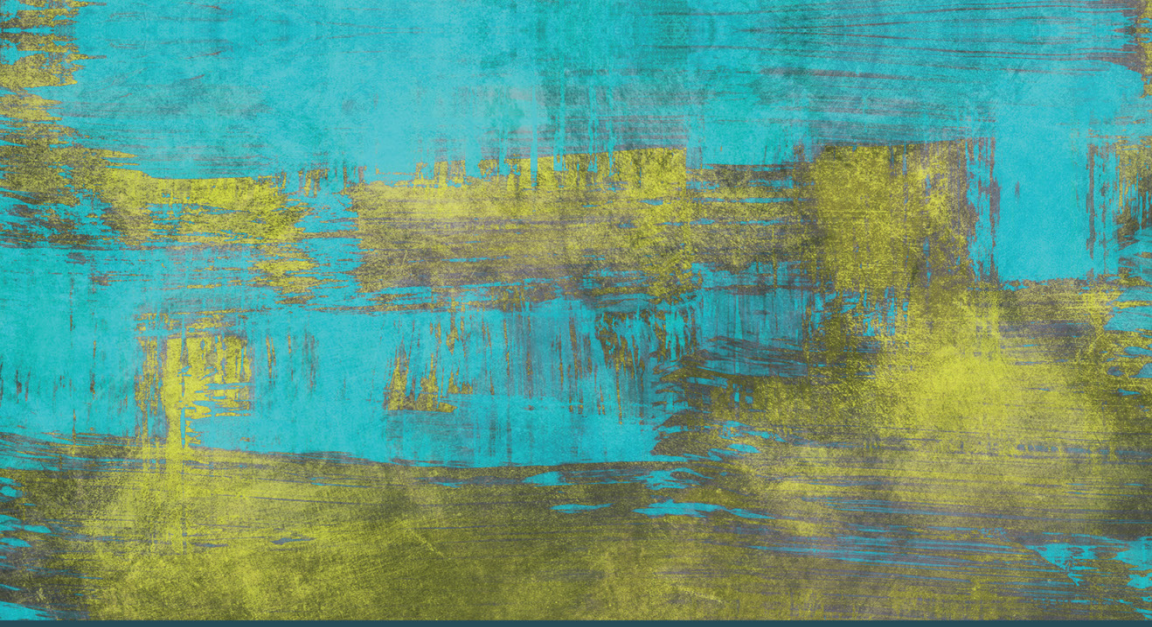

Routledge Innovations in Political Theory

THE WORLD'S CONSTITUTION

SPHERES OF LIBERTY IN THE FUTURE GLOBAL ORDER

Adam K Webb

The World's Constitution

Global governance is tightening and foreshadows that world state formation will become a live political issue in this century. Some observers treat it as inevitable amid the urgency of global issues. They foresee a technocratic scaling up of the model of state authority that has prevailed at the national level for over two hundred years. Many critics and members of the public around the world look askance at that prospect. They rightly fear a moral vacuum of authority disconnected from the world's traditions, and a concentration of power that would be damaging to liberty or even dystopian in its upshot. Still, they often merely aim to stand athwart the scaling up of political institutions, rather than actively trying to shape an alternative that can seize the global horizon.

The World's Constitution: Spheres of Liberty in the Future Global Order offers a radically different vision of future world order that could work in a global space while shifting the balance of power from state back to society. It draws on older resources in political thought, both Western and non-Western, to upend mainstream notions of statehood and sovereignty that have been taken for granted for too long in the modern era. It offers an original 'sphere pluralist' framework that can reconcile liberty, tradition, and cosmopolitanism. As a book rooted in the past but mindful of future constitutional and policy challenges, it bridges ideas and real-world implications, with insights that cut across a wide range of topics from migration and social welfare to personal law systems and channels of representation. It opens an exciting debate about global constitutional futures that is likely to become more salient over the next couple of generations.

Adam K Webb is Resident Professor of Political Science and Co-Director of the Hopkins-Nanjing Centre, an overseas campus of Johns Hopkins University's School of Advanced International Studies. Previously he taught at Harvard and Princeton and was a Visiting Scholar at the American Academy of Arts and Sciences. His other books include *Beyond the Global Culture War* (Routledge, 2006), *A Path of Our Own: An Andean Village and Tomorrow's Economy of Values* (ISI Books, 2009), and *Deep Cosmopolis: Rethinking World Politics and Globalisation* (Routledge, 2015).

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To my daughter, Suyana—who continues to show me hope

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Preface and Acknowledgements

This book was over a decade in the making, during which many of my personal experiences were a microcosm of themes that it covers.

In the first half of that time, my nomadic existence included spending time in some of the world's great library collections, at the British Library, Princeton University, the University of California at Berkeley, the University of Toronto, the University of Exeter, and Nanjing University. In the second half, despite my foray into university administration—which would normally imply less nomadism—the peculiar circumstances of the pandemic unexpectedly saw me moving around at least as much. As several of my colleagues noticed, despite the hassle of leviathans restricting travel, they could never guess quite where I might pop up next for a virtual meeting or class. The tensions between flows of people across borders and the heavy hand of states often exacerbating a crisis reinforced many of the ideas on which I touch in these pages.

During this long period, my institutional affiliation either in person or remotely has been the Hopkins-Nanjing Centre, part of the three-campus network of Johns Hopkins University's School of Advanced International Studies. I am grateful for the support for my globe-trotting intellectual activities, but most of all to those individuals and groups within our community with whom I have often discussed big ideas including themes of this book. Among those commenting on earlier drafts were Joaquín Matek and Thomas Simon. I benefited from lively exchanges in my seminar on Ethics and Public Policy in Global Perspective, as well as from the small but vibrant circle of regulars who have joined our weekly Philosophy Interest Group, whether over wine in person or on screen from all over the world. Branching off from that circle, my long conversations about philosophy and modernity with José González have been a meaningful respite from the mundane as well. I also appreciated the opportunities to present on related themes at various lectures, panels, and other events at HNC and elsewhere at JHU-SAIS.

Despite the disruption of the pandemic for us all, the opportunity to lead HNC communities in exile as far afield as Italy and Taiwan, and on shorter visits to Peru and Southeast Asia, also highlighted the strength of bonds between people united by common interests and callings despite the challenges of geography. The resilience of HNC's bilingual intellectual space, against the inauspicious

tendencies of authoritarianism and great power tensions in recent years, has also been an inspiring tale of liberty and cosmopolitanism in its own way. I look forward to more of its potential coming to fruition when circumstances improve.

Beyond the HNC and JHU-SAIS spaces, my thinking on the themes of the book has been tested and enriched in engagement with interlocutors at Front Porch Republic, Solidarity Hall, the Simone Weil Centre for Political Philosophy, Telos conferences in Ragusa and Berlin, and during visits to Forman Christian College in Lahore and the University of Toronto. In Toronto, early conversations about the book with Joseph Carens, Melissa Williams, and Tong Zhichao were helpful. Among those with kindred but varying perspectives on the fate of community and truth amid technocratic globalisation have been Paul Grenier, John Médaille, Matthew Franklin Cooper, Russell Arben Fox, and Elias Crim. I also continue to appreciate my longstanding friendship and debates with David Yang.

In the final stages of publishing the book, I am grateful for the enthusiasm and support from my editor at Routledge, Natalja Mortensen, as well as the anonymous review feedback and the efforts of Charlotte Christie and V. N. Varsha in shepherding through production.

Finally, amid all the upheavals of the last few years, I treasure the refuge that has been my family—my wife, Di, my daughter, Suyana, and my mother, Barbara. Despite the formidable stresses that we have faced on multiple fronts, we have navigated the challenges of a globetrotting life and supporting one another in all the corners of the world where we manage to spend time together.

Introduction

Every day, millions of people go through passport control. They do so at vast airports of glass and steel, at grimy ferryports, and at rickety roadside huts where one halts when driving across a line on the map. At land crossings, the character of a border is manifest. On opposite sides stand officials of two states, with their different uniforms and insignia. And above flutter the flags of their respective states. Behind the formalities of exit or entry looms the might of a leviathan. It owns the space whence or whither you cross, if indeed it lets you cross at all.

Everything about the crossing hinges on rules made by the states involved. As you step over the border, forces bearing on your life shift in an instant. Not only do you find yourself subject to a different leviathan, which can punish you for infractions that you might commit in its domain. Any transactions you do will fall under its commercial codes. Income earned on its territory will be taxed in its own way. Depending on who you are and where you belong, your rights to medical coverage and a safety net probably change as you cross. In a pandemic, the border may mark off a lockdown zone or exclude you altogether as a foreign potential bearer of infection. Driving a car or practising a profession will depend on whether the state recognises your licensing. If you run into domestic strife, the family law of the state may adjudicate your personal affairs according to its own ideas of justice. And, not least, your status shifts. If you are a citizen of the state you are leaving and not of the one you are entering, you turn instantly from member into guest. As a guest, your interactions with the leviathan's enforcers will be different, in more or less obvious ways. Because of your weaker relation to the state, your relation to the territory itself is also profoundly different. You are in a space but not of it.

To any modern traveller, all this is familiar. The almost metaphysical shifts of a border crossing are second nature nowadays. They are not nature itself, of course: at any land crossing, much that is natural does not change. One would hardly expect the climate and vegetation to change from one side of a border to another. People's appearance would also not change much, unless those living just over the border have been transplanted en masse from much farther afield. The natural tends to change gradually, not at a line. Yet modern experience is so entwined with the state's regulation of daily life, and the fact that states are multiple and territorial, that most of us take for granted that so many things change

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in the blink of an eye on crossing a border. The flag, the force of arms, and the foreignness of the rules go together. If you want to do away with such abrupt changes of law and membership—if you want the border in all its significance to go away—then you need the same flag to fly on both sides of it. A truly common space requires a common state ruling it.

Visionaries have long talked of the prospect that the world can become such a common space. Take lines from the middle of Alfred, Lord Tennyson's 1835 poem, 'Locksley Hall':

> For I dipt into the future, far as human eye could see,
> Saw the Vision of the world, and all the wonder that would be….
> Till the war-drum throbb'd no longer, and the battle-flags were furl'd,
> In the Parliament of man, the Federation of the world.
> There the common sense of most shall hold a fretful realm in awe,
> And the kindly earth shall slumber, lapt in universal law.[1]

Today, the war-drums still throb here and there. The nearly two hundred leviathans remain jealous of their authority, whether in pitched battles in Ukraine or Gaza or frictions in the South China Sea, or dozens of other flashpoints. Populist politicians win elections by threatening to deport millions of immigrants. The COVID-19 pandemic saw many countries pull up the drawbridge for a year or longer. In some ways, we seem no nearer to an open world 'lapt in universal law' than in Tennyson's time.

Yet globalisation has brought a proliferation of cross-border flows and entanglements. The trend is towards one global space of interaction, even if the patchwork of boundaries and rulemakers complicates it. Most people, if asked, probably assume that something like border crossings with flags flying over them, and different rules on each side, will still exist fifty years hence. But if, as in Tennyson's poem, they 'dipt into the future, far as human eye could see', they might imagine other possibilities. What about a hundred years hence? Two hundred years? For globalisation to lead eventually to unity without multiple sovereign states would be far less surprising than for today's nation-state system to persist in its current form despite an ever-growing mismatch with human experience.

This book takes up the very big question of a future world state. Despite vague ideas of a world 'lapt in universal law', the path to reach it and—more importantly—fundamental questions about its purpose and scope get less attention than they should. Perhaps because most people think of it as a very distant prospect, beyond their own lifetimes, it does not attract much urgent debate. But given the pace of globalisation, the character of an emerging world state may well become a live political issue within a generation or two. While it will probably take longer to consolidate and to be labelled as such, choices made within our lifetimes will shape it.

I shall argue in this book for a vision of global constitutional order. A world state cannot be just a scaled up version of the nation-state, which replicates its worst features. That way would lie a soullessly flat global space at best, and dystopian technocracy at worst. Rather, despite the scale, a global order congenial to liberty means unbundling power itself across a plurality of spheres. The centre of gravity must shift drastically back from the state towards circuits of meaningful living in society.

Constitutional questions on a grand scale mirror how one understands the exercise of character on a small scale. My approach, which I call *sphere pluralism*, draws on older resources in political, social, and legal thought about the fragmentation of power as a necessary condition for human virtue. Intellectually, it means revisiting and rearranging the building blocks of sovereignty, liberty, and state–society relations as they have long been understood over more than three centuries of modern political theory and practice. Constitutionally, its upshot is at the same time cosmopolitan, traditionalist, libertarian, and pluralist.

Managing an Expanding World

The currents of history are sweeping us towards ever larger scales of governance. While sophisticated observers might not want to dwell on the destination, they typically take for granted the direction of travel. Some see the growing size and shrinking number of states over recent centuries, and project the trend lines out a century or two. Whether by conquest or by peaceful collective action, those lines would seem to point to the world's political unification.[2] Functional needs supposedly drive that trend, since an interdependent world needs a lot more cross-border political coordination. Democracy within each country has proved too narrow in its horizons and too shortsighted in its priorities to tackle the big questions affecting coming generations. Grand challenges thus need grand solutions. As one writer has put it:

> Without doubt, the modern nation-state has been the most effective governance technology ever devised, securing, at its best, an unprecedented level of prosperity and security for its citizens. But in an interdependent world, no individual state, no matter how competent, can address transnational issues ranging from climate change, to financial regulation, to macroeconomic management, to extremist terror networks.[3]

Such observation of trends and practical needs has a dispassionate air about it. Necessities of scale drive the process. Conversely, the strongest feelings against the world state that might be bearing down on us are due to that very scale itself. Many recent backlashes on both left and right stem from apprehensions about supranational governance. Large structures above the nation-state distance elites even more from citizens. Regional proto-states like the European Union, and the

looser global institutions like the World Trade Organisation or the International Monetary Fund that deal with one or another policy area, have a 'democratic deficit'. Too big for citizens to influence, they threaten to subsume politics in administrative machinery.[4]

Some on the left imagine overcoming that democratic deficit in future. They would adapt to the scale by adding more avenues for public participation and activism. More right-leaning defenders of national sovereignty see the problem as inherent in any notion of global governance, however. One camp on the right treats sovereignty as a free hand for dominating, whether in the unilateral adventures abroad of an America-style superpower or in the internal repression of a China-style strong state. Supranational governance and the global human rights lobby often annoy the powerful.[5] Another camp on the right sees sovereignty as bound up with national history, and thus rejects the conceit of founding 'free-standing international authorities' without roots. For example, some American critics in this vein contrast EU-style 'Eurogovernance' or 'global managerialism' with a robust constitutionalism rooted in a particular national tradition. They think that rulemaking by supranational bureaucrats is undemocratic and unenforceable.[6] Some republican thinkers agree that the nation-state is the only proven large space in which political energy can express itself. Only people with a common history, culture, and language can share a common political life.[7] People will not feel connected to those in other countries if they cannot talk in a familiar way about shared experience. For all these reasons, such critics hold that cooperation at the global level should stop with a 'fair democratic association' among states. Mutual respect could lead to more fairness both internationally and within countries, but would not lead on to direct citizen participation in a global polity.[8]

Such misgivings have to do mainly with structure and scale. They stem from experience so far, and a sense that the ingredients of political life can only be arranged in familiar ways. Perhaps experience could overcome those misgivings in the end. If coming decades showed the left that supranational structures could be made more democratic and oriented to justice, and showed the populists and republicans that a broader scale of common culture could emerge to bind ordinary citizens together, then the scale itself might not remain so problematic.

Yet resistance to the prospect of a world state is not confined to those who merely want to cling to something like twentieth-century national democracy as long as possible. Others who are less at home with the modern world have more fundamental apprehensions about the whole exercise. Many traditionalists fear that a world state would end with a nightmare of tyranny. It would combine in sinister ways the centralisation of past empires and the moral vacuum of modernity. The scale and the content go together. While the details vary, such critics foresee something like what one historian of civilisations has predicted based on imperial forerunners through the ages: 'a unitary, authoritarian, bureaucratic, peaceable, elitist, and sterile world state'. Given the character of those who seem

to be consolidating power nowadays, the dominant worldview of such an order would be 'individualistic, alienated, manipulative, technical, hedonistic, rationalistic, inquisitive, bureaucratic, [and] bourgeois'.[9]

Traditionalists are not alone in imagining that the global scale would magnify the ills of modern society. Many libertarians fear that a world state would leave no way out from political heavyhandedness. With twentieth-century nation-states, at least freedom-lovers often could emigrate whenever governments overreached. Some anarchists respond to dystopian prospects with the temptation of an escape into the wilderness, and perhaps the collapse of complex modern social organisation altogether.[10] But unlike libertarians and anarchists, traditionalists tend just to want to stop the march of history. Before modernity, the greatest threat to any tradition was usually another tradition. Today, traditionalists see the sort of people who govern as hostile to traditions in general. They suspect that global governance is yet another weapon being deployed against them, by the same modern elites whom they find culturally alien in their own societies.

Unlike the left, traditionalists today do not entertain a political fantasy of capturing supranational institutions eventually and turning them to their own purposes. From a traditionalist perspective, the world state is not something to shape. It is something to stop. On this trajectory, if a technocratic world state—like the EU writ large—starts impinging more visibly on their lives a couple of generations hence, traditionalists are more likely to try standing athwart the process and slowing it down where possible, rather than fighting to influence it. That future would look like what some Western Christians today call 'the Benedict Option': give up on secular mainstream institutions and find a haven in 'a robustly Christian subculture within an increasingly hostile common culture'.[11] Such could become the answer of traditionalists of all stripes around the world, if emerging global power centres ramp up pressure against them. They could hunker down and keep traditions only in private life, while yielding the widest horizons. If the world to come is one of technocrats at the top and Tinder-swipers at the bottom, traditionalists may dig in rather than doing battle with either.

Still, such a tactic would probably fail. Scale does matter. To mix metaphors from Edmund Burke and Benjamin Franklin, the battle of the little platoons cannot just stop at borders. Without hanging together, those little platoons assuredly will hang separately. They would also be selling themselves short in the meantime. Despite their diversity, traditionalists of various sorts are by far the largest bloc of humanity. The fastest growing populations, especially the youth bulge in the Global South, are often religious.[12] If such folk see emerging patterns of global governance as hostile to tradition and at odds with their own dignity and independence, then any world state would lack legitimacy at the outset.

As supranational institutions tighten, all these sources of resistance are typically dismissed as getting in the way of necessity. The architects are mostly a cautious bunch, better at tasks than at persuading with ideas. Experts, lawyers,

and bureaucrats proffer functional solutions to policy challenges like the environment, public health, and terrorism. As the reaction of the educated classes to recent populist movements and electoral defeats has often shown, they disdain ordinary people who look askance at supranational institutions as clinging to one or another parochialism that fetters, rather than protecting, human freedom.

Treating global governance in this way, as an accretion of tasks, does not merely risk failing to capture the public's imagination, because of a cultural chasm between rulers and subjects. It can also imperil important goods. The ignored questions of principle that this book will address are often also questions of power. As history has shown, politics harbours few notions more dangerous than the claim that 'something must be done' about one or another problem. To be sure, a state of any size must get things done. We forget at our peril that it must also appreciate what different actors—including itself—cannot do, and what principles trump the tasks of the moment. Sometimes bulwarks that thwart action can be as important as the tools to act.

Here, as this book will argue, the idea of a constitution is crucial. The essence of constitutionalism is distinguishing between politicians' short-term ambitions and the rules of the game within which they must work. In modern times, those rules have typically appeared in a written constitution, though the constraints of custom and religion filled much the same role in the past. A constitution brings to the surface the assumptions of a state's founding, and the distribution of values that it locks in.[13] We can assess a constitution on three dimensions: breadth, length, and depth. First, it has adequate breadth if it lets political actors reconcile different interests at one point in time, and coordinate decision-making on a grand scale. Second, it has adequate length if it allows far-sighted decision-making about future goods. Those who today run supranational institutions believe, correctly or not, that they are working towards such breadth and depth for handling 'global problems'.

But we can also evaluate a constitution on a third dimension, depth. Depth involves harder questions about the boundaries between the state and other spheres of society, the virtues that flow in and out of different activities, and how the whole landscape fits together in a vision of human flourishing. From a premodern perspective, any constitution that lacks depth would fall short. Perhaps such questions seem antiquated and lofty. In any case, few people nowadays ask them. As it happens, this is where the big questions of principle meet with the social chasm between the traditional majority and the elites pushing global governance. The bulk of the traditionally minded global public is ignored, even though some older traditions of political thought may offer rich resources for thinking through such antiquated and lofty questions.

As the philosopher Eric Voegelin noted in 1961, the ancient world-empires imagined a transcendent layer of experience. The ancients believed that a cosmic order should inform the institutions pretending to dominion over a vast territory. Writing amid the Faustian temper of the Cold War, Voegelin argued that the

moderns instead assume that human unity rests on mundane technological progress. Their blind spot for higher meaning implies that even amid our shrunken horizons, 'the global ecumene is in search of a world.'[14] In Voegelin's time, that disenchanted global space was contested between America and the Soviet Union, with everything from tanks to moon rockets thrown into the scuffle. Nowadays, the tightening power structures may not have such obvious centres, even though the relentless energy of tech capitalism, the tools of surveillance, and the similarity of those in power in most countries are much more pervasive. Questions about how to create a 'world' that respects meaning, rather than just more efficient circuits of power and wealth, still go largely unasked.

I do not think I exaggerate in saying that the founding of a world state is the most high-stakes instance of institutional design in history. Get it wrong and we could sleepwalk into authoritarianism or technocracy. Without an 'outside', a world state would probably prove even more stable than large national polities of the past. The trajectory of global political development will be path-dependent, just as it was path-dependent on a more modest scale within countries. As the historian Eugen Rosenstock-Hüssy argued, the great revolutions of European history each marked a turning point in which the respective countries settled on their enduring patterns of national life.[15] What humanity accepts in the contours of a world state matters far more than the present shortage of serious reflection suggests. Despite the complacency of those now leading the way—who think it is their conversation alone—it should be a matter of fierce controversy.

In this book, I shall lay out one possible answer. What would a metaconstitutional settlement at the global level look like? I use the term metaconstitutional because, while world state formation no doubt will involve a written constitution dealing in the narrow sense with political institutions, such details always emanate from a deeper interlocking of principles, interests, and ways of life. Indeed, a state itself nests within a social and civilisational order with an implicit constitution of its own, whether made explicit in ideology or left implicit in norms and assumptions about human nature. Such an order encompasses more than a state. It touches on the full array of political, social, economic, and cultural arrangements.

In tackling the global question, therefore, I want to reorient the conversation away from the state in a narrow sense to that broader metaconstitutional order. Specifically, I shall propose how to secure, on a landscape of cosmopolitan diversity, robust protection for spheres of liberty. As a fuller account in later chapters will detail, those spheres gain much of their importance as spaces for the free exercise of virtue. Virtue is not monolithic, to be sure. Still, the various premodern civilisational, philosophical, and religious traditions identified virtues that recurred in familiar ways across time and space, even if they also varied in different walks of life. Modernity has brought progress in some matters. But it has also swollen the scale of institutions, turned old habits topsy turvy, and swept aside much of the traditional texture of life. Amid such disruption, it

has not offered new and stable spaces within which people can live virtuously. The old modes of life often are seen, through a modern lens, as hidebound, placebound, irrelevant, or as obstacles to enlightened remaking of society from above.

Questions of tradition, liberty, and cosmopolitanism must intersect in any thinking about future global metaconstitutional settlements. This intersection is both an intellectual and a political imperative.

Intellectually, revisiting and rearranging some key assumptions will be crucial to underpin such a settlement. As I shall argue, now is a timely moment, and world state formation an apt issue, for fleshing out virtue-centred sphere pluralism as a metaconstitutional theory. Sphere pluralism can accommodate great diversity without binding that diversity to nationality, federalism, or other kinds of territoriality. By unbundling state sovereignty and reclaiming liberty in spheres of society, rather than only individual rights, it can rein in power without reducing liberty to a market that dissolves society itself.

Politically, tradition, liberty, and cosmopolitanism may look like strange bedfellows in an unfamiliar bed. But whether a metaconstitutional settlement can resonate in practice with different constituencies will indicate its fitness for purpose. It cannot just descend from philosophical ideals of the past, any more than it can just solve today's technical questions. It must connect with people's aspirations. If it cannot at the same time satisfy traditionalists who want room for textured and committed ways of life, and libertarians who fear a nightmare blend of technocracy and slick vote-buying, and cosmopolitans who want to release the human spirit from the nation-state, then it will not last. Conversely, a metaconstitutional order that accommodates traditional ways of life, and jealously protects their autonomy in spaces both small and large, may get more benefit of the doubt from more people. The emerging global public in this century differs in its sensibilities from the social base that shored up modern nation-states in the West. It is, by and large, still more rooted in tradition and religion, and more sceptical of state sovereignty that would overreach into society. In short, the global scale needs a certain type of content, unlike what is now taken for granted by the elites designing global governance or by the populists who lash out without offering a serious alternative.

Three Unsettling Trends

Before one can start imagining solutions, however, one has to define more precisely the contours of the problem. After all, much of what I have said so far would be familiar in other eras. Power and liberty, functionality and ideals, ambition and humility, and different scales of belonging—such things have always been in tension, in one guise or another. But apart from the technological advances that make a tightly wound global order possible for the first time, our own era also brings three trends together into a unique dilemma.

First, the modern trajectory has seen state power intrude deeply into society. That prevailing model of sovereignty will pose a grave threat to liberty if scaled up globally. Second, social authority has converged more than ever before, in a new class as broad in its global reach as it is narrow in its outlook. That social force adds impetus to the formation of global governance, and lacks the older commitments to traditional diversity and pluralism. Third, the political honeycomb of territorial states has given way unevenly to globalisation. Foci of power are mismatched with the varying scales of experience and aspiration. Just as the world's demographic centre of gravity shifts southward away from Eurocentric liberal modernity, so do circuits of world society cut across borders and stake claims of liberty and diversity that the national political institutions of recent generations are unable to accommodate.

In short, the global landscape makes the toolkit of the last century ill suited, even dangerous, for the future. At the same time, as I shall go on to argue, this moment of global breakthrough also holds out a remarkable opportunity to cut through a Gordian knot and reconfigure the relationship between state and society, and to restore a pluralism that modernity nearly wiped out.

The growing reach of the state is a modern phenomenon, but has its foreshadowing in a long trajectory of state formation. Historians and archaeologists trace the origin of states back to tribal societies and the transition from hunting and gathering to settled farming. One need not subscribe to discredited ideas of a 'dark green golden age' of peaceful hunter-gatherers.[16] But state formation did mean imposing a new and in many ways more oppressive order. Far from being just an efficient scaling up from tribal bands, the process involved bitter struggle. Moreover, state formation did not happen everywhere that it conceivably could have happened. It required smashing older and flatter kinds of tribal solidarity. Some people came to monopolise vital resources like land and thereby exploit others. For most ordinary folk, state formation meant herd-like domestication and worse drudgery, 'the loss of autonomy at many social and political scales'. Consensus and legitimacy took a back seat, whatever the niceties imagined later by some apologists for the states in question. As one pair of archaeologists put it, 'History has no record of a harmonious state.'[17]

The pace of centralisation picked up after the Middle Ages in Europe. A peculiar model of statehood everywhere trounced its rivals. Political scientist Hendrik Spruyt has traced the emergence and proliferation of the sovereign territorial state. It out-competed the diverse older modes of political organisation: loose empires, feudal hierarchies, clerical estates, independent cities, leagues of cities, and so on. The modern state was consolidated for the common convenience of ambitious rulers, newly prosperous urban merchants, and the like. Functionality at home and credibility abroad made states not only efficient but also recognisable to one another. The European state system eventually crowded out alternatives and then spread over the rest of the world.[18]

Digging into particular cases, historian Charles Tilly has compared such modern state formation to a 'protection racket'. Warlords competed with one another over who could control more territory and offer more effective protection to key stakeholders. In exchange, their subjects let them extract resources to wage further war. The few warlord dynasties who survived the competition eventually acquired an aura of legitimacy as sovereigns. This legitimacy had nothing to do with enhancing the rights of subjects, Tilly hastens to point out. Rather, states crushed rival institutions in society and concentrated power in their own hands. Over centuries of cutthroat competition, such nation-states also shrank their own numbers in a survival of the fittest. Of some five hundred European polities in 1500, only about twenty-five remained by 1900.[19] They thus brought a distinctly modern sort of peace. Violence in daily life has declined over the centuries such that, overall, we now live in the most orderly time in human history.[20]

A state that stands above society in this way can usually impose its own will. Sociologist Michael Mann breaks the state's power down into two dimensions: 'infrastructural power' and 'despotic power'. Infrastructural power is the ability to implement policy that touches all the nooks and crannies of society, perhaps because public opinion has demanded that certain tasks be accomplished effectively. Despotic power is the state's ability to override the wishes of other actors in society. Mann argues that infrastructural power increases with technological sophistication, as more tools and information can be deployed. But despotic power waxes and wanes. None of the tools of control—specific weapons, for example—are unique to the state. They tend to fall into society's hands sooner or later. Amid these oscillations of power between state and society, however, the state does have one advantage: its inherent territoriality. Its ability to span a given territory and control flows across borders give it a comparative advantage that allows it to out-centralise any rival institutions.[21]

Despite the common hard-edged logic of states, thinking about them has varied across time and space. The exercise of power always has its cultural and philosophical inflections. To take just one example, even the way we talk about 'politics' differs among major languages. In European languages, the word descends from the Greek polis, with its atmosphere of deliberation and the visibility of the active citizen. In Arabic, the word corresponding to politics is *siyāsah*. It comes from the verb root س و س meaning to train a horse.[22] Siyasah refers to the domain of political rule as mastery of a turbulent populace. In Chinese, politics is translated as *zhèngzhì* 政治, a combination of characters connoting the authority of a righteous leader and the managing of subjects. These differences reflect longstanding experience within each political culture.

More recently, however, understandings have tended to converge on some common concepts. This is where the overall trend of state intrusion into society is manifest. To the modern mind trying to grasp stateness, mastery of territory is key—in the sense both of mastery over people within a territory, and mastery based on territoriality itself. The philosopher Friedrich Nietzsche called the

state 'the coldest of all cold monsters'.[23] The sociologist Max Weber defined the state as 'a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory'.[24] While force and control of territory loom large, political scientist Kenneth H F Dyson notes that one can slice into the concept of the state on different levels: 'might, law, and legitimacy'. His more extensive definition holds that the state is

> a concept that identifies the leading values of the political community with reference to which authority is to be exercised; emphasises the distinct character and unity of the 'public power' compared with civil society; focuses on the need for depersonalisation of the exercise of that power; finds its embodiment in one or more institutions and one or more public purposes which thereby acquire a special ethos and prestige and an association with the public interest or general welfare; and produces a sociocultural awareness of (and sometimes dissociation from) the unique and superior nature of the state itself.[25]

These essential features of modern European statehood have spread over the whole planet as the default mode of political organisation. Modern states have filled every nook and cranny of the world's territory, leaving almost no space outside the system. They have become the obvious reference point for imagining future global governance.

But their flavour still varies from country to country in ways that can illuminate deeper choices. Political institutions and attitudes emerge from history. The battles by the state and other actors to shape the terms of each protection racket have played out differently at the margins. While the outward face that a state shows to the international system must be more or less strong, the 'saliency of the state' varies more at home. Britain has typically had a much weaker image of the state's role than what we see in France and Germany, for example. While Britain kept lingering quasi-mediaeval ideas of sovereignty shared between monarch and Parliament, and until recently more robust independence of the aristocracy, judiciary, and civil society, French and German sensibilities have stressed unified sovereignty, rational codification, bureaucracy, and administrative uniformity. On the Continent, political cultures regard the state as 'an immanent intelligence, directing social change, rather than as a social agency' that responds to interests in society.[26] We should not underestimate, however, how much the pressures of late modernity have led Britain—and its overseas offshoots like America and Australia—to converge with a Continental-style level of centralisation.

The blotting out of rival power centres in society has gone far beyond the kings' taming of the warlords and clergy in an earlier era. In more recent generations, state power has penetrated to the micro level. To take but one example, the French social critic Philippe Meyer has likened the modern state's intervention

in family life to its replanning of cities and towns. Bourgeois ideas about proper family life had to be inculcated in the poorer strata of society. Schooling became obligatory. Supposed neglect of children by the poor justified encroachment on parental authority. 'The aim was … to turn the family into a stereotyped unit, one that could consequently be regulated and disciplined.'[27] The state now influences family life in ways unimaginable centuries ago. Yet the penetration of society extends to other spheres, too. We find modern states punishing crime, extracting huge amounts of revenue, controlling travel across borders, imposing private law, structuring safety nets, regulating commerce, defining curricula, and so on. By premodern standards, for a state to try doing so much would be wildly impractical. It would also have a whiff of hubris about it. By today's standards, any state unable to do all these things would count as a sorry failure.

Just as states at the national level have attained greater power than ever before, so now globalisation allegedly demands a scaling up of governance to the global level. Here lies the danger. Scaling up that model would not amount to merely adapting one functioning institution to another context. In ominous ways, it would mean locking in a pattern of state–society relations that lies at one extreme in the range of historical experience. Moreover, the plurality of territorial states so far has afforded some counterweight to the dominance of states over societies. The link between territoriality and power removed constraints within each territory, but it also hemmed in each state. Frontiers have been the price of mastery. On the global landscape, each supreme power was just one among many. People could escape, or play variations in national policy off against one another, at least some of the time. Scaling up the modern state to a global scale, with no outside, would let power brook no escape.

Ideas about state power and its ready-made templates can be even more dangerous when an agenda of global governance is on the march. As noted earlier, today there is a tendency to deploy technocratic power ever more, issue by issue. Habits and authority tighten in a multigenerational ratchet. But such approaches gain momentum mostly when they have behind them an identifiable social force. Who, then, are the state-founders of this century? How do they compare to their predecessors?

In the history of state formation at the national level, the main mover was the tough-minded warlord who crushed his rivals. He attracted and financed enough retainers who knew which way was up and forward. Then his heirs held on to power long enough to gain a mantle of sovereign legitimacy. Nowadays, the process is more peaceful and diffuse. Cross-border governance breaks down into dozens of different policy areas. 'Transgovernmental' networks, think tanks, and 'epistemic communities' of bureaucrats link up across borders. They work on one or another corner of regulation: financial monitoring, labour standards, health policy, environmental protection, counterterrorism, and so on.[28] They share best practices but also draw the boundaries of acceptable policy, in line with their own assumptions. Depending on their degree of sympathy for such

people, scholars writing about the 'politics of expertise' paint the artisans of global governance in varying lights.[29] They flatter them as knowledgeable and adept at working with counterparts abroad. Or they indict them as a privileged and insular sort who disdain public input and care more winning esteem from each another and from the world's circuits of power and wealth.

The personal ambitions of bureaucrats do drive a lot. But making sense of global governance requires a broader view of common interests and the social fault lines that distinguish those who are taking the initiative now from the rest of humanity. This is the second trend: the concentration of social authority.

Critics on the left fear that supranational elites are in cahoots with big business. This fear has plenty of precedent at the national level. In the 1980s and 1990s, experts like the so-called 'technopol' economists oversaw hard-edged reforms in developing countries, which often ended up sacrificing the living standards of ordinary people while stock markets boomed.[30] Today, tightening the institutions of global governance can be seen in the same light. Stephen Gill has used the term 'new constitutionalism' to describe trade and investment treaties that lock in pro-market economic policies, so that future democratic majorities within countries have no leeway to reverse them. Critics detect a sinister agenda to weaken democracy on behalf of an 'emerging international aristocracy'. Just as national constitutions in the nineteenth century often defanged mass suffrage by putting property rights and other interests beyond the reach of politics, so too can the new constitutionalism work 'as an "insurance" or "hegemony-preserving manœuvre"'. The relentless pressure from Brussels against Greece's leftist government over a decade ago, in the name of upholding treaty commitments to the eurozone, is sometimes seen as a microcosm of how global institutions will be used to hollow out national democracy.[31]

In short, seizing command of the widest horizons looks to many critics like just another weapon against democracy and ordinary folk. Perhaps those interests focus on economic gain, or on securing fiefdoms of regulatory authority, or both. But whatever the balance between cutthroat marketisation and technocratic regulation, the agenda is implemented by the same sort of people and tightens their top-down control over resources. When those who are already powerful within countries assemble supranational machinery, their leverage grows. Whether their goal in any instance is to make money or to regulate social life, democracy can get in the way.

This convergence also cuts through superficial differences among national elites. At first glance, the bankers of New York, the lawyers of Brussels, and the cadres of Beijing pursue different agendas. Yet they have more in common than ever before. This common mentality may even prove more important than material interests in the long run. It involves assumptions about ambition, hierarchy, legitimacy, and the exercise of power over the bulk of humanity. Mentalities, perhaps more than control of resources, end up shaping deep constitutional arrangements for the long term.

As an umbrella term for describing those at the leading edge of global state formation, I shall borrow what has been described as the 'new class'. The concept was coined in the 1950s by Milovan Djilas, a Yugoslav sociologist looking at the privileged class ruling eastern Europe, despite the abolition of private capital and other sources of power that Karl Marx had analysed. Djilas argued that in a complex modern society with large, bureaucratic institutions, cadres and managers with a certain type of education and professional status amounted to a class.[32] The 'new class' theory was then applied after the 1960s by Western sociologists to understand the changing character of their own elites. The expansion of higher education had created a stratum of people with common values and ambitions, just as the expansion of the welfare state gave them more institutional machinery to advance their agenda and control resources. While the older capitalist class had not vanished—many millionaire rentiers kept drawing dividends from the system—a lot of real power had passed to such managers and bureaucrats. Later incarnations of new class theory have traced a merging of education and wealth.[33] Global elites, whatever their career path and chosen levers of power, tend to come from similar backgrounds, pass through similar education systems, hold similar ideas about the world, and scratch each other's backs in doling out the spoils of globalisation.

To see those driving global state formation as an identifiable new class does not deny that they have some diversity of experience, interests, and agendas. The new class is not an analytically precise label in all contexts, nor does it need to be. But it remains useful as shorthand for a broad social tendency that, as we shall see, is bound up with these big questions of principle. Its members surely have more in common with one another than with much of the global public. For all the tensions among bankers, lawyers, and bureaucrats, for example, they find it easier to work with one another because of the overlaps they take for granted. How likely is it today to find a participant under fifty years old in 'transgovernmental' networks or think tanks or policymaking fora who did not go to a modern-style university and spend much of his or her youth acquiring credentials? How many are devoutly religious? How many wear attire different from the placeless suits of the modern global establishment? Against the much wider diversity across time and space, their narrow common ground is noticeable.

The new class's personal experience feeds into how it views social order. Within modern states, a kind of moral neutrality stands in stark contrast to premodern ideals. The retreat of common religion has meant that modern states instead seek legitimacy, as one writer put it, on 'the path of trying to realise the social utopia'.[34] A thin layer of individual rights and efficient public services is meant to secure the loyalty of subjects.

As the modern template gets scaled up to global institutions, the effacing of tradition goes even further than it did within countries. With the new class leading the way, some elements of diverse national political cultures pass more easily than others through its filters, to shape global governance. The new class admits

no transcendent checks on authority and no civilisational space that might dwarf its own claim to the widest horizons. While it talks of rights in the abstract, such rights are grounded only in positive law and the rest of its own secular matrix. Its natural inheritance thus leans to postwar Continental European political culture more than the messy Anglophone tradition, much less anything stemming from mediaeval Christendom, the Islamic world, or the like. It also has eerie affinities for the vigorous statism of modernising technocracies in East Asia. Efficiency and expertise resonate. Just as wealth gained respectability among the grandchildren of Maoist revolutionaries, so are the grandchildren of Western liberals attracted to the capabilities of top-down regimes in China, Singapore, and the like. Small wonder that Slavoj Žižek, a leftist philosopher and critic of Greek austerity, compared the eurozone bankers and bureaucrats to purveyors of 'Asian values'.[35] If the global new class has a political culture as such, it seems spiritually to lie between Brussels and Singapore.

The global new class also takes for granted that people like themselves will keep leading the way in designing the global architecture. Whether in freeing trade, or regulating finance, or protecting the environment, or fighting terrorism, or preventing pandemics, they assume they are the only layer of humanity inclined to think about a cosmopolitan political future. We should not mistake such consciousness for ambition or imagination, to be sure. Their instinct, stemming from years of conformity on an upward trajectory within one or another career, is not to rock the boat. Problems are to be solved piecemeal and carefully. The new class's allegiance shifts upward. As in ancient Rome, the legal fictions of republican accountability persist even while empire becomes reality. New class networks of expertise increasingly escape the familiar mechanisms of national democratic accountability. The shocks that the new class experienced in recent years with roughly populist victories in the Brexit referendum and two electoral victories by Donald Trump were illustrative, even though such tangential eruptions of grievance are unlikely in the long term to thwart deeper trends to global integration and technocratic control.

Given the hard truths of global demographics, a new class intent to de-fang democracy in any global polity cannot lag far behind. Compared to those who are leading humanity into that supposed future, most people around the world are far more traditional, religious, and uneasy with rising inequality. The global public, if we can speak of one, will have those tendencies for the foreseeable future. The new class will thus be wary of subjecting itself to democracy on a global scale. Its mechanisms of global governance—its proto-state—will have to rely on law and bureaucracy rather than democratic legitimacy to hold its ground. At least, it will have to do so for generations, while the new class hopes to erode the more benighted segments of global public opinion. Just as nation-states penetrated and remade society, so too would such a world state have to make inroads into the more illiberal parts of the social landscape, before it could even entertain universal suffrage.

To be sure, many observers will protest that it is early to speak in this way even of a global proto-state. Mechanisms of supranational governance remain in their early stages and are often fragmented. I admit that they are not yet a state, so much as elements that point onward to statehood once they tighten. Within a broadly liberal mainstream, global norms are also often contested by diverse voices. The new class is not blind to the unequal circumstances and discrimination that amplify some voices while muting others. The preferred response and authority for supranational institutions to deal with everything from refugee crises to torture to sexual violence is often a matter of lively debate.[36] And, to be fair, the Western segment of the new class gives much more respect to individuals and non-governmental organisations than, for example, its counterpart in Beijing does. A world state assembled piecemeal by the new class would not look like an empire under Hitler or Stalin. But the prevailing logic of technocracy, policymaking insulated from popular input, tightening regulation, and an assault on rival forces in society that cannot be assimilated to a version of enlightened but compliant diversity, all point towards a tighter and more hierarchical global future. Populist backlashes show the extent of resentment, but they are nationally confined and do not destroy the bulk of the supranational machinery. Nor do they offer an alternative vision of global order itself.

These first two trends—the maturing of the template of a strong state supreme over society, and the converging of authority in the new class—together point towards an eventual consolidation of global governance.

The third trend, which complicates matters, is the rise of so-called 'world society'. World society exists alongside the international system and the economic circuits of trade and investment. Theorists of international relations use the term to refer to individual contacts across borders, flows of ideas, civil society networks, and the like. They stress that world society has not replaced politics between states, so much as adding another layer to the global community. Unlike the system of sovereign states, world society has a looser relation to territory. As one observer has put it, 'Whereas territorial spaces are mapped in terms of longitude, latitude, and altitude, global relations transpire in the world as a single place, as one more or less seamless realm.' Another compares world society to a 'cobweb' of interactions across borders, in contrast to the image of self-contained countries jostling for power like 'billiard balls' on the international stage.[37]

Still, 'the state as container' asserts its supremacy over world society.[38] As we saw during the pandemic, the ability to control cross-border movement and command resources can come back with a vengeance from time to time. Such tensions between world society and territorial states will become more salient in coming decades. For the last few centuries, as noted earlier, territoriality has given stateness its edge, both in the sense of coercive leverage and in the sense of limiting any one state's reach. The growing tension between that template and world society can lead in different possible directions now, as global

constitutional futures come on the agenda. Today's architects of global governance just assume that as the scale of life expands, with the imperative to do something about one or another problem, the usual elements of statehood will fit together above the nations. They may not yet go so far as a world state, though their direction of travel is clear.

Yet as I shall argue later in this book, world society can also pose a more fundamental conceptual and practical problem. If states across the globe were individually all like the western European polities that exemplify the endpoint of state formation, then stitching them together in familiar terms—as has happened with the EU—would be easier, whether or not desirable. But state mastery over territory and society is incomplete for much of the world. The logic has not lodged firmly in the hearts of billions. The largest swath of territory and population in today's world—the Global South—lags behind in the modern concentration of power. Most of the developing world has 'strong societies and weak states'.[39] Poverty and weak national identity in many countries limit state capacity.

When the new class today trains its eye on the Global South, and utters phrases about 'improving governance' and the like, or when it assembles coordinating mechanisms among wealthy democracies, it envisions gradually tightening state capacity in coming decades. From that perspective, the tension between stateness and world society looks like a last frontier. Its conquest is expected to unfold in time, along familiar lines. But from another perspective, world society can challenge stateness itself. Its scale and diversity could just as easily chasten overreach and demand another model. The wide horizon itself might give us pause when it comes to scaling up power even further. And, not least, the content of the global horizon does not quite align with new class assumptions. Within countries, strong religious and cultural identities often push back, in the name of one or another prepolitical reality, against bureaucrats' efforts to encroach. One simply cannot get away with the same level of intrusiveness in Tunis as in Toulouse, or in Nairobi as in Nanjing.

Perhaps time will indeed tame the global public. For now, however, globalisation is unleashing circuits of engagement quite unlike what the future world is supposed to look like from the vantage points of Brussels and Singapore. As one observer has noted, plenty of premodern elements like cross-border religious resurgence, migration of the traditionally minded, and the like are forcing into the public sphere issues that liberal modernity and the nation-state were supposed to have expelled from it.[40]

The Last Stand of Liberal Globalisation

These three factors—state overreach, the new class, and the mismatch between territorial governance and emerging world society—thus converge on doubts about the viability of existing toolkits. Before we turn to the argument that this

book will develop, however, we have to consider where the existing order tries to put its best foot forward, so to speak. How do establishment practitioners and thinkers build global constitutional legitimacy on what already exists? Perhaps it is exaggerating, or at least premature, to say that reforms within the same logic amount to moving deck chairs around on the Titanic. Be that as it may, the present lines of thinking can be illuminating. They show not only the animating worldviews but also the limits involved.

As a social force, as a legal approach, and as an ethical ideal, the mainstream thrust towards a better version of liberal globalisation revolves around tightening the links between individuals and rationalised supranational structures. I already traced the sensibilities of the new class as the social force now driving the piecemeal advance of supranational governance. More far-sighted versions of this project occur mainly on three tracks: the strengthening of the United Nations, the sanctification of human rights, and the pressing of ambitious claims about global justice. Thinking about these tracks issues forth from two camps. In one camp, scholars closer to the legal establishment want to push existing international law in marginally more systematic directions, towards a kind of liberal global constitutionalism. In another camp, liberal idealists who float further from political power urge realising familiar values more fully.

A prime repository of hopes for perfecting global governance is the UN. Its General Assembly looks like a forerunner of the 'Parliament of Man' in Tennyson's poem. Experts often say that the UN's modest achievements on peacekeeping and spreading best practices make it better than nothing. And as an overarching global framework, it has no rival. UN membership has become a common yardstick of statehood. The UN Charter is the only document resembling a world constitution, for it occupies pride of place among the myriad international treaties. The UN Declaration of Human Rights lists ideals that even repressive regimes pretend to uphold.[41] The UN hardly amounts to a state, however. It has no enforcement mechanisms of its own. Rather, it offers a hub on a complex landscape of international law, with nation-states still as the basic units.

Some onlookers lament the retreat of idealism about a genuine world state, since the heady days after the UN's founding at the end of the Second World War. More recent generations have settled instead for loose coordination among governments. Supporters of the original UN idea go on to insist not only that the future will require a genuine global authority that looks more like a state, but also that such a state is quite feasible. Countries can cooperate, build trust, and craft institutions that eventually tighten to the point of overcoming national sovereignty. They also compare a hypothetical world state to existing large states like India, to suggest that democracy can work on a vast scale.[42]

Whether such visions should be read more as forecasts or as utopias is debatable. But if world state formation is happening through and around the UN, albeit very slowly, one striking fact is that it is not happening the same way that states formed at the national level. It does not depend on naked force and the

conquest of territory, with legitimacy following after the fact. If it is happening, it is more about legalism as cross-border structures coalesce bit by bit and expand their functions. Many legal scholars today hold that view. As one put it, 'global governance is already underway', but with multiple mechanisms and no clear account of authority and legitimacy. While the days of anarchical international politics may have faded, the global regulation we have is uneven and lacks clear guiding ideas. Without a blueprint of world order, the structure is coming about by trial and error.[43]

Whether in the UN or in other international bodies radiating out from it, or in regional unions like the EU, the material of that structure is law. If the old empires were bound together by religion or civilisation, and early modern states were bound together by force and perhaps by fealty or kinship, then the modern liberal nation-state has been bound together by law. As the philosopher Alasdair MacIntyre put it, 'The lawyers, not the philosophers, are the clergy of liberalism.'[44] The lawyers are also the vanguard of world state formation. Legal scholars write of 'international constitutionalisation', 'global administrative law', 'transnational administrative law', and the 'law of a transnational society'.[45] This quasi-constitutional space above the nation-state does not contain a unified set of legal organs. Rather, it involves diffusion of best practices, such as respect for certain legal norms, revolving around human rights, predictability, transparency, and expertise.

Compared to national state-founding, global state formation is not bloody. Quite the contrary: it is bloodless. Cross-border governance leaves behind most aspects of identity that inspired national publics. What many nation-states have accomplished by way of modern disenchantment, supranational institutions must carry through even more fully. Unsurprisingly given its other sensibilities, the new class would scale up and perfect the empty neutrality of the liberal nation-state. If anything, it would go further by filtering out residues of preliberal identity that linger within countries. The EU exemplifies the sort of supranational institutions that emerge from this process. Any mention of the Continent's Christian heritage was ruled out of the preamble in the draft EU constitution of 2004.[46] A debate the same year between Cardinal Joseph Ratzinger (later Pope Benedict XVI) and the philosopher Jürgen Habermas also showed the gap between a traditionalist and a liberal view of what was needed to sustain political institutions. Ratzinger insisted that to ground rights and to stand against overbearing majorities required prepolitical standards of justice, such as from faith. Habermas argued that a neutral democratic constitution itself could provide enough legitimacy, including for future cosmopolitan superstates like the EU, even if religious legacies might linger in society.[47]

Liberals' suspicion that traditional sources of legitimacy are not only unnecessary, but indeed divisive, becomes more insistent the larger the scale of the institutions. Many think that globally, greater diversity can allow at most a neutral space of rights and efficiency. To be fair, they do not see such neutrality as

empty, the way traditionalists view it. Rather, they think human dignity requires a rationalised relationship between individual citizens and large-scale governance, and that neutrality is part of that rationalisation. This logic holds for legal scholars who try to perfect existing institutions. It also holds for liberal political theorists who want to take global horizons of justice more seriously.

Within these lines of thinking, a tension persists between existing supranational arrangements that ultimately arose as pacts among nation-states, on the one hand, and cosmopolitan liberal ideals, on the other. Often, idealists seem to treat international law as a disappointing effort to fulfil liberal individualism. Yet it bears remembering that the logic of international law was never intended at the outset to secure liberal individualism as such. It aimed instead at peace and comity among sovereigns, and largely let them do as they pleased to their own subjects. Still, much of its content has been gradually fleshed out with elements of liberalism since mid-century, especially around human rights. Treaties and the UN Charter enumerate rights much as national constitutions do. Even if states do not live up to those ideals, international human rights law has enmeshed them via their own treaty commitments. Those frameworks have gone some of the way to making the internal conduct of states a matter for global concern. Human beings become rights-bearers in a global space, rather than only citizens in each separate polity.

This effort to pierce through the state to connect international law with individuals is the main point, so far, at which cosmopolitan values in the abstract line up with global constitutionalism as a more concrete set of legal aspirations. They share the focus on individuals in a global context, rather than just on states. They also agree on the need for a global authority to enforce norms. Scholars writing about global constitutionalism push the frontiers in arguing that constitutional-type elements, rather than just the logic of international law, are beginning to appear in supranational spaces like the UN, the EU, and the International Criminal Court. Constitutionalism in political theory has always aimed to lock power, to prevent its arbitrary use against individual citizens. Rule of law, separation of powers, constituent power, and rights are familiar building blocks at the national level. Supranationally, some such elements come to the fore earlier and more fully. Most visible is international human rights law, enforced by both supranational courts and by national courts authorised to implement the treaty commitments of their respective countries. Constituent power—the idea of popular sovereignty operating outside routine politics to found a state—has little recognisable presence. But it has been suggested that rights preceding popular sovereignty may not be so new. In some ways, it goes back to Enlightenment ideas of natural rights preceding and animating the American and French Revolutions. Global norms transcending national sovereignty can amount to a kind of 'compensatory constitutionalism'. Even as globalisation fetters national democratic governments, individuals might be gaining protections based on human rights treaties.[48]

This advancing of a liberal cosmopolitan agenda by international lawyers deals mainly with gradually making supranational bodies more effective and giving legal teeth to human rights. Another camp includes liberal political theorists who start not from existing institutions but from more abstract ideals. Their logic is similar, however. They take individuals rather than states as the basic units. They want a fairer and more direct relationship of those individuals to one another and to the institutions governing in a global space.

Much of this cosmopolitan reasoning holds that globalisation itself generates claims for justice. Liberal theorists tend to zoom in on economic interdependence across borders. Trade, investment, and gaping economic inequality break down the self-contained nation-state. While social democratic aspirations of justice used to stop at a national border, the more cosmopolitan current sees borders as arbitrary when it comes to justice. Already in the late 1970s, Charles R Beitz led the way in arguing that global interdependence already made the relationship between rich and poor similar to that within countries, rather than treating each population as a separate unit. While the lack of global enforcement made change practically difficult, Beitz rejected the supposed 'political realism' that denied any room for global justice at all. He suggested that revenue from natural resources should be shared with the world's poor, for example.[49]

More recently, Thomas Pogge pushed the moral indictment of wealthy Western countries further. He compared the world's unjust 'basic structure' to earlier eras' experience of slaveholding and male chauvinism within countries. He argued that justice demands helping the extremely poor regardless of nationality. Treating countries as self-contained units condemns individuals in resource-poor or badly run states to suffer through no fault of their own. Pogge and other recent liberal cosmopolitan thinkers vary in what they recommend for global institutions. Some merely demand wider horizons of concern and generous aid, while others think that pushing the 'frontiers of justice' outward to encompass all individuals ultimately means securing human rights within a global democratic state.[50]

While not said explicitly, these varying thrusts towards liberal cosmopolitanism—by international lawyers, global constitutionalism scholars, and political idealists—suggest an ordering of ends and means. That ordering has evolved from an era of modern democratic statehood into an era of new aspirations for global governance. The rights of the individual, regardless of place and status, have primacy. Where states organised on a national scale no longer advance such rights far enough, efforts must pivot to the (imperfect) resources of international human rights law and supranational adjudication. Visions of reform rely in turn on legitimacy from an enlightened segment of opinion. Since most of humanity is seen as excluded from, disempowered by, or blinkered by national democratic structures of any consequence, political agency from below tends to come last in the reformist imagination. International lawyers rarely see much point in appealing to democratic publics and prefer incremental legal advances

instead. And if liberal idealists celebrate agency from below, they tend to focus on activist movements that by definition are elevated a level above, and even outside, the mainstream citizenry in their level of enthusiasm and the reach of their imagination.

Earlier, I noted the observation in some corners of legal and political thought that while supranational constitutionalism plays up rights and rule of law, it plays down any idea of a constituent power. We begin to see that whatever the reason for this gap in the EU and the UN, the rest of the liberal cosmopolitan worldview reinforces it. Collective agency as a means necessarily takes second place behind securing individual human rights as an end. Such a ranking makes even more sense when the intellectual and social centre of gravity of liberal cosmopolitanism is in the new class. Given its numbers, the new class has more weight within powerful institutions or the realm of ideas than with a voting (or fighting) demos. Moreover, the new class suspects that any would-be global demos is not reliably committed to liberalism.

Regardless of era, constitutional principles touch on three elements: protection, justice, and power. First, the liberal version of global constitutionalism has made undeniable progress in securing protection for individual rights in some corners of the world, though mainly as a top-down gift from the practitioners of law and statecraft. Second, efforts to harmonise law across countries and to enlarge the scope of fairness also involve constitutional claims about justice. In contrast, the third element—power—gets short shrift. It mainly involves the 'something must be done' urge to equip institutions to tackle global problems.

In short, global constitutionalism today works in a systematising, enlightened spirit. It aims to remove arbitrariness from an open global space. It would connect individuals everywhere to overarching just institutions. It would sweep away barriers as those institutions implement sound policies for the benefit of the citizenry. To be sure, those working and advocating at these frontiers should not be tarred with the leftist critique that they are merely fending off democracy to secure capitalism or the like. I acknowledge that mainstream liberalism as thought, and the new class as a social force, do have an idealistic wing. Nonetheless, the limited attention to the distribution of power, compared to protection and justice, is significant. At most, mainstream thinking might ask about the scales on which power is exercised, not about the types of power or who holds it.

For example, the EU experiment has generated debate over how best to reconcile competing sources of authority and legitimacy. While its institutions were formed initially by member states, much like any other international organisation, the maturing of binding supranational adjudication, directly enforceable individual rights, and a supranational elected parliament have all complicated the picture. The tug of war between national sovereignty and a quasi-federal system mean that the EU looks like a mess of competing claims that ultimate constitutional authority resides on different levels. Answers within the global

constitutionalism literature range between two extremes of either seeing the EU only as the creature of international treaties or seeing it as resting on a transnational European citizenry. An increasingly important middle ground argues for accepting that ambiguity as desirable, and perhaps the best source of overall legitimacy over time. Overlapping authority and a balance of power between different elements of the EU structure could work as well as do today's balances of power within national constitutions, for which there is ample precedent.[51]

Looking to the future, advocates of democratic global governance typically fend off fears of overcentralisation with an analogous argument about distributing power across units. They insist that democracy can operate on many such levels at once. While they may want a world state able to act on common priorities, it need not be all powerful. Typically, they call for something like a 'federated global democracy' that ensures human rights but also preserves borders and country-sized units for lower-level policymaking.[52] Even within regions today, experiments like the EU can benefit from a loose, 'multispeed' federalism to accommodate the preferences of national publics for different paces of deepening cooperation.[53]

The idea is that territoriality will remain a key organising principle of governance, and that the main axis of change is in a shift of scale, for good or bad, rather than in deeper types of authority and their purposes. This assumption is thus shared between defenders of national sovereignty, who want to keep powers where they are or repatriate them where already lost, and liberal advocates of global integration, who want to shift many powers upward. The two sides differ mainly on the relative importance of each scale. To defend one or another preferred scale, the two sides also deploy a mix of arguments about identity and efficiency.

Identity-based arguments involve attachment and emotion. Human beings, some argue, are territorial by nature. Just as animals mark territory to ensure access to resources on it, so too is territoriality supposedly hardwired into human experience. Conflicts across history have often hinged on territory. Indeed, the logic goes, perhaps the relative peace of the postwar decades comes not from having overcome territoriality, but from having stabilised borders to avoid friction.[54] Emotional attachments to life in a place tend not to travel far, and settle on the nation-state or something not far above it. Even some enthusiasts of integration above the nation-state note that solidarity within world regions is stronger when based on cultural similarity, such that regional groupings like the EU have better prospects than anything world-spanning.[55]

Efficiency-based arguments about the proper scale of policymaking vary more in their conclusions. They do not treat culturally based national units as sacrosanct. Some areas of policy might best shift up to the global or regional level, while others could stay with national units or devolve to a smaller scale. Still others might spin away from territoriality into functional areas of specialisation across borders. We already saw that much of supranational governance

even today involves networks of experts who handle specific areas of policy. Such divisions of labour allow harmonising across territorial units while also giving specialised bureaucracies plenty of leeway. Those circuits of functional specialisation shift based on the needs of the moment, however. Crucially, they do not rest on any principles at odds with the familiar template of political order, namely some blend of territoriality and bureaucratic expertise mastering society. As philosopher Daniel Kofman has argued, 'clustering' a good deal of policy into place-based political communities can help coordination and accountability across different issue areas.[56]

The overarching pattern is that many of those debates are merely variations on a narrow theme. Whether dealing with the constitutional underpinnings of today's supranational institutions, the balances of power within them, or the proper distribution of power in future between functional circuits and layers of territorial federalism, they have quite a lot in common. They involve the siting of power, in order to make it more efficient, more protective of individual rights, and more rational in its application. But they do not dig into the nature of sovereignty itself, or into the cultural and moral implications of who exercises it. To drive the point home, imagine such debates from a longer-term world-historical vantage point. Whether large or small states do more things together or separately, and through what kind of bureaucratic organs, looks rather like the narcissism of small differences. How many international lawyers can dance on the head of a pin?

This blind spot for types of power and spheres of human aspiration has real implications for liberty and the relationship between state and society. To put it bluntly, varying the scale of the same thing is a poor constraint on that thing. Consider the most common arguments for national sovereignty today and global federalism tomorrow. They assume that territorial units allow room for diversity. People in different places will remain free to use power in different ways, according to their own priorities. With no context, that reasoning has some plausibility. But the global landscape of states and new class social power, which I outlined earlier, means that mere territorial or functional segmenting cannot really protect diversity and liberty. To explain why, I want to draw on a concept coined by sociologist John W Meyer in the 1980s for other purposes. He used the term 'isomorphism' to describe the political convergence across countries in the postwar period. Because of economic pressures, training, networking, and technical assistance, much policymaking turned into mere 'enactments of conventionalised scripts', regardless of how well they work on the ground. Elites around the world gained a common repertoire of models for development, bureaucracy, education, and so on. This 'structural isomorphism' or 'common frame' amounted to a kind of policy coordination or 'world institutional order'. It needed no central authority enforcing it.[57]

All the arguments for relying on a familiar mix of national sovereignty, federalism, and functional networks of experts across borders crash headlong into

the *isomorphism problem*. They will not really fragment power. They will not allow for a rich diversity of democratic experiments. The vast majority of those spaces are run by the same type of people using the same type of institutions in the same ways. The convergence is greater than at any previous point in history. It stems from the replication worldwide of modern statehood, the penetration of state power into each society, and the rise of a commonly socialised new class to steward those institutions. Just because a given institutional space theoretically could guard its distinctiveness does not mean that it will do so in practice. Both the script and the motivation are lacking.

Such social facts are intertwined with the underlying problem of liberty and pluralism that this book will tackle. The pooled sovereignty of similar institutions across states exists to coordinate the efficient use of power. Because those functions do not have strong boundaries around them, they cannot preserve spaces for liberty and the exercise of virtue in society. We could not reasonably expect it to be otherwise. As I shall argue later, the defenders of diversity in traditional societies had boundaries of kind, not merely of scale or specialisation. Any common ideas about virtue that bound them together were still refracted into particular spaces and callings. They inherently buffered against power. In contrast, the new class, while divided into many branch offices, is bound together by a common experience of professional ambition, and perhaps some common assumptions about progress and reservations about the sort of public input that might derail it. The new class lacks, in its bones, any strong motivation jealously to protect any particular turf in society. Indeed, the intertwining of this social experience with the emerging machinery of supranational governance is a key factor in the latter's shortage of public legitimacy. Even though populist voters' lashing out of late has had multiple motivations, some darker than others, their suspicion that allegedly neutral institutions are operated by and on behalf of people unlike them is not wholly off the mark.

Tradition Against Technocracy

The metaconstitutional question of future global order thus goes beyond the narrow design of governing institutions. It touches on patterns of state–society relations and the distribution of social power. This is why mainstream debates in international law and global constitutionalism about how to oil the machinery of governance more efficiently, or to systematise existing practices and align them better with dominant ideals, miss the point. No likely outcome of such narrow debates would shift power away from the new class. Nor would it restore liberty to society, or run state–society relations on radically different principles. Ultimately, these fundamental questions of world order go beyond the narratives at hand. They cannot rely on how the wheels of historical inevitability must naturally bring functional responses to technical challenges.

To come back into the vein of political theory, the metaconstitutional questions break down into three dimensions. First, how can the accelerating concentration of bureaucratic and social authority be rolled back? Second, how can liberty and pluralism be reconceived in an emerging global space? Third, how can the legitimacy of future global order be better grounded on, and accommodating of, traditional diversity? In answering these intertwined questions, I part company with the prevailing notions that the biggest challenge is justice, and that justice will depend mainly on striking the right balance between territoriality and common global problem-solving, and on connecting individuals directly to the machinery of governance. Rather, this book shifts the focus away from justice, at least in that prevailing sense of rationalising distribution and regulation. It shifts instead towards more timeless concerns with liberty and virtue. The metaconstitutional alternative must unbundle power itself. It must redefine state–society relations and free the spaces within which virtue can be exercised. Contrary to what most supporters and opponents of the current trajectory assume, the scaling up of life beyond the nation-state does not have to mean more of the same. It need not mean more concentration of power, and more proliferation of the same types of institutions, with even less room to escape.

Counterintuitively, the scaling up can catalyse a radical rethinking of sovereignty. Rather than exacerbating the pressure against liberty, a global space can allow unbundling power along quite different lines than what we have seen with the modern state and its atomised citizenry. Within the pen of sovereignty, the leviathan has trodden on its subjects heavily. Removing the walls of the pen does not have to mean a fatter and more far-ranging leviathan. It may mean that the leviathan stumbles, flattens, and suffocates. Properly conceived, globalisation can allow a resurgence of society's claims against the state.

Equally counterintuitively, I shall argue that the best resources for rethinking liberty in a global order will come not from atomist liberalism or some version of a revolutionary left. They will come instead from more traditional currents of thought and practice. Older inspirations abound for thinking about how to unbundle power based on kind rather than mere scale. Against the atomist logic of modern liberal thought, which sees only an aggregation of individual rights and interests, the older traditions tend to pull towards virtue. Crucially, they also tend to pull towards society and away from technocratic overreach.

An argument that engages seriously with preliberal traditions of political thought will not only be counterintuitive in its choice of resources. It will also be counterintuitive in its aims, from the perspective of many traditionalists. Inevitably, I am thus making an argument not only from, but also to, some of the traditions in question. Tackling these questions means untangling what I noted earlier, namely, many traditionalists' misgivings about global order as a legitimate aim at all. I believe it is folly to ignore or resist the process of world state formation. To put it bluntly, history has reached a point where the issue will not go away. The metaconstitutional question of what *kind* of global order we shall

have is more momentous than any instance of local culture wars, or even the 'social question' of global poverty, which will probably subside gradually even with uneven economic growth. Traditionalists dismiss or evade the question at their peril. Their silence would mean that others keep answering it for them. This is, to borrow philosopher Mark Bevir's term, a 'dilemma' of the sort that traditions often face. New facts and challenges arise that do not fit into comfortable worldviews. Often reluctantly, the 'web of belief' must be rearranged to restore coherence.[58]

Not only is a global order of the right kind compatible with much that traditionalists value, if we dig a bit deeper than usual. By breaking free of the territorial nation-state paradigm, a global scale may even be surprisingly well-suited to realising some of their aspirations. I shall argue that a cosmopolitan space, rightly ordered, could guarantee more room for the free exercise of virtues familiar to the traditions. People could be freer to flourish along more traditional lines, and to enrich the full panoply of social institutions, if we abandon assumptions tied up with the modern nation-state. Otherwise, the new class will scale those assumptions up into an overbearing global structure more hostile to tradition than any nation-state past or present. As the historian Arnold Toynbee found in his sweeping study of world history, a civilisation often forms a universal state in its dying stages: the Romans and the Mughals are examples.[59] If we stretch the definition of a civilisation to treat liberal modernity as one, then the architects of today's emerging institutions might well conclude that such an antitraditional world state is the last and best gamble of enlightenment, to hold at bay the pressures of benighted public opinion.

For the reasons we have seen, however, the legitimacy of a world state founded by the new class could run shallow and then run out. It might tighten as technocratic dystopia and survive through repression. Or it could collapse into something else very quickly. Whether in Confucian or Islamic ideas of dynastic cycles, or in Andean folklore about a periodic *pachakuti*, or cosmic inversion, or elsewhere, we find many old images of a new era being inaugurated every few centuries. Whether traditionalists engage seriously with the question of global order now may tip the balance. In short, this crucial moment in world history offers a unique opportunity. It can define the content of future cosmopolitanism and restore a distinctly pluralistic kind of liberty for the long term.

1 Old Resources for a New Question

Political thought, observed one historian, 'is the child of chaos and the father of order'.[1] Whether in ancient Greece, ancient China, or elsewhere, periods of war and strife have inspired new philosophies that, in turn, anchor a more stable era for later generations. The world today has its turbulence, but it is not plagued with war except in some hot spots. Its disorder mainly involves confusion about what standards will shape a common global space. Modernisation has broken chains but also knocked down signposts. Traditions that long provided a reference point for questions of social order, on small and large scales, today languish in disarray and neglect. The educated strata most versed in sophisticated versions of those traditions have largely been decapitated by social upheaval, revolution, and conquest. In turn, the new class sees itself more as overcoming tradition than building on it. Even if traditions were more intact, their ability to contribute to tackling these big global questions would also depend on the right spirit of openness. Yet traditionalists who are on the defensive against modernity have also retreated into defensiveness against outsiders in general. In effect, they yield the widest global horizons to liberal thinkers and the new class social base that is driving much of globalisation.

This awkward relationship between traditions and cosmopolitanism is not limited to the question of metaconstitutional order that animates this book. It crops up in many other areas where modernity confronts alternative values. Indeed, it has been a recurring theme in three other books that I have published over the last two decades.[2] While any intellectual trajectory brings shifts of emphasis, it also has some continuity. In particular, I have come back often to the sense that globalisation as it now exists gets the scale right but the content wrong, so to speak.

My first book, *Beyond the Global Culture War*, called into question the common idea that the self-understanding behind modern liberalism has some uniquely universal purchase on the human spirit. Instead, I argued that the atomist outlook is but one of four ethoses—equally timeless and placeless—that have jostled for cultural dominance through history. While marginal and disdained in premodern civilisations, atomism broke through to shape much of modern society and psychology. Yet a proper view of the other ethoses, as equally universal building blocks of an alternative, could offer a starting point for thinking about

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how to challenge liberal modernity more broadly. That book stayed largely on the level of theory and wide ranging history, however.

The second book, *A Path of Our Own: An Andean Village and Tomorrow's Economy of Values*, started from a much narrower story on the ground. It told of the experiences of one village in highland Peru, caught between the excesses of both a neoliberal state and leftist revolutionaries. This microcosm was but one example of a broader problem, namely, the peasantry's loss of place in the modern world. The book went on to propose a strategy for building on traditional practices to construct an alternative economy of values, networking together rural enterprises and communities. As an economic vision, it called not only for bringing development to the forgotten half of humanity, but also for going on the offensive to reclaim wider economic space for the virtues that animate traditional communities.

The third book, *Deep Cosmopolis: Rethinking World Politics and Globalisation*, returned to the sweep of history and civilisations. It dug into premodern encounters among civilisations to find an alternative mode of cosmopolitan thinking. Rather than the thin layer of rights and consumerism that prevails in liberal globalisation, it aimed at finding more substantial points of contact among traditions. Civilisations could merge while still taking their content seriously.

Beyond the sense that globalisation today gets the scale right but the content wrong, all three books also had arguments hinging on virtue. Whether one wants to map similar ideals across the peaks of civilisations, or to adapt disappearing decent ways of life in small communities so they can survive in a prosperous and open world, character is a kind of common currency. Here I do not want to dig at great length into understandings of virtue, since it has been explored in reams of philosophical and political writing over the centuries. But some brief orientation to how I treat it in this and other books is indispensable to ground much of the rest of the argument, as it is one of the terms that will recur.

The language of virtue contrasts with that of 'values'. Values serve in modern social science as a catch-all category to dump any human motivations that do not fit into economics, biology, and the like. Values are generally understood by liberal thinkers and in mainstream contemporary culture as something like preferences. They are not grounded in truth for human beings as such. In contrast, in older thought across all the major traditions, virtue was imagined as a stable feature of a well-ordered soul. It corresponded to deeper spiritual realities or accumulated insights into the conditions for human flourishing. Again, my aim here is to identify patterns of thinking rather than to justify the worth of virtue ethics as such, or the benefits to human beings of cultivating virtue. Those tasks have been more ably undertaken at length by thinkers in all the traditions. Moreover, neither the proponents nor critics of such understandings of virtue have typically felt that they are a matter of mere rational proof, so much as lived experience.

Despite recurring themes, the language of virtue has varied on the surface. To map common ground in a global context, I have found useful what elsewhere I have called ethoses. The word *ethos* originally referred in ancient Greek to the lineaments of character, which could be cultivated to endure over an exemplary lifetime. While traditional thought as well as specific walks of life have shown great diversity in esteemed practices, in propositions about the details of truth, and in cosmologies that fit all the parts together, ethoses can be seen as more fundamental and fewer in number. In my previous writing, I have also argued that ethoses travel better. The ethoses—and the virtues manifesting them—are more readily recognised across time and space by people with similar character ideals.

Virtues can be understood as grounded in truths about the human condition. Such grounding does not mean reducing aspirations and modes of living to uniformity. Consider the demotic ethos of peasants and members of sworn brotherhoods, who gain self-respect from fulfilling their duties to kin, companions, and one or another small and relatively egalitarian community. Or consider the perfectionist ethos of samurais and literati and mystics, who see their pursuits as the affair of a select minority who shine within or beyond the world. Or consider the virtuocratic ethos of clerics or mandarins who feel called to steward the world by ordering it rightly or inspiring by the power of example. These are but three ethoses in which certain virtues cluster together. Each implies a very different outlook on the distribution of human capacities and the ranking of ideals and satisfactions. Of course, they appear differently in different cultures and eras.

In *Beyond the Global Culture War*, I argued that alongside those three ethoses in all civilisations, a fourth one, atomism, remained marginal for most of history. Briefly, atomism had a stripped-down view of the self, with a kind of pedestrian individuality that was less about virtue of either a socially embedded or a transcendent sort, and more about raw authenticity and adaptability. Before modernity, typical bearers of atomism as an ethos were uprooted merchants, janisseries, court eunuchs, sophists, and slaves. In modernity, atomism broke through to cultural dominance in the logic of liberal individualism, including the outlook of the new class. It put traditional ways of life, with their demotic, perfectionist, and virtuocratic elements, on the defensive.

I offer this approach here in bare outline not because I intend to frame the argument in this book around these ethoses. Nor need anyone buy into this way of slicing up historical experience to appreciate an argument about questions of metaconstitutional order. Rather, the approach here shares three crucial features in common with my previous writings. First, it deals with virtues in universal terms, rather than as bound up with the language and details of a specific tradition. Second, it assumes a plurality of human aspirations and modes of self-cultivation, without degrading that plurality to an infinity of tastes. Third, in treating virtues as expressing an ethos, it emphasises both the stability of the self in whom those virtues intersect and the motivation to channel those virtues through demanding engagement with the world beyond oneself.

Later in this chapter, I shall explore the atomist self-understandings that underpin, at a micro level, the problematic constitutional assumptions of modernity. But here I want to draw a narrower contrast between the older robust understandings of virtue and those that liberalism can offer. Few liberal thinkers talk about virtue. Most prefer instead the neutral language of rights and values. But often a worldview is illuminated when an exponent pushes it as far as possible in an atypical direction, yet still bumps into its limits. In this case, perhaps the most prominent liberal thinker comfortable with talk of virtue is the American philosopher and former policy adviser William Galston. He has suggested that liberalism as mere neutrality among values is not enough to sustain a liberal society. Rather, such a society also needs what he calls the liberal virtues: tolerance, reason, loyalty, restraint, responsibility for oneself, and so on. He then makes two important concessions that confirm why most traditionalists would find those virtues unimpressive. First, 'the liberal virtues demand less self-discipline and sacrifice than do the virtues of classical antiquity, of civic republicanism, or of Christianity.' Second, 'most accounts of liberalism embrace, tacitly or explicitly, the premiss that life is too valuable to jeopardise in conflicts over how to lead it'.[3]

One need not hold superhuman conceits about traditional ideals to see that liberal virtues of the sort Galston lists are very thin. More significantly, the logic itself is flipped. Liberal virtues are lubricants for social coexistence. Such habits might also afford their individual bearer a peaceful life. Yet in the traditional understanding, broadly speaking, virtues were more demanding precisely because they were exercised 'towards' some standard of truth and flourishing. Indeed, while the virtuous ancients would not rashly sacrifice their own or others' lives, they would find repellent the idea of living with a disordered character ignorant of truth.

While the more substantial, ethos-grounded idea of virtue will run as one thread through this book, it is also important here to touch briefly on the use of another concept: traditions. Focusing on ethoses and virtues has inherently cosmopolitan implications. It frees us to think imaginatively about common ground across diversity. A virtue-centred cosmopolitanism deals less in boundaries than in truths, and less in insular versions of traditions than in encounters among them. It contrasts with the insistence among some traditionalists that each tradition is a self-contained and coherent whole, which can only be understood on its own terms. MacIntyre's communitarian view of traditions, for instance, holds that 'there is no way to engage with or to evaluate rationally the theses advanced in contemporary form by some particular tradition except in terms which are framed with an eye to the specific character and history of that tradition.' He adds that 'the multiplicity of traditions does not afford a multiplicity of perspectives among which we can move, but a multiplicity of antagonistic commitments, between which only conflict, rational or nonrational, is possible.' At most, when traditions do encounter one another, MacIntyre thinks that the one

most capable of absorbing the other's ideas into its own more comprehensive framework will triumph.[4]

The unit of analysis thus differs. While for MacIntyre that unit is a self-contained tradition, in virtue-centred cosmopolitanism the units are the universal types of human flourishing into which the various traditions can provide complementary insights. Circumstances have changed greatly since thinkers wrote or customs ossified. By eschewing too self-contained and holistic a view of traditions, this approach avoids the idea that any encounter between them means conflict, victory, or extinction. The plurality of ethoses and spaces within each tradition is also more congenial to liberty. Truth and virtue flourish in the moral ecology of different niches and walks of life. They wither under too overbearing an orthodoxy.

While these interrelated points are argued more fully elsewhere—either later in this book or, farther afield, in the previous three books—I mention them here briefly to orient the overall approach. In short, this is a radical vision of how pieces of a future world order might fit together. Virtue-centred sphere pluralism is at the same time traditionalist, pluralist, libertarian, and cosmopolitan.

This chapter will map out the theoretical underpinnings of this approach in more detail, as a point of departure for later chapters on specific themes. It first identifies promising premodern strands of thinking about liberty and limited sovereignty, and traces how the logic of modern state power overcame them. Then it explores the modern understanding of individual autonomy and its troubling affinity with centralised power. It turns next to alternative pluralist views of human agency and unbundled sovereignty, suggesting their potential and their limitations. These resources then come together in my own core account of virtue-centred sphere pluralism. This understanding of liberty and the need for a certain model of sovereignty to protect it will inform the rest of the book, as I work through implications for key areas of global metaconstitutional order.

Given that the argument relies heavily on the resources of the traditions, it is worth also saying at the outset what it means to mine the past for inspiration. A paradox lies at the heart of this project: it looks both backward and forward. The conclusions would disrupt the world as it is, but in the name of more permanent things. The new class privileges the present and an imagined future as its sources of legitimacy. A traditionalist approach by definition views the past more warmly. Some trenchant critiques of injustice in history were launched in the name of a lost golden age. Muslim reformers pointed to the early caliphate, Confucians to the ancient sage rulers, and so on. And for the last two centuries, traditionalist reactions to the modern world have also striven to rearticulate what has vanished. Often they have harboured a 'tragic view of history', because recreating it seems like a lost cause.[5]

Still, I do not want just to mirror progressive conceits with conservative nostalgia. A global order cannot meaningfully restore some past ideal. The past was a mixed bag. Even the more desirable elements would not fit together quite the

same way on a vast scale in this century. Rather, it will be more useful to draw intelligently on certain traditional resources that could give depth to the world's constitution while preserving liberty. Given the global scope of the question, we must look not only backward but also outward across different traditions. The universe of inspiration is thus potentially vast. It will not make sense to try systematically to explore what every tradition of social thought might have to say on global order. Instead, this is a problem-driven project that requires discerning where corresponding insights lie.

Since the world's constitution has not been a subject of broad reflection before among traditionalists, it is a new undertaking to try combining insights across traditions in this way. This book will not 'represent' different traditions or strike some preconceived balance among them. Nor do I seek to persuade anyone that this argument dovetails with any tradition as a whole. Still, while mixing and matching insights might unsettle those who see each tradition as sui generis, history offers plenty of precedent for such synthesis. Indeed, many enduring currents of thinking—from Thomist Christianity to Zhu Xi's neo-Confucianism—arose when different traditions were pulled together to address new challenges.

Pulling together inspiration from different traditions also requires being mindful of the gap that has always yawned wide between principles and practice. Past or present, people rarely lived up to ideals. Yet at this point in history, we have a special advantage precisely because the traditions have largely been forced out of the public sphere. The new class has little sympathy for them. Traditional political thought often was used in the past to justify the world as it was, and to fit the convenience of the powerful. Today, the frankly anti-traditional outlook of the global establishment opens up room for taking seriously the radical implications of old ideas. The natural constituencies for them now sit far from power, so insights can flow more honestly wherever they may. In particular, those insights have something to offer in tackling the global challenges I have outlined so far. They can tell us something about how to fragment power and protect ordered liberty, how to understand robust prepolitical spaces for the exercise of virtue, and how to accommodate diversity on a global civilisational landscape bigger than the nation-state.

This chapter will identify those resources and work through the most useful strands of logic within them. It starts by mapping premodern counterweights to the primacy of the state, such as the independence of spiritual authority, the chastening effect of a broader civilisational space, and the alternative traditions of withdrawal from worldly power structures. Then it traces the emergence in modernity of an atomist view of freedom that, paradoxically, has favoured centralised power. It moves on to some twentieth-century pluralist schools of thought that pleaded for a more textured liberty in society. The core of my own approach then follows: a virtue-centred sphere pluralism that pulls together these insights in a novel form oriented to an alternative global order.

Heterarchy and the Traditions of Liberty

Much of this chapter works ever more deeply into a theory of virtue-centred sphere pluralism. On a macro level, the theory unbundles sovereignty; on a micro level, it involves a view of the self at the intersection of multiple engagements in different spheres. At the outset, however, I shall start with a simple concept useful for understanding different types of social order: heterarchy. The more familiar concept of hierarchy refers to nested or ranked units, with grander units controlling lesser ones. In contrast, anthropologists use heterarchy to refer to multiple sources of social power. Positions within a heterarchy might be unranked, or they might be ranked in different ways depending on perspective and context.[6] To classify a society as more hierarchical or more heterarchical, we have to ask two questions. First, has it one or several axes of power? Second, has it one or several paths to high status? Is society essentially run by bureaucrats, for example, with power and status stemming only from the rank one can achieve in a state apparatus? Is it essentially run by capitalists, such that money determines position and other institutions largely respond to holders of wealth? Or, in a heterarchical order, the influence of the political, economic, religious, intellectual, and other spheres might be fragmented such that each has its own channels of aspiration and none can command the social landscape. More hierarchical and more heterarchical societies can be found across time and space.

Most relevant for our purposes here are cases with a meaningful chastening of power. Meaningful refers both to meaningful limits and to those limits being informed by commitments meaningful to the people involved rather than only by their clashing interests. Some parts of the world, for example, had strong traditions of division between political and spiritual authority. A world in which a king occupied a supremely powerful position was still a world under the divine. Those who spoke of things divine thus had some measure of influence over a ruler, especially when they operated as an independent priesthood. As far back as ancient Israel, the law of the Torah bound everyone, including kings. Unlike in more absolutist Middle Eastern empires, a Jewish king could not interpret the law himself. Wise judges interpreted, thus embodying 'the ontological priority of revelation to administration'.[7]

This division of labour descended to mediaeval Christendom, with its 'two swords' of royal and Church jurisdiction. Rulers had their own function, rooted in natural law and predating Christianity, of preserving social peace. But the clergy held the keys to salvation and thus spiritual authority over believers. Debates recurred over the balance and boundaries between the two spheres. Still, no one doubted that the Church's independence put real limits on royal power.[8] That division between rival authorities combined with the idea that individuals had a direct relationship with God, to undermine too hierarchical a social order. In the space between authorities, law at least in principle should hold a ruler to account.[9]

In India, the brahmin priests had their own domain apart from kṣatriya rulers. Status grounded in ritual enjoyed more respect than raw power. Moreover, as with natural law and Christian revelation, 'dharma was above the king, the people, society.' The kings had their proper function keeping worldly order, however. Without the rod of royal punishment, in a world of anarchy (*mātsyanyāya*), large fish would eat small fish, the metaphor went.[10] The division of function was less systematic in India than in Christendom, in that complex legal systems did not jealously protect domains of authority. Still, the principle of complementary functions, which could not be absorbed one within the other, pervaded Hinduism as it did Christian thought.

Where the division of spiritual from secular authority was less clear, as in premodern China, rulers merged both to some degree. Chinese emperors had a role in worship.[11] But we find as many similarities as differences with Europe and India. Even though China lacked a truly independent clergy, the ruler of the day was still bound by truths that transcended his power. Some early Daoists and Confucians argued that a kind of cosmic natural law linked heaven and earth. They urged emperors to give their subjects 'government with a human face'. As elsewhere, the tension between such 'declaratory' ideals and the harder 'practical' techniques of rulership ran through Chinese history. The pendulum also swung back and forth between seeing the Confucian scholar-officials as more like bureaucrats, or as more like independent clerics who could hold the emperor to account in the name of the tradition. In the neo-Confucian writings of the mediaeval Song dynasty, thinkers urged *zūnwáng* 尊王, or obedience to the emperor for the sake of political order, but paired it with references to *tiānlǐ* 天理, or divine justice.[12]

Compared to Europe and India, however, images of power in China overall were more hierarchical. All society and ritual nested within the cosmos, with the emperor as the point of contact between world and heaven. The emperor and officials were thought to stand in a family-like relationship with subjects. Commerce, folk religion, and interest-group politicking were disdained. Chinese civilisation has been contrasted with others in 'the centrality and weight of [its] political order'.[13] Some of the emphasis on monovalent imperial authority and bureaucracy did make premodern China look rather more like modern strong states than like the looser mediaeval polities elsewhere. In practice, however, the state-centred hierarchy was limited by weak state capacity. 'The mountains are high and the emperor is far away', went the saying. Alongside the administrative hierarchy, urban and long distance market networks worked according to their own logic, often with rival power centres.[14] Lived heterarchy thus did complement ideas about heavenly justice as a standard above rulers. Still, the social realities below the ruler and the ideals above the ruler mostly were disconnected from one another. Unlike in some other traditions of political thought, heterarchy was not an overarching theme in Confucian China.

These contrasts notwithstanding, when I note the degree of hierarchy or heterarchy in different contexts, I am not trying to pronounce on a whole civilisation. It should be the start of reflection on when and why a given pattern emerged. Some historians of mediaeval Europe have found many Chinese-style tendencies there, for example. One argued that the longing to restore Rome, with its fusion of empire and theocracy, was strong in some circles. Had it succeeded, it would have led to hierarchy and conformity along Confucian lines, which could have made the Church's pressure against Galileo look mild by comparison.[15] In the Islamic world, the early Abbasid dynasty saw a clash between the so-called 'absolutist' and 'constitutionalist' blocs. The former were functionaries in the vein of pre-Islamic Persian absolutism. The latter centred on the religious scholars, who invoked not only shariah law but also the looser tribal organisation of Arab culture against rulers who might be tempted to overreach.[16] In South Asia, we see episodes in which heterarchy momentarily weakened. The mediaeval Chola dynasty in southern India enlisted brahmins' help to divinise the ruler. During its heyday, Chola architecture showed religious and political foci within settlements converging.[17] Beyond the Old World, the Inka empire in the Andes also evidenced darkly authoritarian tendencies during its expansion. It even moved ethnic groups around to perfect grids of bureaucratic control and isolation.[18] Had it not been overrun in short order by the Spaniards, it might have evolved into one of most hierarchical of polities, even though during later centuries the Andes, like other mountainous regions, proved hard to control.

In short, visions of concentrated power cropped up in multiple places around the world. Sometimes they got quite far in practical implementation. Conversely, when heterarchy prevailed anywhere, it did so because of political struggle, supported by ideas circulating in the background culture. It was not a permanent feature of any civilisation.

Heterarchy hinges on more than just how people understand the proper use of power. It also has to do with spaces distant from the powerholder. People need room not to care about the pretensions of strutting potentates. Premodern rulers were humbled by standards looming above them, but just as much by the fact that in many parts of the world, before the territorial nation-state, the unity of a wider civilisation dwarfed their domains. Greco-Roman political thought never lost sight of the tension between placeless natural law and cosmic order, on the one hand, and any polity that governed in a given place and time.[19] Later, mediaeval Christendom encompassed all Europe's cultural diversity and its local rulers, in a unity for which many Catholics have been nostalgic ever since the Reformation cracked it.[20] Likewise, in the Muslim world after the first generations, a unified caliphate gave way to multiple kingdoms, nested within a broader ummah based on religion and law.[21] Given such lingering ideals of a unified civilisation-empire in both Europe and the Middle East, placebound rulers never enjoyed a full horizon of legitimacy. As long as a civilisation loomed large, territorial boundaries worked differently than for the modern state. They

marked the limits of power, rather than a zone within which sovereignty had free rein.

We thus see that among ideas deflating the pretensions of premodern rulers, crucial were the transcendent standards of God and heavenly justice above, and the vastness of a religious or civilisational space outward. Alongside them, a third chastening phenomenon can be called withdrawal. This took varying forms. The simplest was the geographic withdrawal of highland and frontier zones, where limited state capacity could not penetrate. As political scientist James C Scott has detailed, mountain folk often perfected 'the art of not being governed'.[22] Such a zone beyond the reach of rulers was more a geographic than a psychological factor, however. At the level of ideas, we find anarchists' and hermits' beliefs about a world more worthwhile than the powers and conventions of the day. In the Judaeo-Christian world, 'an ancient tradition of Gnostic-apocalyptical thought' set itself in contrast to natural law. Where natural law identified timeless principles of cosmic order and urged humans to abide by them, the Gnostics expected the world to turn upside down once truth ruptured reality.[23] Even in non-Gnostic variants, Christian anarchist thought turned its orientation beyond the world into 'an indifference to the state that is peculiarly subversive.[24] Much the same irreverence for hierarchy and propriety permeated Daoism. Zhuangzi and other Daoist thinkers had 'contempt for political activity as a form of grovelling'.[25] Whether for Gnostics, Daoists, Sufis, or other kindred spirits, the prospect of finding a truth beyond convention not only abated interest in the games of power. When such sects had enough followers, their ideas also subtly delegitimised power's pretensions.

The picture blurs at the edges, of course, and such ideas meant different things to different people. Liberty commonly gets teeth more from institutions than directly from ideas. Here, the noticeable pattern is that before modernity, the degree of real power concentration fell far short of modern experience. Despite the loss of much autonomy in the evolution from hunter-gatherer life to ancient state systems, even the most ambitious of ancient and mediaeval states failed to master society.

A recurring obstacle to power was the importance of particular liberties, in meaningful groups and meaningful spaces. The bulwarks of custom and immunities chastened rulers' aspirations to control their subjects too tightly. In mediaeval Europe, for example, the liberties of communes, cities, universities, and other associations limited the ability to interfere with their ways of life. While human dignity in general rested on natural law or faith, concrete liberties attached to individual membership in one or another collectivity.[26] An analogous liberty amid diversity cropped up in premodern India. In Hindu political thought, kings, notwithstanding their duty to preserve order, were also bound to respect the customs of particular castes, lineages, monastic orders, and the like.[27] By the eighteenth century, the patchwork of Muslim and Hindu authorities brought even more plurality: not despotism but 'a territory which was parcelled

out among co-sharers with vested rights … everywhere at odds with arbitrary rule'.[28] Islamic theory also respected a kind of religious pluralism. As early as the Constitution of Medina—an intertribal pact overseen by Muḥammad himself—a duty of mutual protection in wartime had nested within it the responsibility of each religious minority, such as the Jews, for running its own affairs.[29] As with the particular liberties of mediaeval Christendom, these bulwarks on sovereignty attached to collectivities rather than to individuals.

Such particular liberties were reinforced by the prepolitical nature of those spaces. They ran on principles distinct from and morally more substantial than those of statecraft. In Confucian thought, despite the imagined unity of imperial authority, hints cropped up that life had multiple callings. The gifts of the first five legendary emperors—from farming to ethics to science—dealt with very different dimensions of life. Mencius argued in passing that different qualities were esteemed in different places: nobility at court, age in villages, and virtue in governing.[30] The hotchpotch of writings in the Guanzi included, in a chapter on 'shepherding the people', a similar observation that household, district, state, and empire were different layers of society, each best managed in its own way.[31] In traditional Chinese images of social structure, we also see differentiation into four quasi-estates (*sìmín* 四民): gentry, peasants, artisans, and merchants.[32] And according to the eminent twentieth-century Chinese sociologist, Fei Xiaotong, Chinese rural society worked on a mental map of shifting concentric circles of obligation.[33]

Kinship served as the most common and formidable counterweight to political authority in China. Outside the state, Confucianism stressed filiality or 'consanguineous affection'.[34] Confucius and Mencius argued that when filiality clashed with a public duty to the state or with ritual propriety, filiality took precedence. One should not hand one's fugitive father over to the authorities, for example. Analogues existed in other parts of the world. In Sophocles's play *Antigone*, for example, the protagonist violates the ruler's order not to bury her defeated brother. She invokes a higher law of ritual obligation to the gods and to her family.[35]

In Hinduism, caste also stood out as a prepolitical category. A compelling account of the logic behind a caste system comes from Louis Dumont's classic book, *Homo Hierarchicus*. A caste system starts from a cosmos based on ritual purity rather than the individual. One's caste identity fits into that hierarchical whole and permeates all relationships. Hindu tolerance did not affirm the equal worth of different ways of life. Rather, it acknowledged hierarchy and a code of separation.[36] Politically, the king was bound to maintain not only dharma in general, but also to respect the particular dharma or customs of 'castes, countries, guilds, and families'. In that highly differentiated world, one should stick to one's own role and its duties rather than seeking other callings.[37] We find analogues to this structured hierarchy and mutual noninterference across the Indo-European cultural zone. Plato's *Republic*, for example, described three

strata of philosopher-kings, warriors, and workers. Justice meant allocating individuals to them correctly. A temperate soul would then keep to his or her own place.[38]

While filiality in China and caste in India had some prepolitical weight, they were not quite heterarchical in their implications, however. They may have chastened political power, but they did not fully affirm an equality of rival principles in their own spaces. Instead, they allowed one specific non-political principle to pervade other aspects of social life. Familistic analogies ran through Confucian political thought itself. The emperor's authority was compared to that of a father on a grand scale. Given that states anywhere have the distinct competence to punish crime, sheltering a criminal relative from the state might also look to some more like family overriding politics than like each having its own sphere. Likewise, caste in India was a holistic fact about each person that determined his or her engagements in society. In short, the mere fact that a principle beyond statecraft carries cultural weight may temper political sovereignty, but it does not assure full pluralism. In some contexts, like nepotism or discrimination, it swells one dimension of human experience at the expense of others.

These examples are few, but they raise an important question of perspective when we encounter this uneven historical landscape. It was a hotchpotch of elements of heterarchy, conscience, and constraints on power, informed by other ideals or principles of social life. But what lessons can we draw about pluralism and its sources for the world as a whole? Bluntly put, insights about how to protect ordered liberty globally may emerge from some times and places more than from others. This fact can make people uncomfortable.

There are two possible attitudes to take. First, one could say that there really was plenty of common ground around liberty and pluralism. If historical experience looks too lopsided, perhaps we have not tried hard enough to find that common ground. Second, one could say that civilisations have had essential differences and that some have attached little importance to liberty and pluralism. These first and second conclusions would be, respectively, the most comforting and the most awkward. Yet even the few examples mentioned so far already show the limits in how deeply any premodern state could penetrate society. Diverse resources at least hinted at heterarchy, even when weakly realised. On balance, perhaps, everything was not equally important in every tradition, but also no whole civilisation should be dismissed as rocky ground for heterarchy to grow.

Variation was both horizontal and vertical. Horizontally, while nothing would be wholly present or absent, forces might bring some tendencies to the surface in some civilisations more than others. Glimmers of heterarchy, or at least the resources to support them, might have been suppressed or encouraged depending on the balance of influence or shifting receptivity. Vertically, even the same civilisation or currents of thought within it might see sensibilities gain or lose ground over time, depending on social conditions that matured or decayed.

Where, then, should we look for the most useful insights? Just as we should not fall into undifferentiated nostalgia, neither should we favour some civilisations as the main potential contributors to a global constitutional project. Rather, we should recognise useful elements wherever and whenever they appeared. Crucially, we can also learn lessons from why those useful elements were dominant or marginal at the time. Social forces and institutional experience amplified some ideas over others. And today, the global landscape allows recombining elements in new ways. Picking some elements also means not hesitating to reject others. The landscape of political cultures around the world has shifted over time. Not all currents of the past are equally suited to flow into and fill a future global space. The battle lines of the past, over the nature of truth, liberty, and the proper relationship between the state and other spheres of society, have always run through traditions and political cultures. Sometimes the apparent value flips: dominant elements may be less useful, and marginal elements more useful, in answering global questions in this century.

Truth is universal. As I have argued in my previous books, qualities of character tend to be a common concern of all the great traditions. Most insights about virtue can be found anywhere, to some extent. When it comes to meta-constitutional questions, however, the lessons of the past are more uneven and contingent. They come from struggle and the accidents of political and social history, as well as habits that grew out of experience. As later chapters of this book unfold, it will be clear that it has plenty of sympathy for key examples of heterarchy, but also for elements of English common law, Islamic legal pluralism, the headstrong tribal localism of the old Germanic and Arab tribes, the sturdy peasantry and gentry, and the humility of the pious. It has rather less use for the absolutisms of ancient Persia, the conformity of exam-taking Chinese bureaucrats, the hubristic rationalism of modern French bureaucracy and secularism, and so on.

As we move further into the nuances of heterarchy, insights will tend to arise on two levels. How institutions oppress individuals or leave room for them is the more visible layer of the story. The deeper layer is the psychology of how individuals engage the world, from the inside out. The former is a macro-level pluralism of institutions and practices: the toolkits for how to organise political and social life to fragment power, to smooth coexistence amid diversity, and to give free play to multiple spaces for the exercise of virtue. The latter is a micro-level pluralism of outlook: the self-understanding that sustains a multiplicity of virtuous engagements and fortifies resistance to mere conformist ambition beneath tyranny.

The most explicit mapping of the inner and outer aspects of engagement came from virtuocratic strands of thinking about moral leadership. For example, theologians in the Islamic world distinguished Muḥammad's inner *wilāyah* (sainthood) from his outward *nubuwwah* (prophethood).[39] Likewise, Mencius expanded Confucian ideas of *nèishèng* 内圣 (inner sageliness) into a

complementary *wàiwáng* 外王 (outer kingship), creating a tension that would run through centuries of Chinese elite culture. One pole emphasised self-cultivation (*xiūshēn* 修身) and inner spiritual freedom, with influence on others flowing mainly through the power of example. The other pole put more stock in discipline, ritual propriety, and public action to govern and pacify the world-under-Heaven (*zhìguó píngtiānxià* 治国平天下). But regardless of where the emphasis lay, the two were intertwined. Acting correctly manifested a cultivated mind, just as the virtuous sometimes 'viewed the arena of public action primarily as a field for exercising their own moral musculatures'.[40]

In both Confucianism and Islam, the free exercise of conscience was bound up with well-ordered self-expression, only fully making sense in the broader context of cosmic justice. As critics have noted, Confucianism could often be used to justify quiescence. But that 'scholastic' strand, with its emphasis on outward signs of virtue and respect for authority, was regularly called to account by a 'prophetic' strand. The latter appealed to the moral responsibility of the scholar-official to do battle against social ills and hypocrisy.[41] Virtue strained against oppression in the name of truth; the self did not simply strain against constraint for the sake of autonomy. Conceptual histories of freedom in the Islamic world show analogous ideas. Oppression (*ẓulm*) was contrasted not with freedom (as in the modern West) but with justice (*'adālah*). Justice meant respect for moral balance and the limits of divine law. Freedom (*ḥurriyah*) itself implied a kind of nobility and dignity. To be unfree could mean, in the older non-Islamic sense, to be a slave. But more fundamentally, one could be unfree by being a slave to one's base animalistic impulses, such as indulgence in hashish. True freedom came from ordered submission to God. Crucially, a more atomist version of unconstrained individual choice (*ikhtiyār*) was disconnected from the more dignified concept of *ḥurriyah*. It was seen merely as room for personal tastes on one or another issue, rather than as a higher good worth fighting to preserve.[42]

Confucianism and Islam leaned towards engagement with the world, in ways shaped by ideals of spiritual and political unity. Christianity and Hinduism had more fragmented understandings of how individuals might act, though the logic was similar in the interplay of roles and conscience.

Take two examples. The Hindu caste system had a suffocating tendency to embed most people in their social roles most of the time. *Svadharma*, the idea of doing one's own duty, even badly, rather than another person's duty well, encouraged passively accepting hierarchy. At the same time, however, all the ritual prescriptions and boundaries were balanced by the ideal of the *sannyāsi*, or renunciant, who could opt out of the world to pursue a spiritual breakthrough. A certain biographical template, with renunciation as the final stage of the life cycle, could also lend a worldly stamp of approval to such a release of the soul from constraint.[43] In mediaeval Europe, despite the collectivist image of the era that descends to us, elements of individuality lurked beneath a person's cross-cutting memberships in different groups: guilds, clans, localities, religious

orders, and the like. Such multiplicity meant that no one identity could trump all others. So too did individual conscience underpin a choice of calling. A warrior who took an oath of fealty exercised free will in that instant. Likewise, individual faith still lay beneath conformity to Christian worship, which would be meaningless without it.[44]

The nuances of how the free exercise of conscience related to external standards of order and virtue varied across time and space, to be sure. Even within the same tradition, the emphasis could shift. I do not want to force these different patterns into one template. Yet enough common themes recur to offer a starting point for reflection. These examples point to what free agency of a non-atomist sort looked like when it did gain some ground. In all the examples mentioned so far, tight constraints of propriety and the sanctification of a social order were still bound up with individual self-cultivation and volition. In Hinduism, the strictures of worldliness derived their legitimacy from a cosmic order that the individual could access directly, if he or she had the impulse to break through illusions. In Christianity, individual sincerity sat at the intersection of social commitments and gave each of them their value. In Confucianism, inner cultivation underpinned stewardship of society for the sake of deeper goods than the powerholders of the day might respect. In Islam, the rules of decent living were implemented by, and for the sake of, individual human beings in a perfected relationship with God.

In short, rather than liberty being a space for mere whims, it was measured against a higher standard of human flourishing. Individual dignity bridged disciplined engagement with life, on the one hand, and demanding standards of self-cultivation oriented to something beyond the mundane, on the other hand. As the Roman statesman and philosopher Cicero argued, the true test of virtue was acting rightly even when no one was looking, because just seeming virtuous without being virtuous stained one's own character.[45] In this logic, the inner self and its outer engagements could not be split from one another. Virtuous character would be refracted through worldly activity of all sorts. Such refraction served as display and proof.

Crucially, worldly engagements were bound together by such micro-level virtue and macro-level cosmic order. They did not find their unity in any overarching self-interest of the individual involved, any more than in any overarching institution wielding power across all domains of activity. Momentary crystallisations of advantage and domination could not properly carry the day. In ways that may strike the modern mind as unfamiliar, the demands of tradition thus could be compatible with intrinsically diverse spaces of liberty.

Indeed, the idea of a purely administrative state that lacked robust ethical content while still pretending to dominate society would have struck most people before modernity as an oxymoron, or at least profoundly illegitimate. The few exceptions illustrated as much. In China of the third century BC, the shortlived Qin dynasty applied Legalist philosophy, with its vision of machine-like bureaucracy

operating efficiently in the interests of the ruler rather than his subjects. It saw self-cultivation and other Confucian ideals as effete obstacles to hardheaded practicality.[46] The Qin dynasty collapsed and ended up damned as tyrannical in Chinese history for the next two thousand years. Kindred thinkers elsewhere—such as the Sophists in ancient Athens and the *Arthasastra* in ancient India—also put forth a similarly instrumental and tyrannical view of politics.[47] But such thought and practice tended to be frowned upon by the mainstream of the old civilisations. Experiments in that vein ended in disgrace whenever openly attempted.

Absolutism, Liberalism, and the Monism of Modernity

I traced earlier the trajectory of modern state formation that began in Europe. Structurally, it transformed the relationship between state and society and tightened control over territorial units. It then spread worldwide a template of power that the new class now apparently aims to scale up supranationally. In parallel with this political revolution ran the evolution of worldviews legitimising it. Mediaeval kings had long chafed at the constraints of Church independence, but the shattering of Christendom's civilisational unity with the Reformation gave more leeway to assert total authority within a territory. Religious strife also added credibility to strong rulers' claims to offer peace amid squabbling sects. Jean Bodin in the 1500s led the way in sketching a theory of absolute sovereignty. 'The sovereign prince is accountable only to God', he insisted in justifying the assault on troublesome rival sources of legitimacy. A ruler's power must be indivisible and supreme above Church and society. Bodin still acknowledged a divine law above the ruler, even while denying any social or institutional mechanism to enforce it against a would-be tyrant.[48]

Truth to orient even structurally unaccountable power became rather less important as absolutist thought matured after Bodin. Yet the legitimacy of the absolute monarch, while it took three or four centuries to consolidate, was still only transitional to later understandings of strong state legitimacy. As the twentieth-century libertarian philosopher Bertrand de Jouvenel has traced, such power had much the same logic before and after the democratic revolutions. Once kings had concentrated power enough, chopping off their heads simply meant that the people, as abstract collectivity, donned power's mantle instead. The most centralised of Europe's kingdoms, France, thus remained in the nineteenth century the most centralised of republics. Indeed, under the fiction that people and sovereign were now one, the penetration of society could speed up. Society needed planning as an organic whole: 'So soon as an intellectual imagines a simple order of things, he is serving the growth of Power.' Because of runaway ideas about popular sovereignty, and the predilections of modern intellectuals and bureaucrats, according to Jouvenel, 'Power…is now no longer one small dot in society but a great stain at the centre of it, a network of lines that run right through it.'[49]

Modern state centralisation may have been, for a few generations, less conspicuous and alarming than in the vast absolutist empires of earlier history. After all, modern Europe was territorially fragmented and unleashed the freedoms of market capitalism at the same time. Despite expansive pretensions, power remained for a long time less intrusive in practice than it might have been.

Visions of tightened political order were still only half of the picture for our purposes here, however. Just as traditional versions of heterarchy and liberty operated downward from institutions and outward from individual conscience, so too did the modern tendency to monism have both elements. By monism, I mean the collapse of both power and flourishing into one primary axis or dimension of meaning, such that they lose much of their diversity and depth. As monistic conceits of centralised state sovereignty descended, they met with atomist self-understandings coming up from a reimagined self. Both matured in complementary ways as modernity rolled forward to the present. The self-understandings in question were articulated by many thinkers and lived out by millions as cultures evolved. I want to highlight only a few key features here. Inevitably, controversy attaches to any choice about what is important, and one could no doubt slice through the modern history of ideas in various ways. Nonetheless, what follows should be recognisable, and useful for orienting the later arguments of this book.

In this vein, more complete psychologically than Bodin's absolutism was that of Thomas Hobbes, the defender of royal power in England in the mid-1600s. His views on the need for concentrated sovereignty were not markedly different from Bodin's or, from a broader world-historical perspective, those of the ancient Chinese Legalists and others like them. The novelty came less from justifying overriding power, than from Hobbes's atomist description of such a social order from the bottom up. More than in earlier forerunners of absolutism, Hobbesian and similar theories had to fill a gap of legitimacy distinct to their era. As the unity of Christendom as a civilisation collapsed into territorial polities, and as rival centres of power in a complex traditional social structure collapsed into mass subjecthood, so too did the 'great chain of being' linking cosmic truth down to a human telos collapse into a much thinner set of assumptions about human nature.

Such a multidimensional collapse left a vacuum that needed filling. In its essence, the atomist view of humanity was monistic and materialist. Hobbes asserted in the first pages of *Leviathan* that 'life is but a motion of limbs.' He laid out a materialist account of how senses, appetites, and impulses combined in a mechanistic way to generate individual will. Given human beings' rough similarity in their appetites and capacities, Hobbes depicted the state of nature as plagued with insecurity. 'I put for a general inclination of all mankind, a perpetual and restless desire of power after power, that ceaseth only in death.' Individuals had an interest in liberty, meaning an absence of external impediments to using their faculties and powers to pursue their appetites. Common

submission to one ruler would give them the greatest security to do so, since self-preservation trumped all. While a subject rationally could try to resist being executed, therefore, all normal rights were given over to absolute authority. Such a strong ruler could suppress clashing opinions or meaningful commitments outside the state's supervision, which tended to generate strife and thus threaten mass death in civil war.[50]

A generation after Hobbes, John Locke developed an idea of the social contract based less on fear-driven common subjection, and more on consent to preserve rights and limit the ruler's power. The bottom-up rebuilding of social order from an atomist version of human nature was not so different, however. A basic equality among individuals also held in Locke's state of nature. Self-preservation was the overriding goal, even though Locke painted a less brutal picture of cutthroat rivalry. Civil government was needed mainly to provide a common enforcer of rights. Beyond preservation of life, a key right for Locke was property. Since individuals owned their own bodies, mixing their labour with a parcel of land, for example, would create an ownership right that a contract-based state should enforce.[51]

This idea of liberty as bound up with physical self-ownership and property recurs through much of modern liberalism. The later political theorist C B Macpherson identified an entrenched assumption in English political thought from the seventeenth to nineteenth centuries: 'possessive individualism'. He argued that as the market economy replaced feudalism, the notion came to prevail that individuals owned themselves, and thus owed nothing to others unless they had contracted to do so. Being fully rational meant having the ability to compete with others and accumulate wealth beyond subsistence. Effective self-ownership—not being a dependent servant or pauper, for example—was also a precondition for political participation.[52]

We must properly see this atomist image of liberty among and in relation to other versions across history. In the early 1800s, the activist and writer Benjamin Constant contrasted the 'liberty of the moderns' with the 'liberty of the ancients'. The liberty of the ancients, as in Athens and Rome, had emphasised the citizen's freedom from arbitrary rule. It required active participation in civic life, including collective defence, but the heavy weighting of politics also meant conforming to shared values that intruded deeply into private life. The liberty of the moderns, in contrast, arose in a society of commerce and larger states in which individuals could take much less interest in politics. Maturing in England, France, and America, it revolved around freedom from constraint in private activity. Political representation served mainly to keep authority accountable and thus unoppressive.[53]

Variations on this distinction have cropped up repeatedly among other political theorists and historians of ideas. A kind of negative liberty, or freedom from interference, has often been seen in a Hobbesian light as compatible with absolute rule, as long as the sovereign who keeps order does so while treading lightly

on private life and private interests. According to Isaiah Berlin's interpretation, negative liberty broke ground unfamiliar to the ancients by giving such weight to private choices disconnected from politics. Positive liberty instead deals with both self-mastery and the ability to participate in politics, to remove even the possibility of arbitrary power being exercised over one. In one view of early modern European history, the political liberty of ancient republicanism retreated as liberalism—in the guise of Hobbes, Locke, and their heirs—swelled the importance of private life. In another view, the idea of freedom through political participation was absorbed into the social contract approach of Locke, and helped lead on to liberal democracy.[54]

The debates over these typologies and how they relate to one another—liberty of the ancients and moderns, negative and positive liberty, and freedom from interference and freedom from arbitrary rule—are important in their own areas. Rather than digging more deeply into the nuances here, however, I mainly want to note some elements that will help orient the different approach that I shall take in this book.

As we saw earlier, the bright spots of liberty and heterarchy in premodern traditions of social thought—even if not fully developed—tended to link individual conscience with a telos, and with a civilisational and social landscape that hemmed in state overreach. Freedom of action was meaningful only in relation to such higher ends. For its exercise, it needed spaces sanctified against state repression. In contrast, the versions of liberty in play among Hobbes, Locke, Constant, Berlin, and so on, all had a distinctly monistic and atomist logic, in one form or another, despite their other differences. They all started from a stripped-down version of the individual. They took for granted neither an eternal or civilisational order of human flourishing, nor any complex set of personal virtues that the individual should cultivate. The monistic account of human nature rested on physical impulses and survival, or economic agency and possession, or (in the most expansive version of political liberty) a single dimension of active citizenship that privileged engagement with the republic over other potentially meaningful circuits in society. All versions were monistic at their core, even if the details varied.

These monistic views of the self corresponded with monistic views of fairly expansive state authority. Either it was the cession of absolute power upward for the sake of order and peaceful privacy, or it was the overriding power of the republic as abstract representative of an undifferentiated mass of citizens. Neither the privatised liberty of the moderns nor a more participatory republican liberty gave much weight to rich and independent circuits of meaning, which might loop through society or out to wider civilisational or religious horizons. And neither saw much point in constraining state power, except insofar as doing so would assure noninterference in the atomist pursuits of the individual subject, or distribute the ability to influence that power more evenly among the mass of citizens.

Crucial for where my argument will lead later is that, between the macro level of power and the micro level of individual self-understandings, a monistic logic hung together. Unavoidably, I must simplify here to connect the dots over a long period and much social change. Yet a recognisable maturing of the same logic appeared in the centrist liberal consensus of the new class and its representative thinkers by the late twentieth century. Take, for example, the philosopher John Rawls and the Nobel Prize winning economist Amartya Sen.

In his 1971 book *A Theory of Justice*, Rawls proposed a thought experiment called the 'original position'. He believed that individuals would come up with principles of justice, without bias towards people like themselves, if they imagined being ignorant of their 'natural fortune or social circumstances' before being inserted into a society. Risk-averse, they would favour a more or less social democratic state. It would provide generously for the 'least well-off', with enough of the 'primary goods' needed by everyone, such as health, rights, and income. In that book and in his 1993 work *Political Liberalism*, Rawls took for granted the importance of choice itself rather than the intrinsic truth of any ends chosen. 'Without invoking a prior standard of human excellence', his framework imagined 'beings who can revise and alter their final ends and who give first priority to preserving their liberty in these matters'. As free and equal citizens, they should expect a neutral state to protect their rights. It would exclude any appeal to 'comprehensive doctrines' beyond the 'public reason' accessible to everyone: scientific evidence, public safety, prosperity, and so on. A neutral liberal state would thus protect the priorities common to stripped-down individuals as such. It would let them switch in and out of 'self-authenticating' belief systems over time, while keeping a continuity of citizenship and basic rights.[55]

Sen is best known in development economics for his 'capabilities approach'. He argued against the prevailing focus in development on merely maximising income or equality or negative liberty. Rather, he called for maximising capabilities, meaning the range of health and education and other functional prerequisites to operate in society.[56] Sen's capabilities approach inspired the well-known Human Development Index, which ranks countries' well-being not by the conventional indicator of GDP, but rather by a composite of income, health, and education.

Sen's capabilities differ from Rawls's primary goods—the former involve functions, and the latter the means to acquire and exercise those functions—yet they have much in common. Both fall within the monistic and atomist logic of much modern social thought. They take as the starting point an individual with certain common attributes and needs. They assume as little as possible about ultimate ends or the content of human flourishing. The individual's engagements in the world are not intrinsically meaningful, or linked to sanctified spheres of social life, or reflective of any deeper character. They are more like a diffuse and ever-changing array of choices, made by an embodied subject as he or she moves through life.

If modernity forces one to build up from the bedrock, then such logic works plausibly enough on its own terms. It connects a stripped-down version of the self to a neutral state. The state in turn strikes a balance, giving that self the means to do as it wishes while not judging or interfering with its chosen ends. Culturally, that logic has three centuries of affinity on the 'right' with possessive individualism and homo economicus. The alignment between the atomist individualism of rational self-interest and the hard realities of capitalism is a familiar indictment by social critics, though cause and effect do not run only in one direction. On the 'left', perhaps less obviously, we find three generations of affinity between the atomist worldview and a kind of bodily flourishing and self-invention.

The latter tendency has cropped up in various guises in recent decades. One of its proponents, Michel Foucault, lamented the extent to which social categories and disciplinary pressures had long meant that 'the soul is the prison of the body'.[57] More traditionalist critics have focused on other dimensions of the cultural and psychological shift. Christopher Lasch looked askance at the baby boomers' 'culture of narcissism', including its quest for prolonged youth.[58] More recent Christian theologians have dissected modern 'expressive individualism'. It sees flourishing as stemming not from adherence to standards of virtue, but rather from the freedom to live outwardly according to one's own subjective self-definition. Since the 1960s, sexual freedom and the centrality of the 'body as totem' have merged into this worldview. More recently, late modern culture has been torn between this inner subjectivity of self-definition and the primacy of the body. One version takes bodily flourishing as the essence of the self, in ways that a 1960s sexual liberationist would recognise. The other would free the imagined self from any constraints of embodiment, through the new celebrations of asexuality and transgenderism. Respect for free sexual self-expression sometimes leads, in late modern jurisprudence, to demands that all social spaces, including those informed by religious orthodoxy, give way to the state's insistence on equal recognition of all identities.[59]

Agency through unjudged sexual self-invention has eerie parallels to the agency of homo economicus. The latter shatters social constraints in indulging an appetite for material accumulation. Both versions of the atomist self-understanding have a kind of raw, even mechanistic, physicality about them. Such physicality would be as comprehensible to Hobbes as it would be disconcerting to the cultural mainstream of premodern civilisations. The meaningful exercise of virtue used to loom larger, at least as an ideal. In our own time, the nuances of the economic and the sexual merely shift with generational turnover and the family squabbles under the broad umbrella of late modernity.

Despite its insistence on a certain version of freedom, the atomist self-understanding also has an unnoticed forerunner long ago. Counterintuitive though it may seem, it has dark parallels with the experience of slavery. Consider Orlando Patterson's history of ancient understandings of slavery. The slave was alienated

from the claims and honour of social ties, and disconnected from past and future. Standing outside any system of honour, and providing only physical labour, he or she was free to cross boundaries of social space and caste. Such a life amounted to a kind of bodily survival but 'social death'. Thus was the prospect of enslavement terrifying in the cultural imagination of the Greeks, Romans, and others. According to prevailing ideas of honour, one would do better to die in freedom than to end up as a slave.[60]

To be sure, the structural exploitation of slaves, the brutality towards them, and the weight of ascribed characteristics, differed greatly from anything in contemporary liberal societies. I do not want to overstate the comparison. But the elements that do overlap are eerily suggestive. The embodied self grows in significance, just as the density and strictures of social belonging and honour thin out. Perhaps the late modern fixation on health and safety would have arisen anyway, simply because protecting health and safety is more feasible than in the past. Nowadays, we do not so easily die of simple infections or chop off our toes while digging ditches with rusty spades. Stronger state capacity also makes it less likely that we have our throats slit by highwaymen. Progress does happen. Still, the other side of the coin of the realm is that, as for the slave, and with only a little exaggeration, there is less worth dying for. The retreat to a kind of physicality happens for two reasons. First, for large parts of secularised humanity, transcendent meanings under the umbrella of the old civilisations have collapsed to a more streamlined version of the self and its needs. Second, as the state has encroached on society, many traditional circuits of belonging and commitment have shrunk to contingent choices. The transition is both psychological and social.

Politically and culturally, this worldview maps outward in two directions. One arrow points rightward to the self-expression of moneymaking and consumerism. In some quarters, that tendency is complemented in populist displays of power by citizens. Often an ethnic and gendered demographic claims 'mainstream' ownership of one or another country. The other arrow points leftward to the self-expression of flexible identities. It demands justice mainly as fulfilment of potential for each individual, regardless of traits or choices. Justice is equal well-being over an embodied lifetime. The right-leaning version puts the centre of gravity in agency, with admiration for the energetically assertive who occupy space and command resources. The left-leaning version puts the centre of gravity in experience, with sympathy for those whose lives might be curtailed by circumstance.

I paint these tendencies with a broad brush here, of course. Since they share many common elements and psychological points of origin, despite the intensity of the hot-button issues that divide them, they also blur into one another for much of Western society. At the same time, however, the landscape of the last decade or so readily suggests caricatured stock characters from each camp: perhaps a fifty-something white man who drives a petrol-guzzling SUV to the

polling station to lash out against illegal immigration, or a twenty-something vegan who asks preferred pronouns of allies at a Black Lives Matter protest. In other parts of the world, the tendencies may vary in weight. The political rhetoric and tactics differ based on the repertoires and priorities at hand. Yet leaving aside the traditional majority that has a quite different outlook, versions of each camp abound from São Paulo to Shanghai.

Still, even such stylised descriptions can illuminate how the logic of atomism is unfolding in late modernity. While each camp's orientation loops away from the other on the cultural signals of the day, they converge again on implications for society and state power. Efficiency and experience matter more than ordering and virtue. Both see a largely atomised public made up of individuals with their various appetites and forms of agency. Engagements and circuits of belonging in society are no longer foundational or sanctified in the traditional sense. Before modernity, the ideal was a well-ordered soul whose virtues were displayed in the various circuits of engagement. Those engagements in turn only fully made sense as part of a meaningful cosmic order. Today, any commitments are more like possessions or inventions of the atomist self. Lacking foundations of their own, they are more susceptible to being flattened by other assertions of power and interest. From the standpoint of the modern atomist, unity hinges on advancing utility across all domains in which one exercises agency. To be sure, judgements still need making about relative gains and losses, and varying time horizons. Yet such trade-offs are a matter of degree rather than a diversity of intrinsic claims on one's soul.

In traditional understandings, both the diversity of engagements and the overarching cosmic order implied constraining worldly authority. Today, the two camps within modern atomism both tend over time to ratchet up state power at the expense of society. The lack of an up and down within the self has at least an affinity with taking lightly any strong claims of self-defence by spaces in society. While the right-leaning version gives freer play to self-assertion in the market, it also balances it with reassertion of citizen majorities through the ballot box, especially against foreigners. While the (often resentful) voting citizen is also an isolated atom, in a peculiarly modern way, he or she exercises a monistic kind of self-assertion in the political sphere. Pulling the levers on national sovereignty may leave profit-making untrammelled, but it comes at the expense of cross-border world society. The late-modern right's liberty is not the traditional liberty of society. Rather, it is the liberty of homo economicus and the citizen insider, both energetically claiming space in their own interest. The left-leaning version resorts to the state as an instrument of social reform, so as better to guarantee universal well-being and to level unequal treatment of those with diversely embodied traits. The late-modern left's liberty is the freedom from ascription and from judgemental restrictions on self-invention.

If we venture further to the extremes of the modern political spectrum, the endpoints are more of the same. Much of the culture war in the West over

intersectionality, critical race theory, and the alt-right draws on these respective views of human nature as defined by a kind of physicality.

For the radical left, the intersectional view of social injustice zooms in on the experience of those who are oppressed at the same time on more than one axis of identity, such as class, race, and gender: poor black women, for instance. Mainstream liberal individualism's superficial neutrality of rights ignores the experience of the 'multiply burdened'. It shies away from a radical remaking of social structure necessary for true equality. Again, we see that the core of intersectionality is embodiment. It pleads for those who encounter daily oppression precisely because they embody visible characteristics that attract mistreatment.[61] As one Christian critic has noted from a perspective sympathetic to the oppressed, however, intersectionality tends to focus more on the fixed physical characteristics of both the victimiser and the victims, rather than the moral agency that both might have.[62]

Those on the far right tend to use intersectionality as a foil, claiming that it 'isn't just describing a hierarchy of oppression but, in practice, an inversion of it, such that being a white straight cisgender man is made anathema.'[63] Symmetrically, however, physicality abounds at both ends. While the intersectional left takes liberalism to task for masking oppression, the growing alt-right rejects liberalism's supposed emasculation and erasure of embodied whiteness. Centuries of conservative embrace of Christianity, including its assumption of a core human dignity based on the equality of souls, is now giving way to a kind of pagan reassertion. The alt-right is largely atheist, denying original sin and any need for humility. Instead it favours the 'heroic will' of masculine defenders of a white racial collectivity.[64]

In short, rather than a battle on behalf of civilisation, or salvation, or justice, or the souls of the meek, the primary axis running from the far left to the far right is coming to look like one form of embodied victimhood versus another form of embodied chauvinism. Both have tribalistic undertones. Ambitions for the relative standing of one's own group within the world occupy more mental space. Engagements in various directions that might manifest one's character and discernment matter less.

I have highlighted the different emphases in these camps—from the intersectional left to the left-liberals, and from the free-marketeers and populists to the alt-right—all the while stressing that they share more than they comfortably would admit, at least compared to the full sweep of diversity in world history. Leaving aside the most radical ends of the spectrum who mainly want to disrupt, both broad camps also unwittingly join forces to facilitate the growing concentration of power in the new class, and the imposition of its worldview on larger swaths of human experience. The new class may be more at ease with regulation and more cosmopolitan than the right wing would prefer. But in concert, they advance economic utility and the supremacy of the state over cross-border world society. Likewise, the new class may be more technocratic and ambitious than

the left wing would want. But their interests align on deploying state power to smooth out messy social inequalities. Beyond any one policy area, the common atomist logic rolls on. It gradually thins out society and leaves less between the state, on the one hand, and the individual as either economic agent or beneficiary of social democratic largesse, on the other hand. Most ordinary people end up less empowered than before. They are expected to find consolation in imagined material gain and imagined self-invention—or, at the fringes, imagined future revolution or imagined future race-war.

This foray into the present political and cultural landscape necessarily simplifies a good deal. It is also more of a snapshot than the longer term trends of several centuries of modern political thought and practice. Still, it helps to complete the framing of the problem. At the outset, I identified the dilemma of emerging world order in this century at the intersection of three trends: (1) overbearing state sovereignty as the template most likely to be scaled up for global governance, (2) the convergence of authority in the new class, and (3) the mismatch between territorial statehood and world society. At this stage, we now see also that those macro-level trends are reinforced by an atomist self-understanding that—important variation notwithstanding—has become the dominant micro-level grounding of legitimacy in late modernity. The preoccupations of that self-understanding propel the ratcheting up of monistic power, both socially and constitutionally. Or, at least, its blind spots hinder a reframing of the question.

What would such a reframing mean? Specifically, can we recover a more pluralist, society-centred version of liberty that is compatible both with a global space and with older emphases on virtue? It will not be enough just to rearrange the familiar toolkits of modern political thought and practice: the state as the focal point of collective sovereignty, the nesting of larger and smaller territorial units as the best way to calibrate political efficacy, and the defining of liberty around some mix of gain and self-invention. We must also tackle more fundamental layers of the problem, including the nature of sovereignty itself and what it would mean to unbundle power—both institutionally and socially—while embracing cosmopolitanism.

Pluralism and Sphere Sovereignty

The current trajectory of global governance is defective in giving short shrift to heterarchy, pluralism, and society. In all fairness, of course, the ideological centre of emerging supranational institutions, and of liberal democracies that still set the prevailing language of legitimacy worldwide, is not authoritarian. Human rights norms genuinely do aim at limiting repression by states. They reject a purely instrumental view of individuals as the playthings of state policy. Within countries, as one scholar has noted, liberal constitutions often start by affirming popular sovereignty and then listing the fundamental rights of individuals.

They assume that the protection of these rights figures among the state's core purposes.[65]

To the extent that individual rights have a kind of sanctity, they are indeed the most important remaining check on state power nowadays. Yet such minimal respect for individuals will hardly prevent a consolidated world state deploying, with due procedural niceties, its full weight against institutions or identities in society that it finds objectionable. National experiences already foreshadow as much. In the liberal and technocratic worldview, society does not carry weight itself. The circuits of meaning that gave texture to the landscapes of traditional societies lack enough reinforcement today. Real reinforcement would require independent bases of power and beliefs about the exercise of virtue.

Moreover, shifting around power or making it more accountable within a liberal framework will not solve the problem. Even if the architects of global governance were inclined eventually to risk global elections, popular sovereignty in itself would check very little. Based on past experience within countries, mass democracy can easily be led into demanding a larger rather than a smaller state footprint, and seeing much in society as obstacles to utopia rather than bulwarks against overreach. And, not least, the dominance of the new class across all leading institutions works against heterarchy. Tweaking which branch office is responsible for which function will not change much. In short, if the converging risks of late modernity raise urgent questions, the current trajectory of global governance offers no reassuring answers.

Overall, we confront an entrenched monistic tendency: monism in stripped-down individual self-understandings, monism in the nature and sources of new class authority, and monism in the template of state sovereignty. The three layers reinforce one another. *If the problem is monism, then the solution is likely to lie in some sort of pluralism.* In the remainder of this chapter, I shall flesh out a fuller account of pluralism. This will require first working through various important strands of pluralist thought from the early twentieth century. Then I shall pull their promising elements together into a coherent account of liberty and virtue-centred sphere pluralism, suited to tackling the metaconstitutional challenges of world order. This framework becomes the basis for later chapters of the book.

Pluralism is a widely used and imprecise term. It has been bandied about in political thought in the English-speaking world for over a century. During the Cold War, it had a positive valence as a catch-all counterpoint to totalitarian menaces from the Communist bloc.[66] As political theologian David Nicholls has detailed, however, pluralism has been used in at least three different ways to analyse 'the relationship between unity and diversity in a state'. The first is empirical research on how interest groups mobilise to lobby the government, making policy the product of a marketplace of pressures rather than some abstract and top-down common good. The second is accommodation of ethnic and religious diversity in shared political institutions, especially in postcolonial and other

countries that do not fit a neat nation-state model. The third is a challenge to overarching ideas of state sovereignty, in an effort to reclaim independence for different kinds of institutions in society.[67] While diversity of the second type has its place later in this book, this third meaning of pluralism—focused on shrinking the state and devolving sovereignty to different functions and associations—is most relevant as a foundation of my approach here.

Ultimately, such pluralism is an intellectual defence of heterarchy. As we have seen, premodern traditions of social thought often shored up heterarchical counterweights to the state. Pluralism in general thus has timeless and placeless aspects. In the early twentieth century, however, two clusters of thinking developed pluralist lines of reasoning in sophisticated directions as a response to specifically modern problems: (1) the pluralist school in England, and (2) the Calvinist theorists of sphere sovereignty in the Netherlands. Each had its peculiar context and blind spots. Neither was sufficiently global in perspective. Still, they can provide toolkits and help us to refine questions for our own time.

English pluralism was founded by the historian, philosopher, and Anglican priest John Neville Figgis. 'The real question of freedom in our day', he argued, 'is the freedom of smaller unions to live within the whole.' Figgis had some inspiration from the German legal scholar Otto von Gierke, who had mounted a vigorous defence of the independence of associations from the state. Gierke had found in ancient Germanic legal tradition a respect for the spiritual bonds among members of an association, which gave it a collective life of its own. He contrasted that mode of legal thinking with Roman law, which reduced associations to a sum of individual contracts and a fictive personality granted by the state. Figgis similarly drew from this imagined libertarian tradition running through northern European history, exemplified by the turbulent freedom of the Germanic tribes and the associations of the Middle Ages. It was the opposite of the centralising tendencies of the all-absorbing Greek polis, the Roman empire, the papacy, and modern strong states. He and other English pluralists saw their mission as strengthening associations in civil society, such as churches and guilds. The state should be a balancer among them, rather than a taker of initiative in its own right. Since people found fulfilment by participating in multiple social groups with different aims, the state should not claim preeminence in all dimensions of life.[68]

English pluralism was a broad church. Its thinkers and activists shared a disillusionment with the growing strength of the modern state, especially after the First World War. They sought a third way different from both statism and excessive individualism in the market. Figgis subscribed to a fairly traditional view in which truths about human flourishing were linked to the organic unity of the community. Such sensibilities had prevailed in the late nineteenth century among many idealist philosophers, though they had begun projecting that organic unity on to the modern nation-state. Figgis instead wanted to shift the focus of organic unity down from the state to smaller, purposive associations.

Associations would have their own prepolitical character, with churches as the classic example. After Figgis, most pluralists' preoccupations evolved towards a left-leaning guild socialism. A growing focus on poverty and disillusionment with mainstream politics led some, by the 1920s, into a more radical desire to turn associations into instruments of social revolution. The political economist and future Labour Party chairman Harold Laski shifted emphasis from the autonomy of quite traditional institutions like churches, towards an emancipatory view of individual freedom at the intersection of different associations. Worker education and activism, as well as industrial democracy, would remove obstacles to such freedom. Associational life was seen less as valuable for its own sake, as it had been for Figgis, and more as a venue for self-expression. Laski's desire for material progress and more sweeping social and cultural change also led him by the 1930s to a new interest in capturing and deploying state power. Eventually, the Labour Party that Laski led by the 1940s had no recognisably pluralist agenda.[69]

Such tension between a pluralism of traditional, purposive associations and premodern sympathies, on the one hand, and an emancipatory and secular type of labour activism aimed at social transformation, on the other hand, was just one axis of diversity. Pluralist influences also radiated out into different national traditions. In America, the dialogue was mainly with the Progressives, who prefigured Laski in their desire to use associational activism for national-scale social change. In France, as political theorist Cécile Laborde has traced, quasi-pluralist currents pulled in two directions that both ended up being distinctly unpluralist. Unlike the British comfort with state and society complementing one another, French political culture was more inclined to see an irreconcilable clash between them. One current of French pluralism thus evolved into a traditionalism that drew heavily from Catholic integrative corporatism. Its advocates wanted a religious state to reclaim a unifying, antiliberal function above society. The other current flowed towards radical syndicalism. In quasi-anarchist fashion, its worker associations were seen as merely shifting aggregates of the activists making them up.[70]

Much of this history has a contingent air about it due to particular circumstances. In Britain, generations changed and activists' priorities moved on. National political cultures elsewhere had different sensibilities, even in otherwise fairly similar Western countries. Still, two broader insights, or at least lines of questioning, do arise from this early twentieth-century intellectual history.

One comes from Laborde herself. In analysing the varieties of British and French pluralism, she also offered a typology of ideas about the nature of ties among members within associations, and the state's role in relation to associations. On one dimension, she asked whether a given strand of pluralism saw an association as an organic unit, such that its meaning or purpose made it more than the sum of its members, or merely as a contractual bond among those individuals making it up. On the other dimension, she noted that while some pluralists

saw the state as merely coordinating among associations without representing much of intrinsic value in itself, others saw it as integrating associations into a broader and higher community such as the nation. Laborde combined the axes into a two-by-two typology: (1) organic-coordinative like Figgis, with inherently meaningful associations and a weak state, (2) contractual-integrative like Laski, with associations as sites of individual freedom but the state pulling them all together in a national project of social reform, (3) contractual-coordinative like the French syndicalists, who eventually faded off into worker anarchism, and (4) organic-integrative like some Catholic-inspired French corporatists.[71]

The other broader insight comes from libertarian political theorist Jacob T Levy's reflections on the history of pluralism and its influences. He noted that while the English pluralist tradition of the early twentieth century has faded from view, leaving mainstream liberalism dominant, there are areas where liberalism and pluralism usefully might influence one another. For one thing, he argued, pluralism itself drew from an alternative quasi-liberalism—of James Madison and Alexis de Tocqueville, for example—that was sceptical of state power. In contrast, mainstream liberalism that descends from Hobbesian individualism has a blind spot for the value of power outside the state. It sees the main threats to freedom lying in residues of feudalism and religion in society, rather than in state overreach. For this reason, according to Levy, pluralism's emphasis on associational rights can offer a useful corrective to the liberal tendency to see only individuals and the state, with little between them.[72]

Together, the historical context of early twentieth-century pluralism, as well as Laborde's and Levy's broader insights beyond that moment, suggest questions that this book must tackle in considering the global context in this century. We must take seriously the need to reclaim space for society, liberty, and virtue. The building blocks of an alternative theory must include: (1) the nature of the associations, units, or spheres whose plurality is to be defended, (2) the competences of those spheres and the metaconstitutional logic of boundaries among them and between state and society, and (3) the nature of the individual's free engagement with plurality and the reasons why such engagement reconciles liberty and virtue.

At the same time, given the changed historical context, we should not treat the global field of order as just a matter of scale and diversity. Plurality rests not just on institutional arrangements, but also on social facts. Much of the shift a hundred years ago from a traditionalist flavour of pluralism to an activist version that would deploy state power to emancipate individuals was driven by proto-new class sensibilities. The path from Laski's industrial democracy to Blairite New Labour two generations later had much social churning about it, but also a new consolidation of power by those ambitious souls whom the churning lifted to the top of late modern society. The enemies of pluralism are different in different eras. And looking forward, a global metaconstitutional settlement inevitably would be bound up with certain patterns of authority and socialisation. Some

cultural and moral ecologies today stand in its way, just as other cultural and moral ecologies could stabilise a new settlement.

English pluralism was loose and easily metamorphosed into something else. Two factors caused this. First, its thinkers had varied and ambivalent views of tradition and the ballast that it might have provided. Some such as Figgis had their roots in religion and took the autonomy of nonliberal associations seriously. The likes of Laski had a more progressive view of individual emancipation, and talked about the future rather than building on tradition. Indeed, Laski himself was hostile to traditional Christianity and Judaism. The leftward-drifting activists of the 1920s saw plural spaces in society as part of a broader transformation. Second, while English pluralists all agreed on the need to unbundle state sovereignty and give free play to associations, they did not fully think through the nature of those plural spaces and the boundaries among them. English pluralism thus lacked a whole framework of values and categories, which could sustain an alternative vision of metaconstitutional legitimacy.

Here is where another cluster of pluralist thinking in the early twentieth century can offer complementary resources. The sphere sovereignty school of thought that emerged within Dutch Calvinist circles had almost no direct point of contact with English pluralism, and is probably less widely known outside its own networks. Yet it had more enduring impact as a distinct force in Dutch politics. And while it suffers blind spots of its own, it can add some useful conceptual building blocks. That said, as with many of the resources on which I draw in this book, I must acknowledge at the outset that some of the uses to which I propose putting sphere sovereignty would probably unsettle its founding theorists.

Sphere sovereignty emerges from a longer tradition of Calvinist thought. It goes back to Althusius (1557–1638), who laid out a rationale for pluralism and proto-federalism. He argued that a political commonwealth was an aggregation not of individuals, but of many smaller associations such as families, guilds, and cities, all with their own functions and liberties.[73] Sphere sovereignty as such was articulated first by Abraham Kuyper (1837–1920), a Dutch theologian, newspaper editor, and politician. Among other accomplishments, he founded the Free University of Amsterdam and served as prime minister from 1901 to 1905. His ideas on sphere sovereignty were refined later by Herman Dooyeweerd (1894–1977), a legal scholar and philosopher at the Free University.

The preoccupations to which the theory of sphere sovereignty responded were familiar. They included the usual traditionalist apprehensions about modernity. Kuyper opposed both versions of the overbearing state: the republican based on popular sovereignty and emerging from the French Revolution, and the authoritarian, exemplified by Wilhelmine Germany and exalting the state as above society and organically unifying it. He felt that both versions lacked Christian humility. They saw nothing above the state to limit it, and no social institutions below the state, larger than the naked individual, worth respect. Kuyper framed the Calvinist alternative as placing God above both state and individual.[74]

Dooyweerd developed the argument further. Rather than just a contractual relationship between the free individual and the centralised state—which usually meant oppression rather than liberty in practice—a 'radically Christian idea of the state' saw institutions in society as having intrinsic, prepolitical value. The state could not presume either to encompass society or to emerge from it as its sole spokesman.[75]

Apart from the religiously inflected language, the approach so far was similar to that of the English pluralists. Yet sphere sovereignty went on to a more systematic account of why and how social life was independent of the state. Kuyper and Dooyeweerd argued that the unity of God's creation was refracted into specific spheres such as the state, religious institutions, family life, business enterprises, schools, clubs, and so on. While the details of how the spheres operated would vary in historical context, each sphere must enjoy 'sovereignty in its proper orbit'. This was not just a matter of functional decentralisation. Rather, it was a permanent 'structural principle' grounded in creation itself. Each sphere fulfilled a particular human purpose. No one sphere such as the state could encompass or subordinate the other spheres.

In a complex society, of course, the multiple spheres would generate 'enkapsis', or intertwinements, of various sorts. 'Unifying enkapsis' would occur if one sphere were absorbed into or dominated by another. A theocratic regime would have religious institutions dominating the state, for example. Or a society with kinship permeating all institutions with nepotism would have the family dominating outside its own sphere. In a more modern context, Dooyeweerd gave the more common example of 'territorial enkapsis'. By virtue of coexisting in the same country, institutions of all types would be influenced to some extent by the positive law of a national government, even a very restrained one. Whatever the various intertwinements among spheres, however, they should not encroach on the essential character of each sphere and the freedom of its institutions to pursue their ends. This sort of liberty would let institutions with different qualities be interdependent, without being absorbed or subordinated to one another. Finally, Dooyeweerd listed 'personal enkapsis', the kind of intertwinement in which an individual would participate in institutions from multiple spheres at the same time: as a member of a family, as a worshipper, as a businessperson, as a scholar, and so on. Each engagement would contribute to the flowering of his or her identity and moral capacity.[76]

Given the distinct nature of each sphere, what did Kuyper and Dooyeweerd expect the state itself to do? It should be modestly confined to its own political sphere, but that sphere had legitimate functions of its own. In language that Weber would recognise, the state held 'monopolistic organisation of the power of the sword over a particular cultural area within territorial boundaries'. It should preserve order amid human sinfulness, by suppressing crime and dealing with other matters of limited public concern like disease control. Guaranteeing public order did not override the sovereignty of other spheres, however. At most,

the state could function as 'the balance wheel in society' by providing juridical backing for the boundaries among spheres and for their smooth functioning: punishing violence within other institutions, enforcing contracts and property rights, and so on. The jealous protection of the spheres from state overreach was not about just delimiting power or marking off spaces. Rather, each sphere was so profoundly different in its nature that the state was incompetent to master its logic.[77]

Under sphere sovereignty, the state should refrain from interfering in other spheres. Its own functions should maintain their independence, too. Despite the roots of sphere sovereignty in Calvinism, Kuyper and Dooyeweerd insisted that religion should not intrude on the state. The state's public order function was grounded in 'political natural law', which was more limited than the 'primary natural law' of overarching Christian morality. One should not try reasoning from primary natural law directly into political life, a habit for which Dooyeweerd criticised Catholics. Doing so risked generating grand yet diffuse ideas of the common good, which would tempt intervening across the boundaries of the spheres. Political natural law could only shed light on how to apply the structural principles of sphere sovereignty in historical context. In particular, a state had to determine how to turn the imperative of public order, the power of the sword, into concrete institutional choices. This marking off of a political sphere from morality in general meant that the state should not be bound to a particular religious denomination; nor should it require religious tests of officeholders.[78]

Compared to English pluralism, sphere sovereignty—especially with Dooyeweerd's elaboration of Kuyper's original work—was thus more sophisticated in its account of the plurality to be defended. Its religious grounding created a tension between the universal and the context-bound, however.

On the one hand, Kuyper and Dooyeweerd saw sphere sovereignty as based on permanent categories, reflecting the deep structure of creation. This underlying truth made the spheres different from many other attempts to divide up the world for analytical purposes. Weber, for example, suggested that the arc of modernisation had seen different value spheres becoming rationalised. Each sphere's institutions matured in modernity: the bureaucratic state, the capitalist market economy, the scientific method, aesthetics, and so on. But Weber's spheres were analytic, not normative, categories. He could have sliced up reality differently if he had been asking different questions. And, not least, he saw the modern process of differentiation as disenchanting the world by breaking down traditional unity, not as a case of spiritual truth being refracted into the spheres like light through a prism.[79]

Unlike the secular social scientist's approach, the worldview of Kuyper and Dooyeweerd implied a moral certainty. One could judge history without being swept along relativistically by it. To the extent that history reshaped human experience, it disclosed meaning rather than changing it. Early influences on

Kuyper had included German idealist philosophy, which saw spiritual forces unfolding in history rather than just a struggle among material interests.[80] Built into the account of sphere sovereignty was a trajectory of historical development. Modernity had proved a disaster in overcentralisation of power and loss of faith for many people. Yet its social conditions also held out the chance to realise sphere sovereignty's potential more fully. Kuyper was quite the Victorian in that he recognised a diversity of worldviews and the growing weight of individual consciousness.[81] Dooyeweerd argued that the spheres themselves, while timeless and absolute in their character, could only disclose themselves fully over time as society became more complex. Primitive or even mediaeval society was too undifferentiated. Any community with high boundaries and indistinct institutions—like the ancient polis or the Germanic tribe or even the all-encompassing Church of the Middle Ages—suffocated the separate spheres. Their unfolding required the rise of a distinct state with its own legal functions, the release of a market economy, the independence of the nuclear family, and the proliferation of free churches, schools, universities, clubs, and so on. Sphere sovereignty certainly did not take an atomist view of the individual. But individual personality could blossom if set free, by responsible engagement with and membership in the diverse institutions of the different spheres.[82]

On the other hand, while sphere sovereignty's religious inspiration gave its proponents a commanding confidence about essential truths in history, they also insisted that inspiration was unique and indispensable. Kuyper and Dooyeweerd cannot be plucked out of their Calvinist heritage. Dooyeweerd saw sphere sovereignty as flowing directly from the 'ground-motive' of the Calvinist worldview, with its scheme of Creation, Fall, and Redemption that 'acts as a spiritual mainspring in human society'. Much like sunlight passing through a prism and coming out in colours, so did the spheres ultimately flow from the world's 'supra-temporal unity in Christ'. Likewise, the sovereignty of God above state and society was manifest in the obedience of the believer. The deep divide between Creator and created in Calvinism meant that, unlike in Thomist Catholicism, the world's diversity could not be reduced by overconfident human reason to a 'speculative unity'. In this vein, Kuyper in an 1869 speech inveighed against 'uniformity [as] the curse of modern life'. The sinful modern mind had a pantheistic temper, with a 'misguided love' that wanted to break down divinely sanctioned diversity, like the builders of the ancient Tower of Babel. In their hubris, the moderns—deploying the overbearing state as one tool—wanted to 'grind away with a coarse hand all the divinely engraved markings on the copper plate of life'.[83]

Despite the sophistication of sphere sovereignty, therefore, it did not travel as well as did English pluralism. While English pluralism had transatlantic exchanges of ideas with Progressives in America, as well as with reformers in colonial India, sphere sovereignty had definite Dutch roots. Dutch culture, along with the pluralism of Dutch society and institutions, shaped Kuyper and Dooyeweerd. Their country was a multireligious society with a host of parallel

institutions that jealously guarded their independence. Experience hinted at something like sphere sovereignty even before it was articulated.[84] Indeed, Kuyper's political achievements as prime minister endured in relatively strong pluralist and consociational institutions until later in the twentieth century. He could accomplish as much politically because, unlike the English pluralists like Laski, he and his party could count on a traditional social base that brought its principles to the ballot box generation after generation. Farther afield, such ideas did not fit experience so well. Even when Kuyper's and Dooyeweerd's writings have been translated into other languages, they have had little broader audience. Christian thought in the Anglosphere deals more with individual morality than with social institutions, except for peripheral thinkers like Figgis. Beyond the West, sphere sovereignty has resonated even less. A South Korean fan of Kuyper lamented that the long history of state dominance over society in East Asia, combined with many Korean Christians' political apathy and suspicion of activism, made Kuyperian calls for a vibrant civil society fall on deaf ears there. Some sympathisers have suggested that sphere sovereignty could be the basis of a contribution by Christian minorities, such as in southeast Asia, to imagining a more diverse and tolerant form of postliberalism, compared to the tightly wound monism of Islamist or Hindu nationalist revival.[85] Yet even that proposed engagement does not become a springboard into genuine universalism.

Such placebound history and limited resonance might seem unimportant. But one also gets the impression that even for Kuyper and Dooyeweerd, the whole framework was not expected to travel well, either. Their view of global diversity was imprinted by the sensibilities of their time. Perhaps most damaging to Kuyper's reputation has been the fact that his ideas about diversity and boundaries—though not sphere sovereignty as such—later were taken up by some defenders of apartheid, or the separate development of the races, in South Africa. His followers in recent decades have robustly condemned that misappropriation of his thought. Some have also acknowledged and lamented that his assumptions about race, gender, and the like were offputting by later standards.[86] Indeed, some of his passing remarks about other civilisations—when he was not simply ignoring them—were leavened with contempt. The 'blurring of the boundaries' in modern European society had already gone to its darkest extremes in much of Asia, he thought. The pantheistic temper of Hinduism and Daoism had turned intellectually gifted civilisations into a passive 'human wreckage'. They had sunk into 'the depths of human degradation and hideous immorality'.[87] In short, Kuyper was hardly trying to charm a global audience.

Those Kuyper followers who today acknowledge his limited horizons often shift the emphasis, from attitudes on the surface to principles that go deeper than their historical context. They argue that the core of his thought, especially on sphere sovereignty, can be adapted to our more global era. Perhaps we just need to tweak the language and imagine different ways the spheres could be manifested. Perhaps the themes of individual freedom and the unfolding of different

capacities should be recognisable across traditions.[88] At the same time, however, we have to recognise that even Dooyeweerd, writing decades later, insisted bluntly that his system of thought was inseparable from Calvinist theology. 'It does not, for example, permit Christian and non-Christian starting points to be theoretically synthesised.' Its practical use depended on its intellectual roots, too. 'Even the principle of sphere sovereignty does not arm us against totalitarianism if it is separated from the scriptural motive of creation and thereby robbed of its real intent.'[89]

How much all this matters depends on what one is trying to accomplish. It does not do justice to any tradition to spout facile reassurances that, in a metaphysical sense, the 'supratemporal root-unity' of the various traditions is really the same: Christ/Logos/Allah/Brahman/Dao/Tian. The more precise concepts, such as the spheres and the goods they entail, do matter. Still, even Kuyper as a practical politician could find ways to cooperate with those who did not share all of his assumptions. He rejected a confessional state in the Netherlands. He overcame centuries of distrust to reach out to Dutch Catholic politicians and form a traditionalist coalition on some issues.

Towards a Virtue-Centred Sphere Pluralism

Between such practical cooperation across belief systems, and the insistence on unique spiritual absolutes, there are also middle levels where the metaconstitutional questions animating this book really lie. Among traditions, one can find insights that are substantively useful and travel well if one pays more attention to common virtues and the social and institutional ecologies necessary to sustain them. In the rest of this chapter, I want to flesh out a theoretical approach that works on that level and can better address the questions at hand. This is where English pluralism, Calvinist sphere sovereignty, and a host of older resources from heterarchical corners of political thought and practice together can have something to offer. The elements just need reinterpreting and combining in new ways.

Despite its limitations, sphere sovereignty does offer metaconstitutional insights that go beyond English pluralism and older, more general sorts of heterarchy. While neither Kuyper nor Dooyeweerd exhaustively described all the spheres, they went far in articulating the distinct nature of each and basing a claim to sovereignty on that distinctiveness. They also marked off the political sphere as responsible for public order and justice, while holding it incompetent to intervene in other spheres. These sorts of qualitative distinctions went deeper than a mere sympathy for free associational life, on which the English pluralists had based a vaguer hope to limit state power. Furthermore, sphere sovereignty connects the autonomy of the spheres to the individual believer's engagement with, and flourishing within, the institutions of each. Rather than being merely fields of free associational life—as for Laski, for instance—the

sovereign spheres were seen by Kuyper and Dooyeweerd as dimensions of individual flourishing within a larger cosmic order.

To flesh out the approach that will guide the rest of this book, I want to draw in particular on what Dooyeweerd called 'personal enkapsis'. As introduced earlier, he described possible intertwinements among spheres. Unifying enkapsis is one sphere absorbing another. Territorial enkapsis is the state's jurisdiction over a geographic location and its influence on institutions of other spheres operating there. Personal enkapsis is the intertwining of spheres through each individual who engages simultaneously with their respective institutions. As citizen, parishioner, worker, student, volunteer, and hobbyist, for example, someone could exercise each aspect of his or her soul in different directions. No membership in any one institution could define his or her personality. Any institution from a given sphere that claimed enough authority to intrude into other spheres as well would not only overreach functionally. It would also deform the multidimensional free play of that person's humanity and dignity.

Dooyeweerd mentioned personal enkapsis only in passing and did not develop the concept. His account on its own will not get us very far. But it has loose analogies to other traditional modes of respect for a liberty of commitments. Consider two quotes that, from elsewhere on the landscape of modern European political thought, stake a similar claim for conscience against overbearing authority. The first comes from Lord Acton, a nineteenth-century British politician and historian, and devout Catholic:

> By liberty I mean the assurance that every man shall be protected in doing what he believes his duty against the influence of authority and majorities, custom and opinion.[90]

The second comes from de Jouvenel, the twentieth-century French conservative with a libertarian streak, whose account of modern centralisation of power appeared earlier in this book:

> Liberty [is] the direct, immediate, and concrete sovereignty of man over himself, the thing which allows and compels him to unfold his personality, gives him mastery over and responsibility for his destiny, and makes him accountable for his acts both to his neighbour, dowered with an equal right claiming his respect—this is where justice comes in—and to God, whose purposes he either fulfils or flouts…. It is not as an element in the happiness of the individual that the loftiest spirits have vaunted liberty, but rather because it consecrates the dignity of his personality and thus saves the human being from playing the merely instrumental role to which the wills of authority tend ever to reduce him.[91]

Acton's and Jouvenel's definitions of liberty in these instances hinged on the moral more than the constitutional aspects. But they stood in the long genealogy of premodern heterarchy that I outlined previously. This older view of liberty connects individual conscience to higher obligations. On a complex social tapestry, the threads of action pull in different directions. Those obligations demand a particular way of life or course of action from above, not as a mere matter of individual preference. The strongest protections of freedom of worship, for example, in the early modern West and even in still quite traditional societies like India have stemmed from this logic. Only as liberal secularism has advanced has it seemed unnecessary to peg conscience on such obligations.[92] The free individual now stands alone.

Standing alone may leave one freer in some ways. One needs less justification of one's choices. More ominously, it also leaves one vulnerable to centralised power and monistic forms of narrow aspiration. Thought here lines up with practice, as the older psychological and social ramparts against centralisation crumble. The collapse of overarching reasons for courses of virtuous action coincides with the rise of more powerful modern states. Mainstream liberal constitutionalism poorly defends intermediary institutions between state and subject. The freedoms that it most prioritises protecting—those culturally most valued in the modern West and increasingly elsewhere—tend to be the atomist freedoms of possession and lifestyle. Mechanistic views of the self line up with utilitarian ideas of the public good, over which technocratic authority presides. Appetites and administration loom large. Independent circuits of commitment carry less weight.

In contrast, the concept of personal enkapsis suggests a different understanding of liberty. Individually, it puts more emphasis on the freedom to engage meaningful ways of life, crystallised in the institutions of different spheres. Only robust guarantees of autonomy in society can protect such spaces for action. Autonomy implies unbundling any overarching sovereignty that would enfold or deform those spaces. Or we could think of the framework on micro and macro levels. On the micro level, personal enkapsis points to a liberty that pulls agency out of the self in multiple dimensions. On the macro level, sphere sovereignty points to an institutional ordering of state and society in which the relationship between them hinges on plurality itself. Together, personal enkapsis and sphere sovereignty, along with all the other heterarchical elements mentioned, cohere in what I shall call *virtue-centred sphere pluralism*.

As applications in the rest of the book will show, virtue-centred sphere pluralism overcomes several blind spots of the present world order and putative liberal solutions. It breaks down sovereignty into a rigorous defence of the autonomy of the spheres. It thus discourages a ratcheting up of centralised power regardless of geographic scale. Because it does not privilege state-based territorial enkapsis, it gives sufficient weight to cross-border circuits of meaningful engagement in world society. Given the affinity between virtue ethics and the traditions, it

builds on—rather than negating or disdaining, in new class fashion—the world-views of a large swath of the world's population that now feels little affinity for visions of global governance. It holds out greater promise of sustaining legitimacy in the long term for a global order compatible with pluralism.

The account of the self that anchors the micro-level end of virtue-centred sphere pluralism is also more robust than atomism. Personal enkapsis supports a definition of liberty in relation to fulfilling engagements. The self-understanding thus differs from both versions of contemporary atomism. On the one hand, it rejects the right-leaning version that stresses self-assertion through possession and consumption, hedged by occasional majoritarian affirmations of citizenship. On the other hand, it rejects the left-leaning version that stresses self-invention and the embodied equality of human experience. Instead, virtue-centred sphere pluralism links liberty and virtue through a plurality of strong commitments with personal enkapsis at the intersection. The virtues called forth may differ depending on the sphere and institution, of course. But it is precisely this diversity of contexts in which virtue operates that would allow it freer play. The narrow preoccupations and power relations in any one sphere would have less leverage to deform the full range of virtuous engagement across spheres. A pluralism of spaces inherently favours the untrammelled exercise of virtue. It thus brings advantages of character, rather than just freeing one from monistic oppression. It pulls one out of an atomist understanding of the self, without tethering one to a single dominant standard of value.

Virtue-centred sphere pluralism has elements in common with the approach of Figgis, Laski, and other pluralists, but also important differences. To borrow Laborde's typology, it is neither strictly contractual nor strictly organic in its view of the relationship between the individual and any groups to which he or she may belong. A contractual view implies a kind of individual subjectivity and flux of interests, while an organic view implies a primacy of the group over its members. The former puts the centre of gravity in a streamlined self; the latter puts it in a collectivity. In contrast, an enkaptic approach puts the centre of gravity in virtuous engagement itself, which better reconciles freedom and substance. Moving from the micro to the macro level, this self-understanding also favours a pluralistic metaconstitutional settlement along the lines of sphere sovereignty. The bottom (personal) level and the top (metaconstitutional) level have a logical correspondence.

At the same time, there are overlaps and differences with the original Calvinist framing of sphere sovereignty. For Kuyper and Dooyeweerd, the 'ground-motive' of Creation was essential to link the spheres and the individual believer's flourishing. But my argument here fits the assumptions together differently. While virtue-centred sphere pluralism could be compatible with a Calvinist, or any other, religious ground-motive, we need not take as much for granted in talking about it. The ground-motive as seen by Kuyper and Dooyeweerd was really an answer to two questions: the nature of the human soul and its salvation,

and the cosmology of how humanity fitted into the universe. The lens zoomed to two extremes, so to speak, both deeply beneath virtue into the soul and far out to the divine.

While any account of virtuous engagement benefits from a full understanding of what existence is all about, both individually and cosmically, most of the questions that arise in social and constitutional order have to do with the middle range. That middle range involves the aspect of the self that faces towards engagement, and the activities and spaces of worldly engagement as such. While Dooyeweerd mentioned the concept of personal enkapsis only in passing, as one type of intertwinement among spheres, here I have elevated it to a more central position. It deals with precisely this crucial middle range between the self and its engagements. But rather than being a mere social fact of multiple memberships, it can also be fleshed out with a more comprehensive understanding of virtue exercised freely in those spaces of engagement. Personal enkapsis thus becomes the core of how to understand liberty and pluralism in a new way, along non-atomist lines.

Because of this reframing, the virtue-centred sphere pluralism that I propose is also more universally accessible than the original form of sphere sovereignty. The common ground across traditions deals mainly with the lineaments of character and the free exercise of virtue in society. That common ground need not presuppose a theological consensus on the deepest questions of the soul or the grandest questions of the cosmos, even though, compared to atomism, it might better appreciate the weight of such matters in any individual's worldview. To use another metaphor, the houses of virtue are similar because of their structures, not because they all rest on the same subsoil or have the same view from their windows. Their similarity becomes not the theological ground-motive of a specific tradition like Calvinism, but rather the micro level of a metaconstitutional ordering *within the world*.

This more cosmopolitan approach also leads on to challenging some of Kuyper's and Dooyeweerd's problematic assumptions about scale and territoriality. I noted earlier that they acknowledged historical development as an unfolding of latent potential. While sphere sovereignty's foundations were timeless, the ability to imagine it varied across history. Kuyper thought the Roman empire was a low point, as 'one world empire under one sovereign state'. Christianity's emergence illuminated a permanent reference point beyond the state, affirming the 'sovereignty of faith'. The contours of sphere sovereignty then came into sharper relief after mediaeval times, with the proliferation of kingdoms, orders, and guilds in the absence of supranational political structures.[93] Perhaps given the small size of the Dutch homeland, it came naturally to Kuyper and Dooyeweerd to assume the nation-state as the largest political unit. Political power was inherently territorial, charged with order and public goods in a geographic unit. Even while arguing for a limited state respectful of the sovereign spheres, they still took for granted territorial enkapsis on a national scale. The bulk of social life

was happening within one political jurisdiction, rather than across borders. Alongside their lack of interest in non-Christian civilisations, such ideas about national political life suggest at least a scepticism about any cosmopolitan world order. It would look too much like Rome. It might yoke believers and unbelievers together, and menace society with vast imperial sovereignty.

A simple revision of their approach could argue, on a practical tack, that the state's functions now can be scaled up to a supranational level. Public order and public goods are not best provided in a unit the size of the Netherlands. For all the functional reasons listed by proponents of supranationalism today, globalisation has changed the best scale on which to carry out state-like tasks. Even if the nation-state were an appropriate crystallisation of the political sphere in Kuyper's time, it may have ceased to be so. Perhaps the shift from territorial to functional realities of organisation stamps an expiry date on territorial enkapsis itself. Scaling up need not pose any more threat to liberty than did overbearing state sovereignty within countries. After all, as the theory of sphere sovereignty itself holds, the question need not hinge on what is happening within any one sphere according to its own logic. Understanding and respecting the boundaries among spheres will matter more for liberty. Such a practical argument might or might not persuade the original proponents of sphere sovereignty and their later followers. In any case, the theory itself leaves room for political scale to evolve with the historical context.

Still, the stubbornness of something like territorial enkapsis is not limited to sphere sovereignty. It appears elsewhere among a range of modern thinkers, and needs unpacking—and challenging—further as we work through the implications of scaling up metaconstitutional order beyond the nation-state. Oddly, territorial enkapsis is a resilient assumption that unites otherwise quite different perspectives. It has a hold over some of a traditionalist or libertarian bent who naturally should warm to a pluralist vision.

For traditionalists, take H J W Hetherington, an idealist philosopher in the early twentieth century. He saw himself as defending tradition against the fragmenting tendencies of the English pluralists, despite being sympathetic to many of their values. Hetherington argued that a proper traditionalist inspired by the European classical tradition would take seriously the idea of a higher self, socialised in a well-ordered society. That well-ordered society needed a sense of spiritual unity. Unity could only come from the state, because it embodied the common values of the whole national community. Just as the soul and reason stood above fragmented impulses, so too should the sovereign state stand above associational life, even if it could respect liberty under that umbrella. Hetherington acknowledged in passing that nonpolitical associations did cross borders, and that expanding enlightenment might well scale up life and merge states in the long run. But he still insisted that any evolution of scale would not change the principle: common conceptions of the good life had to prevail in the political institutions of a society, whatever the diversity of civil society.[94]

While that view sees an ideal territorial state as the embodiment of traditional unity, another view works towards territorial enkapsis from the opposite direction. It hinges on the assumption that liberty in society requires a cohesive national community. In this line of thinking, philosopher and anthropologist Ernest Gellner noted the rarity of free, pluralistic civil society in world history. Usually the choice has been centralised state power that atomises and crushes society, versus power dispersed into segmentary communities, each of which makes suffocating claims on the loyalty of individuals within it. According to Gellner, the modern liberal state strikes a balance by combining 'political-coercive centralisation' with just enough dispersion of economic power. The nation-state provides a distinct space with internal peace, enforceable laws, and a citizenry educated in a common language and set of norms. In that space, the ties of belonging could relax and let individuals become 'modular'. Modularity means being able to engage with different associations or identities at will, and with some background level of trust among strangers, but without being defined and suffocated by any one commitment.[95]

Gellner's modularity is a much looser concept than personal enkapsis. It looks more like the free and ever shifting associational life of left-leaning pluralists like Laski. Unlike Hetherington's view of a traditionalist state, it also lacks any conscious theory of virtue. Nonetheless, in either Hetherington's or Gellner's version, the notion that liberty and diversity in society have to nest within something larger has some plausibility to it. The problem, from a sphere pluralist standpoint, lies in assuming that the obvious stabilising context for liberty must be a territorially organised state. Organising life primarily around the axis between a unifying territorial state and a free populace poses two risks.

On the one hand, it can give the state too much power. Territorial political units have difficulty respecting circuits of engagement in which modularity spills outward across borders. Even when small and multiple, states are still tempted to claim a kind of primary competence. World society exists on their sufferance, or at least needs to justify itself entirely as a creature of individual citizens. If imagined as the guardian of a common tradition, as Hetherington would have had it, a state has even more reason to overreach into society, even if not quite so aggressively as new class technocrats now do.

On the other hand, at the popular end of the axis between state and individual, a free-for-all beneath or even across territorial states has libertarian but not pluralist implications. A classic libertarian argument for global federalism comes from economic theorist James M Buchanan. To maximise liberty, he claimed, a loose federal system could guarantee peace and openness among smaller units. Those smaller units could make policy, though their size would reduce the stakes. They would also be constrained so as to maximise liberty, especially in the market. They would have to compete with one another as overbearing governments would lose people and capital free to move elsewhere.[96] Buchanan does not properly take into account the isomorphism problem that I noted earlier. Territorial

units essentially similar to each other would not compete meaningfully. Even if they did, such a balancing of individual liberty against limited states would still have a strong monistic tendency. It more or less reduces individual liberty to a kind of atomist fluidity of movement and escape. While slippery people are hard to grasp, they may not have the sturdiest of souls. Libertarian global federalism might keep taxes low but would hardly sustain an adequate social and moral ecology for human flourishing.

The problem with treating liberty in terms of territorial enkapsis and limited government is that it largely ignores world society. Territorial enkapsis inherently privileges the political sphere, leaving a poor basis for securing sphere sovereignty. Rather, the state needs balancing by other domains, which in turn emanate, on a sphere pluralist account, from the exercise of virtue in multiple directions by individuals. Reservoirs of independent authority in society also tend to give pause to the powerful. A metaconstitutional settlement above the state—above all the spheres—would better defend both traditional substance and pluralism, compared to merely allowing political fragmentation or federalism with a lot of individuals voting with their feet based on self-interest.

A Distinct Approach to the Global Question

Virtue-centred sphere pluralism thus proposes cutting the state itself down to one among several spheres, and rearranging the relative scales of political authority and society. While I shall flesh out the details in later chapters, *my core argument is that sphere pluralism is especially well equipped to inform a metaconstitutional settlement in a broader global space beyond the nation-state*. At the same time, to orient the rest of the book fully, it bears laying out how this approach also differs from four other paradigms: a purported *liberal pluralism* and three nonliberal paradigms, namely *integralism*, *communitarianism*, and *republicanism*. I shall take each in order.

My survey of modern political thought and practice so far has set pluralism in contrast to an atomist sort of social and constitutional monism, with modern liberalism as the latter's main heir. As a historical and cultural reality, it would be misguided to imagine liberalism as an ally of pluralism. Most fundamentally, the opposition between pluralism and liberalism stems from liberalism's focus on an image of the individual that lacks a telos, and its neglect of a robust role for social institutions buffering said individual from the democratic state. In other words, liberalism has blind spots for both an 'up' and a 'down' within the self, and for a 'between' in the state–individual space. That being said, I touched briefly earlier on the observation by Levy and others that some strands of quasi-liberal thought, including Madison and Tocqueville, are less dismissive of society. And tactically, there are plenty of instances in which pluralists and liberals might make common cause against the worst instances of tyranny, even

if they might differ on the long-term tendencies that make tyranny possible, and on what should replace it.

While not in the mainstream of liberal political theory, thought about so-called 'liberal pluralism' deserves considering briefly here, to draw the contrast more explicitly. The concept has been put forth by Galston, the same liberal philosopher who, as we saw earlier, advanced an idea of 'liberal virtues' thinner than any more traditional nonliberal ethos. In much the same way, Galston's mapping of a liberal pluralism has some elements in common with nonliberal pluralism, but also fundamental differences of emphasis worth illuminating.

Galston takes as the core of liberalism the individual's freedom to pursue various conceptions of the good life, with no one set of values dominant across all social institutions. While democracy and tolerance need some common civic virtues to sustain them, he rejects the 'civic totalism' of other liberals who would have such common norms penetrate all areas of life and curtail deviation from them by private associations like religious institutions, independent schools, families, and so on. Democratic accountability and a liberal constitution do not suffice, according to Galston, to limit intervention that might encroach on individual choice of lifestyle. Rather, pluralistic associational life forces the state to restrain itself. Restraint itself is a kind of liberal virtue, he avers. It 'requires an element of moral humility and a visceral antipathy to coercion outside the bounds of necessity'. Interestingly, Galston even briefly mentions the English pluralists and the Dutch Calvinists as kindred spirits in valuing such restraint by the state vis-à-vis associational life.[97]

Contrasted with sphere pluralism and its traditional sympathies, such liberal pluralism begins to look rather like an analogue of liberal virtues: characteristically modern in the thinness of its assumptions about human flourishing and the mildness of its challenge to existing institutions. While sphere pluralism and liberal pluralism both urge restraint by the state in dealing with the diversity of associational life, and see the latter as giving individual freedom much of its scope, liberal pluralism lacks key elements. Its individual autonomy is very compatible with value-neutral atomism. The state's restraint in dealing with society looks mainly like another buffer akin to individual constitutional rights. Liberal virtues like tolerance and restraint similarly support peaceful coexistence among free and equal citizens. But both the micro- and macro-level substances of sphere pluralism are missing.

At the micro level, sphere pluralism refracts virtue into multiple domains in an exercise of character. Mere individual choice cannot capture the depth of fulfilment at which personal enkapsis aims. At the macro level, sphere pluralism has a more structured and substantive view of the different areas of associational life, and of the metaconstitutional guarantees that they require. Unlike in liberal pluralism, associational life is not just a generic range of options that provide raw material among which individuals choose. Rather, the spheres have intrinsic foundations and fit into a wider moral ecology. They demand constitutional

deference going beyond what a liberal state could justify. In short, liberal pluralism is more congenial from a sphere pluralist standpoint than are tyranny or technocracy or the more overbearing forms of civic totalism, but it does not go far enough to untangle the fundamental problem of modern political theory.

The other three schools of thought with which I want to contrast sphere pluralism are explicitly antiliberal.

Integralism is one of three longstanding answers to the question of political theology, or the relation between religious truth and worldly power. In the experience of European Christianity, the choice was typically among the Lutheran-style supremacy of each territorial state over a national church, or the Anabaptist-style withdrawal of the pious from political life altogether, or the mediaeval Thomist supremacy of the universal Catholic Church over territorial states.[98] The Thomist answer is one example of integralism, though similar templates have appeared in Islam and some other traditions. Integralism holds that all of social and political life must hang together within a comprehensive framework, stemming from truth as understood in a religious or civilisational sense.

Today's traditionalist responses to modernity often lean towards integralism of one or another sort. Amid the modern fragmentation and disavowal of truth, many dissatisfied souls yearn to restore an overarching unity in both belief and social organisation. Nostalgia points towards integralist precedents in Christendom and Islam. Yet integralism has little to offer as an answer to the global dilemma. On a practical level, the world's diversity makes it impossible to base the unity of a world order on any one tradition. Even within a particular region, sufficiently unifying legacies are hard enough to invoke. Those who in 2004 wanted to mention Christianity as one inspiration in the EU draft constitution's preamble could not get their way. The world as a whole has even less of a common tradition. No one is in the majority. An integralist basis of metaconstitutional order would resonate with the global public no more than new class visions of global governance do now. And even if an integralist world state somehow could establish supremacy on behalf of one tradition, it would menace the liberty of other traditions, and thereby impoverish the range of resources for virtuous living.

More fundamentally, integralism contrasts in important ways with virtue-centred sphere pluralism. To be sure, the substance of virtue itself, and many ideas about how to ground dignity and freedom of conscience, are often compatible with traditions that have leaned integralist in some parts of the world. But the metaconstitutional logic diverges. Integralism denies the sovereignty of the modern state, yet in its place it essentially envisions a kind of unifying enkapsis in which religion penetrates and dominates all other spheres. Dooyeweerd himself criticised the Catholic ideal, harking back to the Middle Ages, of an all-encompassing community with the Church at the top, in partnership with a sympathetic and public-spirited state. He thought it stemmed from overconfidence in human reason and risked a suffocating idea of the common good. From

a Calvinist perspective, he argued that the unity of the world could not crystallise in any overarching institution, be it church or state or a fusion between them. Unity came instead only in the heart of the believer.[99]

Some of Dooyeweerd's barbs for Thomistic integralism came from long-standing Calvinist suspicion of Catholics. They may matter less for those of us not invested in such sectarian tensions. Still, there were real metaconstitutional differences, at least when it came down to the social and political thought of both traditions in the twentieth century. Take the contrast between sphere sovereignty and subsidiarity. Subsidiarity, which emerged from Catholic social teaching and became far more widely known than sphere sovereignty, first appeared as a principle in the 1931 papal encyclical, *Quadragesimo Anno*.[100] It holds that things should be done at the lowest level possible to avoid centralisation of power: family rather than locality, locality rather than region, region rather than nation, and nation rather than supranational institutions. In Catholic social teaching, subsidiarity protects human dignity by giving scope for moral responsibility. Like sphere sovereignty, it starts from Christian beliefs and reacts against the overbearing ambitions of the modern state. Where subsidiarity focuses on questions of scale and the vertical distribution of power, however, sphere sovereignty fragments power horizontally by dividing life into spheres with their own intrinsic natures. Subsidiarity is more about decentralising, sphere sovereignty more about preserving boundaries.[101]

The historical experiences shaping subsidiarity and sphere sovereignty were also quite different. Until well into the twentieth century, many Catholics were nostalgic for the vast scale of mediaeval Christendom and its integralist pattern. Sphere sovereignty, in contrast, was more thinkable amid the structural pluralism of late nineteenth-century Dutch society. Yet how much those differences of emphasis really matter today is debatable. Kuyper himself made common cause politically with Dutch Catholics, more than his forefathers would have entertained. Sphere sovereignty and subsidiarity also converged in practice as the twentieth century moved on. Some intellectual currents of postwar Christian democratic parties drew from both. Catholics have become more comfortable with religious diversity and democracy. Some sphere sovereigntists have become more willing to use the state to tackle social injustices. Moreover, in practical politics, both schools of thought agree on efforts to build 'a multiform and revitalised model of civil society'. They also have aligned with some aspects of international human rights law that urge treading lightly on minority groups.[102]

For the purposes of virtue-centred sphere pluralism, integralism cannot adequately deal with the intersection among virtue, tradition, and liberty in a global space. Sphere pluralism is stronger on marking off the boundaries necessary for liberty, especially amid diversity. Yet integralist approaches in Catholic, Islamic, and other traditions may still have other elements to contribute. In particular, the legacies of mediaeval Christendom and Islam deal much better with civilisational horizons than with national spaces. Indeed, as I noted earlier in

this book and more fully in my prior writing, such major civilisations bequeath ample resources for mapping common ground globally, and finding points of contact across different traditions. Perhaps an all-encompassing idea of truth predisposes one to recognise truth farther afield. Finally, while this one observation will align with Kuyper's critics, such an older integralist cosmopolitanism, unlike Kuyper's assumptions about distinct peoples and national units, would never have been invoked to justify the peculiarly modern rigours of apartheid.

A third school of thought worth contrasting with virtue-centred sphere pluralism is *communitarianism*. Communitarianism was articulated in the 1980s as a counterpoint to the excesses of liberal individualism. As such, it shares some common misgivings about what I have called atomism. It differs from pluralism, however, both in self-understandings and in its views of political agency and power.

A good representative of communitarian thinking is the philosopher Michael Sandel. He took issue with Rawls and other liberals' image of individuals as making choices like switching possessions, as if the self could be separated from its social and cultural context.

> [W]e cannot regard ourselves as independent in this way without great cost to those loyalties and convictions whose moral force consists partly in the fact that living by them is inseparable from understanding ourselves as the particular persons we are—as members of this family or community or nation or people, as bearers of this history, as sons and daughters of that revolution, as citizens of this republic. Allegiances such as these are more than values I happens to have or aims I 'espouse at any given time'…. To have character is to know that I move in a history I neither summon nor command…. The distance is always precarious and provisional, the point of reflection never finally secured outside the history itself.[103]

Communitarianism is, to be sure, more substantive in its view of individual commitments than is atomism in general, or liberalism in particular. Virtue-centred sphere pluralism could be compatible with someone seeing his or her involvement in a given group or institution as so important, so fundamental to his or her identity and happiness, that it would be hard to imagine life without it.

Still, the emphasis falls differently in two respects. First, virtue-centred sphere pluralism admits strong commitments to whichever groups or institutions one engages in a sphere, which in turn shape the self. But those commitments radiate outward in different directions. A person is not fully defined by any one of them, because each corresponds to only one aspect of human flourishing. More critical distance remains, not because commitments are taken any less seriously, but because they do not all nest in a potentially suffocating social whole. At the core of sphere pluralism lie virtue and conscience, not social belonging. Second, communitarianism's nesting of commitments within a social whole has a certain

tribalistic givenness about it. While communitarians may agree with integralists on the need for an all-encompassing meaningful collectivity, they do not share the integralist starting point, that such a collectivity descends from religious and civilisational truth. Instead, as Sandel's examples illustrate, the encompassing community is usually taken in the modern context to mean a nation with a history. Its corresponding polity embodies it and offers a space for shared conversations about belonging and solidarity. Those shared conversations are particular, and in some sense arbitrary. They cannot easily be held to universal standards.

These differences of worldview have real political implications. One revealing example is the position of the communitarian philosopher Michael Walzer. In his book *Spheres of Justice*, he seemed at first to argue for a fragmentation of power quite compatible with sphere pluralism. Moved by a desire to limit inequality, he argued that each sphere, such as political participation, money-making, medical care, education, and so on, should have its own standards of just distribution. A society must erect boundaries to prevent converting power in one sphere into power in another. The wealthy should not be able to buy votes, for instance, any more than an elected legislator should be allowed to influence university admissions for offspring.[104] But those boundaries, unlike for Kuyper and Dooyeweerd, are not rooted in the nature of the spheres. Each society marks off spheres and their respective standards of justice in its own way, as part of a national 'story its members tell'. Walzer's spheres have nothing foundational and timeless about them. Consequently, as in Sandel's communitarianism, individuals have no Archimedean point outside society to judge and compare. Even more importantly for our purposes, Walzer's spheres of justice also do not adequately limit state sovereignty. Since he worried most about the misuse of wealth across spheres, he gave the political sphere more benefit of the doubt. It has pride of place as the venue for national conversations among citizens about justice. In short, while communitarianism may overlap with virtue-centred sphere pluralism on some practical issues, its conceptual framework is mostly incompatible. It suffocates conscience within social belonging. It imagines communities as too self-contained and all-encompassing. And it gives primacy to the state over other spheres. It will not lead on to a workable settlement that takes both tradition and liberty seriously in a cosmopolitan global space.

Some of the same shortcomings also appear when we contrast virtue-centred sphere pluralism with a fourth school of thought, *republicanism*. Republican political theorists likewise seem to share some preoccupations with sphere pluralism. They criticise liberal individualism and its atomist focus on gain and self-absorption. They would revive a focus on cultivating virtue. And they look askance at some of the technocratic tendencies of our time and the loss of liberty.

The difference lies in how republicans understand the content of liberty and virtue, taking the ancient Greek polis as a model. The twentieth-century philosopher Hannah Arendt ably articulated the inspiration. She commended the Athenians for seeing the core of freedom as political participation. The active

citizen was free not in the sense of indulging his will, but in manifesting his virtues through public action. The polis served 'to establish and keep in existence a space where freedom as virtuosity can appear'. Arendt contrasted that view of freedom with the unsatisfying freedom of withdrawal into a space apart from politics, such as contemplation or private life. She argued that such individualistic versions of freedom resonated most when active political participation was not possible, as with philosophers in the post-republican later Roman empire or with the fatigued who lived under modern totalitarianism.[105]

Republican liberty is tied up with politics. Republican virtue focuses on the character needed for political action. Here, a sphere pluralist should have misgivings. The problem goes beyond the possibility that active political majorities could suppress the individual, which Constant saw as built into the 'liberty of the ancients'. Rather, 'freedom as virtuosity' releases individual agency principally within politics. It gives little weight to a soul that takes seriously engagements in multiple directions and on multiple scales, along the lines of personal enkapsis. As with communitarianism, critical distance in a republican world is constrained by one particular context of belonging. Republican liberty, while a strong buffer against despotism, ultimately means a freedom to go 'all-in' within one sphere: politics. It is not a freedom to engage with different things in different ways, or to judge being in or out by the standards of something higher.

As Constant and others would no doubt insist, any effort to revive republican political virtue in today's nation-states would crash into the realities of modern experience. Supranationally, the prospects are even dimmer. One study of EU citizenship, for example, noted that it entails no real political duties, only rights. 'Duties have been in marked recess during the last half a century at least', in a 'de-dutification of citizenship around the democratic world'.[106] Yet even if it were culturally possible for republican citizenship to offer an alternative to liberal anomie, it would still amount to a truncated and distinctly unpluralist version of human flourishing. Republicanism has little humility about the weight of the political virtues. While political virtues can be proper to political action and enhance the vitality of the political sphere, they have a one-dimensionality in their implications for human flourishing. They also tempt those exercising them to disdain or encroach upon other spheres.

In contrast, virtue-centred sphere pluralism relativises politics as just one among several sovereign spheres of life. It inherently means some degree of depoliticisation compared to the excesses of both the ancient polis and modern states. If a global metaconstitutional settlement can rein in the state, then it follows that both virtue and liberty would operate largely in other spheres outside politics. Indeed, the point of a settlement would be provide secure outlets for such energy. Diversification would puncture the pretensions of modern republican citizenship, which often just legitimises xenophobia by swelling the ego of imagined popular sovereignty. It would also drain cultural energy from the slightly different swelling of the political sphere that happens among the new

class. The technocratic branch of the new class deploys state power to manage society, shrinking fields of action outside its own authority. The idealistic branch of the new class exalts a kind of loquacious activism that aims to capture a common political space and ram through social change. In contrast, a chastening of the political would leave more room for the free play of multiple engagements, undeformed by attaching great ambitions to political management or political mobilisation. Personal enkapsis refracts interests and energy across many pursuits. Given the right social and moral ecology, those pursuits for many ordinary people could well be more emotional, more spirited, more stubborn, or more eccentric, than those who preside over a disenchanted late modernity or yearn to live permanently on the barricades can respect.

Finally, I want to borrow the metaphor of knots, in two ways. Taken as a whole, and compared to any of the other schools of thought on offer, virtue-centred sphere pluralism has the best prospect of cutting the Gordian knot of global metaconstitutional order. Today, we confront an expansion in the scale of social and political life, but no apparent template other than replicating an overbearing modern state. The moral and cultural resources of late modern life strike many critics as thinner than in the past. Ready-made visions of restoration put up walls of insularity that deny a global space rather than engaging it. Weaponisation of politics by both the left and the populists threatens the remaining vitality of civil society, yet citizenship is often invoked as the only counterweight to mercenary anomie. Sphere pluralism instead would break down sovereignty itself and disentangle the circuits of social life from the territorial state model. It offers the best argument to advance a multilayered and cosmopolitan global society. And by shifting the centre of gravity from membership to virtue, it offers a view of liberty compatible with fluid engagement within and across traditions. In short, it cuts the Gordian knot with a rearrangement of key assumptions about power, scale, and flourishing.

These possibilities arise because of inspiration coming together from at least four sources: (1) the misgivings that pluralists from a century ago rightly held about overcentralisation, (2) the potential at the intersection among personal enkapsis and liberty and virtue, (3) the resources of an older deep cosmopolitanism as traced in my earlier writing, and not least (4) a global moment that urges rethinking metaconstitutional questions more than at any point in the last two centuries. Even though the political machinery and social landscape of the present look quite dark from a traditionalist and pluralist vantage point, the potential for a refounding may prove greater than many critics imagine.

The second metaphor of knots has to do with what a metaconstitutional vision of virtue-centred sphere pluralism can accomplish between state and society. In reframing sovereignty for a cosmopolitan order, a metaconstitutional settlement would create specific knots of enkapsis among the institutions of the different spheres, so as to preserve liberty and manage diversity on a global scale. Rather than marking off private from public in familiar ways, it would release

agency at the intersection of dense commitments in society, none of which can absorb the others. Such a pluralistic, cosmopolitan space would allow intermixing manifestations of virtue and multiple strong traditions, all set free from the deformities of the territorial state. Indeed, the global scale could better suit full disclosure of the spheres, precisely because territoriality would no longer hold them captive. Breaking most links with territory would let the constellations of virtue unfold in their natural orbits, large and small. Pluralism is the affair both of big civilisations and of little platoons. A metaconstitutional order stabilising that cosmopolitan space would preserve genuine heterarchy, by carefully policing the boundaries suggested by sphere pluralism. It would unbundle modern assumptions about the state.

That unbundling also adds a third dimension to how liberty and limited government have been understood in modern political theory. A one-dimensional account considers mainly the relation between the state and the individual subject or citizen. It revolves around a vertical exchange of rights and protections in a social contract. Its protection of rights sanctifies individual choice as long as one does not harm others. A two-dimensional account shifts the focus from the state–citizen relationship to the operation of the political sphere itself. It checks political power by fragmenting it, perhaps in a federalist division of labour between central and regional bodies, or in a separation and balancing of legislative, executive, and judicial authority.

Those two dimensions deal with the limiting and distribution of political power. The chain of logic runs roughly from a minimal self to its necessary protections, then from its relationship to political authority into the operation of the resulting political institutions.

The steps in developing those two dimensions were crucial in the maturing of liberal political theory from the early modern to Enlightenment eras. As a buffer against tyranny, they have had some benefits. As we have seen, however, they also have blind spots for the atomisation of society and the concentration of power in similar types of people across similar institutions. A society that lacks adequate metaconstitutional protections beyond individual rights tends to see power and liberty slip away from it, as the state claims to speak on its behalf. To resolve this problem, a sphere pluralist approach adds a third dimension. It strengthens the claims of society, but not merely as a vague affirmation of space outside the state. Rather, it seeks a higher-order metaconstitutional settlement, which can constrain the political sphere by treating it as one among several components, with the other spheres of society formally protected and preponderant. In contrast to the first two steps, this third breakthrough demarcates boundaries and their corresponding authorities. The chain of logic runs from spaces for the free exercise of virtue, to limits on authority by type.

The rest of this book will develop the argument around specific themes. The next two chapters use the cosmopolitan angle as a point of entry into questions of world society. Questions about openness, membership, and the shortcomings

of territorial political authority are crucial in justifying a sphere pluralist alternative. Those two chapters examine pluralist rationales for open borders as well as freeing circuits of meaningful social engagement beyond the nation-state. The chapter after them deals with flows of resources. It maps out a pluralistic approach to economic freedom, the safety net, education, taxation, and so on. It seeks insights into how to reduce the state's economic footprint to something more like that of a night watchman state. At the same time, a pluralistic approach guarantees adequate resources flowing to the institutions of the semi-sovereign spheres and vibrant spaces in civil society. The two following chapters centre on legal issues. If the nation-state's territorial monopoly on 'one law for all' based on where people live were to fade away, then how might more pluralistic legal forms best fit mobile ways of life? My approach fleshes out a choice of personal law without regard to location. The last two thematic chapters deal with matters of political structure and sovereignty. They offer a blueprint for political participation compatible with preserving the boundaries among spheres. They also suggest safeguards to preserve the metaconstitutional settlement for the long term. The conclusion considers potential routes to founding of such a world order.

Finally, in putting forth what will look like a sweeping vision, I want to make clear what I aim to accomplish. Given the radical break with prevailing assumptions, some readers may be tempted to dismiss it as a utopian abstraction with no hope of fulfilment. Even were that true, utopian principles can always stand in illuminating tension with whatever global political processes do unfold. But I hope that what I propose can be read on three different levels with practical implications.

First, even within the existing trajectory of global governance, incremental changes could bring some practices closer to this vision. Political alliances can sometimes carry through policy reforms on which the blocs involved could agree for varying reasons. Such is easier, of course, on some dimensions of what I shall propose than on others. Second, the new class will most likely extend its present trajectory of global state formation for some decades to come, regardless of the debates about alternatives that open up in that time. Its institutions will tighten and affect life on the ground more and more. Despite their apprehensions of democracy, the architects of global technocracy may deflect criticism by creating token spaces for electoral participation. While they no doubt would hope to limit the scope and impact of elections, the contours of the global public suggest that even within those confines, those wanting a different global future could offer an alternative. If global politics is to come to life, the debate needs joining even in spaces that were not designed for these questions. Putting forth this perspective now can be seen as a contribution to that global debate before it even opens. Third, since a liberal or technocratic world state would enjoy little legitimacy, it could prove quite unstable. If it is to rupture, then it helps to think in advance about the more lasting world order that could succeed it.

2 The Political Honeycomb

In the previous chapter, I argued that the present trajectory of world state formation, led by the new class, leaves much to be desired as far as preserving liberty and room for strong commitments in society. Relying on familiar solutions like the territorial fragmentation of power, as in a global federal system, will hardly solve the problem. I suggested instead that the solution will lie in unbundling sovereignty, along lines adumbrated in some currents of political thought about pluralism. The framework of virtue-centred sphere pluralism pulls together these resources.

While later chapters of this book will work through the implications for the economy and civil society, for legal order, and for sovereignty, this chapter and the next tackle a different, transitional stage of my argument. They deal mainly with the third troubling trend that I identified at the outset: the growing mismatch between world society and territorial statehood. The overbearing ambitions of the modern state have deformed society within each country. As world society strengthens, what I shall call the *political honeycomb* of territorial sovereignty also comes into tension with human engagements that naturally unfold in circuits smaller, and especially larger, than the nation-state. This tension goes beyond the obvious matter of scale. Much talk about globalisation already notes that life has expanded beyond countries. From a sphere pluralist perspective, however, the tension is more fundamental. Much of modern life came to be organised around the nation-state as a container of social processes. By its nature, that pattern crystallises the political sphere's supremacy over society.

A sphere pluralist approach to globalisation thus has some common ground, but also important differences, with other kinds of moral cosmopolitanism. As we shall see later, moral cosmopolitanism holds that human beings have rights and duties to one another in a universal space. Such universalism can take the modern liberal form in which stripping down identity to free and equal individuals can make distinctions like nationality seem unjust or arbitrarily overblown. Yet it also has an older cosmopolitan version in the great civilisations. The so-called Axial Age from roughly 800 to 200 BC saw a flowering across Eurasia of 'second-order thinking' about truth itself. While older tribalistic identities had submerged conscience in a group's physical continuity and service to it, the new philosophical and religious currents valued critical distance. They offered

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insight into what the tension between mundane and transcendental orders might mean for human beings as such.[1] All the traditions that spread outward to command wide civilisational spaces drew energy from that universal temper. Only in the twentieth century did traditions, emptied of much of their energy and outmanoeuvred on the widest horizons by liberalism and Marxism, largely became a refuge of the insular as markers of new ethnic and populist tribalisms.*

A cosmopolitanism aligned with tradition, rather than with liberalism, has ample resources in the premodern civilisations. Where virtue-centred sphere pluralism takes a different tack from its forerunners is in bringing metaconstitutional questions of world order to the surface. The traditions shared an emphasis on virtue. But in a typical premodern society with a weak state, virtue crystallised mainly in duties towards particular institutions or in relationships with particular people. Since universal truth had a salutary tension with mere tribal membership and worldly ambition, traditions could deflate excessive claims by rulers. Yet most discerning people took for granted both some wider civilisational horizons and the de facto autonomy of much of society. The centrality of virtue did not have to lead directly to grand metaconstitutional designs to protect either the horizons or the autonomy.

Liberal moral cosmopolitanism, in contrast, sees human dignity as best advanced by reducing the density of strong commitments in places. Only in that way can free individuals take advantage of a thinned-out global space. Since global institution building has become practically more feasible, liberal cosmopolitanism does sometimes have constitutional implications. As we saw earlier in the book, that vision usually involves making the relationship between individuals and global institutions more systematic and direct. It amounts to scaling up the nation-state model of state supremacy over an atomised society. Both those who would preserve the political honeycomb of sovereignty as it is, and those who would advance liberal globalisation above it, assume that the individual's primary relationship should be to a large and impersonal space that defines common rights and duties for all within it. Whether that individual is a national citizen or a global citizen merely changes the scale. Sphere pluralism instead puts at the centre the metaconstitutional question of how best to protect spaces in society for the exercise of virtue, including within a cosmopolitan horizon. It challenges the political honeycomb on behalf of pluralism, not on behalf of a thin individualism that, however cosmopolitan, would merely scale up national dysfunction.

This chapter looks at how today's political honeycomb deforms a common global space. First I review the logic of the political honeycomb, including origins of ideas about nationality and allegiance. Statist constraints on human agency across borders are deeply problematic from a pluralist perspective. Even

* I discuss this process more fully in *Beyond the Global Culture War* and *Deep Cosmopolis*.

the expansion of horizons that has occurred with globalisation has been lopsided and incoherent. It has left plenty of extraterritorial overreach by political authority, and selectively freed economic activity. Cross-border society, including both migration and engagements in diverse spheres, gets short shrift. I suggest that while today's globalisation hints at eventual further opening of borders, that potential has built-in limits and unevenness. There are also awkward double standards about which countries are expected to open and why. The next chapter will then explore what an alternative approach sympathetic to the claims of world society would look like, and how the landscape could be reordered in ways congenial to both cosmopolitanism and pluralism.

The Long Arm of the State

As noted earlier, modern state formation has been likened to a protection racket between rulers and ruled.[2] For such a protection racket to deepen its legitimacy, it has to justify its subjects' bond of obedience. The state in the abstract could secure the life and rights of the individual, viewed in atomist terms. Yet any particular state still needed to justify why, among multiple states, it should command exclusive loyalty from its subjects. A honeycomb of political sovereigns must presuppose an answer to that question.

From the early modern period, that justification hinged on an exchange of allegiance for protection. A whole body of law and political theory grew up around the idea. A subject could break the bond of allegiance and commit treason by doing any number of things to disrupt the local protection racket. The eminent eighteenth-century English legal theorist William Blackstone included under treason everything from directly fighting against the king or his officials, to aiding invaders or pirates, to casting doubt on the title to the throne or confusing the royal bloodline.[3] In other words, treason covered any act likely to endanger the monopoly on legitimate force.

Since carnage would surge forth if the floodgates opened, a traitor who fiddled with them should pay with his life. In an environment of statemaking as warmaking, such tight obedience was perhaps practically necessary. The moral opprobrium attached to treason needed fleshing out more fully, however. In much premodern thinking—such as in ancient Hinduism and even, residually, in Blackstone's own writing—sacrilege ranked as a far higher offence than disrespecting a worldly ruler. Modern treason only became the worst of offences by combining two older ideas. On the one hand, Roman law—inflected by Hellenistic and Persian absolutism—demanded 'deferential allegiance' to a ruler majestically above his subjects. On the other hand, Germanic culture had a flatter 'contractual allegiance' based on a warrior's oath of loyalty to his chieftain. Early modern apologists for the state welded the two together. Treason meant betrayal of a natural bond both to one's superior and to one's tribe. It should be punished as an ingrate's breach of faith. As one philosopher phrased it, 'The sentinel at the frontier is death.'[4]

The modern idea of treason exemplifies the political sphere's vertical claim over its subjects. But whom exactly it claims has also required horizontal distinctions. The subject must owe allegiance to one particular state among all states. While the modern concept of nationality has been defined as this exchange of allegiance for protection, sticking the label on individuals has meant revising older ideas of citizenship. For the ancient Greeks and Romans, citizenship was a much narrower status. It meant fellowship among those who had the right to participate in a given city-state. Scaled up to the Roman empire, citizenship shifted its centre of gravity from political participation to legal status. For modern states, clearer distinctions also had to be drawn between aliens and insiders. Different eras and political cultures in Europe imagined the basis of nationality differently. In the early modern Anglo-Saxon understanding, nationality was the common status of subjection to a particular sovereign. One became a subject by enjoying protection from birth on a territory. In the later Continental view, drawing more from Roman inspiration, nationality meant membership in a corporate body of citizens. By the late twentieth century, however, these understandings had merged into a common definition of the citizen in contrast to the alien. The citizen has a relationship both horizontally to the national territory and populace, and vertically to the state controlling it.[5]

In our survey of pluralism and its enemies, this point is crucial. The dominance of the state over society—and of the political over other spheres—is intertwined with the political honeycomb of the international system. In prevailing usage, while citizenship and nationality mean essentially the same thing, they emphasise the inward- and outward-facing aspects respectively. On the one hand, citizenship, in Arendt's terms, is 'the right to have rights'. The citizen can participate as an equal in a given political community. For political equality to override other social distinctions involves paying a price, however. The discourse of citizenship tends to elevate that political bond above humbler engagements in other spheres of life. On the other hand, nationality matters in relation to the international system. It stamps the individual with a state's claim over and responsibility for him or her. Just as a state dominates society within each territory, so too is the individual's standing on the world stage bound tightly to a national label. Moreover, the bond of individual to state is defined, under conventional international law, wholly by the state in question. As an essential element of sovereignty, each state has the basically unfettered right to determine for itself who are its nationals. While nationality is woven into the international space, in other words, international institutions have no say over it.[6]

In modern experience, the most obvious symbol of nationality is the passport. In the global space it serves as the main identifying document, a condition of travel, and the marker of a state's claim over the individual. The passport symbolises the primacy of political allegiance over other ties. Unsurprisingly given the erosion of pluralism, the modern state has led the way in tightening identification of individuals. As John Torpey observed in his history of the passport,

'in the course of the past few centuries, states have successfully usurped from rival claimants such as churches and private enterprises the "monopoly of the legitimate means of movement".' Under international law, a passport signifies the bearer's protection by his or her home government. Yet the universalisation of the passport has also tightened state control over travel. Governments have waged recurring battles against the 'exit revolution' of easier emigration. While the UN Declaration of Human Rights theoretically enshrines the right to leave one's country of nationality, 'the passport as a licence to travel' has made it easy for states, when tempted, to deny issuance of a passport and thereby to make exit impossible.[7]

To be sure, freedom of exit has grown immensely with easier travel. The recent pandemic saw some governments cavalierly stopping or delaying passport processing, on the basis that international travel was 'non-essential', but such restrictions have been rare. Far more limiting today are restrictions on entry. With the breakup of empires into nation-states, border controls have tightened. Indeed, the practical function of nationality today has very little to do with a right of protection abroad. Rather, nationality gives the right to live in a particular country. International law recognises only the right to enter one's own country, leaving immigration control as an exercise of sovereignty. The right of abode has been called 'the most central and important right of citizenship', even as the new quid pro quo of allegiance.[8] In the practical workings of today's states, this link of the right of abode to nationality means that multitudes of people each year are deported from many countries. Restrictions on entry also underpin so-called 'global apartheid', the stark difference of fates between citizens of rich and poor countries.[9]

The power of state over citizen, and the extent to which borders restrict free movement, are oft-noted features of the modern world. Yet defenders of the Westphalian international system will hasten to argue that the political honeycomb preserves liberty more than it curtails it. They will say that sovereignty, however overbearing on some matters, is also hemmed in by the very plurality of states in the world. The power of any state stops at its border. And within the political honeycomb, there is room for diversity of national practices as well as individual exit from any given country.

While compelling in theory, that line of argument falls short in practice. In the previous chapter, I already noted the problem of isomorphism: the dominance of the new class across most countries means that political diversity is rather less than the political honeycomb might accommodate. But the problem runs deeper. The state's claim on its subjects, based on nationality, entails a more profound structural lack of liberty. In practice, the state's territoriality curtails its jurisdiction much less than defenders of Westphalianism pretend. As we shall see, the state's nationality-based jurisdiction and its coordination with other states greatly limit the ability to escape the confines of the political honeycomb. Where vertical allegiance was one version of the state's supremacy over

society, border controls now become the main way in which the political sphere shapes and limits circuits of social life across states. They are both uncosmopolitan and unpluralist.

To understand why, we must look more closely at the distinction that legal scholars draw between personal and territorial jurisdiction. The former attaches to the individual wherever he or she goes, based on identity and status. The latter applies to everyone within a given territory and only within it. The modern state's logic is mainly that of territorial jurisdiction. Statutes apply by default only within a country. As one legal scholar considering the 'geography of justice' put it, 'simply by moving an individual around in space, the duties that apply—and, most significantly, the rights that individual enjoys—wax and wane.'[10] Extraterritorial jurisdiction has been treated as the exception rather than the rule. Just as allegiance binds citizen to state while abroad, however, it is within the home government's right to criminalise acts by citizens outside the country. Such laws remain rare, and typically aim at acts that otherwise would go unpunished, such as murder of a fellow citizen on the high seas. They increasingly aim, however, to restrict activities that may not be illegal under the laws of other jurisdictions, but which nevertheless offend public opinion at home, such as going abroad for sexual exploitation of minors, or bribing foreign officials.[11]

Were extraterritorial jurisdiction limited to malum in se acts—acts intuitively considered criminal by their nature—then it would be unproblematic. Perhaps such acts are not effectively prosecuted where they happen, because of weak state capacity, or if they occur in the no man's land in international waters. In such instances, the nationality of the perpetrator could justify a fallback jurisdiction at home. When acts like cross-border criminal conspiracies are planned or have effects in the home country, then such jurisdiction would not really count as extraterritorial anyway.

But from a perspective that takes liberty more seriously, the long arm of the state grabbing its citizens abroad should be more unsettling. Often its jurisdiction is pegged solely on nationality, and the activities restricted are not clearly criminal. They have more to do with the preferences and convenience of the state in question. The growing ambition of extraterritorial jurisdiction smacks of, and coincides with, new class overreach into society domestically. This reduction of the liberty supposedly inherent in the political honeycomb of sovereignty is also strikingly lopsided. Proponents of extraterritorial jurisdiction over citizens point out that their nationality also entitles them to diplomatic protection vis-à-vis other states. If the protection racket benefits them wherever they are, then the logic goes that they should obey it wherever they are. These alleged duties are asymmetrical, however. Allegiance—or, in the case of extraterritorial laws, compliance—is not discretionary. Under international law, however, the home government has the right but not the obligation to extend diplomatic protection.[12] Individual interests often receive weak if any protection, because the home government weighs other diplomatic priorities more heavily. Many a citizen has

languished wrongfully in a foreign jail because a trade agreement or arms deal counts for more. As one legal scholar has noted in other contexts, citizenship status typically does little to force governments to treat individuals well. More often, governments use it as a weapon, to exert control over citizens abroad and to exclude foreigners at home.[13]

To illustrate the incoherence of such overreach, consider the case of foreign fighters.* These are foreigners who join in a civil war in another country, typically because of ideological commitments to a transnational cause. Historical examples abound, from the 1930s Spanish civil war to the 1980s anti-Soviet mujahidin in Afghanistan.[14] A decade ago, foreign fighters in Syria and Iraq got much attention. States went to great lengths to restrict their citizens from going to fight for the Islamic State of Iraq and the Levant, or ISIL. UN Security Council Resolution 2178 urged states to criminalise such participation. Many Western countries dusted off old laws or passed new ones. When it comes to those fighting for ISIL, the discourse of terrorism was bandied about, notwithstanding the age-old debate over who counts as a terrorist versus a freedom fighter.[15] Under the logic of such extraterritorial restrictions, however, the label put on the cause ultimately does not matter. Personal jurisdiction over its citizens entitles a state to punish actions abroad with which it disagrees. It bears noting that the Western governments so eager to punish political activity beyond their borders would find it absurd if Riyadh decided to punish Saudi citizens for drinking, blaspheming, and fornicating while visiting Paris, even though citizenship-based jurisdiction theoretically could apply to them, too.

At face value, punishing foreigners who went to fight for ISIL might seem unproblematic. They are an unsympathetic sort. One might well think it better for the world if they caught a bullet promptly on arrival in the war zone. Nonetheless, we also should have reservations about citizenship-based extraterritorial jurisdiction as the mechanism for dealing with them. The strict logic of the political honeycomb would suggest that, assuming such a person does not commit malum in se war crimes, and keeps his or her activity abroad and does not bring terrorist attacks home, then the state of citizenship would act more consistently by washing its hands of the matter. Since foreign fighters undertake a distinctly political kind of activity by threatening another state's protection racket, they place themselves within another cell of the honeycomb. They cannot—and, by all accounts, do not—begrudge their enemies within that cell dealing with them harshly if caught. The home government might warn that no diplomatic protection will be forthcoming. It could also ally with its counterpart government and shore up its protection racket. On invitation, it could contribute

* My argument here is a condensed version of the fuller discussion in my article, '"Swanning Back In"? Foreign Fighters and the Long Arm of the State', *Citizenship Studies* 21:3 (2017), pp. 291–308.

with drone strikes and other aid to killing those on the 'wrong' side of the civil war, including its own citizens. The purest honeycomb logic, with a bright line between 'home' and 'abroad', would absolve it of both responsibility for and jurisdiction over them. Giving the political sphere as embodied in the territorial state its due, and only its due, would protect liberty rather than curtail it.

The problem of foreign fighters also goes to the heart of how the porousness of modern borders varies, depending on one's purpose in crossing them. Here we can draw on Albert Hirschman's classic distinction between 'exit' and 'voice' as ways for individuals to deal with institutions whose practices they dislike. They can exit by seeking greener pastures elsewhere, or use their voice to try changing those practices from within.[16] By analogy, today's political honeycomb broadly accommodates the right to exit one's country. It is enshrined in the UN Declaration, even though it may face practical limits in the difficulty in gaining admission to many other countries, and occasional refusal of one's government to issue a passport. Yet exit and voice are asymmetrical. Exit is an individual, apolitical right. Voice, with its political implications, stops at the border. The citizen is expected to act politically only where he or she holds citizenship. In this vein, the UN working group on foreign fighters condemned them in part for undermining the territorially bounded self-determination of the country whose civil war they join.[17]

Compartmentalising agency this way in the political honeycomb ignores the many circuits of commitment that do cross borders, especially with globalisation. A few political theorists acknowledge, in passing, that a minority of people value transnational ideological commitments or 'communities of shared fate'. Social movements in global civil society inherently challenge the nation-state as the main site of political agency.[18] Still, the implications of these trends are not pushed nearly far enough, when it comes to foreign fighters and others who cross borders to use political voice abroad. While territorial protection rackets persist, such adventurers must do so at their own risk, of course. It would be equally legitimate for other adventurers with more moral compass to go to fight *against* ISIL, for that matter. But governments today prefer to confine political agency within the home state. This practice shows the asymmetry in how borders are opening. The restriction is far from just a generous attempt to protect other countries from the agency of zealots who do not have to live with the consequences. Were it so, those governments would also have to contemplate curtailing their own investors and broadcasters, who have far greater impact than a few gun-brandishing volunteers. In practice, shoring up the political honeycomb in cases of cross-border agency from below is symptomatic of today's selective opening. Economically and culturally, ever more goes up for the highest bid. Yet as a political actor, the citizen is expected to remain like the frog at the bottom of the well in the old Chinese story: seeing upward but not outward.

Of course, much of this asymmetrical relationship between a state and its nationals abroad comes down to power rather than principle. One need not hunt

for logic when convenience will explain well enough. Yet from a sphere pluralist perspective, the foreign fighters case exemplifies a further difficulty of principle having to do with how we understand membership in a society. I noted earlier that protection has given way to the right of abode as the core benefit of citizenship. This control over territorial access is even more fundamentally problematic when it gives the political sphere prime authority to define and withdraw social membership.

Unsurprisingly, many governments not only criminalised the activities of foreign fighters. They also sought to withdraw citizenship to prevent them returning home. Citizenship deprivation has an inauspicious history going back to after the First World War, when the Soviet Union and other authoritarian governments withdrew the citizenship of émigrés. Britain recently has been the most eager withdrawer of nationality. The Home Secretary has wide latitude to do so on vague grounds of being 'conducive to the public good'. He or she is constrained only by the 1961 Convention on the Reduction of Statelessness, such that the target of deprivation must hold another nationality as well.[19] The power has been used against foreign fighters of immigrant backgrounds in particular. Other countries such as Australia, Canada, and France have passed similar legislation. Some countries have stronger constitutional protections, often because of lessons learned in dark histories of political persecution. Still, it seems fair to say that the predilection of Western new class officialdom would be to deprive foreign fighters of citizenship were it easy to do so.

Proponents of citizenship revocation often invoke the concept of treason. Foreign fighters and terrorists are seen as abandoning any loyalty to their home state and its democratic system. Whatever social ties they may have to a territory, such a breach of faith with the political community trumps everything else. Since political and social rights cannot be disentangled, such a betrayal justifies termination of citizenship as a whole. As one proponent put it, 'It is only because citizens have the right to participate in the giving of the law that they also have constitutional rights to live on the land.' Another has argued that citizenship amid global apartheid is a privilege, such that those who turn their backs on the political values of a prosperous country have no right to live in it.[20] Opponents of citizenship revocation for foreign fighters have voiced a range of reservations. Some argue that it lacks the due process that a criminal trial would afford. Others suggest that foreign fighters are much less likely than feared to bring terror back home, and that citizenship revocation is an ineffective and mismatched penalty. Still others compare it to capital punishment in terminating one's place in society, with no room for redemption. And yet another critique holds that since dual-citizen foreign fighters were often brought up and led astray in the country that is revoking their citizenship, it would be irresponsible for their government to pass them off on another country with which they may have far less connection.[21]

Those reservations centre on protections for the individual. They fit into the logic of modern atomism, in which the relationship between the individual and

the state is the primary focus of justice. In a sphere pluralist approach, however, a more interesting possibility is that it is not properly in the nature of the state to deprive someone of the right of abode on its territory. In other words, the problem does not lie in whether authority is used proportionately and with the right procedures. It lies instead in the type of authority itself and the overreach of the political sphere beyond its competence.

In mainstream liberal thought and constitutional law, we find a more narrowly tailored argument limiting the state's competence to withdraw citizenship. It appeared in two United States Supreme Court opinions decades ago, but could also apply to any context of popular sovereignty. In *Pérez v. Brownell* (1958), Chief Justice Earl Warren's dissent argued that 'This government was born of its citizens, it maintains itself in a continuing relationship with them, and, in my judgement, it is without power to sever the relationship that gives rise to its existence.' And in *Afroyim v. Rusk* (1967), Justice Hugo Black wrote for the majority that 'The very nature of our free government makes it completely incongruous to have a rule of law under which a group of citizens temporarily in office can deprive another group of citizens of their citizenship.'[22] In other words, the state should not be permitted to define its citizenry. It is their instrument rather than their creator. Here, the constraint works only within the logic of the political sphere and the narrow state–citizen relationship. It does not deal with the boundary between state and society as such. A sphere pluralist approach would give more weight to the diversity of social engagements that bind an individual—even a violent miscreant—to a place, or places. It would ask harder questions about what institution rightly could extend its jurisdiction to curtail so many of them.

In modern practice, states do play a crucial role in identifying citizens and certifying the acquisition of citizenship. Whatever social ties a person may have to a country, sometimes gaps in state recognition of them can cancel citizenship. French citizens who live abroad for fifty years with no 'possession d'état de français'—no official document such as a passport or consular inscription or other contact with the French state—can lose French citizenship.[23] Within the logic of sphere pluralism, however, such a gatekeeper role for the state over society and territory implies an overreach of political competence. To cancel the right of abode based on political estrangement would be more than a mere procedural excess within politics. It would move beyond politics. Consider a French citizen with twenty generations of French ancestry and deep ties to French society, who for ideological reasons goes to fight in Syria. Proponents of citizenship deprivation are saying, in effect, that such actions contrary to the foreign policy preferences of the government in Paris entitle a minister, at the stroke of a pen, to cancel membership in French society and access to the territory. The problem goes beyond individual rights to the nature of the relation between state and society.

If, on a sphere pluralist account, the state properly has little if any purchase over social membership, when might withdrawal of an individual's right of

abode in a country make sense at all? An answer would have to lie in society rather than politics. Here we can dig up a very old distinction in legal thinking about treason, as traced by philosopher Floyd Seyward Lear. He found in both Latin and Germanic tradition a distinction between treason against the monarch (variously called *lèse majesté*, high treason, or *Hochverrat*), and treason against society (variously called *perduellio* or *Landesverrat*). The former could include challenging public authority or the dignity of the sovereign. The latter meant a broader betrayal of one's compatriots, such as by aiding an external enemy or causing internal bloodshed. As states became more complex and the ruler's power and status increased, treason against society gradually got subsumed within treason against the monarch.[24]

What would reviving this distinction along pluralist lines mean in practice? Perhaps little, since many acts of harm to society, including mass terrorism, could simply be handled under the criminal law without regard to the citizenship of the perpetrator. Procedurally, revoking a right of abode grounded in society could be adjudicated by a jury drawn from a cross-section of that society, rather than being left to ministerial discretion. What sort of act might qualify for such revocation? To commit treason against society, it would not be enough merely to rise up against the state's officials or even to kill its soldiers in a conflict abroad. After all, those actions would be aimed at the protection racket rather than society at large. Rather, a traitor to society would have to harm that society indiscriminately—all its spheres, so to speak—while claiming exemption from criminal accountability based on holistic loyalty to another society in conflict with it. Mass bombing of civilians in wartime on behalf of an enemy country might qualify. In this logic, a Briton who piloted a Luftwaffe bomber over Coventry might escape a murder charge but forfeit the right of abode. If he held German nationality after the war, however, then he presumably could enjoy whatever visa-free rights of access to Britain might extend later to any other German who, as a German, had done the same thing.

In contrast, the way foreign fighters have been handled in recent years bundles together sovereignty, protection, allegiance, criminality, and the right of abode. To disentangle these concepts would set free certain types of cross-border political action, though the actors would still face normal criminal accountability for malum in se offences, as well as the usual risks of the battlefield. This approach would deny neither political agency nor the ability of states to deal with political agents on their own territory. But a home government's ability to withdraw the right of abode would be greatly curtailed.

Much of my argument has taken apart the problematic logic behind justifications for today's state overreach. Still, the problem goes beyond mere muddled thinking or the impulse to wield unaccountable power. Confusion and temptation usually reflect experience. Here, the issue runs deeper than a few zealots who took up rifles. The approach to foreign fighters and citizenship deprivation has its roots in a particular modern worldview and historical trajectory, with

troubling implications for world state formation. We find a hint of this context in a remark in January 2015 by Britain's then chancellor of the exchequer, George Osborne:

> I think the mood has shifted decisively in favour of people saying, 'This country will give all of us our education for free, it will give all of us our health for free, but don't expect to go off and fight against this country's interests and expect to swan back in.'

Another British government report some years earlier, in outlining 'citizenship as the common bond that binds us together', also noted that over the centuries it had come to include an ever wider bundle of rights, from a passport to voting to social benefits.[25] This wider state footprint in society goes back at least to the mid-twentieth century. Arendt dubbed it 'national housekeeping'.[26]

When the state's growing social footprint is used to justify a tight leash on citizens who leave, however, we find a very inauspicious history. East German border guards used to shoot citizens trying to escape across the Berlin Wall. Their leaders said that would-be émigrés were committing 'Republikflucht'. They were fleeing the state that had financed their education and that thus should be able to extract a corresponding contribution to society. No doubt, proponents of current Western practice would protest that democratic accountability changes the dynamic. Yet the issue may be less one of process or public opinion, and more one of where the centre of gravity of social membership lies and what competence a given institution has to define society. At odds with pluralism, the modern state has absorbed so many functions that political displeasure naturally seems to entail exclusion from social benefits and social space in general.

In keeping with the point of departure in the previous chapter, this entanglement is taken for granted by the new class. Not only does the convergence of control across different spheres lend itself to such intertwining of state and society. New class political culture also revolves around certain ways of talking about common affairs. When advocates of citizenship deprivation condemn jihadis and others for having opted out of a democratic community, they often define that community around deliberation and values and enlightened socialisation. The same British government report that outlined the common bond of citizenship also called on the state to integrate immigrants more tightly, within a 'framework of belonging'.[27] Allegiance has been reinterpreted. It is no longer, as in Blackstone's era, infused with vertical deference to a ruler as one's protector and social better. Rather, it is infused with horizontal conformity to new class standards of enlightenment and ways of talking about them. Jihadis, given their ideological distance from the new class, are especially guilty of lèse majesté against that common fount of social authority.

The new class position at the centre of this bundling together of sovereignty, protection, allegiance, criminality, and the right of abode also matters greatly

in light of the current trajectory of world state formation. Even as the political honeycomb confines political agency to the average citizen's home country, new class coordination across borders quickens. Convergence underpins a tightening of control, with the UN resolution on foreign fighters as but one example. Territoriality as a bulwark of liberty shrinks. To be sure, this process of cross-border tightening has been gradual. Each step has also come as a seemingly reasonable response to one or another outrage. The 1977 European Convention on the Suppression of Terrorism, for example, paved the way by getting rid of a longstanding 'political offence' exception in extradition treaties.[28]

The political honeycomb, by its nature, used to oblige other governments to avert their gaze politely while internal political forces—including, at the margins, foreign fighters—battled it out in a given country. Today, the new class refrain is that for the sake of a common interest in order, and common standards of enlightened governance, 'something must be done' about those who would disrupt a protection racket anywhere. Jealous though modern states are, they join forces readily when they have to do so. And when it comes to the new class vision of global governance, this pattern should be unsettling. Marginal and unpopular cases are often the canary in the coal mine. They foreshadow confining ordinary or ideologically distasteful political participation within each state. At the same time, much as Roman republicanism lingered as a useful fiction beneath the expanding empire, real influence at the heights of global governance will flow from expertise, bureaucratic authority, and other sources of new class power.

Borders, the Container Society, and Double Standards

What I have outlined so far may strike some readers as a one-sided tale of ever tighter control. Yet globalisation more typically is thought to break down barriers. I acknowledge that today's world has more of a common space than ever before. Most governments, including nearly all in the West, now tolerate multiple nationality. Diversity and interactions across borders in world society enjoy more legitimacy than even a few decades ago.

Cross-border movement of people is one aspect of this growing porousness of borders. It goes a long way to creating a meaningful common space and a constituency to sustain it. Around one in thirty people now live outside the country of their birth. Even more have some prior experience of life abroad. Migration concentrates in some routes and destinations, of course, driving the number of immigrants up to 15% or 20% or more in some countries. Globally, while migration has ebbed and flowed over the last century, for the last fifteen years or so it has picked up again. Migrants are increasing in number both absolutely and relatively. Studies of global migration also are forcing an abandonment of so-called 'methodological nationalism', a starting point for analysis that treats the nation-state as a container of society. Attention is shifting to flows and networks.

Much of this is not new; people have always moved. But modern global migration is undertaken not by organised bands, so much as by millions of individuals pursuing job opportunities, forming relationships, and looking for adventure. And for many of them, migration goes beyond just swapping one territory for another. World society includes 'transmigrant' networks, in which people keep ties to more than one country, often over generations. The centre of gravity of their lives may shift, but these cross-border ties remain strong whenever enough networks and practices sustain them. In a way much more modest and peaceful than the foreign fighters, transmigrants sometimes also erode the political honeycomb. Activists cooperate across borders, and dual citizens vote in more than one country. For most transmigrants, however, cross-border social ties matter more than political participation.[29]

Despite such loosening, the political honeycomb still interferes with this global space. It hampers cross-border engagement and deprives migrants of full membership in their destination countries. To be sure, legal scholars note the 'gale-force pressure' of 'postnational' human rights law and other frameworks that give individuals, regardless of citizenship, some limited protection under international law. With Western Europe leading the way since the 1950s, foreigners in many countries can now peg their economic and civil rights on personhood rather than citizenship. In the same vein, refugees and the stateless still face dire challenges, but have more recognition than decades ago.[30] Nonetheless, it is remarkable the degree to which so much, amid globalisation, still hangs on the territorial classification of individuals. Many countries only grudgingly even allow foreigners to own property, under the pressure of treaty commitments or other economic imperatives. Professional certifications, credit histories, social insurance coverage, and the like are tied to countries. For transmigrants, 'political constraints on international travel make it particularly hard to "live lives across borders"'. Border controls often create so-called 'impossible families', as individual legal status and kinship ties conflict. For those from poor countries on the unlucky side of the 'global mobility divide', such restrictions on movement work with even greater suspicion and callousness.[31]

It bears stressing that these tensions run deeper than a mere time lag between a prior national scale of life and new cross-border realities. As one world historian has argued, such circuits across the Mediterranean and in the Atlantic diaspora, among other places, long predated the modern state. Despite the efforts of nineteenth- and twentieth-century bureaucrats to confine life within borders, that 'ever-changing kaleidoscope of social interaction' persisted. Today's growing migrant numbers and bureaucratic pushback just make more obvious that 'under the present global institutional regime, state borders interrupt processes of migration, truncate a human right, stop economic life-projects and cultural trajectories midway,'[32] Amid the broad trends that I outlined earlier in the book, it is the relentless tightening of stateness itself that makes the political honeycomb more intrusive in its deformation of society.

One can tell different stories about how far globalisation has eroded barriers, therefore. One might prefer a tale of openness if such constraints do not inconvenience one much oneself, or if one expects them inevitably to loosen further. Or one might find the barriers tenacious and a constant impediment to much that is taken for granted within countries. Perhaps more revealing than how much borders limit people is in what ways, and for whom, those limits are being nibbled away. Even the most blasé observer who assumes that things are getting better ought to notice also that improvements come unevenly. As with any other political choice, decision-makers and public opinion hold varying ideas about natural priorities and sequencing when it comes to freer movement. What kind of opening happens now can create long-term path dependence. Any future global order will handle cross-border mobility based in part on the patterns and expectations being set now. And much of today's gradual opening involves two tendencies, or models of freer movement, which I shall call here *mobility as capital* and *mobility as citizenship*. They each have blind spots.

Mobility as capital rests on the sense that moving across borders is a privilege to be earned, in the form of money or skills. Philosopher Robert E Goodin once noted, in an article entitled 'If People Were Money', that most governments are as eager to attract capital as they are to keep foreigners out.[33] Yet the greater your advantages, the more open borders generally are to you. This is especially so in the developed Anglosphere countries, which pride themselves on their cosmopolitanism for the right sort of people. They cater to the convenience of well-heeled travellers and investors. Yet poorer visitors, and anyone with a whiff of criminal history, are often barred as undesirable. Investor visa programmes that trade territorial access for money have also spread around the world. In the paradigm of mobility as capital, the world has layers of openness, depending on personal attributes. We might imagine its logic leading eventually to a global free movement right to be earned by the most privileged tenth or so of humanity.

A second paradigm, mobility as citizenship, is exemplified by the EU. Intergovernmental agreements create free movement zones among qualified countries. Their citizens thereby gain directly enforceable rights of access to other countries. Citizenship status rules out any other exclusion based on wealth or skills. As zones like the EU expand outward, their cosmopolitan logic sees the foreigner as future fellow citizen. While zones of free movement often are justified at first on grounds of economic integration, the right to work abroad swiftly turns into a claim for movement in general.[34] Yet the statist oversight of this freedom also looms large. It is created among member states for their own purposes, not directly by world society. The borderless dignity enjoyed by individuals still hinges on their citizenship of a member state. As Brexit has shown, loss of that national citizenship or withdrawal of a state from the treaty cancels the rights of the individuals involved. And, not least, for a country to qualify for joining a free movement zone like the EU typically involves meeting strict requirements. Not only must the economic

gap be narrow enough to avoid a huge flow of migrants. The country joining must also conform to all the other regulations of a common economic and institutional space. One buys free movement by submitting to an ever tighter web of supranational rulemaking.

Both mobility as capital and mobility as citizenship have their drawbacks. They demand fitting into the world's hierarchy of wealth and power. Either one individually earns the standing that opens borders, or one's country swings into line with the standards of new class mandarins. The modern, monistic logic of an atomised individual conforming to vast and impersonal structures prevails. Neither paradigm takes world society or prepolitical goods as its starting point. And both paradigms swell a given sphere beyond its proper competence, by hinging free movement on specific spheres of human experience: financial or human capital on the one hand, or political status and conforming governance on the other hand. Since they are exemplified by the Anglosphere and the EU respectively, the two paradigms also eerily echo the stereotypes. If the Anglo-Saxons know the price of everything, the Continentals want a rule for everything. Indeed, it was revealing in the post-Brexit divorce negotiations that neither side paid much attention to mobility as a social good in itself. London wanted to maximise market access, while Brussels wanted to maximise political control and regulatory alignment.

Mobility in today's emerging global space is thus limited by privilege and by political projects in regional free movement. Compared to the direct exercise of interests in mobility by ordinary people, from the bottom up and for reasons rooted in diverse spheres of society, both mobility as capital and mobility as citizenship are mediated through the judgements of the powerful. Neither of those two dominant paradigms seems likely to overcome built-in limits in how much borders can open and for whom.

Yet we also find a third limit to the erosion of borders, which is just as consequential but gets rather less attention than it should. Entrenched double standards suggest that much of the world sees itself as under no obligation to open to immigrants at all. Despite differences in background and political culture, all Western developed countries have absorbed large numbers of immigrants over the last few decades. They generally have abandoned blatant racial discrimination in immigration policy, and pretend to welcome anyone who qualifies. Prejudices do persist, to be sure, and populist politicians eagerly stir the pot of xenophobia. Yet at least in official discourse, these societies have accepted a break between ethnicity and citizenship.[35] Some other parts of the world like Latin America and Africa also have enough diversity within and across borders that freer movement could come naturally to them.

Yet for a large swath of Eurasia, with more than half of the world's population, expectations of openness and nondiscrimination are not really thought

to apply so stringently.* Even in Eastern Europe, despite EU accession, public opinion lags. When Syrian refugees were to be dispersed across the EU, countries like Hungary and Slovakia baulked at accepting their quotas. They insisted that they were not multicultural immigrant countries like France.[36] EU accession apparently meant one-way openness. France and Germany would have to accept Polish plumbers and Romanian fruit pickers, while the world's dark-skinned and scarf-wearing diversity could still be kept away from Eastern Europe's own doorstep. In Asia, the refrain of being 'not an immigrant country' echoes far. A 2006 UN report found racism and xenophobia running deep in Japan. Businesses sometimes refuse to serve foreigners, and even long-term residents find high barriers to naturalisation. China also long barred foreigners from many hotels and has barely any naturalised citizens at all. Racial prejudices against those with dark skin abound, and race riots have targeted African students. And in the Arab Gulf States, a majority guest worker population faces discriminatory laws and visa restrictions that one observer has called 'almost unthinkable in liberal democracies'.[37] None of those societies want to admit foreigners to full membership. Their upper and middle classes enjoy the West's openness for themselves. They sojourn, buy property, and educate their offspring there. Yet any scenario of really open borders and an influx of diversity at home broadly repels mainstream public opinion in much of Asia.

Non-Western racism and xenophobia largely get a free pass in liberal political theory and under international law. A popular argument among theorists holds that discriminating against particular races in immigration policy violates the principle of equal respect for those already within a national community. Disdaining certain types of foreigners would imply similar disdain for minorities who already hold citizenship.[38] If a country can claim that it has no such background of diversity and immigration, then it gets off the hook in that logic. International law, in keeping with the logic of the political honeycomb, also has a blind spot for non-Western prejudices. While some conventions—mainly in Europe and the Americas—impose weak duties of reasonableness and nondiscrimination in access to citizenship, international law more broadly leaves immigration policy squarely within national sovereignty.[39] In the absence of EU-style treaty commitments, foreigners are fair game for discrimination that otherwise would be illegitimate among citizens. The Convention on the Elimination of All Forms of Racial Discrimination, signed in 1969 by nearly all countries, was pushed by newly independent African states and framed as a response to legacies of colonialism. It leaves nationality as a reasonable basis for discrimination, however.[40]

* My argument here is a condensed version of the fuller discussion in my article, 'Not an Immigrant Country? Non-Western Racism and the Duties of Global Citizenship', *Theoria: A Journal of Social and Political Theory* 62:142 (2015), pp. 1–25.

In the context of the emerging global space and its limits, this non-Western insistence on being 'not an immigrant country' matters greatly. It goes well beyond the fact that the political honeycomb lets states and publics off the hook, by denying enforceable rights of access and nondiscrimination. The deeper narrative also limits progress. After all, no country in Europe in the 1930s could be described as an immigrant country in the contemporary sense, either. Germany as late as the 1970s used the same language to justify its treatment of Turkish guest workers. Yet the Asian discourse of national insularity pretends that Asian countries will not have to change. It invokes essential differences between their societies and those in the West. Behind the double standard lurk deeper sensibilities and assumptions, mostly tied up with colonialism. The old colonial hierarchies still impress thinking around the world. One sociologist coined the term 'brown racism' to describe the intense prejudice, in much of Asia, towards darker-skinned people in Africa and elsewhere.[41] No African in countries like India, China, or Japan would agree, based on daily experience, that discrimination simply preserves national identity and aims evenhandedly at all foreigners. As Asian efforts to claim equal treatment with Westerners at the Versailles peace conference, or as 'honorary Aryans' in Nazi Germany, or as 'honorary whites' in apartheid-era South Africa suggest, typically equality aims upward rather than downward. If there is still a postcolonial race game, much of the 'not an immigrant country' crowd in Asia has been playing it with its own Darwinian zeal.

Colonialism also figures in much of the narrative about why the West should be held to a stricter standard of openness. For many in the Global South, long-standing 'Occidentalist' images of the modern West depict 'a mass of soulless, decadent, money-grubbing, rootless, faithless, unfeeling parasites'. Sympathetic intellectuals in the West itself often acknowledge much of the same point. In this vein, the defining axis of global justice is the racial and cultural legacy of five centuries of colonialism. The injustices of eurocentrism, disruption to indigenous ways of life, and an insidious racial hierarchy with whiteness at the top are overlaid on the political honeycomb of sovereignty. As one recent critic put it, in inveighing against what he saw as a continuous world order over recent centuries, 'White supremacy, and therefore anti-Blackness, is the fundamental basis of the political and economic system and therefore infects all interactions, institutions, and ideas.'[42]

Official efforts against discrimination are typically framed with reference only to that legacy. They leave prejudices elsewhere unmentioned. The Chinese government expressed sympathy in 1995 with indigenous peoples around the world suffering the impact of European colonialism, but hastened to add that China itself had no such ethnic injustices. And the 2001 Durban World Conference Against Racism issued a statement attributing the problem entirely to colonialism, while avoiding any mention of discrimination in Asia.[43] Such blind spots hark back to the 1960s 'salt water doctrine', which limited decolonisation to

cases where the open sea separated coloniser and colonised. Analogous problems within Southern countries fell under national sovereignty.

The implicit narrative goes on to suggest that colonising countries incurred unique guilt, with openness and diversification as a distinct rather than a universal duty. In this vein, a pair of political theorists argued that colonial entanglements give Brazilians, for example, the right to move to Portugal but not the other way around.[44] Postcolonial guilt and legacies of global racial stratification apparently also have the effect, conveniently, of extending the obligation of openness to Western societies that never had an empire. Swiss and Swedes thus do not get a free pass on openness, as Koreans and Kuwaitis might, because Swiss and Swedes vicariously benefit from colonialism's racial legacy. In short, the West's diversification is a fitting consequence of history, while Asian societies do not share the duty to become 'immigrant countries'. Since I already dubbed two other paradigms mobility as capital and mobility as citizenship, this narrative can be called *mobility as karma*.

That such a narrative of convenience issues forth from those who want to remain insular should not surprise us. It is quite common when people can get away with it. But especially noteworthy is that liberal-minded critics of racism or exclusionary immigration policies in the West either ignore that narrative or tread very lightly when they address it at all. If borders need to be more open, then presumably that standard should apply to everyone, everywhere. The rare acknowledgements of Asian insularity or prejudices about the rest of the world are quite forgiving, by and large. They are often interpreted generously as mere attachments to national culture, supposedly untainted by a Western-style hierarchical view of the world. Or the supposed weaker position of those societies in the world means that one should not pick on the underdog, when the West itself still has prejudices of its own to overcome.[45]

As with any ideas, such habits of mind have a sociology of knowledge behind them. Most Western writers simply know little about the non-Western societies in question. They find it tempting to accept tolerant-sounding affirmations from them about why exclusion is something less noxious than it might seem. Prominent theorists also tend to be of the decolonisation-era generation. The axis of postcolonial justice may seem much more salient to them than it will to the vast majority of people born long after independence and the rise of new power centres. And when it comes to thinkers of Asian origin writing in the West, who know directly of non-Western prejudices, they tend to prefer focusing on more fashionable and less embarrassing concerns.

Perhaps it will seem harsh to characterise the landscape this way. I do not want to underestimate the sensibilities that lie behind the double standard. From the vantage point of the postwar years, keeping the spotlight on the defining axis of eurocentrism and colonialism made some sense. Racial prejudices do linger today. The global landscape has not flattened, even though it may have shifted somewhat. But when we are considering prospects for a

genuine common global space—including its future metaconstitutional underpinnings—double standards need challenging. First, reciprocity matters. Few non-Westerners who insist on their own right to be insular would be content if treated the same way in the West. Imagine a world today in which Chinese were turned away from hotels in Britain under the pretext of 'no foreigners allowed', or in which France denied citizenship to third generation immigrants, or in which a German bus driver did as a Japanese bus driver did in one widely-reported incident, and told passengers to watch their belongings because a foreigner had boarded. Second, while patience is often a virtue and formerly insular countries like Germany did evolve, we have little reason to believe that this double standard can simply be waited out. No non-Western society of its own accord has generated immigrant diversity and accepted those immigrants to full membership. Every society that has done so is either in Europe, or a European settler offshoot like Brazil, or a product of transplantation within a former European empire like Singapore. Given the weakness of international law and the lack of concerted pressure on behalf of global norms, those claiming to be 'not an immigrant country' fully expect to remain so. Third, the rising influence of countries like China means their attitudes will shape global structures. If closed borders come naturally to them, and they have no internal constituency insisting on diversity and openness, then they will prefer global principles that keep borders closed and leave ample room for discrimination.

In short, the problem goes to the nature of the political honeycomb and the narrative about the world's defining axis of justice. Rather than envisioning a genuinely common, flatter, global space, that narrative defends territorial and ethnic compartments. Those compartments are defined by monistic ideas of membership and justice. States need to respond only to the claims of individuals who exist in a political relationship to them and who perhaps have certain physically embodied attributes of identity. Debate hinges on who can win what kind of mastery and respect within and among those compartments. A more pluralistic approach would disrupt such easy narratives, both by allowing more diverse claims of access based on cross-border social facts, and by shifting the focus from tribalism to the conditions of human flourishing.

Not only does that mental map make it harder to challenge prejudices and xenophobia where they remain especially strong. It is also invoked by those who want to roll back advances that have already occurred. On the website of the anti-immigrant British National Party, for example, the following claim appears:

> India would not tolerate millions of non-Indians taking over that society. Pakistan would not tolerate millions of Hindus or Christians entering that country and changing it from a Muslim society into something else. Japan would not do it; China would not do it—so why should Britain?[46]

The unsavoury camp of Western nationalists, in the rare moments they take an interest in distant corners of the world, seize eagerly on Asian insularity. Rather than wanting to overcome the double standard by putting Asia on the same cosmopolitan hook, they instead want to let the West off the hook by becoming more like Asia. The global double standard thus undermines openness even in more open parts of the world. Only universal expectations of opening will apply consistent enough pressure from a moral high ground.

Free Movement and the Prepolitical

If a global common space requires a common standard of openness, then we have to step back and consider more systematically what can underpin such a standard. What should that standard be, and which of today's sensibilities and practices might lead on to it? To tackle this question, I start by reviewing two main schools of thought in political theory, arguing respectively for a permanent right of national communities to determine their own membership, and for open borders on liberal individualist grounds. I then note a third position that would nibble away at citizenship-based exclusion in favour of social membership, but still falls far short of a truly global template. These reflections on contemporary debates pave the way for turning back to richer cosmopolitan resources from the past that are more aligned with sphere pluralism.

The strongest case for a permanent right of countries to control their own borders comes from some intertwined arguments by Michael Walzer, Christopher Heath Wellman, David Miller, and Peter C Meilaender, among others. They claim along communitarian lines that, like any other association, a nation has the right to determine its own membership. Current citizens have a stake in whom to admit because newcomers reshape a country over time. Moreover, borders around a country permit more trusting open encounters and a 'rediscovery of the familiar' within them. A borderless world would simply see people retreating into smaller 'petty fortresses' of identity. Freedom of movement within a country affords 'adequate' space for all important pursuits. While individual interactions with foreigners may require some accommodation of short term visitors, permanent access to a territory should be at the discretion of each state. Some theorists within this school of thought also acknowledge the need for further openness at the margins. Refugees, for example, have a humanitarian claim for safety. And if a country admits foreigners such as guest workers for a long time, it may eventually incur obligations to grant them citizenship rather than keeping a permanent noncitizen underclass, which would harm social cohesion and equality. Most importantly, this school of thought envisions border controls being a permanent feature of the global landscape. Just because some countries may choose to admit more immigrants does not impose any obligation to continue doing so, or for all societies to make the same judgement about desirable levels of diversity.[47]

The opposing liberal school of thought on open borders is exemplified by Joseph Carens, Kieran Oberman, and others in a moral cosmopolitan vein. They see the freedom to move anywhere as trumping any desire by a nation to close itself off. Borders deny many possibilities for individual fulfilment, including interactions with foreigners for those who wish to engage. Having to justify immigration policy only to one's compatriots, rather than to all human beings potentially affected by it, gives too much weight to arbitrary identities and not enough to human rights. Border controls coerce individuals and restrict them in ways that would never be countenanced within a liberal democracy. Moreover, given stark inequalities in the world, citizenship-based discrimination shores up global apartheid and unjust privilege. Rather than seeing nationality as a legitimate form of belonging, liberal open borders theorists like Carens condemn it as the last in a series of obstacles to freedom and equality: 'Like feudal barriers to mobility, [border controls] protect unjust privilege.' These liberal thinkers may admit some marginal restrictions on movement for public order reasons, but in general they see them as fundamentally illegitimate.[48]

Advocates of open borders vary in how soon they expect justice to prevail. Yet the broad thrust of their logic is that, like earlier injustices, borders must vanish in the long run. In other words, they fold open borders into a long line of progressive liberal causes. In a 1971 article, Roger Nett called free movement 'the civil right we are not ready for'. Another writer on migration policy suggested more recently that

> [I]t is at least possible that the idea that it is acceptable to place restrictions on the movement of persons that hold human beings cruelly hostage to the place of their birth will be seen by my grandchildren as hopelessly wrongheaded. What seems like prudence and realism today in not promoting what seems 'politically impossible' may seem a simple lack of moral courage tomorrow.[49]

Such thinkers are vague on what this trajectory might look like. They imply that the end result will be a common global space, at least as far as movement and respect for individual rights. Their logic also mostly rules out permanently different standards of openness for different societies. Any nation's right to set its own terms of membership carries less weight than every individual's right to move.

These two schools of thought—membership-based and rights-based, as shorthand—are essentially abstract positions. They sit at opposite poles of a debate. But it bears noting that they share the modern logic of an unmediated relationship between the individual and a larger space of justice, whether national or global.

Between them sits a third position, worth considering because it touches more concretely on the ethics of immigration policy as often experienced. It also considers difficult questions about the relationship between state and

society. Theorists normally associated with the membership-based or rights-based schools of thought sometimes venture into the realm of this third position, as qualifications to their argument. For our purposes here, we can take an articulation of it by Carens, in a book where he reaffirmed the open borders ideal, but acknowledged that within more conventional assumptions about continuing controls he could still call for fairer policies towards immigrants.[50]

He calls this alternative framework 'social membership'. It shifts the centre of gravity from citizenship—a political status—to residency and social ties. It thus strengthens the claims of individual foreigners vis-à-vis their host society. He argues that by the standards of social membership, long-term residents should enjoy nearly all the same rights as citizens, short of voting and officeholding. Their social ties carry more weight than a formal stamp of political membership or even legal status. Naturalisation after a few years should be a right, based more on social facts than on political discretion. 'Social membership does not depend on official permission.' Even foreigners who do not naturalise should be exempt from deportation after long residence. Carens considers it a 'scandal' that, in many countries, lack of citizenship exposes even individuals who grow up in a society to deportation if they commit a crime. He notes that the social membership framework is not fully cosmopolitan. It does allow treating people differently based on whether they have taken root in a country. Still, it goes a long way to eroding distinctions based solely on nationality.

Unlike a pure open borders position, social membership has some points of contact with contemporary legal and political practice. Nationality remains central in the political honeycomb. Most countries fail to treat even long-term residents on the same terms as citizens. Yet the complex relationship between legal nationality and social facts does allow some manipulation, which can allow slight concessions to social membership. In practice, nationality requires some substantial contact with a country, whether by birth or descent or long residence. And in international law, the influential 1955 Nottebohm case between Guatemala and Liechtenstein affirmed that a state only had to consider another state's nationality effective, when contested, if it included some real social ties to the country.[51] As I noted earlier in this chapter, the meaning of nationality in recent decades has gradually shifted away from exclusive allegiance to one state. Now it increasingly means a merely adequate tie to a country, such that a person can hold multiple citizenships if separately qualified for each.

But perhaps the most significant nibbling away at narrow views of nationality, along lines of social membership, is in cases of deportation. In most of the world, lack of legal nationality still exposes even a child who grew up in a country to deportation the same way as a visitor. Yet EU law protects long-term residents somewhat by raising the threshold to imperative reasons of public security. And in some international law cases, a few individuals resident since childhood in countries like Australia have been able to invoke the UN principle of a right to stay in 'one's own country', recasting it as a country of deep social

roots even without legal nationality.[52] These exceptions are rare, of course. Still, we can imagine their broadening if the logic of social membership gains ground in coming decades.

From the broader perspective of overcoming the political honeycomb, the social membership principle goes a step in the right direction. It presses the claims of society against the state. It takes away excessive emphasis on the political sphere. It disentangles social belonging from legal citizenship and hints at prepolitical claims in society that a state should not infringe. Yet for three reasons, it also stops far short of justifying a common global space along sphere pluralist lines.

First, it remains territorially bounded. While political markers of belonging lose their centrality, only within-country roots and ties count. Social membership amounts to a softer and more generous version of the container society. Second, it entails no real mandate to open societies further. The claims of social membership attach to rights-bearing individuals who have already sunk roots in somewhat diverse societies. If a society has little immigration and foreigners cannot claim identifiable harm, then we lack strong reasons to insist on a common standard of openness. No global trajectory of abolishing borders lurks as the end goal. Third, the prepolitical goods involved do not cross borders. States may have to behave more generously to immigrants, but borders and territorial sovereignty can still deform and disrupt the circuits of world society. It falls short of a genuine pluralism that escapes political territory.

What would it mean for the container society to yield ground to such cross-border prepolitical circuits? The next chapter will flesh out the argument. But as a point of departure, consider rare exceptions today to the prevailing logic that citizenship and political borders trump other identities, and that territorial access hinges entirely on sovereign discretion. These exceptions fall into two categories: (1) an individual right of abode in a territory based on personal ties other than nationality, and (2) transnational zones of free movement based on historical realities deeper than the borders of the day.

The term right of abode comes out of British immigration law and refers to an absolute right of entry beyond a residence permit. Citizenship always gives the right of abode, and for most countries most of the time, only citizens can have it. But other peculiar circumstances can sometimes give a right of abode without citizenship. In Britain, for example, certain Commonwealth citizens born decades ago with British ancestry or married to a qualified spouse enjoyed it even if they did not meet citizenship requirements as such. Other countries also have created analogous categories that base such a right on long residence, family ties, or ancestry: Overseas Citizenship of India, the Jewish right of return to Israel, and so on.

Another exception to the prevailing neat overlap of borders–citizenship–access is free movement zones based on history. As one example, the Common Travel Area between Britain and Ireland preserves the borderless zone that

predated Irish independence. It has long been justified based on 'the long historical connection between the United Kingdom and what is now the Republic of Ireland and the close personal ties that exist between the people of the one country and the people of the other'. The two governments agreed to keep the Common Travel Area after Brexit. A second example is Native American 'free passage' rights across the border between America and Canada. They are secured by the 1794 Jay Treaty after American independence, enshrining for those of Native American ancestry their precolonial nomadic and hunting rights. The treaty guarantee trumps immigration policy and allows those who qualify to work in any occupation, take up residence, and be immune from deportation.[53]

These intriguing exceptions to border sovereignty—an individual right of abode and historically grounded zones of cross-border movement—have important features different from more typical practice today. Both are prepolitical in some sense, though they rest not on individual rights so much as on meaningful circuits of interaction over time in society. The noncitizen right of abode presumes the holder's ties to a territory. It does not require, as more typical spouse or dependent visa rules do, that an individual citizen be applying to reunite with specific family members because they are currently living in the territory in question. The Common Travel Area and free passage rights also rest on longstanding social facts. They accommodate historical intertwining of societies or ways of life that cross borders. It was seen as unnatural to let borders erected more recently split them. As a free movement zone of sorts, at least for some people, these arrangements also differ from EU-style mobility as citizenship. They are not, at least in their origins, imagined as intergovernmental projects.

These peculiar cases are exceptional, of course. They involve quirks of history. Yet I mention them because the logic behind them foreshadows possible lines of argument about a future common global space. Rather than mobility for a privileged layer of humanity based on capital, or mobility as a regional political project based on citizenship, more compelling rationales for open borders can rest on deeper societal goods that transcend place. In terms of what I have covered so far, this approach pulls together elements of social membership and world society. Both concepts shift the centre of gravity away from the political honeycomb and towards meaningful social ties. They are more compatible with a sphere pluralist approach.

Social membership justifies access to a given society, while world society highlights cross-border circuits of interaction. Yet the prevailing toolkit for making sense of such cross-border ties falls short. It emerges from contemporary, more or less liberal, political theory and social science. It lacks language beyond individual rights for articulating exactly why other spheres of human experience should carry weight against the claims of political sovereignty. In the next chapter, I shall fill this gap by looking back to some premodern traditions of cosmopolitanism, then extending the argument more consistently into sphere pluralist terrain.

3 Towards a Global Space

We saw in the previous chapter that today's political honeycomb deforms important circuits of human engagement. Even mainstream arguments for opening borders or tempering exclusionary practices against foreigners tend to have a selective logic. They often reinforce the supremacy of the political sphere. In this chapter, I want to move on to the next stage of my argument, by looking away from the present, both backward and forward. I draw on older resources compatible with sphere pluralism. Then I propose why and how most restrictions on movement should gradually be abolished.

Advocacy of open borders has become associated with liberal and leftist versions of cosmopolitanism. But while some policy recommendations might overlap, my reasoning here goes in a different direction. It parts company not only with existing practice but also with the typical *ways* in which other thinkers and activists argue for free movement. Rather than streamlining protections for free and equal individuals in a supranational space of governance, a sphere pluralist approach ties freedom of movement to a broader chastening of the political sphere in favour of society. It offers a cosmopolitanism grounded not on openness as such, but rather on circuits of human flourishing that require a certain *kind* of open global space. These circuits mostly involve the non-political spheres, and personal enkapsis rather than territorial enkapsis. Sphere pluralism can fill important gaps in liberal cosmopolitan thinking about migration and membership. It can also leave more room, in contrast to deracinated liberalism, for strong spaces of identity, commitment, and participation.

The Lost Open World

Hunting in the past for cosmopolitan resources will strike many liberals as odd. They often imagine premodern thinking as complacent and insular. Yet in reality, all major traditions had ideas about the universality of civilisation as such.* Whether in terms of faith or virtue or both, they all mapped civilisation on to a gradient accessible to anyone, anywhere. Those civilisational legacies offer

* I discuss these currents more thoroughly in *Deep Cosmopolis*.

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something more substantial than mere flat relativism or claiming tribalistic ownership of one or another compartment on the global landscape. Moreover, the traditions pay ample attention to human goods beyond the legitimate reach of territorial states. They thus have points of contact with virtue-centred sphere pluralism and can inform thinking about metaconstitutional arrangements for a common global space.

In identifying elements of the traditions useful for my broader argument, I shall outline first how for Greco-Roman and Christian Europe, Confucian China, Hindu India, and the Islamic world, the centre of gravity lay in civilisational universalism rather than territory or race. Then I explore the limits placed on political control of territory in the premodern era, including the exceptional application of political banishment and the ways in which outsiders were admitted. Finally, to flesh out the cross-border circuits in which virtue was exercised, I consider the logic of hospitality and the pilgrimage.

In the depths of ancient European history, territory mattered far less than tribal sovereignty, common descent (often largely fictive), and other membership-based boundaries. The metic, or alien resident, did seem a tragic and excluded figure in the city-states, but in much the same way as were women and slaves, based on personal status rather than modern-style territorial citizenship.[1] On a grander scale, intellectual historians have traced a cosmopolitan strand of thinking running from the Greco-Roman philosophers through attempts at universal empire and the Catholic Church's supervision of Christendom. Philosophical truth, virtue, and salvation all became the conceptual underpinnings of a civilisational layer above political fragmentation. While Europe never again achieved political unity after the collapse of Rome, aspirations to a 'world community' persisted. Christian thinking treated political boundaries as a fact of power, but less than wholly legitimate. They fitted within a time-bounded rather than eternal order. They could never overcome 'the priority of the metaphysical over the geographical'. Institutionally, markers of a transnational citizenship of sorts also lingered, in Roman law and papal jurisdiction, until well into the early modern period. While modern state formation ultimately broke up Christendom's institutional and religious unity, the sensibilities of Christian social thought continued affording one of the West's most robust counterweights to xenophobia and racism. Historians note the Church's 'mixed message' over the centuries, sometimes trenchantly affirming human fellowship and equality, and sometimes ignoring the excesses of colonialism and racial discrimination. Yet the tradition itself has tilted towards seeing the ambitions of modern territorial states as hubristic and sinful.[2]

The same tension between insular impulses and a civilisational overlay appeared in Confucian China. Much as in Christendom, Confucian thought and practice recognised territorial boundaries as a way to keep the peace. Yet frontiers were porous, and Confucian ethical standards placeless. Ideally, the 'charismatic power' of a virtuous emperor, supported by a learned stratum of

scholar-gentry, would radiate outward across the *Tiānxià* 天下, or world-under-Heaven. The dynasty and officials of the day did not own or define the tradition. They merely held it in trust, for it outspanned and outlasted any state. Of course, that cosmopolitan version of Confucianism ebbed and flowed across history. A more xenophobic strand, stressing a 'physical discontinuity' with the barbarians beyond the frontier, ran beneath the surface. It found noisier support in moments of crisis, such as conquest by alien dynasties or, more recently, the pressures of European colonialism.[3]

For Hindu India, likewise, unity was not primarily political. It centred on a brahminical religious tradition, overlaid atop the subcontinent's patchwork of places and languages. Perhaps more explicitly than in other civilisations, this Hindu universalism was limited to a thin upper-caste stratum. They interpreted the concept of *dharma* or duty to support an immutable social hierarchy, with themselves as the bearers of spiritual knowledge. Other actors deferred to the brahminical tradition in varying degrees. Secular rulers, often from the kṣatriya warrior caste, did not hesitate to fight one another constantly, on a shifting landscape with fickle alliances. Yet they did not challenge the ideal of a peaceful 'universal dominion' on a civilisational scale, even though such a unifying empire never came to fruition. The practitioners of political strife remained confined to their own sphere of ambition. They never offered an alternative vision of breaking up the wider civilisation and securing a more modest peace within sovereign territories.[4]

For Arab tribes in a desert environment, with their nomadic way of life, solidarity was based on *asabiyyah*, or kinship, rather than territory. With the spread of Islam, religious affiliation theoretically came to matter more. Muslim status might be measured by public ritual worship or by a personal confession of faith, but the categories still revolved around the who rather than the where. The Muslim world had no real internal barriers to mobility. At least among educated urban circles, free movement in a common civilisational space became quite normal over the centuries. Muslim thinkers acknowledged people's emotional attachment to territory, but only in the sense of a familiar homeland with a sense of belonging, quite apart from institutions like shariah law. Historians generally agree that territorial boundaries carried little weight, except in the limited context of ongoing war against infidels. Political control of an area by a Muslim ruler could facilitate the implementation of shariah and the practice of Islam, but such a condition was a minimum threshold. It did not require wiping out diversity. It could accommodate non-Muslim minorities who accepted the Islamic character of public space. The only instance of more rigid control of space was in smaller units. Mecca, Medina, and Jerusalem had tighter rules about what could happen within 'sacred space', but for ritual rather than political reasons.[5]

In short, any broad view of world history must recognise that even though prejudices and insularity shaped daily life, the major civilisations also had a universalistic and nonterritorial logic at their core. Still, if we seek alternatives

to the modern political honeycomb, then those broad cosmopolitan tendencies may have limited use. Do they really offer a compelling rationale, for example, against today's border controls or the state's dominant role in adjudicating membership? What do we find if we dig more precisely into practices and thinking different from the modern Westphalian system?

For example, take banishment, the closest premodern analogue to deportation. Banishment did exist as a practice across much of the ancient world. Given Chinese impressions of barbarous wastelands at the edges of empire, banishment to them was an especially harsh punishment for Han who had displeased the authorities. Ancient Greek democratic city-states sometimes banished troublemakers. The Roman poet Ovid was banished by Emperor Augustus to the barren area around the Black Sea, for a grave but unspecified offence. In the mediaeval and early modern period, more sophisticated laws developed in Europe to govern the expulsion of criminals and dissidents from one territory to another. Mediaeval English fugitives who found sanctuary in a church could agree to leave the realm and never return. Spain returned Jesuits and troublesome settlers from its American colonies to Europe. By the eighteenth century, England punished many common criminals with transportation to Australia.[6]

Yet these practices, however much superficially like modern deportation, rested on an entirely different logic. The banishment of political enemies was a rare, elite affair. Rome only banished within its empire, not beyond its own territory. Transportation of criminals to Australia likewise stayed within the same sovereign empire, but also occurred without regard to nationality. In short, premodern banishment focused on punishing or neutralising a specifically dangerous individual. It relied on distance or the harshness of the destination, rather than on ejecting him or her from a sovereign political space. Banishment was not about enforcing migration rules or revoking an alien's right of residence.

But surely there were instances of outsiders requiring permission to enter a territory, based on their status and lack of membership? I do not want to exaggerate and say that we never find any notion of a community's ownership of public space, with conditions of entry to it. But one intriguing instance shows that even when such practices existed, they looked very different from modern border controls. Consider the *aman*, or safe conduct, given under shariah law to non-Muslims entering Muslim-controlled territory. The eighth-century Islamic legal scholar Shaybani outlined the basic concept. The aman could be granted for a period of up to one year, after which the non-Muslim in question, if choosing to remain, would shift to the status of a *dhimmi*, like any other internal non-Muslim minority living in treaty-based protection under a Muslim ruler. Crucially, the aman could be granted by any free adult Muslim man or woman, not necessarily by the ruler himself, though the latter in some instances could revoke it. It could not be granted by a slave, or by a dhimmi, or by a Muslim in a vulnerable position in non-Muslim areas.[7]

In short, the aman operated largely in society, based on particular ties and guarantees between individuals of the appropriate statuses. It had little to do with state authority. This practice is also analogous in suggestive ways to the lack of imprisonment as a formal punishment under Islamic law, even though people could be detained temporarily for trial or for debt.[8] More broadly, across the modern world the rise of prisons and other modes of space-based discipline roughly coincided with the tightening of territorial borders. Michel Foucault rightly noted the eerie parallels among prisons, hospitals, schools, barracks, and lunatic asylums.[9] Yet there has been little attention to the emergence of border controls as yet another analogue. From this angle, the closure of borders and the tightening of citizen–alien distinctions begin to look like much more than a policy adjustment. The insistence on controlling movement is intertwined with a shift in state–society relations. Personal status and commitments between people have lost their centrality. They have given way to the swollen institutions of the political sphere. The modern state classifies an atomised populace based on space and then limits its movement.

We can also unpack the logic of premodern cosmopolitanism, such as it was, by considering hospitality. The relationship of a society to migrants depends on more than movement restrictions. The newcomer also represents something significant, just as the encounter reveals the host's character. One study of the stranger (*garib*) in the mediaeval Muslim world notes that the term referred loosely to 'a plurality of individuals' who wandered in and out of a given place. No legal category otherwise lumped them together like the modern alien, however, or required treating them all the same way. Treatment depended on their particular origins, religious affiliations, and the like. The stranger was often an object of sympathy, being uprooted from the social ties that give support, credibility, and prestige. While travel broadened horizons, for the non-travelling majority it smacked of vulnerability to poverty and loneliness. In keeping with pre-Islamic Arab custom, strangers deserved hospitable treatment. Christian tradition going back to biblical stories also urged hospitality. Sharing a meal, even with someone of another faith, was an act of charity and vulnerability at the same time, an 'unconditional surrender by both parties' that honoured God. Indeed, the vulnerable stranger sometimes was considered a representation of God, reminding even a privileged host of 'a fundamental commonality among human beings'.[10]

These instances suggest a notion of guesthood quite different from the foreigner–guest concept in today's political honeycomb, in which the individual–state relationship is primary. When those who affirm sovereign control of borders today use the language of guesthood in speaking of non-citizen outsiders, they are emphasising a link between outsider status and the terms of access to territory. Under mobility as guesthood, the guest may be well treated but never escapes the distinction of status. The political honeycomb marks that status and its menacing implications. The non-citizen guest always has a stamp on the forehead and a ticket out the door, so to speak. The precariousness of the non-citizen

guest has as its foil the dignity of the citizen host, sharing fellowship with other citizen insiders. In contrast, the traditional view of guesthood breaks down that barrier. It puts group membership largely to one side and intertwines the guest's dignity and the host's virtue. A host who insisted too much on host–guest distinctions would incur dishonour, by failing to exercise the virtue of hospitality. Traditional notions of hospitality, just like chivalry, are as much about the character and motives of the one acting virtuously, as they are about the status and needs of the beneficiary. Hospitality can motivate openness even in the case of an insular community. Mere liberal language about the rights of foreigners, without the duties of the host, would have little purchase on it. Virtue-centred sphere pluralism aligns more with the traditional way of thinking.

Hospitality is one resource within the traditions for broadening our reflections on the future global space. It has its limits, though. It is bound to the place and relationship in which it is exercised. It has a clear distinction of roles—even if not of dignity and fellowship—between those with a tighter and a looser tie to that place. Openness on a grander scale requires more than just a welcoming attitude on arrival. We have to look instead at cross-border circuits of movement and action, with their own intrinsic importance beyond the competence of any territorial ruler.

In premodern experience and thought, the pilgrimage offers one such model. Pilgrimage crops up in all traditions, albeit diverse in its motives. It has been said of Hinduism, for example, that 'no religion has more elaborate conceptions of sacred space.' Pilgrims visited sacred sites such as temples, often believed to be the site of divine descents, as an alternative to ongoing sacrificial worship in daily life. Despite the other petty distinctions within Hinduism, the exceptional nature of 'salvific space' made it generally open to anyone who visited. One of Hinduism's peculiarities compared to other parts of the world was that such sites were scattered all over the subcontinent, rather than having a clear hierarchy. Circuits criss-crossed territory instead of radiating out from one hub. Different pilgrimage-like concepts appeared in Confucianism and Islam. Confucius counselled the gentleman not to put attachment to home above a moral duty to migrate to another kingdom, if necessary, to serve a more virtuous ruler. And in Islam, influenced by the Arab nomadic way of life, the *hijra* figured prominently. Much as in Confucian thinking, the hijra—modelled on Muḥammad's move from Mecca to Medina—exemplified moral obligation in contrast to place of origin. Joining an ideal society might mean abandoning the attachments of place or prior political loyalties. In mediaeval Christendom, pilgrims embodied a kind of universal fellowship across diversity.[11] Just as in the Muslim world, the stranger was not a formal category. Christendom had no sense that the pilgrim 'belonged' somewhere else and had to go back. The pilgrim's purpose, not the pilgrim's origin, took centre stage.

Along these lines, Christian interpretations of natural law also paired hospitality with a right to enter territory for certain purposes. This 'right of

communication' sheds light on traditional resources for opening borders. It was articulated most clearly by the Spanish legal scholar Francisco de Vitoria in his 1539 lecture, 'On the American Indians'. He rejected, in keeping with many Catholic thinkers' unease about the conquest of the Americas, any justification based on alleged barbarism. All else being equal, Amerindians' independence should have been respected. Nonetheless, he found a violation of natural law in Amerindian rulers' refusal to permit innocent passage of merchants, settlers, and most importantly missionaries. 'Placing obstructions in the way of the Gospel' counted as a grave offence that justified curtailing sovereignty.[12] In noting this line of argument, of course, we must distinguish rigorously between the logic and its colonising misuses. The core logic aligns with sphere pluralism. Political control of territory does not trump other spheres of human activity, which may warrant peaceful access by outsiders.

This prepolitical view of the pilgrimage also informs more recent Christian writers' affirmations of solidarity with vulnerable migrants. 'Homo viator', or the traveller, embodies 'solidarity between mortals' in a way that homo politicus or homo economicus cannot do. The pilgrim transforms his or her sinful self while transgressing human borders. Nationalistic Christians who lack compassion for undocumented migrants forget that the Church's 'primary citizenship is in heaven'. In the same spirit, many sincere Christian intellectuals have sharply denounced the recent alignment of some coreligionists with xenophobic popular nationalism. They note that Christianity is inherently multiethnic and transnational. One's country should not claim one's highest loyalty, especially at the expense of vulnerable migrants.[13]

To be sure, images of the pilgrimage vary across traditions. They have different ideas about the centrality and dispersion of sacred space, and the balance between the meaning of places and the experience of travelling to them. But they agree that the pilgrimage is a sacred circuit rooted in a spiritual reality beyond any state's reach. Pilgrims escape, or at least subtly discredit, the grasp of the powerful. They do so not only by moving across borders, often with great determination and some disdain for those who would constrain them. Their purposes in moving also rank higher than any placebound interest or community. Just as with hospitality, the pilgrimage adds more layers to migration than a modern view of the political honeycomb and control of territory can recognise.

Both hospitality and the pilgrimage also suggest more reasons why even closed societies should open into a common global space. As we saw with the insistence by some non-Western societies on being 'not an immigrant country', a liberal claim to equal treatment only applies to those who have already been admitted, so they could simply not be let in in the first place. The individual rights of would-be immigrants or foreign residents have little purchase under the logic of the political honeycomb, with citizen status as its linchpin. In contrast, these traditional resources can remind us of the virtues of openness, as well as the intrinsic value of non-political pursuits that transcend territory.

Mobility, Meaning, and the Voices of World Society

With modern state formation, the more open view of human flourishing in the old civilisations has retreated to a territorial and even tribal logic. Most of the units of today's political honeycomb are democratic, more or less. But that does not diminish the problem of their overreach. They exaggerate the scope of state jurisdiction over society, and presume a permanent right to exclude based on the individual's relationship to the polity. Yet the main alternative current of thinking, pegging aspirations to open borders on liberal individual rights, also falls short. Its narrow view of rights requires individuals bearing them and having some reasonable claim on the society they would enter. The liberal vision has little language for arguing down barriers around the 'not an immigrant country' camp, either. More fundamentally, even if a liberal approach made some headway, it would still be promoting an atomist and impoverished view of mobility. The liberal order today gets us mobility as capital and mobility as citizenship. In their own ways, these tracks both swell one sphere of life at the expense of others: either the atomised individual as bearer of capital and skills, or the atomised citizen conforming to a supranational EU-style version of the modern state. Global liberalism, even in contexts where it might partly open borders, would leave the individual naked before concentrations of wealth and power. The atomist logic of modernity deforms mobility as much as it does other aspects of life.

World society thus must figure as an element in any sphere pluralist search for counterweights to a narrow focus on wealth and power. One can approach world society in more and less promising ways, however. Liberalism goes some way towards recognising its growing weight. But the atomist logic of liberal thought sees world society only as an aggregation of individual rights and interests. Global citizenship in that mode would only imagine claims bouncing between the individual citizen and some scaled-up version of the liberal state. In contrast, a sphere pluralist approach has more in common with the old civilisations. It takes prepolitical goods as its building blocks. First, it highlights meaningful circuits of engagement crossing territory and binding the world together, largely around pursuits beyond either politics or economics. Its logic is personal enkapsis rather than atomism. Second, it would mean that free movement involves less justifying individual access to a given territory, and more setting free nonterritorial spheres of activity that need not justify themselves to the placebound. Third, those nonterritorial spheres of activity would stake their claim not on having newly emerged with globalisation, but rather on their very timelessness. They have always existed. The distortions that the political honeycomb inflicts on them just become more evident today as globalisation strains against it.

In the previous chapter, I traced the trajectory of modern state formation, including the observed tendency of states to overreach both vis-à-vis their own societies and extraterritorially. But the 'why' can be just as important as the 'what'. We have to consider more closely how that overreach is now justified.

Specifically, how does today's monistic logic justify the primacy of the political sphere and territorial enkapsis? How does it justify territorial restrictions that constrain or deform other spheres?

A little-noted feature of the modern state is that it has come to occupy a privileged position of permanence. The only limited attention to anything like this point comes in discussions of territorial integrity and the continuity of population. The so-called 'perpetuity assumption' holds that states persist over time and that, rather than redrawing borders or breaking up states, exit from such a permanent political community can happen only via individual emigration. The perpetuity assumption only deals with questions of scale, such as secessionist movements.[14] Related, yet distinct, is what we might call the qualitative permanence of the modern state. The Christian writer William T Cavanaugh has compared many people's indulgence of the state as the arbiter of the common good to 'the age-old sin of idolatry'. He urges Christians instead 'to demystify the nation-state and treat it like the telephone company', with a specific rather than an overriding function.[15]

If we combine these two disconnected observations on perpetuity of scale and qualitative idolatry, then the problematic nature of ideas about the state's permanence comes into sharper relief. Liberal experience of an atomised modern world presumes that only a few pursuits can pull individuals out of their own solipsistic existence. The citizen's engagement with politics occupies pride of place, especially since many other social circuits based on religion, kinship, locality, and so on have loosened. Moreover, today only the state gets full deference as far as expectations that it will last many lifetimes. The average citizen probably feels much surer that the national flag will fly three hundred years hence, than that any other institution encountered in daily life will still exist. Under territorial enkapsis, after all, other institutions operate largely at the mercy of political authority. Whatever the constitutional enshrining of rights, they attach most firmly to individuals whose mortality makes them unthreatening to the modern state. Temples, corporations, universities, activist organisations, charitable endowments, and even intergenerational private wealth, all exist on the sufferance of states. They can be regulated and taxed out of existence. And if their activities cross borders in world society, they can be hampered or shut down altogether based on the regulatory logic of the political honeycomb.

Consider if it were the other way around. What if the state were subject to the whims of institutions in other spheres? Imagine that under some quirky legacy of early modern international law, Liechtenstein were scheduled to be auctioned off as a private estate to the highest-bidding billionaire in 2030; or that the Pope held a dormant right to decree, at any time, the incorporation of Portugal into Spain. Both liberals and civic republicans would bridle at the prospect and consider either scenario a grave insult to political liberty. When one builds legitimacy monistically, from the mortal individual up to the permanent state, however, other spheres suffer precisely that sort of encroachment. The modern

individual is understood not mainly as a commitment agent—in the personal enkapsis sense—but rather as an atomist experience agent, so to speak. He or she navigates the world's possibilities and maximises happiness. Intermediary institutions between citizen and state, as well as the engagements of world society, have roughly the same degree of permanence that property rights impart to momentary possessions. It would be exaggerating only a little to say that, compared to the state or individual rights, commitments in other spheres are all fictive amusements along the way from birth to death.

This primacy of the state over other spheres of society is historically contingent, as we have seen. Perhaps one could make a—not wholly convincing—case that in the early era of violent statemaking, the protection racket and the need for allegiance to it had a certain necessity. The political sphere might have swollen out of proportion because only a strong state could ensure relative peace for other spheres to operate. With the democratic peace and the decline of day-to-day violence, raw protection may have lost some of its necessity, even though the new class has captured the state and expanded its social footprint.

Whichever way the balance of needs for a strong state might cut at any moment, I want to suggest that with changed historical circumstances, the room for rolling back state dominance over other spheres of social life now has expanded. Such a practical possibility would align with the ethical imperative. Breaking down the political honeycomb matters for reasons of both scale and type. While people who live across borders feel the constraints of the political honeycomb firsthand, they are still a small albeit growing minority. Breaking down territoriality would benefit them, to be sure, yet the reasons go much further. Even for people who stay put and do not move internationally, the territorial state's dominance by its very nature deforms life. Territorial enkapsis under the container society inherently privileges the political sphere. Society does not stop at the border. Only by setting world society free and breaking the political honeycomb can the other spheres truly flourish. No other sphere can be sovereign if the scale of one sphere patterns so much of life.

The territoriality of the modern state creates worse problems when it comes into tension with an ever more integrated global landscape. Mainstream liberal political theory acknowledges as much only with regard to how to draw the borders around the demos, or the people making up a political community. State borders are largely given by history, as arbitrary outcomes of warmaking and dynastic politics. Even the principle of self-determination still requires defining the group for which a majority can speak. Liberal theorists broadly admit that they have no satisfying way to untangle this problem, namely, that a demos cannot define its own edges. Even if, for simplicity's sake, arbitrary existing borders have to be taken for granted, decisions made by majorities will still spill over outside. That reality generates other debates in political theory about whether and how the demos can give voice to 'all affected' farther afield.[16]

My argument here hinges on the narrower tension between the demos's control over borders, on the one hand, and more placeless circuits of commitment in society, on the other hand. Let me phrase the logic of today's order quite bluntly. The individual as a political animal, deliberating with other citizens to form a territorially bounded majority, is seen as entitled based on political membership, to use the coercive power of the state to assert ownership of that territory. Such control then excludes outsiders based on the fact that they lack membership in that political community and do not owe allegiance to it.

Phrased that way, it becomes clear both how lopsided such a framework is from a sphere pluralist perspective, and how much of an outlier in history. When liberal theorists try to justify this tight overlap of demos–territory–power–borders, they tend to argue in circles or at least to assume the primacy of the political sphere. Michael Blake, for example, admits that nationality is arbitrary but goes on to reject a Carens-style argument for open borders in order to treat all individuals equally. Citizens and aliens are not equally situated, he insists. Unlike aliens, citizens have 'boundaries of shared liability to a political state'. Unconditional access to the national territory—denied to aliens—fits into a bargain of political obedience. Citizens must get basic liberties including free movement as a quid pro quo for their state's authority over them wherever they are.[17] Yet such an argument for the demos–territory–power–borders overlap only works if one takes for granted along monistic lines that the citizen–state tie trumps other dimensions. One need not invoke individual rights to doubt as much. One could believe instead that, for reasons peculiar to other nonpolitical spheres of life, everyone both inside and outside a given cell of the political honeycomb might have vital reasons for living and engaging with each other across its borders.

We thus come to the crux of the question. How do we weigh the claims of enkaptic circuits of meaning across borders, against the claims of territorial closure at the discretion of a sovereign demos? Why, some might ask, can meaningful activities in the nonpolitical spheres not coexist with, and work 'around' and 'within', strong political sovereignty and border controls? Defenders of the political honeycomb will insist that they must and can do so. Answering this question hinges on what presence within a space means for a range of social goods. We can break it down further into two parts. What does it mean to have one's 'own' social space, beyond arbitrary political interference? And why does potential access to an even larger space beyond it matter?

In other contexts, philosophers have written about the meaning of social space. Jeremy Waldron has observed, for example, that 'everything that is done has to be done somewhere. No one is free to perform an action unless there is somewhere he is free to perform it. Since we are embodied beings, we always have a location.' He goes on to argue that for the homeless, private and public rules of exclusion from given spaces cumulatively can take away enough room for even the most basic of activities such as sleep. For social life, too, space has

many layers of meaning. Anna Stilz has suggested that it would be wrong to displace a people—even a stateless people like the Navajo or Palestinians—from their territory. Their 'right of territorial occupancy' goes beyond private property rights or formal jurisdiction. It involves instead a range of 'collective social practices' and 'located life-plans', including the expectation that that space will remain available for them to live out those plans.[18] For Waldron, perhaps, any adequate space would do; and Stilz focuses on a longstanding collective tie to a territory rather than a right to move across territories. But other writers apply a similar logic to cross-border interactions. For the complex global social networks of modernity—whether for activists, missionaries, academics, or business people—communication cannot fully substitute for 'meetingness', or 'obligations of physical presence'.[19]

Still, to note the importance of physical presence and meaningful social space might not satisfy defenders of the political honeycomb. They will insist that border controls managed by the political sphere can still leave 'adequate' room for these other social goods. Indeed, Wellman even goes so far as to suggest that internal movement restrictions within the same country might not violate human rights if the permitted zones of movement were enough to leave adequate choices available.[20] Even if one accepts that framing, how one judges adequate social space will be contentious. The answer might vary historically. For most peasants in the past, a village or a cluster of villages might have sufficed. For mediaeval Muslim scholars, the ummah would be more appropriate. Perhaps amid modern globalisation, not even a large nation-state would be big enough.

But I think it would be a mistake to accept that framing of the question at all. It measures adequacy in quantitative rather than qualitative terms. It legitimises curtailing space at the convenience of the political sphere, so long as such reduction does not violate some social minimum. Territorial enkapsis still would carry the day. Behind it also lurks, unexamined, the image of the atomised individual in a marketplace of life options, much as an economist might judge whether enough competition exists within a protected market for an equilibrium of supply and demand to work. From a perspective grounded in sphere pluralism, however, the *number* of options available misses the point. Rather, the *qualitative* subordination of these other circuits of meaning to territorial politics inherently deforms them. It would be rather like saying that anti-miscegenation laws still leave a large enough pool of potential spouses of the same race, and that an apartheid state thus has not encroached on the nature of marriage.

When it comes to much wider versions of one's 'own space', expectations also must matter. First, given the scale of a global space, engagement with any given part of it would be for most people a mere possibility. They might expect only that it will be open to them as needed. Such an expectation goes beyond the sort of experienced and entrenched attachment to a smaller territory that we see every day. Second, and of more practical relevance given today's limited free movement, expectations matter when it comes to making regional experiments

in open borders irreversible. In other words, once a broader social space has opened, people should reasonably expect it to remain open, immune from future disruption by the political honeycomb.

Under today's liberalism, expectations about free movement in an open social space are treated very differently from political and economic expectations. Political expectations are taken quite seriously: treaty obligations, equality under the law within a country, and the like. Economic expectations also have won growing recognition by liberal elites. As noted earlier in this book, the 'new constitutionalism' of binding supranational frameworks hinders future democratic majorities from moving the goalposts of economic policy. Global capital expects a stable business environment. Respect for economic expectations also extends, by and large, to state financial obligations. Mainstream opinion would baulk at repudiating treasury bonds or abruptly curtailing state pension rights, for example. When governments expropriate property or disrupt fundamental economic expectations, the remedy typically involves compensation based on monetary value. One can take one's compensation away to play elsewhere or differently, so to speak. Political and economic expectations are compatible with an atomist view of the self, as a rights-bearing citizen or as a resource-holding rational agent. The existing modes of mobility as citizenship or mobility as capital also fit into that view.

When expectations in society are disrupted, however, they get nowhere near the same deference. From a sphere pluralist perspective with an eye to world society, expectations that a cross-border space will remain open should carry a lot of weight. Personal enkapsis implies a *mobility of meaning*, with many entanglements beyond the full comprehension of the political or economic spheres. Even more than political or economic interests, after all, social goods like family ties, friendships, vocations, cultural affinity, or pilgrimages all require physical presence on a territory. They are messy and shifting. They are too particular to be compensated in monetary terms. They are too varied to capture in the usual language of rights and treaty commitments.

The fallout from Brexit illustrates this blind spot in present thinking.* The British and EU authorities hastily issued reassurances that while free movement would end after withdrawal, migrants who had already taken advantage of it would have their 'acquired rights' of settlement guaranteed. Such an approach sat squarely within international law and the usual language of individual rights—and perhaps social membership—while still affirming sovereign control of borders going forward. Yet the disappearance of future free movement options troubled many. As one indignant young commentator wrote on the

* My argument here is a condensed version of the fuller discussion in my article, 'When Open Borders Must Stay Open: Expectations and Freedom of Movement', *Polity* 51:2 (April 2019), pp. 202–30.

Financial Times website the day after the referendum, 'The younger generation has lost the right to live and work in 27 other countries. We will never know the full extent of the lost opportunities, friendships, marriages, and experiences we will be denied.'[21] When free movement has already existed in a cross-border social space—with the political honeycomb giving up some of its typical modern impingement on other circuits of life—its abolition, as the result of a reassertion of political sovereignty, illuminates the deforming dominance of the state over commitments in cross-border society. Lack of political membership again trumps all else. Before Brexit, an EU citizen who valued the prospect of a future right to move to Britain—or vice versa—would be situated the same as a second-generation émigré descendant who enjoyed citizenship in a country that he or she had never visited but still had a secure right to enter. A Brexit-style curtailment of free movement would leave the latter's citizenship-based access intact, while cavalierly stripping away from the former substantive rights based on social expectations in a longstanding common space of free movement. Social expectations are seen as too soft, too vague, or beneath the notice of high politics.

Defenders of sovereign control over borders, including such a right to abolish free movement, will invoke the weight of political expectations. They will claim that limiting a state's ability to withdraw from an EU-style free movement zone would curtail the political expectation that citizens, acting as citizens, would always be able in future to determine the fate of their sovereign national community. This primacy of political participation, because of citizens' stake in their polity's future, is also used to justify letting citizens who have lived abroad for a long time—maybe even since birth, in the case of émigré descendants—continue voting in national elections.[22] But on a broader view, satisfying the expectation of an ongoing democratic right to close borders can only involve a lopsided understanding of how political and social expectations weigh against one another. It monistically privileges the identity of the individual as voting citizen over all his or her other identities, which may operate in different spheres of life and/or transcend territory. It unduly indulges the electorate's potential satisfaction from marshalling political power to truncate diverse cross-border circuits of engagement. It effectively asserts a right to abolish other rights.

If one takes seriously sphere pluralism and prepolitical goods, however, then it makes sense to view a consolidated free movement zone as inviolable on social grounds. A strict limitation of political sovereignty to its own intrinsic nature would allow, at most, disentangling sovereign political structures, fission of cells within the political honeycomb, and the like. Whether with Brexit-style withdrawal from a supranational union, or Quebec-style secession of regions from countries, free movement should survive a new border.

A Roadmap to Open Roads

In today's context, to suggest that transnational free movement should be irreversible does not yet have much practical upshot. It would apply only to cases like the EU where modern state borders have already opened. Such instances are still few and far between. Yet the broader logic of my argument holds that today's political honeycomb of border controls is fundamentally illegitimate in general. This position agrees with the liberal proponents of open borders, though for very different reasons. Rather than individual rights, it draws on sphere pluralism and a due regard for the prepolitical layers of world society. Yet the line of reasoning does converge with the rights-based vision of global free movement as an eventual goal. Future generations may well see those who today advocate and enforce immigration controls as, if not the moral equivalent of slave traders or concentration camp guards, at least akin to those who erected segregation signs or sent petty convicts to the antipodes. When we talk of bringing the world closer to a common global space, however, the conversation must shift from delegitimising borders to imagining pathways to abolishing them.

No serious advocate of open borders would imagine it as anything other than a long-term project, involving gradual erosion of current restrictions. Were borders thrown open suddenly, today's vast inequalities would unleash vast and unmanageable flows of people. One survey found that a sixth of people in the world would move internationally if given the chance. With a free choice of destination, the Congo would lose more than half its inhabitants and the population of Singapore would triple.[23] Global apartheid unfortunately has created the conditions for its own necessity, at least in terms of transitional border controls. Many advocates of open borders call for several decades of 'political genius' to craft 'a regime of managed migration' that would allow freer movement. They suggest that more consistency and fairmindedness, along with international coordination, could loosen restrictions over time. Transitional benefits could include more economically rational flows of labour in which sending and host societies both gain.[24]

A trajectory of realising freer movement inevitably will interact with public opinion. Thinkers of a communitarian bent often assume deeply entrenched public support for border controls. Will Kymlicka, for example, asserts that 'Most people in liberal democracies…would rather be free and equal within their own nation, even if this means they have less freedom to work and vote elsewhere, than be free and equal citizens of the world, if this means they are less likely to be able to live and work in their own language and culture.'[25] If true, such a view would pose an obstacle to creating a common global space. Yet evidence suggests a more mixed and promising landscape, even in today's world where territorial states are taken for granted. The view Kymlicka describes may hold sway among Brexit voters and their counterparts in other Western developed countries. There, many in the lower strata may be uninterested in living abroad themselves,

and may feel undercut by waves of immigrants. Knee-jerk xenophobia may also crop up among some segments of East Asian publics who subscribe to the 'not an immigrant country' mantra, and who have been socialised by education and media to exaggerate the cultural and cognitive barriers among societies. But such segments of the global populace are not the majority. Given demographic retreat in the developed West and in countries like Japan and China, their global weight will shrink markedly in coming decades. Surveys suggest that among the fast-growing youth bulge in Latin America and Africa, support for open borders in their own regions and globally is impressively high.[26] Public opinion may well be moving in the right direction. It could become still more favourable as the window of opportunity for founding global structures draws nearer in coming decades.

Timeless principles and political trajectories can meet in framing such a vision. If borders are fundamentally illegitimate, as well as a distinct feature of modernity, then free movement would restore an openness that should never have been curtailed. Just as most farsighted economists imagine free trade and investment flows worldwide in the long run, so must globalisation for human beings and their social engagements become an assumed trajectory. Full free movement should be built into any vision of world order. A time frame of fifty to seventy years or so would be compatible with a gradual narrowing of economic gaps. It would also bring the end result within reach of younger generations. Milestones could be built in along the way. Restrictions could fade away bit by bit, both on a macro level between particular territories or populations, and on a micro level as individuals qualified in light of their circumstances for ever more types and destinations of mobility.

That process must be slower than many of us might like, solely on prudential grounds. Political control of movement can be justified temporarily only on the basis that would justify any other state action under sphere pluralism, namely, a narrow responsibility for public order. Just as the state can prevent crime and contain epidemics, for example, so too might an unmanageable short-run influx of huge numbers of people—not just increased diversity that unsettles xenophobes but rather, say, a tripling of population—would touch on public order interests. For the time being, unfortunately, the world's economic imbalances do create such pressure. Controls on movement must contain it. But such controls should be tolerated grudgingly. They should be permissible only while the imbalances exist, and lifted in any context where such an unmanageable flow would not result. To invert today's logic, we should need good reasons to close a border to people, not good reasons to open it.

The end result should not only be an absence of controls on movement. It should also include the full disappearance of distinctions of status based on ties to national territories. The radical nature of this conclusion comes through if we contrast it with today's paradigms of mobility as capital or mobility as citizenship. Both keep the political honeycomb by default, because of the presumed

primacy of the political sphere over society. They merely grant concessions for some people and places and purposes. To do away with the honeycomb itself goes much further. It avoids the risk of freezing lines of exclusion around class or region, which is where mobility as capital or mobility as citizenship might end up. It would eventually mean extending full national treatment to all human beings as such. In what stages those distinctions of national status fade away would remain to be seen. One could structure the process as an issue-by-issue lifting of discrimination, applying to everyone simultaneously. Or one could structure it as a package by which a growing number of individuals could acquire global cosmopolite status. At a critical mass, such status might then automatically extend to all of humanity.

At both macro and micro levels, the trajectory of freer movement should aim unapologetically at creating a constituency for irreversibility. Already, the number of cross-border migrants is rising fast at around 3% of humanity. When it passes 10% or so, especially as part of a multi-decade initiative, the global conversation about openness would be permanently transformed.

That social base's breadth and depth both matter. Today's migrant populations cluster in a couple of dozen destination countries. To overcome 'not an immigrant country' sensibilities, future migration will need spreading more evenly across the world. Claims of justice need enforcing globally rather than just regionally. A greater diversity of destinations would also counter the backlash against the skewness that has most of the world learning English as its first foreign language and a huge number of migrants gravitating to the Anglosphere by default. The depth of diversification matters, too. Within countries, free movement has often built national cohesion through the 'minoration' of regional ethnic populations, as an influx of compatriots from other regions reduces them to a minority. Perhaps minoration of all nations is the very long-term global future, along with a greater 'geography of mixedness' through intermarriage. Perhaps the demographic trend leads to what the Mexican thinker José Vasconcelos a century ago saw foreshadowed in Latin America as 'the cosmic race', with all the world's diversity flowing into it.[27]

But it may well stop far short of such mixing. Full mobility could generate, for most territories, something more like a fifth of inhabitants as recent migrants from elsewhere, another fifth having some partial ancestry elsewhere, and a solid majority with local roots maintaining an enduring ethnic character over time. Such diversification would still create irreversible constituencies for global integration. It would also contribute to the preservation of liberty. As Acton noted in the nineteenth century, diverse multinational empires have often been among the most free, precisely because they avoid too tight an overlap of identity and power.[28] Mobility and diversification thus offer much more than treating decently the minority of people who choose to live transnational lives. They are also pillars of metaconstitutional structure in the long run. After all, power today is most commonly (mis)used through

a swollen political sphere that pretends to justify itself on behalf of a neatly defined demos.

The logic of openness outlined here also favours a certain approach to micro-level freer movement. Alongside macro level free movement zones and broad loosening of restrictions for everyone, for a long transitional period we could also see individuals gradually enjoying more rights of access to particular territories. That access could rest on specific facts and qualifications, as visas, residence permits, and citizenship do now. But unlike now, the rules would become more generous over time as part of an overall trajectory. If border controls are fundamentally illegitimate and destined to fade away, then each individual's right of access to a given territory should be understood not as having acquired a particular privilege, so much as having had one fragment of illegitimate restrictions on movement lifted.

Qualifying to have migration controls lifted for individuals with respect to particular territories, based on social facts, would have loose analogies to today's growing tolerance for multiple nationality. Most countries nowadays treat multiple nationality as a non-issue.[29] This acceptance correlates with the shift away from allegiance and protection, and towards the right of abode, as the perceived core of citizenship. Even if one supposedly cannot serve two political masters at the same time, the right of abode based on adequate ties to a society—or to more than one society—need not be zero-sum. As part of the trajectory of opening, then, we could go further in imagining the right of abode on a given territory as distinct from political membership. It would arise from the qualifications that a person might hold in multiple societies at once. No longer would the default assumption be a right of abode only in one's country of political citizenship, with any right elsewhere as a privilege reluctantly conceded. Furthermore, I use the term right of abode deliberately, in the sense of its original meaning under British immigration law. As a complete exemption from immigration control, it would mark full social membership. Unlike today's permanent residence status, which can be revoked in nearly all countries, the right of abode would make the person in question undeportable. Such a right of abode would look something like Carens's social membership. Given the trajectory of opening, however, it would be merely a waystation to abolishing restrictions on worldwide free movement for everyone.

In moving towards a common global framework for the acquisition of such a right of abode—or, as noted, more accurately the restoration of a fragment of free movement—we might envision some key principles. Recognition of such a right should be (1) nonbinary, (2) nondiscretionary, (3) based on a threshold that becomes lower over time, (4) permanent, and (5) easily transmissible.

First, while right of abode means a complete removal of migration restrictions vis-à-vis a given territory, in practice it might simply be the furthermost point on a spectrum of opening. Allegiance within the political sphere has been, by its nature, a binary status that either exists or does not. In contrast, qualifying ties

to a given territory based on cross-border engagements in other spheres exist on a spectrum. If the right of abode corresponds to something like Carens's social membership, then other rights short of it still could be guaranteed under global standards. For example, a person might acquire an inviolable right to long-term visits based on family ties. Or one might enjoy a right of residence, without a right to work in a troubled labour market. Each would rest on particular ties in world society or prior contact with the territory in question.

Second, as part of a global trajectory of opening, the right of abode would also have to become a standardised status across countries. It would have common rules of acquisition beyond the discretion of each state. This removal of state discretion inheres in basing such a status on enkaptic ties in multiple spheres of world society, rather than on a contract of allegiance with one polity. It would remove any theoretical basis for treating the foreigner as a guest who has accepted terms of admission. The qualifications would rest on accumulated social facts, which would pass the threshold automatically. They would not require an oath of allegiance in the political sphere, as now. Lifting restrictions on access to a territory should not demand performances of civic rebirth on the part of the beneficiary.

Third, however the threshold for recognition of the right of abode is set initially, the trajectory of opening suggests that it should fall gradually over time. The growing density of interactions in world society, ever less deformed by the political honeycomb, combined with narrowing economic gaps, would remove reasons to make the right of abode difficult to acquire. Perhaps at the outset it could require ten years of residence on a territory, which the EU has set as the longest a member state can require before eligibility for naturalisation. As the world becomes more open, it could fall to something like five years of total presence, even broken up in shorter periods. It should be enough to show some substantial engagement with society within a country, and that one's presence is not part of an unmanageable influx.

Fourth, once acquired, the right of abode should also be irrevocable. Unlike today's residence permits, which expire on long absence from a country, the right of abode would function more like nationality. In shifting the burden of proof to restricting rather than permitting migration, there would be no reason to remove rights of access from people merely because they are not being actively used for a time.

Fifth, the right of abode should be easily transmissible to other individuals with whom one has ties that would make it relevant. Most obviously, such transmissibility would remove many of the ways border controls impede family life. Easier transmissibility to spouses, children, and parents would multiply the accumulation of multiple rights of abode, as part of a long-term global opening. Generosity in the right of abode by descent, for example, differs from today's nationality policy in many countries. Citizenship is often hard to transmit to children born abroad without enough ties to the 'home' country. The rationale

holds that, states being permanent, citizenship requires close ties and should not be accumulated at a distance over the generations, as a mere potential right to live in a country.[30] In the alternative vision, however, we have every reason to be generous and overinclusive with the right of abode. In the long run, after all, if border controls are destined to disappear, then everyone in effect will enjoy right of abode everywhere at once.

If a common global space means breaking down nationality-based discrimination and restrictions on movement, then what would remain of nation-states? I shall consider questions of political structure more fully later in the book. But we can expect that during a long transitional period of removing border controls, national units would retain some functions of decision-making and representation. Eventually, a reallocation of such authority to more appropriate scales—upward or downward—may well end up making a national-level intersection of demos and decision-making meaningless. Here, I do part company with many liberal theorists who want more open borders but assume that democratic nation-states are going to persist long term. Such writers work within a social membership logic, more or less. They would merely shift from political citizenship to domicile or jus nexi—a residence-based tie—as the basis of participation rights, in a kind of global federal system. They would take the vote away from émigrés, for example, and give it to foreign residents.[31] In contrast, my argument entertains a more radical break with political territoriality in the long run.

Until that happens, however, what might this broader framework imply for the scope of residual citizenship rights? For one thing, setting free the circuits of interaction in world society, and affirming sphere sovereignty, would curtail the scope of such citizenship-based participation rights to narrowly political matters. The policy issues on which citizens of a territory would vote might look much more like a nineteenth-century night watchman state than like today's national housekeeping. Moreover, as a residual embodiment of the political honeycomb, such units would also have to be bound more rigorously to their own territoriality. Extraterritorial jurisdiction would vanish. Any cross-border coordination on matters of public order could only occur properly through globally accountable political mechanisms matched to the scale of jurisdiction.

Places and Belonging Without Walls

By this point in my argument, defenders of the political honeycomb no doubt will be wincing. Probably the greatest misgiving will centre on likely effects from a common global space of free movement and diversity, coupled with weakening the function of national governments. Would this not leave a vacuum of membership and authority? This misgiving would resonate not only with civic republicans and communitarians but also with many traditionalists. Why bother setting free the circuits of world society, and invoking prepolitical goods, if we end up in practice with only deracinated individuals? The remainder of this book

will cover ways of filling that supposed vacuum, especially in the areas of economic life, civil society, and legal institutions. But since much of this chapter and the last one has indicted the very principle of territoriality, I first want to address whether any room could remain for organising social life on a territorial basis, even if not in the mode of today's political honeycomb. In short, could territoriality be compatible with sphere pluralism as long as it does not unduly swell the political sphere?

I admit, at the outset, that greater mobility would weaken national cohesion within countries. Such is happening today, on a smaller scale. In an open global space, equal treatment would no longer require assimilation to national membership. Inevitably, ethnic identity among migrants and their descendants would remain networked globally rather than linked to the territory on which they find themselves. Many defenders of the nation-state fear such a shift and think it unworkable. Communitarians like Walzer insist that most groups want a strong territorial basis for their identity. In that view, making identity merely personal and portable would be unsatisfying. Even some liberals concede that 'cultural defence' by shrinking majorities can sometimes be a reasonable response to 'demographic anxiety'. There is more than a grain of truth in the allegation that today's liberal cosmopolitans often ignore these concerns, because they disdain placebound folk as a foil to their own enlightenment.[32] The other side of weakening national identity is often, admittedly, a shift of power and prestige upward to the rootless. A deracinated world of that sort—which, it bears noting, the liberal new class is already bringing about in its own way—would lack many rich, place-based spaces of distinctness, membership, and participation. While other kinds of networks and institutional spaces for dense commitments could fill much of the gap, we probably cannot abandon the territorial principle altogether without losing something.

Such critics overlook, however, the prospect that other units of strong territorial identity could prove more effective than today's sovereign nation-state. A common global space surely could accommodate smaller, denser territorial identities as long as they affect only the functions appropriate to them. The usual arguments for decentralisation apply here. Leopold Kohr, for example, called for 'the breakdown of nations' into small historic regions like Burgundy and Bohemia. They could have more accountability within and more mobility among them. We also find in multiple traditions of political thought an appreciation of local pluralism. Daoism has long favoured, in opposition to Confucian grandeur, small and self-reliant agrarian settlements. Alexis de Tocqueville saw the village or township as one of the best buffers on modern centralisation. Some of the most successful and enduring democracies, like Switzerland, have enshrined local and district-level participation. And peasants the world over—one of the strongest social bases of tradition and liberty, and the largest single bloc utterly at odds with the new class—would much prefer to keep powers at the local level. As historian Eric Wolf observed,

> [t]he peasant utopia is the free village, untrammelled by tax collectors, labour recruiters, large landowners, officials. Ruled over, but never ruling, they also lack acquaintance with the operation of the state as a complex machinery, experiencing it only as a 'cold monster'.[33]

Sphere sovereignty thinkers have mixed views of such local autonomy. Kuyper listed municipalities among the sovereign spheres, though Dooyeweerd criticised him for separating them from the state as such, when they were merely subdivisions of the political sphere.[34] To realise the potential of localities not only as a buffer for liberty but also as spaces for participation and diversity, I suspect that we should have to deal in quite small units. Small size eventually changes the dynamics so much that a qualitative shift happens rather than just decentralising within the political sphere. We can look to the locality as the one main arena, after the fading of the political honeycomb, for a healthier territoriality to come into its own.

Localism can give some sorts of diversity their best refuge. The local scale has key advantages over the national, or even the provincial. It accommodates the principles of self-determination and associational life that defenders of national sovereignty often invoke. Yet it defangs them by applying them in small units. Both in principle and out of prudence, intensifying local autonomy is a desirable price to pay for breaking down larger barriers and creating an open global space. Localism is more defensive, and less aggressive, than national sovereignty. We would do well not to disdain a desire for place-based identity as mere majoritarian xenophobia on the part of countries powerful enough to get away with it. For the sake of consistency, we should insist that countries as innocuously small and distinct as Bhutan and Botswana open their borders, too. Allowing strong localism strikes a balance between giving place-based identities freer rein and limiting harmful spillover effects. That scale would be more flexible and would better reflect fine-grained social realities on the ground. It refrains from imposing itself on large numbers of the unwilling, as national-scale majoritarianism does. It reduces the stakes. Those who want to enjoy, or avoid, a given local atmosphere have to go a shorter distance. Localism can also be tied to robust mechanisms of participation. Classic republican virtues can have freer play in small communities than at any time since the ancient city-states.

Localism can also mesh well with so-called 'lifestyle migration' or 'enclave-seeking'.[35] Free movement combined with local control over policies affecting the character of a place would preserve, or even intensify, fine-grained cultural diversity. The scale of identities might shift on both the sending and the receiving ends of individual migration. People might identify strongly with a locality whose character they have chosen, or with a locality of origin, more than with the country surrounding either. Such could mark a return to the old-style 'campanalismo' (loyalty of those living within earshot of the church belltower) or 'patria chica' (small homeland) allegiances of an earlier generation of Italian and

Mexican émigrés, respectively, who moved abroad before their home countries had eroded village identity in favour of flatter nationalism.[36]

Still, localism may sound like a convenient political abstraction. What is its content? The idea of landscape can guide us. Writers on landscape note the many physical and social features involved. Landscapes are shaped by attitudes, ideologies, and experiences. In W G Hoskins's masterful history of rural England, he notes the layers accumulated over time. Grand vistas may be natural, but 'simpler and smaller landscapes' are shaped gradually by local people into all their 'historic depth and physical variety'. In the same vein, D W Meinig lists ten different lenses through which we might view any given landscape: as nature without people, as a habitat domesticated by human stewards, as an artefact conquered and transformed, as a scientific system, as a venue for problems of unsustainability, as potential wealth, as imprinted by ideology, as history with its layers of settlement and use, as a place with a unique texture for the senses, and as an aesthetic spectacle.[37] For our purposes here, I shall assume that the meaning of localism, as institutionally protected, is likely to centre on habitat, history, and place. This is where the territoriality principle best fits and where the human dimension matters most.

Local control still needs unpacking, of course. Who are the locals and how much control should they have? How do demos and mobility relate? It bears stressing that such local citizenship raises quite different issues from the residual national citizenship that I suggested would persist during a long transitional period, as borders open and the political honeycomb fades. Unlike such national units, localism would be a permanent feature of the metaconstitutional settlement.

Put another way, once we get full mobility, who would make up the local demos? It helps here to distinguish, as Phillip Cole does at the national level, between 'territorial boundaries' and 'civic boundaries'. The former involve the space itself, including a right of access to it when restrictions exist. The latter involve membership rights, such as a voice in shaping political life. In arguing for open national borders, Cole suggests that one can give territorial access more readily than civic membership, as a way of reassuring insiders that an influx by itself will not immediately change everything.[38] To reconcile free movement with dense, place-based character will mean making much of this distinction. The demos cannot simply be all residents of a locality, no matter how new and unfamiliar. This distinction runs counter to many well-intentioned liberal efforts to open up local participation to foreigners. Some countries in Europe—and a handful of municipalities in America—allow foreign residents to vote in local elections even if they lack the citizenship necessary to vote nationally. They do so on the basis that the local demos should be more open, based only on residence.[39] My argument here inverts the logic. The world could have much more openness on a large scale, including eventually abolishing nationality. The price of such openness would be restricting civic membership locally, to let local character flourish.

How, then, might membership in a local demos be determined? Given the weight of localism, rules on membership should be standardised globally. Within those standards, local variation could reflect the nature of different localities. A very high-turnover and cosmopolitan town around a university would probably have different needs than an isolated rural settlement with a very stable and distinct population. What I outline here can be seen as representing the latter, more 'closed', end of the spectrum, with 'stickier' standards of membership. More diverse and open localities might opt to give all residents full participation rights from day one.

As a guiding principle, I assume that place-based character needs the local demos to have some inertia in composition. Someone will more likely appreciate that character and make judgements responsibly within it, if he or she has long-standing ties to a place. Those ties could be evaluated within the logic of social membership, with due regard to how they might appear in different spheres of engagement. To avoid local discrimination that would undermine mobility rights, the thresholds should probably be objective rather than at local political discretion. For example, having long duration of residence in a community, particularly in one's formative years, owning property there, being engaged in community organisations, and the like, could all indicate meaningful roots. These qualifications fall on a spectrum. Converting them into voting weight thus may require abandoning the binary principle of having either one vote or no vote. Fractional voting, for example, would allow people who have resided only a short time, or who visit a community regularly and own property but do not live there, a partial say. Doing so would encourage civic engagement while ensuring that long-term and highly committed residents retain predominant influence. Having spent one's formative years in a community, such that one continues identifying with it, could also justify having a lifelong fractional vote there. Mobility means many people could end up with a partial say in more than one place. Someone might vote in a community of origin, in a community of ongoing residence, and in a community with a second home, all at the same time. To preserve the principle of political equality, however, such a person's participation, across all such places, could be capped at one vote in total.

However we might define who the locals are, we also must consider what powers localities might wield. How much 'margin of appreciation' can they enjoy, to influence place-based character without generating other ill effects?[40] A host of potential challenges lurk here. Which local sensibilities should be indulged? How far can local majoritarianism be trusted? How can localism avoid dysfunctional control by the inbred, backscratching demagogues of place? What kinds of individual expression contrary to prevailing local character can be accommodated? The arrangements would need fleshing out over time, with vigorous public debate and the accumulation of jurisprudence. Here I want only to suggest the likely contours of such a local margin of appreciation and the reasoning behind them, in light of an overall framework of sphere pluralism.

One essential principle is what I shall term the 'community visage'. I adapt this from the Québécois concept of 'visage lingüistique', referring to the linguistic face of society in Quebec, as shaped by tight language policies to ensure the visibility of French in public space.[41] Given the narrow scope of local experience, it is the place-based texture and use of public resources and rules to sustain that texture that matter most. Much of this can be captured in terms of the community visage of the landscape and the social life manifest on it.

Due respect for the community visage has built in limits. It is a 'what', not a 'who'. It would work at cross purposes with a broader vision of cosmopolitan sphere pluralism, if local control merely allowed a retreat into the 'petty fortresses' that Walzer fears. Restrictions should not undermine free movement or engagements in other spheres. While it might be tempting to fall back on local restrictions, out of apprehension about what an open global space means, local policies should never prevent certain types of people from entering or taking up residence. Nor should any rules apply differently based on who someone is or whence they originated. The essence of the principle of territoriality is the character of a place and how it operates. It is not who the occupants are, so long as they abide by local practices. The community visage deals in public space and public resources. It would encroach on other spheres of social life if local policy directly impinged, beyond its competence, on private space.

To protect the sanctity of private space and the freedom of anyone to take up residence, ownership or lease of property should be broadly unrestricted. Such restrictions have an inauspicious history, whether in citizenship-based restrictions on ownership, or segregation-era racial covenants restricting who could purchase specific properties.[42] They have rarely done anything positive for local texture. At the same time, measures can ensure that the property market operates consistently with its nature for personal and business use. Large conglomerates with ethnonational agendas should be prevented from buying up critical masses of property. Such activities have a similarly inauspicious history, as with German buying of Polish land in Prussia in the nineteenth century, or Jewish National Fund buying of Palestinian land in the twentieth.[43] Property ownership should not become an indirect mechanism for exclusion from a locality, or for remaking policy in ways that cannot prevail through proper avenues of participation.

If a locality cannot exclude people based on who they are, what remains within the margin of appreciation? The community visage could surely include the built environment, such as architecture and planning policy. Presumably, given the historic character of a place, it could go so far as to ban minarets, though not the use of indoor private space as a mosque, which would fall within the sphere of religion. It also could regulate publicly visible business goods and services, though not direct transactions going into private space. A community filled with devout Muslims thus legitimately could ban shops selling alcohol in the windows. It could not prevent packaged delivery of alcohol to a private

residence for consumption behind closed doors. Regulation on behalf of the community visage should not extend to encroachment on private spaces, which would amount to a taking of property or at least the right to live in it according to one's own lights.

Restrictions on personal behaviour in public space are a knottier issue. Many hard cases would need working through in ways that space will not permit here. As a rough guide, however, one could weigh (1) the impact on the community visage as compared to the imposition on individuals' reasonable modes of self-expression and standards of dignity, especially when they involve activity in diverse spheres of life; (2) the relative burden on the majority of residents who are making the decision, versus minority residents and sojourners; and (3) whether restrictive measures are likely, in both intent and impact, to undermine sphere pluralism and the principle of a common global space open to all.

If a given way of behaving is merely a momentary form of deference to prevailing sensibilities, and does not burden someone in the private sphere or when crossing through communities, then the margin of appreciation should probably be generous. It is more reasonable to require that someone wear a shirt when spending an afternoon walking around a village, than it would be to say that every resident man must grow a beard, or that every woman driving through for a minute by car must don a scarf. It would also be more reasonable to insist that all commercial signage include a given language, than that no other language be spoken in the street. Acceptable restrictions have to be of a sort that anyone, regardless of their own identity and commitments, would be capable of abiding by given a modicum of goodwill. Unacceptable restrictions would ooze animus and have the effect of making a given locality practically inaccessible to much of the world's population.

I acknowledge that many liberals would bridle at allowing even these assertions of local character. But the rules would probably be much less restrictive in most times and places. After all, growing diversity and exposure to the world tend to shift a lot of such commitments into the realms of self-expression and social pressure rather than binding rules. Moreover, even if such local character may seem mildly suffocating to some, it would still be only local. Easy ways out would abound in close proximity. Such local tightening—or at least the room for it—is, I would argue, a price worth paying as a necessary counterweight to the much more important opening of global space and defanging of national majoritarianism.

These reflections on what strong localism might mean are merely exploratory, of course. To flesh them out further would require not merely more debate in theory, but also experience trying to apply them in practice, amid the vigorous give-and-take of a diversifying world. As much is also true of any other aspect of how today's political honeycomb might gradually break down. This chapter and the last one have aimed only to lay out reasons why, as part of a sphere pluralist

metaconstitutional settlement, the centre of gravity must shift from the territorial state to the realm of world society and prepolitical goods. The common global space opens up more questions than answers, of course. The remaining chapters of the book will explore how that global space could then be filled with other metaconstitutional pillars of liberty and commitment.

4 The Economic Constitution

An open global space cannot be just about ideals and ways of life in the abstract. As in any other context, past or present, it inevitably has material needs and interests interacting in hard-headed ways. Indeed, today's uneven landscape of openness comes largely from interests that prefer, variously, to free or to hinder the flow of commerce across borders. The political honeycomb is intertwined with the hotchpotch of inequality, rent-seeking, and protectionism that prevails in the economic sphere. Any global metaconstitutional settlement would have to take into account the world's economic constitution, by which I mean the principles deeply entrenched in the organisation of economic life. In this chapter, therefore, I want to lay out an approach to the economic constitution that would be compatible with virtue-centred sphere pluralism and an open global space. The arrangements that I propose would reconcile cosmopolitan mobility and a rollback of state power, on the one hand, with avoiding the solvent effects of a purely economic libertarianism that might starve society of needed resources, on the other.

Admittedly, this sort of argument on principle may strike some readers as far removed from the shifting realities of economic life. On a global scale and over the long term, we can expect vast changes. New technologies will emerge, and productivity will rise. Many scarcities will fade away, even as the pressures of sustainability bring other limits. Such shifts may seem better addressed by policymakers in the moment, rather than by locking in frameworks at the outset. Nevertheless, whenever we adapt, we do so best with an eye to lasting principles and structures. In a future global space, giving policymakers too much discretion could prove the bane of both liberty and virtue.

I approach the economic constitution here in the spirit not of designing policy, but rather of offering a bird's-eye view. From the starting point of virtue-centred sphere pluralism, the economic constitution should aim at two goals. It should constrain the world state to ensure liberty within the other spheres, and it should build more thoughtful agency and social conscience into how resources flow through them. First, I consider how we might imagine a unified and free market as part of the common global space. Then I turn to health and education as examples of spheres at the edges of the market. Next, I map out how to strengthen civil society by reserving a chunk of resources for a robustly independent nonprofit

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sector. The last part of the chapter outlines how we might deal with taxation, regulation, money, and other more public areas of the economic constitution.

Markets, Pluralism, and Conscience

An open global order includes a single global market. Trade and investment flows have already generated, albeit unevenly, a 'denationalised space'.[1] Despite the thrashing around of politicians who promise short-term protectionist measures, economic integration continues beneath the surface in most of the world most of the time. Mainstream economists peering into the future take for granted that barriers to the global market should and will fall further in the long run. Indeed, an economically integrated global space is foreshadowed in new-class thinking by the large 'single markets' of the EU and America. Those common spaces were created largely via state initiative, not only by lifting protectionist barriers but also by harmonising regulations.[2]

A global single market surely would raise efficiency. From the perspective of this book, it would align with breaking down territoriality and letting the circuits of life find their natural scales. The market naturally extends beyond countries. The sphere pluralist logic would recommend a breakthrough unlike the EU model, however. During the end of the Brexit negotiations in 2019, the EU's chief negotiator, Michel Barnier, resisted compromise on access because the EU was 'a complete ecosystem, with common rights, common norms, common standards, common rules, a common legal system'.[3] That sort of single market weighs down businesses, workers, and consumers with regulatory standardisation. It has tilted power towards bureaucracies staffed by the new class. Commanding just one internally 'open' space on the global landscape, it has often erected protectionist barriers to the outside. The same model on a global scale would risk losing the 'democratic experimentalism' that comes in diverse political units today.[4] It is unsurprising, for example, that the Chinese government now sees setting global technical standards as a way to reassert state power over the private sector and to advance its own geopolitical influence, with politics trumping the free play of economic initiative and innovation.[5]

To keep dynamism, therefore, a global single market somehow must replicate the laboratory effect of the political honeycomb, minus its territoriality. It must lean libertarian, so to speak. Market choice should do most of the shaping of product standards, terms of employment, and the like. Such deterritorialised flexibility would also free businesses and capital markets to innovate on ethical fronts compatible with virtue, such as with Islamic banking that avoids charging interest.

In saying that the global single market should lean libertarian, however, I want to borrow from some parts of libertarian thinking more than others. Libertarian economists like Friedrich A Hayek rightly note the genius of the market in generating a 'spontaneous order'. Within a few simple rules, millions

of individuals pursue their aims based on dispersed information. Amazing efficiencies and innovations can result.[6] The libertarian writers Arthur Seldon and James M Buchanan also stress the value of economic freedom specifically. They argue that the average person feels freedom far more tangibly in the market than in distant political participation. Private property, for example, offers a secure space of independence amid the vagaries of a complex modern society. In this spirit, libertarians condemn democratic states' erosion of property rights. 'The tyranny of the majority is no less real than any other.' Voting majorities and the politicians seducing them invoke ideas of the common good to take property away or to cripple much of its potential use through regulation.[7]

Dating back to the early nineteenth-century writer Frédéric Bastiat, libertarians also see any state that goes beyond protecting life, liberty, and property, into regulating and redistributing, as committing 'legalised plunder'. In Hayek's view, modern states' mobilising of consent from a largely propertyless majority of voters leads to 'a tug-of-war for shares in the income pie'. Anthony de Jasay predicted that such top-down 'churning' of gains and losses could lead to a 'plantation state'. Political and economic power would merge. The state would secure livelihoods and dole out rewards based on status rather than free bargaining among individuals.[8] It bears noting that libertarian critics generally do not blame this trajectory on ill intent. Rather, the planner's mentality converges with the idealistic reformer's urge to wipe out small injustices in society. In Hayek's 1944 phrase, we hasten down a 'road to serfdom'. Misfortune and mess cry out for remedy, whatever the cost to liberty. Jouvenel lamented that in modern political discourse, 'the idea of result holds the entire field.'[9]

Apart from its moral and political downsides, that impulse to redistribute also gives rise to inefficiencies like rent-seeking. Huge resources are wasted on political battles over whom to favour. Politicians act out of an interest in re-election, so they willingly sacrifice diffuse parts of the common good to distribute favours to the well-connected or noisy. Economists of a libertarian bent see much of global economic life as distorted by the 'global industry of states' in a 'world system of state capitalism', with their jockeying for position and jealous control over resources and rulemaking. Politicians also tend to take advantage of crises to grab further power, as with the 'resurgence of statism' after the 2008 financial bailouts. They make economically destructive choices based on conceits about picking winners and catching up with other countries. In practice, these critics argue, such state heavy-handedness leads to worse outcomes. Rather than levelling the playing field, it doles out largesse to established interests.[10]

All the above libertarian arguments against state overreach are compelling on their own terms. Still, many critics on the left fear that weakening the state would make things worse. In their rival account, economic individualism is not the hero; it is the villain. Letting the market loose would erode social obligation. They hold up economic globalisation as a case in point. The freeing of cross-border trade and investment has tipped the balance of power toward

business and away from ordinary people. Even the democratic accountability that is supposed to exist within each unit of the political honeycomb is often fettered, in quasi-constitutional fashion, by the oversight of technocratic bodies like the WTO. Rising immigration also tends to weaken welfare state solidarity, throwing hapless individuals on their own resources. Citizenship, as a marker of rights and obligations, gets emptied out. The market, with its raw self-interest and blithe acceptance of rising inequality, fills ever more space.[11] This leftist critique of the tools of economic freedom goes back centuries, into a broader misgiving about property. Historians have traced the disencumbering of property once traditional society unravelled. The rich and powerful cast off the old fetters on profit-seeking. In that version of the story, modern understandings of property, contract, and debt—of the sort so celebrated in the Anglosphere—have worked less to secure choice and dignity, and more as weapons against the poor.[12]

While libertarian thought rightly urges us to be wary of the state, it has blind spots for market excess and the goods of society beyond both state and market. Most libertarian writers reduce the battle to one axis of state versus market, with liberty residing wholly in the latter. Hayek, for example, nods in passing to other spontaneous orders that could arise beyond the market, but the market is his example par excellence. It is 'the only comprehensive order extending over the whole field of human society'. He praises dispersed initiative in general, but in practice pegs it only on homo economicus.[13] At least in the modern political context, libertarians have far more interest in reining in redistributive majorities than in enlivening society. Theirs is a thin sort of liberty, fundamentally within the atomist paradigm of liberal modernity. That version of human flourishing is starkly different from virtue-centred sphere pluralism, in which the individual does not merely bargain in a market, but also sits amid a full range of ethical commitments in different spheres, each with its own standards of justice and need for resources.

Just as libertarians have a blind spot for market excess, so do leftist critics of globalisation have a blind spot for the shortcomings of the political honeycomb. Their solution lies not in genuine pluralism but in reasserting the dominance of the political sphere over the economic. Unsettled by rampant capital, they fall back on the familiar toolkit of national policy. Leftist democratic reassertion would let capital controls, tight regulation, and other mutilations of liberty fall on the wealthy without regret. Such a reassertion would bring collateral damage in practice, however, including for ordinary people who have fewer ways to escape the walls of the nation-state. It would also make a mess of principle. In reaffirming the political honeycomb, it would set back prospects of a genuine global opening. And its recapture of the market would hardly empower the demos. It would hand the levers of regulation to the new class, in either its more grimly technocratic or its more self-righteously loquacious versions. Such leftist models offer no useful inspiration for a global economic constitution. If we

want to fend off both the demagogic and the mercenary, then we probably need to look beyond a simple tug of war between state and market.

Only a sphere pluralist approach can fill the gap. Its robust limits on political authority would be accompanied by due regard for the proper distribution of resources across spheres outside the market. The founding of a world order offers a unique moment for locking in rules of the game. On the one hand, it can mark off spheres that relentless profit-making must not colonise. On the other hand, it can fend off the risk that the social pressures of inequality, the power of universal suffrage, and the siren song of political entrepreneurs would join to unleash all manner of statist heavy-handedness on a global scale.

In contemplating such an economic constitution, our first port of call should be traditional views on the social context of wealth. In the economic anthropology of relatively simple societies, the idea of 'spheres of exchange' recurs. Such communities might have a clear boundary between subsistence goods, on the one hand, and assorted prestige goods that are exchanged amid social jockeying for status and power, on the other. The distinction prevents converting back and forth. Easy conversion would let those who monopolise wealth gain control over others' subsistence. They could then unleash a cycle of appropriation and further concentration of power. Such spheres of exchange are a strong guarantee of relative equality in acephalous, stateless societies. Once colonialism and globalisation pull such societies into the cash economy, everything becomes convertible and inequalities widen.[14]

Economic anthropologists who write about spheres of exchange tend to do so in the context of relatively equal tribal societies. They also imply a straightforward moral contrast between socially laden egalitarianism and rising modern inequality once material accumulation takes over. But in more complex and unequal societies before modernity, there was also plenty of thought about the moral dimensions of how wealth should be used. Ancient and mediaeval Christian thought saw wealth as flowing from fruitful labour, for example. Work manifested virtue, just as good stewardship required a spirit of abundance and generosity. As one historian of ideas has argued, this theme of abundance was displaced in modern times. Even as modernity brought more real abundance, ideas of scarcity ironically came to the fore. Economists revolutionised understanding of marginal utility. Capitalists also turned exclusive control over wealth into a new instrument of power. Today, the old spirit of abundance lingers only in corners like Catholic social teaching. Reformers in this vein stress a duty to use wealth ethically, and to balance moneymaking against the needs of workers, for example.[15] These arguments have had little impact on most modern conservatives' prioritising of market freedom from state control, however. Many Christian conservatives see the state as the greater enemy of virtue, and 'excessive negativity towards markets' as leading into state overreach. They prefer talking about the moral failings of materialism rather than institutions, and insist that charity is a personal rather than a collective duty. Likewise, the burgeoning

'Islamic subeconomy' of interest-free banking has not reshaped society so far. It labels itself as distinct from the mainstream economy by devising technical ways to comply with Islamic law.[16]

While religious traditions rightly stress the ethical context of moneymaking, they have thus proved stronger on conscience than on policy. And in some ways, that may be for the best, given the rigidities of a planner's approach to the economy. These lines of thinking have generated proposals for more dispersed attempts at acting ethically in economic life, however, such as by founding enterprises with a social conscience. The so-called 'economy of mutuality' or 'civil economy' would see a new type of business, which would make a profit while building reciprocity and ethics into its mission. This idea cropped up, among other sources, in Pope Benedict XVI's 2009 encyclical, *Caritas et veritate*, and in a 2010 book by Nobel Prize winner Muḥammad Yunus, the founder of the Grameen Bank for microfinance.[17] In *A Path of Our Own*, I also outlined an 'economy of values' involving rural cooperatives in the Global South, which would build on peasant values rather than presuming their disappearance with modernisation. I coined the term 'the virtuous millionaire' to suggest an analogy to how one could have economic liberty and social conscience mixed together in such enterprises. The virtuous millionaire—or, more commonly, any medium or large enterprise or investment fund—would act independently and profitably rather than as part of a state plan, while still building an ethical dimension into decision-making.[18] In shaping the market economy, safety nets, and civil society, any framework should leave room for this kind of dispersed dynamism. The alternative to today's tug of war between hucksterdom and the leviathan lies in expanding such spaces for the virtuous exercise of economic agency.

Sphere pluralism, informed by the traditions, will offer more useful tools here than either the libertarian or the leftist approaches. It acknowledges the social question, for which modern libertarians have a blind spot. While, as a matter of political history, men like Kuyper and Jouvenel stood against leftist revolution, they also took seriously the dislocations caused by capitalism. Kuyper supported organic, guild-like mechanisms for workers to defend their interests, even as he felt it improper for the state to interfere in the economy any more than in the family, church, or university. And Jouvenel lamented the real suffering that irresponsible capitalism inflicted on factory workers. For two reasons, such traditionalists have been well placed to see the modern capitalist economy's dark side. They have an image of human dignity from the past against which to measure it; and they are not wedded socially to its bourgeois beneficiaries. At the same time, vis-à-vis the left, traditionalists have a more textured view of society. Jouvenel, for example, rightly noted that liberty's most vocal defenders are those who enjoy independent bases of social authority. Yet such figures are also prime targets of the leftist social reformer. The latter yearns to flatten all troublesome sources of status other than common citizenship or the rewards doled out by a rationalised public authority.[19]

When it comes to the economic constitution, we should steer clear of both Scylla and Charybdis. Any approach that takes lightly either the social question or the temptations of political overreach should be a non-starter. A solution must hinge on boundaries among the spheres and respect for their distinct natures. Several chapters ago, I noted some similarities between Kuyper's and Dooyeweerd's sphere sovereignty, on the one hand, and Walzer's spheres of justice, on the other. Walzer called for 'complex equality'. Domination was to be avoided through the 'defence of boundaries' among spheres like politics, the market, education, healthcare, and so on. Such boundary-policing would mean 'blocked exchanges'. In particular, money should not buy advantages in the non-economic spheres. Few enthusiasts of Walzer even know about sphere sovereignty, and Walzer himself apparently was not influenced by it. Yet a handful of writers in the tradition of sphere sovereignty have pointed out ways in which Walzer's logic differs from that of Kuyper and Dooyeweerd. Walzer's spheres of justice are relativistic. The norms in each sphere have no foundation in human nature or theology. They emerge in each country amid its political debates about values, and thus vary across time and space. Given his own preoccupations about American society, Walzer also feared boundary-crossing by money far more than by political power. Indeed, he would give the state and its citizenry the final say in defining standards of justice and policing the boundaries among spheres.[20] To put it more bluntly, his version of complex equality has a strong whiff of the loquacious new class activist. Without foundations, universality, or proper suspicion of the state, Walzer's scheme offers little to inform a global economic constitution. One exception, to which we shall return, might be his call for blocking exchanges, namely making it harder to convert resources in one sphere into leverage in another. It has parallels with the 'spheres of exchange' in tribal societies, but with a vaster scale and political oversight rather than organic social pressure as the mechanism.

The framework for this chapter now comes into view. The economic contours of a global metaconstitutional settlement must assure the independence of the various institutions that enable society to function materially. It must also channel enough resources through them. It cannot just lift economic constraints on individuals, letting them do as they wish as long as they do not harm others; nor can it treat all common institutions as arising simply from the rights of atomised individuals, like a chain of market transactions or contracts for protection. Instead, it starts from the logic of virtue-centred sphere pluralism. Human flourishing requires that the spaces of fulfilment be given their autonomy and the resources to operate according to their various natures. Individual consent plays out in personal enkapsis among the institutions of the different spheres. It does not mean any one-dimensional assignment of rights through either political consent or economic bargaining, which would elevate one sphere to primacy over the others.

Safety Nets and Health Security

Social insurance offers a useful case for thinking through how to apply these principles. It has been a favourite battleground between the statist left and the neoliberal right. The former sees social insurance as a democracy's duty to vulnerable fellow citizens. The latter sees it as an excuse for vote-buying redistribution. If we peel away the modern debate, we find that most traditional communities had mechanisms to assure a subsistence to all members. As James C Scott described in his classic work *The Moral Economy of the Peasant*, villagers understood a safety net as based on reciprocity and generosity. Such virtuous practices could operate horizontally among the poor or vertically as a duty of landlords and local powerholders to those dependent on them. Amid severe poverty, the safety net aimed not to level all inequality so much as to soften risks. It also tended to work on a small and informal scale.[21]

Modernity has brought a surge in living standards. It has also meant the 'end of nature', in the sense that today we are far less likely to die of starvation or disease. The need for a safety net has not vanished, however. The modern 'risk society' merely has other forms of risk, often coming from the vagaries of a complex economy. Vast public commitments to social insurance have arisen in response. In the twentieth century, alongside older civil rights and political participation was added a welfare-oriented 'social citizenship', based on solidarity within a territory. Recent globalisation has thrown that model into doubt. Intense competition has impaired organised labour's ability to defend generous social insurance systems. Solidarity has also weakened with immigration and awareness of the even starker inequalities of the 'transnational social question'.[22] Still, the modern idea of social insurance managed by states retains a powerful appeal. It could be tempting to scale it up in a future global order.

Such a prospect would repel most conservatives and libertarians. After the 1960s in the West, they took the postwar welfare state to task for being economically wasteful, ethically ill-founded, morally deleterious, and practically unfit for a dynamic society. They argued that it had gone beyond reducing risk and had turned into 'addictive redistribution'. It curried favour politically and concentrated power. Indeed, it often made poverty worse by eroding personal responsibility and rewarding 'sponging on one's fellow citizens'. Many such critics want the welfare state scaled back drastically. They would shift risk management into the private sector. While some critics concede that working-class poverty a century ago might have required state support for a time, they say that much higher incomes now make private provision easier. Modern consumers also usually prefer choice rather than a bureaucratically administered system that dates back to another era. In their reckoning, the future would lie in private pension saving, private medical coverage, and the like.[23]

For anyone wary of centralising power, such an unbundling of social insurance has its appeals. The present lack of adequate coverage in the poor majority

of the world, and the lack of any mechanism for redistribution across countries, mean that this century could bring a rare opportunity to craft a better global model. In the logic of sphere pluralism, the state could still compensate for risks that are genuinely public in nature and scale: for example, huge natural disasters, epidemics, and the like. The need to smooth income and consumption over the life cycle, such as by providing for periods of unemployment and for retirement pensions, does not inherently correspond to the state's public power. It is more fittingly handled in the sphere of the market, especially as living standards around the world keep rising, even if some incentives and safeguards need building in for the average person. For these sorts of risk management, the conservative and libertarian vision is compelling.

Here, however, I want to look more closely at health security. The nature of risk management in this area lends itself to a model different from what either libertarians or leftists would propose. By health security, I broadly mean coverage of all risks relating to physical infirmities. It includes medical costs in the usual sense, as well as disability, long-term nursing care, and the like. Such risks are more individualised and personal than the sort of large-scale disasters that appropriately fall under the state's public power. While they have a life-cycle element and are actuarially predictable, they also have more uncertainty—and risk orders of magnitude greater—compared to the lifetime income smoothing that pension saving serves within the market. By its nature, health security falls somewhat outside the state–market dyad. It thus lends itself to a distinct approach inspired by sphere pluralism. The human condition includes vulnerability to physical infirmity, making health—as one thinker has put it, 'species-typical functioning'—a high priority regardless of a person's other values, commitments, or advantages.[24] In the language of sphere pluralism, we might say that health has some of the qualities of a distinct sphere. Whatever changes the future brings in treatments and costs, the distinct challenges of this sphere are unlikely to disappear entirely. I thus take health security as one case to show how social provision could work under global sphere pluralism. I deal only with the bare financing of healthcare, not its other two dimensions of delivery and regulation.[25]

One past model of a safety net outside the state–market dyad is mutualism. As far back as ancient Rome, groups of workers formed mutual benefit societies to cover burial expenses and other simple risks. The model matured and proliferated with the industrial revolution. The vigorous civil society of the Anglosphere met the Victorian night watchman state's unwillingness to address vulnerability in a dislocating urban economy. Mutualism in England took the form of so-called friendly societies. Millions of workers banded together, in groups of a few hundred or thousand, to pay dues for coverage against illness, disability, and burial expenses. Such bodies had a distinct ethos of self-reliance vis-à-vis both the state and the rich. Some had distinct types of members, based on a common trade or religion or the like. Mutualist bodies also appeared in the British settler

colonies and in America, and to a lesser extent on the Continent. They faded away in the twentieth century as states hampered them with tighter regulation and displaced them with more uniform coverage, either through national health or compulsory insurance systems. In hindsight, mutualism has become an object of nostalgia for those who seek a third way beyond state and market. It offered an attractive image of community, based on reciprocity and virtuous discipline, while letting the poor provide for themselves without relying on a swollen welfare bureaucracy. At the same time, leftist critics say the praise is overblown. Such traditional safety nets were patchy and inadequate, and rife with discrimination and other exercises of private power.[26]

As a model for a global safety net, mutualism at least shows that risk management can happen in a sphere shaped by distinct values, independently of state and market. A global scale would bring distinct challenges, however. Globalisation already comes into tension with national social insurance models. The social spending that has survived neoliberal cuts is still bound to territory in the political honeycomb. A few observers note the mismatch between the national scale and a globalised 'knowledge society' in which people move across borders.[27] The portability of social insurance benefits across countries has lagged. In a few cases of deep integration like the EU, migrants get ready access to healthcare when they move among member states. Some other benefits like contribution-based pensions are paid to retirees who settle abroad. Yet medical coverage has far more barriers when it comes to cross-border movement. Even people who enjoy relative freedom of movement based on nationality privilege still run into difficulty taking medical coverage with them. Private insurance for those who can afford it has more flexibility. Yet regulatory protections as far as pre-existing health conditions, age ratings, and the like do not bind insurers beyond their home countries. State-run medical coverage is even more notorious in its territorial limits. Some libertarians have observed that the welfare state tends to imprison its beneficiaries within a given country. Its placebound generosity can make freedom of movement meaningless in practice, when one cannot take one's safety net with one.*

The political honeycomb's blind spots for the portability of benefits come partly from the usual bureaucratic inertia. In a computerised global economy, mobile coverage could be easier as a technical matter. But more fundamentally, the logic of state-funded medical coverage, as with much of the postwar welfare state, rests on 'social citizenship' in a territory. Healthcare has come to be seen as a 'normatively nonexcludable public good', an entitlement owed to all within a given territory.[28] The other side of that coin is that an entitlement linked

* I explore the question of health coverage portability at length in my article, 'The Health Sphere Beyond Borders: Coverage Portability and Justice in a Global Space', *Bioethics* 35:1 (January 2021), pp. 79–89.

to territory weakens when one leaves it. Even the EU, while upholding free movement and nondiscrimination, has affirmed the territorial principle behind the welfare state. It has upheld national laws on compulsory membership for all residents and limits on the geography of coverage. EU courts, like much of the public, see territoriality as bound up with the solidarity to support risk-sharing and redistribution.[29] This assumption spills over into an unhealthy interaction between national social insurance systems and attitudes to immigrants, who are seen as gaming the system through 'welfare tourism'.[30]

Binding solidarity to territory also leads in alarming directions in some currents of political thought. Some theorists have suggested discouraging brain drain. They would force educated would-be émigrés to pay back their compatriots for their training, if they will no longer be yoked to them by redistributive taxation.[31] The doctrine of Republikflucht—'deserting the republic', which as we saw earlier is invoked by those who want to punish extraterritorial activism and the like—rears its head when it comes to the nonportability of benefits. Moreover, beyond portability, state control of health security inherently allows yet another mechanism for concentrating authority. For example, China's health charter in 2020 expanded entitlements to basic care, but also affirmed the party-state's supervision of the whole system, on the grounds that public health and national security were intertwined.[32]

Against this background, we see that cosmopolitan sphere pluralism suggests a need for health coverage unbound from territory, as well as independent of both state overreach and market callousness. Carving out this principle implies some differences from other approaches. First, it does not stop at mere decentralisation or choice. Many critics who lament the top-heavy character of the welfare state, including some liberals on the centre-left, have proposed farming out services to smaller units, or giving recipients more consumer choice about their coverage.[33] Such vague liberalism has no grounding in a multidimensional theory of virtuous agency, however. It still gets stuck on the single axis between state and market. Second, while sphere pluralism would chasten the state, it also retains a quasi-public or at least collective basis for the safety net. Here I differ from how key thinkers in the sphere sovereignty tradition tended to rule out tax-like funding of social benefits. Dooyeweerd himself, for example, saw a bright line between state and society, meaning the state's role in public justice did not extend to social provision of a redistributive sort.[34]

What is at stake here hinges on how we talk about concepts like the state versus the social or the common. I am proposing a metaconstitutional settlement to secure the relationship among the spheres. Under it, the future world state (as a political entity) would count as just one such sphere. In that narrow sense, the state is indeed best kept out of the sort of social provision that health security exemplifies. But health security, like other spheres, remains at least a matter of common concern and moral agency. The encompassing metaconstitutional settlement must ensure a flow of adequate resources through spheres other than

state and market. Since the state would lack the supremacy and competence to intervene in the spheres, their basic contours need locking in at the founding. Those contours would include structures to oversee the functions intrinsic to each sphere. Whatever changes occur in the long run within each sphere—on its own terms, and through its own mechanisms—its claim to a share of common resources also should be secured at the metaconstitutional level. Leftists think the old forms of mutualism and private charity had too many holes and too much arbitrariness about them. That is probably true, though how much was due to premodern poverty and how much in the nature of things is debatable. Be that as it may, the solution does not have to be giving the state control over the safety net, to add its own holes and twists of arbitrariness to it. Rather, a metaconstitutional settlement can ensure an adequate flow of resources and universal access to them, but outside the state in the narrow sense.

I am not going to overprescribe a model here. There is more than one way to mark off the spheres and their claims, after all. What I propose here merely illustrates how health security could work within a sphere pluralist framework.

A guaranteed flow of funding to the health security sphere could amount to 10% of gross world product (GWP), earmarked from a broad-based revenue source such as natural resource extraction or consumption taxes. OECD countries today spend around 10% of national income on health. That is sufficient in absolute terms to fund something like the core medical services of Britain's NHS or America's Medicaid. As a global average today, 10% of GWP, if evenly spent, would finance everywhere roughly the health service level of a country like Brazil or Russia. As global prosperity rises more evenly, that 10% would become more generous in real terms.

How would the global pot of money be used? Each person could receive (annually, perhaps) a fixed, equal number of points with which to buy a given plan, or combination of plans, to insure against health needs. While all plans would meet basic needs, the exact coverage profile could reflect individual priorities. Plans would compete on coverage profile and quality of service. They would not be permitted to engage in medical underwriting or restrict coverage geographically. Individuals could adjust their plan choices from time to time, with rules in place to prevent gaming the system or disrupting the actuarial sustainability of a given plan. This sort of long-term individual coverage has some features like German and Belgian private medical insurance today. Unlike those examples, however, the point allocation outside the market would have a more egalitarian flavour. In keeping with sphere pluralism, it would amount to a separate 'currency' for choosing how to meet health needs. It would thus do away with the perennial problems that German and Belgian plans face with medical inflation and increasing premiums.[35] The underlying funding would come from a fixed share of GWP, rather than from premiums paid out of individual income.

From the vantage point of individuals using this system, some principles animate it. It would break down 'social citizenship' into a choice-based,

deterritorialised system. At the same time, it would disconnect the source of funding and the individual's health consumption basket from both individual market power and the discretion of a political majority. Unlike today's safety nets, it would rest on neither citizenship, nor residence, nor employment, nor wealth. With its centre of gravity in society, it would look rather like mutualism with a generous subsidy, scaled up to the world as a whole. It would offer a floor for health needs common to human beings as such. And it would let decisions about those needs be made without interference from outside the health security sphere.

From the vantage point of society's broader landscape, this model has further advantages. It would be insulated from politics. It would thus curtail the state's power over society, in keeping with the overall metaconstitutional framework. Political temptations would have no way to erode actuarial sustainability. Breaking the link to territory would mean giving everyone 'national treatment' of a sort, wherever they go. This portability would defang today's fears about welfare-sponging immigrants. Just as there would be no territorial membership from which to exclude them, there would be no territorial pot of money for them to sponge off. This way of meeting needs would hark back to premodern charitable foundations like the Islamic hospitals, which drew no distinctions that would bar strangers from their services. Toxic forms of social control would also loosen. Neoliberal retrenchment of the welfare state has led over the last generation, especially in the Anglosphere, to a 'new behaviourism' on the part of the 'disciplinary state'. Recipients of state welfare services have had to follow ever tighter rules that deprive them of agency and dignity.[36] Paradoxically, ever tighter regulation of daily life has been accompanied with an unravelling in the adequacy and generosity of social provision. Under this alternative, however, individuals would have much greater choice along with adequate resources. The providers of health services would have to earn their points. Exit would discipline them. Voice would do so as well, if plans built in participation by their clients. Each plan could have member panels to design coverage and weigh priorities. Collective agency could improve the quality and fairness of treatment under each plan. Activists could no longer aim at capturing the levers of political power. They could fight instead to make the best use of the budget to which they are committed, rather than trying to enlarge the pot of money at others' expense.

With an egalitarian point system and multiple options, outcomes should match needs better than under a state-run one-size-fits-all scheme of social insurance. Choices would still need to be made both individually and collectively, of course. Inherent in any medical coverage is the management of scarcity. But as each plan would need actuarial sustainability, it would have to make efficient choices reflecting the profile of its members. Market efficiencies would also improve at the interface between those plans and the productive economy from which they would purchase advanced medical equipment, drugs, and the like. The global reach of their membership would give plans extensive bargaining

power, though unlike national systems today, they would have equal resources on a capitation basis. Good performance would stem from careful stewardship of resources. Plans would have no way to extract more external resources on grounds irrelevant to their mission in health security, such as by overcharging subscribers in a market or lobbying legislators for subsidies. The health security sphere as a whole would have its core budget from a fixed share of GWP, in contrast to the soft budget constraints on today's welfare states. Coverage could go beyond risk pooling to prepayment for services.[37] It could thus unleash a wave of innovation in the style and content of care. Diverse provision would better reflect the ethical and cultural values of the world's population.

But let us zoom in from these effects in the aggregate to how individual choice would work. Should individuals be allowed to spend their points on an eccentric and unbalanced profile of coverage? Or should the scheme build in so-called 'choice architecture' or 'libertarian paternalism', to 'nudge' them to meet their basic needs in a sensible way? The literature on the psychology of healthcare has a range of views on whether it differs from other goods in the market and on whether the average person makes rational decisions.[38] Whatever position one takes on that debate, however, we can think of individual use of points as analogous to the collective choices made today at the level of national public policy in countries with state-run health systems. Within the guiderails of national income and the landscape of public values, each government makes decisions about the profile of coverage to offer its subjects. One country might want to spend a bit more on advanced cancer treatment and a bit less on nursing care, for example, while another might do the reverse. In a global space, individuals would make the same choices about their own priorities. The crucial difference under sphere pluralism is that they would do so within the logic of the health security sphere itself, rather than through the state.

Most likely, such a scheme should build in some constraints on plan profiles. But the leeway to choose should be at least as wide as the leeway a government has now for designing its country's health system. This model would scale that choice to each person's preferences rather than sweeping him or her along with a territorial majority, however. And given the scale of mobility in a global space, this experimentation would let information spread better than in today's political honeycomb. Some advocates of more choice in provision concede that, today, most people have little basis for imagining what alternatives would look like for them.[39] In a deterritorialised system, people anywhere could assess any profile of coverage as an option really available to them. Some around them would probably have experienced it already. Plans that performed well and saved resources could also have a built-in reward mechanism for their members. The savings could be redistributed to members in the form of additional lifelong point allocations to buy further coverage, within or beyond that plan.

The rules governing this sphere might or might not let plans attach to affinity groups. They might operate the same way many mutual aid societies operated,

based on the common social characteristics of members. Territorial solidarity could give way to other kinds of less placebound affinity, based on anything from religion to ethnicity to ideology. Modern mobility and communications could allow plans to cater to niche identities, much like the internet today. The organisations offering health security plans would look like part of a diverse global civil society.

Nonetheless, while attaching health plans to affinity groups would be a recognisable form of enkapsis under sphere pluralism, we should be wary of giving carte blanche. Affinity groups could cause other problems at odds with the distinct purpose of the health security sphere. Too much screening or self-selection could disrupt the actuarial sustainability of plans. Affinity groups might also come into tension with an open global space. They could reinforce a kind of 'pillarisation', like what happened in the Netherlands and other countries with deep religious or linguistic divisions: parallel institutions in each sphere for different groups, so that people's interactions in all spheres would be mainly with those of the same identity. A world in which Zoroastrians mostly had the same temples, schools, supermarkets, and hospitals, all with a Zoroastrian flavour, might be less cosmopolitan and less accommodating of personal enkapsis than the ideal. Richard M Titmuss's classic study of gift-giving—including altruistic actions like donating blood—noted that complex modern societies set the scope of solidarity based on different answers to the question of 'Who is my stranger?'[40] Given the need to enlarge human sympathy in healthcare, a nudge toward universalism could prove constitutionally appropriate. Incentives could tilt plans toward geographic diversification of enrolment, for example. The rules could also ban anything other than self-screening of members.*

Would this framework involve any redistribution? Since solidarity and redistribution have been crucial in national-scale safety nets, we must ask whether such aspects of justice should carry over into a global sphere of health security. At first glance, the question might look meaningless. Egalitarianism already would be built into the equal allocation of points. Unlike today's private insurance premiums, the core funding would not come out of beneficiaries' unequal incomes. Meeting basic health needs would 'cost' everyone the same, so the

* Should groups like the Amish be allowed to opt out, given their religious objections to participating in any insurance scheme beyond their own tight-knit communities? Remember that, like anyone else, they would be financing the sphere indirectly anyway, through whatever source of revenue provided the 10% of GWP. If they opted out, it would look a lot like simply not making use of the plans to which they theoretically had been assigned by default. If they saved public money by doing so, then some portion of the savings could be gifted back to their own community mechanisms for meeting health needs. The logic of my model would not require doing so, however. Any such rebate also should be just a portion of notional average expenses. Otherwise, any low-expense group would have an incentive to concoct a reason to opt out, raising average costs in plans for everyone else.

market sphere would not deform health security. Risks also would be pooled across members of each plan and, given the lack of underwriting, across humanity at large. These elements of equality and solidarity correspond to what surveys have identified as most people's view of health inequalities, as a matter of arbitrary luck rather than individual effort.[41] Equal point allocations would deal in a so-called 'platform currency' for healthcare. Platform currencies prevail in activities where it is thought people should not be able to acquire resources or status outside the scheme, so to speak. They must earn a specialised currency under the rules, and not have ways to buy in or cash out.[42]

Distributive issues become more complicated when people want to add additional resources to their entitlements. In the health security sphere, should those who are willing and able to pay be allowed to convert money into more or better services? On the one hand, strict equality would insist on equal point allocations; someone could choose how to use them, but have no way to exceed his or her fair share. If we allowed private medical care to be bought with money, for example, it might depress the quality of services within the egalitarian system. It could also create an accounting mess with both points-based plans and money bidding for the same services. On the other hand, it may still prove possible to let people choose to 'overfund' their health expenditure beyond the standard point allocation, while preserving the basic principles of equality and a distinct health currency. One solution could be to allow buying extra points, but at a price marked up relative to income. Doing so would aim, for the sake of equality, roughly to match the 'felt' price of additional points to the relative financial sacrifice one would incur. The choice would reflect strength of preference rather than buying power, so to speak. It would build a strong element of de facto progressive taxation into the buying of points. Extra funds generated this way for the health security sphere could be used in a redistributive fashion. They could cross-subsidise all plans, or fund medical research and the like. Individuals might also get additional points free of charge, for reasons intrinsic to the nature of the sphere. For example, justice might suggest an increment for those who make organ or blood donations, or who have suffered medical malpractice, or who were born with a condition for which gold-plated coverage could make a difference in quality of life.

These judgements about how to administer a sphere cannot be locked in constitutionally for all time. They instead can be left to policymaking of a sort, by governing bodies at the pinnacle of the sphere. The metaconstitutional framework would only set boundaries among spheres, and assure their autonomy and an adequate flow of resources to each of them. Within those guiderails, the details could shift over time. Those choices properly belong to institutions whose mandate is to fulfil the purposes intrinsic to their own sphere. In the health security sphere, for example, pinnacle governing bodies might have only a few foundational principles locked in, in ranked order: 1) the actuarial sustainability of the sphere as a whole and particular plans within it, 2) fairness across individuals,

including preventing gaming the rules at the expense of others, 3) meeting the basic health needs of all human beings, as understood in relation to the resources and treatment frontiers of the time, and 4) expanding room for individual choice based on preference and conscience. Those principles should be fixed for the long term. They would still leave leeway for pinnacle governing bodies to decide, for instance, to allow (or ban) the buying of extra points, or to increase (or decrease) investment in medical research relative to current health needs.

Beyond such system-level rule-setting and oversight, the common space of the health security sphere would be quite limited. In normal life, the vast majority of the time, decisions about how to allocate resources should fall within the purview of each plan. It would be expected to fit the collective preferences of those who spend their points on it, just as national health systems now supposedly prioritise based on democratic opinion that has worked its way through the political sphere.

An exception might be in crises—like a pandemic—that overwhelm routine medical services. Such crises would occur for reasons beyond the control of any plan and unconnected with member preferences. When the normal flow of resources according to predetermined priorities cannot meet severe needs, the governing structures of the health security sphere could step in. They could arrange emergency transfers of resources among plans and locations, for example. Given that all plans operate on an equal fiscal footing, however, such bailouts should presumably be reconciled and eventually repaid once the dust settles.

Oversight could also include setting standards for crisis care, when capacity is overwhelmed and hard choices need to be made about whom to treat. Such matters get tricky, though. To take a familiar example from the recent pandemic, what happens in a shortage of ventilators? In normal operation, each plan would have its own built-in priorities for allocating scarce resources, and members would know its general approach when signing up. It would make no sense for someone whose choice of plan in normal times shows that he or she ranks long-shot access to an expensive ventilator below other health priorities suddenly to gain better access just because large parts of the health system were collapsing in a crisis. Helping a plan to meet its normally sustainable commitments is different from overriding and re-ranking those commitments. That said, in a severe crisis all or most plans might be unable to function as intended, without a much bigger backstop or infusion of assistance. No temporary borrowing of resources could solve the problem. In such a dire crisis, many people would be hoping for further resources to come from outside the health security sphere. They would need to be mobilised from other spheres like the state. I shall address that scenario later in the book, where I deal with boundaries around the state's role as such.

Diversifying Education

Education is another sphere whose boundaries have been overridden by state and market. State-organised mass education has become a feature of the political

honeycomb and the mastery of state over society. Modern states justify it to prepare their citizens for competition in the global market and to socialise them in values needed to sustain (or instil) national identity. The template has proved similar across countries, despite wide economic and cultural differences. It has often been copied unthinkingly as the image of progress.[43] The new class sees control over the curriculum and the ability to socialise the next generation as a key front in a culture war. Liberal theorists deploy the language of democratic citizenship to justify training in a certain type of critical thinking intended to erode traditional values. They thus look askance at the efforts of some non-mainstream groups to teach their children privately or at home, especially if such alternative education would run counter to the vision of enlightenment.[44]

An array of critics have pushed back in recent decades against this homogenising thrust of modern education. They hail from varied ideological standpoints. Some advocates of school choice—a publicly funded voucher system—say simply that families are best situated to make such decisions. They predict that quality would improve if schools had to compete for students. Along libertarian lines, Hayek agreed on a voucher system if the state must fund education at all. He added the deeper observation that education inherently has no unified standard of excellence. Much like information in the market, knowledge is inherently diverse and unpredictable in its value in an unplanned society. Radicals on the left like Ivan Illich similarly have called for 'deschooling society'. He lamented modern schools as another instance of noxious authority and said that society puts too much stress on credentials, hierarchy, and formal sequences of study. He would ban screening applicants for jobs or training based on prior educational history rather than demonstrated competence. He would also give out 'edu-credit cards' to fund lifelong learning experiences and acquisition of skills. And among traditionalists, boundaries of responsibility based on natural law figure prominently. Parents are thought to have 'primary and prepolitical educational authority over their children'. For most people, it is 'family first, citizenship second', despite aggressive attempts by public education systems to mould all children. The state has at most a subsidiary role and should never encroach on matters of conscience. Sphere sovereignty theorists agree on the distinct nature of the educational sphere as a condition of liberty. Kuyper and his later followers, for example, insisted on the autonomy of schools and universities. They should have freedom of inquiry and reflect varied systems of belief, while not being directly subject to churches or other bodies, either.[45]

Historically, educational practice tilted more toward pluralism than it does today. From a long-term perspective, the modern template of state education administered by the new class is aberrant. To be sure, schools and university-like institutions in the old civilisations did reflect the beliefs of the surrounding society. Yet they usually enjoyed more autonomy in funding and day-to-day management, and sometimes a looser relationship to official orthodoxy.[46] Since traditional societies lacked the systematic sieving of people by educational

credentials, their schools and universities were free to matter less, so to speak. They were more removed from jockeying for power in state and market.

In the logic of sphere pluralism, recovering such autonomy should be a starting point in any vision of education, whether at the primary, secondary, or higher levels. The familiar arguments about efficient competition and the distinct nature of educational goods could apply globally, just as well as within countries. Two further considerations become even more salient when we think about a metaconstitutional settlement for the future global space. First, the world's far greater diversity, especially with increasing mobility, would make homogeneous territorial policies for education absurd after the collapse of the political honeycomb. Second, as with other spheres, power concentration poses a unique threat in global institutions. A big state footprint in the educational sphere would deform its character. It would expose it to new class control or to shifting political majorities demanding one or another common global curriculum.

The approach I outline here has parallels to that in the health security sphere. Core principles would include deterritorialisation, secure funding, and autonomy. With the breakdown of the political honeycomb, educational institutions—like other bodies in global society—should be chartered directly under global provisions. Each one's operation and pool of students should have no legal binding to place. As with health security, a secure stream of funding—perhaps 5% to 8% of GWP, based on today's developed country ranges—should be reserved for the educational sphere. The boundaries of the sphere are somewhat fuzzy, of course. The education umbrella could include everything from foundational skills at the primary and secondary levels, to the most rigorous and selective tracks of liberal arts and professional education, to acquisition of discrete marketable skills, to classes for personal enrichment. These pursuits differ somewhat in their nature. Some more obviously need walling off from other kinds of market-based choice and spending.

For the sake of simplicity, I shall focus here on two types that do clearly belong to a distinct educational sphere. One is core learning at the primary and secondary levels. In a prosperous society, it would be expected for all human beings in one form or another. The other is the academically rigorous learning that traditionally was the mission of long-established prestigious universities. They aimed at cultivating a minority of people with a taste for liberal education. Both of these pursuits deal with the fulfilment of human intellectual capacities. Neither the public agenda of a state nor material interests in the market can capture them fully.

Respecting the sovereignty of the educational sphere and detaching it from territory would serve two purposes at the global level.

First, it would bypass today's points of friction among education, identity, and power. The norms for each institution would emerge from its own mission and, over time, the interplay between choosing students and being chosen by them. Sphere pluralism would deprive those with outside agendas of the levers

of power—budgets, curriculum design, and standards of conformity on a territory—to intrude on education. Battles would need to be fought in smaller units with lower stakes, and with arguments fitter for purpose.

Second, such deterritorialised autonomy would suit the richness of a global space. Linguistic diversity, for instance, has waned less because of trade and migration, and more because state-run education systems have tried to crush each country into sameness.[47] In a global space with choice, linguistic minorities would have more room to set up their own schools with their languages as media of instruction. Transnational migrants could also take their languages with them wherever they had sufficient numbers, rather than conforming to host majorities. Today's nationalistic history and civics teaching would dissolve into larger and smaller spaces less bound to territory. And from the standpoint of virtue-centred sphere pluralism, a crucial advantage is that diversity would also flourish in educational philosophies. The intellectual supports for the cultivation of virtue could be taken seriously without imposing them on the unwilling.

A secure stream of funding for the educational sphere would mean that money, citizenship, and residence no longer determine anyone's access to a track of intellectual development. As with the point system for health security, educational vouchers would assure a portable right to primary and secondary education. Institutions and students would select mutually. Autonomy on both sides would be compatible with universal provision. Since schools would have to compete over time, those of poor quality would fall by the wayside.

University education might have a different model of funding. Traditionally, it has had more selectivity than at the primary and secondary levels. Universities also have more of an inner life, such as research, that goes beyond serving students. Their time horizon extends further into the future, as the centuries-long history of the world's great universities shows. Voucher funding in the form of fees per student would probably matter less, therefore, than a permanently endowed stream of income attached to a university itself. The constitutional guiderails of the educational sphere should guarantee universal access to higher education and rule out ascriptive exclusion or other types of selectivity at odds with its nature. A university's permanent funding places it in trust for humanity at large, so to speak. Its autonomy is properly confined to matters of content and internal order. Unlike in some rationales today, student fees would serve little purpose in making either students or universities accountable.[48] Broader social change in a heterarchical direction would strip away the mass credentialing function that today turns fees into the price of a degree to increase earning power.

As with the health security sphere, we run here into the question of redistribution. Equity at the individual level would operate mainly through universal access to vouchers and fair standards of admission to universities and other higher education institutions. At the level of universities, however, an equity issue can arise at the founding moment and in its medium-term aftermath. For

the sake of autonomy and long-term stable expectations, universities should be guaranteed endowment-like streams of funding. Indeed, for the most richly endowed private universities today, this guarantee would be the functional equivalent of their present assets. The obvious basis on which to allocate such permanent largesse is universities' reputations for academic excellence. As a fact of history and present economic inequality, however, such excellence is unevenly distributed across the planet. We should be unsettled about the idea of locking in such a snapshot of uneven excellence for generations to come. Even if a free global space would open the likes of the Ivies and Oxbridge to all of humanity—and even if rising education levels around the world would make it a fair contest in the long run—legacies do matter. Linguistic and geographic diversity, most obviously, are ill-served by the present university landscape. Typical university rankings have nearly all of the top twenty in America and Britain. Softer cultural associations and symbolic legacies also make it unlikely that even with fair admissions and universal mobility, students from all backgrounds would feel equally at home in the world's present hubs of academic excellence. It would thus be desirable to build in a century or so of gradual, performance-based redistribution of funding endowments across the global landscape. As the world becomes wealthier, a redistribution within the same share of GWP need not mean a real reduction in the funding of today's leading institutions, so much as the addition of new and more diverse centres of excellence.

The details of such adjustments could be ironed out by pinnacle governing bodies in the educational sphere. Just as with the health security sphere, we should draw a distinction between constitutional principles to lock in and matters of discretion that legitimately could shift over time. The latter could be decided within the logic of the sphere itself rather than under external pressure. In the educational sphere, for example, adjustments in how the fixed share of GWP is spent, or modest redistribution to overcome legacy inequalities among institutions, would fall within policy discretion. In contrast, basic autonomy, values diversity, global openness in admissions, and academic freedom would be locked in.

Civil Society and the Gift Economy

As I have outlined so far, under a framework of cosmopolitan sphere pluralism, health security and education could be treated as distinct spheres. Politics, the market, religion, and the family would also count as spheres in the classic schemes of Kuyper and Dooyeweerd. In thinking about a metaconstitutional settlement, we could see the remaining areas of civil society in general—beyond religious and educational institutions—as another, looser sphere of sorts. Such civil society offers a powerful counterweight to the state. It also fulfils human needs that other spheres cannot meet.

Much ink has been spilled in recent decades about civil society. It includes institutions and activities that fall under neither the state nor the market: foundations, volunteer networks, activist communities, and the like. From a mainstream liberal perspective, a vibrant civil society reinforces democratic values, resists authoritarianism, and habituates the modern citizen to tolerance, cooperation, and public-spiritedness. Some more radical and traditionalist critics note the West-centred narrowly liberal image of global civil society. Sometimes it has blind spots for privilege and power even within ostensibly open and enlightened networks. A debate also persists over whether the usual definition of civil society can include activities of a less modern flavour. Village, kinship, and religious organisations are typically outside state and market, and they have a recognisable energy and social impact. Yet their more particular, more ascriptive scope—and perhaps their celebration of values that liberals find unappealing—can make it all too tempting to exclude them from a modern definition of civil society.[49]

Beyond these debates over the nature of civil society, the ownership and flows of resources within it also vary a lot. Associations may prove transitory or involve only interactions among their own members. Foundations, in contrast, carry out activities in civil society that require ongoing use of substantial material resources. Foundation-like entities have existed for centuries in all civilisations. They matured as a legal type in mediaeval times, with some common concepts underpinning them in Europe, the Islamic world, and China. Whether as trusts, charitable foundations, waqfs, temple endowments, or clan estates, they were seen as distinct from normal individual or household patrimony. Because of their quasi-public aims, such as charity or piety, they enjoyed privileges of permanence and inalienability. English trusts could exist in perpetuity if they served a charitable rather than a family interest. And Islamic waqfs were often framed as ways for the donors to practise *qurba*, or drawing closer to God by underwriting a noble purpose.[50]

Given the weakness of premodern states, foundation-like entities had a huge social footprint. They not only offered visible services. They also controlled vast amounts of wealth, typically in land. They shored up pluralism as independent power bases in society. Unlike rich individuals, they enjoyed extra credibility because of their public-spirited and altruistic aims. Small wonder that, like the monasteries under Henry VIII, they also drove absolutist rulers to distraction. Given pluralist thinkers' interest in the prepolitical personality of entities in civil society, it is worth noting here that in traditional practice, the state played little role in regulating or creating these foundation-like entities. Trusts were, in English legal theory, contracts derived from the will of the donor, not entities to whom the state had granted a legal personality. And charitable waqfs enjoyed a 'static perpetuity', being nominally owned by God rather than by any individual, let alone a ruler.[51]

This independence of civil society came under attack in modernity. It collided with the logic of the political honeycomb. First, the clergy bore the expropriating

brunt of absolutist and revolutionary states' jealousy of its independent reserves of wealth. States also started supervising trusts and waqfs, ostensibly on behalf of the public interest. More recently, some liberal critics have expressed misgivings about the unaccountability of large-scale philanthropic ventures. In particular, rich donors' ability to shape priorities offends, because it takes place outside the reach of the democratic talking-shop. The 'fifth estate' exercises power without either the shareholder accountability of a corporation or the voter accountability of a state. Older foundations also are seen by many in the new class as embodying the ethos of a declining traditional establishment, whose dead hand still prods society despite generations of progress.[52] One suspects that the energy of this critique also stems from some discomfort with any rival centre of power beyond the two hubs of new class agency: namely, technocratic regulation and activism by the enlightened and loquacious.

Any pluralist should find political supervision of civil society unsettling. Under virtue-centred sphere pluralism, we should distinguish between two types of accountability. Vertical accountability of civil society to government regulators or to some imagined democratic public (which often means only the most motivated activists within it) would be, in practice, incompatible with genuine pluralism. It smacks of the political honeycomb, in that it would elevate the political sphere over civil society. Indeed, some of today's loudest voices professing concern for the accountability of civil society are nationalists who fear cross-border networks that do not defer to officialdom. Horizontal accountability is quite another matter. Transparency in how civil society entities operate can let the public, and other entities in the same sphere, make more informed judgements about whether ideals and reality match up. Sphere pluralism would recommend, where possible, horizontal rather than vertical accountability. In a global metaconstitutional settlement, the fragmentation of power across spheres matters more than harnessing civil society to the judgement of outsiders.

Any principles governing the sphere of civil society thus should limit the state's opportunities to encroach on its independence. Traditional pluralists have long insisted that associations have their own prepolitical personality, arising from the nature of their activities and their members' participation. They are not fictitious institutions that exist on sufferance between the state and the atomised citizen.[53] The state's interaction with civil society should be merely to facilitate smooth legal dealings where necessary, such as recognising ownership, contracts, and the like. It should not determine the essence of things. It stretches credulity, for instance, to imagine that a waqf dating back centuries derives its true personality today from documents stamped by a government that shot its way into power within the last generation.

With the collapse of the political honeycomb, civil society's natural scale could also be set free in a global space. A couple of generations hence, it should look odd in hindsight that nonprofit entities used to be chartered and tax-exempt only under the laws of one or another country. Given the nature of civil society,

territorial fetters on its activity are just as improper as protectionist barriers in the market. And, not least, any regulation of civil society should be done where possible by bodies within the sphere itself. Such peer regulation by other civil society bodies can work as a further form of horizontal accountability. It would treat regulatory issues as mainly technical, rather than a battleground for public policy made by outsiders.

Such ramparts around civil society would align with the understanding of liberty built into virtue-centred sphere pluralism. The prepolitical personality and inner life of associations and foundations would enjoy greater security than now. Yet, at a deeper level, they do not matter as group identities or repositories of power for their own sake. Rather, they matter because of personal enkapsis, and how engagement through civil society and other spheres supports human fulfilment. A vibrant civil society would offer a moral ecology and multiple fields for the exercise of virtue. In that vein, sphere pluralism would let personal enkapsis come to the fore, as state-dominated territorial enkapsis and mere political citizenship retreat in importance.

This rationale has implications for how far pillarisation in civil society should go. In the Dutch case, early twentieth-century pillarisation of institutions in different spheres around the main social blocs—Protestant, Catholic, socialist, and liberal—did reduce friction over issues like state funding and school curricula. Lessons were drawn for other deeply divided countries like Lebanon. Pillarisation indeed can displace key conflicts out of politics. It can also let marginalised minorities gain ground without a battle over public culture.[54] In a global space, pillarisation would mean many people's engagements in civil society, based on their identity, could overlap with their affiliations in the spheres of religion, education, and the like. Even though territorial elements might weaken with mobility, pillarisation could still amount to a socially significant kind of segmenting. On one level, pillarisation could keep a reassuring familiarity for people, lessening the vertigo of a cosmopolitan space. At the same time, some groups might have a suffocating comprehensiveness that would end up limiting individual conscience, and thus the core of personal enkapsis. They might replicate the insularities and domination of the political honeycomb, albeit because of social dynamics rather than state power.

Why would such insularity pose a problem? Many experts think that cross-cutting affiliations lead to a more open society. They allow freer interactions across the distinctions of class, religion, ethnicity, and ideology.[55] In the long run, both the global space writ large and personal enkapsis writ small would fare better with less pillarisation. It would be legitimate, therefore, to devise soft pressure to diversify the interlacements among institutions. It bears stressing that soft discouragement of pillarisation has a very different logic than today's liberal insistence on the primacy of political citizenship and nondiscrimination. In practice, as many conservative critics point out, efforts to make traditional associations abide by the rules of a supposedly neutral public sphere often reflect

a new class impulse to use antidiscrimination laws as 'cudgels' against people seen as benighted.[56] In contrast, a soft discouragement of pillarisation in global civil society would distinguish rigorously between the autonomy of the spheres and the institutions, on the one hand, and the more problematic cumulative interlacements among them, on the other. A modest effort against pillarisation could leverage cross-cutting disruptive forces within the civil society sphere, not the heavy hand of the state. It would advance a purer form of sphere pluralism. Interfering as a display of political power and enlightened conformity would do quite the opposite.

Marking off the structural independence of civil society in these ways is vital. Yet the flow of resources to it also matters, just as we saw for the health security and education spheres. A skeleton needs arteries with blood coursing through them to bring the body to life. Here, fiscal independence has two dimensions: owned endowments versus streams of income captured or donated from society at large—roughly, capital versus receipts. We can take them in turn here.

The security of foundation endowments must figure in any framework of sphere pluralism. Security can look like rigidity sometimes, however. It can run into a perennial two-pronged criticism.

First, large traditional endowments before modern times often led to a clogging of wealth. They reduced the efficient circulation of assets in the economy. They also concentrated power, especially if much local land was owned by waqfs, monasteries, and the like. The financialisation of assets in a global economy already has reduced some of this clogging, however.[57] In an even richer and more open global space in the future, the issue probably would matter little. It could be appropriate, nonetheless, to let foundations invest only in a well-diversified cross section of the global economy so their interlacement with the economic sphere is essentially passive. Doing so would reduce clogging, spread the economic benefits of capital use, minimise entanglements with specific local markets, and even out the rate of return across foundations. After all, their investments should serve to finance a mission, not to speculate with a wild eye.

Second, a long time horizon has been known to make a foundation's mission less relevant to a changed society. Liberal critics especially take issue with missions that come to seem unrealistically narrow, outdated, or even benighted.[58] Even with a strong commitment to pluralism, a more diverse global culture, and no Whiggish conceits about progressive enlightenment, the constitution of the civil society sphere must take some account of this problem. In the future, conditions indeed will go on changing. Some missions in civil society will lose relevance. A modest spend-down requirement on endowments could ensure enough stability and independence of resources for a human timescale, while still letting natural attrition occur in the long run. This should be done, however, in a way that respects boundaries between civil society, on the one hand, and the colonising tendencies of state and market, on the other. Any redistribution of assets away from moribund foundations, for instance, could be dispersed across the

rest of civil society rather than escheating into state coffers. Resources should stay within their own sphere.

Both foundations and more ephemeral associations need financing from society at large. Flows of funds outside the ambit of the state have offered a vital check on power over the centuries. They have also met diverse social needs that no one authority could discern. The *zakat* or annual alms payment obligatory for Muslims, the Athenian liturgy or donations to prestigious public goods by the wealthy, and the largesse of modern Anglosphere charities are obvious cases of substantial sums of money circulating to public benefit outside the state.[59] To ensure enough new money flows into civil society, the metaconstitutional settlement could lock in, say, a guaranteed 5% of GWP. If paid as a levy out of personal income, it would stand in lieu of some conventional taxation. Rather than being paid into state coffers, it would let each person choose recipient organisations based on values and perceived need. Such a civil society levy would disperse power. It would bring about a more efficient distribution of the goods provided by civil society, compared to state taxation and expenditure. Some mainstream economists note that majoritarian decision-making causes oversupply or undersupply of particular goods, and that some choice on where one's taxes go—so-called 'taxes as ballots'—could meet needs better.[60] Presumably more choice would increase people's willingness to pay, than if the same money were allocated collectively, as now. Of course, some smoothing mechanisms would need building in to reduce 'spiking' of contributions to needs that get momentary publicity. Perhaps one could rebalance the recipients of one's levy only gradually, for example.

These are technical questions. More importantly, from the standpoint of virtue-centred sphere pluralism, a civil society levy would broaden horizons. Each person's exercise in allocating his or her levy would have a moral impact. It could break down insularity more effectively than any public pressure against pillarisation. Psychological research suggests that altruism is cultivated best in a 'gift economy', where people give to strangers enough that they feel some sacrifice but not enough to be a burden.[61] The mere fact of having to think about civil society and the needs of (perhaps distant) others, and to take some small responsibility for allocating resources to them, would enlarge sympathy. Here we find a compelling analogue in John Stuart Mill's argument for broadening the suffrage in the nineteenth century. He predicted that even the dullest citizen, on getting the vote, would elevate his or her imagination a little to public affairs. Spillover effects on self and society would follow.[62] Mill's educative effect of suffrage operated within the political sphere. A civil society levy would create a new suffrage beyond the political sphere, so to speak. Given the diversity of its objects, the truly individual nature of the choice, and its ongoing rather than merely episodic exercise, its horizon-broadening impact would be greater than the vote.

It would still need to be determined whether the real sum of money being allocated should be 5% of each individual's income or something more like a

flat point system. The former would weigh the civil society 'vote' of the rich more. That might be acceptable, however, in that judging how to allocate the civil society levy is partly about discerning worthy ends but also about weighing efficiency and the performance of the recipient organisation. Those with higher incomes are more likely to have personal experience of managing surplus resources. A middle-ground solution might devise a formula in which the rich still direct larger donations in absolute terms but with a redistributive component that scales up the contributions of those with lower incomes. Even for the rich, the civil society levy could have subtle effects on the culture of wealth and the direction of agency. It would look more like gift-giving in archaic societies or the 'return of wealth' in mediaeval Christian and Islamic charity.[63] The sources of social honour and influence would shift a little away from modern-style accumulation, and a little toward public-spirited use of money.

Fettering the Public Fisc

The flow of resources that I have outlined so far would be mandatory in amount but voluntary in direction. It would lock some share of income to social purposes but leave plenty of choice in where it goes. Choice disperses power. It would transcend pure self-interest and uneven purchasing power, as well as meet diverse needs that no planner could grasp. Still, even after carving off secure funding for the spheres of health security, education, and civil society—among others—the truncated state would still need resources to fulfil its own narrow public functions. Sphere pluralism would shrink, but not do away with, taxation and the public fisc.

Taxation is, by definition, the compulsory collection of revenue. Political institutions then decide on behalf of the public how to spend it. The study of taxation by historians and fiscal sociologists has become an important niche field. Taxation has shaped the prosperity of societies through history as well as their landscapes of power and liberty.[64] The economic constitution of the future global space must settle these questions for the long term. With the dissolution of the political honeycomb, a tax system would need designing with enough uniformity and efficiency for a complex global economy. At the same time, liberty demands a system as unintrusive as possible. It should be compatible with the moral ecology of pluralism.

Since taxation siphons off private wealth, it often becomes an ideological battle ground over where to draw the line between the state, on the one hand, and both the market and society, on the other. Many an overbearing state has favoured breaking up private concentrations of wealth. It sees them as inconvenient barriers to reshaping an atomised citizenry. More recently, thinkers and activists of new class orientation have argued for high tax rates, especially on inheritance. Their rationale stems from an impulse to rationalise the use of society's resources by bringing more under democratic control, and from an idea of

merit that makes them hostile to seemingly arbitrary sources of wealth. Some of their proposals would reconceive property rights as mere useful legal conventions that serve the public good. Once one gets past the 'myth of ownership', they believe, 'the distribution of tax burdens has no intrinsic moral significance.' 'The organisation of the economy, and the allocation of its product between public and private control, is a legitimate object of continual collective choice.'[65]

A striking pattern is the new class's greater concern with power than with profligate consumption. Living large within one's own lifetime offends less than the non-economic influence implied in gifting one's wealth to one's relatives or to foundations with a mission. The new class favours an image of rationalised merit—preferably assessed by institutions it controls—more than the individual virtues of austerity and generosity. Such an atomist worldview, whether in the self-assertion of homo economicus or the equality of embodied experience, contrasts starkly with the virtuous engagements of personal enkapsis. The obverse of the new class's merely instrumental view of private property is a rigorous defence of the public fisc. Defenders of the doctrine of sovereign immunity—the legal notion that the state, unlike private entities, cannot generally be sued for damages—argue that it protects the democratic polity's spending against erosion by 'a thousand cuts' of liability. More authoritarian branches of the new class, such as in China, also are reasserting the role of state-owned enterprises and sovereign wealth funds.[66]

The claims of the public fisc also interact in illuminating ways with the political honeycomb. Just as the new class selectively deploys extraterritorial jurisdiction against foreign fighters and the like, so too are states reasserting their taxing power amid globalisation. The regulatory net tightens in ways that curtail economic freedom. In recent years, intergovernmental agreements have created a bureaucratic morass of tax reporting and information exchange to remove the anonymity of cross-border wealth flows. Those of technocratic and activist bent entertain imposing capital controls in future financial crises. They also talk of harmonising fiscal policies across countries to prevent tax competition that favours shifting assets around. In a foreshadowing of what it would mean to scale up the controls of the political honeycomb, we hear growing discourse about tackling 'tax nomads' and 'stateless income', and creating a 'world tax authority' to 'catch capital' better. As one such advocate put it, such 'reforms would bring all stakeholders of capitalism back under the control of democratic decisionmaking.'[67]

At the other end of today's ideological spectrum, we find libertarians who have long been wary of taxation in general, and of modern democracy's temptation to ratchet it up. Key libertarian thinkers affirm private wealth as the basis of dispersed power. They see property as a prepolitical right beyond the legitimate reach of the state. If they accept taxation at all, they would confine it to strictly public purposes such as law and order. They reject redistribution that intrudes on private patterns of ownership and exchange. Both libertarians and traditionalist

conservatives have long thought that inherited wealth underwrites cultural vitality because of its psychological remove from narrow moneymaking. When it comes to the cross-border capital controls and/or tax harmonisation that new class technocrats and activists would impose, libertarians also assert a vital argument for liberty. They insist that the right to move assets out of a country and seek more congenial economic pastures elsewhere is a pillar of human freedom. Competition among states to attract capital also disciplines governments and discourages high taxation.[68]

As with other issues, sphere pluralism can cut in a new way through this debate. Both those who assert democratic control over wealth and those who reduce liberty to homo economicus and his assets have their blind spots. They see only a contest on a single axis between the atomised individual and the modern state's concentration of political power, whether nationally or supranationally. Sphere pluralism frames the question rather differently, as seen in my proposals so far for health security, education, and civil society. The liberty to be defended is personal enkapsis, not accumulation as such. The multiple spheres would fragment power and diversify flows of resources. One can affirm social obligations surrounding wealth without assuming that the state must take the lead in managing those social obligations.

Where would this leave taxation by a future state at the global level? As far as scale, it would mean reducing the fiscal footprint to that of the night watchman state of the nineteenth century. As the state has taken on more social and economic responsibilities, it has corralled a huge share of income and employment. According to so-called 'Wagner's Law', rising per capita incomes have been correlated with an ever greater share of GDP flowing through the state, especially for transfer payments, as electorates demand more generous benefits. The modern income tax has been called 'the monster that laid the golden egg'. It made revenue collection much smoother while also tempting legislators to increase rates. Critics have also noted that different kinds of taxes have different implications for liberty. Traditional indirect taxes on transactions or land did not require intrusive inspections and ultimately were only enforceable against property and goods. The income tax requires more state access to information and must be backed by the threat of coercion. Most intrusive are wealth taxes. They require extensive reporting and make potential expropriation easier. They also align in spirit with the contingent view of property rights emerging in some new class circles. As an American Supreme Court justice once declared, 'the power to tax involves the power to destroy.'[69]

A constrained global state necessarily means a constrained public fisc. After carving off social functions into other spheres with their own streams of funding, the state could fulfil its limited public functions with well under 20%—perhaps as low as 10%—of GWP. Moreover, a quarter or so of that revenue could be diverted to local authorities. Strong localism would further shrink the concentrated power of the global public fisc and bring accountability closer to ordinary

people. As far as revenue sources, subsoil natural resources could be considered a public windfall requiring no extraction from society. Beyond that, the least intrusive would be low and flat taxes on consumption and individual income, with a minimum of reporting required.

Some political discretion would be left. Beneath a fixed ceiling, the global state could vary tax rates and emphasise one or another legitimate source of revenue. But as premodern practice and theories of public choice suggest, both liberty and accountability tend to be greatest when particular types of revenue are earmarked for particular spending. Such earmarking keeps a visible relationship between a tax and its purported benefit. It shrinks politicians' discretion in using 'fiscal illusions' about costs and benefits to cater to their support base.[70] Given the openness of the global space, and the requirement under sphere pluralism that public authority be used only for broad-based public purposes, territorial differentiation in fiscal policy should be ruled out. Whatever rates are set, and whatever rules on expenditure are devised, should be uniform across the world for the sake of horizontal equity. The rationale for tax competition would not apply, because the burden would be much lower than today. Without the political honeycomb, the barriers to a free flow of people, goods, services, and capital in an open global space would also vanish.

How much redistribution should these fiscal guiderails build in? In contrast to some liberal egalitarian or socialist theories, my argument so far has weighed the redistribution of advantages less, and the fragmentation of power more. In keeping with virtue-centred sphere pluralism, it also favours the enrichment of value-laden social spaces for personal enkapsis. Still, unlike most libertarians, I do not underestimate the world's inequalities. They have an impact on human dignity and on people's capacity to participate in any of the sovereign spheres. A framework with too little redistributive pressure would lack decency and legitimacy.

What I have outlined so far in the various spheres already contains strong redistributive elements. The health security point system is egalitarian. Even if people could buy additional points, the progressive pricing would level purchasing power. Similarly, education funding would be secured on the basis of equal access, without regard to the ability to pay. The civil society levy would be flat, though the benefits from it would probably tilt downward given widespread sympathy for the needy. The equal share of public revenue devolved to local authorities across the world, based only on population, would mean a redistributive windfall for poorer areas. State-funded global public goods like security and infrastructure would yield benefits rather more equal than the flat taxes on consumption and income to pay for them. The system could also offer basic income tax exemptions and rebates of consumption taxes up to subsistence. These measures would add a progressive element. In short, plenty of redistribution would happen even within this structurally neutral scheme. Combined with a fragmentation of power across spheres, it would narrow material inequality compared to today.

On this very different institutional and social landscape, it remains an open question whether, as some critics on the left might fear, income and wealth inequality would nonetheless keep rising across the world. Perhaps the smoother competition of a truly global market would still mean a winner-take-all dynamic without enough of a fiscal headwind to stop it. If a spiral of wealth accumulation over the generations produced the oligarchy that those on the left fear, then it could swell the market sphere out of proportion. Finally, therefore, there is room for adding a further redistributive mechanism with a universal but progressive estate levy on death. The rates at the higher end could suffice to prevent cumulative concentrations of economic power of the sort that would breach boundaries around the market sphere. Yet they would still leave enough inherited wealth dispersed across society to shore up heterarchy and independence.

But a more compelling reason for the universality of the estate levy has nothing to do with the distribution of wealth. Instead, it comes back to the thoughtful exercise of agency in virtue-centred sphere pluralism. The estate levy should have choice built in rather than working like just another tax for the public coffers. Recall the Millian analogy for the civil society levy. Just like ordinary people voting, having to take responsibility for allocating part of one's income to a civil society cause of choice would broaden horizons. The same logic would apply to a universal estate levy. For even the poorest person, to contemplate assigning even a tiny share of one's patrimony—perhaps 5% at the lowest level—to some social good would be a useful exercise of conscience and discernment. People would come to see it as a modest statement about what, beyond their own personal and family interests, has mattered most to them in life.

What would be permitted destinations of the estate levy? I do not propose, as some do, the atomist agenda of giving out 'demogrants' or 'stakes' to every individual coming of age.[71] Rather, the estate levy should go to a more permanent common good. To reflect the diverse commitments that personal enkapsis involves, it could finance a wider range of beneficiaries than the civil society levy; religious or educational institutions could qualify, for example. Since the estate levy comes out of capital rather than income, it should be understood as a capital sum for the long term rather than as a mere addition to current revenue. The accretion of these endowments from the bequests of billions of people over time would amount to an ongoing spontaneous ordering of society's patrimony. It would lie beyond the power of the state or any one sphere. A redistributive element also could be built into the weighting of bequests. The exercise of conscience in designating where one's estate levy goes has a dual aspect. On the one hand, it reflects one's own values in assigning part of the patrimony that one has accumulated. On the other hand, it discerns what social goods matter. Since the poor arguably can discern such matters as well as the rich, it could be fitting to pool, say, a third of total receipts and use them to scale up the smaller bequests. Wealth-counting would be balanced with a more equal soul-counting. The share should be fixed constitutionally for all time, since sphere-based institutions

would have no obvious way of arriving at a consensus on how to readjust it. Of course, any living or posthumous donations in excess of the obligatory levy should go entirely to the chosen recipient organisations without redistribution.

Regulation and the Currencies of Liberty

So far, I have outlined arrangements to defend the boundaries among spheres. They would also generate society-enriching flows of resources beyond state and market. When all is said and done, however, some necessary points of contact between state and market remain. At the edges of the state's public order responsibility lie functions of market regulation. Pluralist thinkers since Althusius have acknowledged as much.[72] Even a night watchman state still has to enforce property rights, contracts, and the like. No doubt, an effective world state would do so better than the corrupt ineptitude that torments many countries today.

In general, market regulation in the global space should have a light touch. Unlike the bureaucratic logic of the EU-style single market, a libertarian-leaning and society-centred order should allow plenty of diversity and experimentation. Commercial relationships should be subject to arbitration and choice of law as the parties wish. Where possible, product specifications and professional certifications should be left to pluralistic mechanisms, such as voluntary associations with their competing standards. The state's role in market regulation would come down largely to areas where voluntary agreement and a free flow of information cannot suffice. Since retail consumers would not have the same bargaining position as business partners, a separate, state-enforced commercial code could deal with transparency, fairness, consumer harm, and the like. This sort of light-touch neutral market regulation in the public interest dates back to ancient times.[73] By any standard of sphere pluralism, it falls within the state's competence. More abstruse areas of market functioning like antimonopoly rules could probably be farmed out to bodies at arm's length from the state. They would often be matters of technical efficiency and measurable market share. Ideally, they should stay out of reach of the political temptation to pick winners.

Another quasi-public area of economic life is currency. For different, sometimes quirky, reasons, both libertarians and the radical left have taken a lively interest in monetary arrangements as reflecting values and power. Libertarian theorists bemoan inflation as yet another case of the modern state digging itself into an undisciplined redistributive mess at the expense of stable rules. They call for a stricter 'monetary constitution', which takes price stability as key and removes monetary policy from politicians. Variously, they propose everything from an international gold standard to a 'free money movement' that would let private entities issue currency and compete on who could best offer stable money.[74] In contrast, the radical left argues that money cannot be neutral. Any attempt to make it so ignores the political struggle around it. Control of money by a bloc of politicians or by technocratic bodies like central banks will reflect

their victory in a class struggle.[75] Closer to the centre of the political spectrum, the last decade and a half of post-financial crisis debate over tightening or loosening monetary policy, or regulating currency, has come down to a version of this clash. Those who want monetary stability for business predictability battle those who would fuel inflation for other policy ends. On a different front, we also see tensions between state and market over the legitimate room for digital currencies like Bitcoin or the tradeoff between convenience and liberty in a potentially cashless future.[76]

In a future global space, a common currency would be vital both for functional reasons and as a symbol of the single market. Given the fragmentation of power across spheres and the constraints on the public fisc, many of today's levers of economic manipulation would vanish. Currency stability becomes vital in their absence. In keeping with the rest of the vision, the global monetary constitution should aim at long-term price stability, without even the sub-2% lubricating inflation that most central banks have long considered acceptable. A global currency could be pegged to a basket of natural resource commodities or to a basket of real purchasing power in relation to one of the standardised flat taxes. Such price stability would contribute to predictable expectations, including fixing the relative value of resource streams for the institutions of the various spheres. It would also free Islamic finance institutions to innovate without needing to adjust for inflation. These gains go beyond mere economic efficiency into the areas of metaconstitutional balance and the conditions for the exercise of virtue.

From a radical perspective, this sort of monetary constitution might seem to lean too far toward libertarian blindness about how power relations are refracted through control of money. The leftist critiques of capitalism do have a point. Yet fragmenting power across spheres would shift the terrain of debate. The market's spillover power would shrink under this metaconstitutional settlement. Likewise, understanding liberty as personal enkapsis departs in important ways from a key libertarian assumption: namely, the centrality of the market as an arena for human freedom. Libertarians rightly believe that liberty often consists of claims on resources and expectations about their range of use. If those claims unfold in only one sphere—the market—then the ability or inability to contest the lubricant of those expectations—the monetary constitution—would have decisive impacts on both liberty and power. Without realising it, some on the radical left approach the same realisation from the opposite direction. They shift claims into the political sphere, with the idea of a 'new property' in social welfare entitlements and the like. Others put forth the idea of 'primordial debt theory', or an unrepayable individual 'debt to the social totality'. They trace the logic back to primitive societies with ritual gift-giving and mutual obligations but map it on to currency as the medium of all debts today. The currency then becomes an instrument of the democratic state since they see the state as the capstone of that social totality.[77]

Both the market-centred view of liberty and the state-centred view of the social totality are too one-dimensional. Under the global metaconstitutional settlement, in contrast, personal enkapsis and the unbundling of sovereignty mean that claims on resources reinforce liberty in that they are refracted through multiple spheres. The proper long-term functioning of those spheres requires each one to have a separate monetary constitution, in a sense. It must be hemmed round by constraints on power and distinct standards of just allocation. It might even make sense to have a currency for each sphere—money in the market, alongside nonconvertible (or conditionally convertible) points for health security, points for political expenditure, the tithe for civil society funding, vouchers for education, and the like.

It bears noting that entrenching boundaries this way and locking in flows of resources, each with its own norms, would differ from the logic of dividing subsistence from prestige spheres of exchange in tribal societies. In the reading of economic anthropologists, those traditional customs aimed to prevent exploitation and assure a subsistence to all. While sphere pluralism in a constitutional settlement would also temper material exploitation, that is not its main purpose. Rather, these material supports would help to fragment power and to guarantee spaces for the free exercise of virtuous agency, in each sphere according to its distinct nature.

Still, such a fixing of the boundaries among spheres and their claims on resources would raise two broad types of questions.

First, once set up, such a scheme drastically curtails political agency. It forever solves the Wagner's Rule problem of electorates bidding up the share of income corralled by the state. Even more fundamentally, it removes the state as an Archimedean point for shifting the rules. Chaining the state sets the other spheres free. We should not underestimate, however, the breach with current practice that would be involved in setting the scheme up. Not only has modern humanity got used to a political clearinghouse for all such claims, but it also has a collective free hand in adjusting them. Those holding wealth, even on a modest scale, have got used to it being socially unencumbered except by taxation. Both the toolkits that most people have in mind and the constellation of rights over the commonwealth are thus distorted by the modern experience, so to speak. The founding act that sets the spheres free would reconfigure claims on assets and income. Future liberty with stable expectations may require a one-off disruption at the outset.

Second, locking the spheres does presume some confidence that broader material and social conditions will not change so fundamentally in the coming centuries as to throw the whole scheme out of whack. To some readers, this will seem preposterous. Technology has already remade much of life in each of the last few generations. Yet that reality should not lead us to assume either that the pace of change will continue or, more importantly, that the human goods we hope to serve will change at all. By 2100, it seems more likely than not that

growth will level off into a more stationary state. Economic gain may become less important, and status-seeking and 'positional goods' more important again. In that scenario, having a single hierarchy of aspiration makes mobility a zero-sum gain, with all the pressures and discontents that would follow. As Gellner has observed, competition for status becomes gentler and less frustrating when it happens on multiple ladders, so everyone can keep up the fiction that only his or her own ladder really matters.[78] Locking the spheres to ensure heterarchy might prove the wisest way to deal with such a stationary state.

But let us imagine another, more transformative, scenario. Classic Marxism predicted that technology would eventually abolish scarcity, leading to communism. Artificial intelligence and the like may displace livelihoods and raise the floor of prosperity, to the point that labour markets in the familiar sense fade away. But such universal abundance would not make fragmenting power any less crucial. Nor would it alter the claims on resources that map on to dimensions of human flourishing. Indeed, abundance would probably dovetail quite well with the sort of economic constitution that I have outlined. It might even be desirable to lock large shares of the yield from future robotics advances, not to the state or to owners of private capital—as today's models would make inevitable—but instead to some combination of universal basic income and subsidies to civil society. Huge resources in the non-work and nonprofit economies and in civil society could sustain, in liberty, enough room for fulfilling callings that a conventional labour market would not underwrite. Society would come even more fully into its own, beyond the narrow imperatives or temptations of state and market. For the coherence of virtue-centred sphere pluralism lies, in the end, in neither power nor money. Everything meets instead in personal enkapsis and the character that the individual can cultivate.

5 Legal Pluralism

Early in this book, I framed the core problem as how to devise a pluralistic framework congenial to liberty on a cosmopolitan landscape. I then argued that the breakdown of the modern political honeycomb gives us a vital opportunity. The circuits of commitment that the traditions express so well could be set free in a global space ordered by virtue-centred sphere pluralism. In the previous chapter, I went on to outline how these principles could apply to economic life and the funding of health security, education, and civil society. Economic power could be dispersed away from the state, even while building social ends into the flow of money much better than today.

Most of what I have argued so far has involved a story of liberty, of breaking down both power and territoriality. This breakdown would in turn release the vitality of spheres of life beyond the state. The vision cannot stop with merely breaking down the shortcomings of the present, however. I noted as much briefly when describing how strong local communities could counterbalance global openness. Still, other dense spaces of commitment must also be empowered.

In this chapter and the next one, I consider how the legal order can play a role. By the legal order, I do not mean the structure of the state itself. I mean (1) the systems of dispute resolution that bind those subject to them, and (2) the broader machinery of enforcement at the boundary between state and society. As in my discussion of the economic constitution, this requires more of a bird's-eye view than detailed policy recommendations. Legal scholar John Henry Merryman distinguished 'legal systems'—concrete rules and institutions—from 'legal traditions'—deeper assumptions about law, on the scale of the great models of common law, civil law, shariah law, and so on.[1] In mapping this vision of legal order on to its inspirations, I shall be talking rather more about legal traditions than about legal systems in an operational sense.

Those resources do have real-world implications, however. Combined, they can favour cosmopolitanism, liberty, and tradition. A sphere pluralist approach to legality asks first and foremost about the moral ecology of traditions in a cosmopolitan space. I shall argue that, in keeping with the breakdown of the political honeycomb, the legal order's centre of gravity must shift into global society. The corollary of sphere sovereignty should be deterritorialised legal pluralism. This imperative holds for three reasons. First, global diversity makes a territorial

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and majoritarian approach to many areas of law unworkable. A plurality of personal law systems would be more compatible with mobility and more likely to defuse potential areas of community friction. Second, such fragmentation would align with the overall metaconstitutional logic of virtue-centred sphere pluralism. It would unbundle sovereignty and shift many functions from state to society. Third, given an enkaptic understanding of liberty, legal pluralism would better let people manifest strong commitments.

This chapter deals with the plurality of personal law systems. The one that follows then considers the more public layer of the legal order, which would manage relations among personal law systems as well as offer a limited, neutral legal space for common concerns.

Law Beyond Territory

In a global metaconstitutional settlement, two features of the legal order need special attention. First, how does it draw the most important lines between state and society? Second, how much is it bound to territory?

Robust rule of law puts the centre of gravity of the legal order beyond political authority. We saw earlier that traditional thought hemmed the state in with prepolitical understandings of moral order. Law was broadly seen as prior to the state, as rooted in religion, natural law, or custom. Going back into prehistory, so-called chthonic or folk law had been subsumed within the whole of society or the cosmos, with no privileged interpreters or written corpus. Even after the rise of ancient and mediaeval states, when rulers had a function in dispensing justice, they did not have carte blanche to remake the essence of law or, in theory, to place themselves beyond its reach. In mediaeval Europe, the clergy and the customary liberties of social groups gave that idea teeth. In the Islamic world, the ulama were stewards of a shariah rooted in society and unifying the ummah. The fixity of shariah insulated the ulama somewhat from rulers' temptations to reinterpret it for political convenience. And in Hindu South Asia, the law likewise flowed from dharma. At most, rulers could decide how to apply fixed patterns. Dharma's claims trumped both custom and statecraft when push came to shove.[2]

Those traditional views contrast sharply with a rival temptation, nearly as old, for the state to wield positive law as a weapon against society. Premodern state capacity never let that temptation get very far. Yet in the more overbearing empires of ancient Rome and ancient China, lip service to natural law and cosmic order did not always impress the more hard-headed administrators. Roman law gradually came to insist on dealing only with individuals. Clans dissolved with the 'penetration of the Augustan political power into the recesses of the social structure'. The Legalists in China, during their ancient heyday, also pushed against Confucian ideas of truth and ritual. They saw law as a mere tool for running the machinery of state, alterable at the ruler's whim.[3]

Modern civil law, starting with the French Revolution and German systematisation, took this age-old hostility toward the prepolitical much further. Modern states have recodified law as yet another method for remaking society. Indeed, one modern legal scholar has mused that 'you can't really get away from the idea that the civil law tradition is somehow associated with dominance.'[4] Jouvenel and Acton likewise point out that, in the name of abstract order and individual freedom, the modern state has wiped away the rich landscape of self-governing groups in society. 'It emancipates the subjects of every such authority in order to transfer them exclusively to its own. Under its sway, therefore, every man may profess his own religion more or less freely; but his religion is not free to administer its own laws.'[5]

Ironically, despite its dark history of overreach, the nation-state is often invoked today as the best buffer against global technocracy. National laws that reflect the will of national publics are supposedly the best defence of diversity. The view that law maps on to the common sense of a placebound society harks back at least to the classic statement of Lord Devlin in the 1950s. He said that law held society together because it rested on the conformity of the great majority, exemplified by that matter-of-fact creature, 'the man on the Clapham omnibus'.[6] Devlin has been criticised from the left for exaggerating conformity as a basis for social cohesion. The right has taken him to task for caring more about conformity for its own sake than about the truth behind moral standards. Still, his view carries on in the psychological attachment of many people today to the nation-state as the unit of identity.[7] They see law as the stuff of majorities and consensus. That under-examined assumption holds across a wide spectrum of ideological positions today, from the advocates of Islamic law for Islamic states ruling over Muslim-majority societies to the softer civic nationalism of liberal states. Even more cosmopolitan liberal and multicultural thinkers who would unpack the nation-state still think that territory matters. Perhaps they would have it matter in looser layers than today, with federal systems ranging above and below the nation-state, and accommodations of indigenous minorities and the like. Yet territory, law, and common values are still their building blocks.[8]

To frame law as a territorial matter—either harmonised globally or differentiated in federal units—will not work for the world's metaconstitutional settlement. On a diverse landscape, it would ignite battles over which majority and whose values count. To be sure, one could try flattening such diversity, as some far-reaching empires have found tempting. Ancient Rome, for example, framed the *jus gentium* as a common denominator among the laws of barbarian peoples, and then the Justinian Code as a further simplification that converged with natural law.[9] Philosophically, perhaps one could argue for a global legal code as a truer synthesis of traditional legal systems. But as we shall see, such convergence will be useful in very few matters. People would hardly welcome it encroaching on many areas of personal life that they hold dear. It could also turn easily into a tool of state overreach.

If the global legal order is to work with diversity rather than against it, then we must look for alternatives to majoritarian law. While sphere sovereignty theory should have inspired alternatives, Kuyper and Dooyeweerd were hampered by the notions of their time. To be sure, their distinction among spheres could justify limiting the state's encroachment on society. Yet they saw such buffers as nested within the territorial enkapsis of 'national individuality' and distinct countries' political and legal cultures. They took for granted a cultural cohesion marked by territory. As a sympathetic Kuyper scholar later conceded, 'he was never seriously confronted by the idea of more than one nation within a single political territory.' Indeed, this image of nations as building blocks of diversity went in inauspicious directions. Later apologists for apartheid used the 'pluriformity' of creation to justify 'separate development' for South Africa's ethnic groups even within the same country.[10] In a global space, virtue-centred sphere pluralism should not bind people so unthinkingly to collectivities.

In the rest of this chapter, I shall take family law as an illustration of why legal pluralism—a choice among systems of personal law—is the most promising framework. I shall lay out how these spaces of legal choice might work. This paves the way for the next chapter, which will move up a level to the public legal order above such diversity.

Sources of Legal Pluralism

A global metaconstitutional settlement must take the family seriously. The natural affections and desire for privacy of even the humblest family tend to 'resist interference to the last', as one writer has put it. Many thinkers hold that the family is the most basic unit of society and prior to any nation-state. It is, for most people, a prime field for the development and exercise of character. Yet, in modern times, the state's influence on family life has grown as in other spheres. Aggressive revolutionary regimes, especially of a secular or communist flavour, have waged war on family loyalties. Even more liberal states have eroded the 'natural dominion' of parents and have claimed an expansive role in protecting child welfare. As states have come to finance more social protection, 'family policy' is built into how benefits work. Whether by actively rewarding certain types of households and roles, or merely by taking them for granted in policy design, states shape domestic life. Modern family law has also shifted recognition of relationships out of the informality of traditional community life. It has displaced churches' and other institutions' roles in defining marriage and its duties. The 'public architecture of marriage' and family have a 'channelling function'. Not only do they express the mores of a society's mainstream. They also offer a ready-made template of conduct that individuals often use by default.[11]

As in other spheres, the state's centrality in family law has made it the clearinghouse of social claims. Fitting the messiness of traditional laws into a national

code has proved a nightmare in places like Palestine, with its varying schools of shariah law and the different histories of its West Bank and Gaza regions. And even in countries like Ireland, a consensus can unravel and deep divisions can emerge over the pace of social change and how to translate it into law. The Republic's 1995 referendum to allow divorce occurred against the background of decades of deeply Catholic political culture—framed in contrast to Britain and the North—colliding with a generational shift. Whichever vision of Irishness won out, half the public would feel that its own had lost. The more recent controversies around the world over same-sex marriage also flow from this notion of one law for all in a given territory. A shrinking conservative mainstream would prefer the state to lock in a traditional view of the 'natural family', while liberal and radical activists want marriage redefined as a sign of 'queering the state'.[12]

Within countries, these tensions over which should be the 'one' law for all already cause strife. In a truly global space, they would be far greater. Even in America and the EU, movement of people across units with different political cultures shows that territorial law poses more problems than it solves. The right to move among American states often raises the question of whether marriages in one state should be recognised in other states, if the latter object on grounds of their own public policy. The EU justified free movement at first on merely economic grounds, but migration ends up putting identity on the agenda. Member states defend distinct national laws as a counterweight to the common European space.[13] Different laws on different patches of territory inherently come into tension with movement across them. The tension plays out for collectivities trying to deal with shifting opinion over time, and for individuals wanting to live by their own values wherever they move.

On today's landscape, such difficulties fall into the area of private international law and conflict of laws. Sometimes family law disputes come wholly under the jurisdiction of the state where the parties live. Other times, the law of a country applies in a more portable way to people who have moved away but retain ties to it. The standard by which to pick a given national law can vary in a 'fragmentation of jurisdiction'. Typical 'connecting factors' include habitual residence, nationality, or domicile. Habitual residence and/or nationality have tended to become more important, though the vaguer concept of domicile—the permanent home to which one intends to return—lingers in Anglosphere law. Controversy continues over how best to define a mobile person's ties to one or another territory. Jurisdiction over a relationship between individuals, such as when a marriage is celebrated in one jurisdiction but the parties were residing elsewhere, and then one or another of them moves to yet another place, can prove even more fraught.[14] All those approaches, however, take for granted the territoriality of law. Law supposedly reflects the values of a majority in a territory and has authority over individuals because of their ties to that territory.

These arrangements flow from the logic of the political honeycomb and the modern supremacy of the state over society. They have limited portability

at best. They also do not depend on the choice of the people involved, except insofar as the clever and resourceful can forum-shop by changing residence or nationality. For a future global order to try solving the problem through more consistent federalism, or through simply scaling up the logic of the nation-state, would be disastrous. Federalism would keep the mismatch between individual circumstances and laws made by place-bound and time-bound majorities. And trying to forge one law for all at the global level would not only be impractical, given the range of views and the lack of ethical authority to deal with matters of family law; it would also pose an even greater threat to individual liberty and traditions. There would be nowhere to escape whatever consensus a world state claimed to represent.

I shall argue that instead of a fragile consensus and faux tolerance in a neutral public sphere, it is better to handle diversity by recognising multiple systems of personal law disconnected from place. All the territorial connecting factors of residence, domicile, and nationality would cease to matter. This solution would bypass the problem of unmanageable diversity by displacing it to choice of law. It would also set free traditional and other frameworks of personal law to sustain the conditions for flourishing personal enkapsis. Just as with the reassertion of sovereignty in other spheres, they would no longer need entangling with politics and fitting to majority opinion in one or another place.

The most prominent historical example of legal pluralism came out of the Islamic world. Shariah matured over the first two centuries under the Umayyads, fleshing out Qur'anic principles with the kinship norms of the Arabs, along with legal practices from the Byzantine empire, Christian canon law, the Sassanids, and so on. Much sophisticated legal thinking flowed in as intellectuals from other traditions converted to Islam. The 'antinomy between a religious ideal and the changing demands of everyday life' across the ummah favoured a pluralistic approach, such as mutual tolerance among the different *madhahib*, or schools of legal interpretation. Diversity also crystallised in pacts with the religious minorities or dhimmis. In exchange for accepting Muslim rule, Christians, Jews, and others were given wide leeway to apply their own personal law systems. Of course, the public sphere remained Islamic, minorities had incentives to convert to Islam, and ruler-appointed qadis judged criminal and other public cases. In the Ottoman empire, minorities litigating among themselves also could opt to be heard in the more 'universal' Islamic courts. Despite such gradients toward Islam, however, the diversity of dhimmi personal law systems endured over many centuries. Kuyper himself, during his travels in the eastern Mediterranean in 1905, remarked in passing on the plurality of Ottoman legal systems as a kind of sphere sovereignty.[15]

Two features of Islamic legal pluralism make it a useful starting point for thinking about global legal order. First, it was mostly non-territorial in its framing. The autonomy of religious minorities with their own personal laws did not prevent geographic mingling in the same city, for example. Islamic law,

including the accommodations for minorities, also cut across the entire ummah despite rivalries among rulers who controlled different regions within it. Second, Islamic legal pluralism limited the state's role. Mobility and a common cultural repertoire across the ummah were possible largely because governments confined their functions to what a sphere sovereignty theorist would describe as the state's responsibility for public order. 'It was quite possible,' writes one historian, 'to pass from one principality to another without having in this respect the sense of leaving one's country.' Abiding by the shariah took priority over allegiance to any worldly ruler. The ruler would appoint an official mufti for public law matters, while individuals would consult private muftis on questions of personal law. Political and religious institutions thus played complementary roles. The ruler commanded armies and punished crime. The ulama judged everything else in society from contracts to property rights to family life.[16]

Beyond the Islamic world, we find cases of legal pluralism in other premodern societies. When China fell under non-Han dynasties like the Mongol Yuan, different personal laws often governed different tribes or ethnic groups. Even among the Han, clan rules served as a kind of private legal system, keeping order in daily life despite weak state capacity. Clan elders had wide patriarchal authority over members. They administered fines and light corporal punishment to uphold norms, as codified in clan genealogies and other texts. Public law, or *fǎ* 法, had a limited remit, leaving various incarnations of ritual propriety, or *lǐ* 礼, to hold the field in society. In mediaeval Europe, rulers conceded special jurisdiction to some social groups, albeit less systematically than in the Muslim world. Legal pluralism lost its respectability as three factors converged: the rise of absolutist states that aimed to master society, the taming of religion, and the growing Enlightenment fashion for systematising law at the expense of custom. Efforts to salvage pluralism lingered for a while in antiquated polities like the Austro-Hungarian empire, with its intermingled ethnic groups.[17]

While 'one law for all' became the mantra in the metropole, circumstances forced the European colonial empires to take a pluralist approach overseas. The need to govern diverse societies, often through native elites, meant applying parallel laws. The Spanish crown for a time treated Amerindians as a separate community. British overseas ventures were loosely organised as commercial undertakings at first. Later, the logic of 'indirect rule' meant leaving customary laws intact once formal empire was consolidated. The systematising impulse often meant pigeonholing individual subjects within one or another community. Loose traditional norms were then codified by administrators according to the advice of handpicked elders or clerics. While Europeans did not colonise the Ottoman empire or China, they extracted extraterritorial concessions, putting their own citizens under the jurisdiction of consular courts. After colonialism retreated, independent countries were often left with de facto legal pluralism. A modern legal system was overlaid on religious and customary systems, which ordinary people often still saw as their first port of call for settling disputes.[18]

Those loose, bottom-up legal orders in the Global South are one end of the spectrum of pluralism today. At the other end is the layering of global law. I noted early in this book that the new class takes law as its main instrument of global state formation. Many legal scholars find a kind of pluralism in this complex transnational space. The 'hard law' of treaties and the 'soft law' of human rights norms and the like are creating layers of global legal order no longer simply pegged on national sovereignty. This 'fragmented landscape' involves not only layers of jurisdiction in the EU, for example, but also functional systems to deal with international trade disputes, product standards, data privacy, war crimes, and the like.[19] It bears stressing, of course, that that sort of global legal pluralism is rather haphazard. New class bureaucrats and lawyers have created it piecemeal to handle specific tasks, rather than to accommodate any liberties and traditions in society. No robust metaconstitutional theory lies behind it.

Of high-end legal pluralism today, the most systematically transnational and coherent version is the *lex mercatoria*. Sometimes translated as the 'law merchant', the lex mercatoria harks back to mediaeval rules by which long-distance merchants settled disputes among themselves. In its modern form, the lex mercatoria is a creature of transnational corporations. These powerful actors sometimes bypass territorial law to create their own placeless standards and mechanisms, ranging from internal personnel policies to product specifications to private arbitration panels. Some experts on the lex mercatoria see it as nibbling away at state sovereignty. It offers a 'global proto-law' based on 'new private regimes' of self-regulation. On a theoretical level, two main debates swirl around the lex mercatoria. Experts disagree on whether the lex mercatoria really amounts to a freestanding space of legality, or whether it still relies on national legal systems for enforcement. It also may or may not serve the public interest. Defenders say its efficiency and specialisation fit the scale of a cross-border economy. Critics call it a power grab by a 'mercatocracy' that wants to limit transparency and accountability, and write its own rules at the expense of consumers and society at large.[20]

If legal pluralism in the Global South today lies at the messy interface of weak statehood and lingering tradition, and legal pluralism at the global level in the layers of supranational treaties, bureaucracies, and corporations, then a third suggestive version is in marriage privatisation. Unlike the other two, this third is a proposal floating in some currents of liberal thought and activism in Western countries, rather than a current reality. In simple terms, marriage privatisation would mean the 'disestablishment' of modern, state-recognised marriage. In its place would come 'freedom of marital expression'. Its advocates insist that an ostensibly neutral liberal state should not be defining marriage, often according to older templates rooted in religion and gender norms. The agenda thus bridges liberal and feminist concerns. Those who would privatise marriage typically concede that the state would still have to recognise some relations of contract and dependency among individuals, given the caregiving function of the family,

but that it could adapt its laws accordingly. Any deeper meaning to marriage would have to play out entirely within society. It would reflect the religious or other stamps people might wish to put on their relationships.[21] As of now, of course, no state has privatised marriage. The controversies over same-sex marriage have tilted instead toward reforming the 'one law for all', to make it gender-neutral.

Mainstream liberal thinking is unlikely to lead to a more robust legal pluralism. To be sure, it may welcome more functional specialisation and layering of law. Yet it will be reluctant to give up the power of uniform, state-made law as a tool for transforming society. The new class pairs an urge to wipe away traditional residues in law with a temptation to regulate and systematise on behalf of enlightenment. More ambitious arguments for privatisation of law come from libertarian and quasi-anarchist writers. Some call for doing away with any coercive authority to which individuals have not consented. They would turn everything over to voluntary agreement and private protection agencies that individuals could contract.[22] Such arguments are more thought experiments than concrete alternatives. Still, the sensibility maps onto a growing awareness of how important informal kinds of dispute resolution have always been. The humble and rustic have often had to take matters into their own hands. They have relied on a mix of custom and violence to defend their rights. Such habits only retreated as state capacity tightened and norms about law-abidingness spread downward. Yet even in developed countries today, many farmers and others still prefer relying on informal ways to settle disputes.[23]

Any compelling argument for legal pluralism as a metaconstitutional principle needs clearer ethical foundations. In short, what is pluralism for? Of the modern instances outlined above, all three—supranational 'fragmented jurisdiction' around treaties and human rights norms, the lex mercatoria, and proposals for marriage privatisation—arise from liberalism. Even the more radical libertarian or anarchist visions take a kind of atomist individualism as the core principle. In keeping with the rest of this book, however, I take personal enkapsis as the crux. Rather than stripping everything down to the atomist individual, a richer legal pluralism could give free play to the diversity of traditional values. Having multiple personal law systems is not about loosening definitions, but about letting definitions operate. It is not about fluidity, but about crystallisations. It is not about enlightenment, but about rediscovery.

In the rest of this chapter, I shall outline a robust, deterritorialised legal pluralism that can operate across a future global space. It would be anchored within a metaconstitutional framework of sphere pluralism. This approach offers three main advantages. First, it meets many people's desire to order their lives around strong commitments. Second, such legal pluralism would foster a healthier moral ecology, helping the best of traditional life to survive globalisation. Third, the dispersion of power would align with a model of liberty and associational life that usefully constrains the state.

Personal Law and Human Flourishing

Very many people care about identifying with a tradition. Virtues become concrete in relation to a social whole that offers shared standards, a sense of belonging, and ties across the generations. The scale of that whole and the content of the virtues vary, of course. It may include family, fatherland, faith, and so on. The ego counts for much less than the individual's living within the demands of an ongoing tradition.[24] Here, law often has a central place. As one philosopher has noted, 'nomos and narrative' are two sides of the same coin. The common stories of a group are bound up with the rules that mark off a virtuous way of life.[25] One commits oneself to those rules in part because of what another philosopher has called the human capacity for 'second-order volition'. What matters is not what one wants, the focus of liberal atomism. Rather, one knows what one wants oneself to want, because the guideposts of intergenerational experience show that it leads on to fulfilment.[26]

While personal law could rest on a non-religious tradition, most of the mature examples, as with Islamic legal pluralism, do stem from faith. These examples illustrate the value of personal law. Encompassing though such systems are, in the end, they hinge on individual conscience and commitment. They become intelligible as personal enkapsis within a framework of sphere pluralism. Indeed, Kuyperian Calvinism and Islam agree that religious motivation must shape all spheres of life. When we think about the demands of a system of rules, therefore, we see that external conformity cannot suffice. Conscience ties the whole tapestry together. As recent writers on sphere sovereignty have pointed out, the centrality of religious motivation means it cannot play second fiddle to political citizenship. Christianity also puts conscience at the centre. While it concedes to states the right to regulate action, it denies them the right to coerce inner belief or to hinder the believer from carrying out duties stemming from religion.[27] How far the faithful must concede such liberty to those who do not conform has been, to be sure, a perennial challenge through history. But on a diverse landscape, the focal point of inner conscience suggests that while belief and practice must generally be allowed to coincide, it stretches the logic to assume they must always coincide the same way for all.

One end of legal pluralism is conscience and the crystallisation of commitment. The other end is how law functions on a social landscape. Law ripples out across society and creates a 'moral ecology' for individual choices. Since 'the law is a teacher', it shapes character. This awareness crosses traditions, from Aristotelian-Thomist thinking about how to cultivate virtue, to the Islamic twinning of theology and law as the pillars of civilisation, to the Confucian image of law as a hard guardrail within which ritual and moral example can effect a soft transformation of people.[28]

Still, the relationship between hard law and soft social effects raises more questions than it answers when it comes to a diverse global space. In a nutshell,

can legal pluralism offer a hard enough guardrail—a firm enough teacher, so to speak—if no body of law occupies a dominant position? To say that sincere belief holds law and virtue together does not, in itself, settle the question of whether majorities with one law for all work better in practice. Here, even some of today's most fervent defenders of religious liberty against the secular state still slip into the trap of the political honeycomb. The American Catholic conservative Robert P George, for example, opposes privatising marriage because a 'strong marriage culture' can only flourish when society as a whole sends a consistent message.[29]

Perhaps such views come from the blind spot of thinking one can count forever on a national majority that shares one's sentiments. But in a global space, beyond the practical unworkability of such a consensus, there are compelling reasons why the moral ecology of traditions would work better under legal pluralism. Both the fact of diversity with no majority, and the interest in liberty, together point toward legal pluralism. Observers from Tocqueville onward have noted that disestablishing religion has rarely led to secular apathy as feared. Rather, under the right circumstances, it has led to a flowering of diverse denominations in society, untainted by the shaky legitimacy of the state.[30] Sincerity and affiliation match up better. From a sphere pluralist angle, the true nature of the institutions that embody those commitments would be set free. Consider how many modern young people have strained against unchosen, brittle traditions enforced by states. Far more who grow up in wholly voluntary traditional communities like the Amish opt to stay with them as adults. If we scale up the idea, then a loose form of legal pluralism in a global space could be the best recipe for the survival of traditional ways of life. As a structural matter, legal pluralism also fits the broader logic of sphere pluralism. Limiting the state's footprint will not happen only by eradicating the political honeycomb's border controls, channelling social expenditure through independent bodies, and other such measures that I have already outlined. A further retreat of the state from personal law would square with respecting the intrinsic freedom of associations.

To respect personal law systems implies a distinct view of liberty consistent with virtue-centred sphere pluralism. On the one hand, it differs from postmodern views of legal pluralism today, which celebrate looseness, layering, and hybridisation for their own sake. The lex mercatoria and privatisation of marriage aim only at stripping away impediments to freedom of contract. They put nothing between the state and the individual, except a vacuum of moral neutrality. On the other hand, the image of liberty here also differs from the self-determination of a society as a whole. Too often, the unit seen as most entitled to opt for traditional values is the nation. In practice, the nation means a tenuous majority or the political elite of the day. The UN's gestures at tradition and diversity have difficulty escaping such container-society assumptions.[31]

In contrast to both liberalism and national self-determination, the kind of legal pluralism I outline here would look more familiar in premodern experience.

Robust systems of personal law crystallise insights about virtuous living. Those insights run deeper than the tastes of individual adherents. Positive law made by the state cannot comprehend them. In short, giving room to choose systems of personal law means recognising a freedom to engage with truths more permanent than either the chooser or the time and place of the choosing.

The question then shifts to how the individual's commitment to a personal law system would work in practice. That the state would impose less does not mean that power would cease to operate in the choice itself, in the internal workings of the system, and in its enforcement.

Liberals have a common misgiving about legal pluralism: it might free individuals from the state while locking them into smaller-scale kinds of oppression. This misgiving has cropped up in recent decades in response to proposals to recognise ethnic minority customs, religious courts, and so on. In one instance, the then Archbishop of Canterbury, Rowan Williams, suggested in a 2008 lecture that in a diverse society, it could make sense to accommodate some Muslims' preference for their own shariah-based personal law arbitration. While insisting that everyone should have recourse to the same civil rights, he noted that an 'unqualified secular legal monopoly' had a blind spot for the multidimensional loyalties of the faithful. Even entertaining the idea provoked a severe backlash.[32]

When it comes to minority practices, liberals look more generously on 'external protections' against majorities than on 'internal restrictions' that constrain members. Liberal feminists especially take issue with what they see as the control of women in Muslim communities. Privatising marriage or letting religious minorities opt for shariah arbitration could risk shoring up the power of abusive husbands and hidebound elders. Indeed, some liberals insist that the state's imposition of one law for all is an invaluable weapon against petty oppression. They fear that associational liberty for unenlightened groups would frustrate the longer-term emergence of modern individuality. In keeping with the new class sensibility, law can erode traditional practices. As one critic of shariah arbitration in Britain put it, 'If we permit the growing intrusion of shariah courts to continue, British Muslims will in effect be subject to the same coercive pressures to conform as they would in an Asian village.'[33]

These concerns need to be taken seriously. Still, three realities may blunt some of the criticism. First, liberal autonomy within family relationships may be less popular, even within liberal societies, than the critique assumes. In a different context, one scholar has noted that the family is a specific institution with its own norms and that most people who strongly support gender neutrality and individualism in the public sphere take a softer view within the family. They may follow a more traditional template at home and see their ties and the roles as based not on an individualistic contract but on 'an entire shared past and an imagined shared future'.[34] Second, what looks repressive from an outside liberal vantage point may not really be so. A defender of multicultural tolerance has argued that the hijab often empowers Muslim women to enter the public sphere

and fit into a standard of sexual morality that affects Muslim men as well.[35] Third, some rejoinders to liberals' misgivings about multiculturalism note that their concerns are often selective. They are bound up with self-congratulatory ideas about Western enlightenment and the backwardness of Muslims.[36] Taken together, these responses deserve some weight. One should read practices as they are, rather than as a projection of new class prejudices. And as a snapshot of opinion in today's world, probably more people want to accommodate others' traditional assumptions about family life than want to transform them.

Still, none of these caveats should blind us to power relations within traditional communities and personal law systems. A metaconstitutional settlement must take account of these facts. It should structure the space of legal pluralism to bring out the best rather than the worst. To do so will mean transcending the usual tension between liberalism and multicultural relativism. Traditional pluralists have a better toolkit for thinking through these issues, once we get past the historical baggage of some early thinkers. Kuyper's biographers have noted the man's antiquated views on women's role within the traditional family, though they suggest that with more experience of twentieth-century social change he might have broadened his imagination.[37] Sphere sovereignty itself does have tools for tackling oppression in private life. It reserves coercive power to the state, for example. While it jealously defends other spheres' distinct functions and gives them free rein, that freedom cannot justify mistreatment. Dooyeweerd reminded us not to confuse sphere sovereignty with letting powerful figures in each sphere lord it over others, whether in economic, religious, or family life.[38] If those administering a system of personal law are abusing vulnerable people, then the state would intervene, just as it would do with a street mugging.

This fact will not satisfy many liberal critics of legal pluralism, though. They may object that even if coercion is illegal, personal law systems by their nature tend to suffocate individuality. Unlike mediation or arbitration of a business contract, shariah courts and similar bodies apply laws rooted in belief and custom.[39] For a person embedded in that milieu, a right on paper to exit—or not to opt for that system—imposes huge costs, because he or she must turn away from a way of life. Choice looks like betrayal, especially when many traditionally minded groups see personal law as a defence of identity. A choice of personal law is unlike choosing an insurance policy, in other words. One liberal theorist worried about this dynamic, Ayelet Shachar, has conceded a role for personal law systems only if they are not too comprehensive. If they are confined to specific issues, with easy exit, then the state can still advance a long-term goal of 'transformative accommodation' that effectively remakes traditions.[40] Such an approach would hardly satisfy believers for whom the appeal of a personal law system is precisely its comprehensiveness, however. It also leaves the door open to the state doing much transforming and little accommodating.

Genuine pluralism should give leeway for systems of personal law to operate, absent coercion. It should avoid second-guessing them. Comprehensiveness

raises other issues, nonetheless. For example, Islamic scholars have long wrestled with how a marriage contracted within shariah or another system fares if one or both members of a couple convert.[41] If status and belief all hang together, then the legal situation gets quite messy when the pieces of the puzzle shift. On a future global landscape, debate could arise over whether a person must have one consistent system of personal law across all significant relationships. If so, it would begin to look like pillarisation or today's subjection to a jurisdiction of domicile, even if freely chosen rather than given by birth or residence. If not, then it can lead to forum shopping or tension between different commitments, with each one justiciable according to different standards. Yet many of these apprehensions only make sense if we assume a landscape that is more integralist or communitarian than pluralist. Sphere pluralism puts more emphasis on personal enkapsis. The coherence of a person's different engagements lies in his or her conscience, rather than in the social pressure of a collectivity that imposes overlapping commitments on everyone.

In this logic, how far can a choice of law for a marriage ripple outward, say, to the custody of children, to inheritance of property, to enforcement of trust provisions in those children's marriages a generation later? I do not pretend to resolve these issues here. But three principles might offer a starting point. First, for a given relationship such as marriage, stability of expectations favours a choice of law at the outset, which cannot be switched without the consent of both parties. Second, some ripple effects, such as on the custody of children or the inheritance of marital property, can be desirable because they would be tightly linked to the logic of the original commitment, as well as needing some system of personal law to govern by default. Other ripple effects should stop once they reach an adult capable of a free choice of law in a distinct sphere. Otherwise, the exercise of conscience would be respected at one point but abridged at another, equal point. Third, when it comes to external state enforcement of rights and obligations incurred within personal law systems, the public legal order would have to recognise a hierarchy or sequencing of claims.

On a messy global landscape, with multiple systems of personal law coexisting and none with majority support behind it, the linchpin of the whole structure in these three dimensions must be formal recognition. Shrinking the 'imperative' scope of 'one law for all' does not remove the need for a public imprimatur on 'dispositive' choice of law. Voluntary, formal commitment figures within traditional understandings of marriage, for example. Both shariah and canon law have long required the witnessed consent of both parties. In civil law countries today, public notaries also record documents that express the will of private individuals. Even within the constraints of current national legal systems, there is some room for a choice of provisions on entering into a marriage, from property regimes to prenuptial agreements about the terms of dissolution to covenant marriage that makes divorce slower to obtain.[42]

Formal recognition when a choice of law occurs would clarify obligations with regard to other personal law systems and to public enforcement. The global legal order could offer a notary-like mechanism. Unlike today, however, it would not impose particular content on personal law systems. It would not pretend to grant them a fictitious legal standing that they otherwise would not have. Nor would it deny the prepolitical sources of their norms as understood by the individuals choosing them. Pluralists already recognise in this spirit that one can see an association as having a life of its own, and still give the state a function in recognising it formally where it implicates public law.[43]

Viewed from the perspective of traditions, individual registration of choice of law can look like a housekeeping device. A devout Muslim has always been able to choose which madhab to consult for personal law matters, for example.[44] Amid global diversity, both the various personal law systems and the public order enforcing boundaries among them have an interest in knowing who has opted for what. Perhaps by the standards of a given tradition, an adherent would already have incurred a moral obligation through upbringing or the like to choose a given personal law. Yet the public order itself, given its limited competence under sphere pluralism, cannot discern such things better than a mechanism for individual registration. At the same time, from a more liberal standpoint, individual choice of law has the side-effect of drawing a bright line against coercion or the givenness of identity. What I propose thus runs counter to the deforming logic—still all too prevalent—that the individual is bound to a given system of law either by territory or by family background.[45] In terms of legal formality, consistent with personal enkapsis, the individual would claim a system of personal law rather than being claimed by it.

This mode of legal pluralism thus avoids the Herculean task of trying to forge a common global code of personal law. It sets systems of personal law free to coexist with one another. Still, some liberals may insist that choice of law will not be made in a vacuum. Putting so much weight on the moment of choice runs the risk of trapping vulnerable people. Liberal theorists rightly point out that a lot of talk about the right to exit problematic relationships or contracts means little amid unequal power. People often suffer the agonising pressure of emotional influences that have built up over time. The pressures of custom also sometimes look less like accumulated wisdom and more like dumb habit.[46]

I acknowledge that, on today's social and psychological landscape across much of the world, a choice of law often would not be made in ideal circumstances. Legal pluralism might still be the only practical way to manage global diversity and keep at bay the state's tendency to impose its own model. It could well bring individual costs with it, nonetheless. Yet over time, legal pluralism with choice of law could be a great experiment. Perhaps it will prove the single greatest boon for tight orthodox traditions, because most people really want frameworks for security and fulfilment. Or perhaps it would end up the greatest solvent for unreflective traditionalism as people escape the givenness of place

and patrimony. I suspect the truth would have elements of both. Some chunk of humanity would opt for personal law systems of a traditional sort, albeit more thoughtfully than now. Growing diversity of experience, including geographic mobility and contact with those who despite similar backgrounds have chosen differently, would raise the threshold of clarity that a personal law system would have to offer about its content and workings.

Today, a young Muslim bride often signs a marriage contract without even reading it. Everyone around her expects as much. The social pressure to conform to a narrow standard of family honour overwhelms any glimmer of apprehension. If her marriage ends up in a divorce case, then she will probably also experience judicial authority as something external and predetermined by her time and place. She will have little understanding of the theological and legal principles behind the process, and few material or mental resources to make her case effectively. She will probably also have little, if any, sense that the process is legitimate because she subjected herself to it out of personal conviction. After two generations of global legal pluralism, I suspect that her granddaughter would experience all stages of this trajectory differently. Even as an average young woman in a rural backwater, she would probably have enough education and awareness of the global landscape to know that within her branch of Islam, let alone farther afield, a marriage contract can be written more than one way. Conversations with a prospective husband over the contours of the marriage would become the norm.

The experience of the community would also drive home that even a prevailing system of personal law was not given by place and time. Our young Muslim bride at century's end would know that the public legal order would not coerce anyone into a specific option or idly look away from private coercion. The choice of law would also allow a better match between conscience and commitment. Most people operating under a given system would be genuinely committed to it. Such should not be caricatured as a competitive market among personal law systems, to see whom they might attract, even though an onlooker cold to their meanings might see it that way. Rather, it would be a practical solution to diversity. It would add the salutary effect of breeding a little less complacency and a little more reflection. Today's overlaps of tradition, place, community, background, and jurisdiction would gradually loosen as the social conditions of virtue-centred sphere pluralism matured.

One loose foreshadowing of such a landscape of legal pluralism is in contemporary India. Political scientist Gopika Solanki has traced in Mumbai the complexities of a 'shared adjudication model'. Post-independence India wrote into its constitution the aspiration to a uniform civil code. In practice, Hindu, Muslim, and other personal law systems have persisted. Solanki argues that this arrangement has split authority between state and society, with the secular courts, religious bodies, and a host of other informal actors in civil society all interacting in a 'pluralised legal sphere'. Such pluralism not only fragments power. It also

allows transmission of changing values across the boundary between state and society, creating room for women's rights and other new justice claims gradually to gain ground.[47]

India's vast diversity and its accommodation of personal law systems have something in common with the global landscape I have outlined. Two important differences bear noting, however. First, as with much in post-independence India, the 'shared adjudication model' is a muddled improvisation. For a global metaconstitutional settlement, the lines around each type of authority need drawing more clearly for the long term. Second, the accommodation arose on sufferance, so to speak. The modernising Nehruvian elite trod lightly not because of any genuine sympathy for traditional pluralism, but because it needed minority vote banks. It more or less assumed that as development ran its course, liberal enlightenment would win out. A sphere pluralist global order would see traditional diversity as a permanent and desirable fact, however, even if how people engage with it would evolve.

Legal Reform from Within

In this scenario, the relationship between individuals and systems of personal law would mature over a couple of generations. The choice of law—a right of exit, or a right not to enter—would avoid the worst mismatches between conscience and commitment. It would also force systems of personal law to make their aims and functioning clearer to their adherents. Exit is not the only mechanism, however. Voice also matters. Like any legal system, personal laws inevitably evolve by internal legislation or interpretation. Given the extent of global diversity and social change, any personal law system would face new challenges in how to apply its principles, even if its adherents held those principles to be essentially fixed. When someone opts for a system of personal law, therefore, it cannot mean committing to a snapshot of its rulings and practices exactly at the moment of choice. One effectively throws one's lot in with a system that may evolve. The same happens today, after all, when living in a country with a national legal system and an active legislature. One commits to a framework and a process rather than to expectations of an outcome as such. What happens within a personal law system as far as voice and evolution must be seen, from the standpoint of the public legal order, largely as an internal matter. Still, I want to suggest what this evolving internal life of a personal law system might look like in a context of global legal pluralism.

A sphere pluralist approach holds that a personal law system has an internal life worthy of respect. Its practitioners might see it as an achievement in discerning truth, or as the accumulated wisdom or reasoned deliberation of a community, or as stewardship of a revelation. In Confucianism and in ancient Greco-Roman thought on natural law, the truths of philosophy loosely informed positive law, which should align with it so far as the realities of daily life allowed.

Customary law, whether in tribal communities or the legal theories of mediaeval Europe, was binding instead because it reflected the ongoing practice and will of a community.[48] Both the philosophical and the customary views leave room for the rules, or at least their interpretation, to shift over time. The practitioners may have varying understandings of how much leeway they have to change direction, of course.

Rather more challenging are systems such as Islamic law, which adherents understand to be based on revelation. In that case, the four sources of law are, in order, the Qur'an as the word of God, the Sunnah as the doings and sayings of Muḥammad as the Prophet of God, the *ijma* or consensus of the community on how to apply the first two, and *qiyas* or jurists' reasoning by analogy to fill the remaining gaps. Scholars of Islamic law distinguish between the shariah as the 'revealed and immutable path' and the fiqh as the body of jurisprudence based on human interpretation of the shariah over many centuries. *Ijma* has come to mean the consensus not of all believers, but rather of the ulama. The range of interpretation has narrowed with each passing generation, even if some minor differences among the madhahib are respected.[49] Overall, Islamic law today has some diversity under an acephalous clergy, though adherents see a common truth underlying it. Reinterpretation as an act of human will has no real legitimacy. Even less can any state legislation alter the content of the law.

Under modern conditions, the evolution of legal systems has not been mainly due to judicial interpretation. National governments have intervened to recodify and harmonise systems of personal law. In Muslim-majority countries, governments have legislated on everything from family to inheritance to waqf law. Typically, they have shown themselves ill-informed about the religious foundations of shariah.[50] British colonial regimes in India and Africa also expropriated jurisdiction from society. They codified Hindu law and tribal customary law in artificial ways. These takeovers of law fell into the trap of the political honeycomb and territorial enkapsis. They also shifted power to supposed experts who may have been unrepresentative. In Africa, for example, British jurists favoured a fixed notion of customary law as understood by the 'old men' of the villages, uncontaminated by social change and modern nationalist activism.[51] Whether to accelerate or to retard change, that sort of state-led legislation deformed the internal life of each system of law. In a framework of global legal pluralism, we should do better to let each system of law adapt according to its own logic.

Depending on the legal system, that internal change could look like reinterpretation of an existing body of law. Or it could look like reconstitution based on the voice of stakeholders. The former is modelled by the long development of English common law. While civil law systems change the law readily with new codes, common law has dealt mainly with accumulated precedents. How much common law takes account of social change is an important theoretical debate. But it has proved adept at adjusting to the shifting content of property rights during the transition from feudalism to a market society, and to the modern family's

elevation of affection over bloodline in matters of inheritance, to take just two examples. It has dealt more with managing relationships and mutual obligations like contracts, rather than presuming an abstract rights-bearing individual of a sort that could only be at home in a modern liberal state.[52] Typically, this evolution has kept the style of legal reasoning constant, and with it the predictability that makes common law attractive, even while reinterpreting some concepts. Islamic law has also adapted somewhat to changing social conditions. Islamic jurists undoubtedly could rise to the challenge of a new global society. Given that much of Muslim personal law hinges on contracts—such as the *nikāḥ*, or marriage contract, which today tilts by default against women—it has room to let people devise new ways to manage their lives in an Islamic framework.

From the standpoint of the public legal order, this sort of internal adaptation would pose no difficulty. It would avoid many potential areas of friction. A bigger practical problem comes from the fixed yet acephalous nature of Islamic law, Jewish law, and the like. While the madhahib agree on a great deal, they are not even as unified as common law. Islamic law lacks a single authority or mechanism of professional certification to demarcate its boundaries. The Jewish Torah is also less a systematised whole than an accumulation of strands of argument over many generations.[53] In the absence of hard recognition by a state, choice of law and varying interpretations could lead to disarray. The madhahib, in short, are not centralised enough to avoid confusion over authority, but also not egalitarian enough to throw everything open to the *ijma* of all adherents. For fixed yet acephalous personal law systems, the public legal order's housekeeping function of registration would have to label clearly for which interpretive authority an individual is signing up, not merely a body of law in the abstract. For Islamic law, enough detailed jurisprudence and enough identifiable jurists exist for such an arrangement to work in practice. For some other traditions such as Hinduism, and even more so for Confucianism, the sheer shapelessness of belief and the lack of a clear body of interpreters would make the task harder. In principle, however, the public legal order could recognise, as a personal law option for those wanting it, any institution with clear interpretive authority and codification.

For personal law systems that do not ground their content on a fixed revelation, change would probably come through internal legislation. Voice may prove as important as exit (or choice at entry). Here further insights from Hirschman on voice versus exit are useful. He suggested that voice becomes more important where exit options are limited, and where individuals feel strong loyalty to an organisation or group.[54] Given the depth of reflection informing a choice of personal law, loyalty should generally be high. Where the law's foundations allow voice, voice should abound. Indeed, one might expect even more voice than in today's national contexts. The givenness of law for all in a territory now makes many ordinary citizens quite apathetic about it. As education levels rise and the possibilities of a global space open up, contestation within personal law

systems may open up as well. That process must unfold organically, however. It will be conditioned by the nature of each legal system itself. While the public legal order has a stake in preventing coercion, it should not treat voice in a given personal law system as a wedge for wreaking a transformation mainly wanted by outsiders.

Where a personal law system has internal debate, we run into further challenges. Law that crystallises the will of a community must be pegged on a mini-sovereign, so to speak, with unambiguous boundaries. With today's territorial law, we at least can draw on democratic theory to define who the demos is, based on nationality or residence or the like. With global legal pluralism, the sovereign directing the internal life of a personal law system would be much murkier. This problem goes beyond scale, which would be a big enough issue in itself, given the geographic mobility. It also touches on the nature of each body of law. I would distinguish three types: (1) hierocratic, with a definite ecclesiastical power centre that can interpret or recodify law; (2) democratic, with full legislatability and a defined demos; and (3) drifting, with no doctrinal obstacle to change but also no clear body to legislate.

Hierocratic and democratic systems of personal law would be the easiest to manage on a landscape of legal pluralism. Canon law as interpreted by the Catholic Church exemplifies a hierocratic system. Compared to shariah, it is not understood as so directly derived from revelation. The Church has refined it a lot over the centuries. As Vitoria argued in 1532, the Church's authority comes via apostolic succession and addresses the eternal good of the individual believer. It does not deal like a state with the diffuse good of a public at any moment.[55] Whatever adaptations canon law might need to make as one global system of personal law, any adherent would know that the Holy See would decide. At the other extreme, a democratic system of personal law could evolve as its adherents see fit. It could define its demos as all those who have opted for it and create channels for them to voice their wishes through elections or the like. Hierocratic and democratic systems have in common the advantage that when one signs up for a given jurisdiction, one knows who makes it up, and how changeable the body of law is.

The most likely drifting systems of personal law would be those derived from one of today's national legal codes. Nowadays, such systems have all the clarity and limitations of the modern state. The public, the subjects, and the jurisdiction of such systems fit a national territory. And democratic self-government is bound up with the right to legislate.[56] I suggested earlier in the book that in the long term, the global metaconstitutional settlement would probably unravel national polities. Functions will split and shift up or down in scale. For those who want to keep managing their personal affairs within one of those erstwhile national legal systems, the transition to being a merely personal law would include the loss of an easily identifiable demos as well as the legislative institutions that could adapt the code. They would become drifting systems in the absence of

national political machinery. Perhaps common law systems have enough tradition of judicial independence and reinterpretation that they could spin off into the global ether and function much like the madhahib. The transnational tradition of common law, rooted in England, has coexisted for many decades now with different sovereign national jurisdictions from Canada to India.[57] Yet for civil law systems with state-centred codes, the vacuum would be harder to fill. In practice, the solution would probably look like newly chartered bodies with defined judiciaries and membership-based channels for legislation. They might frame themselves as based on a given national legal system at the moment of its dissolution, but not really in continuity with it. Such a scenario could look like what happened to Roman law after the empire's collapse and the inability of new fiefdoms to apply it: it survived in fragments as a reference for some private law disputes, while public law became irrelevant.[58] I would hazard, however, that most national legal systems would not survive such a transition. They would fall between two stools. They would offer would-be adherents neither the density of moral commitment and the vision of human flourishing that more traditional systems embody, nor the innovation and niche appeal of new personal law systems.

This last observation brings me to a final point about what can qualify as a personal law system. People choosing one would rightly demand clarity of content and certainty on who would adjudicate. They would want it to handle fairly the full range of justiciable matters that people could encounter, at least for the areas of their lives that they have put under it. The public legal order would also have a stake in the institutional maturity of a system, its ability to interact with other systems, and its likely endurance over many generations. Some systems—such as the Islamic madhahib, Jewish halakhah, Catholic canon law, English common law, and so on—have long existed and could adapt well to a global space. After all, they already do so to some extent, despite the constraints of the political honeycomb. They would just need to be set free to put themselves on offer to anyone, anywhere. Other systems have longstanding traditional inspirations and many would-be adherents, but at least today fall short on institutional capacity and the detailed jurisprudence needed to operate in a complex global society. Still others do not even exist yet, but we could imagine them being created by less traditional people—including liberals and radicals of various stripes, perhaps with unconventional views on gender identity and the like—who could treat global legal pluralism as an invitation to innovate and emancipate.

For the public legal order's own convenience, it could take the view that only the most longstanding and institutionally mature systems could qualify. In practice, that view would limit options to a few dozen religious and national systems. I think that doing so would shortchange the potential of this global experiment. Of course, minimum thresholds of sophistication are unavoidable to win public recognition. The public legal order should not be left cleaning up the mess when a personal law system collapses into informality or incoherence. Yet with that caveat, any personal law system—or, more precisely, any institution offering to

adjudicate a version of it—should be eligible for choice of law purposes. The tapestry of global legal pluralism needs many panels on it to gain legitimacy. In the end, the legitimacy of each personal law system would add cumulatively to the legitimacy of the public legal order in which it is anchored. That public legal order is the subject of the next chapter.

6 The Public Legal Order

In the previous chapter, I argued for legal pluralism as the best way to manage diversity in the future global space. It aligns with sphere pluralism's dispersal of power and the effort to maximise room for the virtuous engagements of personal enkapsis. Viewed from within, any given personal law system might look more hierarchical or more democratic, or more traditional or more secular, in its inspirations. Viewed from outside and above, all personal law systems must look the same. They would express values to which the people involved have assented through choice of law, and which thereby have gained legitimacy. This legitimacy in turn matters in how personal law systems interact with one another, and with the public legal order as a neutral space.

In this chapter, I shall outline an approach to the public legal order: its role in enforcing rulings under personal law, its rationales for tolerance among traditions, how adherents of traditional personal law systems might justify compliance with it, mechanisms for the protection of rights and administrative accountability, and the possible structure of the legal professions and legal institutions. The contours of such a public legal order would be compatible with sphere pluralism and a much curtailed scope of state sovereignty.

Bridging Legal Pluralism

The inherently public functions of a neutral legal space deal with crime, torts, administrative regulations, and matters of contract and property for which no personal law system or arbitration body has been chosen by the parties involved.

When it comes to personal law systems, the public legal order's most visible function would be routine housekeeping, such as formally recording individuals' choice of law. The public legal order also could ease the functioning of personal law systems. The most mature ones foreshadow, and already have, many of the features that we have come to consider the norm for modern state law. Canonical courts and shariah courts all have recognisable procedures involving fairness and evidence, even if their philosophies may differ from their secular counterparts.[1] The efficient functioning of personal law systems could be improved, therefore, not by interfering in their internal operation but merely by furnishing resources even-handedly across all of them. For example, funding of

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court infrastructure and staff costs could speed up decision-making. Subsidies for legal aid could help parties to present their side of a case in the strongest way and to make full use of any remedies available under the personal law in question. After all, even the staunchest of traditionalists would not want power or wealth diverting the course of justice from what the principles, in their purest form, require.

Beyond such neutral support, the public order might be tempted to intervene in other ways. The biggest challenge arises when the rights, duties, and judgements under the internal rules of a personal law system seem alien and unappealing to those responsible for the public legal order. Yet robust traditions with dense commitments unavoidably will repel some outsiders some of the time. Absent coercion, we should be wary of the impulse to intervene. To understand why, we must draw on the logic of sphere pluralism to ask what issues fall within the competence of a neutral public legal order.

Take a perennial issue emerging from halacha, or Jewish law. Its practitioners have long experience as a minority faith, with religious courts disconnected from the legal system of the surrounding society. In some ways, their experience of pluralism foreshadows what other personal law systems would confront in a global space. One tension in the gap between halacha and the secular legal systems of Western countries involves a question of status in cases of divorce: the oft-cited problem of the *agunah*. Notwithstanding civil divorce, under halacha a marriage can be fully dissolved only when the husband grants a *get*, or Jewish divorce. A *get* is void if coerced. A Jewish wife denied a *get* becomes an *agunah*, or 'chained woman', under halacha, and thus cannot remarry within Judaism even if she is already divorced by the standards of the civil courts. Jewish courts find creative ways around the obstacle by invoking prenuptial agreements with financial penalties to influence the husband's choice. But civil courts not only cannot compel the issuance of a *get* without voiding it by definition; they also have been reluctant to intervene in what, given the separation between religion and state, looks like a mere sectarian issue of status.[2]

In the logic of sphere pluralism and respecting personal law systems, too, pure matters of status fall beyond the competence of the public legal order. Requiring acts that have meaning only within a religious context would deprive those acts of that very meaning. Granting or denying a particular status to someone or allowing access to certain rites under personal law, such as marriage, can matter only to those who believe the personal law system in question has moral authority, and thus seek the approval of its adjudicators. As experts on the *agunah* problem note, for example, it only troubles divorcées who care about their status under Jewish law and consider a civil divorce insufficient.[3]

Given the absence of civil divorce (like civil marriage) on a pluralist landscape, however, what would happen if someone who had contracted a given status and obligations under a personal law system ended the relationship in question without satisfying the internal requirements for a full exit? As far as

status and the moral disapproval of the particular community, the public legal order would have to let matters run their course. Indeed, it would lack the right sort of authority to do otherwise. The moral strictures of traditional personal law systems operate mainly through informal social pressure among those who share them. As Gellner put it, individual commitments gain teeth only if embedded in an 'interdependent and ritually orchestrated totality'. Historically, this has meant committing in front of either a traditional community like a village or the notaries of an impersonal yet strong state—in short, the 'tyranny of cousins' or the 'tyranny of kings'.[4] Personal law systems of a traditional sort fall closer to the former end of the spectrum. Whether the person's tarnished status would matter to anyone outside that personal law system—such as authorities in another personal law system under which the person proposed to enter a new marriage, for example—would depend entirely on those others' rules and the comity that they might extend to their counterparts. Bigamy, for example, would cease to be cognisable under the public legal order.

Still, the public legal order would have a stake in the smooth functioning of all personal law systems. It could impose criminal penalties for misrepresenting one's status at the moment of a choice of law, and for perjury in the proceedings of personal law courts. Beyond these neutral kinds of supportive coercion, it must distinguish between what is enforceable and what is not. In a diverse global space, to back the rulings of a personal law system by force would be quite a leap. However important certain duties may be within a personal law system—such as marital fidelity—the public legal order cannot take responsibility for them. A transgression that, for personal law adherents, warrants harsh punishment will not be comprehensible to those outside the system. In the logic of sphere pluralism, the public legal order should only recognise offences under the public criminal law and all individuals' right to be protected from illegal coercion by others. The same principled boundaries that protect personal law systems from outside interference would also prevent them from summoning outside coercion. For any dispute touching on core points of doctrine, they would have to rely on soft social pressure to do most of the work.

While the public legal order could not intervene in matters of status and moral obligation, material claims are more likely to entangle it. No doubt, the public legal order would find it more convenient merely to see individuals. In general, the more complex the society, the more trends have gone in that direction. Roman law, for example, gradually evolved from only knowing the agnatic family—ruled by its paterfamilias—to recognising individual rights of property, contract, and the like. At the same time, the caring function of the family means that law must treat relationships differently from, say, commercial transactions. Shariah law obliges Muslims to support family members financially, and the family's claim on its members' property means prescribed rules on how to distribute inheritances. In modern times, positive law also enforces obligations of financial support, even as liberal reforms have thinned moral judgements about adultery and other

nonmaterial elements of marriage. As the state's footprint in social welfare and immigration control has increased, it has also gained more of a stake in recognising relationships that would affect how such benefits and discrimination operate.[5]

The distinction between questions of status and questions of civil obligation already appears in some personal law systems. Under canon law, for example, the Catholic Church can grant a separation *a mensa et thoro*, to live apart, even though it cannot dissolve the sacrament of marriage or allow remarriage under its rites. It draws a line between such moral and ritual obligations and the right of secular courts to dispose of the 'merely civil effects' of a failed marriage. Similarly, those liberals today who would privatise or loosen definitions of marriage admit that the state will still have to untangle property claims.[6] Within sphere pluralism, the public legal order generally would defer to personal law disposition of financial matters, the same way it should respect contracts and arbitration agreements as expressing the will of the parties involved.

The public element arises when those rights require recognition and enforcement against strangers outside the personal law system in question or coercing a party who will not comply with a ruling. This is the state's classic domain under any version of sphere sovereignty. The transfer of property rights has its point of contact with the public legal order, for example. It mirrors the registration of choice of law, as a housekeeping matter. Potential coercion to back civil judgements inheres in the functions of the modern state. Every legal right or duty requires a corresponding action available to enforce it. Just as punishment for crime has moved into public hands, so too has civil enforcement become a state responsibility. Where, as in Roman law, creditors could enforce their rights directly, it led to acts like enslaving or killing debtors, which today would shock the conscience.[7] Coercive enforcement of judgements by personal law systems thus cannot stay in private hands. In a diverse global space, having personal law bailiffs fanning out to use force for widely varying ends could end in chaos and a loss of legitimacy.

Enforcement of personal law judgements thus has to pass through agents of the public legal order. In practice, coercive enforcement would be limited to a handful of issues like forcible transfer of tangible property, eviction from premises, and transfer of minor children in a custody dispute. It would be hard to imagine other areas in which a personal law ruling could need the public legal order to coerce an independent adult. Here, a limited buffer is built in. As with any other situation where the public legal order must protect the basic dignity of every human being, it could refrain from enforcing a judgement that would be egregious in its effects. It could broadly defer to personal law judgements on asset division and support obligations to reflect the parties' prior choice of law. Yet it could suspend enforcement so extreme as to inflict utter destitution or de facto debt slavery. Such minimum protections correspond to those in most bankruptcy codes. They respect contractual obligations but still ensure a baseline of human dignity.

A sphere pluralist line of reasoning also adds a further reason for restraint in enforcement. Given the nature of personal enkapsis as the linchpin of dignity and the free exercise of virtue that the whole structure protects, burdens imposed by a personal law system should not effectively deprive someone of the minimal capacity to engage with other spheres of life. Where possible, for instance, enforceable rulings from personal law systems should craft obligations in a way that lets spouses make a clean break, as far as the civil effects of a marriage ending, so as to minimise ripple effects on third parties.

Beyond enforcement, the public legal order also could play a role in the interstices among personal law systems. Suppose the parties of a case disagree on which system has jurisdiction. A neutral body must settle the choice of law. To blunt the temptation for the state to overreach and curtail personal law jurisdiction as such, that body could have a panel of representatives from multiple personal law systems. Their own commitment to legal pluralism would make them defer to personal legal systems in general. They would be likely to treat disputes over choice of law as technical matters of confusion. The public legal order also must establish a workable hierarchy or sequencing of jurisdictions. At times, criminal, civil, and personal law elements of a given controversy may run in parallel. Presumably, the layers of a case involving coercion or publicly cognisable rights must take priority (as a practical, even if not a moral, matter). After all, their enforcement would expand or shrink the ability of private parties to meet obligations incurred under personal law.

The public legal order will also run into knotty cases where no personal law has been chosen, even if a choice perhaps should have occurred before a question arose. Given the state's narrow function under sphere pluralism, it should not trespass into other spheres by offering a neutral personal law of its own by default. These gaps might arise only when biology is operating without a choice of personal law, so to speak: most notably, intestacy and births out of wedlock. While individuals could always be encouraged to declare a personal law for default purposes—in the absence of a choice of law for particular relationships, or instructions for particular situations—some oversights will be unavoidable. Since the only facts cognisable by the public legal order in these instances would be biological, the default rules on the disposition of assets and custody would have to follow biology. Those rules most likely would run along the lines of intestate inheritance in order of genetic proximity, and custody to the birth mother, for example.

Such cases are fairly straightforward. They should provoke little objection from practitioners in any personal law system, since there would be no prior nexus giving them a stake in it. A knottier problem arises when the public legal order could assert a stake in child custody and upbringing, despite the parents' choice of law. Of course, sphere pluralism offers tools for intervening when physical abuse occurs. Public coercive power backs the bare minimum guarantees of human dignity. On the broader welfare of the child, where a personal law

system already derives from the parents, it would be most consistent with the overall framework for the child's welfare to be weighed under that system. The public legal order need not get entangled. This deference could extend to finding alternate guardians, if the authority of unfit parents must be terminated under a personal law system.

A rarer though theoretically more challenging case would be that of foundlings. Normally, a child's default personal law system before adulthood could be derived from the parents, leaving no gaps of jurisdiction. Foundlings have no such background, however. Like the bastard as *filius nullius* under an older version of common law, they are born into a neutral space. What should the public legal order do when it has the issue forced on it this way? Without a system of its own—which its limited sovereign competence rules out—it has to have a way of assigning the foundling to a personal law system. How, then, could it pick a personal law system out of thin air? The question of what community has a default claim on children is a perennial one within many traditions and in contemporary public policy. The Islamic jurist Shaybani extended Islamic jurisdiction to the children of apostates, but not to grandchildren who had grown up in a non-Islamic setting. Nowadays, rules on interethnic or international adoptions also cause controversy about whether children should be seen as a blank slate or as cultural property, and whether common sense demands assigning children to families of the same race.[8]

Under deterritorialised legal pluralism, most of today's tools for assigning jurisdiction over foundlings would vanish. Today, a foundling gets the nationality of the place of discovery; the law of the state in question then governs. What might fill the gap? Let us assume that we aim to assign a foundling to a personal law system able to place him or her in a social milieu that will 'work' over time. Randomly assigning the foundling somewhere in the world as a whole reeks of inhuman abstraction. Since the foundling was discovered in a place where ties were more likely than not, spatiality must play some role. The easiest solution would assign the child to whichever personal law system has a plurality of adherents in the immediate area. Better would be putting the matter to a jury of local residents who could consider the personal law systems with adherents in the area. Common sense would probably prevail in assigning a child phenotypically likely to have come from a given social group to the least eccentric personal law system commonly chosen by members of that group. In keeping with a society-centred logic, ordinary people, rather than the public legal order itself, would fill the gap in a way least likely to create problems of belonging. Once the child grows up, he or she could make a free choice of law.

These guidelines for resolving questions of jurisdiction or filling the gaps among personal law systems nearly exhaust the range of responsibilities that the public legal order would bear. Still, it could not always fall back on neutrality and farming out jurisdiction to others as quickly as possible. Here we come to another layer of philosophy behind the rule of law. What inspirations from

existing legal traditions might best shape the style of legal reasoning when the public legal order has to adjudicate issues that touch on the content of personal law systems? It must have some working definitions of fairness and the public good. I shall consider two resources here from different legal traditions and map out how they might interact in a global legal synthesis: *equity* and *maṣlaḥa*.

Equity emerged in the English legal tradition to complement law in the formal sense. Law, as an accumulation of precedents and statutes, was an instrument for getting at natural justice. In its mechanical operation, however, it sometimes worked against natural justice. Mediaeval England thus developed a parallel track of equity courts deriving their authority from the monarch as the fount of justice. Appealing to equity did not mean appealing to a logic different from law, so much as a set of principles that could apply it in a more flexible way. Common sense and conscience could fill the gaps. Among the maxims of equity were, for example, that between equal claims, the earlier in time should prevail, and that a party pleading the equities of a case should have clean hands by not having done wrong to cause his own plight. Equitable remedies could also include a court directly ordering a party to right a wrong, rather than just dealing with compensation.[9]

Maṣlaḥa is a concept within Islamic fiqh. The process of ijtihad or interpretation sometimes refers to *maṣlaḥa* as an umbrella term for public welfare or interest. In the absence of clear guidelines, shariah is assumed to be aimed at five such general human goals: religion, life, intellect, lineage, and property. Much like equity, reasoning about *maṣlaḥa* can only fill gaps in the law. It cannot override explicit provisions of shariah, clear analogies to them, or worship of God, even though it can warrant adjusting other legal claims among people. Some Islamic jurists are uneasy about too vague an idea of the common good leading to reasoning in a vacuum. In practice, however, reasoning about *maṣlaḥa* is deployed only when a clear interest in one of those five categories is at stake, and of a general public scope rather than only touching on particular people or groups. *Maṣlaḥa* has been compared to the English concept of a 'public policy' interest. *Maṣlaḥa* differs from equity in that it focuses more on ends than on a mode of reasoning.[10]

A combination of equity and *maṣlaḥa* could inform standards of fairness and thresholds of justiciability in the public legal order. They complement one another as, respectively, useful principles of legal reasoning, and generalisable interests more or less common to all systems and unlikely to tread on traditional sensibilities. They transcend any one system of personal law. The maxims of equity could set a threshold for the enforceability of personal law judgements, for example. And *maṣlaḥa* could fill some gaps among personal law systems or step in when a drifting system founders. Indeed, it could do so better than a liberal version of public reason, because its content better recognises the substantive goods that personal law systems advance.

This built-in sympathy for such goods could add to the legitimacy of the public legal order. The conceptual underpinnings of today's monistic order are a bond between state and individual citizen, and a studied neutrality on any view of the good life. The framework outlined here would still deploy public power to protect individual dignity against coercion, in keeping with the logic of sphere pluralism. Yet it would see the common good as playing out mainly in particular spaces, rather than in the realm of citizenship.

The public legal order would thus have a dual mandate: 1) *guaranteeing* a security of rights and smoothing their interoperability, and 2) *facilitating* commitment and virtue through the choice of law and other instances of personal enkapsis. The *guarantee mandate* involves a limited kind of territorial enkapsis familiar in sphere sovereignty terms. Yet the scope and openness of the global space will mean abandoning the political honeycomb, which for centuries has amounted to insisting on the primacy of state over society. The public legal order would not just be more tolerant of lived diversity than today. It would also build into its *facilitation mandate* a due regard for the plural spaces of sovereignty needed to support the moral ecologies of the traditions.

Tolerance and Legitimacy

By and large, the global public is much more religious and traditional in outlook than the new class wants to admit. Today, many ordinary people understandably see the machinery of secular states, not to mention supranational institutions, as hostile to their own values. Even some critics in the West who would not count themselves as traditionalists note that 'tolerance talk' about liberal neutrality often amounts to a 'discourse of power'. Sometimes its 'benign neglect' of diversity just ignores the tilted landscape of history and the biases of majorities.[11] When aggressively secular governments in France and elsewhere deny citizenship to Muslim women who wear the niqab, for example, they effectively insist on state supremacy over society and religion. In such a country (or such a world, if scaled up), only the new class and its fellow travellers will feel entirely at home. In contrast, a public legal order with the dual mandate I have outlined would look much more sympathetic to most of the world's population. It would have the salutary effect of privatising many kinds of moral disagreement. It would prohibit public legal authority from tipping the scales. In all likelihood, it would also relax some of the paranoia about cosmopolitan engagement that today stems directly from traditionalists feeling under assault.

While the facilitation mandate can reassure those who fear openness as a weapon, the guarantee mandate must have teeth, too. These teeth largely involve routine application of criminal law against private coercion. But they also touch on supporting a genuinely open global space, in ways that might unsettle the more insular. I argued earlier in this book for free movement of people, albeit with enough room for a local 'community visage' to balance it. I then suggested

abolishing territorial barriers to economic life and the portability of social provision. Still, given the landscape of legal pluralism and particular ways of life, other barriers might work against an open global space. Strong group commitments sometimes bear oppressively on outsiders, even if they only operate through soft opinion and chosen interactions. Most of the time, purely informal interactions are what they are. They can be left to ebb and flow across identities. Where the public legal order must enforce private legal provisions, however, things get more complicated. A sphere pluralist approach can offer some guidelines on how to handle such scenarios.

Take a problem that the American courts have had to confront in recent decades, namely, that of discriminatory provisions in private law. Private trusts set up in wills, for example, might aim to shape conduct by punishing beneficiaries for marrying outside their race or religion. Some legal scholars argue that state courts should not enforce such provisions because they run afoul of public policies against discrimination.[12] Should the global public legal order see its guarantee mandate as extending to such issues? I think that most of the time it should not do so. The impact of private provisions of this sort does not rise to the level of coercion or severe deprivation, which would fall within the natural scope of public power. They merely give out private resources according to the wishes of the donor. On a pluralist landscape of robust commitments, definite ideas about whom one wishes to reward or engage go naturally with diversity. The scale of the impact also does not involve the exercise of a broader social or quasi-public influence, like the foundations that I considered two chapters ago.

In extreme scenarios, however, discriminatory provisions might really aim at deforming the broader framework of sphere pluralism, *and* at exerting power beyond the relationship between the donor and beneficiaries. Personal enkapsis gives strong agency to the individual, but it should not operate in a way that multiplies the impact into other individuals' engagements in different spheres. In such instances, a legal case sometimes could demand intervention. For example, an especially determined donor with animus toward a local ethnic minority might want to promote de facto ethnic cleansing of a community over several generations. She could deploy a large trust with rules designed to accomplish her goal on several fronts. The rules could require beneficiaries to ostracise members of that minority and refrain from even fleeting economic interactions with them, subsidise buying up their property, reward curtailing retail services that cater to them, and the like.

Each discrete action might look like a trivial personal choice, even if shaped by incentives. Yet the cumulative intent and deployment of resources might cross a line. In effect, it would not be facilitating the liberty of personal enkapsis. It would not even be encouraging one beneficiary's choices in one sphere to spill over into other spheres of his or her life. Such would be a natural process compatible with sphere pluralism, even if it ideally occurred based on individual conscience rather than on yielding to pressure from others. Rather,

such a trust would be seeking to drive many people's behaviour across multiple spheres. If the public legal order weighed such a case, the principles guiding deliberation probably should include equity and *maṣlaḥa* along with provisions on freedom of movement and residence in a global space. The scenario would raise different legal issues than merely rewarding a grandchild for marrying within the faith. In particular, a line might be drawn between shaping incentives for immediate beneficiaries, versus trying to narrow choice for other people several steps further removed. Such exceptional cases aside, private law should generally be left free to operate as desired. The public legal order should defer generously in enforcing rulings. To be sure, modest private incentives could shore up a few 'petty fortresses' here and there on the global landscape. Nonetheless, the solution lies in experience and gradual social change, not legal enforcement.

Alongside its tolerance of legal pluralism, the global order would also have another crucial feature that would shape legitimacy. No one would be in the majority. This fact gets surprisingly little attention in present thinking about global institutions and legitimacy. That multiplying factions within a polity can blunt majority rule is a familiar point going back to Madison and American federalism. But it has a much longer history in the European trajectory of religious tolerance. In mediaeval Christendom, as Figgis points out, religion, society, and state were thought to overlap in scale, differentiated merely by their institutions. The breakdown of that religious unity with the Reformation led, after much bloodshed, to an embrace of tolerance since no one bloc could win.[13]

In a future global space, sphere pluralism would advance tolerance further. Too much of the modern image of tolerance has come out of the political honeycomb. Either it looks like a majoritarian concession on a given territory or it fits a Whiggish narrative in which liberal citizenship advances and dense ways of life in society retreat before a strong state, leaving little worth fighting over. In contrast, the future global landscape could be largely religious and traditional in sentiment for the long haul, yet lacking any majority. Much as the rupturing of the political honeycomb can set free other spheres of social life to recover their sovereignty, so too can the reduction of all faiths to minority status prompt a shift in thinking. Alongside greater trust in a neutral public legal order, the beliefs informing personal law systems might be thought of differently. Rather than an overlap given by demographics and territory, and imposed by weight of numbers, the choice of law would rest on sincere belief as another instance of personal enkapsis. Sovereignty in personal law systems would hew closer to the nature of both law and religion. Of course, further change would have to occur over a couple of generations to bring this idea down to earth in social facts. Geographic mobility and individual reflection about choice of law would lead to another stage beyond the lack of a majority globally. In a critical mass of regions and even localities, any one system of personal law would fall into minority status as well. The givenness of personal law would have faded not just legally,

but also socially. At that point, the transition to global legal pluralism would be basically irreversible.

This sort of future public legal order could more easily win legitimacy. It would have to work effectively, rather than embodying some imagined overlap of demos, values, and territory as within countries today. Yet legitimacy might still run into other obstacles. Adherents of some personal law systems might feel less under threat than they do today, but they might still find the neutrality and global scale of the public legal order an awkward imposition above what matters most to them. This issue will arise most sharply for those who believe their personal law system stems from transcendent sources that will outlast any given worldly order.

While many systems could generate such misgivings, some are more likely to do so than others. Canon law has its roots in the faith, for example, but the doctrine of the two swords has shaped a longstanding acceptance among Christians that secular rulers have their own sphere of responsibility. Sphere sovereignty theorists like Kuyper and Dooyeweerd drew on this distinction when they said that the state should not itself have a confessional mandate. Jewish tradition likewise has reconciled itself to rabbinical courts having limited jurisdiction in the diaspora.[14] And the Hindu division between brahmin and kṣatriya functions roughly maps on to the two swords.

The problem is most likely to be felt by a subset of Muslims. They would be unfamiliar with living in a nonconfessional polity, and thus unmoved by a division of labour between religious and political authority. Their grievance would look like the inverse of what Henry VIII and other absolutist monarchs loathed about papal authority: that it asserted the primacy of a religious power outside and above the kingdom. For Muslims unimpressed with the public legal order, it might look like an un-Islamic global polity standing outside and above shariah.

This reaction would have roots in historical experience. A deep-seated confidence comes from Muslims being in the majority across that region of the world for many centuries. Most of the time, their frontier was expanding outward. Public institutions elevated Islam to a dominant position based on the faith of the majority. Rulers at least paid lip service to compliance with shariah. The cosmopolitanism of the ummah depended on a common template of Muslim-majority dominance throughout it. Dhimmis were tolerated under pacts of protection with that majority, but the gradient presumed eventual conversion and tried to accelerate it. The 'exaltedness' of Islam amid a 'rank ordering of tribes and races' inspired petty humiliations of dhimmis, ranging from rules on attire to the maximum height of churches and temples. In an intersection of thinking about faith and gender, Muslim men could marry dhimmi women, but a dhimmi man who did the reverse would have 'transformed himself into the vanguard of a polytheist army'.[15] While modernity has put the Muslim world on the back foot for generations, old mental maps die hard.

This pervasive dominance of Islam was tempered by two kinds of accommodation. First was a gap in practice between the shariah and political power. As I outlined earlier, heterarchical resources did emerge within the Islamic world, especially in the role of the ulama as a counterweight to the sultans. Rulers enjoyed a discretionary area of authority to use force in maintaining order. This area of statecraft known as siyasah was under-theorised but thought to be outside shariah and a practical complement to it. The ulama remained independent as arbiters of shariah, which played the main role in shaping the texture of ordinary life. Rulers could still appoint qadis to enforce law on behalf of the state, drawing on shariah for universal purposes or dhimmi laws in more particular cases. Given the tough practicalities of statecraft and the decadence of many individual rulers, siyasah lacked the respectability of shariah. Still, resistance against an unjust ruler could not become legitimate just because of public oppression or un-Islamic personal conduct. It was justified only if the ruler crossed the line from siyasah and commanded his subjects to violate shariah in their own lives.[16]

The second accommodation emerged in zones where rulers were Muslim but most of their subjects were not. These included the expansion first into regions like Coptic Egypt and later into mostly Hindu South Asia. In practice, Muslims dominant politically but not demographically were more willing to accept a flatter gradient between religious communities. They could not assume assimilation would happen. Historians have argued that aggressiveness or tolerance tended to track the power balance. Sometimes one could impose oneself, while other times one just had to keep the peace. In South Asia, however, political scientist Sudipta Kaviraj has noted another factor. Both Hinduism and Islam imagined what he calls the 'constitution of society' in contrast to the 'plasticity of the social world' assumed by modern states. Society, ordered by religious authorities of varying types, was not a proper target of state re-engineering. He argues that this habit of treading lightly reinforced tolerance towards non-Muslims and a boundary between state and religion.[17]

These are all very old questions about tolerance of Muslims toward non-Muslims, and the social and institutional gradient between them. They have gained new life in the modern political honeycomb. In each unit of the honeycomb, a state with a territorial majority is supposed to dominate society. The logic is at odds with the premodern Muslim experience of broad civilisational spaces. Yet the question becomes salient with the rise of Islamist movements that seek power in such countries, while feeling threatened by a West-dominated global order. Spokespersons for those movements sometimes make vague gestures at reviving the dhimmitude model to deal with majority–minority relations. They do so awkwardly, though, conscious that global norms run against them. They might insist in one breath that they will respect the equal citizenship of all in their territory. Then in the next, they admit that minorities will be denied full political participation and access to the highest offices. Some less mainstream intellectuals like the Turkish Islamist Ali Bulaç do try to imagine a more genuine pluralism.

To bridge Turkey's Islamist–secular divide, he has called for a Turkish political model with multiple personal laws, for different types of Muslims and for non-Muslims, with the state taking a less active role.[18] While in spirit Bulaç's vision is compatible with what I have outlined—albeit on a national scale—it would be hard to put into effect when Turkey's Muslim majority might still demand a gradient reflecting its preponderance.

As in other matters, scaling up to a world with no majority can cut the knot. Nearly all Islamic political thought through the ages has been confined to questions about the unity of the ummah, the legitimacy of an Islamic state, and the internal relationship with dhimmis. Very little attention has been paid to how to engage a larger pluralist landscape, with Muslims as a non-dominant bloc, both socially and politically. Only with recent migration to non-Muslim societies has this become a live issue. The émigré and diaspora experience foreshadows the challenge for Muslims of living in a world with no majority. Responses have been provocative but also limited in their assumptions. One observer of South African Muslims has noted that their distance from political power has sparked a vitality of debate about their own religious obligations in civil society instead. An influential pamphlet by Taha Jabir al-Alwani calling for a 'fiqh for minorities'—meaning Muslims in the West—imagines staying true to the shariah, but taking modern science and lay interpretation more seriously. He also encourages abandoning the self-image of a beleaguered and transient minority. He calls for full citizen participation and being 'kind and equitable' to non-Muslims. This attitude would draw on what he sees as the more universal spirit of Islam. He even cites an early case when some persecuted Muslims took refuge in Abyssinia and cooperated with its Christian ruler. The prominent Islamist Tariq Ramadan has similarly urged Muslims in the West to participate in civic life. He argues that Islam can be inculturated in the distinct national contexts of the West. One can be a Western Muslim in a distinct way, just as Arab Muslims differ from African Muslims or Indian Muslims.[19]

That approach has its merits. It might build some bridges and reduce alienation in contemporary Western societies. But it still takes the political honeycomb for granted when it talks of full citizenship. It also has only limited links to Islamic legal theory. It sounds more like an adaptation to today's circumstances of national identity than a basis for the legitimacy of a long-term global settlement truer to the traditions.

Other arguments for a more pluralistic version of Islam slide into either quasi-liberal language or claims about theological common ground. Abdulaziz Sachedina, for example, starts with the pluralism of the international order and calls for recovering an earlier and more tolerant way of dealing with non-Muslims. While relations between humans and God involve a particular faith, relations among human beings as such can happen on a plane of civil equality, recognising individual conscience and moral sensibility as existing prior to any religious belief. Sachedina invokes in passing the Rawlsian idea of an 'overlapping consensus'

by analogy.[20] Such concessions to liberalism have earned him a fatwa condemning his un-Islamic lines of argument, so his framework may persuade few of the devout. A different approach appears in Hasan Hanafi's writing. He argues that Islam stresses the unity of God but acknowledges a multiplicity of ways of life and social contexts. This 'innate multilateralism in Islamic culture', if it can re-emerge from the deforming pressures of Western imperialism and national despotisms, can underpin universal ethics and the coexistence of civilisations.[21]

Those two theoretical approaches differ somewhat from sphere pluralism. The former is quasi-liberal in putting the focus on individual rights and choice, rather than on personal enkapsis as an exercise of virtue. The latter is theological, relying heavily on a cosmology of content. Crucially, neither would justify why a Muslim with strong misgivings should accept the global public legal order. They deal only with a loose spirit of openness and mutual respect. Perhaps because those writers are not contemplating a world order, they do not tackle the tougher question of metaconstitutional structures and power relations. Global legal pluralism can only work if personal law systems based on shariah can interlock with a broader space that is not primarily Islamic. That legitimacy needs to engage with some building blocks in Islamic legal theory.

I want to outline here one approach that might go some way in resolving this problem.

Earlier, I mentioned siyasah, or the area of statecraft that complemented shariah. While pointing in the direction of sphere pluralism and a non-religious public order, the siyasah still operated in the overall space of the ummah. A level further removed was the *siyar*, a kind of law of nations to deal with outsiders. Islamic legal scholars developed it as a sophisticated prototype of international law. It dealt with relations with non-Muslim polities, which had to be accepted as in equilibrium with the ummah once its frontiers had stopped expanding. As such, it addressed a more neutral and equal space than the siyasah. One contribution of the siyar was to make sense of an intermediate status on the frontier, neither incorporated into the ummah nor in the enemy zone of the *Dār al-Harb* (House of War) beyond it. Such zones could variously be classified as the *Dār al-'Ahd* (House of the Covenant) or *Dār al-Ṣulḥ* (House of Truce). They had entered into an ambiguous peace with the ummah without being reduced to dhimmitude. One term for such a peace was the *hudna*, framed as a temporary truce, which Muslims had a religious duty to uphold. One view held, based on an early treaty at Mecca, that a hudna could last only ten years, because war was the natural state between Muslims and infidels until the latter were finally overrun. A less popular view held that a hudna could be permanent.[22] Whether such intermediate zones of peace were durable and really meant an equality of states was debatable. The concepts do offer a useful starting point here, however. They are a resource for thinking about how a settlement with non-Muslims outside the reach of shariah can still be morally binding for Muslims, on terms comprehensible within shariah.

Still, these examples were marked by territory. They applied to frontier situations. The global metaconstitutional settlement would instead span an open global space of great diversity and mobility. Muslims and non-Muslims would live interspersed for the long term. To flesh out terms of coexistence, we can turn to the much earlier 622 Constitution (Wathiqah) of Medina. Historians disagree on the authentic details of this document drawn up by Muḥammad, but some provisions are clearly relevant to our question. As Watt outlines, Muḥammad's first foothold in Medina occurred against the background of a society based on tribal solidarity. People had felt few moral obligations outside their own group. The group offered protection and was held collectively responsible for misdeeds committed against members of other groups. The Constitution of Medina marked a breakthrough in thinking about intergroup solidarity. Different tribes—including, crucially, Medina's Jews—pooled the duty of military protection against outsiders. They also renounced the right to protect their members who had committed a crime in the common space, though groups would still pay blood money on their behalf.[23] This template meant that Muḥammad had accepted nesting religious communities within an overarching covenant of protection. The pact also preceded Muslims' later getting accustomed to being in an expanding majority.

We begin to see how these elements might come together. The social landscape globally would be more like Medina or South Asia than like the Muslim-majority model that tempts Islamists today, who want to seize power in cells of the political honeycomb. And unlike modern states, the world state would have a reassuringly modest footprint and due respect for commitments in the nonpolitical spheres. The reality of Muslims being a global minority is a link between the early Islamic foreshadowings and how the Muslim public might accept the legitimacy of this metaconstitutional settlement. While the ummah and mediaeval Christendom were all-encompassing civilisational umbrellas, that option vanishes at the global level. Integralism fails amid diversity. Instead, we fall back on an understanding adumbrated in Calvinist sphere sovereignty and the pluralism of the Constitution of Medina. A common protection pact or public order function is what people experience when living in the neutral space of the public legal order. From the standpoint of devout Muslims with a personal law system based on shariah, the relationship with non-Muslim others could feel like a hudna. The truce would not be on a physical frontier, however. It would be at institutional points of contact in a space where territory largely ceases to matter. Unlike the classic hudna, the public legal order would make peace omnidirectional and portable, so to speak. Its guarantees would benefit Muslims all over the world, not only in places with a Muslim majority.

The legitimacy of this peace would depend on stacking the metaconstitutional building blocks. That stacking should be recognisable to devout Muslims. Respect for personal law systems would map on to the leeway for a private choice of madhab, albeit with the same logic extended far and wide to systems of non-Islamic origin. The spiritual underpinnings would be left in the sphere of

religious belief, with individual conscience and the principle of 'no compulsion in religion' as the common guidelines. The legitimacy of the supporting institutions would shift up to a protection arrangement for peace among communities. The language of the siyar, binding on Muslims though comprehensible to non-Muslims on their own terms, would work by analogy to describe the coexistence underpinning that peace. Rather than a negotiated bilateral pact with each non-Muslim group or territory, coexistence would be more diffuse. Individual tacit consent would move to the centre, in a fluid global space.

This settlement would invert a historically familiar map of legitimacy. For the first time, political authority and public law—the sphere of the siyasah, roughly—would operate institutionally on a wider scale than religious authority and personal law—the shariah, in this case. Aspirations to universalism abound in Islamic political thought. The ideal of a unified caliphate lingered long after the collapse into separate sultanates and amirates, just as images of civilisational empire also inspired over the centuries in Europe, India, and China (when divided). Eventually, Muslims more or less accepted political fragmentation despite the religious and societal unity of the ummah. That nesting of political domains within civilisational unity has been examined by the Palestinian-Egyptian political scientist Tamim al-Barghouti. He argued that while Muslims' ideal allegiance focused on the ummah, with its non-territorial and non-ethnic scope, such universality was practically impossible. Political power instead corresponded to the *dawla* or, loosely, regime. The word dawla has the same root as 'turning', to highlight the ephemerality of power. Each dawla would profess ultimate loyalty to Islamic values. Yet a dawla differed from a Westphalian-style modern state. It was more temporary and also more open to outsiders, who might move in and out of it, fight for it, and so on. Barghouti sees the political solidarity with Arab revolutionary regimes, Islamist movements, and the Palestinian cause, for example, as instances of Muslims' present-day engagement with a dawla.[24]

When it comes to the legitimacy of a global public legal order in the eyes of devout Muslims, we need not aim very high. The acceptability of the premodern centuries would be quite enough. It would not ask them to conflate the metaconstitutional order or the global space with the ummah. Rather, it would ask them to consider the public legal order analogous to the old sultanates, amirates, and dawlas. As the adjudicator of neutral public power, its function would approximate that of a premodern ruler mainly concerned with statecraft. That he dealt in statecraft rather than Islam did not damn him to illegitimacy, so long as he let shariah operate freely among the believers.

While I have framed this argument in relation to Islamic tradition, it could apply well enough elsewhere. Take, for instance, the distinction between brahmins as bearers of Hindu religious universalism and the kṣatriya rulers with their various warring principalities. Outsiders who seized power in parts of India from time to time—such as the Greeks who followed Alexander the Great—were

incorporated into the caste system as kṣatriyas of a sort, and thereby made symbolically less threatening.[25] Just as the minority of Muslims who regard the public legal order as the realm of infidels might humour it as they would an amir, so too might the minority of like-minded Hindus humour it as a ruling kṣatriya, and so on. The main difference with the past is that the scale inverts. In the past, worldly rulers were like rafts floating on a deep civilisational lake. In the future, the public legal order would be like a long pedestrian bridge spanning many deep pools. The inversion of scale should not be feared as political enkapsis of the religious, however. All spheres would be operating in a universal space, with personal enkapsis as their linchpin. Distinctions of type, rather than scale, would matter most after the rupture of the political honeycomb.

Finally, I should note a further reason why the public legal order would be compatible with Islamic political theory. So far, I have suggested some conceptual points of contact between legal pluralism of this sort and shariah. Cumulatively, they could at least make the framework recognisable. But compatibility does not necessarily close the deal. The public legal order must also elicit positive compliance, or a sense of duty to obey. Such duty often involves a quid pro quo, analogous to the protection-for-allegiance bargain of the modern state. And to be sure, the practical gains of a secure global space, with legal institutions that guarantee individual dignity better than most national governments today, would be a compelling reason to welcome such a global structure.

If we want a more robust rationale for obedience in good faith, then we have to look at what the public legal order would offer to devout Muslims, *as Muslims*. What might make it not only acceptable but also appealing? For the dhimmi, the duty to obey came on two tracks. They obeyed in exchange for protection rather than ongoing war, and because it gave freedom to practise their own faith despite Muslim dominance in public institutions. The global framework should not be understood as a non-Muslim concession to Muslims, with a threat of force and a begrudging second-rate membership in the global community, however. Instead, we can go back to the original understanding of the Dar al-Islam's value in religious terms, as a territory controlled by Muslims. I want to be frank in acknowledging that an open global space with a neutral public legal order would amount to giving up a territorial version of the Dar al-Islam. For that reason, it must deliver the same goods equally well, or better. The Dar al-Islam was valued as a space in which Muslims could practice their faith and order their own institutions according to the shariah. It also offered a favourable environment for the message to spread to the unconverted.[26] The provisions, harsh to the contemporary eye, regarding apostasy and the tight control of dhimmis and war on the frontier can be seen as ensuring that the Dar al-Islam remained a space congenial to the practice and spread of Islam. After all, in that historical context, often one either conquered or was conquered.

The global public legal order should be legitimate because, despite its neutrality, it would furnish precisely those goods of the Dar al-Islam. It would

guarantee the free exercise of religion and the security of Muslims as individuals. It would facilitate ways of life in conformity with shariah under a choice of personal law. Moreover, by opening up those freedoms in a global space, it would allow Muslims to act according to conscience and to bring the institutional trappings of their way of life with them wherever they go. The political honeycomb falls short of this vision because of its scale and coarse understanding of sovereignty. It subordinates personal enkapsis to the territorial enkapsis of political supremacy. In contrast, the public legal order would leave much more room for personal enkapsis, in ways recognisable as the free exercise of conscience by pious Muslims wherever located.

In short, the public legal order would not be a legitimate object of resistance by Islamic standards. Like the premodern ruler operating acceptably in the realm of siyasah, it would not wage war on Islamic practice. The duty of obedience would correspond to the protection offered, consisting of the dual mandates of facilitation and guarantee. It need not, however, demand an expression of allegiance from ordinary citizens. Allegiance in Islamic political theory is represented by the bay'a, or personal and lifelong promise of obedience to an individual leader.[27] Such is the stuff of service in a band of warriors or a state apparatus. The duty of obedience to the public legal order can appear tacitly instead, via ongoing compliance. Such diffuse and tacit consent also fits an implicit covenant or truce—'ahd or hudna—with non-Muslims in a global space. As noted earlier, of course, all these lines of reasoning would apply by analogy to followers of other faiths, though the issue would probably be less salient for them.

Rule of Law

I have dwelt at length on the legitimacy of the public legal order in relation to personal law systems specifically, and traditional religious believers more generally. This is because this mode of global legal pluralism would mark a radical departure from both modern and premodern practices, and thus needs fleshing out. In forging a global order more congenial to dense traditional commitments and modes of human flourishing, justifying it to diverse segments of the public would also be a crucial yardstick of success.

At this point, however, I want to turn to other aspects of the public legal order. They may be more familiar and less controversial than legal pluralism. It is still worth considering how the approach here draws on existing legal traditions, and why it should favour some resources rather than others. Specifically, I want to address civil liberties, administrative accountability, criminal law, and the structures of the legal profession and courts. These themes move out of the realm of what we could call private law—everything from personal law systems to most economic interactions—into the realm of public law that covers the state's relation to its citizens.

Civil liberties like freedom of expression encompass much more than the religious freedom so central in the earlier part of this chapter. Despite weak state capacity and strong societies in the premodern era, encroachments on individual freedom by rulers and their functionaries were rife. Shariah courts had robust legal procedures for matters that came before them. In contrast, political authorities in the realm of siyasah had more or less free rein to abuse their underlings, political opponents, and ordinary subjects.[28] The same pattern holds across other premodern polities. Only in a few currents of political thought and legal development did two important ideas emerge: first, that liberty in general had to be protected, and second, that public authorities not only had a moral obligation to do justice but should also be institutionally compelled to do so.

These ideas can be grounded on different accounts of what liberty is and what it is for. From a libertarian perspective, Hayek contrasted particular liberties granted by absolutist rulers against liberty in general as a principle that allows everything not explicitly prohibited.[29] More traditional understandings usually linked liberty to the conditions for virtue. In practice, they favoured multiple kinds of liberty—freedom of religion, freedom of the press, freedom of the family, freedom of calling, etc.—with each mapped on to the aspects of human nature to be served by them.[30] Such traditional views of particular liberties roughly foreshadowed sphere pluralism, even though not explicitly. Liberties served multiple incommensurable purposes. Free expression, for example, means something different in an atomist society where no value can trump what the individual wishes to say, than in a society with a pious majority that might value speaking according to one's conscience or deliberating on the meaning of the scriptures.

In the framework I have outlined, civil liberties can be understood as Janus-faced. Viewed in society, among people living out their values, liberties are best seen as purposive in the traditional sense. They branch out in multiple directions, as does personal enkapsis. Viewed from the public legal order, they are better seen as halos of dignity around individuals and walls around the sovereign spheres. Their operational purpose *for the state* would be to confine it to the limited authority of its own sphere. Constraint would work on two levels. The state must recognise first the dignity of individuals and their freedom from physical coercion as the most visible and straightforward guarantee to provide. Yet, beyond what contemporary liberalism imagines, the logic of sphere pluralism would add further rights-bearing units. A sophisticated jurisprudence would draw bright lines around the inner life of associations in the various sovereign spheres.

Limiting state power involves not only individual rights, therefore, but also the state–society boundary. In the next two chapters, I shall consider the structure of the state and other organs more fully. Here, however, we can examine how limits on the state would be experienced most commonly in normal life: as mechanisms of administrative accountability.

Historically, the extent and logic of administrative accountability have varied. Three questions are worth noting here. First, is it primarily a moral or an institutional matter? Confucian China developed the censorial system as a mechanism for self-policing of the state. It relied heavily on remonstrance against policy-makers. Legal teeth were few, since the ideal censor was a moralist rather than a prosecutor. Invocations of Confucian morality did not prevent the Ming dynasty from defanging real accountability, for example, as absolutism tightened.[31] While the language of moral obligation can inform actors' sense of duty and the exertion of loose cultural pressure, only institutional mechanisms—courts and written law—will work consistently over time. Second, should the organs of the state be treated the same as any other actors in society? Concretely, this comes down to whether the dignity of the state as a supremely sovereign entity means it needs special immunities. Third, should administrative accountability pass through a common court system, or through specialised administrative courts?

Modern legal traditions agree on the first question, putting more faith in institutional than in moral constraints. The second and third questions have more varied answers, as exemplified in Anglosphere and Continental legal development. In late mediaeval Europe, the revival of a distinct track of Roman-style public law was opposed by those fearful of power-hungry monarchs' desire to place their own acts beyond judicial review. The Anglosphere's tradition of judicial independence and a weak state means that through to modernity, it continued subjecting officials' actions to review by the ordinary courts. The scope of that review has been limited in Britain, however, by the fiction that the bureaucracy acts on behalf of the Crown under the royal prerogative. A classic distinction contrasts *jurisdictio*—the area in which legal rights apply and are thus subject to judicial review—from *gubernaculum*—the area of unreviewable state power. In practice, the expansion of the state's functions touching on daily life has prompted practical demands for more accountability. Many more activities have shifted into jurisdictio. The state can be sued for some torts like any other entity, for example. Yet the principle of wide administrative discretion, unreviewable as long as it is exercised reasonably, persists.[32] Other Anglosphere countries like America have less historical fog surrounding these ideas about administrative accountability. The deep structure remains the same, though. Ordinary courts have jurisdiction, but generally defer to administrative discretion and sovereign immunity.

Continental legal development has taken a different tack. Public law as a distinct institutional area gained ground earlier than in the Anglosphere. It revolves around the German concept of the *rechtsstaat* (state of law/rights), the spirit of which has spread to France and elsewhere. As a liberal ideal, the rechtsstaat discarded older images of a state with a moral mission. Instead, it favours strict rationalism with individual rights and state accountability. Compared to the Anglosphere model, the rechtsstaat minimises official discretion and immunity so far as possible. Oversight occurs mainly through specialised administrative

courts staffed by civil servants familiar with the workings of the bureaucracy. A rigid separation of powers makes administrative cases immune to review by ordinary courts. In short, the state has become both more rational and also more elevated over private law.[33]

Hayek offered a useful perspective on the pros and cons of the rechtsstaat model versus the Anglosphere common law model. As a libertarian, he mostly preferred the Anglosphere's political culture, with its emphasis on limited government, yet on this issue he leaned toward the rechtsstaat because it narrowed official discretion. The state, like any business, should not have to face judicial interference in how it uses its own resources most efficiently, but Hayek thought ordinary people needed predictability and secure rights when facing officialdom. Unaccountable power threatens liberty. Unlike in the Continental model, however, he suggested that ordinary courts could still be responsible for reviewing cases, if they added specialised tracks with the necessary technical knowledge. Hayek's main critique of the rechtsstaat was how it reflected its social context. The modern state had taken on vast responsibility for welfare and redistribution. Trying to solve particular social problems meant that it ended up with too much power. The rechtsstaat's advantages would come through much better with a smaller footprint, enforcing rules of just conduct.[34] That critique aligns with growing misgivings, especially in America, about the 'administrative state'. In the twentieth century, Congressional lawmaking gave way to broad grants of discretionary rulemaking authority to the federal bureaucracy. Animated by a vision of depoliticised expertise and social reform, the administrative state came to merge legislative, executive, and judicial functions. The new establishment escaped most political accountability, provoking popular resentment.[35]

In a future global order based on sphere pluralism, with the state's functions greatly curtailed, the rechtsstaat model offers compelling advantages. A narrow state apparatus without transformative ambitions vis-à-vis the economy and society, and operating in a space of universal peace rather than potential war, would not need wide administrative discretion, unreviewable prerogatives, or immunity from suit. Nearly all of its activity could shift from the realm of gubernaculum into the realm of jurisdictio.

Nonetheless, some important differences of principle and purpose would distinguish this sort of legal accountability from the conventional rechtsstaat. The public legal order would not be like today's Continental model, which effectively gives the political sphere primacy. It would not limit accountability to the relationship between a highly rationalised state apparatus and the atomised rights-bearing individual citizen. Rather, rights in a sphere pluralist framework would support liberty as personal enkapsis. They would be tied up with the facilitation mandate of the public legal order, with all its respect for legal pluralism and associational life.

Another vital dimension of public law is criminal justice. Despite its significance, this may be the least controversial as a point of political theory. Sphere

sovereigntists like Kuyper and Dooyeweerd have held that the 'power of the sword' inheres in even the narrowest understanding of the state. All major traditions give rulers wide discretion on penal matters, even when they must tread lightly on 'custom and usage' and prepolitical commitments in society.[36] The public legal order would leave most of life to personal law systems, contractual agreements, and the flows of resources in other spheres. Yet on delictual matters—criminal law, torts between strangers, and other disputes arising in a neutral space—a world state would be rightly the successor to sovereign nation-states. It would be responsible for security, including the power to modify criminal codes wholesale.

I noted earlier the misgivings about civil law codification as, historically, a weapon of overbearing states. In this narrow area of delictual matters, however, a robust and uniform global code has its place. Given the diversity of the global space, such codification must build on the experience of national systems. It must also engage public opinion to generate a workable consensus. Here the civil law approach to codification has more to offer than the common law habit of gradual accretion. Civil law codes have a long history of redesign and transplantation.[37] For revolutionary ruptures to reorder diverse elements—as a global state-founding must do—such rationalisation is the only plausible path.

One high priority should be creating a uniform global criminal code. Today, given the political honeycomb, the only talk of a global criminal code occurs at the margins. A few scholars propose harmonising standards on crimes against humanity and other limited topics of international conventions.[38] A federal model, with varying criminal codes based on territory, may be tempting. In the long run, however, it would not work amid the rest of the metaconstitutional structure. Too many other functions would already be unbundled in an open global space. Any federal unit would lack a conscious demos–polity overlap to legitimise distinct criminal laws on its territory. Moreover, treating crimes differently based on where they occur would run against the logic of a common global space. It stretches the credibility of justice, for example, for murderers who slay their victims in different corners of the world to face different punishments or even legal processes.

The process of devising a uniform global criminal code could unfold in stages. The most serious crimes could be harmonised first. More interesting than the scale or staging, however, is how it might draw on the diversity of traditions. To take one obvious example, how might the public legal order respond to Muslim activists who, inspired by the hudud under shariah, argue for the global criminal code to include beheading murderers and chopping off the hands of thieves? With no one in the majority globally, and the public power respectful of Islamic personal law but not itself Islamic, the only way to write any such provision into the global criminal code would be by persuading enough of the global public. Doing so would no doubt entail giving reasons beyond the specific language of shariah. In principle, both murder and theft are punishable crimes for which

the modern prison—itself dehumanising and often counterproductive in its own way—is hardly a timeless and self-evident answer. Perhaps there are compelling reasons to favour one or another mode of punishing crimes, but those reasons would need arguing out in public debate.

Still, could there be any room for a choice of law in penal matters? At first glance, a choice of law seems a non-starter when it comes to crime. After all, the point of penal law is to order a common space with predictable protections for would-be victims. Most muggers, if asked in the dock, would opt for the laws of Sweden over the laws of Singapore. Most mugging victims, if asked in the hospital room, would say the reverse. Opting for a harsher punishment to apply to oneself if one commits a future crime would only make sense for an upstanding person who has no intention of doing so but who wants to signal greater trustworthiness in exercising a responsibility. Perhaps aspiring bank clerks who agree in advance to be shot for embezzlement would get hired more readily. Such scenarios are too eccentric to be likely to figure in the legal code, however. They also raise issues of fairness to different victims of the same offence committed by different perpetrators.

Victimless crimes might be more relevant for a choice of law at the margins. People bound by a strong moral imperative to refrain from certain conduct might want to add an extra legal guardrail as a form of self-policing. Some American states allow compulsive gamblers to ban themselves from entering casinos or collecting winnings, for example.[39] Perhaps a recovering alcoholic could sign up for legal penalties for drinking. Some disagreement over the appropriateness of online censorship in a global space might also play out in this way. It would be difficult to generate a global public consensus to censor online pornography, for example. Yet, much as individual consumers today in censorship-free countries can instal their own blocking settings, so too might it be possible in a global space to have a choice of law on blocking. A test of conscience might be whether, rather than just demanding censorship for everyone as a political display of virtue, one would bind oneself by incurring fines for looking at what one wants to ban. Technology makes such a choice of law more feasible than before. Still, such bans under choice of law should only apply to matters of a personal moral nature and not to political censorship. Self-reinforcing political balkanisation might imperil the larger metaconstitutional settlement. A person might choose each time not to listen to commentaries calling for abolishing capital punishment, for example. But it would be a damaging circularity if one could use the force of law to censor oneself from being aware of them at all.

Organs of Justice

What I have outlined so far is only a starting point for thinking about how a public legal order might pull together multiple resources. Rule of law would be compatible with the rest of a scheme of virtue-centred sphere pluralism. The details,

of course, would emerge from a public consensus and adapt over time. In the last part of this chapter, I want to turn briefly to possible institutional arrangements. The variegated legal landscape and fetters on state power have implications for the courts, the legal profession, and juries.

In contrast to the common law and rechtsstaat models, I mentioned the debate over whether a court system should be unified or differentiated by function. Differentiation has been more common throughout history. Islamic legal scholars centuries ago noted the various ways to divide judges' responsibilities by the nature of the dispute, the parties, and the location. Civil law countries like Germany have parallel court systems for civil, criminal, administrative, employment, and tax cases, for example.[40] As modern society has become ever more complex, it requires more expertise in adjudication than any unified court system could well provide. In keeping with sphere pluralism, institutions in different spheres could have separate court systems. These systems could be attuned to their overarching mandates and distinct principles of justice. They could also be staffed by judges with long experience in the sphere in question. When we combine the functional diversity of the spheres with the diversity of personal law systems, we end up with a global legal profession broken down into a variety of tracks and areas of practice. Of course, anyone practising law would need training in the public legal order with which they unavoidably will come into contact at the edges. Yet most of the expertise could be honed in the context of a particular court system. Global legal pluralism would do away with the place-based national balkanisation of the legal profession as seen today but create other differentiation.

The common law legal tradition deserves credit for its heritage of judicial independence. Judges in the Anglosphere have more independence and higher status compared to those in most civil law countries. The gap comes from Anglosphere societies' experience of the judiciary as a welcome buffer on state power. On the Continent, first absolute monarchs and then revolutionary regimes saw the courts as an obstacle to reform. Modern restructuring turned judges into mere functionaries applying rationalised legal codes.[41] Given the overall logic of chastening a world state, judicial independence must be a high priority regardless of the branch of law. In practice, it would probably mean something more like an Anglosphere-style adversarial than a Continental-style inquisitorial system for criminal trials. The public prosecutor would represent the state on an equal footing with the defence, rather than having the state as judge in its own cause.

The courts in personal law systems would enjoy independence from the public legal order. In the interstices of the public legal order—such as adjudicating among personal law systems, or engaging in equity- or *maṣlaḥa*-based filling of gaps—judicial independence from the state also matters. Perhaps inevitably, based on modern experience, state-appointed judges would be tempted to encroach on legal pluralism. Over a few generations, their rulings cumulatively

might concentrate interpretive authority or force personal law systems to converge. To resist this temptation, courts adjudicating among personal law systems must be as independent as possible from the state. Perhaps they could recruit judges from the personal law sphere, who would be committed to pluralism from professional experience. Such judges would treat jurisdictional issues as matters of technical clarification, and not as a battlefront between state and society.

That diverse landscape, jealous of state authority, also implies a view of the judiciary and the legal profession rather different from that in any modern state. Modern judges and lawyers often must swear allegiance to a national constitution, monarch, or the like. In times of ideological tightening, even some of the most liberal states have also enforced content-based loyalty oaths that elevate allegiance to the polity and majoritarian values above the exercise of conscience.[42] In contrast, sphere pluralism would rule out demanding oaths of any judge or lawyer. At most, he or she should promise faithfully and conscientiously to execute duties within the system in question. No judge tasked with giving rulings under shariah in a personal law system should be expected to swear allegiance to a world state. Said judge might well regard the state as tolerable in its function but inferior to the shariah in its legitimacy. Even lawyers representing defendants in a criminal case should not be required to take such an oath. In rare cases, after all, they may believe that the world state and its criminal laws are illegitimate. They should nonetheless be entitled to mount a vigorous defence of their clients, as long as they can abide by the norms of the courts and make arguments recognisable under the law being applied. These measures are mostly symbolic, of course, but symbols would matter to reinforce a pluralistic legal culture centred in society.

Shifting the centre of gravity of the public legal order away from the state also favours a jury system for criminal trials. As in the Anglosphere, with its long tradition of civil liberties and rights of the accused, juries would place the power to convict a defendant in society rather than in the hands of state functionaries.[43] The jury is not only a powerful counterweight to the state, as in centuries past. Today, it is also a counterweight to the new class. Even in Anglosphere countries, judges and lawyers tend to view jurors as members of an untutored public, whose decision-making about the law should be stage-managed by professionals. Jurors are not informed, for example, of their age-old right of nullification, which lets them acquit a defendant on grounds of conscience and natural justice even if the law otherwise requires a conviction. The independence of a jury drawn from society need not prevent an important modification inspired by civil law systems, however. Alongside judges, they sometimes have lay assessors drawn from the public in lieu of a jury. Lay assessors serve for longer terms than the one-trial duration of juror service in the Anglosphere. They gain more

familiarity with court procedure and how to evaluate evidence. Longer-serving jurors of this sort could combine the best of both worlds. They would have the independence of the public but also the experience and confidence to do the job more reliably.

The Anglosphere model of the jury also would need modifying in another respect. In principle, a jury should consist of the defendant's peers. Historically, it has been drawn from the locality where the crime was committed. In modern times, the scale has broadened to a city or county. The territoriality principle remains embedded in how a 'master pool' of potential jurors is generated. Controversy has boiled in recent decades over the representativeness of juries in racially polarised countries like America. Advocates of diverse juries argue not only that they will assess facts more fairly in context—rather than applying the vague standard of a 'reasonable person'—but also that the experience of serving on a more diverse jury broadens horizons and improves the legitimacy of the justice system. In areas with high levels of immigration, some critics also suggest that excluding noncitizens from juries impairs representativeness.[44]

In a future open global space where territoriality matters little and mobility is high, and a uniform global criminal code has come into effect, what might representativeness mean in jury selection? Ideally, jurors should be drawn from a cross-section of the global public. One would have to screen for competence in the language of the parties, of course, but longer-serving jurors could conceivably be posted farther afield to break the tight link to territory. While this ideal cannot be fully realised, moving toward jury globalisation could help harmonise standards across the world. It could strengthen consciousness of a common legal space and blunt the impact of biases in deeply divided societies.

As this last example suggests, a global legal order would be immensely challenging to create. It would mature in stages. Jurisprudence would need refining over a long period, as happened within nation-states. This process inevitably would pull in two directions at once. On the one hand, the messiness of existing practice, along with traditionalists' desire to build on accumulated wisdom, would mean treading lightly. The global landscape must have plenty of room for the conservatism, cautiousness, and modesty familiar in common law and shariah, among other systems. On the other hand, the unprecedented scope of a new founding and the need for coherence could add urgency. Particularly at the highest levels of the public legal order, a coherent framework would need creating swiftly to hold everything else together. The landscape thus also needs room for the more innovative temper of the civil law tradition. That more theoretical approach, as one observer described it, takes pride in the 'legal science' of codification and systematisation. It 'glorifies the scholar, flatters the legislator, and demeans the judge'.[45] Such a spirit can be given freer play at the apex of the public legal order, precisely because

the rest of the framework would fetter power and preserve diverse spaces of commitment.

Of course, all these guarantees around the public legal order would be only as good as the world state's stability and the larger metaconstitutional settlement's ability to survive for the long haul. It is to that more fundamental level of institutional design that I turn in the next two chapters.

7 The State Constitution

The argument of this book has worked from society towards the state, so to speak. It has laid out the prospects of virtue-centred sphere pluralism in an open global space, the flows of resources through that space, personal law systems, and the public legal order. This sequencing makes sense if the aim is to restore the primacy of society, including the circuits of human flourishing within it, and to reduce the state to its proper scope within one sphere. Against this background, we now can zoom in on a view of the world state itself, even nearer to the core of the world's constitution. This chapter will deal first with the state in a narrow sense, namely, the scope of its authority, its ethos of leadership, and how it represents society. The next chapter will then consider the metaconstitutional grounding of the global order, including the founding process and how to lock the state into a framework of sphere pluralism for the long term.

In framing this argument, I shall be selective. Some readers may think it odd to dwell on some aspects of this global framework while ignoring other seemingly more important ones. Given the limits of space, I prioritise what I see as the most theoretically interesting questions, in light of the overall approach in this book. I highlight the points that link most to sphere pluralism—and thus depart most from mainstream political theory—along with the building blocks of the overall metaconstitutional structure. Other aspects get less attention. Sometimes they do not matter much in the grand scheme. Other times, the gaps could be filled in various ways compatible with the rest of the outline.

The State's Competence

As I argued at the beginning of this book, a world state cannot just scale up the modern nation-state. To do so would replicate the familiar problems of a swollen political sphere and an assault on pluralism. If we turn to the past, however, we find no readily transplantable model. The old civilisations had common aspirations to a universal state in their zone. Yet those aspirations bore little or sour fruit most of the time. On the one hand, realised universal states—like the Roman and Chinese empires—proved weak on heterarchy. On the other hand, those parts of the world where the universal state ideal faded into the background—as the Catholic and Islamic traditions grudgingly conceded—displaced

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unity onto a civilisational plane instead. In its more sophisticated philosophical versions, this view meant that rulers in each time and place should discern universal truth but tailor it to the mores of their own communities.[1] That premodern nesting of the social order within a civilisational framework had two drawbacks, which make it a poor template for the world's constitution. First, the universal and the particular were ranked vertically. The image of a great chain of being often justified concentrating honour and power, rather than allowing a flatter mode of sphere pluralism. Second, the universal still implied one or another particular civilisational space, rather than a global landscape. The world today lacks any such common, majoritarian heritage in which to nest an integralist mode of political life.

While the scale and sophistication of the old civilisations offer much to enrich a global space, therefore, we must look elsewhere when it comes to the metaconstitutional underpinnings of a world state disposed to respect pluralism. Sphere sovereignty theorists offer a more useful toolkit. They see nesting the state within a civilisation as less important than functionally limiting its authority. The main question for Kuyper and Dooyeweerd was qualitative, not spatial. The fully disclosed state combines coercion and juridical order—might and right—to uphold public justice on a territory. It deals with matters of order and common interest affecting everyone in its jurisdiction: crime and some aspects of public health and infrastructure, for example. Other matters fall outside its ken, even though it is interlaced with other spheres.[2] While Kuyper and Dooyeweerd mapped out this division of labour, one need not be a Calvinist or even a sphere sovereigntist to see the merits of the approach. Other pluralists in the twentieth century agreed broadly on what it would mean to confine the state to its distinct tasks rather than giving it full sovereignty over society.[3]

Sphere sovereignty theorists have rarely entertained scaling up their principles beyond the nation-state. But as I have argued throughout this book, the slightly different emphasis of virtue-centred sphere pluralism and the global scale ahead of us meet in a promising opportunity.

First, an open global space sets the circuits of society free to reach their natural scales. It would let traditions encounter and mix with one another. They could enrich and legitimise new political institutions more than today's sterile liberalism has done. Without either a domineering political sphere or a common civilisational heritage, such a global space would be looser than any modern nation-state. Its contours would frustrate the imposition of political majoritarianism on a diverse society.

Second, a sphere pluralist approach has a less totalising spirit than the older civilisational cosmopolitanisms. They were usually bound up with a hierarchy of persons and tight orthodoxy. Twenty-first-century life better fits the more tolerant and egalitarian assumptions of Kuyper's Dutch environment, the Constitution of Medina, and other such forerunners.

Third, by pairing the scaling up with a chastening of modern stateness, we can allay perennial worries about an overbearing global leviathan. The global public power would be more geographically expansive, to be sure. Yet its functions would be truncated. It would reach less deeply into society and have fewer levers of power. This scope means that we should not see the world state as an arena for impressive political action. Rather, it would be an organ for handling limited public interests. The state and the metaconstitutional pillars surrounding it would leave plenty of room for action locally and in civil society.

I shall deal in the next chapter with metaconstitutional guarantees of sphere pluralism, which go beyond routine politics. Even within the legitimate boundaries of routine politics, however, power must have tight limits. Confining the world state's functional scope must be paired with constraints on how even that limited authority operates. In the previous chapter on the public legal order, I noted the need for judicial independence, juries, administrative accountability, and so on. Most elements of sovereign immunity and prerogative powers should also be abolished. Such indulgences of powerholders' whims have long had as their best—albeit still shaky—rationale the Darwinian pressures of the international system. Politicians supposedly have needed to tread on citizens' rights from time to time for the sake of national efficiency and survival. In a common global space, the fetters of legality can tighten around political power.

Concentration of power in the hands of the world state could also be thwarted by avoiding the usual markers of geographic centralisation. Even a night watchman state would need a professional civil service, but the size of that civil service could be capped. It should be recruited globally without ascriptive quotas. Frequent rotation would help foster a global horizon and avoid corrupting entanglements. As the proliferation of videoconferencing during the recent pandemic showed, modern technology also makes it feasible for the first time in history to avoid establishing a conventional capital. Even if some representative bodies need meeting places, civil service offices could be dispersed across the world. Doing so would avoid the inbreeding of policymaking elites that often goes with geographic proximity. Dispersion and remote work would allow closer contact with the world's diversity. It would ease mobility of civil servants so they genuinely could come from and feel at home in multiple places.

In the political sphere itself, marked off and kept in check by all these measures, a world state's inherent functions could still give it real power. In light of public opinion, it could tailor policies on everything from criminal justice to infrastructure spending to environmental regulation. Even with some devolution to localities, the scale of modern life would inevitably put many of these tasks in the hands of a world state. Localities are ill-equipped to regulate air pollution, ocean shipping, subsoil resource extraction, high-speed rail safety, satellite spacing, and quarantine, to name just a few examples.

To dig more into the role of the world state and its limits, let us take a test case that will spring to mind for many readers in light of recent experience. How might this kind of global order respond to a crisis like the recent pandemic?

It bears noting that the controversy over measures taken during the pandemic revealed, in a vivid snapshot, many of the cultural tendencies of late modern atomism that I detailed earlier in the book. Lockdown proponents saw the spread of a deadly infection that overwhelmed health systems as a strong argument for the state as an indispensable protector of life. Politicians and media together deployed behavioural psychology to nudge the populace into a pattern of fear and compliance, often as a blunt instrument that brought other human costs with it. As the Italian philosopher Giorgio Agamben argued in two critical essays in early 2020, lockdown followed in a long genealogy of rhetoric about terrorism and security. He argued that it normalised a 'state of exception' that tightened control in the name of public health. A society that tolerated such restrictions believed only in 'bare life', and was willing to sacrifice all other aspects of economic, political, social, and religious life to preserve it. Suppressing contagion meant suppressing the human impulse to gather and converse.[4]

Such 'bare life' exemplified the embodied equality so central to the worldview of the left-liberal camp within atomism. Not only did physical safety trump the fulfilments of personal enkapsis among multiple spheres of life, but justice also came in some settings to mean a fair equality in the duration of embodied experience. Thus did hospitals in Italy and some other countries, when faced with a shortage of ventilators, deny critical care to the elderly. And across the world, the threat of contagion meant that infected patients died alone without the human contact that had made life worth living. Notably, however, the most visible response by critics of lockdown was not in Agamben's vein. It was not mainly about meaningful circuits of life, which would have been a sphere pluralist starting point. Rather, they complained about economic costs and the physical constraints of mask-wearing or compulsory vaccination. The right tended, in its own version of atomism as physical self-assertion, to play up the claims of the economically active and robustly healthy mainstream citizen who could handle a minor case of flu, even while the vulnerable should be sacrificed or at least quietly stay out of harm's way. The liberty being defended was not primarily that of society or virtue, or dense and meaningful commitments. It was a monistic liberty of profit and physical autonomy.

In short, both main camps in the pandemic culture war were operating within a recognisably atomist set of assumptions. And in most countries, new class policymakers balanced such pressures to varying degrees, but still only within their own worldview. By the end of the pandemic, it had become clear that narrowly measured indices of mortality and economic activity had carried the day. A host of other things had been sacrificed without much compunction: contact with family and friends, and supposedly less important activities in society like religious worship, education, and cross-border travel. Dispersed initiative for

reducing contagion and supporting the infected or isolating got less attention, compared to the tug-of-war between those who would rely on state edicts and state handouts to do the work, and those who in a fit of petulance against constraint often refused to take any measures at all lest it seem a sign of weakness.

But how might such a pandemic have unfolded in a world order based on virtue-centred sphere pluralism? As a starting point, even sphere sovereignty's limited view of the state's function does include key aspects of public health. While the state should tread lightly on other spheres, controlling infectious disease falls in the category of public order. Just like deterring and punishing crime, enforcing property rights, or prohibiting pollution of air and water, contagion is a concern common to all people. As the pandemic showed, globalisation scales up the challenge of a local outbreak and can require a coordinated response. An effective world state could offer just that. While still constrained by rule of law and other liberties, it could legitimately quarantine infectious individuals, restrict travel in and out of areas with early clusters of cases, and so on.

Such temporary and targeted measures could even get the benefit of the doubt compared to now. An entrenched principle of global free movement would lurk in the background, ready to reassert itself with certainty once the threat passed. Measures could also be tailored precisely to the geography of infection rather than to political units. We saw in the pandemic that it might have made more epidemiological sense at key moments to seal off a city like Madrid or New York than to take the easy and politically appealing option of stopping international travel. In other ways too, an open global space could make responding swiftly to a pandemic easier than in recent experience. Panicked claims about a need for national self-sufficiency in medical supplies overlook that shortages stemmed not from the fact of global supply chains, but rather from protectionist national tightening that snapped them. A world state's response would not involve beggar-thy-neighbour tactics like hoarding personal protective equipment and vaccines in areas with less need.

A broad and nimble response is one thing. Quite another is responding in ways that concentrate power and run afoul of metaconstitutional principles. Much as with poverty, war, or climate change, a serious common problem demanding urgent solutions can tempt publics to let politicians overreach. Centralisation gets ratcheted up over time. The old adage holds that a crisis should never be wasted. In 2020, the right seized on the pandemic to close borders and demonise foreigners. The left used it to argue for minimum income guarantees, wealth taxes, state healthcare, and the like. Such varied longings for one or another kind of structural change only gave cover as new class elites displayed their usual instinct to control more swaths of society. It would not be far-fetched to imagine arguments emerging, some years or decades hence, for microchipping everyone with a health and movement tracker, for the sake of our common interest in preserving human life. The rationale would be framed with the best of intentions. If dystopia comes, it will probably come offering a stipend and a safety helmet,

not brandishing a rifle. That level of principle never got enough attention during the fevered lockdown debates. Those who strained against restrictions mostly invoked economic costs or an ill-considered freedom to risk their own and others' health. Few discussed any serious idea of liberty or the habits and structures that might play out over the long term.

In a pandemic that amounted to both a public health crisis and an overwhelming burden on the health security sphere, the boundaries and interactions among spheres would be crucial. To trigger an exceptional response could require getting past a double lock involving the governing structures of the health security sphere and the world state. First, the former would have to determine on grounds of health capacity that the threat passed the threshold of an emergency. Then the world state would have to determine, as a matter of public order and the common good, what a proportionate response would be. Mobilising excess resources should involve, if possible, no more than routine operations within the logic of market and state. The health security sphere could have pre-existing contracts in place to 'surge' production of medical supplies, for example. The state could enforce emergency production commitments and, perhaps, guarantee loans that the health security sphere eventually would recover from coverage plans. The state also would be within its rights to divert some of its own resources to the crisis. It could deploy its security forces to transport medical supplies, for example, or defer infrastructure spending to buy personal protective equipment. None of these interactions would blur the boundaries of sphere sovereignty.

As the pandemic showed, however, other large-scale measures can swell the role of the state greatly. To blunt the economic impact of the lockdowns, Western governments rushed to subsidise everything from furloughed worker wages to banks to universities. Some critics rightly noted that such bailouts were patchy and politically selective. The rules favoured larger and better-connected institutions, often at the expense of small businesses and the informal sector.[5] Vast bailouts and subsidies incur government debt that expands the state's fiscal footprint for a long time after a crisis. They also create a taste for further intervention.

In the global framework that I have outlined, the solution to a pandemic-type shock need not be to sit back and let destitution ensue. Since the economic impact of a lockdown, for example, would stem directly from restrictions that the state imposed as part of its public order function, it is reasonable to expect some assistance from outside the market. Of course, if a prosperous global economy had built-in shock absorbers, the need for intervention would be reduced. Any universal basic income from natural resource or other revenues should be the first port of call amid temporary disruption. If a larger buffer needed activating, it should take political discretion and centralised authority out of the picture as much as possible. There could be constitutionally locked mechanisms for automatically raising flat income and social insurance taxes in a crisis. The influx of money could fund allowances paid directly to unemployed individuals or indeed

to everyone experiencing the disruption of public health restrictions. Such horizontal compensation at the time of a crisis might greatly increase the burden on the best-off and least affected people for a short time. But it would stem from the common responsibility of financing a policy to support public order in an emergency. In principle, horizontal compensation limited to the emergency period itself would also avoid vertical concentration of power. Politicians would not be picking beneficiaries. Nor would they accrue public debt that their successors would then use to increase the state's fiscal footprint.

Going a step further, should the world state be allowed to expand its own budget in an emergency? The measures I have outlined so far would only redeploy existing resources, or facilitate some interactions among spheres, or briefly elevate transfer payments in a mechanistic way with no political discretion. In normal operation, as detailed earlier in the book, the state would have tight limits on taxation. Yet most current understandings of the state build in some ability to raise taxes and spending in a crisis like a war. Any such ability to evade normal constraints should give us pause, for two reasons.

First, a loophole leaves room for ratcheting up the state's fiscal weight over time, even if only because public debts need paying out of future revenue. In a dire enough crisis, however, foreclosing this possibility could prevent the world state from fulfilling even its limited function. The risk could be curtailed by requiring a legislative supermajority to unlock taxation and borrowing. The total resources mobilised could also have a hard cap of, for example, 50% of GWP and the requirement to repay over five years out of the usual tax base, with severe austerity on other government spending in the meantime. Such a high threshold of necessity and the seriousness of the fiscal consequences should avoid this temptation in more or less any foreseeable case. For example, the recent pandemic would not have approached that threshold. The economic impact of social distancing could have been handled through modest transfer payments at the time. The threshold for more drastic fiscal measures would be extraordinarily high, such as a once-in-a-millennium plague that killed a third of humanity and left a tenth seriously disabled.

The second peril of state aid in a crisis has to do less with the scale than with the channels through which aid flows. Deploying resources in the wrong way can rebalance relations among the spheres or deform the functioning of a sphere according to its own nature. The state could be free to use its own existing resources to subsidise needs in other spheres in a crisis, or in the extreme case above, to raise extra revenue and support them more abundantly. But the meta-constitutional framework should thwart state encroachment on the institutions of other spheres. One way to avoid this would be to channel aid through existing hypothecated channels. In a pandemic, for example, the 10% of GWP that the health security sphere normally receives by right could be scaled up to 15%, with extra resources flowing directly into existing plans. Alternatively, individuals could receive vouchers, which they could contribute as an addition to the

civil society tithe described earlier in the book. In any crisis, dispersed action in civil society could be the best way to meet pressing needs. Passing aid through the individual judgements of billions of people would get emergency funding into use, but without political discretion or any change in the balance of power.

These details could be settled in many possible ways. But the key point is to settle them well in advance of a crisis. They need locking into the metaconstitutional guardrails around the world state. Making up the rules as one goes along, with urgency amid mass panic and power-grabbing temptations, could be fatal to any pluralistic global order. Whether such a crisis is a pandemic, a megatsunami, an asteroid impact, an internet-destroying solar storm, or something now unimaginable, it will come sooner or later. A system is only as sound as its performance under stress. The guardrails can ensure that fear, hardship, and carnage would not lead to surrendering the long-term conditions of pluralistic liberty and human flourishing.

Socialising the Stewards

We must ask questions not only about the what and the how of power, but also about the who. Those running the state must interact with other leading segments of global society. Since one of the three troubling trends of late modernity has been the concentration of social authority in the new class, a metaconstitutional alternative must break it down. We thus have to take a detour into qualities of leadership and how they relate to broader patterns of state–society relations. Accountability, style, and scope of governance make sense only against a backdrop of ethos and social power. In particular, the historical experience of heterarchy can guide us in thinking about representation. As elsewhere in the book, I want to identify the most instructive patterns in each civilisation that foreshadow the challenges of our own time. The narrow ambition that defines a certain type of atomist individuality is bound up with social monism, which in turn is hostile to pluralism as a constitutional matter.

Among ruling classes in history, the Confucian scholar-officials may inspire at first glance. Unlike the technocratic new class, they claimed authority based on mastery of the classics and the ethical standards that they had supposedly absorbed by learning them. And unlike hereditary aristocracies elsewhere, each aspirant to office had to prove his mettle on his own. The *kējǔ* (科举), or examination system, dates back to the Sui dynasty in the late 500s. It has been counted as premodern China's fifth great invention, after paper, printing, gunpowder, and the compass. Sympathetic Chinese historians have praised its broad recruitment of talent after feudal hierarchies broke down. A quarter or more of successful examination takers hailed from the ranks of ordinary people rather than official families. Such circulation satisfied its supporters as a kind of political openness that prefigured the modern spirit of equality. The 'selection society' worked top-down. Officials selected officials, amounting to fewer than one in a

hundred of the population at large. Yet that social model also offers a cautionary tale of credentialism and hierarchy. Equality of opportunity to hold political office shaped the aspirations and temper of all of Chinese society. Power, wealth, and honour concentrated along that one state-centred axis. As a more predictable and respectable route of upward mobility than commerce, it also lent legitimacy to what remained in the end a deeply stratified society. A chasm divided a privileged bureaucratic stratum from the common folk, even if talent circulated across it in each generation.[6]

Ideally, the scholar-officials carried on the conscience of Chinese civilisation and weathered the rise and fall of dynasties. As mainly an office-holding stratum, however, they never had full independence. Examination-based mobility came at the price of submission to the state that had plucked one from obscurity. While the risk was evident, in the 'fear lest moral character be slighted in a quasi-legalist impersonal machinery of stereotyped tests', the self-confidence to defy power in the name of truth shrank over the centuries. With the consolidation of centralised bureaucracy and the 'nationalisation of talents', those who took the tradition most seriously and rejected petty ambition had few places to turn when displeased with the policy of the day. Many withdrew into private life.[7] For this reason, if we seek lessons for today in the Confucian tradition, the image of the principled yet impoverished gentleman far from power inspires more than the typical officeholder. In keeping with a sphere pluralist diagnosis, Chinese civilisation's ethical core proved more resilient outside the state apparatus than within it.

In contrast to Confucian China, Hindu India divided authority in principle. While kṣatriya rulers kept anarchy at bay, the brahmin priestly caste was esteemed as the ultimate bearer of civilisation. The prepolitical order of Hindu civilisation humbled holders of political power in theory, though in reality the division of labour and the effectiveness on either side left much to be desired. The balance of power between political and spiritual authorities fluctuated across time and space. The Hindu texts offered no map of a stable polity as such. Indian society and its brahmin truth-bearers yielded with indifference as first kṣatriya infighting, and then waves of Muslim and European invasion, installed one or another layer of alien rulers over them.[8]

The Islamic world saw tension between equality among believers, on the one hand, and more stratified views of learning and honour, on the other. As Islam spread out from the tribal environment of Arabia, influence seeped in from Greek philosophy and Persian absolutism and courtly refinement, among other sources. Amid these layered views of the world, the ulama held the centre. Their defence of religious truth against worldly power chastened Greek and Persian pride. Yet clerical authority also meant, in its own way, displacing real equality to the afterlife. Much like Confucianism, the Islamic tradition disdained those who abased their religious knowledge before power. One hadith held that 'the most excellent jihad is when one speaks a true word in the presence of a tyrannical ruler.' And

as a mediaeval Syrian jurist put it, 'God hates nothing more than a scholar who visits an emir.'[9]

Those ideas were imperfectly reflected on the complex landscape of Muslim society. 'The ulama were allowed to control the social fabric,' one historian observes, 'but they were given virtually no voice in the other aspects of government.' The independence they enjoyed came from the waqf endowments as well as Islam's embeddedness in ordinary life, though as with the Chinese scholar-officials, many also served as state-appointed qadis. The fault lines of status appeared in the constant jousting in literature and commentary among the ulama, the warriors, the merchants, and the bureaucrats. Consolidation of complex states shifted power away from the warriors to the bureaucrats, just as urbanisation enriched the merchants. But whether among those who prayed, fought, or traded, a recurring theme was the defence of heterarchy against the absolutist and servile temptations of the bureaucrats. Unsurprisingly, when modern state-building projects eventually tried to steamroll tradition, the movements that fought back typically did so in the name of the prepolitical liberties and orthodoxies of Muslim society.[10]

Since Europe was the first domino to fall to the modern onslaught, however, the resistance from traditional heterarchy was best articulated there. While the clergy had its defiant souls, the gentry was a strong reservoir of independence. Its status rested not on learning so much as on landholding and upbringing. We find its most effective apologists in Britain. The British gentry imagined itself in contrast to those who derived their status from expertise or money or state service. The idealised gentleman would display public-spiritedness, but his reference group was a certain layer of society rather than the state apparatus. His self-cultivation had less literary polish and courtly habit, for example, than in post-Enlightenment France. His tough virtue and self-confidence were bred in the independent public schools. Despite the clear distinction between gentlemen and common folk until recently, however, the gentleman ideal was also just porous enough for an open society. While inherited property usually lurked in the background, the markers of being a gentleman were such that anyone who acted the part could be treated as such.[11]

For a classic account of the gentry, we can turn to the leading light of eighteenth-century British conservatism, Edmund Burke. In a 1791 essay, he insisted that 'a true natural aristocracy … is an essential integrant part of any large body rightly constituted.' Talent could rise into it, but not on equal terms of meritocracy in the modern sense, because it could only flower with long cultivation from childhood or even over several generations. It needed the ballast of continuity for its socialisation and its independence. Chivalry and learning best flourished amid the networks that linked together the landed aristocracy, clergy, and men of letters. Talent needed anchoring to gentle manners and the social structure. Burke's idealised image of Britain's traditional ruling stratum meant that he looked askance at any revolutionary upsurge of new intellectuals

who would displace it. In ominous form across the Channel, he saw men of talent trying to tear down the traditional establishment rather than join it. Given their humble origins, their ambitions outran their qualities of statesmanship. The French revolutionary had 'a juvenile warmth through his whole frame', a 'pride, petulance, and self-conceit' that promised to wreak destruction on the old order. 'The age of chivalry is gone,' he lamented. 'That of sophisters, economists, and calculators has succeeded; and the glory of Europe is extinguished forever.'[12]

Burke was reacting specifically to the revolutionary moment. But Jouvenel took a broader view in his libertarian survey of the history of power. He saw such intellectual revolutionaries as living out an age-old, troubling relationship between talent and stateness. The intelligent and ambitious in the 1790s may have devoted their energy to guillotining their king. Yet their forerunners had been appointed by absolutist monarchs to strengthen the state apparatus and displace the more stiff-necked traditional aristocracy. 'Resistance', Jouvenel averred, had long been 'the business of aristocracies'. Modern states' assault on heterarchy included staffing the bureaucracy with ambitious men of humble origin who owed everything to the opportunity. Their impulse to concentrate power aligned with their envy of rival power centres in traditional society. In the name of rational reform and the equality of all subjects, such functionaries cleared the field of resistance. Generations later, modern social revolutionaries found much of the work already done. They could substitute the abstract demos for the decapitated monarch. Modern functionaries took advantage of revolutions to tighten their grip further. Jouvenel noted that 'the further the liquidation of the aristocracy has been carried, the more complete will be the tyranny established by the revolution.'[13]

The more a society abandons heterarchy, the more tame servility comes to the fore. Sociologist Norbert Elias traced the rise after the European Middle Ages of a newly 'civilised' habitus around power. The violent self-assertion of warriors gave way to the polish of courtiers, with the latter's higher 'thresholds of embarrassment and shame'. Rewards no longer came from making one's fortune in battle. They came from impressing those further up the hierarchy. One had to temper one's impulses and weigh the longer-term consequences of one's performance. Elias wrote almost exclusively of Europe, but he referred in passing to the similar habits of China's 'class of scholarly officials pacified to a particularly high degree'.[14] A parallel account comes from Karl Wittfogel, the theorist of 'hydraulic societies' in much of pre-modern Eurasia, with their vast states and top-heavy administrations. Their despotic character came from the jostling for rank amid centralisation. Feudal and bourgeois societies had multiple sources of honour and power. One might lose the battle in one sphere but still preserve a basis of dignity in other spheres. In despotic hydraulic regimes, in contrast, a monistic bureaucratic hierarchy meant that one misstep that offended superiors could mean losing everything.[15]

The tame servility of officials in hydraulic despotisms, or of courtiers in early modern absolute monarchies, foreshadowed the wider assault on heterarchy in the twentieth century. This more recent global trend has centred on educational sifting. While the Chinese examination system was a quasi-meritocratic mechanism before modernity, Western interest in copying it grew in the nineteenth and twentieth centuries, first for civil service recruitment and then for social mobility more generally. The expansion of a certain type of higher education over the last half-century has had profound implications. Assessment of academic ability has converged worldwide on a narrow range of models. The credentials of the university graduate are entry tickets for modern society's higher echelons. 'No salvation outside higher education' is the touchstone of meritocracy.[16] To be sure, the mechanisms may be more or less state-centred in different countries. But the common mode of funnelling talent into power and instilling certain kinds of ambition and conformity along the way eerily fits the forebodings of an earlier era. Time horizons shrink to one lifetime. Knowledge becomes a currency of ambition rather than cultivation. A hierarchy of credentials is printed in bold over the tapestry of society.

Modern educational funnelling has created the new class. At the same time, rival bases of power have faded. Meritocracy of the modern sort is distinctly hostile to sphere pluralism both psychologically and functionally. The centralisation of power has undercut the independence of the landed gentry, the clergy, and other leaders of civil society. The levelling spirit of mass society has also robbed older styles of cultivation of much of their appeal. Sometimes revolutionary upheavals—especially in Africa and Asia—have smashed traditional elites in one generation, while it took a century or more of gradual change in Europe.[17] We should not overlook the new class's visceral hostility to heterarchy, despite its protestations about individual freedom. In the name of emancipation and rational progress, it wages a culture war against rival foci of power. As some libertarians have noted, modern intellectuals look askance at the unpredictable reward structures of the market. Implicitly they 'want all of society to be a school writ large', with rewards doled out in a measurable hierarchy of performance. Since credentials today count for so much, the perceived exceptions grate all the more. Jasay quipped, 'In a republic of teachers, the capitalist ends up as the political underdog.'[18] New class policies of redistribution erode rival bases of power at least as much as they benefit the needy.

The early incarnation of the new class in the 1960s had a boisterous air about it. The student movements aimed their energy at dying traditional elites. Downscale allies with pitchforks had their uses. With the consolidation of new class rule and the further centralisation of power nationally and supranationally, however, we should hardly be surprised that tighter hierarchies are back in fashion. That some Western intellectuals show growing admiration for an East Asian model of 'political meritocracy' is symptomatic.[19] The supposed skill, efficiency, and far-sightedness of officials in places like Singapore and Beijing

attract those unsettled by messy popular participation. Some sympathisers of the EU also welcome insulating areas of policy from national democracy. Such sentiments should not be exaggerated, of course. They face plenty of pushback and even mockery.[20] But they are also more significant than just the co-optation of apologists, or the age-old story of free folk on the frontier being assimilated by one or another swelling bureaucratic empire. Rather, the experience of the new class favours an affinity for hierarchy over heterarchy. We should expect the global landscape on its present trajectory to generate more such advocates, and even more mild sympathisers. The template of global order that they will support is starkly at odds with any pluralistic vision. They have little sense of a transcendent standard of human flourishing, under which one cultivates oneself with some humility. They also do not have a healthy scepticism that achievement within the world lacks full legitimacy when it has been won only by hard-edged, instrumental competition.

When imagining future metaconstitutional arrangements, we must be mindful of how they might interact with this powerful world-historical temptation. Any world state founded in the spirit of virtue-centred sphere pluralism must build in strong guarantees of heterarchy. These guarantees must involve not only curtailing the state's ability to encroach on other spheres, as I have outlined throughout this book. They must also take seriously the points of contact between power, on the one hand, and the socialisation and recruitment of the ambitious, on the other. Design cannot take place in a social and cultural vacuum. Depending on the model, representation of society and the structuring of opportunity might engender more tame servility and more fawning around narrow aspirations, or it might cultivate more robust virtues.

Design a system one way, and it will favour the continuation of the new class, with its narrow credentialling, its funnelling of aspirations to a few professional tracks intertwined with one another, and its allegiance to global institutions that protect its interests. It would look like a soullessly technocratic version of the old Chinese mandarinate. Design it another way, and we have more hope of getting a different sort of stratum committed to virtue-centred sphere pluralism: cosmopolitan, with a clear image of virtue, and its socialisation and aspirations outside the state. The former, when facing a crisis, would ask what additional powers correspond to its own talents and expertise. The latter would ask how to be true to its own self-understanding amid adversity, within the rules of the game. Enlightenment, compared to virtue, gives more blank cheques to power.

The lessons from historical experience can only be suggestive here, but they are worth noting. Any civilisation has had a leading stratum. The more heterarchical models see it less as a pyramid of functionaries, however, and more as cultural glue that links state and society. In a future global order, that leading stratum would have to regenerate, across spheres, the wide horizons and networks that, in modern times, have largely fallen into the hands of the new class. There is more than one way of being cosmopolitan. The older traditions typically

saw the cultivation of virtue as happening mainly outside politics, whether in the family, in religious institutions, or in independent schools. One learned habits of self-command in private. Those habits could then carry over into civil society and, for those who chose, into political life. The acquired virtues gave a basis for discerning the best course of action, including knowing what to conserve.[21] In contrast, modernity has shifted cultivation into more uniform public institutions like the universities. It prizes the ability to succeed by a ready-made yardstick. It inculcates a smug impulse to critique and reform heavy-handedly from on high once one arrives on one's own perceived merits. In the future, moving the centre of gravity of elite education back into society would serve several purposes at once. It would allow more robust content and explicit character formation of a sort that a neutral secular state is reluctant to carry out. It also would refract success through more diverse channels of heterarchy, rather than mainly recruiting for a centripetal power structure.

To illustrate the trade-offs, we can treat the Chinese scholar-officials and the English gentry as two polar options for elite formation. In contrast to the new class, both took the cultivation of virtue seriously. They also made no pretensions about the flat sameness of all callings, as the new class does when it masks technocracy by genuflecting to mass culture. But despite this common ground, the Chinese and English models pointed in different directions. The Chinese vision was of a mandarinate. It had a cerebral and pacific undertone because it was examined on the classics. It recruited from society anew in each generation, to match rank to talent. It idealised service to the ruling dynasty, with exceptions at the margins for those who could not gain office or who withdrew under the pangs of conscience. Indeed, on the transmission belt between society and state, recruitment served as a kind of representation by origin, in that bureaucrats hailed from a cross section of the populace. The English gentry as understood by Burke and others was also a natural aristocracy, but its landholding base made its virtues less cerebral on the whole. It had more intergenerational continuity than its Chinese counterpart. Its distance from the state apparatus also gave it a sturdier independence. On a landscape tilted more toward society, it could mix an ethos of service with a function of representation. It spoke for a national interest more permanent than the rulers of the day.

In the trade-off between intergenerational continuity and individual mobility, no system can satisfy everyone. More equal opportunity gives rise to fewer problems in some circumstances than in others. If it draws through multiple channels rather than only one, inculcates strong traditions along the way, and tempers some of the elbows-out ethos that comes with intense competition, then perhaps the worst cultural effects of modern meritocracy can be avoided. At the same time, an order would ideally reconcile the cerebral temper of the mandarinate with the sturdy independence of a gentry-style heterarchy, while still distancing the leading edge of civilisation from state service. Robust arrangements to sustain sphere pluralism would assure the dispersion of resources and power,

and thus of aspirations. Over a couple of generations, a gradual social revolution could undo today's concentration of talent and socialisation in the new class. The redirecting of ambition in more diverse directions, away from new class institutions, is the indispensable social corollary of sphere pluralism.

On a civilisational level, virtue must come first. On a metaconstitutional level, heterarchy must come first. The two complement each other in virtue-centred sphere pluralism. In the mechanisms to achieve both, there should be ample room for mobility as well. But, in contrast to the logic of today's new class, the social order's main purpose should not be to dole out predictable rewards to those of narrow talents and even narrower ambitions, especially if virtue and heterarchy would both be casualties along the way.

Social Pluralism and the Mixed Constitution

After this detour into social structure, we can turn back to the transmission belts that would link society to the state. The task is novel both because of the scale of the global order and the limits on authority that I have outlined.

To the question of representation in a future world state, left-liberal reformists today have their own answer. They propose direct election of a global parliament or a people's assembly added to the United Nations. Scaling up representative democracy above the nation-state would solve the democratic deficit in global institutions. It would bypass diplomats and authoritarian national elites. Supporters often see such a vision as complementing a strong voice for transnational civil society, to shift the basic unit of global governance from nation-states to people. Beyond the moral claim to public participation, it could have instrumental benefits. More diverse input would improve decisionmaking. They concede that it could take a long time for such a body to have real legislative power and that it might start with a merely advisory role. Over time, however, they foresee such a global legislature achieving the same sort of mass democratic participation that matured earlier within countries. It would flesh out legitimacy, complementing the rule of law and bringing a unifying democratic accountability to support the global social contract.[22]

Mainstream opinion tends to be sceptical of such a global parliament. The scale alone raises doubts. The distance of global representatives from ordinary people would imply little real democracy. Policies on a grand scale might ill fit needs on the ground. The world's diversity and its many political fault lines might also make it hard to cobble together a democratic majority on any issue. Without a strong global identity to bind the demos together, minorities might concede even less legitimacy to the winners of elections.[23] How much these obstacles to a global legislature matter in the long run is an open point. Perhaps they merely mean a time lag in the scaling up of political interest. Or perhaps federalism would mean only truly global policy questions would rise to the largest scale.

Such debates will no doubt persist in the coming decades and receive more attention than they do now. Yet they are rather mainstream and frankly unimaginative. They deal with whether and how to scale up a modern nation-state mode of representation. They take for granted the familiar understandings of liberal democracy. Here, in keeping with the rest of this book, I want to ask the more basic question of what one would aim to achieve with a global legislature in the first place. If the rest of the metaconstitutional structure hinges on sphere pluralism, then we need corresponding older ideas of representation.

The core idea of representative democracy is that, as the agent of a mass electorate, a legislature speaks for society as a whole. It has wide authority to make rules as it sees fit. But such an understanding is peculiarly modern. It would have seemed alien to the mediaeval European mind, and even more so to Islamic and other traditions that put a fixed religious law at the centre of society. Traditional understandings held that even if political authority came down from on high in some sense, it still had to earn legitimacy from its subjects. Such legitimacy hinged on respecting usages and higher law. It never justified an activist state with law as wholly its own creature. Only with the modern tightening of state power and weakening of religious legitimacy did the conceits of parliamentary sovereignty mature. Given this background, traditionalists and libertarians tend to have misgivings about the authority of legislatures. Hayek called majority rule 'a reversal of the principle by which civilisation has grown', namely, dispersed innovation by creative minorities. And Jouvenel saw the rise of strong legislatures as a stepping stone to unfettered popular sovereignty, which remakes laws as it sees fit. In the long run, freedom of action by elected legislatures has concentrated power in the state's hands rather than checking it.[24]

Expansive ideas about a legislature's authority could only gain ground if, at the same time, the public it represented lost many of its internal distinctions. In other words, a strong agent presupposes a unified principal. But older ideas of representation were differentiated. In mediaeval European political thought, cities, guilds, and estates had legal personalities of sorts. Each whole was greater than the sum of its parts. For a ruler hemmed in by custom and religion, the society whose usages and common good he had to respect was not one mass. Instead, it was a complex landscape with multiple chains of authority. Magnates spoke for those below them. Corporate groups with different resources had to approve public levies. Counsellors advised based on both general wisdom and varied personal experience. Society's consent to legislation was not the stuff of abstract democracy. It nested in natural units with their distinct characters, brought together by history.[25]

This plural mode of representation fell by the wayside as modern states steamrolled diversity and mobilised the populace. Yet some intellectual defences of it lingered well into the twentieth century. Against the 'gregarious animality' of mass voting, both Catholic and Calvinist traditionalists spoke of 'organic suffrage' and the like.[26] While such ideas of nested representation were most

explicit in European political thought, analogues had cropped up elsewhere, too. In China, the philosopher Guanzi divided the country into a pyramid of sub-units, each with its own corporate accountability. He also insisted that the best life for each social stratum—'gentry, peasants, artisans, and merchants'—would come not from 'dwell[ing] together in confusion' but from pursuing their callings and virtues in their own milieux.[27]

When premodern states had legislatures, they represented these sorts of social groups. This assumption crystallised in a 'mixed constitution'. Parliaments had representatives in different chambers, or at least elected through different channels, representing different parts of society. European political thought from the ancient Greeks to the early moderns had a rich toolkit for imagining sovereignty as residing in multiple organs of the polity. Monarchical, aristocratic, and democratic elements were balanced. Whether the mixed constitution was mainly about combining different qualities of insight, protecting minority interests from mere nose-counting, or slowing hasty decisions was never quite settled. Depending on time and context, mixed constitutions might also serve to frustrate ambitious rulers or to rein in an enthusiastic mass of voters.[28]

The revolutions and reforms of the eighteenth and nineteenth centuries did away with the substance of mixed constitutions. Kings' urge to master society joined with levelling impulses from below to erase the distinctions between estates. Legislative authority collapsed into a unitary body speaking for a unitary nation. Even when multi-chamber legislatures or different modes of election lingered, their meaning had faded by the mid-twentieth century. Sometimes the different organs of democratic government merely served to stabilise responsiveness to varying scales of a mass electorate, as with a Madisonian separation of powers or federal voting units. Other times, residual non-democratic organs like the House of Lords lost nearly all their power.[29] The demos as principal and the legislature as its powerful agent had reached maturity. Heterarchy and the ramparts of society had weakened along the way. Of course, this story was not just one of political development. Broader social changes fuelled the remaking of institutions. Yet all roads led to the modern trinity of Leviathan, the new class, and an electorate impressed by an activist state.

Liberal and leftist imaginings about a global legislature pay no attention to the value of a mixed constitution. They debate only whether a global public exists or could coalesce, and whether its will could be represented on such a vast scale. They aim to replicate the democratic ideal from the nation-state. If their sort of global state could represent a global demos, that demos would be undifferentiated along modern lines. To be sure, it might have some federal sub-units and ways to give voice to minorities. But it would not take seriously a mixed constitution as a way to represent more fundamentally different human experiences, or as a check on democracy as such.

Given my argument so far, however, I want to challenge those assumptions. To constrain a world state properly and align representation with the logic of

sphere pluralism, we must recover something closer to a mixed constitution. Heterarchy implies representing a differentiated public. That does not mean a reactionary vision of estates and the like. Differentiating need not fly in the face of equality before the law and due respect to all callings, as I shall elaborate later. Some egalitarian achievements of modernity are worth keeping. Rather, differentiating means imagining representation as a multichannel process, so as better to guarantee liberty and advance the common good.

Reopening a debate about the mixed constitution must start by weighing all the ends that mixedness might accomplish. Mixedness necessarily means a move away from simple democracy. It assumes that representation is improved by complicating, in one way or another, the prompt mirroring of public opinion by legislators. Improvement can involve deliberation, trusteeship, and time horizons. Deliberation can be more sincere and effective if different ideas of the public interest meet in more respectful and less partisan contexts, or if better information is brought to bear. If decisionmakers are to weigh arguments on their merits, they cannot simply hold a wet finger up to the wind. In this vein, Burke insisted on the independence of members of Parliament from those who had voted them in. They had been chosen for their superior judgement, not to parrot what voters themselves preferred. That image of the gentlemanly trustee who would consider the public interest at large, rather than any local or personal stake, prevailed through much of the eighteenth and nineteenth centuries.[30] Sound representation may also need adapting to a longer time horizon. Some contemporary liberal theorists lament the 'presentist' bias of democracy, in which voters weigh their own short-term interests rather than the good of future generations.[31] Today, such arguments would shift trusteeship forward in time. In Burke's era, in contrast, the time horizon extended back into the past; trustees should defer to the accumulated wisdom of dead generations.

Mixed representation thus should aim at choosing trustees to deliberate about the common good. That common good is more than a mere balance of sectional interests. It should build in due regard for the interests of the public at large, including *forward* over the long term. It should pay heed *upward* to the highest principles of the metaconstitutional settlement. And it should tread lightly *outward* in respecting the landscape of sphere pluralism. Modern election by an undifferentiated demos has failed on all three dimensions. It snapshots the opinions of a mass of voters confident of their own wisdom and eager to use the state to realise their wishes. A unified legislature is as much the bane of heterarchy as are narrowly funnelled socialisation and credentialling of elites.

Of course, how one moves away from modern modes of representation to a better alternative is no simple matter. Many traditionalists in the past insisted along Burkean lines that only a minority of people discerned or possessed qualities of statesmanship. Who elected whom would determine the calibre of government. Such traditionalists fought tooth and nail against expanding suffrage. Then they lamented the declining character of politicians chosen by that expanded

electorate. Were we to focus on this account of the problem, then the answer presumably would involve limited suffrage and restrictions on eligibility to office, at least for a powerful upper chamber of a global legislature. Experience of upper chambers within countries shows, however, that a quality-based approach to their make-up rarely works consistently over time. The definition of quality shifts over time, and goals are unevenly fulfilled. The inegalitarian logic also clashes with other, more popular elements of the legislature.

Take Britain's House of Lords, the best known case of a non-elected upper chamber that survived into the modern era. It originally brought together the king's 'natural counsellors', namely the landed magnates and learned clergy. By the 1700s, hereditary peers were its mainstay. While most members attended only sporadically and political energy was shifting fast to the House of Commons, the Lords were still seen as representing a vital part of the body politic. This role was defended more explicitly as suffrage expanded and the House of Commons turned into a popular organ. Hereditary peers supposedly enjoyed a multigenerational perspective on the common good. Because of their upbringing, they were more likely to have qualities of statesmanship. They were also independent because of their landed property. They owed neither their seat nor their prestige to living voters or politicians. A defender of the Lords in the nineteenth century added that their style of 'dignified torpor' offered a useful reproach to two modern temptations, namely, the worship of wealth and the worship of office. The logic and content had already shifted a lot over the centuries, however. By the twentieth century, as the chamber's power was stripped away, it no longer represented one of the country's key interest blocs or a bearer of sovereignty. At most, it was seen as offering ballast or more thoughtful scrutiny of legislation. Peerages created in the late nineteenth century also had shifted the tone of the House to reflect a trading empire. Appointments tended to favour 'men of action' who had won renown in business and the military, for example, rather than 'men of thought' who might have improved the quality of deliberation. With the creation of non-hereditary life peers in the mid-twentieth century, and the later stripping of votes from hereditary peers in stages by Labour governments, the Lords have evolved beyond recognition.[32]

The trajectory of the House of Lords offers several warnings when we imagine a global upper chamber. As in many other aspects, Britain's unwritten constitution allowed slippage in the function, content, and workings of the Lords over the centuries. While the independence of its members gave an opportunity for rare moments of statesmanship, on the whole, such a chamber operated most of the time as a passive defender of established interests. The selection of its members—first by descent and more recently by political appointment—also bore no rigorously thought out relationship to the desired qualities of representation or the points of contact between state and society. And, not least, the nature of the House of Lords sat uneasily in relation to expanding suffrage. No clear account of the chamber's function was ever framed. Only if it had been articulated could

the chamber have survived broader political participation and come to be widely accepted as a legitimate part of a constitutional settlement.

Modern researchers writing on upper chambers have distilled the issues in different ways. As noted earlier, run-of-the-mill upper chambers do little more than refract popular sovereignty through federal units, or serve as a flywheel stabilising policy, perhaps by having longer rolling terms or other modes of election that distance them from the vicissitudes of politics. Smaller size sometimes means they have more room for in-depth committee work. As another checkpoint that bills must pass, upper chambers tend to give a system a status-quo bias.[33] Such upper chambers are ultimately about process rather than foundations, however. They take for granted the modern match of legislature to demos. Indeed, for mainstream political theorists, that is just the point. Robert Dahl, a thoughtful defender of democracy against 'guardianship', has argued that it is impossible to select and empower a minority better suited to governing. The knowledge to make good policy is hard to identify, and not obviously the monopoly of certain people.[34] The cases where upper chambers have (some) members chosen for their expertise do not really undermine that sensibility. They are either few in number or are politically appointed in an indirect sense—as with cross-bench life peers in Britain or vocational or university representatives in Ireland.

In modern times, alternatives to this model have been rare. Usually, they have involved some sort of functional differentiation. Some English pluralists like G D H Cole argued that 'real democracy is to be found, not in a single omnicompetent representative assembly, but in a system of coordinated functional representative bodies.' Having representatives chosen from functional groups like professions, unions, or religious bodies would improve deliberation by drawing on expertise and experience in particular policy areas. It would also leave liberty more intact because it would not collapse all loyalties into periodic voting for an overly powerful legislature. In the same vein, the 1879 electoral manifesto of Kuyper's political party envisioned an upper chamber to represent associations, though it was never put into practice in the Netherlands.[35]

Libertarians frame the question differently. They argue that deciding different matters through different channels would limit the state's power. Jouvenel, for example, said that insistence on mass democracy comes from the modern state's lack of respect for ramparts around interests in society. Since people cannot defend their own spaces from the state, everyone demands a voice to influence the state. Jouvenel suggested that if diverse interests were better fortified, then many decisions about how to use limited state power could more comfortably be treated as matters of opinion, with representatives chosen based on their level of insight for the task.[36] Hayek would split representation yet another way. He would have a popularly elected 'governmental' assembly with all the usual partisanship. It would have power to allocate a fixed pot of money to common ends, but not to overreach by varying the rate or burden of taxation. Alongside it, a 'legislative' assembly would deal with lawmaking

and taxation. But the latter chamber would be chosen not by general suffrage. Hayek argued that such important matters are best decided not by those with ambitions to overuse the state, but by those who have distinguished themselves in 'the ordinary business of life' and will return to it. He thus proposed having each age cohort elect its own representatives to the legislative assembly, to serve for a single term between ages 45 and 60. Hayek stressed that his scheme would be about protecting liberty, not about traditional ideas of a hierarchy of virtue.[37]

Finally, traditionalists concerned today about recovering a more virtuous style of politics have reason to be sympathetic to a mixed constitution. One thoughtful consideration of such a model comes from John Milbank and Adrian Pabst, in their critique of modern liberalism. They recommend going back to a mixed constitution made up of organic units, which they say was killed off by liberalism's vision of an undifferentiated state and an atomised citizenry. A healthy and pluralistic democracy requires reining in the overreach of the executive and the judiciary, both of which are dominated by the liberal new class. They write mainly of the British case, where federalised decentralisation and a reinvigorated constitutional monarchy could shore up pluralism. Monarchy, in particular, they argue, could intervene now and then to defend subsidiarity against centralisation. By the same logic, they would reform the House of Lords to represent different interests in society. Their argument mostly stops at the water's edge, however. While they think Britain's pluralist history and position amid ties to Europe, the Commonwealth, and America could let it make a strong case for 'infusing globalised structures with more constitutionalism and respect for civil society', in the end their horizon is mostly the West and the institutional possibilities of the nation-state. They do not even ask the question about what a mixed constitution would mean globally.[38]

Efforts outside the West run into even more insularity. One of the most creative Confucian political theorists today is Jiang Qing. He has laid out a model of 'triple legitimacy' in which a sound polity should rest not only on democracy, but also on the complementary pillars of virtuous knowledge and cultural continuity. In practice, his proposed tricameral legislature would balance mass voting with an examination-based meritocracy in one chamber and assorted cultural elites in another. Jiang's scheme does have strong transcendent elements. But it also slips into a quasi-nationalist obsession with Chinese uniqueness, such that he has not entertained where asking the same questions about any supranational constitution might lead.[39]

Against this background, we can turn to the question of what a global upper chamber would do. Based on the other models, it could be imagined as 1) representing continuity and deference to a metaconstitutional settlement more enduring than the political opinion of the day, 2) overweighting valuable perspectives and thus improving deliberation, and 3) fragmenting sovereignty and limiting legislative power for the sake of liberty.

Within the first function, continuity is rather a spent issue given modernity's breach of tradition. After a refounding, continuity could accrete gradually around a global upper chamber if it survives over several generations. In contrast, deference to a metaconstitutional settlement can matter from the start, even though it would not be up to an upper chamber itself to map out that settlement. For the second function, tilting the field of deliberation could mean multiple things. It could, but need not, imply a very stratified view of what is worth representing and who is equipped to represent it.

The third function—fragmenting sovereignty and limiting power—matters most, I would argue, given the sphere pluralist logic of this book. Indeed, the third function may shed light back on the second function, as far as what high-quality deliberation means in context. A sphere pluralist approach would rightly orient deliberation around a heterarchy of ends, not a hierarchy of persons. An upper chamber should be able to point upward, so to speak, without endorsing an invidious ranking of people. Such a ranking rightly offends many in the modern world by its rigidity. Its esteem for the statesmanlike pairs with contempt for the lowly. In this vein, theorists of sphere sovereignty insist that autonomy for each sphere should not mean, as some misunderstand it, 'a kind of sovereignty of the patron' that gives elites free rein in each domain. Rather, sphere sovereignty should uphold the principles fitting in each sphere. Those principles bind everyone, based on an understanding of human dignity as refracted through multiple commitments.[40] When it comes to representation in an upper chamber, this logic suggests that rather than slicing horizontally between the wise and the foolish, we should slice vertically between spheres or pursuits. Representation needs differentiating, even as we generally respect the equality of citizens. This is because a simple aggregation of votes through one channel cannot reflect the dimensions of human experience, or the constraints of the metaconstitutional settlement. The upper chamber's starting point would thus be representing excellence as unfolded in different domains of life.

This approach has several important implications.

First, it reinforces heterarchy and fragments power. It parts company with traditional defenders of hierarchies based on ranks and estates. It also contrasts with today's apologists for political meritocracy, who would overweight the influence of the new class and disempower ordinary voters whom they see as shortsighted and incompetent.

Second, linking representation to excellence within different domains is less likely to offend modern egalitarian sensibilities. People tend not to begrudge recognising achievement in a given domain, especially if they see that domain as an intrinsically worthwhile aspect of life. Linking channels of representation to those domains does not offend against equality, so long as the channels are genuinely pluralistic.

Third, such an upper chamber would have a dual function. On the one hand, it would reinforce liberty and heterarchy. Representatives would hail from

different domains and be vigilant about those domains. On the other hand, it would improve the quality of deliberation. Representatives would bring their distinct accomplishments and expertise to the task. Crucially, however, the quality of representation would come about as a byproduct of pluralism. It would not start by presuming a natural aristocracy and seeking it out for elevation.

Fourth, drawing representatives from different domains would assure independence from the political apparatus. Indeed, it would do so better than modern mechanisms such as indirect election or lifetime appointment by elected officeholders. It would do so better even than the old House of Lords did. Hereditary peerages, after all, still stemmed from an original creation by a monarch. Later generations might have enjoyed an independence of sorts, to be sure, but it was an independence from politicians based on landownership and a lottery of birth. It did not reflect personal distinction in a sphere beyond the state that, by definition, would have married political independence to experience and insight. And, not least, this approach would differ starkly from the political meritocracy model. The latter in most versions would rely on a state-sponsored examination or other credentialling as its selection mechanism. It would probably generate a stratum of technocrats beholden to the centralised state. In short, a global upper chamber representing diverse domains of excellence would combine political independence and demonstrated accomplishment, while being rooted in social identities and pursuits beyond the state. It would fit sphere pluralism better than any alternative.

This broad framework could take various forms. The domains to be represented could overlap with the spheres, or they could be sliced up differently. Domains could include the legal profession (including personal law systems), religious institutions, education, culture and the arts, charitable foundations, the business world, local government, and the like. Each involves a distinct human pursuit, distinct standards of excellence and qualities of leadership, core interests that public policy should respect, and peculiar perspectives that could inform deliberation on the common good.

However the categories are mapped, several other key questions need careful consideration in the design of an upper chamber. Take the allocation of representatives, for example. Even if one thinks that both religion and education are important domains of life for most people, that does not settle whether the religious domain should get a tenth of the upper chamber and the educational a fifth, or vice versa. Likewise, if the religious domain did get a tenth, how would the breakdown among denominations be set and adjusted over time? Perhaps it could be allocated by declared affiliation among the global public, with overweighting of smaller denominations to assure diverse perspectives. Representatives should also enjoy a decent independence from institutions in their domains of origin, perhaps having retired from active service. Having them serve ex officio as high-ranking clerics, personal law judges, or corporate CEOs would turn them into

mere institutional delegates. Independence from the political sphere should not come at the cost of dependence on other bodies.

Whatever the selection mechanism, therefore, a representative who has excelled within a given domain and absorbed its perspective must still have enough distance from its lived interests when taking up a seat in the upper chamber. A competitive electoral process would also ensure the outcome is not preordained. Beyond the point of election, moreover, such a representative should be understood as holding office as a trustee of the public good in general. He or she would not come as the delegate of one domain jealously defending its interests. As a bearer of partial sovereignty, the upper chamber should be one representative body, not an aggregate of functional groups. Limiting members to one long, non-renewable term would also assure independence and breadth of vision. They would not be going back to a constituency to win re-election.

A more complicated design question is that of the electorate for the upper chamber. By their nature, the domains are dimensions of human activity in which anyone could engage. Still, they might matter more or less to any person. And only a few could rise to the heights of accomplishment within any of them. A restricted suffrage would give the vote to only those citizens with a strong record of engagement in a given domain—perhaps not excellence, but at least commitment. Someone who thinks religion is a delusion should not be picking representatives with a religious perspective, any more than someone who has taken a vow of poverty should be picking representatives with a background of success in the business world. Such limited electorates would still be compatible with basic human equality. They would reflect only chosen commitment and familiarity.

But should the design build in equal weighting overall, across domains? That might resemble what I proposed in an earlier chapter for allowing a partial vote in multiple localities: ties to each would qualify, but the total voting right would still be capped at one, on grounds of equal citizenship. Alternatively, should someone who is energetically engaged in business, the arts, religious life, and civil society be given more overall say in the makeup of the upper chamber, by virtue of his or her many commitments, separately qualified, compared to someone else who wallows at home playing video games most of the time? Since the aim of the upper chamber is not equal representation as such—though it builds in an equal opportunity to have it—but rather linking domains of excellence to the state, I would lean towards the latter design. Each domain would count on its own. The argument could fall either way, however. Most importantly, the rule would need fixing at the outset to put it beyond further contestation.

Representing the Demos

I have dwelt on the upper chamber at length because the logic of domain-based representation departs from mainstream theory and practice today. While the

upper chamber would be distinctive, it would still be just one part of the world state. I shall not venture here to delimit its powers, such as whether all legislation or only some should have to win its assent. The answer would depend on whether we value more its function as a guarantor of heterarchy or its function in improving deliberation. If the former, it would only filter legislation affecting the metaconstitutional balance or fundamental social interests. If the latter, then more routine matters should come before it as well.

Whatever the remit of such an upper chamber, a world state would have the centre of gravity of democracy in a popularly elected lower chamber. Such a chamber is not only practically necessary for legitimacy, given the assumptions of most people in modern times. As sphere sovereignty theorists have long held, political equality also fits the nature of the political sphere itself. It handles matters of common concern that affect all people in similar ways. A limited world state, stripped of the functions restored to their natural spheres in society, would deal with such public interests. They include criminal law, for example, and some public goods. Revenue would be constrained by the metaconstitutional settlement. Still, how to vary taxation within those parameters and where to direct public spending would properly be settled by democratic legislation. The lower chamber could take the lead. Much of how it operates could be adapted from existing models within countries. It should have a strongly democratic character and wide discretion within its remit, to balance the retreat of the political sphere from other areas of life. It should be popularly elected on a basis of political equality and universal suffrage worldwide.

The novelty of scaling up democratic representation globally would require some adaptations, of course. Most obviously, a balance would need to be struck between being small enough for deliberation and large enough to avoid too much distance from the electorate. A global lower house would have some two thousand seats if we followed the standard formula of a lower chamber having a membership the cube root of population.[41] That would need scaling down in practice to no more than a thousand or so if it were to look more like an assembly and less like a stadium. To ensure political equality, the financing of elections would need to be placed on a footing more consistent with one person one vote. Sphere pluralism might justify, for example, hiving off political spending in a separate, nonconvertible currency. Each citizen would have an equal number of points per election cycle, which could be distributed to candidates or advocacy groups as he or she wished, thus letting equally sourced funds percolate through the system.

Other questions of design would involve how members of a global lower chamber are elected and how they form blocs of representatives. As a popular chamber, it should be a site of vigorous contestation over the direction of policy. This would force it to respond to the shifting landscape of public priorities. In modern times, such responsiveness has typically involved party competition. Indeed, it is often assumed that supranational legislatures inevitably will

replicate the multi-party systems within countries. We already see a foreshadowing of transnational political parties in the cross-national groupings of members in the European Parliament. Some political scientists predict that such networks will strengthen gradually, culminating in global political parties once representative bodies emerge in the UN or elsewhere.[42]

As elsewhere in this book, however, we should not take for granted the modern template. Parties used to make traditionalists uneasy. Until British experience gradually made the idea of a loyal opposition respectable in the late 1700s, parties were seen as yet another form of noxious factionalism. Where they were animated by fundamental disagreements over religion, regime type, and the like, they aspired more to obliterate their opponents than to alternate civilly in power. Catholic and other traditionalists elsewhere often clung to this disdain for ideological rivalry until well into the twentieth century, and preferred more organic units of representation.[43]

To assess the legitimacy of parties in a global legislature, we should break down the apprehensions and the functions more precisely. Traditionalists often looked askance at modern parties because they were fighting comprehensive battles over society's fundamental values. At least some of those parties wanted to wage war on orthodoxy and wreak deep changes in society. Pluralists and libertarians have also seen parties the same way Marxists do, as fronts for social interests that want to deploy the state's power on behalf of one or another class. These concerns would diminish under the metaconstitutional arrangements outlined so far. Contestation over moral questions would mostly shift away from the state into permanently guaranteed free spaces, such as personal law systems, civil society, and the like. The state's discretion over the use of collective resources would also be locked within tighter limits than in living memory. While resolving the social question, such compartmentalising of resources would remove temptations for political overreach.

Sphere pluralism would leave the state with less about which parties could fight, compared to today. Voting for parties based on narrow political choices would have a salutary effect on voter psychology. Within virtue-centred sphere pluralism, many preferences, aspirations, and even resentments would shift away from politics and into realms of private life and civil society. Those realms in turn would offer more direct ways for individuals who feel strongly about a given issue to act virtuously, on their own responsibility and together with other like-minded souls. Modern politics has often meant that state power and divided public opinion have turned partisanship into unhealthy exercises in cultural warfare and venting frustration. Voters are not improved at the ballot box the way they might be in civil society. In short, while the opportunity for every adult to participate in a democratic global polity would broaden mental horizons geographically, sphere pluralism would deepen the exercise of virtue through personal enkapsis.

In this less polarising context, parties would have an important role. There would be room for principled disagreement over public policy questions such

as criminal law, priorities for expenditure, infrastructure management, and the adjustment of taxation within the constitutional guiderails. Parties would allow more systematic framing of those approaches to governance and a clear choice in the electoral process. As Joseph A Schumpeter argued, the most effective tool of democratic accountability in a large polity is not direct participation by citizens, but their ability as voters to choose between programmes offered by rival slates of leaders and to throw them in and out of power.[44] Such slate-based voting would be all the more necessary given the scale and diversity of the global public, and the need to offer that public intelligible choices. The mechanisms should reflect a wide range of political priorities in the legislature and force their proponents to work together civilly to sustain a legislative majority. A multiparty system based on proportional representation would mean that legislative majorities would require forming a coalition.

In light of the world's diversity and its other fault lines, voting on a proportional representation basis for relatively placeless global party lists would also have a salutary effect. Compared to single-member districts that might concentrate party support in particular regions, voting by party could redirect tribalistic energies more appropriately in a global political space. Of those other fault lines, ethnoterritorial divisions are today the most salient. Given the logic of a world state and a common global space, I suggested several chapters ago that the nation-state as a political unit would probably fade in functional importance and perhaps become wholly irrelevant. That does not mean the disappearance of ethnoterritorial identities, so much as their retreat into social and cultural experience. One could still consider oneself an Aymara or a Hakka or a Prairie-dweller without those categories having to map on to a demos. Having said that, it remains an open question whether such identities could still be building blocks of representation for the elected lower chamber at all. To be sure, it might be right to insist on entirely placeless party lists for a global proportional representation system. But many people reasonably could demand a mix between list voting and geographic districts, or the ability of small dispersed minorities to elect a representative, or at least assurance of geographic and ethnic diversity within a proportional representation system.

I do not pretend to have a definite answer for this likely debate. The historical context of the global space and people's sensibilities within it are a minefield. Some would see such tribalisms as a fact to accommodate. Others would see them as a peril to be defanged. I suspect that as long as the overall electoral landscape tilted strongly toward party rather than ethnoterritorial fault lines, modest accommodation would be unproblematic. When it comes to ethnoterritorial elements finding their way into global representation, or district-level territorial self-government indirectly having ethnoterritorial influences seep through it, however, it would be vital to uphold a strict ranking of constitutional principles. The goal of representation in the political sphere is reflection on the common good by equal citizens. They are the building blocks. The structure should

not take any given demographic or territorial unit as more than a contingent lineup of identities or an efficient space for policymaking and administration. Such units could well evolve over time with migration and population growth or decline. Quasi-national units should not be misread as foundational building blocks of popular sovereignty as in a federal or consociational system. Only the spheres of human activity would have foundational standing under a sphere pluralist settlement.

In the spirit of giving democratic equality its due place, a final possibility bears considering. Some theorists and activists propose that the truest form of representation is not election, but so-called sortition, or random selection from a cross-section of the citizenry. Sortition dates back to the ancient Greek and early modern Italian city-states, some of which chose officeholders by lot. Advocates today suggest that it would make the legislature a genuine 'transcript of the people'. It would draw on popular wisdom to avoid the groupthink of elites and 'the atrophied consciences of dedicated power-seekers'. More sophisticated analyses zoom in on the 'blind break' that a lottery inserts between the entire pool and those chosen. It prevents manipulation of the selection process. They note, however, that sortition historically has never yet been combined with universal suffrage and that sortition as a process of selection should not be confused with broader questions over what kind of people should govern. While some proposals advocate sortition as a basis for reformed national legislatures, others scale it up or down. More modest experiments would use sortition-based 'citizens' juries' or 'mini-publics' to deliberate on specific questions and advise the real decisionmakers. A grander proposal has been to add a second chamber of the European Parliament, a 'House of Lots'. It would resolve the democratic deficit and bring distant, supranational representative bodies closer to ordinary people, in a 'second territorial transformation of democracy' (the first being the shift from city-state to nation-state).[45]

Sortition indeed would be compatible with the political equality of citizens at the global level. Even amid the stark inequalities of today's world, rising mass education levels make a sortition-based popular presence in the global legislature plausible. Whether it would add anything of value is debatable, however. The literature on sortition focuses on shrinking the gap between decisionmakers and ordinary people, entirely within the political sphere. It does not really address the more central concerns of this book, about the relationship of the political sphere to other spheres of society and prepolitical checks on power. Reframing the question with an eye to sphere pluralism could lead to a further justification for sortition, namely, that it would draw representatives from society in a way unscreened by the political process. But amid the structure I have outlined, inserting a random sample of the public into the legislature would do little to strengthen the ramparts of sphere sovereignty, compared to what other devices would already assure. It would look like a narrow exercise within the political sphere, displacing citizens' equality from the ballot box to the lottery.

Sortition might serve other purposes better. Advisory panels to deliberate on policy and offer more direct public input could supplement the workings of the elected lower chamber. Even with party-based list voting, sortition among members of each party to generate a convention to nominate candidates or to ratify its electoral manifesto could also improve responsiveness. For the upper chamber, an intriguing possibility could be using sortition, rather than election, to pick representatives from the various domains. Taking the pool as those who have distinguished themselves within a given domain, and then selecting randomly, would assure representativeness without running candidates through an electoral gauntlet. A sortition-style 'blind break' in selection could either align with or undermine the character of each domain. Campaigning for election might distort, or even select against, the qualities that generate excellence in that domain. It could look like an intrusion of elbows-out competition from political life. If so, then sortition would recruit those who are truest to the spirit of the sphere in question. But it is just as possible that campaigning would test those qualities and let others in that domain assess them more reliably. If so, then sortition would prevent each domain from putting forth its best representatives.

Such choices admit of various solutions, any of which could be compatible with the rest of what I have outlined. As with many details, however, they would not affect the core metaconstitutional principles. Most fundamental would be locking in representative structures at the global level that anchor a robust core of electoral democracy amid other channels connecting with a pluralistic society. A mixed constitution would not aim at a hierarchy of persons. It would police the ramparts of sphere pluralism and draw on qualities of excellence as proven in different domains of life. Once consolidated, the world state should operate in routine fashion. Such stability within the political sphere would be only part of the picture, however. As we shall see in the next chapter, routine guarantees must be backed by something more formidable beyond politics.

8 A Metaconstitutional Settlement

The previous chapter dug into what representation can mean on a pluralistic landscape: how to understand the points of contact between the global public and a limited world state. In short, it dealt with the state constitution in a narrow sense. If designed successfully, such structures would secure the routine functioning of political life. With the consolidation of one world state, interstate violence would have been banished. Values, interests, and priorities would interact within a framework of law. Such routine could also dovetail, in the long run, with a coalescing layer of civilisation beyond the state, sufficient to sustain the metaconstitutional settlement and its global reach.

Routine can never be the whole picture, however. Beneath any worldly power structure, the potential for violence lurks. Peace and routine rest on a non-routine founding of some sort. They also need guarantees that the structure will not be overthrown or drift away from its own foundations. Such a crisis or drift would have higher stakes in a future global order than in any one country whose constitutional order might succumb to civil strife or gradual betrayal. With no outside, the risks of tyranny, technocracy, or mob rule would face fewer correcting mechanisms and leave no exit.

This chapter thus broadens the focus from the world state, in the narrow sense, to the metaconstitutional settlement in which all the spheres must be anchored. The latter includes the whole framework of cosmopolitan, virtue-centred sphere pluralism: the open global space, the flow of resources through civil society, legal pluralism, and the representation of prepolitical domains. All these features of the metaconstitutional settlement underpin liberty, heterarchy, and cosmopolitanism. They must be put beyond the vicissitudes of electoral politics and the temptations of even a limited global administration. In this chapter, I want to offer a roadmap for how this imperative could crystallise in the founding, guardianship, and amendment of the metaconstitutional settlement.

Foundings and Revolutions

Given the absence of a world state now, we come to the inescapable question of how to establish one. In the book's conclusion, I shall consider this as a strategic matter. Here, however, I first tackle the founding problem on the level of

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legitimacy. What might it mean to have a founding, and founders, on a global scale where no state has ever existed? And how is a founding complicated by the vision of unbundling sovereignty and nesting a world state within a metaconstitutional framework that gives due weight to prepolitical goods?

We can start with how foundings have been treated within countries. In particular, take the concept of the 'constituent power'. Political theorists use the term to refer to a political community's bearer of ultimate authority. It founds a constitutional framework within which routine politics then occurs. Historically, that ultimate authority belonged to a monarch who could grant a constitution. Since the eighteenth century age of revolutions, the constituent power has been understood as belonging to the demos. How the demos exercises its constituent power and to what unit it attaches is debatable. America's 1787 Constitution, for example, is variously seen as a compact among the sovereign peoples of the thirteen states, or as a founding by an emergent national demos. Since revolutionary breaches in many countries have also involved shifts of scale—through secession or unification—the continuity of any demos itself is questionable. And once a given constitution has been established, theorists disagree on whether the constituent power has yielded once and for all to routine politics, or if an ongoing 'reflexive' process of 'post-sovereign constitution-making', as in partly consolidated democracies, can go on refining the machinery of the state.[1]

At the national level, these ambiguities about how the constituent power works persist. At the supranational level, they are magnified, even at this early stage when global state formation is in its infancy. The constituent power behind the UN Charter, for example, is interpreted either as member states or as the 'Peoples of the United Nations' acting in concert through their governments. The EU's founding treaties are framed intergovernmentally, yet observers debate whether a Europe-wide demos is emerging as well. While in the abstract, a kind of social contract transferring legitimacy upward could work supranationally just as well as nationally, the laws and identities to flesh it out are lacking. Some argue that supranational entities like the EU do not even need a demos that can delegate authority vertically, as in the nation-state model. Rather, they hold that 'horizontal' or 'postmodern' understandings of legitimacy shape an alternative kind of 'post-constituent constitutionalism'. Coordination and consent might emerge loosely over time, rather than in a founding moment. Functional areas of governance strengthen in piecemeal fashion. Supranational bodies gain a life of their own, and public legitimacy follows only after the fact.[2]

Given the role of the new class at the leading edge of global governance today, we might suspect that ignoring the constituent power manifests nervousness about what might get unleashed. Were a real transnational demos to rear its head, the accretion of supranational authority in the hands of diplomats, lawyers, and economists could be disrupted. Dismissing the constituent power as unnecessary has convenient implications. It means treating supranational state

formation like routine politics, or even as a technical exercise that eviscerates national popular sovereignty without having to pick a fight over it.

Still, there is good reason, apart from new class apprehensions, to think that any global state-founding process might look different from the national foundings that have been familiar over the last two centuries. The scale and diversity of the global landscape could make such an exercise easier in some ways and more difficult in others.

Mainstream democratic theory gives a people the right to define and control its own territorial borders, but it begs the question of how to mark off a people in the first place. Whatever national identity congeals over time usually has a whiff of arbitrariness about it. Territory has been the product of geography, brutal conquest, and other accidents beyond any democratic process. Secession movements also run into the problem of who belongs to the would-be demos and how far its territorial claims extend. The global scale would bypass this perennial chicken-and-egg problem. A global demos would have no such boundary issues. Indeed, a global demos has advantages over imagining a compact among national demoi. If the latter consented to world state formation, then each one hypothetically could also withdraw its consent later or at least provide fodder for future secessionist strife.

Yet the world's scale and diversity also pose what today, to most observers, look like insurmountable problems. Baldly put, hardly anyone yet thinks in terms of a global demos bearing constituent power. Cosmopolitans may call for more transnational networking in civil society, more cooperation among governments, and more maturing of supranational mechanisms to protect individual rights. But they almost never frame the vision as humanity at large exercising its constituent power. That is not to say that such consciousness will not emerge. Analysts of global social movements predict that public attention will shift upward to global institutions, and that more battles will be waged supranationally because that is where decisions increasingly will be made.[3] Global solidarity may follow over a couple of generations. It could suffice to spark demands for a global constituent power to be acknowledged as such.

On the whole, nothing about the global scale inherently makes the process any harder than it was within countries earlier. Many national episodes of state formation were bedevilled by regional divisions and weak national identity. The founding events that in hindsight look like acts of a unified constituent power often preceded the consolidation of national identity on the ground. The notion of false consciousness need not be only the stuff of revolutionary vanguards, who wish the proletariat would hurry along to realise it has no country after all and should become a global class-for-itself. Many traditional currents of political theory attach agency to units that are not widely acknowledged. Vitoria, for example, held that public authority inherently had a majoritarian character for the sake of peace. In theory, he said, a majority even on the supranational scale of Christendom could designate a common ruler over all, regardless of minority

objections, because such a right inhered under natural law.[4] We thus might imagine a latent global demos of sorts. Its constituent power might legitimately be set in motion even while it still slumbered.

These points are speculative, of course. I suspect they may not even matter much in the end. Public attention turns sooner or later to wherever political action is taking place. The scaling up will happen with experience, whether within the current trajectory of technocratic consolidation or in the more radical alternative that I am outlining. Whether and how the global demos should exercise its constituent power would then come to look much more like the familiar question within nation-states. In short, scale is probably not the most theoretically interesting problem.

A more fundamental problem is ignored in mainstream political theory, though the approach of this book forces us to confront it here. I want to suggest that even if we could frame the founding of a world state as yet another exercise of constituent power, merely scaled up to the global demos, it would be a mistake to do so. After all, from a sphere pluralist perspective, the aim should not be to align demos and state in a bigger way yet, so popular sovereignty then can act vigorously through the new political apparatus. Instead, it should be to found a competent but limited world state. The political sphere must nest within a larger framework of cosmopolitan sphere pluralism. Imagining a global demos exercising constituent power is thus misleading and dangerous. Such an approach would privilege the will of an undifferentiated popular majority flowing through the political sphere. It runs the same risks as linking a unified demos to a unified and supreme legislature in routine political life, except greatly magnified because it imagines a blank canvas painted in blood. Unsurprisingly, the image of a demos bearing constituent power emerged at roughly the same point in European history as the state's dominance over society and the erosion of pluralism. Whatever the founding process at the global level, it should not be reduced to releasing a popular constituent power in the usual sense.

Yet if we look back to the past for other toolkits, we do not get very far. Historically, constitutional design has a range of models beyond the popular exercise of constituent power that has captured the imagination for the last two centuries. Many premodern constitutional arrangements were granted by monarchs, imposed by conquest, slow accumulations of convention, or a covenant among elites.[5] A constitution that came down in this fashion may have had its prepolitical logic built in. It often constrained routine politics better, compared to basing itself on some version of popular constituent power. But it displaced the big questions elsewhere without solving them. It had to accept an arbitrary exercise of power, or at least take for granted the accretion of custom or the prestige of actors who could speak with foundational authority. In Islamic political theory, for example, the *ahl al-ḥall wa'l 'aqd* ('those who are qualified to bind and unbind') could appoint and depose rulers and thus exercise a kind of constituent power on behalf of the ummah, even if sovereignty ultimately belonged

to God. In practice, this power belonged to a mix of influential elders, notables, and scholars in the capital city.[6] It presupposed an established social hierarchy and a consensus on norms.

No such authority or consensus can be taken for granted in a global founding space, especially given the disruptive levelling of modernity and the range of diversity. Moreover, even if we could identify the bearers of such authority, the logic of a founding descending from above, in a great chain of being, implies more unity and hierarchy in society than the metaconstitutional settlement requires.

We ultimately have to return to surer ground in the logic of sphere pluralism. Fragmenting sovereignty means, in effect, fragmenting the constituent power as well. A founding could be seen as a compact, albeit unlike the compact among territorially marked demoi that grounds federal polities. Rather, the metaconstitutional settlement must give each sphere its due. This would mean 1) acknowledging and guaranteeing its sovereignty, 2) creating space for the free unfolding of human pursuits and the meeting of needs according to the logic of that sphere, and 3) securing mechanisms for the institutions within that sphere to evolve and reconstitute themselves according to their own principles.

This pluralist view of the constituent power offers a very abstract yardstick of legitimacy, but at least it is a starting point. The metaconstitutional settlement and its founding moment could only be measured against it after the fact. However hard it is to identify the demos that bears constituent power of a unitary sort, it is even harder to identify who could exercise constituent power on behalf of the separate spheres, let alone how they might combine in a moment of overall ratification. At most, a pluralised constituent power could give tacit consent in the successful working of sphere pluralism. Just as Dooyeweerd thought the spheres were latent but only fully disclosed with the maturing of a complex society, so might we have to accept that the constituent power under a system of sphere pluralism is latent and implicit. Legitimacy is displayed over time. It does not come in a founding with a release of raw energy and a moment of thoughtful ratification. As I shall suggest at the end of this chapter, however, a constituent power broken down across spheres could play a more concrete role in amending the metaconstitutional settlement once it has taken shape.

Imagining the global founding as a metaconstitutional settlement, with the constituent power fragmented across spheres, departs radically from today's new class-led gradualism. While it does not bring the demos to the fore in a visible exercise of constituent power, however, it still must involve a breach of continuity and a mechanism outside normal political life. Two templates of non-routine constitution-making are offered by history.

One template is the special constituent assembly. The most well-known example was America's 1787 Convention at Philadelphia, which first gave concrete form to the Enlightenment notion of a constituent power. While its draft had to go back to the states for ratification, its deliberations took place

behind closed doors to insulate it from public pressure. More recent theorists like Jon Elster endorse that model of purpose-specific constituent assemblies to write constitutions. A normal legislature doing so would be subject to routine lobbying pressure, and politicians would try drafting rules in their own interest. A 'one-off' body might lean in a more idealistic direction and could be more representative of the public. Other critics suggest that conventions linked to existing legislatures, or roundtables with key interests hashing out a pact, might be less hubristic and less dangerous precisely because they would have no fully independent mandate. Within deeply divided countries, such constitutions negotiated amid political flux may be works-in-progress, which will realise ideals better in the long run than imposing abstract models at the outset. Opinion is likewise divided on secrecy. Elster recommends it for efficient deliberation, as long as popular ratification still happens downstream. The EU constitutional convention in 2002–2003 was fully transparent, however. Some observers saw it as a model for consensus-building and legitimacy, even though the product was not ratified in the end.[7]

A second, older template is the lawgiver. It goes back to the writers of some ancient Greek city-states' constitutions. One historian explained that 'lawgiving, to the Greek mind, was not the progressive occupation of a deliberative assembly, but the work, done once for all, of a single person of extraordinary wisdom, a Solon or a Lycurgus.' The lawgiver could be an outsider or a revered local sage who might leave forever after laying down a constitution. The exercise had a religious air about it. It rearranged political and social life and drew sacred boundaries around powers, offices, and taboos. Once the lawgiver had gone, later generations treated the framework with awe and could not amend it by any exercise of worldly authority.[8] In the eyes of liberals today, such a founding method creaks with the arrogance of antiquity. One theorist remarked that 'a genie [of popular participation] has been let out of his lantern and cannot be pushed back in.' Democratic input and easy amendment make modern constitutions better fit the realities of changing societies, so they are more likely to survive. He observed that many ancient constitutions designed by lawgivers did not last as long as some of the modern Anglosphere constitutions that emerged from democratic deliberation and compromise.[9]

How might the special constituent assembly template, or lawgiver template, apply to the founding of a global metaconstitutional settlement? If one went the constituent assembly route, it would need representatives from the different sovereign spheres. Multiple veto-points across them would ensure the acceptability of whatever draft emerged. Such a mix of priorities might lead to awkward compromises and incoherence, however, to say nothing of what subsequent ratification would look like. Given the radical breach with current practice and the number of moving parts, more focused and exceptional action would be effective. The lawgiver template sits better with some traditionalists than with others, however. Jouvenel distinguishes between the routine maintenance of a

system and the mobilising of resources for discrete tasks within it, on the one hand, and founding a system, on the other hand. The latter requires a peculiar kind of creative authority. It can rely neither on pure conquest nor on voluntary association. Rather, it is 'the ascendancy of a settled will which summons and orients uncertain wills'.[10] Jouvenel no doubt would find the lawgiving option attractive. Other pluralists would have reservations. Some, like Gierke, thought the heroic lawgiver did not respect the volksgeist of a preexisting community.[11] Kuyper and Dooyeweerd had a blind spot for state-founding in general. They saw political communities—at least pending disclosure of the spheres with cultural maturation—as an aggregation of subjects on a territory, thrown together by historical accident rather than by any conscious founding.

I believe that, given the purpose of the global founding, something close to the lawgiver template (even if collective rather than individual) is more appropriate. The breach with liberal modernity and the lack of a preexisting global consensus require stepping far outside routine politics. The need to avoid exercising a popular constituent power through the political sphere also removes more familiar modes of agency and ratification. Designing a metaconstitutional settlement that bridges and respects the different goods of the sovereign spheres, without giving any of those spheres primacy in setting the terms, requires a peculiar sort of lawgiving synthesis.

The global founding that I propose thus differs, in both aim and style, from the gradual technocratic consolidation of supranational institutions that has been going on for decades and may yet continue for a while. It would mean a drastic breach of continuity. That it should not be understood as a sudden release of popular energy exercising constituent power would not make it any less a revolution. This prospect has some irony built in, for revolution is hardly a traditional concept. The concept of revolution only came out in its present sense with the French Revolution. The generation of 1789 took a Christian image of linear history ending in transcendence, and displaced it into turning the world upside down to realise utopia here and now. Modernity birthed the 'professional revolutionary'.[12]

The revolutionary spirit descends today on the left, in ways that show a heartening concern for glaring injustice but little regard for the permanent things. We can take the Brazilian radical legal scholar and public intellectual Roberto Mangabeira Unger as a spokesman. One senses that if the global left could channel a popular constituent power a generation hence, it would be roughly Ungerian in tone. Unger offers a radical vision that would 'quicken democratic experimentalism in each major sphere of social life', across politics, the economy, and culture. 'The sense of a latent or natural order in social life must be harmonised with the capacity to let the will remake social arrangements.' Education should form high-energy citizens eager to 'become little prophets' of further change. According to Portuguese leftist thinker Boaventura de Sousa Santos, this spirit has also inspired the youthful 'indignation revolts' of recent

years, like the Occupy movements. Loosely organised and ephemeral, they are driven by resentment of inequality and exploitation by the top one percent. 'It puts the emphasis of the collective action on the radical rejection of a given status quo rather than on the imagination of a future, better society.'[13] Such movements see states, institutionalisation, and law as tools of oppression, rather than as the building blocks of a juster order.

Traditionalists like the accretion of custom and the sanctity of law to check the exuberance of human nature. If we start imagining revolution as a path to refounding tradition, therefore, we are picking odd bedfellows. Whatever the oppression that Unger and Santos see as driving popular revolts, the likes of Burke would no doubt be alarmed by the longing for an unending upsurge of revolutionary energy. His critique of the French revolutionaries of his own time had two dimensions: historical continuity and humility. A constitution, he insisted, was 'a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born. Each contract of a particular state is but a clause in the great primeval contract of eternal society, linking the lower with the higher natures, connecting the visible and the invisible world.' In light of such continuity, reform should be gradual and organic. It should 'approach to the faults of the state as to the wounds of a father, with pious awe and trembling solicitude…[unlike those] who are prompt rashly to hack that aged parent in pieces and put him into the kettle of magicians, in hopes that by their poisonous weeds and wild incantations they may regenerate the paternal constitution and renovate their father's life.' Rash revolutionaries thought they had all the answers. They dismissed custom and the commandments of God. A long line of traditionalist thought since Burke has urged humility in the same vein. It holds that impatient reason cannot comprehend the wisdom of norms accumulated over many generations, or the mysteries of history and Providence.[14]

The lack of humility or respect for continuity is apparent in the aftereffects of revolutions like the French, Russian, and Chinese. What Burke foresaw with grim apprehension, later theorists have fleshed out in light of historical experience over two more centuries. Jouvenel saw such revolutions as just another phase in the tightening of state power. They cleared away the remaining hubs of authority in society that had buffered absolutism.[15] Arendt contrasted the glory-seeking of the modern revolutionary with the founding spirit of the ancients. The Robespierres and Lenins unleashed energy, especially the energy of the 'social question' of poverty, and directionless turmoil ensued. They wanted to sweep away the old order in a tide of enthusiasm, not to found decent political institutions for the long term. Arendt argued that the American Revolution was more successful because in an older spirit it kept most of the existing institutions of the colonies intact.[16]

We see a stark contrast, therefore, between how the Ungers of the world view revolution and how the Burkes, Jouvenels, and Arendts view it. The former

prioritise energy. They see any stable institutions as a barrier to justice and the freedom of activists to remake society in the here and now. The latter see revolution as an exercise in hubris. It seizes power at the expense of liberty and unleashes energy that never lands on a new settlement. The logic of the metaconstitutional settlement that I propose suggests, therefore, that a revolution in form—in the sense of a breach with the present—should still not be in the same spirit as the modern revolutions. The release of energy at the founding would be exceptional. It would be necessary only to reconstitute on a more solid footing for liberty and the coalescing of new traditions. It invokes ancient lawgiving, not the modern enthusiasm for permanent revolution: Lycurgus, not Lenin. Creative energy in the long run will find healthier outlets in the spheres and their spaces for the cultivation of virtue.

In the end, we cannot entirely escape the tension between the indispensable action of the lawgiver, on the one hand, and the continuity and humility that conservative thinkers from Burke onwards have valued, on the other. But revolutionary lawgiving must be understood in the context of the world-historical moment that may be coming. First, continuity has already been broken. A rupture now would not be the same as the sophists of 1789 chopping up their father and dropping him in the kettle. It would be the reverse. By frustrating the new class trajectory of global state formation, it would overthrow the heirs of 1789, not empower them further. Second, more humility is built into this kind of founding. Unlike the modern revolutions, it takes seriously the prepolitical goods that the new order must respect. It would not paint with blood on a blank canvas. It would treat a faded canvas with new—albeit pungent and eye-watering—chemicals, to bring old colours back to life. Third, it may be more useful to think about the circumstances under which the goods of tradition can be fulfilled, than to fall into awe of static continuity for its own sake. As Dooyeweerd argued, one can be humble before the cosmic grounding of sphere sovereignty while still knowing that the spheres are only fully disclosed as a complex civilisation matures. Structural principles must gain concrete form. The founding of the metaconstitutional settlement can be seen as an exercise in responsibility, as a way to realise timeless truths more completely.

Guarding the Settlement

So far, I have outlined how we might think about the founding of the metaconstitutional settlement. Now we can turn to its maintenance. Nearly all maintenance happens within the routine operation of a well-designed constitution. For that reason, maintenance gets little attention from theorists when it comes to modern nation-states. Still, a global metaconstitutional settlement would need external checks on how institutions operate. Principles need to be upheld over the long term without slippage. This is all the more so when the settlement jealously limits the concentration of power and prevents any sphere from encroaching on other spheres.

Given the scale and layers of such a future global order, we can start by borrowing a concept that describes a challenge in federations: authority migration. The term was coined by political scientist Jenna Bednar to describe how one level of government gradually encroaches on the competence of other levels, or shirks burdens and shifts them to other levels. Authority migration does not mean a rational reallocation of tasks. It stems from politicians' self-interested wish to appeal to voters by concentrating visible accomplishments on their own level. It tends more often to centralise than to disperse authority.[17] The global order I have outlined would not be a federation as such. Still, the temptations of authority migration could arise in a different form. Specifically, pluralists have long noted the wont of politicians and civil servants to define the state's competence so that it encroaches on other spheres.[18] Hard limits on revenue and discretion under the metaconstitutional settlement would reduce this risk compared to a typical modern state, but nothing is impossible.

At first glance, a mainstream response would be to turn to some version of judicial review. A key innovation of American constitutional law was the judiciary's strong power to review acts of the legislature and declare them unconstitutional. More broadly, constitutional courts have emerged in most liberal democracies. While the mechanisms vary, the constituent power effectively has locked in certain principles that democratic majorities of the day cannot violate. Interpreting and applying those constraints falls to judges, who are appointed by political leaders but with enough security of tenure and robust professional ethics to insulate them from pressure. Despite longstanding respect for the basic model, criticism has grown in recent decades of 'the global expansion of judicial power'. Conservative and republican critics lament that the judiciary has been captured by the new class, which wields litigation to achieve policy outcomes that cannot be won at the ballot box. The diagnosis extends to supranational fora like the European Court of Human Rights. They are seen as another way that national democracy is hemmed in by global technocracy.[19]

That judicial review has been captured by the new class might make us wary of this solution, given the other problems of new class-led globalisation. But that is not the central problem. After all, judges have favoured various ideologies over time. What critics bemoan today is one instance in history. Judicial review under a world state could involve judges with more congenial worldviews, for example. But more fundamentally, judicial review does better protecting some principles from majoritarianism than others. It can be vigilant about individual rights, for example, within the logic of the modern state and its atomised citizenry. It does less well on authority migration, as the steady march of centralisation in America and Europe shows. After all, judicial review emanates from the political sphere itself, rather than from beyond the state.

This important fact gets limited attention, mainly from libertarians. Jouvenel conceded that a strong common law judiciary was better than nothing, but in the end no institution itself grounded on popular sovereignty could constrain

political power fully. Checks and balances in American constitutional law were a case in point. 'The verities to be defended … must be eternal verities. The mistake of the United States Supreme Court was to defend against political opportunism principles which themselves partook of political opportunism.' In the same spirit, Jasay doubted that any state would long be limited by its own constitution. As he inimitably put it, 'With its key always within reach, a chastity belt will at best occasion delay before nature takes its course.'[20]

Another unpromising tool for constitutional maintenance is resorting to an exceptional exercise of power by a political sovereign. A state of emergency and rule by decree are elements of executive power in many countries. At the global level, executive power of this sort has not been systematically considered. No centralised coercive power yet exists to use in the international system as it is. Moreover, no global crises yet experienced have required action by a global executive, even if one existed, rather than by national governments using familiar tools.[21]

In a deeper constitutional sense, the theory behind exceptional uses of power by an executive was best articulated by German legal theorist Carl Schmitt. Amid the chaos of the Weimar Republic, he argued for intervention by a strong president who could represent the political community as a whole. 'Sovereign is he who decides on the exception,' Schmitt argued. This meant in practice a retreat of law and constitutional niceties, since they could deal only with routine and not with existential crises. Only raw power could preserve the state.[22] Schmitt later became the premier legal theorist of the Third Reich, though his legal analyses of constituent power and the state of exception have kept broader currency. While starkly different from judicial review, the 'exception' is equally unpromising as a device for guaranteeing a future global metaconstitutional settlement. It suffers the same key shortcoming. It rests within the political sphere and treats the security of the state—entrusted to a representative of political sovereignty such as a president—as the core concern. It could deal with some scenarios of chaos, but not with authority migration. It offers little rationale for chastening the state and guaranteeing sphere pluralism.

For better tools, we have to turn again to premodern experience. Schmitt argued in passing that the political sovereign, when acting exceptionally, had a traditional monarch's magical aura of authority. Yet, in misleading ways, he assimilated that authority to modern statehood. I want to suggest here that traditional monarchical authority was really quite different from modern political sovereignty. While not a ready solution to the problem of metaconstitutional maintenance, it can point onwards to an idea of guardianship above the spheres.

It may seem odd to look to grandiose ideas of traditional monarchy as a way to check central power. But all is not necessarily as it seems. Take the most superficially overbearing case of imperial authority, the Chinese dynasties, as a case in point. While unity existed for only about two-thirds of Chinese history, the imperial ideal was generally taken for granted. The emperor delegated most

practical power to the prime minister and other functionaries. His own role at the apex hinged on the power of example rather than active administration. He 'should model himself on Heaven by extending his benevolence to all in common. He should imitate the Earth by being impartial.' 'The person on high clarifies this way, while those below attend to their tasks.' The power of example worked through ritual observance, which glued traditional society together in quasi-constitutional fashion. It also presupposed a cosmological link symbolised by the character *wáng* 王, or king. The three horizontal lines were heaven, earth, and humanity, with the king as the vertical line representing the *dào* 道, or way, that ran through all three as the world's axis. His role was mainly passive, however. He exemplified cosmic order while urging holders of real administrative power to act ethically. To embody the dao bound the emperor to the cosmology of *wúwéi* 无为, or inaction, which let the natural order work as intended. That cosmology also extended beyond the state. The dao applied across the whole range of natural and social life.[23]

A 'sacrificial theory of the state' also permeated Hindu, Islamic, and mediaeval Christian political theory. While brahmins had ritual authority, kṣatriya rulers upheld political and cosmic order as well. This duty went beyond a narrow protection function, of preventing *mātsyanyāya* or 'fishness', meaning the brutality of large fish eating small fish. It included stewardship of *dharma*, or ethical rules, and *ṛta*, or cosmic truth, in particular the room for other castes to carry out their duties and rituals. As in China, the power of example did much of the work.[24] Islamic political theorists defined the role of the caliphate as the 'vicarate of the prophecy', meaning the successor to Muḥammad responsible for upholding the unity and orthodoxy of the ummah. The caliph's loose religious authority delegated hard political power to the various regional rulers, and interpretation of Islamic law to the religious scholars and judges.[25] In mediaeval Christendom, the image lingered of a Roman-style world emperor above kings, to complement the spiritual authority of the Pope. The Holy Roman Empire got ever weaker over time. But even thinkers advocating imperial authority imagined it as inherently limited, a mere focal point of unity and a mediator to keep the peace. Much of the idealised image of rulership got devolved to kings. Divine sanction bore on them, however, as in the phrase describing them as ruling 'By the Grace of God'. As Jouvenel has noted, the conceit that the king could do no wrong was understood, at least in those early centuries, as more of a humbling obligation than an excuse for absolutism.[26] Across these traditions, the image of passive overlordship affirmed common standards of truth and civilisation. Those standards cut across political, social, and religious life, and bound particular officeholders.

Symbolism can only get us so far. Yet an eerie parallel across all four civilisations bears noting: the metaphor of a circle. In China, 'The Way of the ruler is said to be round because, revolving and turning, it is without a starting point. He transforms and nurtures like a god, is vacuous and vacant, and follows the

natural course of things.' The minister, in contrast, had a square function in carrying out concrete duties. Hindu political theory based the idea of the *chakravartin*, or world-ruler, on the symbolism of the *chakra* (wheel or discus). The wheel stood for universal rule and the upholding of dharma. In the Arab-Persian cultural zone as far back as Sumer and through to the Islamic era, the 'Circle of Justice' recurred in accounts of just rulers. The circle meant the interdependence of government on people, people on prosperity, and prosperity on impartial government protective of the poor. Carrying out justice and serving the public good mirrored cosmic harmony, which would then bless a just ruler. And in Europe, Jouvenel identified the Crown as a circular symbol of 'the vocation and end of preservative authority, the point of equilibrium in all the various social and world structures'. Coronation was not mere investiture of political office. It consecrated a cold principle of social order, to balance the heat of movement. Society had ever-shifting patterns of action with multiple power centres. The Crown kept a circular equilibrium among them.[27]

Imagining traditional rulership in the circle metaphor need not mean the harder form of Chinese, Persian, or Roman absolutism, in which overbearing power crushes society while congratulating itself on its cosmic centrality. Instead, it can mean a minimal function, keeping equilibrium among multiple spaces that enjoy prepolitical sanctity. In a future global order based on sphere pluralism, guardianship of the metaconstitutional settlement roughly fits that function. Circular guardianship is mostly passive. It lets routine operate and gives every other actor its due. It contrasts with what the Confucian texts call the squareness of the state, with its sharp practical tasks of governance. Indeed, to stretch the symbolism a bit further, the circle also has a humility about it fitting for limited guardianship, unlike some other religious or political symbols. It stays within the world, for one thing. As the Catholic traditionalist G K Chesterton put it, the cross marks a cosmic rupture in which the logos intrudes into and upends mundane common sense.[28] And if the Chinese *wáng* 王 character has the king bridging heaven, earth, and humanity, it has an air of hubris about it, an unfulfilled mix that is neither square nor cross. Guardianship as circle better captures the vital but modest task of maintaining a future global metaconstitutional settlement, of limiting rather than celebrating power. It fits virtue-centred sphere pluralism, which takes less for granted by way of common cosmologies or integralist social wholes.

At the level of symbolism, all this may seem rather literary and heady. But guardianship can come down to earth another way. We can connect it to types of informal influence, reserve powers, and veto authority in some national constitutions. Constitutional monarchs as in Britain stay out of the political tussle. They nonetheless have informal influence behind closed doors, based on audiences and the reading of state papers over a long reign. In a political crisis that the routine constitutional machinery cannot resolve, little- or never-used reserve powers to call an election or appoint a new prime minister can break a deadlock.

Constitutional monarchs and weak figurehead presidents often also have reserve powers to veto legislation, if it threatens foundational principles.[29]

Of course, in practice, these powers have mostly fallen into desuetude over time. They also have the drawback noted earlier, in that conceptually they still arise from the political sphere, even if the centre of gravity of active politics has shifted elsewhere. If strong, such powers would look like Schmitt's ability to decide the exception in a dictatorial fashion. If weak or just a formality advised by the politicians of the day, then they would look like an empty vessel or, like judicial review, a way for the state halfheartedly to enforce its commitments to itself. Some rare examples of veto power coming from outside the political sphere exist, but they have other shortcomings. Post-1979 Iran's Council of Guardians and Supreme Leader can override democratic legislation in the name of Islam. That power does not guarantee anything like sphere pluralism, however. Those holding veto power come from the clergy. They represent a heavy-handed, integralist imposition of religious orthodoxy on the political sphere within one society with a majority.

Guardianship must stand among and bridge the sovereign spheres, not side with any one of them. As in other aspects of what I have outlined, the macro and the micro levels correspond. The macro level is the metaconstitutional settlement, whose equilibrium of sphere sovereignty is maintained by guardianship. The micro level is the exercise of liberty and virtue in personal enkapsis, by individuals who engage with the institutions of various spheres. Both the smallest scale of human flourishing and the largest scale of cosmopolitan order depend on keeping the spheres distinct. Neither the spheres' natures nor their powers should merge in distorting or repressive ways.

To offer yet another metaphor, the overall scheme of virtue-centred sphere pluralism resembles a barrel, with wooden staves running vertically and metal hoops running horizontally around it. The wooden staves are the sovereign spheres. The metal hoops are the metaconstitutional assurances that keep the spheres positioned rightly in relation to one another—protections for individual dignity at the base, and guardianship at the top. The top hoop is as wide as the bottom one. It does not meet at a unifying peak, as in an integralist pyramid where power and status converge. It merely keeps things from slipping out of place. A solidly built barrel will hold together despite shocks and prevent the stuff of civilisation from leaking out.

To make this proposal more concrete, I shall refer to the body responsible for this function as the *Guardian Circle*. We could imagine it as a quasi-monarchical council with between seven and thirteen members. Its function rests on several key conceptual innovations.

First, the Guardian Circle would have fewer functions than premodern traditional monarchs did. Beyond representing ritual order and balance, they also maintained a coercive peace and legitimised deference in the long hierarchical chain of society. In a future global order, general peace would be easier to

maintain. Deference also has been flattened, mostly for good. The power of soft example, relying on the virtuous character and manners of the monarch, can also retreat somewhat to the periphery of guardianship. Its function instead would be policing the boundaries among spheres and protecting liberty under an enduring metaconstitutional settlement. It must vigilantly counter the temptations of overcentralisation and authority migration that would pose a greater risk globally than in any one country's past.

Second, the Guardian Circle would transcend the institutions, rights, and obligations of the political sphere. It would not represent a unified constituent power, in Schmitt's sense of deciding the exception. It also would not just protect individual rights and the working of the rechtsstaat, as judicial review does. To peg guardianship on the will of the demos or the rights of individual citizens would mean privileging the political sphere—and the Leviathan–atom dyad—above all else. Instead, the Guardian Circle would guarantee a deeper pluralism embracing all the sovereign spheres.

Third, and in the same vein, the Guardian Circle would go beyond the Madisonian checks and balances that have defined the American Constitution. Strong judicial review, along with the splitting of political power among branches and between layers of a federal system, did much to head off tyranny or mob rule. As the late Justice Antonin Scalia often observed, American liberty was not protected so much by the Bill of Rights—every tinpot dictatorship listed rights on paper—as by the fragmenting of political power.[30] That advantage still lay within the political sphere, however. In the long run, Madison's design proved an empty vessel. All the ills of authority migration and new class capture dripped into it. The Guardian Circle, in contrast, stands for a higher-level guarantee beyond the state. Rather than delaying majoritarianism, it defends permanent, qualitative boundaries based on the sovereign spheres. Put differently, virtue-centred sphere pluralism reframes a key question of political theory. Beyond the first dimension of the relationship between the state and the free citizen, and the second dimension of the relationship among the different parts of the state, it now adds a third dimension. Power fragments across multiple spheres, with the state as only one of them. Or to borrow Jasay's metaphor, it moves the key to the chastity belt far out of reach. This higher-level guarantee better suits the stakes of a global metaconstitutional settlement.

Fourth, while much of my argument has drawn on the tradition of sphere sovereignty, this step pushes beyond the frontier of Kuyper's and Dooyeweerd's political philosophy. Both denied state supremacy over the other spheres. They rejected the state's right to set the boundaries of the spheres or distribution norms within them. They also wanted to prevent the state from being judge in its own cause. Despite those commitments, they never offered a good recipe for how to guarantee sphere sovereignty. In Dooyeweerd's sophisticated tracing of the fifteen irreducible 'modal aspects of reality', each was disclosed in succession as part of a complex society's differentiation. The state with its juridical

mode was near the top, with the pistical mode (churches) above it. This analysis did not lead, for Dooyeweerd, to any mechanism by which a fully differentiated order could guarantee each sphere its due, and no more.

I suspect that this blind spot was due to two factors. First, Dooyeweerd held the theological view that a Christian ground-motive could only find unity at the level of the individual, rather than in any integralist civilisational umbrella. Second, he and Kuyper assumed a world of territorial nation-states. Yet territorial enkapsis has the practical effect of nesting the spheres within each country, even if the state should not have qualitative supremacy over them. When it comes to a global metaconstitutional settlement, however, we have room to imagine guardianship as fulfilling that circular function among the spheres, to maintain equilibrium and police boundaries. Escaping the political honeycomb would allow nesting the state itself under sphere sovereignty for the first time. At the same time, it bears stressing again that the function is limited. It falls short of pretending that guardianship is itself a sphere or that it embodies an integralist civilisational unity above the spheres.

In guaranteeing the metaconstitutional settlement, the Guardian Circle would adjudicate disputes over authority or application of norms at the boundaries between spheres. Over time, many such issues would be technical. They would require rulings based on an accumulated body of jurisprudence and convention. The Guardian Circle inevitably would delegate much of its practical adjudication to more specific bodies, though they would come under its responsibility. It would stand at the apex of a complex structure that should look, from the vantage point of institutions in the spheres and society at large, like a unitary actor.

It would also have a supplementary responsibility, along with the institutions within the spheres, for ensuring that they operate with integrity according to their distinct principles. Where appropriate, the Guardian Circle could authorise impartial actors to carry out such internal oversight: ombudsmen, special commissions, and the like. It could require—as constitutional monarchs now do—regular briefings on the activities of peak institutions within each sphere, such as a political cabinet. Some offices within each sphere that need an aura of dignified independence also could be appointed in the name of the Guardian Circle, even if their tasks and recruitment would fall practically within the scope of a given sphere. For example, judges in the public legal order, chiefs of police, presidents of the stock exchanges, and stewards of health plans could all benefit from receiving their commissions symbolically from the Guardian Circle, after internal selection processes by those closer to the institutions in question. Another function typically reserved to heads of state has been clemency, as a last resort in the working of the criminal justice system. Such a responsibility should be removed from the political sphere altogether. Under the aegis of the Guardian Circle, it could be entrusted to jury-like panels of citizens.

Encircling the Dignified Constitution

All the above departs far from the mainstream assumptions of political theory and practice in the last couple of centuries. Given the sources of inspiration, one might infer that the Guardian Circle would have a rather antiquated air about it. As a sort of collective monarchy, therefore, how might its trappings differ from modern offices of state?

To tackle this question of how function and style relate, we can take as our point of departure the concept of the 'dignified constitution'. The term was coined by the journalist Walter Bagehot in his 1867 book, *The English Constitution*. He identified in any constitutional structure two parts: 'First, those which excite and preserve the reverence of the population—the dignified parts, if I may so call them; and next, the efficient parts—those by which it, in fact, works and rules.' The Crown stayed above politics and, hallowed by age, inspired reverence among 'narrowminded, unintelligent, incurious' ordinary people who needed the 'theatre' of the dignified constitution. The emotional and irrational aspects were indispensable. To try making monarchy more transparent or more modern would 'let in daylight upon magic'.[31]

National monarchies have evolved since Bagehot's time. Yet even today, we find elements of the dignified constitution in many countries. The 'invented traditions' of the British monarchy gave it continuity and helped social cohesion despite the sweeping changes of the twentieth century.[32] In other countries like Spain and Japan, constitutional monarchy helped weather bigger storms. Spain's King Juan Carlos I bridged the deep divisions between left and right after the democratic transition. He even headed off a coup attempt in 1982 by donning his uniform and ordering the troops back to the barracks. Japan's figurehead emperors remained a touchstone of national identity despite roughshod modernisation and defeat in war.[33] The dignified constitution also has its place in republics. Presidents take on the mantle as representative of the political community's cohesion, especially if they are figureheads and real power resides in the hands of a prime minister. The roles vary a lot from one country to another. Yet any dignified constitution serves one or more typical purposes: symbolising continuity, deference to authority, the horizontal cohesion of a community across its internal divisions or in contrast to outsiders, and the potential checking of partisan politicians.

At the supranational level, however, the dignified constitution is oddly neglected.* The EU and the UN have only the usual political bargaining and the dull bureaucratic machinery to implement its results. In February 2010, when Herman van Rompuy was installed as President of the European Council—in

* I explore related themes in my article, 'Supranational Governance and the Problem of the "Dignified Constitution"', *Telos* 195 (Summer 2021), pp. 115–32.

effect, the EU's first head of state—British eurosceptic member Nigel Farage expressed disappointment on the floor of the European Parliament, in scathing fashion: 'You have the charisma of a damp rag and the appearance of a low-grade bank clerk.' The UN Secretary-General is the closest thing to a head of state for the world, yet holders of that office have overwhelmingly been former diplomats handpicked by the great powers to be inoffensive. As a 'secular pope', the Secretary-General has had only modest room to use the 'bully pulpit' to urge adherence to international law and to accelerate, ever so slightly, the consolidation of new norms.[34]

This shortage of dignified elements in emerging supranational institutions has several reasons behind it. It could simply reflect the staffing of those institutions by new class functionaries. The trappings of history, deference, and pomp tend to leave such people cold.[35] That older styles linger within some countries does not make it easy to generate them in new supranational bodies. Another factor could be that a dignified constitution only attaches to a proper state that can command allegiance. In other words, you cannot have a dignified constitution without a real constitution, which you cannot have without a constituent power, which you cannot have without an identifiable political community. Such would probably be Schmitt's answer. For him, sovereignty was represented on behalf of 'the political unity as a whole'.[36] Global governance that accumulates through the efforts of lawyers, diplomats, and technocrats can hardly capture the imagination the same way as a dynastic conquest or a founding revolution. The likes of the EU and the UN do not come wielding a bloodstained banner. They come wrapped in an uncharismatic damp rag. Of course, such realities need not make a dignified constitution at the global level permanently impossible. They might just mean awaiting events that generate the symbols, the impressions, and the attachments.

But I want to suggest here more fundamental reasons why the dignified constitution is now a blind spot, and how this relates to the potential future function of the Guardian Circle. In its fullest form, the dignified constitution demands deference from powerholders to something above their own short-term machinations. It has that effect most convincingly if it represents prepolitical goods, not just the grandeur of the state itself. Unsurprisingly, the technocratic temper of today's supranational structures means that those running them lack both gravitas and awe, without realising that something is missing. As philosopher Mircea Eliade observed, the religious and premodern outlook saw obligations on the scale of cosmic time and the eternal present. The moderns, given the 'progressive secularisation of the cosmos', abandon ritual and the sacred, and focus on self-realisation within the narrow confines of the mundane.[37]

For the Guardian Circle, form should follow function. Unlike in the surviving traditional monarchies, its dignified elements should not represent the glory of the state, the ascendancy of a particular social hierarchy, or people's affection for an ethnonational collectivity. Rather, the dignified elements should attach

to the Guardian Circle's function in guaranteeing the metaconstitutional settlement of sphere pluralism. They should not embellish a claim to supremacy. They should reinforce the humility of the actors in the various spheres who know their own limits.

Despite the Guardian Circle's distinct function, we can still draw lessons from monarchical experience within countries. Over time, the exercise of duties on behalf of the metaconstitutional settlement would see a crust of continuity and dignity layering over the institution. The sort of moral example that the ancient traditions emphasised would be more peripheral in this case. Still, the personal qualities of those holding Guardian Circle office could add to the dignified constitution. As Ernst H Kantorowicz's analysis of 'the king's two bodies' in early modern European thought revealed, the personality of the officeholder and the 'halo of perpetuity' around the office are intertwined, albeit conceptually distinct. Succession meant 'the continuity of repetitive incarnation of the body politic in exchangeable bodies natural'.[38] Of course, the world's diversity and the duties of the Guardian Circle would make a literal hereditary monarchy impossible at the global level. Such would be both unrepresentative and, eventually, mediocre. Under twenty-first-century conditions, it would look like the farce of 'vestigial monarchism' that happened when, as in 1916 China, some attempted to revive old imperial styles and attach them to one warlord of the moment.[39] But for the Guardian Circle as a corporate body, an imagined continuity as part of its dignified character would be vital. A new tradition should indeed accrete. Given the inspirations from the past and the principle that the prepolitical sanctities being defended are timeless, that task is not just historically contingent. The Guardian Circle could understand itself as disclosing a function that always existed in history as a potentiality.

How to select the seven to thirteen members of the Guardian Circle is a practical question admitting of more than one answer. Still, the mode of recruitment should suit the landscape of sphere pluralism. It should favour the qualities needed to uphold the metaconstitutional settlement. A cosmopolitan global space makes a diversity of origins and languages essential. Many parts of the world have long traditions of the 'stranger-king' bringing charisma to a community.[40] Collectively, the Guardian Circle would be in some sense stranger-kings everywhere. Given their collective function, they should not represent the several spheres as such. They should have enough experience to understand the spheres and, ideally as examples of personal enkapsis, accomplishments cutting across more than one sphere. Yet they should not have occupied the peak offices in any, lest they be beholden to them.

Personal qualities and continuity both need to operate in the selection mechanism. The age-old tension between them appears in Islamic and Confucian traditions. Islamic political theory variously held that the caliphs and imams should be designated by their predecessors, often hereditarily, or that their probity and ability should be assessed through election by upstanding notables. The Chinese

classics have a similar tension between hereditary transmission of the throne—which leads eventually to dynastic decay—and abdication of an emperor in favour of his handpicked, virtuous successor.[41] For the Guardian Circle, corporate continuity would not mean hereditary succession. It could mean members collectively deciding whom to appoint, in a gradual turnover of seats. Such self-perpetuating succession would ensure the internal maintenance of a tradition, as well as independence from the peak institutions of the spheres. It could also identify a line of succession several places out, to avoid the membership ever falling vacant in a disaster, and to prevent manoeuvring for a seat in the heat of events. Such continuity may need balancing with input from sortition-based panels, drawn from ordinary people and from within the spheres. A nominated shortlist with cross-voting to winnow could work, too. Finally, an element of randomness could be introduced. Holding a seat on the Guardian Circle should be humbling. It should not feel like the culmination of an ambitious thrust for power with unseemly public campaigning. Random selection among, say, three finalists for each seat (or random ordering of a sequence of successors) would have a salutary effect.

In short, a tripartite selection mechanism for the Guardian Circle could blend three sources of legitimacy: 1) self-perpetuating appointment, by consensus of current members, as each vacancy occurs in a gradual turnover (manifesting internal continuity and fidelity to the founding); 2) input from representatives of the public and the plural spaces to be defended (manifesting worldly accountability); and 3) random selection among finalists (manifesting, depending on one's worldview, either a 'blind break' of merely psychological value, or what the traditions saw as the hand of Providence).

Strict rules should also minimise conflicts of interest. Members should not be tempted by the prospect of retiring into high-level positions in one or another sphere to reap further benefits. The Guardian Circle should not be a den of elite backscratching. Since its function is to restrain power, members ideally should be of a character 'indifferent to the satisfactions of governing', as Jasay put it. He mused that the best guarantee of a minimal state, which has never quite existed, would be putting in charge those with other moral or æsthetic priorities outside politics. Such people would aim to block others from coarsely overreaching: 'to keep *them* out, to stop *them* from getting hold of the levers of the state and spoiling it, the butterflies, the peace and all.'[42] Such a motive is more imaginable among members of the Guardian Circle, sitting among the spheres with their limited role, than among elected politicians or CEOs or clerics in their natural domains.

There would be countless points of contact between the Guardian Circle and the institutions of the spheres, as well as the public at large. As explained earlier, complex functions could be delegated to many lower bodies or officeholders, though they would still derive their authority from the Guardian Circle as agents of a unitary actor. Routine functions at the interface between the Guardian Circle

and outside entities could involve, in addition to boundary adjudication, a range of liaison and ceremonial activities. For the most important activities, the Guardian Circle could appoint several hundred emissaries who, like today's national ambassadors, would carry with them some of its dignity and authority. To ensure rapport with a diverse global population, they should be multilingual and recruited from varied ethnic, religious, and personal backgrounds. They should carry out their tasks with geographic rotation to identify with the global space as a whole.

The dignified aspect of the emissaries' role could help reinforce cohesion in the global space. It could highlight the commitment to pluralism and heterarchy that must command acceptance across a broad swath of influential institutions. At public events that bridge the activities of different spheres, or that represent the global community as a whole, only the emissaries of the Guardian Circle could exercise the dignified function. If their visibility humbled those holding power in one or another sphere, then it would serve a useful purpose. It would look like monarchical patronage and ribbon-cutting in countries with a strong dignified constitution today.

How well this model would resonate is an open question, however. Much of the pomp and deference in national dignified constitutions is a holdover from a stratified society. It is marked by longstanding elite codes and styles of cultural capital. It lingered in the culture of diplomacy for longer than in other circles of modern life. Bagehot observed the importance of aristocratic prestige in diplomacy, as the best way to blunt popular 'territorial sectarianism' since 'nations touch at their summits'.[43] Modern society is flatter. The raw material of deference has faded. The diversity of the future global space also means that there is no unified heritage, no common ritual code, and no habitus of prestige that could enshroud the representatives of the dignified constitution. Whether the dignified constitution requires social deference or a common heritage can only really be settled in experience. Perhaps the best to be hoped in the medium term would be, in recruitment of Guardian Circle emissaries, that they tap into assorted cultural raw material in their own backgrounds and where they operate, as well as adequate cross-cultural competence. Over time, as with the congealing of other layers of a loose global civilisation, new markers of dignity may come into clearer view.

Those elements are the soft trappings of the Guardian Circle's role. It also would require structural independence beyond the mechanisms of recruitment. Limited legal immunity for members—indeed, for all those staffing the institutions under its umbrella—while in office would be advisable, especially when they have to stand up to the state. Such immunity should not mean exempting them from normal civil and criminal liability. It could look more like a quasi-diplomatic status, meaning they could be detained only by special police under Guardian Circle authority.

Alongside the dignified constitution and limited legal immunity, the standing of the Guardian Circle apparatus should also be secured by independent

funding. Constitutional monarchs in countries like Japan have lost all financial independence along with their prerogative powers.[44] For the Guardian Circle robustly to defend the metaconstitutional settlement against state and market, in particular, it needs a stream of revenue as secure as the guaranteed funding for spheres of health, education, and civil society. This could be accomplished by designating certain natural resource revenues for the purpose, or a specific transaction tax that is forever beyond modification by other power centres. In total, a modest half a percent of GWP probably would suffice. Such a stream could finance all the institutional functions of the Guardian Circle apparatus, including security elements that I shall detail further below. Enough would be left over for discretionary expenditure, such as on creative ventures or unmet needs in the gaps among the institutions of the various spheres. That small amount would be enough to give some attention to those needs and to catalyse new experiments, but not so much as to swamp the competence and priorities of other institutions.

Iron Fists in Velvet Gloves

What I have outlined so far of the Guardian Circle's nature, role, and independence would suffice, in nearly all circumstances, to keep equilibrium in the metaconstitutional settlement. As for any weak monarch, however, trappings and noble intentions ultimately may not prove enough. Whether in the first or the tenth generation, such a metaconstitutional settlement could face an existential threat. Here, I must add a missing part of the toolkit. We saw earlier that routine democracy is often thought to rest on a founding long ago, in which the constituent power of the demos asserted itself, perhaps with blood in the streets. In this spirit, a dignified constitution also must have coercion lurking behind it.

Here I shall borrow from a rather eccentric source, namely, the comparative study done by philologist Georges Dumézil on mythical images of sovereignty across the Indo-European zone. He found a recurring dualism between the Numa/Mitra dimension and the Romulus/Varuna dimension. The former was the static, priestly, ritualistic, law-upholding aspect of sovereignty, which operated in the daylight of routine and represented 'immobilised perfection'. The latter was the dynamic, terrible power of exceptional violence, which came out in moments of crisis as a 'creative force'. The two dimensions were not in conflict with each other, so much as complementary aspects of sovereignty: gravitas and celeritas.[45]

History abounds with cases where dignity and ritual authority were not backed by force. The Zhou dynasty in ancient China collapsed into the Warring States because its loose symbolic suzerainty, honoured from time to time when inoffensive, counted for naught when regional potentates set out to conquer.[46] And Stalin reportedly asked during the Second World War, 'How many divisions does the Pope have?' Such instances suggest that the Guardian Circle,

when an existential crisis comes, must have enough firepower to defend the metaconstitutional settlement.

Mainstream thinking today about global governance has a blind spot for this crucial question. Today's erection of supranational machinery is a gradual and routine project. It lacks the drama of voices in the air or a bloody founding. The new class pays little heed to either sacredness or violence. It appreciates neither the Numa/Mitra nor the Romulus/Varuna face of sovereignty. But a proper regard for the Guardian Circle's function brings us to an unsettling conclusion. We should not imagine a division of labour between the soft power of a figurehead collective monarchy and the hard power of an elected government. Rather, the Guardian Circle needs elements of both. While most of the function of checking political hubris is static, priestly, and ritualistic, it also needs to be able to count on the dark and terrible option of exceptional violence. The world's dignified constitution, as the visible embodiment of the metaconstitutional settlement, can only be upheld if a reservoir of force lurks in the background. Numa can only back those guarantees if he is also Romulus; politicians' deference to Mitra must include fear of Varuna.

Indeed, this insistence is even more radical than it might seem. It means going beyond the kind of gesture we see today, where an otherwise powerless constitutional monarch is named on paper as the commander-in-chief of a country's armed forces. Such symbolism usually means nothing in practice, and still assumes a unified state military. Given the fragmentation of sovereignty and the Guardian Circle's separation from the political sphere, my proposal means rethinking Weber's classic relationship between stateness and the monopoly on the legitimate use of force. Since the 1940s, visions of a world state have taken for granted that its greatest gain would be assuring world peace by eventually monopolising weapons and depriving national governments of the ability to go to war.[47] Undoubtedly the end of violent international conflict and the capacity to maintain order across the globe would be one marker of successful state formation. The world state in the narrow sense indeed should have full responsibility for routine coercion, along the lines of policing and the like. The logic of limited power and a strong society favours a civilianised police culture, consonant with the Peelian principles of the Anglosphere.[48] Such routine coercion would still fit a recognisable Weberian monopoly, for the most part.

At the same time, we should be wary of letting a successful world state tame all capacity for violence. It would be a mistake to reserve firepower wholly to impersonal legal machinery commanded by elected politicians and administered by bureaucrats. Sphere pluralism already would curtail the state's power of the purse. The Guardian Circle also must curtail the state's power of the sword, at least enough to secure the metaconstitutional settlement. This means splitting the monopoly on coercion both theoretically and practically, in a radical departure from the logic of modern statehood. Theoretically, I want to distinguish between routine maintenance of order and application of the law, on the

one hand, and guaranteeing the metaconstitutional settlement, on the other. The former is the domain of the state, with its accountability to the public through elected leaders. The latter is the domain of a body above or outside the state, bearing responsibility to multiple spheres. This theoretical distinction has gone unrecognised in mainstream political theory and by the early sphere sovereignty thinkers. Dooyeweerd, for example, more or less took a Weberian definition for granted: 'The structural principle of the state…is given in…a historical power formation, the monopolistic organisation of the power of the sword over a given territory. Wherever this foundation is lacking we cannot speak of a state.' The power of the sword serves 'the maintenance of a public jural community of rulers and subjects'. In short, the welding together of coercion and public legality defines the state.[49] Yet I would argue that the logic of sphere pluralism, if it requires a guarantee beyond the state, necessarily means splitting coercive capacity between routine and foundational functions.

Practically, the distinction becomes easier to draw in the future global order for two reasons. First, setting the Guardian Circle and the world state on entirely different foundations means that command structures can be untangled more easily than in, say, a constitutional monarchy. Second, the abolition of national militaries and the pacification of an open global space would reduce military-type spending drastically. It would remove from elected politicians' hands the making of foreign policy and the military command that naturally goes with it.

In this context, what might a division of coercive capacities look like? The state's monopoly on routine coercive force would include nearly everything visible in daily life, such as lightly armed constables, SWAT teams, seaborne and airborne police patrols, and the like. The Guardian Circle would have no point of contact with them. Rather, its own separate line of command would run to the limited range of residual military-type force that would have no use in routine circumstances but could prove formidable if used in a focused way during an existential crisis: strike aircraft, a handful of small aircraft carriers, submarines with a few hundred tactical nuclear warheads, and a marine-type force for rapid deployment.* It could be based far from population centres, ideally offshore on otherwise uninhabited islands or the like. These sorts of coercive capacity would not suffice for the Guardian Circle itself to conquer territory or to repress an unwilling populace. They would look rather like the kind of internally unusable naval power that historians have argued proved compatible with the growth of constitutional government.[50] Still, should a day come when the

* If the Guardian Circle used only a fifth of its (half a percent of GWP) independent revenue stream for its armed forces, it could exceed the total firepower of a country like Britain or France today. With only part of the profile needed, and the worldwide disarmament of former states having been achieved, such well-honed capacity would be quite enough to project force as needed anywhere around the world.

metaconstitutional settlement were imperilled by technocracy or demagogy, that reserve of force could concentrate the mind and restore equilibrium. It would also lend an aura of credibility around the routine adjudicating and ceremonial functions of the Guardian Circle.

Checking the state's power of the sword should not be the task only of the Guardian Circle, however. A final piece of the puzzle is a dispersion of light arms among the public. This mechanism will look more familiar to some readers today. A lot of what I have said about guardianship may strike them as an eccentric way to guarantee liberty. A far more obvious recourse against global tyranny would be hordes of indignant ordinary people taking to the streets or the hills. Admittedly, the history of large countries shows that gaining revolutionary momentum across a wide territory is hard. The vaster scale of the whole world would tip the balance toward the security of the world state. Yet the logic of a popular uprising against oppression is still important to acknowledge in future constitutional theory.

Traditions of political thought across the world hold, in different ways, that subjects of unjust rulers can legitimately kill them. They usually left undertheorised what the threshold of injustice was and counselled forebearance. Nonetheless, a tyrant who lost his head was always thought after the fact to have had it coming to him. Popular rage surged up from below to meet the wrath of the divine coming down to withdraw legitimacy.[51] More recently, an armed citizenry as an ultimate guarantee against tyranny was recognised at the time of the American founding. One of Thomas Jefferson's most remembered quotes is: 'The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants. It is its natural manure.' The right of citizens to bear arms, collectively and individually, is still trenchantly defended by those in America suspicious of centralisation and distrustful of merely formal guarantees. Despite the shift away from a rugged masculine image of frontier self-reliance, many still insist that 'an armed citizenry is the first defence, the best defence, and the final defence against tyranny.' As one writer put it in a comparison to rock, paper, and scissors: 'Parchment might cover guns, but guns can blast that parchment away.'[52] In future, widely dispersed ownership of light firearms—with proper training and screening—must be restored to legality across the world, as yet another guarantee tipping the balance of power away from the state.

We can thus imagine a three-way split of coercive capacity: 1) the state as routine enforcer of laws and keeper of public order, 2) the Guardian Circle with its offshore reserve of force, and 3) the lightly armed public. The conceptual and practical balance should enable any two of these, when push comes to shove, to defeat the third. For example, in a case of localised insurrection that stretches the civil power, the Guardian Circle could back up the normal security forces and help restore order. In a case of a narrow antisystemic electoral outcome or bureaucratic ambition that tempts the political leaders of the day to overreach, the Guardian Circle could align with a popular revolt to restore liberty. And in

a case of the Guardian Circle itself trying to impose its will in deeply unpopular ways at odds with the metaconstitutional settlement, the state and people together could frustrate it. In short, the three-way split creates a further balance of power that should give any hubristic actor pause. It also affirms that the defence of sphere pluralism and the equilibrium of the entire framework are not entrusted exclusively to any one actor.

Traitors and Reformers

The bulk of this chapter has covered the founding and maintenance of the metaconstitutional settlement. In this final part, I want to consider a third aspect, namely, what it would mean to transform or dissolve it. How do we make sense of those who, inevitably, would want to step outside and smash the entire framework? The many constraints and mechanisms building stability into the settlement would also make it much harder, compared to most national constitutions, to change. If well designed, that is precisely the point. Still, it might not be perfect in its initial crystallisation, and could require adaptation. And even if it were sound, some significant number of people undoubtedly would think otherwise, and would need an outlet for their efforts to convince others.

Those who challenge the foundations of a social order have historically been seen as committing a uniquely egregious sin. How that sin was characterised depended on exactly what they were stepping outside and betraying. In premodern civilisations that took for granted an overarching religious orthodoxy, such as mediaeval Christendom or the Islamic world, such betrayal was framed in the language of apostasy or *fitna*.[53] The rupture of a public consensus on doctrine, implying that one was forfeiting one's own salvation as well, made taking up arms to defy authority even more shocking. Since the early modern period and the rise of Westphalianism, treason against the state has been framed instead in the language of risking carnage, by ungratefully breaking the protection racket that has preserved lives including one's own.

In contrast, the linchpin of this alternative global order would be neither orthodox civilisational unity on doctrine nor the supremacy of the political sphere, but rather a metaconstitutional settlement of sphere pluralism in a cosmopolitan space. Espousing even the most divergent doctrines would fall under the liberties of intellectual, cultural, or religious life. Taking up arms in disaffection against the authorities or one's fellow citizens would not, in itself, demand any conceptual innovation in response. Routine criminal liability could apply to specific acts of murder and assault. There need be no crime of heresy or treason as such. The only act to which additional opprobrium need attach would be a treason of sorts against the metaconstitutional settlement itself. Such an act would awaken the ultimate coercive response held in slumbering reserve by the Guardian Circle. In practice, the most likely scenario where treason-like language would come into use would be if an elected demagogue deployed the

machinery of the state to reassert the supremacy of the political sphere at the expense of pluralism and perhaps tried to beggar and disarm other institutions, including the Guardian Circle, to squash resistance.

Efforts to remake the metaconstitutional settlement might never come to such extremes, of course. As the landscape of opinion shifts in unforeseeable ways over time, pressure is more likely to involve people advocating modest revisions through peaceful means. For national constitutions dealing wholly with the state, the debate over amendability is well-worn in political theory. The usual logic holds that moving the guiderails within which routine politics takes place must mean going back to the constituent power through a referendum or the like. The easier the amendment process, the more detailed and policy-like a constitution is, and the blurrier the line between constituent and legislative powers. If it is too hard to amend, either judicial interpretation does de facto revision while pretending to stay within the guiderails, or pressure builds up into an eventual rupture, perhaps starting over with a new constitution altogether.[54] A rupture that unleashes the constituent power is for many observers a frightful prospect. For example, the United States Constitution has an 'Article Five' option of convoking a new constitutional convention to propose amendments, rather than going through Congress. Since such a convention might get carried away and offer a whole new constitution, in a repeat of 1787, the prospect has unnerved the Washington establishment enough that Article Five has never been used.[55]

What would amendability mean in the future global order? Things are complicated by the fact that the metaconstitutional settlement transcends the political sphere. It does not rely on the kind of constituent power that can flow from the demos. Indeed, such an exercise in politically driven revision would pose exactly the risk to sphere pluralism that the framework aims to avoid. It would make the global order look like the British (largely unwritten) and American (written) constitutions, which have yielded to centuries of social change all too readily. Any familiar process of amendment would, in Jasay's terms, put the key to the chastity belt within reach.

Still, we can distinguish different levels and sites of amendment. Since each sphere enjoys a sovereignty of sorts, there should be room for a sphere to reconstitute many of the internal rules that shape the landscape on which its institutions operate. Such would not mean carte blanche to deviate from principles inherent to the sphere. Still, how those principles crystallise is somewhat open to adaptation. It should be possible, for example, for the institutions of the educational sphere, or the health security sphere, collectively to revise what we might call their sphere constitution. Such amendments have their limits, of course. Most importantly, their implications should not go so far as to spill over and affect the boundaries and equilibrium among the spheres. For the state—the political sphere in the narrow sense—the same logic of internal amendment could also apply. The metaconstitutional settlement could give leeway for the demos to exercise a kind of sphere-specific constituent power and adjust details

of representation in the global lower chamber, for instance, or the division of policymaking power between different units, or the organisation of a cabinet, or to bind or unbind legislators' hands on some aspects of spending or criminal law.*

A theoretically challenging upshot of within-sphere constitutional revision has to do with territoriality. A defining feature of the state under sphere pluralism is public juridical authority over everyone on its territory. Even if the world state would be all-inclusive in scale, a conceptual basis would linger for arguing that the demos has some inherent right to territorial self-determination, including agreeing to split itself. Is there room for a right to territorial self-determination in the future global space? Or would the metaconstitutional settlement forever rule it out and bind humanity to a single polity?

At first glance, the temptation to insist on a single state crashes headlong into the emphasis on liberty and pluralism. It might imply taking pluralism seriously only as long as it does not question global political unity. Yet sphere pluralism and the distinction between within-sphere constitutional revision and the stability of the metaconstitutional settlement offer a clearer solution. If we acknowledge a right of territorial self-determination as inhering in the political sphere, then it would also be limited to matters within that sphere. This would mean that in theory—even if practically it would be far-fetched—the global demos as a whole or a segment of it could decide to hive off political jurisdiction into a smaller scale. In effect, it could fragment the world state into independent sovereign units. Any such re-established territorial state could have full political sovereignty over the same limited matters as the world state would have.

Yet the larger imperative to preserve liberty and sphere pluralism would survive. Political self-determination would not exempt such a territorial state from respecting a universal pattern of sphere pluralism that corresponds to deeper needs. It would have to uphold the free movement of people in a global space, the liberties of institutions in the non-political spheres, and so on. In other words, political sovereignty would coexist with deterritorialised permeability in all other spheres. It would not allow bringing back a political honeycomb to deform world society. Crucially, the oversight of the Guardian Circle—and its reserve of offshore coercive capacity—would also have to survive above multiple territorial states. It would remain the guarantor of a metaconstitutional settlement applying to all polities. In short, the far-fetched scenario of secession from the world state conceivably could happen through the political sphere. But a polity

* This amendment power would not extend to the upper chamber, however, since it is chosen on a wholly different basis. It has a limited input in policy but also has only one foot within the state, in a sense. Its nature ramifies into other domains of society and thus cannot appropriately be subject to political amendment.

would lack the competence to alter or withdraw from the larger metaconstitutional settlement. Guardianship has no horizons.

In this light, the metaconstitutional settlement itself must be the most resilient level. Because it deals with boundaries and relations among the spheres and the resources to secure their independence, it touches on the widest range of stakeholders and incommensurable goods. The sphere pluralism built into it is a condition for liberty as personal enkapsis. Amending it should thus be, if not impossible, at least a very difficult process with multiple veto points. Conceivably, a well-considered consensus within each sphere, replicated across all spheres, could be grounds to unlock and revise elements of the metaconstitutional settlement. Minor adjustments dealing with technical questions at the boundaries between spheres, or a modest reallocation of funding in light of fundamental changes in human needs and resources, could win such assent in the right circumstances. More fundamentally, however, the credibility of the entire framework would have to rest on the perception that it can outlast vicissitudes and is hard to undo. Making it easier to undo would imperil the emerging global civilisation that it secures.

Conclusion

Taken as a whole, this book has covered a lot of ground. I began by considering the theoretical underpinnings of virtue-centred sphere pluralism. The founding of a global order offers a unique opportunity for scaling up while also unbundling sovereignty. If well configured, that global order could reconcile cosmopolitanism, liberty, and committed ways of life. In developing the argument, I went through how, in an open global space, to deal with resource flows, legal diversity, representation, and metaconstitutional guarantees. Inevitably, I have been selective about what to describe. I have had to focus on the most important elements, especially where they challenge today's mainstream assumptions. Many more dots could be connected, of course. Much that I have not covered is because it is less important, or is underdetermined by the overall principles, or involves other layers of human needs and experience.

In these last few pages, I want to take a step back and consider the gaping hole in the discussion so far. How do we get from here to there? While working through the ideas, I have deliberately put feasibility on the back burner. Feasibility is a tricky matter. After all, thinking about any constitution usually emerges only after that constitution already exists. It comes from experience, even if abstract principles might have motivated its founders and might colour ongoing debates about what it means.

In two of my earlier books, I argued that an alternative to mainstream liberalism—whether on the level of economic values or cosmopolitan horizons—could sprout and grow quite far in the circuits of global society. Experiments can illustrate what works, influence can grow, and networks can rival those of the new class establishment and build mobilising capacity for the future. Everything I shall say here about feasibility is compatible with those short- and medium-term strategies.

It also bears noting that, even if one could wave a magic wand and found all the global institutions I have outlined, their meaning and resilience would still take time to consolidate. The cultural and ethical substance of a vibrant sphere pluralism can come only from experience. Traditions are in disarray across the world today. Some useful elements are easier to recreate than others. Perhaps the quickest would be the dense sites of responsibility that could be catalysed by unfettering civil society and returning tasks to it. A bit slower method would

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be to cultivate the virtues and mores that come from countless people working in alternative spaces. On a still longer horizon, such pluralism as reemerges will be secure only if habits of vigilance strengthen. Finally, the hardest of all to recreate would be an ethos of stewardship at the higher layers of global society. Despite egalitarian underpinnings, a just global society would still need traditions of virtuous leadership and authority to hold the structure together. The template of such stewardship could only take shape over generations of socialisation.

Such soft civilising processes are the most important element of a vision for the future. They also take the longest and are only indirectly related to founding formal institutions. When an impatient reader collars me here and asks again about feasibility, he or she is more likely to have in mind concrete strategies that would operate on the surface of political power. In the rest of this conclusion, therefore, I want to offer some thoughts on three levels: incremental reforms, political and strategic pathways, and the justification for a sharper rupture when the time ripens.

In talking about incremental reforms, I do not mean to suggest that we can get from here to there gradually. The Westphalian system, the new class dominance of supranational institutions, and the landscape of economic, social, and political power today have countless points of self-defence that would need cracking. Incremental reforms will not do that. But even when it gets difficult, reforms would be better than nothing in expanding the spaces of liberty. They could show what works. And they could modestly shift the terrain, the balance of resources, and experience enough to let the global public imagine more ambitious changes in the long run. Incremental measures include (1) redirecting more resources into civil society and mutualist channels, to starve the hegemony of state and market, and (2) making territoriality more permeable, so cross-border alternative networks of social and economic activity could operate freely.

Some incremental measures could be achieved within countries. An elected national government in any country has leeway, if it chooses, to reduce the state's footprint in civil society, health, education, and the like, and to do so in ways that do not merely hand everything over to the market and worsen social deprivation. Large parts of what I proposed in the chapters on economics and civil society, and legal pluralism, could be written into party manifestos and gain traction. Even modest gains would weaken the Leviathan and shift experiences. A national incremental strategy would still run into a conceptual and legal obstacle, however. With the political honeycomb of Westphalian sovereignty still intact, unbundling these responsibilities in each country would not change the fact that they remain nested within the state as the perimeter around it. The political sphere would keep its primacy on a landscape of territorial enkapsis. Pluralists have been lax in thinking about this problem and should take it more seriously. At most, early-twentieth-century pluralists like Cole foresaw the rise of functional associations cutting across borders.[1] But they did not follow the

implications for how scaling up life and unbundling sovereignty must be two sides of the same coin.

For this reason, any incremental measures within countries should be accompanied by initiatives to make the political honeycomb more permeable. Practices in the non-political spheres should link up across borders. More mutualist and society-centred forms of social insurance, for example, should be made transferable across countries. This would look different from the EU model of transferable medical and pension coverage, which deals with mutual recognition among states. The goal should be not merely to create an isomorphic equivalence of state-run systems, which eases free movement, but rather to detach functions from states as such and move them into a more open global space. Mutualist and civil society organisations could be granted legal status that lets them operate more freely across borders, rather than being bound to a given national regulatory framework or zone of activity. The civil society tithe could be implemented within countries, then harmonised across them, and then individuals could be freed to direct their tax-offsetting contributions anywhere in the world. Legal pluralism could also be realised through expanded recognition of multiple legal systems in private international law, including arbitration mechanisms and choice of personal law, all detached from territorial location.

I mention these policy initiatives to illustrate what it would mean to strengthen society against states, and to free the circuits of society to link up transnationally. In its modest version, such an incremental strategy would amend laws within countries to remove restrictions, take advantage of the gaps in the international system, and conclude bilateral and multilateral agreements on mutual recognition and the like. More ambitiously, the incremental strategy could advance an alternative vision of supranational integration, presented as such and aimed at securing further breakthroughs over time. That vision would have states pairing a commitment to unbundle sovereignty domestically, on the one hand, with a commitment to remove barriers that hinder those unbundled sovereign spheres from linking up across borders, on the other. It would be framed in contrast to both the Anglosphere version of globalisation in which everything has a market price and the EU version of globalisation in which everything has a bureaucratic rule. Scaling up and opening need not mean selling everything to the highest bidder; nor need it mean harmonising state control and letting a leviathan extend its grasp horizontally. A pluralist version of globalisation would reclaim ground for society, instead. This can become the third pole of global policy debate.

Whether in nibbling away at the political honeycomb or advancing a more ambitious transnational integration strategy, an incremental route would only get so far in the medium term. While conceivable, it is unlikely that gradual reform could culminate in a bloc of countries fully merging into a regional version of the metaconstitutional settlement, such that a new global order would be formed first on part of the world's territory and then absorb other states later. A more likely scenario is that incremental policy reforms in some countries will pave

the way and help capture the public imagination, while experiments and networks in civil society also gain ground. At the same time, the heights of global governance will probably remain in new class hands for the medium term. The trajectory of technocratic consolidation may have a generation or two left to run. Indeed, we should be realistic in expecting that the first world state of sorts is more likely to be a new class product rather than an achievement of incremental reform inspired by a sphere pluralist, deep cosmopolitan vision.

Here we come to the second level, namely, political and strategic pathways through supranational institutions. If a world state comes into being first as a continuation of the present order, then those who want something different must plot how to change it. The political and strategic pathways in that scenario could run through capturing institutions originally designed by the other side. History has precedents. If the new class founds a world state, it would open up promising arenas for contestation. While those at the leading edge of global governance today fear unleashing a transnational demos, they apparently know that after they have erected their machinery, some popular legitimacy must eventually fill it. Sooner or later, they will have to build in channels of popular representation. They might set up a highly constrained version of an elected second chamber for the UN, for example. Once that happens, global politics could get interesting very quickly. Given the world's landscape of values, a constitutional structure designed by the new class could coexist for a while with an electorate yearning for a different future. If a more traditional and more pluralist future had also become thinkable because of incremental reforms and efforts in civil society, then the ballot box could become a way to take the battle to the heart of power.*

Broadly speaking, the political argument would run along these lines. Liberal modernity and the new class leading edge of global governance have offered a model that is too overbearing, homogenising, and constraining. The goods of liberty and tradition would be better served by remaking the world state. Of course, a victory at the ballot box and installing leaders more aligned with public opinion would not solve the problem. To get from that sort of world state to the metaconstitutional settlement I have proposed, it would require a full refounding of institutions. The energy that could win at the global ballot box some decades hence is not, however, the sort of energy that founds for the ages. To put it bluntly, we should not idealise the global majority as virtue-bearers who not only oppose technocracy but also know what they do want instead and how to get it. In this century, the religious faith and stake in social justice that abound in most of the Global South will surely be the centre of gravity of global public opinion, and thus of any future global electorate. But all that is energy,

* This scenario could apply to supranational legislatures within regions, like the European Parliament, as well. For reasons discussed below, the landscape of public opinion will probably be more receptive in the Global South, or on a worldwide scale in which the Global South is the majority.

not vision. It is mostly untextured and cut off from history. It has little visceral longing for strong institutional foundations. Given the poverty and the history of decolonisation in much of the world, publics in the Global South will prefer political rhetoric focused on mobilisation, liberation, and the need for an activist state.[2]

Whatever the details of a global refounding, after the initial electoral capture of the world state, there are reasons to be wary of using a mobilised popular constituent power as the mechanism.* This goes back to my argument in the previous chapter about the lawgiver model as better suited to designing the metaconstitutional settlement. The lawgiver model fits in the abstract, given the distinction between democratic accountability within the state and the more complex balance of goods among multiple spheres. It fits even better in the concrete circumstances of contemporary world history and political culture.

As Jean-Jacques Rousseau and other early modern thinkers pointed out, any constitution needs tailoring to a people.[3] But in building solid foundations for the centuries to come, we should imagine the people as they are likely to be, and not only what they are now. Imagine a constituent assembly, drawn by sortition from humanity as it is today, to write a world constitution. It would no doubt concede too much ground to elements of nationalism, a fixed version of religious identities, and expansive redistributive policies with a large state footprint. A century hence, however, people living under the metaconstitutional settlement outlined in this book could be much more mobile, ethnically mixed, educated, reflective, and more vigilant about defending the liberty of civil society. In a sense, the founding is best done on a lawgiver model because it happens with an eye to a future humanity that, to many today, would seem like a bunch of foreigners, or at least quirky grandchildren.

In the scenario of capturing a pre-existing world state and then remaking it, global public opinion would already have generated a sympathetic electoral majority. The alignment of historical imperative and popular will would thus be workable, at least. Still, we should not delude ourselves about a wholly peaceful and legalistic scenario. One would be naïve to imagine elections leading to the capture of global institutions, which would then carry through a sweeping political and social revolution without a single shot being fired. A world state already founded by the new class would no doubt be coloured with deep unease about democracy. It would have built-in barriers to any drastic amendment, let alone the radical reconfiguration of sovereignty that a sphere pluralist settlement requires. A formal breach of continuity would have to follow as the institutions captured at the ballot box dissolved into a refounding.

* This does not rule out a symbolic additional element of popular ratification in some form, given the realities of how legitimacy is perceived.

Given the stakes, we should not imagine that breach being wholly peaceful. To be sure, the metaconstitutional settlement would hold out a promise of liberty and rule of law that would make it a very different offering than, for example, a totalitarian or populist coup. But interests do matter. The breach would almost certainly provoke a new class response equally outside the law. Still, the prior capture of global institutions with an electoral majority would be able to stop the tanks rolling, or at least make them fewer. It could defang some of the repressive capacities that, when push comes to shove, even the most effete segments of the technocracy would deploy to preserve their positions. The moment of rupture would also happen against the background of decades of efforts paving the way in civil society and forging networks of mobilisation. An electoral majority would be just the more visible layer of a multi-sphere constituent power that had proven itself willing to act. The hills loom over the forum.

I accept that this scenario will unnerve many. If global politics gets to this point a couple of generations hence, then from a new class perspective, the breach would look like a coup or an insurrection by political actors who contest an electoral space and then opt out of the rules afterwards. How might the legitimacy of such a breach be defended?

My first response is that even the most modest changes to constitutional arrangements within countries, when no shot is fired, still tend to involve a breach of legality. The 1787 American Constitutional Convention has been called 'an unconstitutional overthrow', since it dropped its original mandate merely to revise the Articles of Confederation, and set up another ratification process altogether.[4] It also seems taken for granted that if, in the future, a republican wave in Britain elected a parliamentary majority committed to abolishing the monarchy, legislation would be duly passed violating the oath of allegiance, and would be accepted as a legitimate fact, even if an otherwise compliant constitutional monarch declined on the way out to sign the paperwork. In short, liberal democratic practice does not itself justify much indignation if the breach has enough public support behind it and does not involve lining up one's opponents against a wall.

Moreover, the breach and its aftermath would not be a surprise. The direction of the refounding and the shape of the metaconstitutional settlement could be apparent even before the political moment arrived. It could reflect the realities of an ever stronger global civil society sympathetic to tradition and pluralism. Its coherence would stem from illustrative experiments on the ground, incremental reforms, and the consolidation of deep cosmopolitan networks over decades of movement-building. In any transition, we must also look beyond the details of the process to compare the relative standing of claimants. An outgoing regime has legitimacy no better than the circumstances of its own founding and function. In the scenario that I have suggested, the pre-existing world state would be the creature of those who have been most committed to a soulless form of globalisation. Its constitution would probably not have been meaningfully ratified by the public, given the contours of global opinion. In contrast, the alternative

vision extinguishing and succeeding it would have had to accrue widespread support in society to push matters to a breaking point.

From a broader perspective, foundings in general, and the founding of this metaconstitutional settlement in particular, can have multiple complementary sources of legitimacy. Just because some sources have more currency today than others, does not mean that all cannot add to legitimacy, depending on the audience assessing them. A Weberian or Hobbesian definition of statehood, which gets bandied about eagerly by realist enthusiasts of the Westphalian system, would justify the founding after the fact simply by right of conquest. If the metaconstitutional settlement can be consolidated, with a monopoly on force split as detailed between a functioning world state and the offshore capacity of the Guardian Circle, then the winners can go on to write history. Succession from prior states could add further legitimacy.[5] Even a breach of legality that sees tanks in the streets still ends, more often than not, in a formal surrender. If the pre-existing world state derived its authority from national governments, and in turn passed the baton even grudgingly to a transitional forerunner of the Guardian Circle, then the metaconstitutional settlement would have grounds for counting as a successor state that absorbed all rights and obligations under international law. Yet another source of legitimacy is democratic ratification. While the conceptual underpinnings of the metaconstitutional settlement do not envision a popular constituent power in the usual sense, a global referendum or the like could be practically desirable as further confirmation of legitimacy.

Alongside these three familiar sources of legitimacy, I want to highlight two others. They are alien to mainstream liberal political theory, but compatible with inspirations for earlier parts of the book. The fourth is sphere pluralism itself. If, as theorists like Kuyper and Dooyeweerd argued, the refraction of human flourishing through the spheres corresponds to some foundational truths, then a global order that guarantees their sovereignty will be superior to one that does not do so. Its timeless nature, rather than any momentary public perception of it, would be decisive. Indeed, a global order that ignores the very question would not even count as fulfilling a basic function. The fifth source of legitimacy would be the notion that the founding generation and its successors—particularly, the Guardian Circle as the linchpin of the metaconstitutional settlement—are not simply creating something new. Rather, they could be seen as the spiritual heirs of the old civilisation-bearing elites who paid more heed to foundational truths than have the moderns who elbowed them aside.

This last source may seem very abstract and even grandiose in the timespan it invokes. Yet the notion of carrying on a civilisation cannot be ignored when we look forward from the founding itself to its legitimacy in the long run. The metaconstitutional settlement would not require or recognise the sort of all-encompassing unity that the old regional civilisations, based largely on religion, took for granted. Nor should it aim at achieving as much. Indeed, such integralism would run counter to the pluralism that the settlement would aim to uphold.

But it surely would benefit from having enough soft, informal bases of cohesion. A global layer of civilisation could sediment over time, as I suggested in *Deep Cosmopolis*. That layer would not overcome the religious and personal diversity of those in all walks of life in global society. It would merely involve enough common ground, alignment of mores, and recognition of a common ethos to sustain civility across the spheres. A sense that one stands in the stream of a multicivilisational heritage stretching back before modernity, and forward into coming centuries, could form part of an emerging self-image among those in offices of responsibility.

That long-term civilising process would be the soft parallel to the hardening and routinisation of institutions and the practices to support them, especially for the Guardian Circle. Routinisation of charisma after a revolution is a familiar theme in mainstream social science. Jouvenel similarly observed that founders' prestige carries over to the organisations that they found. The function inverts later: whereas the founder first legitimises the organisation, the accumulated prestige of the organisation later fortifies less charismatic successors.[6] For the metaconstitutional settlement, routinisation would have two dimensions. On the one hand, the design and initial adjustments in how institutions work would set like concrete, over a generation or so, as social life and political culture came into equilibrium with them and confidence grew. On the other hand, the risk-taking qualities of the founding generation would give way to a more reserved image of guardianship, on the part of those who should be comfortable with mere maintenance, gravitas, and a figurehead role.

If the undertaking lasts long enough to achieve such consolidation, then the equilibrium could stretch far into the future. The rupture of a moment, when all hangs in the balance, would precede what we have often seen in history: a sense that given arrangements are natural and could not have been otherwise. Nevertheless, it bears remembering that in a framework of virtue-centred sphere pluralism, the first imperative of guardianship is not overreaching, even if one has a duty to frustrate others who would overreach. Those guaranteeing what seems natural should not forget the arbitrariness, the step into a void, that any founding represents. As Jasay observed, 'States generally start with someone's defeat.'[7] However legitimate a lasting settlement may look, it could have crystallised in another way. It is a gift held in trust, not a victory. And the most humbling fact should be that, even if over a thousand years later, it too may pass away.

Notes

Introduction

1 Alfred, Lord Tennyson, 'Locksley Hall', in *Poems* (London: Edward Moxon, 1842 [1835]), lines 119–120 and 127–130.
2 Alexander Wendt, 'Why a World State is Inevitable: Revisiting the Logic of Anarchy', http://www.src.uchicago.edu/CSSpapers/worldstate.doc, accessed 27 April 2003. Robert L. Carneiro, 'The Political Unification of the World: Whether, When, and How—Some Speculations', *Cross-Cultural Research* 38:2 (May 2004), pp. 162–77.
3 Thomas Hale and David Held, 'Mapping Changes in Transnational Governance', in *Handbook of Transnational Governance: Institutions and Innovations,* eds. Thomas Hale and David Held (Cambridge, MA: Polity Press, 2011), p. 3. In the same vein, see Jens Bartelson, *Visions of World Community* (Cambridge: Cambridge University Press, 2009); Hilal Elver, 'New Constitutionalism and the Environment: A Quest for Global Law', in *New Constitutionalism and World Order,* eds. Stephen Gill and A. Claire Cutler (Cambridge: Cambridge University Press, 2014); Stephen M. Gardiner, 'A Call for a Global Constitutional Convention Focused on Future Generations', *Ethics and International Affairs* 28:3 (2014), pp. 299–315; and Nico Stehr, 'Exceptional Circumstances: Does Climate Change Trump Democracy?' *Issues in Science and Technology* 32 (Winter 2016), pp. 37–44.
4 Jan Aart Scholte, 'Civil Society and Democracy in Global Governance', *Global Governance* 8 (2002), pp. 281–304. John Laughland, *The Tainted Source: The Undemocratic Origins of the European Idea* (London: Warner Books, 1998).
5 Peter Spiro, 'The New Sovereigntists: American Exceptionalism and Its False Prophets', *Foreign Affairs* 79:6 (November/December 2000), pp. 9–15.
6 Jeremy A. Rabkin, *Law Without Nations? Why Constitutional Government Requires Sovereign States* (Princeton, NJ: Princeton University Press, 2005). Jed Rubenfeld, 'The Two World Orders', *Wilson Quarterly* 27:4 (Autumn 2003), pp. 22–37.
7 Hannah Arendt, *Men in Dark Times* (New York: Harcourt, Brace, and World, 1955), pp. 81–94.
8 Thomas Christiano, 'Democratic Legitimacy and International Institutions', Philip Pettit, 'Legitimate International Institutions: A Neo-Republican Perspective', both in *The Philosophy of International Law,* eds. Samantha Besson and John Tasioulas (Oxford: Oxford University Press, 2010).
9 David Wilkinson, 'Global Civilisation', in *The Boundaries of Civilisations in Space and Time,* eds. Matthew Melko and Leighton R. Scott (New York: University Press of America, 1987).
10 Edward Abbey, *Desert Solitaire: A Season in the Wilderness* (New York: McGraw-Hill, 1968), p. 130. Theodore Kaczynski, *The Unabomber Manifesto and Other Essays* (Seattle, WA: Amazon Digital Services, 2009).

11 Damon Linker, 'The Benedict Option: Why the Religious Right Is Considering an All-Out Withdrawal from Politics', *The Week* (19 May 2015), http://theweek.com/articles/555734/benedict-option-why-religious-right-considering-allout-withdrawal-from-politics, accessed 25 April 2016.
12 Pippa Norris and Ronald Inglehart, *Sacred and Secular: Religion and Politics Worldwide* (Cambridge: Cambridge University Press, 2004).
13 Graham Maddox, 'Constitution', in *Political Innovation and Conceptual Change,* eds. Terence Ball, James Farr, and Russell L. Hanson (Cambridge: Cambridge University Press, 1989). Charles Howard McIlwain, *Constitutionalism Ancient and Modern* (Ithaca, NY: Cornell University Press, 1947 [1940]). Carl J. Friedrich, *Constitutional Government and Democracy: Theory and Practice in Europe and America* (New York: Ginn and Company, 1950 [1937]), pp. 122–23 and p. 131. Donald S. Lutz, *Principles of Constitutional Design* (Cambridge: Cambridge University Press, 2006), pp. 16–17. Daniel J. Elazar, 'Constitution-Making: The Preeminently Political Act', in *Redesigning the State: The Politics of Constitutional Change,* eds. Keith G. Banting and Richard Simeon (Toronto: University of Toronto Press, 1985), pp. 240–41.
14 Eric Voegelin, Stevenson Memorial Lecture No. 11 (3 March 1961), London School of Economics, published as 'World-Empire and the Unity of Mankind', *International Affairs* 38:2 (April 1962), pp. 170–88.
15 Eugen Rosenstock-Hüssy, *Out of Revolution: Autobiography of Western Man* (Eugene, OR: Wipf and Stock, 1969 [1938]).
16 Iain Provan, *Convenient Myths: The Axial Age, Dark Green Religion, and the World That Never Was* (Waco, TX: Baylor University Press, 2013). Steven A. LeBlanc, *Constant Battles: Why We Fight* (New York: St. Martin's Press, 2004).
17 Clive Gamble, 'Hunter-Gatherers and the Origin of States', and Patricia Crone, 'The Tribe and the State', both in *States in History,* ed. John A. Hall (Oxford: Basil Blackwell, 1986). Vicente Lull and Rafael Micó, *Archæology of the Origin of the State,* trans. Peter Smith (Oxford: Oxford University Press, 2011). James C. Scott, *Against the Grain: A Deep History of the Earliest States* (New Haven, CT: Yale University Press, 2017). On the uneven relationship between political complexity and hierarchy, cf. David Graeber and David Wengrow, 'How to Change the Course of Human History', *Eurozine* (2 March 2018), https://www.eurozine.com/change-course-human-history, accessed 31 March 2018. On the difficulties of state formation in low density regions like sub-Saharan Africa, see Jeffrey Herbst, *States and Power in Africa: Comparative Lessons in Authority and Control* (Princeton, NJ: Princeton University Press, 2000).
18 Hendrik Spruyt, *The Sovereign State and Its Competitors: An Analysis of Systems Change* (Princeton, NJ: Princeton University Press, 1994).
19 Charles Tilly, 'War Making and State Making as Organised Crime', in *Bringing the State Back In,* eds. Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol (Cambridge: Cambridge University Press, 1985), and 'Reflections on the History of European State-Making', in *The Formation of National States in Western Europe,* ed. Charles Tilly (Princeton, NJ: Princeton University Press, 1975). On the different trajectory of state formation in Africa, with its lower population density, cf Gareth Austin, 'Sub-Saharan Africa: Land Rights and Ethno-National Consciousness in Historically Land-Abundant Economies', in *Land Rights, Ethno-Nationality, and Sovereignty in History,* eds. Stanley L. Engerman and Jacob Metzer (London: Routledge, 2004).
20 Steven Pinker, *The Better Angels of Our Nature* (New York: Penguin Books, 2011).
21 Michael Mann, 'The Autonomous Power of the State: Its Origins, Mechanisms, and Results', in *States in History,* ed. Hall. On the relationship between territoriality

and sovereignty, see also Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995), p. 30.

22 Clifford Edmund Bosworth, Ian R. Netton, and Frank E. Vogel, 'Siyasa', in *Encyclopædia of Islam*, 2nd edition, eds. Peri Bearman, Thierry Bianquis, Clifford Edmund Bosworth, Emericus Joannes van Donzel, and Wolfhart Peter Heinrichs (Leiden: E. J. Brill, 1960–2005).

23 Friedrich Nietzsche, 'Thus Spoke Zarathustra', in *The Portable Nietzsche,* trans. Walter Kaufmann (New York: Penguin Books, 1954 [1892]), p. 160.

24 Max Weber, 'Politics as a Vocation', in *From Max Weber: Essays in Sociology*, eds. H. H. Gerth and C. Wright Mills (New York: Oxford University Press, 1948), p. 78.

25 Kenneth H. F. Dyson, *The State Tradition in Western Europe: A Study of an Idea and Institution* (Oxford: Martin Robertson, 1980), p. 206. On the conceptual history of the state in Europe, see also Quentin Skinner, 'The State', in *Political Innovation and Conceptual Change,* eds. Ball, Farr, and Hanson.

26 J. P. Nettl, 'The State as a Conceptual Variable', *World Politics* 20:4 (July 1968), pp. 559–92. Kenneth H. F. Dyson, *The State Tradition in Western Europe: A Study of an Idea and Institution* (Oxford: Martin Robertson, 1980), p. 229.

27 Philippe Meyer, *The Child and the State: The Intervention of the State in Family Life,* trans. Judith Ennew and Janet Lloyd (Cambridge: Cambridge University Press, 1977).

28 Anne-Marie Slaughter, 'The Real New World Order', *Foreign Affairs* 76:5 (1997), pp. 183–97. Diane Stone, 'The "Policy Research" Knowledge Elite and Global Policy Processes', in *Non-State Actors in World Politics,* eds. Daphné Josselin and William Wallace (New York: Palgrave Macmillan, 2001). Peter M. Haas, 'Epistemic Communities and International Policy Coordination', *International Organisation* 46:1 (Winter 1992), pp. 1–35. Thomas Hale and David Held, 'Mapping Changes in Transnational Governance', in *Handbook of Transnational Governance: Institutions and Innovations,* eds. Thomas Hale and David Held (Cambridge, MA: Polity Press, 2011).

29 David Kennedy, 'Challenging Expert Rule: The Politics of Global Governance', *Sydney Journal of International Law* 27 (2005), pp. 5–28.

30 Miguel Ángel Centeno, *Democracy Within Reason: Technocratic Revolution in Mexico* (University Park, PA: Pennsylvania State University Press, 1997 [1994]).

31 Stephen Gill, 'Market Civilisation, New Constitutionalism, and World Order'; Christopher May, 'The Rule of Law as the Grundnorm of the New Constitutionalism'; and Ran Hirschl, 'The Origins of the New Constitutionalism: Lessons from the "Old" Constitutionalism', all in *New Constitutionalism and World Order,* eds. Gill and Cutler. Philip Allott, 'The Emerging International Aristocracy', *New York University Journal of International Law and Politics* 35 (2002/2003), pp. 309–38. Slavoj Žižek, 'This Is a Chance for Europe to Awaken', *The New Statesman* (6 July 2015).

32 Milovan Djilas, *The New Class: An Analysis of the Communist System* (New York: Frederick A. Praeger, 1957). A similar work from Hungary was George Konrád and Ivan Szelényi, *The Intellectuals on the Road to Class Power,* trans. Andrew Arato and Richard E. Allen (New York: Harcourt Brace Jovanovich, 1979 [1974]).

33 Alvin W. Gouldner, *The Future of Intellectuals and the Rise of the New Class* (New York: Seabury Press, 1979). Peter L. Berger, 'The Worldview of the New Class: Secularity and Its Discontents', in *The New Class?,* ed. B. Bruce-Briggs (New York: McGraw-Hill Book Company, 1979). Steven Brint, '"New-Class" and Cumulative Trend Explanations of the Liberal Political Attitudes of Professionals', *American Journal of Sociology* 90:1 (July 1984), pp. 30–69. Richard J. Herrnstein and Charles

Murray, *The Bell Curve: Intelligence and Class Structure in American Life* (New York: The Free Press, 1994).

34 Ernst-Wolfgang Böckenförde, *State, Society, and Liberty: Studies in Political Theory and Constitutional Law* (Oxford: Berg Publishers, 1991), pp. 45–46.

35 Slavoj Žižek, 'This Is a Chance for Europe to Awaken', *The New Statesman* (6 July 2015).

36 Antje Wiener, *Contestation and Constitution of Norms in Global International Relations* (Cambridge: Cambridge University Press, 2018). Michael Zürn, *A Theory of Global Governance: Authority, Legitimacy, and Contestation* (Oxford: Oxford University Press, 2018).

37 Frank J. Lechner, *Globalisation: The Making of World Society* (Chichester: Wiley-Blackwell, 2009). Barry Buzan, *From International to World Society? English School Theory and the Social Structure of Globalisation* (Cambridge: Cambridge University Press, 2004). Ulrich Beck, 'The Cosmopolitan Perspective: Sociology in the Second Age of Modernity', in *Conceiving Cosmopolitanism: Theory, Context, and Practice,* eds. Steven Vertovec and Robin Cohen (Oxford: Oxford University Press, 2002). Jan Aart Scholte, 'Civil Society and Democracy in Global Governance', *Global Governance* 8 (2002), pp. 285–87. John W. Burton, *World Society* (Cambridge: Cambridge University Press, 1972).

38 Peter J. Taylor, 'The State as Container: Territoriality in the Modern World-System', *Progress in Human Geography* 18:2 (1994), pp. 151–62.

39 Joel Migdal, *Strong Societies and Weak States: State–Society Relations and State Capabilities in the Third World* (Princeton, NJ: Princeton University Press, 1988).

40 Susanna Mancini, 'Global Religion in a Post-Westphalia World', in *Handbook on Global Constitutionalism,* eds. Anthony F. Lang, Jr. and Antje Wiener (Cheltenham: Edward Elgar Publishing, 2017).

41 Paul Kennedy, *The Parliament of Man: The Past, Present, and Future of the United Nations* (New York: Random House, 2006), pp. 244–90. Michael W. Doyle, 'The UN Charter: A Global Constitution?' and Bardo Fassbender, 'Rediscovering a Forgotten Constitution: Notes on the Place of the UN Charter in the International Legal Order', both in *Ruling the World? Constitutionalism, International Law, and Global Governance,* eds. Jeffrey L. Dunoff and Joel P. Trachtman (Cambridge: Cambridge University Press, 2009). Bardo Fassbender, '"We the Peoples of the United Nations": Constituent Power and Constitutional Form in International Law', in *The Paradox of Constitutionalism: Constituent Power and Constitutional Form,* eds. Martin Loughlin and Neil Walker (Oxford: Oxford University Press, 2007).

42 Thomas G. Weiss, 'What Happened to the Idea of World Government?', *International Studies Quarterly* 53 (2009), pp. 253–71. William E. Scheuerman, 'Cosmopolitanism and the World State', *Review of International Studies* 40:3 (July 2014), pp. 419–41. Alexander Wendt, 'Collective Identity Formation and the International State', *American Political Science Review* 88:2 (June 1994), pp. 384–96. Ran Hirschl, 'The Origins of the New Constitutionalism: Lessons from the "Old" Constitutionalism', in *New Constitutionalism and World Order,* eds. Gill and Cutler.

43 David Kennedy, 'The Mystery of Global Governance', in *Ruling the World?,* eds. Dunoff and Trachtman. David A. Lake, 'Rightful Rules: Authority, Order, and the Foundations of Global Governance', *International Studies Quarterly* 54 (2010), pp. 587–613.

44 Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, IN: University of Notre Dame Press, 1988), p. 344.

45 Jeffrey L. Dunoff and Joel P. Trachtman, 'A Functional Approach to International Constitutionalisation', Andreas L. Paulus, 'The International Legal System as a

Constitution', and Mattias Kumm, 'The Cosmopolitan Turn in Constitutionalism: On the Relationship Between Constitutionalism in and Beyond the State', all in *Ruling the World?,* eds. Dunoff and Trachtman. Benedict Kingsbury, Nico Krisch, and Richard B. Stewart, 'The Emergence of Global Administrative Law'; and Martin Shapiro, '"Deliberative", "Independent" Technocracy v. Democratic Politics: Will the Globe Echo the EU?' both in *Law and Contemporary Problems* 68:3/4 (Summer/Autumn 2005). Carol Harlow, 'Global Administrative Law: The Quest for Principles and Values', *European Journal of International Law* 17:1 (February 2006), pp. 187–214. Andrew Hurrell, 'International Law and the Making and Unmaking of Boundaries', in *States, Nations, and Borders: The Ethics of Making Boundaries,* eds. Allen Buchanan and Margaret Moore (Cambridge: Cambridge University Press, 2003).

46 Cesare Mirabelli, 'The Religious Element in the Constitution for Europe', in *Governing Europe Under a Constitution: The Hard Road from the European Treaties to a European Constitutional Treaty,* eds. Hermann-Josef Blanke and Stelio Mangiameli (Berlin: Springer, 2006).

47 Pablo Cristóbal Jiménez Lobeira, 'Pre-Political Foundations of the Democratic Constitutional State: Europe and the Habermas–Ratzinger Debate', Social Science Research Network (2 July 2010), http://ssrn.com/abstract=1633715, accessed 15 May 2016.

48 Garrett Wallace Brown, 'Cosmopolitanism and Global Constitutionalism'; Anthony F. Lang, Jr, and Antje Wiener, 'A Constitutionalising Global Order'; and Christopher Thornhill, 'The Enlightenment and Global Constitutionalism', all in *Handbook on Global Constitutionalism,* eds. Lang and Wiener. Stephen Gardbaum, 'Human Rights and International Constitutionalism', in *Ruling the World?,* eds. Dunoff and Trachtman. Anne Peters, 'Compensatory Constitutionalism: The Function and Potential of Fundamental International Norms and Structures', *Leiden Journal of International Law* 19 (2006), pp. 579–610. Christopher Thornhill, 'A Sociology of Constituent Power: The Political Code of Transnational Societal Constitutions', *Indiana Journal of Global Legal Studies* 20:2 (2013), pp. 551–603.

49 Charles R. Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press, 1999 [1979]). On the older liberal view of justice among more self-contained polities, cf. John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), and Robert W. Glover, 'Eyes Wide Shut: The Curious Silence of The Law of Peoples on Questions of Immigration and Citizenship', *Eidos* 14 (2011), pp. 10–49.

50 Thomas W. Pogge, *Realising Rawls* (Ithaca, NY: Cornell University Press, 1989). Yael Tamir, 'Who's Afraid of a Global State?', in *Nationalism and Internationalism in the Post-Cold War Era,* eds. Kjell Goldmann, Ulf Hannerz, and Charles Westin (London: Routledge, 2000). Mattias Kumm, 'The Cosmopolitan Turn in Constitutionalism: On the Relationship Between Constitutionalism in and Beyond the State', in *Ruling the World?*, eds. Dunoff and Trachtman, pp. 314–15. David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford, CA: Stanford University Press, 1995). Nancy Fraser, 'Transnationalising the Public Sphere: On the Legitimacy and Efficacy of Public Opinion in a Post-Westphalian World', in *Identities, Affiliations, and Allegiances,* eds. Seyla Benhabib, Ian Shapiro, and Danilo Petranović (Cambridge: Cambridge University Press, 2007). Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, MA: Harvard University Press, 2006).

51 Neil Walker, 'Constitutional Pluralism Revisited', *European Law Journal* 22:3 (May 2016), pp. 333–55. Neil Walker, 'Constitution and Pluralism', and Eoin

Carolan, 'Balance of Powers', both in *Handbook on Global Constitutionalism,* eds. Lang and Wiener.

52 Eric Cavallero, 'Federative Global Democracy', *Metaphilosophy* 40:1 (January 2009), pp. 42–64. Rainer Bauböck, 'Political Boundaries in a Multilevel Democracy', in *Identities, Affiliations, and Allegiances,* eds. Benhabib, Shapiro, and Petranović.

53 Bruno S. Frey and Reiner Eichenberger, 'A Proposal for a Flexible Europe', *World Economy* 23:10 (November 2000), pp. 1323–34.

54 Dominic D. P. Johnson and Monica Duffy Toft, 'Grounds for War: The Evolution of Territorial Conflict', *International Security* 38:3 (Winter 2013/2014), pp. 7–38. See also Robert David Sack, *Human Territoriality: Its Theory and History* (Cambridge: Cambridge University Press, 1986).

55 Barry Buzan, *From International to World Society? English School Theory and the Social Structure of Globalisation* (Cambridge: Cambridge University Press, 2004), pp. 147–48.

56 Poul F. Kjaer, *Constitutionalism in the Global Realm: A Sociological Approach* (London: Routledge, 2014), p. 48. Barry Buzan and Mathias Albert, 'Differentiation: A Sociological Approach to International Relations Theory', *European Journal of International Relations* 16:3 (2010), pp. 315–37. On the practical tensions between functional and federal differentiation, see Johan Karlsson, 'The Stability of a Cosmopolitan Political Order: Functionalism Versus Federalism', paper presented at International Studies Association Annual Convention, New Orleans, LA (February 2010). Daniel Kofman, 'The Normative Limits to the Dispersal of Territorial Sovereignty', *The Monist* 90:1 (2007), pp. 65–85.

57 John W. Meyer, 'The World Polity and the Authority of the Nation-State', in *Institutional Structure: Constituting State, Society, and the Individual,* eds. George M. Thomas, John W. Meyer, Francisco O. Ramírez, and John Boli (London: Sage Publications, 1987). John W. Meyer, John Boli, George M. Thomas, and Francisco O. Ramírez, 'World Society and the Nation-State', *American Journal of Sociology* 103:1 (July 1997), pp. 144–81. See also Robert David Sack, *Human Territoriality: Its Theory and History* (Cambridge: Cambridge University Press, 1986), p. 162.

58 Mark Bevir, 'A History of Modern Pluralism', in *Modern Pluralism: Anglo-American Debates Since 1880,* ed. Mark Bevir (Cambridge: Cambridge University Press, 2012).

59 Arnold J. Toynbee, *A Study of History* (London: Oxford University Press, 1954), vol VII.

Chapter 1

1 Alan T. Wood, *Limits to Autocracy: From Sung Neo-Confucianism to a Doctrine of Political Rights* (Honolulu, HI: University of Hawai'i Press, 1995), p. 1.

2 Adam K. Webb, *Beyond the Global Culture War* (London: Routledge, 2006); *A Path of Our Own: An Andean Village and Tomorrow's Economy of Values* (Wilmington, DE: ISI Books, 2009); and *Deep Cosmopolis: Rethinking World Politics and Globalisation* (London: Routledge, 2015).

3 William A. Galston, *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State* (Cambridge: Cambridge University Press, 1991), especially p. 107 and pp. 220–21.

4 Alasdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, IN: University of Notre Dame Press, 1988), pp. 361–68 and p. 398.

5 Franz Rosenthal, *Sweeter than Hope: Complaint and Hope in Mediæval Islam* [Leiden: E. J. Brill, 1983], reprinted in *Man versus Society in Mediæval Islam,* ed. Dimitri Gutas (Leiden: E. J. Brill, 2015), pp. 545–59. Roger T. Ames, *The Art of*

Rulership: A Study in Ancient Chinese Political Thought (Honolulu, HI: University of Hawaii Press, 1983), pp. 24–25. Peter King, *Reaction: Against the Modern World* (Exeter: Societas, 2012). Robert A. Nisbet, *Tradition and Revolt: Historical and Sociological Essays* (New York: Vintage Books, 1970), pp. 7–8.

6 Carole L. Crumley, 'Heterarchy and the Analysis of Complex Societies', *Archæological Papers of the American Anthropological Association* 6:1 (January 1995), pp. 1–5.

7 Bernard M. Levinson, 'The First Constitution: Rethinking the Origins of Rule of Law and Separation of Powers in Light of Deuteronomy', *Cardozo Law Review* 27:4 (2006), pp. 1853–88.

8 Antony Black, *Political Thought in Europe, 1250–1450* (Cambridge: Cambridge University Press, 1992). Francisco de Vitoria, 'On the Power of the Church', Part I, in *Political Writings,* eds. Anthony Pagden and Jeremy Lawrance (Cambridge: Cambridge University Press, 1991 [1532]). J. A. Watt, 'Spiritual and Temporal Powers', and K. Pennington, 'Law, Legislative Authority, and Theories of Government, 1150–1300', both in *The Cambridge History of Mediæval Political Thought, c. 350–c. 1450,* ed. J. H. Burns (Cambridge: Cambridge University Press, 1988). Maureen C. Miller, *Power and the Holy in the Age of the Investiture Conflict* (New York: Bedford/St Martins, 2005).

9 Francis Oakley, 'Mediæval Constitutionalism', in *Handbook on Global Constitutionalism,* eds. Lang and Wiener.

10 Louis Dumont, *Homo Hierarchicus: The Caste System and Its Implications,* trans. Mark Sainsbury, Louis Dumont, and Basia Gulati (Chicago, IL: University of Chicago Press, 1980 [1966]), p. 72ff. John W. Spellman, *Political Theory of Ancient India: A Study of Kingship from the Earliest Times to Circa AD 300* (Oxford: Clarendon Press, 1964), pp. 4–7, p. 25, p. 56, pp. 98–102, and pp. 107–10.

11 Chang Kwang-chih, *The Archæology of Ancient China*, 4th ed. (New Haven, CT: Yale University Press, 1986 [1963]).

12 Randall Peerenboom, *Law and Morality in Ancient China: The Silk Manuscripts of Huang-Lao* (Albany, NY: State University of New York Press, 1993). Roger T. Ames, *The Art of Rulership: A Study in Ancient Chinese Political Thought* (Honolulu, HI: University of Hawaii Press, 1983). Wang Hongying, 'Chinese Culture and Multilateralism', in *The New Realism: Perspectives on Multilateralism and World Order,* ed. Robert W Cox (Tokyo: United Nations University Press, 1997). Alan T. Wood, *Limits to Autocracy: From Sung Neo-Confucianism to a Doctrine of Political Rights* (Honolulu, HI: University of Hawai'i Press, 1995).

13 Romeyn Taylor, 'Chinese Hierarchy in Comparative Perspective', *Journal of Asian Studies* 48:3 (August 1989), pp. 490–511. Benjamin I. Schwartz, 'The Primacy of the Political Order in East Asian Societies: Some Preliminary Generalisations', in *Foundations and Limits of State Power in China,* ed. S R Schram (London: European Science Foundation, 1987).

14 G. William Skinner, 'Cities and the Hierarchy of Local Systems', in *The City in Late Imperial China,* ed. G William Skinner (Stanford, CA: Stanford University Press, 1977).

15 Geoffrey Barraclough, *Turning Points in World History* (London: Thames and Hudson, 1979), pp. 21–25. Cf Karl Bünger, 'Concluding Remarks on Two Aspects of the Chinese Unitary State as Compared with the European State System', in *Foundations and Limits of State Power in China,* ed. Schram.

16 W. Montgomery Watt, *Islamic Political Thought* (Edinburgh: Edinburgh University Press, 1968), pp. 82–89.

17 Hans-Jürgen Nitz, 'Planned Temple Towns and Brahmin Villages as Spatial Expressions of the Ritual Politics of Mediæval Kingdoms in South India', in

Ideology and Landscape in Historical Perspective: Essays on the Meanings of Some Places in the Past, eds. Alan R. H. Baker and Gideon Biger (Cambridge: Cambridge University Press, 1992).

18 Di Hu, *The Fabric of Resistance: Textile Workshops and the Rise of Rebellious Landscapes in Colonial Peru* (Tuscaloosa, FL: University of Alabama Press, 2022), pp. 13–32.

19 Jill Harries, 'Global Constitutionalism: The Ancient Worlds', in *Handbook on Global Constitutionalism,* eds. Lang and Wiener.

20 Ernest Barker, *Church, State, and Study* (London: Methuen and Company, 1930). Harro Höpfl, *Jesuit Political Thought: The Society of Jesus and the State, c. 1540–1630* (Cambridge: Cambridge University Press, 2004). Víctor Pradera, *El estado nuevo* (Madrid: Cultura Española, 1935), p. 107. Sylvester John Hemleben, *Plans for World Peace Through Six Centuries* (Chicago, IL: University of Chicago Press, 1943).

21 Anver M. Emon, 'Case Studies: On Sovereignties in Islamic Legal History', *Middle East Law and Governance* 4 (2012), pp. 265–305.

22 James C. Scott, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (New Haven, CT: Yale University Press, 2009).

23 Gideon Baker, '"Now We Have Been Delivered from the Law": Thoughts Towards a Genealogy of Anarchism', *Griffith Law Review* 21:2 (2012), pp. 369–90.

24 Alexandre Christoyannopoulos, *Christian Anarchism: A Political Commentary on the Gospel* (Exeter: Imprint Academic, 2011).

25 Roger T. Ames, *The Art of Rulership: A Study in Ancient Chinese Political Thought* (Honolulu, HI: University of Hawaii Press, 1983), pp. 8–9. Vitaly A. Rubin, *Individual and State in Ancient China: Essays on Four Chinese Philosophers,* trans. Steven I. Levine (New York: Columbia University Press, 1976). John A. Rapp, *Daoism and Anarchism: Critiques of State Autonomy in Ancient and Modern China* (London: Continuum Books, 2012). Sam Crane, *Life, Liberty, and the Pursuit of Dao: Ancient Chinese Thought in Modern American Life* (Chichester: Wiley Blackwell, 2013), pp. 156–62. On Daoist influence on modern Chinese anarchism, see Peter Zarrow, *Anarchism and Chinese Political Culture* (New York: Columbia University Press, 1990).

26 Antony Black, *Political Thought in Europe, 1250–1450* (Cambridge: Cambridge University Press, 1992), pp. 7–12, p. 14, p. 19, and pp. 28–31. Thomas Glyn Watkin, *An Historical Introduction to Modern Civil Law* (Aldershot: Dartmouth, 1999), p. 353. Bertrand de Jouvenel, *On Power: The Natural History of Its Growth* trans J. F. Huntington (Indianapolis, IN: Liberty Fund, 1993 [1945]), pp. 31–33 and pp. 314–15; and *Sovereignty: An Inquiry into the Political Good* (Indianapolis, IN: Liberty Fund, 1997 [1957]), pp. 201–208, p. 217, and pp. 220–21.

27 Louis Dumont, *Homo Hierarchicus: The Caste System and Its Implications,* trans. Mark Sainsbury, Louis Dumont, and Basia Gulati (Chicago, IL: University of Chicago Press, 1980 [1966]), p. 168.

28 André Wink, *Land and Sovereignty in India: Agrarian Society and Politics Under the Eighteenth Century Maratha Svarājya* (Cambridge: Cambridge University Press, 1986).

29 W. Montgomery Watt, *Islamic Political Thought* (Edinburgh: Edinburgh University Press, 1968), p. 5.

30 Mencius, *The Works of Mencius,* trans. James Legge (New York: Dover Publications, 1970 [1895]), II:2:iii:6.

31 Guanzi [Guan Zhong], *Guanzi: Political, Economic, and Philosophical Essays from Early China,* trans. W. Allyn Rickett (Princeton, NJ: Princeton University Press, 1985), 'Shepherding the People' 3:9–10.

32 The breakdown of this conceptual structure with modernisation is explored in Kai Vogelsang, 'Chinese "Society": History of a Troublesome Concept', *Oriens Extremus* 51 (2012), pp. 155–92.
33 Fei Xiaotong [费孝通], 乡土中国 (北京: 人民出版社, 2008 [1947]).
34 The term 'consanguineous affection' comes from Liu Qingping, 'Filiality Versus Sociality and Individuality: On Confucianism as "Consanguinitism"', *Philosophy East and West* 53:2 (April 2003), pp. 234–50.
35 Sophocles, *Antigone* trans David Franklin and John Harrison (Cambridge: Cambridge University Press, 2003).
36 Louis Dumont, *Homo Hierarchicus: The Caste System and Its Implications,* trans. Mark Sainsbury, Louis Dumont, and Basia Gulati (Chicago, IL: University of Chicago Press, 1980 [1966]).
37 John W. Spellman, *Political Theory of Ancient India: A Study of Kingship from the Earliest Times to Circa AD 300* (Oxford: Clarendon Press, 1964), pp. 7–8, p. 99, and pp. 104–106.
38 Plato, *The Republic,* trans. Richard W. Sterling and William C. Scott (New York: W. W. Norton, 1985).
39 Marshall G. S. Hodgson, *The Venture of Islam: Conscience and History in a World Civilisation* (Chicago, IL: University of Chicago Press, 1974), vol i, p. 219.
40 Feng Youlan [Fung Yulan], *A History of Chinese Philosophy*, vol. i, trans. Derk Bodde (Princeton, NJ: Princeton University Press, 1952), p. 120, p. 298, and p. 339. Joseph R. Levenson, *Confucian China and Its Modern Fate* (Berkeley, CA: University of California Press, 1968), p. 31. Benjamin I. Schwartz, 'Some Polarities in Confucian Thought', in *Confucianism and Chinese Civilisation,* ed. Arthur F. Wright (New York: Atheneum, 1964), p. 5 and p. 13.
41 William Theodore de Bary, *The Liberal Tradition in China* (Hong Kong: The Chinese University Press, 1983). Julia Tao and Andrew Brennan, 'Confucian and Liberal Ethics for Public Policy: Holistic or Atomistic?' *Journal of Social Philosophy* 34:4 (Winter 2003), pp. 572–89.
42 Erik Ohlander, 'Enacting Justice, Ensuring Salvation: The Trope of the "Just Ruler" in Some Mediæval Islamic Mirrors for Princes', *Muslim World* 99 (April 2009), pp. 237–52. Franz Rosenthal, *The Muslim Concept of Freedom Prior to the Nineteenth Century* [Leiden: E. J. Brill, 1960], and *The Herb: Hashish versus Mediæval Muslim Society* [Leiden: E. J. Brill, 1971], both reprinted in *Man versus Society in Mediæval Islam,* ed. Gutas. Anver M. Emon, 'Case Studies: On Sovereignties in Islamic Legal History', *Middle East Law and Governance* 4 (2012), pp. 274–77.
43 Louis Dumont, *Homo Hierarchicus: The Caste System and Its Implications,* trans. Mark Sainsbury, Louis Dumont, and Basia Gulati (Chicago, IL: University of Chicago Press, 1980 [1966]), pp. 184–85.
44 Antony Black, 'The Individual and Society', in *The Cambridge History of Mediæval Political Thought, c. 350–c. 1450,* ed. Burns.
45 Marcus Tullius Cicero, *De Officiis* [On Duties], trans. Walter Miller (Cambridge, MA: Harvard University Press, 1913), III:9–10 and 19.
46 Roger T. Ames, *The Art of Rulership: A Study in Ancient Chinese Political Thought* (Honolulu, HI: University of Hawaii Press, 1983), pp. 9–12 and p. 50.
47 G. B. Kerferd, *The Sophistic Movement* (New York: Cambridge University Press, 1981). Kautilya, *Arthashastra,* trans. R. Shamasastry (Bangalore, India: Government Press, 1915).
48 Jean Bodin, *On Sovereignty* [*Six Books on the Commonwealth*], ed. Julian H. Franklin (Cambridge: Cambridge University Press, 1992 [1576]).
49 Bertrand de Jouvenel, *On Power: The Natural History of Its Growth* trans J. F. Huntington (Indianapolis, IN: Liberty Fund, 1993 [1945]), pp. 52–57, pp. 66–67,

p. 118, p. 132, p. 141, p. 145, and p. 233; *Sovereignty: An Inquiry into the Political Good* (Indianapolis, IN: Liberty Fund, 1997 [1957]), pp. 3–5 and p. 218. On similar themes, see also Jens Bartelson, *A Genealogy of Sovereignty* (Cambridge: Cambridge University Press, 1995), pp. 188–89 and pp. 210–36; Ernst-Wolfgang Böckenförde, *State, Society, and Liberty: Studies in Political Theory and Constitutional Law* (Oxford: Berg Publishers, 1991), pp. 26–46; and H. L. Laski, *The Foundations of Sovereignty and Other Essays*, reprinted in *The Pluralist Theory of the State: Selected Writings of G D H Cole, J N Figgis, and H J Laski,* ed. Paul Q. Hirst (London: Routledge, 1989), p. 200.

50 Thomas Hobbes, *Leviathan: The Matter, Form and Power of a Commonwealth Ecclesiastical and Civil* (London: Andrew Crooke, 1651), introduction and chapters 1, 6, 11, 13, 14, and 17–18.

51 John Locke, *Two Treatises of Government* (London: Awnsham Churchill, 1690), chapters 2, 5, and 9.

52 C. B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford: Oxford University Press, 1962). Self-ownership also appears more recently in libertarian writings such as Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

53 Benjamin Constant, 'The Liberty of the Ancients Compared with That of the Moderns', in *The Political Writings of Benjamin Constant,* ed. Biancamaria Fontana (Cambridge: Cambridge University Press, 1988 [1819]).

54 Isaiah Berlin, 'Two Concepts of Liberty', in *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), pp. 118–72. Quentin Skinner, *Liberty Before Liberalism* (Cambridge: Cambridge University Press, 1998). Horacio Spector, 'Four Conceptions of Freedom', *Political Theory* 38:6 (December 2010), pp. 780–808.

55 John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1999 [1971], §4, §22, §26, §34, §50, and §85; and *Political Liberalism* (New York: Columbia University Press 1993), §1.5.2–3, §4.6.4, and §6.1.

56 Amartya Sen, 'Capability and Wellbeing', in *The Quality of Life,* eds. Martha Nussbaum and Amartya Sen (Oxford: Oxford University Press, 1993).

57 Michel Foucault, *Discipline and Punish,* trans. Alan Sheridan (New York: Pantheon Books, 1977 [1975]), p. 30.

58 Christopher Lasch, *The Culture of Narcissism: American Life in an Age of Diminishing Expectations* (New York: W. W. Norton, 1979).

59 Carl R. Trueman, 'The Rise of "Psychological Man"', *Public Discourse* (9 November 2020), https://www.thepublicdiscourse.com/2020/11/72156/, accessed 23 January 2021, and 'The Impact of Psychological Man and How to Respond', *Public Discourse* (10 November 2020), https://www.thepublicdiscourse.com/2020/11/72190/, accessed 23 January 2021. Angela Franks, 'The Body as Totem in the Asexual Revolution', *Church Life Journal* (21 January 2021), https://churchlife-journal.nd.edu/articles/the-body-as-totem-in-the-asexual-revolution/, accessed 22 January 2021. Helen M Alvaré, 'Religious Freedom versus Sexual Expression: A Guide', *Journal of Law and Religion* 30:3 (2015), pp. 475–95.

60 Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge, MA: Harvard University Press, 1982).

61 Kimberlé Crenshaw, 'Demarginalising the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics', *University of Chicago Legal Forum* 1:8 (1989), pp. 139–67.

62 Mike Moses, 'Privilege, Oppression, and the Gospel: A Biblical Response to Intersectionality', *Presbyterion* 45:1 (Spring 2019), pp. 128–52.

63 Jane Coaston, 'The Intersectionality Wars', *Vox* (28 May 2019), https://www.vox.com/the-highlight/2019/5/20/18542843/intersectionality-conservatism-law-race-gender-discrimination, accessed 3 December 2019.
64 Matthew Rose, 'The Anti-Christian Alt-Right: The Perverse Thought of Right-Wing Identity Politics', *First Things* (March 2018), https://www.firstthings.com/article/2018/03/the-anti-christian-alt-right, accessed 3 February 2021. Alain de Benoist, *On Being a Pagan* trans. Jon Graham (North Augusta, SC: Arcana Europa, 2018 [1981]).
65 Thomas Glyn Watkin, *An Historical Introduction to Modern Civil Law* (Aldershot: Dartmouth, 1999), pp. 343–45.
66 Jan-Werner Müller, 'Value Pluralism in Twentieth Century Anglo-American Thought', in *Modern Pluralism,* ed. Bevir.
67 David Nicholls, *Three Varieties of Pluralism* (London: Macmillan Press, 1974); and *The Pluralist State* (London: Macmillan Press, 1975).
68 David Nicholls, *The Pluralist State* (London: Macmillan Press, 1975). John Neville Figgis, *Churches in the Modern State*, 2nd ed. (London: Longmans, Green and Company, 1914). Otto Friedrich von Gierke, *Associations and Law: The Classical and Early Christian Stages,* trans. George Heiman (Toronto: University of Toronto Press, 1977). L. T. Hobhouse, *Morals in Evolution: A Study in Comparative Ethics* (London: Chapman and Hall, 1951 [1906]). Laski, *op. cit*.
69 Mark Bevir, 'A History of Modern Pluralism', in *Modern Pluralism: Anglo-American Debates Since 1880,* ed. Mark Bevir (Cambridge: Cambridge University Press, 2012). Marc Stears, *Progressives, Pluralists, and the Problems of the State: Ideologies of Reform in the United States and Britain, 1909–1926* (Oxford: Oxford University Press, 2002). 'Guild Socialism: The Storrington Document' [1914 report by Guild Socialists], in *Essays in Labour History, 1886–1923,* eds. Asa Briggs and John Saville (London: Palgrave Macmillan, 1971), pp. 332–49.
70 Cécile Laborde, *Pluralist Thought and the State in Britain and France, 1900–25* (Basingstoke: Palgrave Macmillan, 2000).
71 Cécile Laborde, *Pluralist Thought and the State in Britain and France, 1900–25* (Basingstoke: Palgrave Macmillan, 2000).
72 Jacob T. Levy, 'From Liberal Constitutionalism to Pluralism', in *Modern Pluralism,* ed. Bevir.
73 Johannes Althusius, *The Politics of Johannes Althusius,* trans. Frederick S. Carney (London: Eyre and Spottiswoode, 1964 [1603]).
74 Abraham Kuyper, 'Calvinism: Source and Stronghold of our Constitutional Liberties', 1873 speech reprinted in *Abraham Kuyper: A Centennial Reader,* ed. James D. Bratt (Grand Rapids, MI: William B. Eerdmans Publishing Company, 1998).
75 Herman Dooyeweerd, *Roots of Western Culture: Pagan, Secular, and Christian Options,* trans. John Kraay (Grand Rapids, MI: Paideia Press, 2012 [1963]), pp. 156–73; 'The Christian Idea of the State' [1936], pp. 139–40 and pp. 150–51, and 'The Contest over the Concept of Sovereignty' [1950], pp. 112–15, both in *Essays in Legal, Social, and Political Philosophy* (Lampeter: Edwin Mellen Press, 1996). Jonathan Chaplin, *Herman Dooyeweerd: Christian Philosopher of State and Civil Society* (Notre Dame, IN: University of Notre Dame Press, 2011), pp. 14–17.
76 Dooyeweerd, 'The Contest over the Concept of Sovereignty', pp. 115–16, and p. 118; 'Sociology of Law and Its Philosophical Foundations' [1964], trans. Robert Knudsen, in *Essays in Legal, Social, and Political Philosophy*, pp. 73–76, p. 83 and pp. 88–89; Herman Dooyeweerd, *Roots of Western Culture: Pagan, Secular, and Christian Options* trans John Kraay (Grand Rapids, MI: Paideia Press, 2012 [1963]), pp. 41–50 and p. 90; and *A Christian Theory of Social Institutions,* trans

M. Verbrugge, summarised in Johan D. van der Vyver, 'Sphere Sovereignty of Religious Institutions: A Contemporary Calvinistic Theory of Church–State Relations', in *Church Autonomy: A Comparative Survey,* ed. Gerhard Robbers (Frankfurt am Main: Peter Lang, 2001). Jonathan Chaplin, *Herman Dooyeweerd: Christian Philosopher of State and Civil Society* (Notre Dame, IN: University of Notre Dame Press, 2011), chapters 4–7. Johan D. van der Vyver, 'Sphere Sovereignty of Religious Institutions: A Contemporary Calvinistic Theory of Church–State Relations', in *Church Autonomy: A Comparative Survey,* ed. Gerhard Robbers (Frankfurt am Main: Peter Lang, 2001). Rockne McCarthy, Donald Oppewal, Walfred Peterson, and Gordon Spykman, *Society, State, and Schools: A Case for Structural and Confessional Pluralism* (Grand Rapids, MI: William B. Eerdmans Publishing Company, 1981), pp. 38–40. Richard J. Mouw, 'Some Reflections on Sphere Sovereignty', in *Religion, Pluralism, and Public Life: Abraham Kuyper's Legacy for the Twenty-First Century,* ed. Luis E. Lugo (Grand Rapids, MI: William B. Eerdmans Publishing Company, 2000), p. 91, pp. 98–100, p. 103, and p. 106. Cornelius P. Venema, 'Abraham Kuyper: Answering Criticisms of His Worldview', in *On Kuyper: A Collection of Readings on the Life, Work, and Legacy of Abraham Kuyper,* eds. Steve Bishop and John H. Kok (Sioux Centre, IA: Dordt College Press, 2013), pp. 86–88. James W. Skillen and Rockne M. McCarthy, 'Introduction', in *Political Order and the Plural Structure of Society,* eds. James W. Skillen and Rockne M. McCarthy (Atlanta, GA: Scholars Press, 1991).

77 Dooyeweerd, 'Calvinism and Natural Law' [1925], pp. 36–37; and 'The Christian Idea of the State' [1936], in *Essays in Legal, Social, and Political Philosophy* (Lampeter: Edwin Mellen Press, 1996), p. 152. Jonathan Chaplin, *Herman Dooyeweerd: Christian Philosopher of State and Civil Society* (Notre Dame, IN: University of Notre Dame Press, 2011), pp. 156–270. Rockne McCarthy, Donald Oppewal, Walfred Peterson, and Gordon Spykman, *Society, State, and Schools: A Case for Structural and Confessional Pluralism* (Grand Rapids, MI: William B. Eerdmans Publishing Company, 1981), pp. 164–66. Richard J. Mouw, 'Some Reflections on Sphere Sovereignty', in *Religion, Pluralism, and Public Life: Abraham Kuyper's Legacy for the Twenty-First Century,* ed. Luis E. Lugo (Grand Rapids, MI: William B. Eerdmans Publishing Company, 2000), pp. 89–90.

78 Dooyeweerd, 'Calvinism and Natural Law' [1925], pp. 20–35; and 'The Christian Idea of the State' [1936], in *Essays in Legal, Social, and Political Philosophy* (Lampeter: Edwin Mellen Press, 1996), p. 152.

79 Weber, 'Religious Rejections of the World and Their Directions', in *From Max Weber,* eds. Gerth and Mills, pp. 331–57. Jonathan Chaplin, *Herman Dooyeweerd: Christian Philosopher of State and Civil Society* (Notre Dame, IN: University of Notre Dame Press, 2011), p. 82 and pp. 98–101. Elaine Storkey, 'Sphere Sovereignty and the Anglo-American Tradition', in *Religion, Pluralism, and Public Life,* ed. Lugo, p. 191.

80 James D. Bratt, *Abraham Kuyper: Modern Calvinist, Christian Democrat* (Grand Rapids, MI: William B, Eerdmans Publishing Company, 2013), chapter 2.

81 James D. Bratt, 'Abraham Kuyper: Puritan, Victorian, Modern', in *Kuyper Reconsidered: Aspects of His Life and Work,* eds. Cornelis van der Kooi and Jan de Bruijn (Amsterdam: VU Uitgeverij, 1999).

82 Herman Dooyeweerd, *Roots of Western Culture: Pagan, Secular, and Christian Options* trans John Kraay (Grand Rapids, MI: Paideia Press, 2012 [1963]), pp. 21–22, pp. 57–58, and pp. 76–82; and 'The Relation of the Individual and Community', trans. Daniël F. M. Strauss [1946], in *Essays in Legal, Social, and Political Philosophy*, pp. 93–94. Jonathan Chaplin, *Herman Dooyeweerd: Christian*

Philosopher of State and Civil Society (Notre Dame, IN: University of Notre Dame Press, 2011), chapters 4–5.

83 Dooyeweerd, 'Calvinism and Natural Law' [1925], trans. A. Wolters, in *Essays in Legal, Social, and Political Philosophy*, p. 5 and pp. 14–19; 'The Christian Idea of the State' [1936], in *Essays in Legal, Social, and Political Philosophy* (Lampeter: Edwin Mellen Press, 1996), p. 143; and Herman Dooyeweerd, *Roots of Western Culture: Pagan, Secular, and Christian Options* trans John Kraay (Grand Rapids, MI: Paideia Press, 2012 [1963]), pp. 8–9. Kuyper, 'Uniformity: The Curse of Modern Life' [1869] and 'The Blurring of the Boundaries' [1892], both in *Abraham Kuyper: A Centennial Reader,* ed. Bratt. Jonathan Chaplin, *Herman Dooyeweerd: Christian Philosopher of State and Civil Society* (Notre Dame, IN: University of Notre Dame Press, 2011), pp. 39–54.

84 Richard J. Mouw, 'Some Reflections on Sphere Sovereignty', in *Religion, Pluralism, and Public Life: Abraham Kuyper's Legacy for the Twenty-First Century,* ed. Luis E. Lugo (Grand Rapids, MI: William B. Eerdmans Publishing Company, 2000), p. 102.

85 Elaine Storkey, 'Sphere Sovereignty and the Anglo-American Tradition', in *Religion, Pluralism, and Public Life,* ed. Lugo, pp. 192–204. Son Bong Ho, 'Relevance of Sphere Sovereignty to Korean Society', in *Kuyper Reconsidered,* eds. van der Kooi and de Bruijn. Thomas Harvey, 'Sphere Sovereignty, Civil Society, and the Pursuit of Holistic Transformation in Asia', *Transformation* 33:1 (2016), pp. 50–64. Ng Kam Weng, 'Covenant Politics and Pluralist Democracy for a New Asia: An Asian Christian Social Vision', *Transformation* 21:2 (April 2004), pp. 83–92.

86 James D. Bratt, 'Abraham Kuyper: His World and Work', in *Abraham Kuyper: A Centennial Reader* ed. Bratt. D. T. Kuiper, 'Groen and Kuyper on the Racial Issue', in *Kuyper Reconsidered,* eds. van der Kooi and de Bruijn. Peter J. Paris, 'The African and African-American Understanding of Our Common Humanity: A Critique of Abraham Kuyper's Anthropology', in *Religion, Pluralism, and Public Life,* ed. Lugo. Tracy Kuperus, 'An Eclectic Inheritance: Kuyper's Politics Today', *Comment (Cardus)* (25 October 2013), http://www.cardus.ca/comment/article/4067/an-eclectic-inheritancekuypers-politics-today/,accessed 13 October 2024. Hillie J. van der Streek, 'Kuyper's Legacy and Multiculturalism: Gender in His Conception of Democracy and Sphere Sovereignty', in *On Kuyper,* eds. Bishop and Kok, p. 443.

87 Kuyper, 'The Blurring of the Boundaries' [1892], in *Abraham Kuyper: A Centennial Reader,* ed. Bratt, pp. 384–86.

88 Richard J. Mouw, 'Some Reflections on Sphere Sovereignty', in *Religion, Pluralism, and Public Life: Abraham Kuyper's Legacy for the Twenty-First Century,* ed. Luis E. Lugo (Grand Rapids, MI: William B. Eerdmans Publishing Company, 2000), pp. 103–104. Jonathan Chaplin, *Herman Dooyeweerd: Christian Philosopher of State and Civil Society* (Notre Dame, IN: University of Notre Dame Press, 2011), chapters 3 and 5. M. Thomas Thangaraj, 'The Clash of World Religions in the Emerging Global Society', in *Religion, Pluralism, and Public Life,* ed. Lugo. B. J. van der Walt, 'Christian Religion and Society: The Heritage of Abraham Kuyper for (South) Africa', in *Kuyper Reconsidered,* eds. van der Kooi and de Bruijn.

89 Herman Dooyeweerd, *Roots of Western Culture: Pagan, Secular, and Christian Options* trans John Kraay (Grand Rapids, MI: Paideia Press, 2012 [1963]), p. 8 and p. 129. In a similar vein, today's advocates of 'radical orthodoxy' also wish to re-anchor philosophy and the social sciences within a Christian perspective, which at most might allow case-by-case 'coincidences of outlook' with other traditions. See John Milbank, 'Knowledge: The Theological Critique of Philosophy in Hamann and Jacobi', in *Radical Orthodoxy: A New Theology,* eds. John Milbank, Catherine Pickstock, and Graham Ward (London: Routledge, 1999); and Angus M.

Slater, 'The "Comeback of Christendom" or a "Christian Cosmopolis"? Dialogical Possibilities in the Work of John Milbank', *Journal of Dialogue Studies* 3:2 (2015), pp. 31–51.

90 John Emerich Edward Dalberg Acton, *The History of Freedom and Other Essays,* eds. John Neville Figgis and Reginald Vere Laurence (London: Macmillan and Company, 1909), pp. 1–29.

91 Bertrand de Jouvenel, *On Power: The Natural History of Its Growth* trans J. F. Huntington (Indianapolis, IN: Liberty Fund, 1993 [1945]), pp. 352–53.

92 Michael W. McConnell, 'The Origins and Historical Understanding of Free Exercise of Religion', *Harvard Law Review* 103 (1990), pp. 1410–517. Pratap Bhanu Mehta, 'Death and the Sovereign', *The Indian Express* (19 August 2015). Ernst-Wolfgang Böckenförde, *State, Society, and Liberty: Studies in Political Theory and Constitutional Law* (Oxford: Berg Publishers, 1991), pp. 204–45. Lynn Dobson, 'Conceptions of Freedom and the European Constitution', in *Political Theory and the European Constitution,* eds. Lynn Dobson and Andreas Follesdal (London: Routledge, 2004).

93 Kuyper, 'Sphere Sovereignty', in *Abraham Kuyper: A Centennial Reader*, pp. 469–70.

94 H. J. W. Hetherington, 'The Conception of a Unitary Social Order', *Proceedings of the Aristotelian Society* 18 (1917–1918), pp. 286–316.

95 Ernest Gellner, *Conditions of Liberty: Civil Society and Its Rivals* (New York: Penguin Press, 1994), pp. 7–12, pp. 87–92, and pp. 97–108.

96 James M. Buchanan, 'Federalism and Individual Sovereignty', *Cato Journal* 15:2/3 (Autumn/Winter 1995/1996), pp. 259–68.

97 William A. Galston, review of Stephen Macedo, *Diversity and Distrust: Civic Education in a Multicultural Democracy*, in *Ethics* 112:2 (January 2002), pp. 386–91; 'Pluralism and Civic Virtue', *Social Theory and Practice* 33:4 (October 2007), pp. 625–35; and 'The Idea of Political Pluralism', *Nomos* 49 (2009), pp. 95–124.

98 Philip D. Shadd, *Understanding Legitimacy: Political Theory and Neo-Calvinist Social Thought* (Lanham, MD: Lexington Books, 2016), pp. 82–83.

99 Dooyeweerd, 'The Christian Idea of the State' [1936], in *Essays in Legal, Social, and Political Philosophy* (Lampeter: Edwin Mellen Press, 1996), pp. 126–34; and Herman Dooyeweerd, *Roots of Western Culture: Pagan, Secular, and Christian Options* trans John Kraay (Grand Rapids, MI: Paideia Press, 2012 [1963]), pp. 122–31. Rockne McCarthy, Donald Oppewal, Walfred Peterson, and Gordon Spykman, *Society, State, and Schools: A Case for Structural and Confessional Pluralism* (Grand Rapids, MI: William B. Eerdmans Publishing Company, 1981), pp. 41–42.

100 *Quadragesimo Anno: Encyclical of Pope Pius XI on Reconstruction of the Social Order* (15 May 1931). The principle is recognised in Article 5 of the Treaty on European Union, though give the general tone of supranational governance in the EU, it has few teeth. For a discussion of its legal interpretation, see EUR-Lex, 'Subsidiarity', http://eur-lex.europa.eu/summary/glossary/subsidiarity.html, accessed 22 July 2017, and Gabriël A. Moens and John Trone, 'Subsidiarity as Judicial and Legislative Review Principles in the European Union', in *Global Perspectives on Subsidiarity,* eds. Evans and Zimmermann. On possible invocations of subsidiarity globally, either by states or individuals, see Andreas Follesdal, 'Subsidiarity and the Global Order', also in *Global Perspectives on Subsidiarity,* eds. Evans and Zimmermann.

101 David H. McIlroy, 'Subsidiarity and Sphere Sovereignty: Christian Reflections on the Shape and Scope of Government', *Journal of Church and State* 45:4 (September 2003), pp. 739–63. James W. Skillen and Rockne M. McCarthy, 'Introduction', in *Political Order and the Plural Structure of Society,* eds. James W. Skillen and

Rockne M. McCarthy (Atlanta, GA: Scholars Press, 1991), p. 241. Lael Daniel Weinberger, 'The Relationship Between Sphere Sovereignty and Subsidiarity', in *Global Perspectives on Subsidiarity,* eds. Michelle Evans and Augusto Zimmermann (London: Springer, 2014).

102 Víctor Pradera, *El estado nuevo* (Madrid: Cultura Española, 1935), pp. 70–71 and pp. 74–78. Jonathan Chaplin, *Herman Dooyeweerd: Christian Philosopher of State and Civil Society* (Notre Dame, IN: University of Notre Dame Press, 2011), pp. 22–23 and p. 142. Richard J. Mouw, 'Some Reflections on Sphere Sovereignty', in *Religion, Pluralism, and Public Life: Abraham Kuyper's Legacy for the Twenty-First Century,* ed. Luis E. Lugo (Grand Rapids, MI: William B. Eerdmans Publishing Company, 2000), pp. 92–93. Robert P. George, *Making Men Moral: Civil Liberties and Public Morality* (Oxford: Oxford University Press, 1993), pp. 38–41. Paul E. Sigmund, 'Subsidiarity, Solidarity, and Liberation: Alternative Approaches in Catholic Social Thought', and Henk E S Woldring, 'Multiform Responsibility and the Revitalisation of Civil Society', both in *Religion, Pluralism, and Public Life,* ed. Lugo. Kent A. van Til, 'Subsidiarity and Sphere-Sovereignty: A Match Made in...?' *Theological Studies* 69 (2008), pp. 610–636. Jonathan van Tongeren, 'The Problem of Scale, or Why Sphere Sovereignty Needs Subsidiarity', Christian Political Foundation for Europe (23 April 2012), http://www.ecpf.info/k/n30667/news/view/514822/514821/the-problem-of-scale-or-why-sphere-sovereignty-needs-subsidiarity.html, accessed 28 April 2016. Johan D. van der Vyver, 'The Jurisprudential Legacy of Abraham Kuyper and Leo XIII', *Journal of Markets and Morality* 5:1 (Spring 2002), pp. 211–49.

103 Michael J. Sandel, *Liberalism and the Limits of Justice* (New York: Cambridge University Press, 1982), p. 179.

104 Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (New York: Basic Books, 1983). Kent A. van Til, 'Abraham Kuyper and Michael Walzer: The Justice of the Spheres', *Calvin Theological Journal* 40 (2005).

105 Hannah Arendt, 'What Is Freedom?' in *Between Past and Future: Eight Exercises in Political Thought* (New York: Viking Press, 1968 [1954]).

106 Dimitry Kochenev, 'EU Citizenship Without Duties', *European Law Journal* 20:4 (July 2014), pp. 482–98.

Chapter 2

1 Karl Jaspers, *The Origin and Goal of History,* trans. Michael Bullock (London: Routledge and Kegan Paul, 1953). S. N. Eisenstadt, 'The Axial Age Breakthroughs: Their Characteristics and Origins', in *The Origins and Diversity of Axial Age Civilisations,* ed. S. N. Eisenstadt (Albany, NY: State University of New York Press, 1986).

2 Charles Tilly, 'War Making and State Making as Organised Crime', in *Bringing the State Back In,* eds. Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol (Cambridge: Cambridge University Press, 1985).

3 William Blackstone, *Commentaries on the Laws of England* (Oxford: Clarendon Press, 1765–1769), Book IV, Chapter 6.

4 John W. Spellman, *Political Theory of Ancient India: A Study of Kingship from the Earliest Times to Circa AD 300* (Oxford: Clarendon Press, 1964), pp. 133–134. William Blackstone, *Commentaries on the Laws of England* (Oxford: Clarendon Press, 1765–1769). Floyd Seyward Lear, *Treason in Roman and Germanic Law: Collected Papers* (Austin, TX: University of Texas Press, 1965). George P. Fletcher, *Loyalty: An Essay on the Morality of Relationships* (Oxford: Oxford University

Press, 1993), pp. 41–46. F. M. Cornford, *From Religion to Philosophy: A Study in the Origins of Western Speculation* (Sussex: Harvester Press 1980 [1912]), p. 59.

5 Paul Weis, *Nationality and Statelessness in International Law* (London: Steven and Sons, 1956), p. 4 and p. 32ff. J. G. A. Pocock, 'The Ideal of Citizenship Since Classical Times', in *Theorising Citizenship,* ed. Ronald Beiner (Albany, NY: State University of New York Press, 1995). Michael Walzer, 'Citizenship', in *Political Innovation and Conceptual Change,* eds. Terence Ball, James Farr, and Russell L. Hanson (Cambridge: Cambridge University Press, 1989). Kim Keechang, *Aliens in Mediæval Law: The Origins of Modern Citizenship* (Cambridge: Cambridge University Press, 2000). John W. Salmond, 'Citizenship and Allegiance', *Law Quarterly Review* 18 (January 1902), pp. 49–63.

6 Hannah Arendt, *The Origins of Totalitarianism* (New York: Meridian Books, 1958 [1951]), pp. 293–99. Linda Bosniak, *The Citizen and the Alien: Dilemmas of Contemporary Membership* (Princeton, NJ: Princeton University Press, 2006), pp. 19–21. Lynn A. Staeheli, 'Political Geography: Where's Citizenship?' *Progress in Human Geography* 35:3 (2011), pp. 393–400. Alice Edwards, 'The Meaning of Nationality in International Law in an Era of Human Rights: Procedural and Substantive Aspects', in *Nationality and Statelessness Under International Law,* eds. Alice Edwards and Laura van Waas (Cambridge: Cambridge University Press, 2014). Paul Weis, *Nationality and Statelessness in International Law* (London: Steven and Sons, 1956), p. 5, p. 83, and p. 239.

7 John Torpey, *The Invention of the Passport: Surveillance, Citizenship, and the State* (Cambridge: Cambridge University Press, 2000). Valentin Groebner, 'Describing the Person, Reading the Signs in Late Mediæval and Renaissance Europe: Identity Papers, Vested Figures, and the Limits of Identification, 1400–1600', David Lyon, 'Under My Skin: From Identification Papers to Body Surveillance', Gary T. Marx, 'Identity and Anonymity: Some Conceptual Distinctions and Issues for Research', and Gérard Noiriel, 'The Identification of the Citizen: The Birth of Republican Civil Status in France', all in *Documenting Individual Identity: The Development of State Practices in the Modern World,* eds. Jane Caplan and John Torpey (Princeton, NJ: Princeton University Press, 2001). Paul Weis, *Nationality and Statelessness in International Law* (London: Steven and Sons, 1956), pp. 222–25. Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge: Cambridge University Press, 2004), p. 18. John Torpey, 'Leaving: A Comparative View', and Aristide R. Zolberg, 'The Exit Revolution', both in *Citizenship and Those Who Leave: The Politics of Emigration and Expatriation,* eds. Nancy L. Green and François Weil (Chicago, IL: University of Illinois Press, 2007). Alan Dowty, *Closed Borders: The Contemporary Assault on Freedom of Movement* (New Haven, CT: Yale University Press, 1987). Daniel C. Turack, *The Passport in International Law* (Toronto: Lexington Books, 1972), pp. 1–14 and p. 228. Jeffrey Kahn, 'The Extraordinary Mrs Shipley: How the United States Controlled International Travel Before the Age of Terrorism', *Connecticut Law Review* 43:3 (February 2011), pp. 819–88. William Worthy, 'The Right to Travel', *The Christian Century*, 74:51 (18 December 1957).

8 Peter Goldsmith, 'Citizenship: Our Common Bond', independent report prepared for British government (11 March 2008), p. 20. Helen Irving, 'Still Call Australia Home: The Constitution and the Citizen's Right of Abode', *Sydney Law Review* 30 (2008), pp. 133–53. Daniel C. Turack, *The Passport in International Law* (Toronto: Lexington Books, 1972).

9 On the history and contemporary practice of deportation, see Daniel C. Turack, *The Passport in International Law* (Toronto: Lexington Books, 1972), p. 20; Daniel Gorman, *Imperial Citizenship: Empire and the Question of Belonging* (Manchester:

Manchester University Press, 2006), p. 159; Daniel Kanstroom, *Deportation Nation: Outsiders in American History* (Cambridge, MA: Harvard University Press, 2007), and *Aftermath: Deportation Law and the New American Diaspora* (Oxford: Oxford University Press, 2012); and Javier Bleichmar, 'Deportation as Punishment: A Historical Analysis of the British Practice of Banishment and Its Impact on Modern Constitutional Law', *Georgetown Immigration Law Journal* 14 (Autumn 1999), pp. 115–63. On global apartheid and related themes, see Titus Alexander, *Unravelling Global Apartheid: An Overview of World Politics* (Cambridge: Polity Press, 1996); Harald Bauder, 'Citizenship as Capital: The Distinction of Migrant Labour', *Alternatives* 33 (2008), pp. 315–33; Rogelio Sáenz, 'Reflections on the Sociology of Security and Surveillance in the Study of Immigration', *Sociological Forum* 28:3 (September 2013), pp. 627–30; Nick Vaughan-Williams, *Border Politics: The Limits of Sovereign Power* (Edinburgh: Edinburgh University Press, 2009); and Joseph William Singer, 'Titles of Nobility: Property, Poverty, and Immigration in a Free and Democratic Society', Harvard Public Law Working Paper No. 13–32, Cambridge, MA (12 June 2013).

10 Kal Raustila, 'The Geography of Justice', University of California, Los Angeles School of Law, Research Paper 05–7, http://ssrn.com/abstract=693924, accessed 28 May 2018.

11 Liu Shih-shun, *Extraterritoriality: Its Rise and Its Decline* (New York: Longmans, Green and Company, 1925). William S. Dodge, 'Understanding the Presumption Against Extraterritoriality', *Berkeley Journal of International Law* 16:1 (1998), pp. 85–125. Armand de Mestral, 'The Extraterritorial Extension of Laws: How Much Has Changed?' *Arizona Journal of International and Comparative Law* 31:1 (2014), pp. 43–54. Gerald L. Neuman, 'Extraterritoriality and the Interest of the United States in Regulating Its Own', *Cornell Law Review* 99:6 (September 2014), pp. 1441–70. Andrew Walmsley, 'Nationality Issues and the Denial of Residence in the Context of the Fight Against Terrorism: Feasibility Study', report prepared for the Bureau of the European Committee on Legal Cooperation, Strasbourg (5 December 2006). William Blackstone, *Commentaries on the Laws of England* (Oxford: Clarendon Press, 1765–1769), Book IV, p. 374. Raul C. Pangalangan, 'Territorial Sovereignty: Command, Title, and the Expanding Claims of the Commons', in *Boundaries and Justice: Diverse Ethical Perspectives,* eds. David Miller and Sohail H. Hashmi (Princeton, NJ: Princeton University Press, 2001).

12 Daniel C. Turack, *The Passport in International Law* (Toronto: Lexington Books, 1972), p. 232. Paul Weis, *Nationality and Statelessness in International Law* (London: Steven and Sons, 1956), pp. 36–41. Alice Edwards, 'The Meaning of Nationality in International Law in an Era of Human Rights: Procedural and Substantive Aspects', in *Nationality and Statelessness Under International Law,* eds. Alice Edwards and Laura van Waas (Cambridge: Cambridge University Press, 2014), pp. 34–35. Craig Forcese, 'The Capacity to Protect: Diplomatic Protection of Dual Nationals in the "War on Terror"', *European Journal of International Law* 17:2 (2006), pp. 369–94.

13 Thomas Simon, 'Citizenship as a Weapon', *Citizenship Studies* 17:3/4 (2013), pp. 505–24.

14 David Malet, *Foreign Fighters: Transnational Identity in Civil Conflicts* (Oxford: Oxford University Press, 2013), p. 8, and 'Foreign Fighter Mobilisation and Persistence in a Global Context', *Terrorism and Political Violence* 27:3 (2015), pp. 454–473.

15 United Nations Security Council Resolution 2178 (24 September 2014). Craig Forcese, 'When Can Canadians Fight in Foreign Wars? Key Legal Issues', National Security Law Blog: Canadian Practice in International Perspective (21 November 2014), http://craigforcese.squarespace.com/national-security-law-blog/2014/11/21/

when-can-canadians-fight-in-foreign-wars-key-legal-issues.html, accessed 19 May 2016. Jasper L. de Bie, Christianne J. de Poot, and Joanne P. van der Leun, 'Shifting Modus Operandi of Jihadis Foreign Fighters from the Netherlands Between 2000 and 2013: A Crime Script Analysis', *Terrorism and Political Violence* 27 (2015), pp. 416–440. Ian Bryan, 'Sovereignty and the Foreign Fighter Problem', *Orbis* 54:1 (Winter 2010), pp. 115–129. On the broader rhetoric of terrorism and security, see Andrew Walmsley, 'Nationality Issues and the Denial of Residence in the Context of the Fight Against Terrorism: Feasibility Study', report prepared for the Bureau of the European Committee on Legal Cooperation, Strasbourg (5 December 2006); Brian J. Phillips, 'What Is a Terrorist Group? Conceptual Issues and Empirical Implications', *Terrorism and Political Violence* 27:2 (2015), pp. 225–242; Elena Pokalova, 'Legislative Responses to Terrorism: What Drives States to Adopt New Counterterrorism Legislation?' *Terrorism and Political Violence* 27:3 (2015), pp. 474–496; and Vida Bajc, 'Sociological Reflections on Security Through Surveillance', and Lisa Stampnitzky, 'Toward a Sociology of "Security"', both in *Sociological Forum* 28:3 (September 2013), pp. 615–623 and pp. 631–633 respectively.

16 Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organisations, and States* (Cambridge MA: Harvard University Press, 1970); and 'Exit, Voice, and the State', *World Politics* 31:1 (October 1978), pp. 90–107.

17 United Nations Working Group on the Use of Mercenaries, 'Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination', Report A/70/330 (19 August 2015).

18 George P. Fletcher, *Loyalty: An Essay on the Morality of Relationships* (Oxford: Oxford University Press, 1993), pp. 17–18. Melissa S Williams, Nonterritorial Boundaries of Citizenship', in *Identities, Affiliations, and Allegiances,* eds. Seyla Benhabib, Ian Shapiro, and Danilo Petranović (Cambridge: Cambridge University Press, 2007). Martin Shaw, 'Civil Society and Global Politics: Beyond a Social Movements Approach', *Millennium* 23:3 (1994), pp. 647–67. On debates over the legitimacy of cross-border political agency, see also Brigitte Beauzamy, 'Transnational Social Movements and Democratic Legitimacy', and Catarina Kinnvall and Bo Petersson, 'Diaspora Groups, Transnational Activism, and Democratic Legitimacy', both in *Legitimacy Beyond the State? Re-Examining the Democratic Credentials of Transnational Actors,* eds. Eva Erman and Anders Uhlin (New York: Palgrave Macmillan, 2010). Francis Dupuis-Déri, 'Global Protesters Versus Global Elites: Are Direct Action and Deliberative Politics Compatible?' *New Political Science* 29:2 (June 2007), pp. 167–186.

19 Paul Weis, *Nationality and Statelessness in International Law* (London: Steven and Sons, 1956), p. 124. Andrew Walmsley, 'Nationality Issues and the Denial of Residence in the Context of the Fight Against Terrorism: Feasibility Study', report prepared for the Bureau of the European Committee on Legal Cooperation, Strasbourg (5 December 2006). Jorunn Brandvoll, 'Deprivation of Nationality: Limitations on Rendering Persons Stateless Under International Law', and Kim Rubenstein and Niamh Lenagh-Maguire, 'More or Less Secure? Nationality Questions, Deportation, and Dual Nationality', both in *Nationality and Statelessness Under International Law,* eds. Edwards and van Waas.

20 Peter Goldsmith, 'Citizenship: Our Common Bond', independent report prepared for British government (11 March 2008). Ben Herzog, 'The Democratic Roots of Expatriations', and David Miller, 'Democracy, Exile, and Revocation', both in *Ethics and International Affairs* 30:2 (2016), pp. 261–264 and pp. 265–270 respectively. Emanuel Gross, 'Defensive Democracy: Is It Possible to Revoke the Citizenship, Deport, or Negate the Civil Rights of a Person Instigating Terrorist

Action Against His Own State?' *University of Missouri Kansas City Law Review* 72 (2003), pp. 1–71. Shai Lavi, 'Citizenship Revocation as Punishment: On the Modern Duties of Citizens and Their Criminal Breach', *University of Toronto Law Journal* 61 (2011), pp. 783–810. Christian Joppke, 'Terrorists Repudiate Their Own Citizenship', European Union Democracy Observatory on Citizenship, http://eudo-citizenship.eu/commentaries/citizenship-forum/1268-the-return-of-banishment-do-the-new-denationalisation-policies-weaken-citizenship, accessed 5 December 2014.

21 Patti Tamara Lenard, 'Democracies and the Power to Revoke Citizenship', *Ethics and International Affairs* 30:1 (2016), pp. 73–91. Audrey Macklin, 'Citizenship Revocation, the Privilege to Have Rights, and the Production of the Alien', *Queen's Law Journal* 40:1 (2014), pp. 1–54, and 'The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship?' European Union Democracy Observatory on Citizenship, http://eudo-citizenship.eu/commentaries/citizenship-forum/1268-the-return-of-banishment-do-the-new-denationalisation-policies-weaken-citizenship, accessed 5 December 2014. Jeanine de Roy van Zuijdewijn, 'The Foreign Fighters' Threat: What History Can (Not) Tell Us', *Perspectives on Terrorism* 8:5 (October 2014), pp. 59–73. David Malet, 'Foreign Fighter Mobilisation and Persistence in a Global Context', *Terrorism and Political Violence* 27:3 (2015), pp. 454–473. Elizabeth F. Cohen, 'When Democracies Denationalise: The Epistemological Case Against Revoking Citizenship', *Ethics and International Affairs* 30:2 (2016), pp. 253–259. Peter J. Spiro, 'Terrorist Expatriation: All Show, No Bite, No Future', European Union Democracy Observatory on Citizenship, http://eudo-citizenship.eu/commentaries/citizenship-forum/1268-the-return-of-banishment-do-the-new-denationalisation-policies-weaken-citizenship, accessed 5 December 2014. Andrew Walmsley, 'Nationality Issues and the Denial of Residence in the Context of the Fight Against Terrorism: Feasibility Study', report prepared for the Bureau of the European Committee on Legal Cooperation, Strasbourg (5 December 2006).

22 T. Alexander Aleinikoff, 'Symposium on Law and Community: Theories of Loss of Citizenship', *Michigan Law Review* 84 (June 1986), pp. 1471–1503. United States Supreme Court, *Pérez v. Brownell* (1958), p. 64, and *Afroyim v. Rusk* (1967), p. 268.

23 Christian Joppke, 'Citizenship Between De- and Re-Ethnicisation', in *Migration, Citizenship, Ethnos,* eds. Y Michal Bodemann and Gökçe Yurdakul (New York: Palgrave Macmillan, 2006), p. 87 note 16.

24 Floyd Seyward Lear, *Treason in Roman and Germanic Law: Collected Papers* (Austin, TX: University of Texas Press, 1965).

25 Peter Goldsmith, 'Citizenship: Our Common Bond', independent report prepared for British government (11 March 2008).

26 Hannah Arendt, *The Human Condition* (Chicago, IL: Chicago University Press, 1958).

27 Peter Goldsmith, 'Citizenship: Our Common Bond', independent report prepared for British government (11 March 2008).

28 Bernhard Blumenau, 'Taming the Beast: West Germany, the Political Offence Exception, and the Council of Europe Convention on the Suppression of Terrorism', *Terrorism and Political Violence* 27:2 (2015), pp. 310–330.

29 Mathias Czaika and Hein de Haas, 'The Globalisation of Migration: Has the World Become More Migratory?' *International Migration Review* 48:2 (Autumn 2015), pp. 283–323. Peggy Levitt, 'Variations in Transnational Belonging: Lessons from Brazil and the Dominican Republic', in *Dual Nationality, Social Rights, and Federal Citizenship in the US and Europe: The Reinvention of Citizenship,* eds. Randall Hansen and Patrick Weil (Oxford: Berghahn Books, 2002). Peggy Levitt, 'The Ties

that Change: Relations to the Ancestral Home over the Life Cycle', and Rubén Rumbaut, 'Severed or Sustained Attachments? Language, Identity, and Imagined Communities in the Post-Immigrant Generation', both in *The Changing Face of Home: The Transnational Lives of the Second Generation,* eds. Peggy Levitt and Mary C. Waters (New York: Russell Sage Foundation, 2002). Peggy Levitt and B. Nadya Jaworsky, 'Transnational Migration Studies: Past Developments and Future Trends', *Annual Review of Sociology* 33 (2007), pp. 129–156. Andreas Wimmer and Nina Glick Schiller, 'Methodological Nationalism and Beyond: Nation-State Building, Migration, and the Social Sciences', *Global Networks* 2:4 (2002), pp. 301–334. Lawrence M. Friedman, 'Frontiers: National and Transnational Order', in *Public Governance in the Age of Globalisation,* ed. Karl-Heinz Ladeur (Aldershot: Ashgate, 2004), p. 26. N. P. Sreejesh, 'Multiculturalism in South Korea: Role of Foreign Brides in the Transformation of Korean Identity', *Indian Journal of Politics and International Relations* 4:1/2 (2011), pp. 130–149. Christof van Mol, Helga A. G. de Valk, and Leo van Wissen, 'Falling in Love With(in) Europe: European Bi-National Love Relationships, European Identification, and Transnational Solidarity', *European Union Politics* 16:4 (2015), pp. 469–489. Russell King and Anastasia Christou, 'Of Counter-Diaspora and Reverse Transnationalism: Return Mobilities to and from the Ancestral Homeland', *Mobilities* 6:4 (November 2011), pp. 451–466. Rainer Bauböck, 'Towards a Political Theory of Migrant Transnationalism', *International Migration Review* 37:3 (Autumn 2003), pp. 700–723. Roger Waldinger, *The Cross-Border Connexion: Immigrants, Emigrants, and Their Homelands* (Cambridge, MA: Harvard University Press, 2015).

30 Kim Rubenstein and Daniel Adler, 'International Citizenship: The Future of Nationality in a Globalised World', *Indiana Journal of Global Legal Studies* 7:2 (2000), pp. 519–548. Yasemin Nuhoğlu Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago, IL: University of Chicago Press, 1994). Peter J. Spiro, 'Embracing Dual Nationality', in *Dual Nationality, Social Rights, and Federal Citizenship in the US and Europe,* eds. Hansen and Weil. Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998). Seyla Benhabib, 'Disaggregation of Citizenship Rights', *Parallax* 11:1 (2005), pp. 10–18. H. L. Laski, *Studies in Law and Politics*, reprinted in *The Pluralist Theory of the State,* ed. Hirst, chapter 11. Linda Bosniak, *The Citizen and the Alien: Dilemmas of Contemporary Membership* (Princeton, NJ: Princeton University Press, 2006), pp. 37–76. Daniel C. Turack, *The Passport in International Law* (Toronto: Lexington Books, 1972), pp. 123–25. Kristy A. Belton, 'The Neglected Non-Citizen: Statelessness and Liberal Political Theory', *Journal of Global Ethics* 7:1 (2011), pp. 59–71.

31 Thomas Glyn Watkin, *An Historical Introduction to Modern Civil Law* (Aldershot: Dartmouth, 1999), pp. 158–59. Jacob Metzer and Stanley L. Engerman, 'Some Considerations of Ethno-Nationality (and Other Distinctions), Property Rights in Land, and Territorial Sovereignty', and Rawi Abdelal, 'Markets and Meanings: Nationalism, Land, and Property in Lithuania', both in *Land Rights, Ethno-Nationality, and Sovereignty in History,* eds. Engerman and Metzer. Allison Brownell Tirres, 'Ownership Without Citizenship: The Creation of Noncitizen Property Rights', *Michigan Journal of Race and Law* 19 (Autumn 2013), pp. 1–52. Roger Waldinger, *The Cross-Border Connexion: Immigrants, Emigrants, and Their Homelands* (Cambridge, MA: Harvard University Press, 2015), p. 51 and p. 80. Jane Lilly López, '"Impossible Families": Mixed-Citizenship Status Couples and the Law', *Law and Policy* 37:1/2 (January 2015), pp. 93–118. Steffen Mau, Fabian Gülzau, Lena Laube, and Natascha Zaun, 'The Global Mobility Divide: How Visa

Policies Have Evolved over Time', *Journal of Ethnic and Migration Studies* 41:8 (2015), pp. 1192–1213. Ronen Shamir, 'Without Borders? Notes on Globalisation as a Mobility Regime', *Sociological Theory* 23:2 (June 2005), pp. 197–217. Elizabeth F. Cohen, 'The Political Economy of Immigrant Time: Rights, Citizenship, and Temporariness in the Post-1965 Era', *Polity* 47:3 (July 2015), pp. 337–51.

32 Dirk Hoerder, 'Transcultural States, Nations, and People', in *The Historical Practice of Diversity: Transcultural Interactions from the Early Modern Mediterranean to the Postcolonial World,* eds. Dirk Hoerder, Christiane Harzig, and Adrian Shubert (Oxford: Berghahn Books, 2003).

33 Robert E. Goodin, 'If People Were Money....', in *Free Movement: Ethical Issues in the Transnational Migration of People and of Money,* eds. Brian Barry and Robert E. Goodin (University Park, PA: Pennsylvania State University Press, 1992).

34 On the history of legal bases for free movement, see Daniel C. Turack, *The Passport in International Law* (Toronto: Lexington Books, 1972), pp. 35–122, Pedro Caro de Sousa, 'Quest for the Holy Grail: Is a Unified Approach to the Market Freedoms and European Citizenship Justified?' *European Law Journal* 20:4 (July 2014), pp. 499–519, Hanneke van Eijken, 'European Citizenship and the Competence of Member States to Grant and to Withdraw the Nationality of Their Nationals', *Merkourios* 27:72 (2010), pp. 65–69, and Richard Sobel and Ramón L. Torres, 'The Right to Travel: A Fundamental Right of Citizenship', *Journal of Transportation Law, Logistics, and Policy* 80:1 (2013), pp. 13–47.

35 Cécile Laborde, 'Republican Citizenship and the Crisis of Integration in France', and Ulrich K. Preuß, 'Citizenship and the German Nation', both in *Lineages of European Citizenship: Rights, Belonging, and Participation in Eleven Nation-States,* eds. Richard Bellamy, Dario Castiglione, and Emilio Santoro (New York: Palgrave Macmillan, 2004). Christian Joppke, 'Citizenship Between De- and Re-Ethnicisation', in *Migration, Citizenship, Ethnos,* eds. Y. Michal Bodemann and Gökçe Yurdakul (New York: Palgrave Macmillan, 2006), 'Exclusion in the Liberal State: The Case of Immigration and Citizenship Policy', *European Journal of Social Theory* 8:1 (2005), pp. 43–61, and *Selecting by Origin: Ethnic Migration in the Liberal State* (Cambridge, MA: Harvard University Press, 2005).

36 Rick Lyman, 'Eastern Bloc's Resistance to Refugees Highlights Europe's Cultural and Political Divisions', *New York Times* (12 September 2015), https://www.nytimes.com/2015/09/13/world/europe/eastern-europe-migrant-refugee-crisis.html?_r=0, accessed 26 October 2017.

37 Doudou Dièn̈e, 'Racism, Racial Discrimination, Xenophobia, and All Forms of Discrimination: Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance', United Nations Economic and Social Council Commission on Human Rights, 24 January 2006. Canon Pence, 'Japanese Only: Xenophobic Exclusion in Japan's Private Sphere', *New York International Law Review* 101 (Summer 2007), pp. 1–73. Kristin Surak, 'Convergence in Foreigners' Rights and Citizenship Policies? A Look at Japan', *International Migration Review* 42:3 (Autumn 2008), pp. 550–575. Barry Sautman, 'Racial Nationalism and China's External Behaviour', *World Affairs* 160:2 (Autumn 1997), pp. 78–95, and 'Anti-Black Racism in Post-Mao China', *China Quarterly* 138 (June 1994), pp. 413–437. Martin Jacques, *When China Rules the World: The Rise of the Middle Kingdom and the End of the Western World* (London: Allen Lane, 2009), chapter 8. Myron Weiner, 'Immigration: Perspectives from Receiving Countries', *Third World Quarterly* 12:1 (January 1990), pp. 140–165. M. Raquibuz Zaman, 'Islamic Perspectives on Territorial Boundaries and Autonomy', in *Islamic Political Ethics: Civil Society, Pluralism, and Conflict,* ed. Sohail H Hashmi (Princeton, NJ: Princeton University Press, 2002), pp. 96–97. Paul Scheffer,

Immigrant Nations trans. Liz Waters (Cambridge: Polity Press, 2011 [2007]), pp. 75–76.

38 Michael Blake, 'Immigration', in *A Companion to Applied Ethics,* eds. R. G. Frey and Christopher Heath Wellman (Oxford: Blackwell Publishing, 2003). Christopher Heath Wellman, 'Immigration and Freedom of Association', *Ethics* 119 (October 2008), pp. 109–141. Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge: Cambridge University Press, 2004), pp. 138–39. Sarah Fine, 'Immigration and Discrimination', in *Migration in Political Theory: The Ethics of Movement and Membership,* eds. Sarah Fine and Lea Ypi (Oxford: Oxford University Press, 2016).

39 Peter J. Spiro, 'A New International Law of Citizenship', *American Journal of International Law* 105:4 (October 2011), pp. 694–746.

40 United Nations, Convention on the Elimination of All Forms of Racial Discrimination (1965).

41 Robert E Washington, 'Brown Racism and the Formation of a World System of Racial Stratification', *International Journal of Politics, Culture, and Society* 4:2 (Winter 1990), pp. 209–27.

42 Ian Buruma and Avishai Margalit, *Occidentalism: A Short History of Anti-Westernism* (London: Atlantic Books, 2004). Rajeev Bhargava, 'How Should We Respond to the Cultural Injustices of Colonialism?' and Tan Kok-Chor, 'Colonialism, Reparations, and Global Justice', both in *Reparations: Interdisciplinary Inquiries,* eds. Jon Miller and Rahul Kumar (Oxford: Oxford University Press, 2007). Hugh Tinker, *Race, Conflict, and the International Order: From Empire to United Nations* (London: Macmillan, 1977). William Minter, 'Invisible Hierarchies: Africa, Race, and Continuities in the World Order', *Science and Society* 69:3 (July 2005), pp. 449–457. Stephen Castles, *Ethnicity and Globalisation: From Migrant Worker to Transnational Citizen* (London: Sage Publications, 2000), pp. 163–86. Gargi Bhattacharyya, John Gabriel, and Stephen Small, *Race and Power: Global Racism in the Twenty-First Century* (London: Routledge, 2002). Elazar Barkan, *The Guilt of Nations: Restitution and Negotiating Historical Injustices* (Baltimore, MD: Johns Hopkins University Press, 2000). John Torpey, 'An Avalanche of History: The "Collapse of the Future" and the Rise of Reparations Politics', in *Historical Justice in International Perspective: How Societies are Trying to Right the Wrongs of the Past,* eds. Manfred Berg and Bernd Schaefer (Cambridge: Cambridge University Press, 2009). Kehinde Andrews, *The New Age of Empire: How Racism and Colonialism Still Rule the World* (New York: Bold Type Books, 2021).

43 Chinese government statement to United Nations High Commission on Refugees (1995), quoted in Benedict Kingsbury, '"Indigenous Peoples" in International Law: A Constructivist Approach to the Asian Controversy', *American Journal of International Law* 92:3 (July 1998), pp. 414–457. 'Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance', Durban, 2001.

44 Sara Amighetti and Alasia Nuti, 'A Nation's Right to Exclude and the Colonies', *Political Theory*, *Political Theory* 44:4 (August 2016), pp. 541–566.

45 eg. Joseph H. Carens, 'Migration and Morality: A Liberal Egalitarian Perspective', in *Free Movement,* eds. Barry and Goodin, pp. 36–40 and pp. 44–45; and Margaret Kohn and Keally McBride, *Political Theories of Decolonisation: Postcolonialism and the Problem of Foundations* (Oxford: Oxford University Press, 2011), pp. 150–51.

46 British National Party, 'Immigration', http://www.bnp.org.uk/policies/immigration, accessed 12 July 2024.

47 Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (New York: Basic Books, 1983), pp. 31–63. Christopher Heath Wellman, 'Freedom of Movement and the Rights to Enter and Exit', in *Migration in Political Theory,* eds. Fine and Ypi; and the same author's contribution to the debate in his co-authored book with Phillip Cole, *Debating the Ethics of Immigration: Is There a Right to Exclude?* (Oxford: Oxford University Press, 2011). David Miller, *Strangers in Our Midst: The Political Philosophy of Immigration* (Cambridge, MA: Harvard University Press, 2016), pp. 51–62, pp. 81–84,and pp. 123–24. Jules L. Coleman and Sarah K. Harding, 'Citizenship, the Demands of Justice, and the Moral Relevance of Political Borders', and James M. Buchanan, 'A Two-Country Parable', both in *Justice in Immigration,* ed. Warren F. Schwartz (Cambridge: Cambridge University Press, 1995). Peter C. Meilaender, *Toward a Theory of Immigration* (New York: Palgrave Macmillan, 2001).

48 Joseph H. Carens, 'Migration and Morality'; 'Aliens and Citizens: The Case for Open Borders', in *Theorising Citizenship,* ed. Beiner; and *The Ethics of Immigration* (Oxford: Oxford University Press, 2013), pp. 225ff. Kieran Oberman, 'Poverty and Immigration Policy', *American Political Science Review* 109:2 (May 2015), pp. 245–46; and 'Immigration as a Human Right', in *Migration in Political Theory,* eds. Fine and Ypi. Jean Hampton, 'Immigration, Identity, and Justice', in *Justice in Immigration,* ed. Schwartz. Phillip Cole, in contribution to his co-authored book with Christopher Heath Wellman, *Debating the Ethics of Immigration: Is There a Right to Exclude?* (Oxford: Oxford University Press, 2011). Arash Abizadeh, 'Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders', *Political Theory* 36:1 (February 2008), pp. 37–65.

49 Roger Nett, 'The Civil Right We Are Not Ready For: The Right of Free Movement of People on the Face of the Earth', *Ethics* 81:3 (April 1971), pp. 212–227. Lant Pritchett, *Let Their People Come: Breaking the Gridlock on Global Labour Mobility* (Baltimore, MD: Centre for Global Development, 2006), p. 101.

50 Joseph H. Carens, *The Ethics of Immigration* (Oxford: Oxford University Press, 2013), especially pp. 100–69; and 'Citizenship and Civil Society: What Rights for Residents?' in *Dual Nationality, Social Rights, and Federal Citizenship in the US and Europe,* eds. Hansen and Weil. Related arguments also appear in Sarah Song, 'The Significance of Territorial Presence and the Rights of Immigrants', in *Migration in Political Theory,* eds. Fine and Ypi; Linda Bosniak, *The Citizen and the Alien: Dilemmas of Contemporary Membership* (Princeton, NJ: Princeton University Press, 2006); and Daniel Kanstroom, *Aftermath: Deportation Law and the New American Diaspora* (Oxford: Oxford University Press, 2012), pp. 164–91.

51 Nottebohm Case (second phase) (Licht. v. Guate.), 1955 I.C.J. 4, 24 (April 6).

52 Ryan Liss, 'A Right to Belong: Legal Protection of Sociological Membership in the Application of Article 12(4) of the ICCPR', *NYU Journal of International Law and Politics* (Summer 2014), pp. 1097–1191. United Nations Human Rights Committee, *Nystrom, Nystrom, and Turner vs. Australia*, Comm. No. 1557/2007, UN Doc. CCPR/C/102/D/1557/2007 (2011).

53 Committee statement by Tim Raison, 13 May 1981, quoted in Terry McGuinness and Melanie Gower, 'The Common Travel Area and the Special Status of Irish Nationals in UK Law', House of Commons Library Briefing Paper 7661 (9 June 2017), p. 13. Bryan Nickels, 'Native American Free Passage Rights Under the 1794 Jay Treaty: Survival Under United States Statutory Law and Canadian Common Law', *Boston College International and Comparative Law Review* 24:2 (2001), pp. 313–340. The idea that certain cultural identities may require cross-border free movement, such as for the Roma, is mentioned in passing in Patti Tamara Lenard,

‘Culture, Free Movement, and Open Borders’, *Review of Politics* 72:4 (Autumn 2010), pp. 627–652.

Chapter 3

1 Vittorio Citti, ‘The Idea of Metics in Attic Tragedy’, in *Forms of Control and Subordination in Antiquity,* eds. Yuge Toru and Doi Masaoki (Leiden: E. J. Brill, 1988). Henry Sumner Maine, *Ancient Law* (London: J.M. Dent and Sons, 1917 [1861]), chapters IV–V.

2 Garrett Wallace Brown, ‘Between Naturalism and Cosmopolitan Law: Hospitality as Transitional Global Justice’, in *Hospitality and World Politics,* ed. Gideon Baker (New York: Palgrave Macmillan, 2013). Jens Bartelson, *Visions of World Community* (Cambridge: Cambridge University Press, 2009). Richard B. Miller, ‘Christian Attitudes Toward Boundaries: Metaphysical and Geographical’, in *Boundaries and Justice,* eds. Miller and Hashmi. Oliver O’Donovan, ‘Christianity and Territorial Right’, in *States, Nations, and Borders: The Ethics of Making Boundaries,* eds. Allen Buchanan and Margaret Moore (Cambridge: Cambridge University Press, 2003). Antony Black, *Political Thought in Europe, 1250–1450* (Cambridge: Cambridge University Press, 1992), pp. 88–89. Dawn M. Nothwehr, ‘Defining “Racisms” in a Globalised, Terrorised, Ecologically Threatened World’, *New Theology Review* (February 2008), pp. 5–17, and *That They May Be One: Catholic Social Teaching on Racism, Tribalism and Xenophobia* (Maryknoll, NY: Orbis Books, 2008). Paul J. Weithman, ‘Natural Law, Solidarity, and International Justice’, and Ann Dummett, ‘The Transnational Migration of People Seen from Within a Natural Law Tradition’, both in *Free Movement,* eds. Barry and Goodin; for a defence of territoriality within natural law, cf. John Finnis, ‘Commentary on Dummett and Weithman’, in the same volume. On the longer term history of the emergence of racial consciousness in the West, see Ivan Hannaford, *Race: The History of an Idea in the West* (Washington, DC: Woodrow Wilson Centre Press, 1996); and Margaret T. Hodgen, *Early Anthropology in the Sixteenth and Seventeenth Centuries* (Philadelphia, PA: University of Pennsylvania Press, 1964), pp. 207–90.

3 Daniel A. Bell, ‘The Making and Unmaking of Boundaries: A Contemporary Confucian Perspective’, Joseph Chan, ‘Territorial Boundaries and Confucianism’, and Michael Nylan, ‘Boundaries of the Body and Body Politic in Early Confucian Thought’, all in *Boundaries and Justice,* eds. Miller and Hashmi. Frank Dikötter, *The Discourse of Race in Modern China* (London: Hurst and Company, 1992), pp. 1–30.

4 Ainslee T. Embree, ‘Indian Civilisation and Regional Cultures: The Two Realities’, in *Region and Nation in India,* ed. Paul Wallace (New Delhi, India: American Institute of Indian Studies, 1985). André Wink, *Land and Sovereignty in India: Agrarian Society and Politics Under the Eighteenth Century Maratha Svarājya* (Cambridge: Cambridge University Press, 1986), pp. 9–30.

5 Tamim al-Barghouti, *The Umma and the Dawla: The Nation State and the Arab Middle East* (London: Pluto Press, 2008), p. 8. W. Montgomery Watt, *Islamic Political Thought* (Edinburgh: Edinburgh University Press, 1968), pp. 60–61. M. Raquibuz Zaman, ‘Islamic Perspectives on Territorial Boundaries and Autonomy’, in *Islamic Political Ethics: Civil Society, Pluralism, and Conflict,* ed. Sohail H Hashmi (Princeton, NJ: Princeton University Press, 2002), pp. 96–97. Franz Rosenthal, ‘The Stranger in Mediæval Islam’, *Arabica* 44 (1997), reprinted in *Man versus Society in Mediæval Islam,* ed. Gutas, p. 793. Khaled Abou El Fadl, ‘The Unbounded Law of God and Territorial Boundaries’, and Sohail H. Hashmi, ‘Political Boundaries and

Moral Communities: Islamic Perspectives', both in *States, Nations, and Borders,* eds. Buchanan and Moore.

6 Ruth I. Meserve, 'The Inhospitable Land of the Barbarian', *Journal of Asian History* 16:1 (1982), p. 57, p. 60, and p. 87. David Miller, 'Democracy, Exile, and Revocation', in *Ethics and International Affairs* 30:2 (2016),pp. 265–270. Bleichmar, 'Deportation as Punishment: A Historical Analysis of the British Practice of Banishment and Its Impact on Modern Constitutional Law', *Georgetown Immigration Law Journal* 14 (Autumn 1999), p. 120 and pp. 123–30. Robert G. Caldwell, 'Exile as an Institution', *Political Science Quarterly* 58:2 (June 1943), pp. 239–262.

7 Muhammad ibn al-Hasan al-Shaybānī, *The Islamic Law of Nations: Shaybānī's Siyar,* trans. Majid Khadduri (Baltimore, MD: Johns Hopkins Press, 1966), chapter VI. Anver M. Emon, *Religious Pluralism and Islamic Law: Dhimmīs and Others in the Empire of Law* (Oxford: Oxford University Press, 2012), pp. 88–89. Majid Khadduri, 'International Law', in *Law in the Middle East: Origin and Development of Islamic Law,* eds. Majid Khadduri and Herbert J. Liebesny (Washington, DC: Middle East Institute, 1955), p. 362. Joseph Schacht, 'Aman', in *Encyclopædia of Islam,* eds. Bearman et al.

8 Franz Rosenthal, *The Muslim Concept of Freedom Prior to the Nineteenth Century* [Leiden: E. J. Brill, 1960], and *The Herb: Hashish versus Mediæval Muslim Society* [Leiden: E. J. Brill, 1971], both reprinted in *Man versus Society in Mediæval Islam,* ed. Gutas, pp. 58–60.

9 Michel Foucault, *Discipline and Punish,* trans. Alan Sheridan (New York: Pantheon Books, 1977 [1975]), p. 228.

10 Franz Rosenthal, 'The Stranger in Mediæval Islam', *Arabica* 44 (1997), reprinted in *Man versus Society in Mediæval Islam,* ed. Gutas. Snjezana Akpinar, 'Hospitality in Islam', *Religion East and West* 7 (October 2007), pp. 23–27. Silas Webster Allard, 'In the Shade of the Oaks of Mamre: Hospitality as a Framework for Political Engagement Between Christians and Muslims', *Political Theology* 13:4 (2012), pp. 414–424. Cláudio Carvalhaes, 'Borders, Globalisation, and Eucharistic Hospitality', *Dialog* 49:1 (Spring 2010), pp. 45–55. Christine D. Pohl, 'Responding to Strangers: Insights from the Christian Tradition', *Studies in Christian Ethics* 19:1 (2006), pp. 81–101. On views of the foreigner in ancient Judaism, see Bonnie Honig, *Democracy and the Foreigner* (Princeton, NJ: Princeton University Press, 2001). On the decline of Christian hospitality in political theory, in favour of concerns about security, see Haig Patapan, 'Leviathan's Children: On the Origins of Modern Hospitality', in *Hospitality and World Politics,* ed. Baker.

11 Knut A. Jacobsen, *Pilgrimage in the Hindu Tradition: Salvific Space* (London: Routledge, 2013). Daniel A. Bell, 'The Making and Unmaking of Boundaries: A Contemporary Confucian Perspective', Joseph Chan, 'Territorial Boundaries and Confucianism', and Michael Nylan, 'Boundaries of the Body and Body Politic in Early Confucian Thought', all in *Boundaries and Justice,* eds. Miller and Hashmi. Sohail H. Hashmi, 'Political Boundaries and Moral Communities: Islamic Perspectives', in *States, Nations, and Borders,* eds. Buchanan and Moore. Bartelson, *Visions of World Community*, pp. 65–67.

12 Francisco de Vitoria, 'On the American Indians' (1539) in *Political Writings,* eds. Pagden and Lawrance. Gideon Baker, 'Right of Entry or Right of Refusal? Hospitality in the Law of Nature and Nations', in *Hospitality and World Politics,* ed. Baker. Anthony Pagden, 'The Christian Tradition', in *States, Nations, and Borders,* eds. Buchanan and Moore; for a more critical view of Vitoria, cf. Georg Cavallar, 'From Hospitality to the Right of Immigration in the Law of Nations, 1750–1850', in the same volume.

13 Mariano Barbato, *Pilgrimage, Politics, and International Relations: Religious Semantics for World Politics* (New York: Palgrave Macmillan, 2013). William T. Cavanaugh, *Migrations of the Holy: God, State, and the Political Meaning of the Church* (Grand Rapids, MI: William B Eerdmans Publishing Company, 2011), pp. 69–87. David Albertson et al, 'Open Letter Against the New Nationalism: An Appeal to Our Fellow Christians', *Commonweal* (19 August 2019), https://www.commonwealmagazine.org/open-letter-against-new-nationalism, accessed 25 August 2019.
14 Allen Buchanan, 'The Making and Unmaking of Boundaries: What Liberalism Has to Say', in *States, Nations, and Borders,* eds. Buchanan and Moore.
15 William T. Cavanaugh, *Migrations of the Holy: God, State, and the Political Meaning of the Church* (Grand Rapids, MI: William B Eerdmans Publishing Company, 2011), 'Killing for the Telephone Company: Why the Nation-State Is Not the Keeper of the Common Good', *Modern Theology* 20:2 (April 2004), pp. 243–274, and 'The City: Beyond Secular Parodies', in *Radical Orthodoxy,* eds. Milbank, Pickstock, and Ward.
16 For example, Robert E. Goodin, 'Enfranchising All Affected Interests, and Its Alternatives', *Philosophy and Public Affairs* 35:1 (Winter 2007), pp. 40–68; Sofia Näsström, 'What Globalisation Overshadows', *Political Theory* 31:6 (December 2003), pp. 808–834; and Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge: Cambridge University Press, 2004).
17 Michael Blake, 'Immigration', in *A Companion to Applied Ethics,* eds. R. G. Frey and Christopher Heath Wellman (Oxford: Blackwell Publishing, 2003).
18 Jeremy Waldron, 'Homelessness and the Issue of Freedom', *UCLA Law Review* 39 (1991), pp. 295–324. Anna Stilz, 'Occupancy Rights and the Wrong of Removal', *Philosophy and Public Affairs* 41:4 (2013), pp. 324–56.
19 For example, T. Storme, J. R. Faulconbridge, J. V. Beaverstock, B. Derudder, and F. Witlox, 'Mobility and Professional Networks in Academia: An Exploration of the Obligations of Presence', *Mobilities* 12:3 (2017), pp. 405–24.
20 Christopher Heath Wellman, 'Freedom of Movement and the Rights to Enter and Exit', in *Migration in Political Theory,* eds. Fine and Ypi, pp. 89–90.
21 Nicholas Barrett, comment on 'Readers Respond to the EU Referendum Vote', *The Financial Times* (24 June 2016), http://www.ft.com/cms/s/2/f4dcdf62-399d-11e6-9a05-82a9b15a8ee7.html?siteedition=uk#axzz4GkhZDRz3, accessed 8 August 2016.
22 On the idea of the EU, in particular, as an 'incomplete contract' subject to revision by member states, see Alexander Cooley and Hendrik Spruyt, *Contracting States: Sovereign Transfers in International Relations* (Princeton, NJ: Princeton University Press, 2009). On the expatriate voting debate, see Claudio López Guerra, 'Should Expatriates Vote?' *Journal of Political Philosophy*, 13:2 (2005), pp. 216–234; and Rainer Bauböck, 'Stakeholder Citizenship and Transnational Political Participation: A Normative Evaluation of External Voting', *Fordham Law Review* 75:5 (April 2007), pp. 2393–2447.
23 Neli Esipova and Julie Ray, '700 Million Worldwide Desire to Migrate Permanently', *Gallup News*, 2 November 2009, http://news.gallup.com/poll/124028/700-Million-Worldwide-Desire-Migrate-Permanently.aspx, accessed 25 October 2017.
24 Kerry Howley, 'Ending Global Apartheid', *Reason* 39:9 (February 2008), https://reason.com/2008/01/24/ending-global-apartheid/, accessed 13 October 2024. Nick Gill, 'Whose "No Borders"? Achieving Border Liberalisation for the Right Reasons', *Refuge* 26:2 (2009), pp. 107–120. Mehmet Ugur, 'The Ethics, Economics, and Governance of Free Movement', and Bimal Ghosh, 'Managing Migration: Towards the Missing Regime', both in *Migration Without Borders: Essays on the Free Movement of People,* eds. Antoine Pécoud and Paul de Guchteneire

(Oxford: Berghahn Books, 2007). Jonathan Seglow, 'Immigration Justice and Borders: Towards a Global Agreement', *Contemporary Politics* 12:3/4 (September/December 2006), pp. 233–246. Ricard Zapata-Barrero, 'Theorising State Behaviour in International Migrations: An Evaluative Ethical Framework', *Social Research* 77:1 (Spring 2010), pp. 325–352.

25 Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995), p. 93.

26 Adam K. Webb, 'Can the Global South Take Over the Baton? What Cosmopolitanism in "Unlikely" Places Means for Future World Order', *Third World Quarterly* 37:6 (2016), pp. 1016–1034.

27 D. W. Meinig, 'Territorial Strategies Applied to Captive Peoples', in *Ideology and Landscape in Historical Perspective: Essays on the Meanings of Some Places in the Past,* eds. Alan R H Baker and Gideon Biger (Cambridge: Cambridge University Press, 1992). Ann Morning, 'Multiraciality and Census Classification in Global Perspective', in *International Perspectives on Racial and Ethnic Mixedness and Mixing,* eds. Rosalind Edwards, Suki Ali, Chamion Caballero, and Miri Song (London: Routledge, 2012). José Vasconcelos, *The Cosmic Race,* trans. Didier T. Jaen (Baltimore, MD: Johns Hopkins University Press, 1997 [1925]).

28 John Emerich Edward Dalberg Acton, *The History of Freedom and Other Essays,* eds. John Neville Figgis and Reginald Vere Laurence (London: Macmillan and Company, 1909), pp. 290–93.

29 T. Alexander Aleinikoff, 'Symposium on Law and Community: Theories of Loss of Citizenship', *Michigan Law Review* 84 (June 1986), pp. 1471–1503. Peter J. Spiro, 'Embracing Dual Nationality', Randall Hansen, 'The Dog that Didn't Bark: Dual Nationality in the United Kingdom', Géraud de la Pradelle, 'Dual Nationality and the French Citizenship Tradition', David Martin, 'New Rules for Dual Nationality', and Peter H. Schuck, 'Plural Citizenships', all in *Dual Nationality, Social Rights, and Federal Citizenship in the US and Europe,* eds. Hansen and Weil.

30 Even among those critical of present border controls, there is a certain eagerness to deny citizenship transmission to the children of émigrés to avoid 'overinclusiveness'. See Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Cambridge, MA: Harvard University Press, 2009), pp. 111–190; David Martin, 'New Rules for Dual Nationality', and Peter H. Schuck, 'Plural Citizenships', all in *Dual Nationality, Social Rights, and Federal Citizenship in the US and Europe,* eds. Hansen and Weil; Christian Joppke, 'Citizenship Between De- and Re-Ethnicisation', in *Migration, Citizenship, Ethnos,* eds. Y. Michal Bodemann and Gökçe Yurdakul (New York: Palgrave Macmillan, 2006), p. 83; and Carens, 'In Defence of Birthright Citizenship', in *Migration in Political Theory,* eds. Fine and Ypi, pp. 219–20.

31 For example, Dora Kostakopoulou, *The Future Governance of Citizenship* (Cambridge: Cambridge University Press, 2008).

32 Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (New York: Basic Books, 1983), p. 44. Liav Orgad, *The Cultural Defence of Nations* (Oxford: Oxford University Press, 2015). Ulf Hannerz, 'Cosmopolitans and Locals in World Culture', in *Global Culture: Nationalism, Globalisation, and Modernity,* ed. Mike Featherstone (London: Sage Publications, 1990).

33 Leopold Kohr, *The Breakdown of Nations* (Totnes: Green Books, 2001 [1957]). Roger T. Ames, *The Art of Rulership: A Study in Ancient Chinese Political Thought* (Honolulu, HI: University of Hawaii Press, 1983), p. 7. Alexis de Tocqueville, *Democracy in America,* ed. J. P. Mayer and trans. George Lawrence (New York: Harper and Row, 2006 [1835]), pp. 61–98. Carl J. Friedrich, *Constitutional*

Government and Democracy: Theory and Practice in Europe and America (New York: Ginn and Company, 1950 [1937]), p. 248. Eric R. Wolf, *Peasant Wars of the Twentieth Century* (New York: Harper and Row, 1969), p. 294.

34 Herman Dooyeweerd, *Roots of Western Culture: Pagan, Secular, and Christian Options,* trans. John Kraay (Grand Rapids, MI: Paideia Press, 2012 [1963]), pp. 55–56, and 'The Christian Idea of the State' [1936], in *Essays in Legal, Social, and Political Philosophy* (Lampeter: Edwin Mellen Press, 1996), p. 140.

35 On 'lifestyle migration', see Michaela Benson and Karen O'Reilly, 'Migration and the Search for a Better Way of Life: A Critical Exploration of Lifestyle Migration', *Sociological Review* 57:4 (November 2009), pp. 608–625. 'Enclave-seeking' is discussed in Douglas Rae, 'Democratic Liberty and the Tyrannies of Place', in *Democracy's Edges,* eds. Ian Shapiro and Casiano Hacker-Cordón (Cambridge: Cambridge University Press, 1999).

36 On these long-distance loyalties to small places, see Roger Waldinger, *The Cross-Border Connexion: Immigrants, Emigrants, and Their Homelands* (Cambridge, MA: Harvard University Press, 2015, pp. 33–34. On the Roman etymology of the local *patria* of private sympathies, see Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Mediæval Political Theology* (Princeton, NJ: Princeton University Press, 1957), pp. 232–49.

37 W. G. Hoskins, *The Making of the English Landscape* (Dorset: Little Toller Books, 2013 [1955], p 28. D. W. Meinig, 'The Beholding Eye: Ten Versions of the Same Scene', in *The Interpretation of Ordinary Landscapes: Geographical Essays,* eds. D. W. Meinig and John Brinckerhoff Jackson (New York: Oxford University Press, 1979). Alan R. H. Baker, 'On Ideology and Landscape', in *Ideology and Landscape in Historical Perspective,* eds. Baker and Biger.

38 Phillip Cole, *Debating the Ethics of Immigration: Is There a Right to Exclude?* (Oxford: Oxford University Press, 2011), pp. 168–69. A similar argument appears in Sarah Fine, 'Freedom of Association Is Not the Answer', *Ethics* 120 (January 2010), pp. 338–356.

39 Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge: Cambridge University Press, 2004), pp. 202–209. Kees Groenendijk, *Local Voting Rights for Non-Nationals in Europe: What We Know and What We Need to Learn* (Washington, DC: Migration Policy Institute, 2008). Gerald L. Neuman, '"We Are the People": Alien Suffrage in German and American Perspective', *Michigan Journal of International Law* 13 (Winter 1992), pp. 259–335. Yishai Blank, 'Spheres of Citizenship', *Theoretical Inquiries in Law* 8 (July 2007), pp. 411–52.

40 I use the term 'margin of appreciation' by analogy. It comes from European Court of Human Rights jurisprudence on the scope of deference given to political judgements by member states, based on particular national conditions. See, among others, European Court of Human Rights, 'French Ban on the Wearing in Public of Clothing Designed to Conceal One's Face Does Not Breach the Convention', press release ECHR 191 (1 July 2014).

41 On Québécois language policy, see also Joseph H. Carens, 'Immigration, Political Community, and the Transformation of Identity: Quebec's Immigration Politics in Critical Perspective', in *Is Quebec Nationalism Just? Perspectives from Anglophone Canada,* ed. Joseph H Carens (Montreal: McGill-Queen's University Press, 1995).

42 Jacob Metzer and Stanley L. Engerman, 'Some Considerations of Ethno-Nationality (and Other Distinctions), Property Rights in Land, and Territorial Sovereignty', and Rawi Abdelal, 'Markets and Meanings: Nationalism, Land, and Property in Lithuania', both in *Land Rights, Ethno-Nationality, and Sovereignty in History* eds. Engerman and Metzer. V. Nithi Nithiyanandam and Rukmani Gounder, 'Equals in

Markets? Land Property Rights and Ethnicity in Fiji and Sri Lanka', in *Land Rights, Ethno-Nationality, and Sovereignty in History.* eds. Engerman and Metzer. Richard R. W. Brooks and Carol M. Rose, *Saving the Neighbourhood: Racially Restrictive Covenants, Law, and Social Norms* (Cambridge, MA: Harvard University Press, 2013).

43 Ruth Kark, 'Land–God–Man: Concepts of Land Ownership in Traditional Cultures in Eretz-Israel', in *Ideology and Landscape in Historical Perspective,* eds. Baker and Biger. Menachem Lorberbaum, 'Making and Unmaking the Boundaries of Holy Land', in *States, Nations, and Borders,* eds. Buchanan and Moore. Jacob Metzer, 'Jewish Land, Israel Lands: Ethno-Nationality and Land Regime in Zionism and in Israel, 1897–1967', in *Land Rights, Ethno-Nationality, and Sovereignty in History,* eds. Engerman and Metzer.

Chapter 4

1 Saskia Sassen, 'The Repositioning of Citizenship and Alienage: Emergent Subjects and Spaces for Politics', in *Migration, Citizenship, Ethnos,* eds. Bodemann and Yurdakul.

2 Michelle P. Egan, *Single Markets: Economic Integration in Europe and the United States* (Oxford: Oxford University Press, 2015).

3 Michel Barnier, quoted in Toby Helm and Jon Henley, '"We Cannot Change What We Are": Michel Barnier Stares Down Tory Threats', *The Guardian* (5 October 2019), https://www.theguardian.com/ politics/2019/oct/05/barnier-joins-brexit-blame-game, accessed 6 October 2019.

4 Michael C. Dorf and Charles F. Sabel, 'A Constitution of Democratic Experimentalism,' *Columbia Law Review* 98:2 (March 1998), pp. 267–473.

5 Alexi Drew, 'The Critical Geopolitics of Standards Setting', *Transatlantic Dialogue on China Blog* (7 May 2021), https://www.transatlantic-dialogue-on-china.rusi.org/article/the-critical-geopolitics-of-standards-setting, accessed 11 May 2021.

6 Friedrich A. Hayek, *The Constitution of Liberty* (London: Routledge and Kegan Paul, 1960), pp. 22–38 and pp. 148–61.

7 Arthur Seldon, 'Too Little Government Is Better Than Too Much', 1990 essay reprinted in *The State Is Rolling Back: The Collected Works of Arthur Seldon*, vol. 2, ed. Colin Robinson (Indianapolis, IN: Liberty Fund, 2004). James M. Buchanan, 'Property as a Guarantor of Liberty', especially pp. 49–59, and Richard E. Wagner, 'Parchment, Guns, and Constitutional Order', p. 13, both in *Property Rights and the Limits of Democracy,* ed. Charles K. Rowley (Fairfax, VA: The Locke Institute, 1993). Richard A. Epstein, *Takings: Private Property and the Power of Eminent Domain* (Cambridge, MA: Harvard University Press, 1985), p. 13. For a quasi-libertarian view of spontaneous release of talents in Daoist thought, see Roger T. Ames, *The Art of Rulership: A Study in Ancient Chinese Political Thought* (Honolulu, HI: University of Hawaii Press, 1983), pp. 53–58. On historical examples of weak individual property rights, see Cha Young-Gil, 'The Function of Peculium in Roman Slavery During the First Two Centuries AD', in *Forms of Control and Subordination in Antiquity,* eds. Yuge and Doi (Leiden: E. J. Brill, 1988), and Kemal H. Karpat, 'Some Historical and Methodological Considerations Concerning Social Stratification in the Middle East', in *Commoners, Climbers, and Notables: A Sampler of Studies on Social Ranking in the Middle East,* ed. C. A. O. Nieuwenhuijze (Leiden: E. J. Brill, 1977).

8 Bastiat, Frédéric, 'The Law', in *Essays on Political Economy,* trans. Patrick James Stirling (New York: G. P. Putnams and Sons, 1874 [1850]). Friedrich A. Hayek,

The Constitution of Liberty (London: Routledge and Kegan Paul, 1960), p. 13ff and pp. 118–24; and *Law, Legislation, and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy* (London: Routledge, 1982 [1973–1979]), volume III, pp. 62–104 and p. 150. Anthony de Jasay, *The State* (Oxford: Basil Blackwell, 1985). On the subjection of property rights to sovereign states, see also R. G. Hawtrey, *Economic Aspects of Sovereignty*, 2nd ed. (London: Longmans Green, 1952 [1930], pp. 7–8.

9 Hayek, *The Road to Serfdom* (Chicago, IL: University of Chicago Press, 1944). Bertrand de Jouvenel, *Sovereignty: An Inquiry into the Political Good* (Indianapolis, IN: Liberty Fund, 1997 [1957]), p. 11, p. 44, and pp. 154–55. John Emerich Edward Dalberg Acton, *The History of Freedom and Other Essays,* eds. John Neville Figgis and Reginald Vere Laurence (London: Macmillan and Company, 1909), pp. 94–95. The legal dimensions of this shift are explored in Ernst-Wolfgang Böckenförde, *State, Society, and Liberty: Studies in Political Theory and Constitutional Law* (Oxford: Berg Publishers, 1991), pp. 47–70 and pp. 146–74.

10 Gordon Tullock, 'Rent Seeking', in *Property Rights and the Limits of Democracy,* ed. Rowley. Richard E. Wagner, 'Parchment, Guns, and Constitutional Order', in *Property Rights and the Limits of Democracy,* ed. Charles K. Rowley (Fairfax, VA: The Locke Institute, 1993). Leonard Brewster, 'The Impossibility of the State', *Journal of Libertarian Studies* 16:3 (Summer 2002), pp. 19–34. Carey Roberts, 'Hamiltonianism: The Origins of the Modern State', Dane Stangler, 'Entrepreneurship and Government', and Timothy P. Carney, 'The Cultural Costs of Corporatism: How Government–Business Collusion Denigrates the Entrepreneur and Rewards the Sycophant', all in *Back on the Road to Serfdom: The Resurgence of Statism,* ed. Thomas E. Woods, Jr. (Wilmington, DE: ISI Books, 2011). An anarchist perspective on the same is Gary Chartier, *Anarchy and Legal Order: Law and Politics for a Stateless Society* (Cambridge: Cambridge University Press, 2013). Non-libertarian analyses of some of the same tendencies appear in Francisco O. Ramírez and George M. Thomas, 'Structural Antecedents and Consequences of Statism', in *Institutional Structure,* eds. Thomas, Meyer, Ramírez, and Boli; and in Saskia Sassen, 'De-Nationalised State Agendas and Privatised Norm-Making', and Jean-Jacques Rosa, 'The Competitive State and the Industrial Organisation of Nations', both in *Public Governance in the Age of Globalisation,* ed. Ladeur.

11 Margaret R. Somers, 'Citizenship, Statelessness, and Market Fundamentalism: Arendtian Right to Have Rights', in *Migration, Citizenship, Ethnos,* eds. Bodemann and Yurdakul. Christine Schwöbel-Patel, 'The Political Economy of Global Constitutionalism', in *The Handbook on Global Constitutionalism,* eds. Lang and Wiener. John Torpey, *The Invention of the Passport: Surveillance, Citizenship, and the State* (Cambridge: Cambridge University Press, 2000), pp. 156–57. For republican affirmations of a national scale of democracy, see David Miller, 'Bounded Citizenship', in *Cosmopolitan Citizenship,* eds. Kimberly Hutchings and Roland Dannreuther (New York: St. Martin's Press, 1999), and Richard Tuck, 'The Left Case for Brexit', *Dissent* (6 June 2016), https://www.dissentmagazine.org/online_articles/left-case-brexit, accessed 17 February 2018. Such arguments are examined critically in Arash Abizadeh, 'Does Liberal Democracy Presuppose a Cultural Nation? Four Arguments', *American Political Science Review* 96:3 (September 2002), pp. 495–509. For a more traditionalist critique of immigrant diversity's impact on social cohesion, yielding ground not only to the market but also to a liberal state governing a mass of strangers, see John Milbank and Adrian Pabst, *The Politics of Virtue: Post-Liberalism and the Human Future* (London: Rowman and Littlefield, 2016), p. 26.

12 Janet Coleman, 'Property and Poverty', in *The Cambridge History of Mediæval Political Thought, c. 350–c. 1450* ed. Burns. C. B. Macpherson, 'The Meaning of Property', in *Property: Mainstream and Critical Positions,* ed. C. B. Macpherson (Toronto: University of Toronto Press, 1978). Morris Cohen, 'Property and Sovereignty', *Cornell Law Quarterly* 13 (1927), reprinted in *Property: Mainstream and Critical Positions*, ed. C. B. Macpherson (Toronto: University of Toronto Press, 1978). Andro Linklater, *Owning the Earth: The Transforming History of Land Ownership* (London: Bloomsbury, 2013). A. Claire Cutler, 'New Constitutionalism and the Commodity Form of Global Capitalism', and Adrienne Roberts, 'New Constitutionalism, Disciplinary Neoliberalism, and the Locking In of Indebtedness in America', both in *New Constitutionalism and World Order,* eds. Gill and Cutler. Douglas Hay, 'Property, Authority, and the Criminal Law', in *Albion's Fatal Tree: Crime and Society in Eighteenth Century England,* eds. Douglas Hay et al. (London: Allen Lane, 1975). Peter Gabel and Jay M. Feinman, 'Contract Law as Ideology', and Duncan Kennedy, 'Legal Education as Training for Hierarchy', both in *The Politics of Law: A Progressive Critique,* ed. David Kairys (New York: Pantheon Books, 1982). John Brigham, *Property and the Politics of Entitlement* (Philadelphia, PA: Temple University Press, 1990), pp. 95–99.

13 Hayek, *Law, Legislation, and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy* (London: Routledge, 1982 [1973–1979]), volume I, p. 115.

14 Paul Sillitoe, 'Why Spheres of Exchange?' *Ethnology* 45:1 (2006), pp. 1–23

15 Charles M. A. Clark, 'Wealth as Abundance and Scarcity: Perspectives from Catholic Social Thought and Economic Theory', Robert G. Kennedy, 'Wealth Creation within the Catholic Social Tradition', Francis T. Hannafey, 'Entrepreneurship in Papal Thought: Creation of Wealth and the Distribution of Justice', and Carlo Dell'Aringa and Claudio Lucifora, 'The Role of "Indirect Employers" in Wage Distribution: Economic Data and *Laborem exercens*', all in *Rediscovering Abundance: Interdisciplinary Essays on Wealth, Income, and Their Distribution in the Catholic Social Tradition,* eds. Helen Alford, Charles M. A. Clark, S. A. Cortright, and Michael J. Naughton (Notre Dame, IN: University of Notre Dame Press, 2006). Víctor Pradera, *El estado nuevo* (Madrid: Cultura Española, 1935), p. 95.

16 Robert P. George, *Conscience and Its Enemies: Confronting the Dogmas of Liberal Secularism* (Wilmington, DE: ISI Books, 2014). John Larrivee, 'It's Not the Markets, It's the Morals: How Excessively Blaming Markets Undermines Civil Society', and Gerard Casey, 'Religion, the Market, and the State', both in *Back on the Road to Serfdom,* ed. Woods. Timur Kuran, 'Islamic Economics and the Islamic Subeconomy', *Journal of Economic Perspectives* 9:4 (Autumn 1995), pp. 155–73.

17 Benedict XVII [Joseph Ratzinger], *Caritas in veritate*, papal encyclical (June 2009), https://www.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf_ben-xvi_enc_20090629_caritas-in-veritate.html, accessed 11 July 2021. Muhammad Yunus, *Building Social Business: The New Kind of Capitalism that Serves Humanity's Most Pressing Needs* (New York: Public Affairs, 2010).

18 John Milbank and Adrian Pabst, *The Politics of Virtue: Post-Liberalism and the Human Future* (London: Rowman and Littlefield, 2016). Kevin T. Jackson, 'Economy of Mutuality: Merging Financial and Social Sustainability', *Journal of Business Ethics* 133 (2016), pp. 499–517. Adam K. Webb, *A Path of Our Own: An Andean Village and Tomorrow's Economy of Values* (Wilmington, DE: ISI Books, 2009), pp. 159–200.

19 Kuyper, 'Manual Labour', 1889 article reprinted in *Abraham Kuyper: A Centennial Reader,* ed. Bratt. Jonathan Chaplin, *Herman Dooyeweerd: Christian Philosopher of State and Civil Society* (Notre Dame, IN: University of Notre Dame Press, 2011), pp. 266–67 and p. 301. Bertrand de Jouvenel, *On Power: The Natural History of Its Growth,* trans J. F. Huntington (Indianapolis, IN: Liberty Fund, 1993 [1945]), p. 172, p. 184, p. 317, and pp. 354–410 passim. For later reconsiderations of pluralist thought more left-leaning on social justice, see Bob Goudzwaard, 'Christian Politics in a Global Context', excerpted in *Political Order and the Plural Structure of Society,* eds. Skillen and McCarthy, and Paul Q. Hirst's introduction in *The Pluralist Theory of the State,* ed. Hirst.

20 Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (New York: Basic Books, 1983). Kent A. van Til, 'Abraham Kuyper and Michael Walzer: The Justice of the Spheres', *Calvin Theological Journal* 40 (2005). James W. Skillen and Rockne M. McCarthy, 'Introduction', in *Political Order and the Plural Structure of Society,* eds. James W. Skillen and Rockne M. McCarthy (Atlanta, GA: Scholars Press, 1991), p. 10. Jonathan Chaplin, *Herman Dooyeweerd: Christian Philosopher of State and Civil Society* (Notre Dame, IN: University of Notre Dame Press, 2011), pp. 198–98.

21 James C. Scott, *The Moral Economy of the Peasant: Rebellion and Subsistence in Southeast Asia* (New Haven, CT: Yale University Press, 1976).

22 Anthony Giddens, 'Risk and Responsibility', *Modern Law Review* 62:1 (January 1999), pp. 1–10. Ulrich Beck, *Risk Society: Towards a New Modernity* trans Mark Ritter (London: Sage, 1992 [1986]). T. H. Marshall, 'Citizenship and Social Class', in *Citizenship and Social Class and Other Essays* (Cambridge: Cambridge University Press, 1950). Rand E. Rosenblatt, 'Legal Entitlement and Welfare Benefits', in *The Politics of Law,* ed. Kairys. Janine Brodie, 'New Constitutionalism, Neoliberalism, and Social Policy', in *New Constitutionalism and World Order,* eds. Gill and Cutler. Thomas Faist, 'The Transnational Social Question: Social Rights and Citizenship in a Global Context', *International Sociology* 24:1 (2009), pp. 7–35.

23 Arthur Seldon, 'Too Little Government Is Better Than Too Much', 1990 essay reprinted in *The State Is Rolling Back: The Collected Works of Arthur Seldon*, vol. 2, ed. Colin Robinson (Indianapolis, IN: Liberty Fund, 2004). Friedrich A. Hayek, *The Constitution of Liberty* (London: Routledge and Kegan Paul, 1960), pp. 285–305. Richard A. Epstein, *Takings: Private Property and the Power of Eminent Domain* (Cambridge, MA: Harvard University Press, 1985), pp. 306–24. Bertrand de Jouvenel, *Sovereignty: An Inquiry into the Political Good* (Indianapolis, IN: Liberty Fund, 1997 [1957]), pp. 168–98; and *The Ethics of Redistribution* (Cambridge: Cambridge University Press, 1951). Richard E. Wagner, 'Parchment, Guns, and Constitutional Order', in *Property Rights and the Limits of Democracy,* ed. Charles K. Rowley (Fairfax, VA: The Locke Institute, 1993), pp. 31–32. John Brigham, *Property and the Politics of Entitlement* (Philadelphia, PA: Temple University Press, 1990), p. 163. Anthony de Jasay, *The State* (Oxford: Basil Blackwell, 1985), pp. 208–12. James M. Buchanan, 'Property as a Guarantor of Liberty', especially pp. 49–59, in *Property Rights and the Limits of Democracy,* ed. Charles K. Rowley (Fairfax, VA: The Locke Institute, 1993), p. 163. Charles Murray, *Losing Ground: American Social Policy, 1950–1980* (New York: Basic Books, 1984); and *In Our Hands: A Plan to Replace the Welfare State* (Washington, DC: AEI Press, 2006). Per Bylund, 'The Modern Welfare State: Leading the Way on the Road to Serfdom', in *Back on the Road to Serfdom,* ed. Woods. Julian Le Grand, *Motivation, Agency, and Public Policy: Of Knights and Knaves, Pawns and Queens* (Oxford: Oxford University Press, 2003).

24 Norman Daniels, 'Health-Care Needs and Distributive Justice', *Philosophy and Public Affairs* 10:2 (Spring 1981), pp. 146–79.
25 Richard Freeman, *The Politics of Health in Europe* (Manchester: Manchester University Press, 2000), pp. 1–5.
26 Jonathan Scott Perry, *The Roman Collegia: The Modern Evolution of an Ancient Concept* (Leiden: Brill, 2006). P. H. J. H. Gosden, *Self-Help: Voluntary Associations in the Nineteenth Century* (London: B. T. Batsford, 1973). Christine Hallas, *In Sickness and in Health: Askrigg Equitable, Benevolent, and Friendly Society*, 1809–2000 (York: Ebor Press, 2000). Deborah Mabbett, 'Mutuality in Insurance and Social Security', in *The New Mutualism in Public Policy,* ed. Johnston Birchall (London: Routledge, 2001). Allan Mitchell, 'The Function and Malfunction of Mutual Aid Societies in Nineteenth Century France', and Paul Weindling, 'The Modernisation of Charity in Nineteenth Century France and Germany', both in *Medicine and Charity Before the Welfare State,* eds. Jonathan Barry and Colin Jones (London: Routledge, 1991). David G. Green and Lawrence G. Cromwell, *Mutual Aid or Welfare State? Australia's Friendly Societies* (Sydney: George Allen and Unwin, 1984). Pavel Chalupníček and Lukáš Dvořák, 'Health Insurance Before the Welfare State: The Destruction of Self-Help by State Intervention', *The Independent Review* 13:3 (Winter 2009), pp. 367–87. Richard Freeman, *The Politics of Health in Europe* (Manchester: Manchester University Press, 2000), pp. 14–31. David T. Beito, *From Mutual Aid to the Welfare State: Fraternal Societies and Social Services, 1890–1967* (Chapel Hill, NC: University of North Carolina Press, 2000). Dennis P. McCann, 'Inequality in Income and Wealth: When Does It Become Immoral, and Why?' in *Rediscovering Abundance,* eds. Alford, Clark, Cortright, and Naughton. Lew Daly, *God's Economy: Faith-Based Initiatives and the Caring State* (Chicago, IL: University of Chicago Press, 2009). Mike Konczal, 'The Voluntarism Fantasy', *Democracy Journal* 32 (Spring 2014), https://democracyjournal.org/magazine/32/the-voluntarism-fantasy/, accessed 1 October 2019.
27 Karl-Heinz Ladeur, 'Globalisation and the Conversion of Democracy to Polycentric Networks: Can Democracy Survive the End of the Nation-State?' in *Public Governance in the Age of Globalisation,* ed. Ladeur. Frank J. Lechner, *Globalisation: The Making of World Society* (Chichester: Wiley-Blackwell, 2009), pp. 103–23.
28 Shlomi Segall, *Health, Luck, and Justice* (Princeton, NJ: Princeton University Press, 2010), pp. 78–80.
29 Robert Holzmann and Johannes Koettl, 'Portability of Pension, Health, and Other Social Benefits: Facts, Concepts, and Issues', *CESifo Economic Studies*, 61:2, 2015, pp. 377–415. Willem Maas, 'Free Movement and Discrimination: Evidence from Europe, the United States, and Canada', *European Journal of Migration and Law* 15 (2013), pp. 91–110. Miek Peeters, 'Free Movement of Patients: Directive 2011/24 on the Application of Patients' Rights in Cross-Border Healthcare', *European Journal of Health Law* 19 (2012), pp. 29–60. Luís Moreno and Nicola McEwen, 'Exploring the Territorial Politics of Welfare', in *The Territorial Politics of Welfare,* eds. Luís Moreno and Nicola McEwen (New York: Routledge, 2005). Gareth Davies, 'Services, Citizenship, and the Country of Origin Principle', Europa Institute Mitchell Working Paper, Edinburgh, 2/2007.
30 Eva-Maria Poptcheva and David Eatock, 'The UK's 'New Settlement' in the European Union: Renegotiation and Referendum', European Parliamentary Research Service Report (February 2016), https://www.europarl.europa.eu/thinktank/en/document/EPRS_IDA(2016)577983, accessed 10 October 2024. David Miller, *Strangers in Our Midst: The Political Philosophy of Immigration* (Cambridge, MA: Harvard University Press, 2016), pp. 9–10 and pp. 26–28. Mark Tushnet, 'Immigration Policy in Liberal Political Theory', in *Justice in Immigration,* ed. Schwartz.

31 Anna Stilz, 'Is There an Unqualified Right to Leave?' in *Migration in Political Theory,* eds. Fine and Ypi. Lea Ypi, 'Justice in Migration: A Closed Borders Utopia?' *Journal of Political Philosophy* 16:4 (2008), pp. 391–418.
32 Eric C. Ip, 'The Political Determinants of China's New Health Constitution', *Medical Law Review* 29:1 (Winter 2021), pp. 3–23.
33 e.g. George Watson et al., *The Unservile State: Essays in Liberty and Welfare* (London: George Allen and Unwin, 1957).
34 Gregory Baus, 'Dooyeweerd's Societal Sphere Sovereignty: Neither Tax-Based Nor Laissez-Faire', unpublished paper (February 2006).
35 W. Vercruysse, J. Dhaene, M. Denuit, E. Pitacco, and K. Antonio, 'Premium Indexing in Lifelong Health Insurance', Catholic University of Leuven, Faculty of Business and Economics, AFI Paper 1274, http://www.actuaries.org/ASTIN/Colloquia/Hague/Papers/Vercruysse.pdf, accessed 24 May 2018.
36 Walter Block, 'Rejoinder to Hoppe on Immigration', *Journal of Libertarian Studies* 22 (2011), pp. 771–92. Franz Rosenthal, 'The Stranger in Mediæval Islam', *Arabica* 44 (1997), reprinted in *Man versus Society in Mediæval Islam,* ed. Gutas, pp. 792–93. Miri Shefer, 'Charity and Hospitality: Hospitals in the Ottoman Empire in the Early Modern Period', in *Poverty and Charity in Middle Eastern Contexts,* eds. Michael Bonner, Mine Ener, and Amy Singer (Albany, NY: SUNY Press, 2003). Malcolm Harrison and Laura Hemingway, 'Social Policy and the New Behaviourism: Towards a More Excluding Society', and Teela Sanders, 'Concluding Thoughts: The Consequences of a "Not-So-Big Society"', both in *Social Policies and Social Control: New Perspectives on the 'Not-So-Big' Society,* eds. Malcolm Harrison and Teela Sanders (Bristol: Policy Press, 2014). Chris Jones and Tony Novak, *Poverty, Welfare, and the Disciplinary State* (London: Routledge, 1999).
37 Robert H. Jerry, Jr, 'Life, Health, and Disability Insurance: Understanding the Relationships', *Journal of Law, Medicine, and Ethics* 35 (Summer 2007), p. 81.
38 Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (New Haven, CT: Yale University Press, 2008). Julian Le Grand and Bill New, *Government Paternalism: Nanny State or Helpful Friend?* (Princeton, NJ: Princeton University Press, 2015). A. J. Culyer, *The Economics of Social Policy* (New York: Dunellen, 1973).
39 Julian Le Grand and Bill New, *Government Paternalism: Nanny State or Helpful Friend?* (Princeton, NJ: Princeton University Press, 2015), pp. 90–94.
40 Richard M. Titmuss, *The Gift Relationship: From Human Blood to Social Policy* (London: George Allen and Unwin, 1970), pp. 209–24. A similar argument appears in Shlomi Segall, *Health, Luck, and Justice* (Princeton, NJ: Princeton University Press, 2010), pp. 139–52. On how externalities are felt differently in narrower versus more general organisations, cf. A. J. Culyer, *The Economics of Social Policy* (New York: Dunellen, 1973), p. 134.
41 Robert H. Jerry, Jr., 'Life, Health, and Disability Insurance: Understanding the Relationships', *Journal of Law, Medicine, and Ethics* 35 (Summer 2007), p. 81. Shlomi Segall, *Health, Luck, and Justice* (Princeton, NJ: Princeton University Press, 2010). For a related analysis of fairness in resource distribution, see Paul Bou-Habib, 'Distributive Justice, Dignity, and the Lifetime View', *Social Theory and Practice* 37:2 (April 2011), pp. 285–310.
42 Hanna Halaburda and Miklos Sarvary, *Beyond Bitcoin: The Economics of Digital Currencies* (New York: Palgrave Macmillan, 2016), pp. 49–95.
43 Frank J. Lechner, *Globalisation: The Making of World Society* (Chichester: Wiley-Blackwell, 2009), pp. 103–23. Francisco O. Ramírez and John Boli, 'Global Patterns of Educational Institutionalisation', and 'On the Union of States and Schools', both in *Institutional Structure,* eds. Thomas, Meyer, Ramírez, and Boli.

44 Amy Gutmann, 'Civic Education and Social Diversity', *Ethics* 105 (April 1995), pp. 557–79. Rob Reich, 'The Civic Perils of Homeschooling', *Educational Leadership* 59:7 (April 2002), pp. 56–59. Robin L. West, 'The Harms of Homeschooling', *Philosophy and Public Policy Quarterly* 29:3 (Summer 2009), pp. 7–12. For a parallel argument from a more communitarian angle, see Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (New York: Basic Books, 1983), pp. 203–26.

45 John E. Coons and Stephen D. Sugarman, *Education by Choice: The Case for Family Control* (Berkeley, CA: University of California Press, 1978). Friedrich A. Hayek, *The Constitution of Liberty* (London: Routledge and Kegan Paul, 1960), pp. 376–90. Ivan Illich, *Deschooling Society* (New York: Harper and Row, 1970). Melissa Moschella, 'Natural Law, Parental Rights, and Education Policy', *American Journal of Jurisprudence* 59:2 (2014), pp. 197–227. Francis Schrag, 'The Right to Educate', *The School Review* 79:3 (May 1971), pp. 359–78. Ferdinand Schoeman, 'Rights of Children, Rights of Parents, and the Moral Basis of the Family', *Ethics* 91:1 (October 1980), pp. 6–19. Stephen G. Gilles, 'On Educating Children: A Parentalist Manifesto', *University of Chicago Law Review* 63:3 (Summer 1996), pp. 937–1034. Kuyper, 'Sphere Sovereignty'; 'The Blurring of the Boundaries' [1892], both in *Abraham Kuyper: A Centennial Reader,* ed. Bratt, pp. 400–401. Rockne McCarthy, Donald Oppewal, Walfred Peterson, and Gordon Spykman, *Society, State, and Schools: A Case for Structural and Confessional Pluralism* (Grand Rapids, MI: William B. Eerdmans Publishing Company, 1981).

46 On a historical model of educational autonomy beyond the West, see William Theodore de Bary, *The Liberal Tradition in China* (Hong Kong: The Chinese University Press, 1983), pp. 86–87.

47 Danny Hieber, 'Why Do Languages Die?' Mises Institute (4 January 2012), https://mises.org/library/why-do-languages-die, retrieved 2 April 2016.

48 On the implications of funding sources for access and institutional autonomy, see John E. Coons and Stephen D. Sugarman, *Education by Choice: The Case for Family Control* (Berkeley, CA: University of California Press, 1978), pp. 190–92; Ian Williams, *The Alms Trade: Charities, Past, Present, and Future* (London: Unwin Hyman, 1989), pp. 54–85; Paul Bou-Habib, 'Who Should Pay for Higher Education?' *Journal of Philosophy of Education* 44:4 (2010), pp. 479–95; Ernest Barker, 'Academic Freedom', 1924 lecture reprinted in *Church, State, and Study*; Seldon, 'Universities Out of Politics', 1962 essay reprinted in *The State Is Rolling Back*, vol. 2; and Friedrich A. Hayek, *The Constitution of Liberty* (London: Routledge and Kegan Paul, 1960), pp. 390–94.

49 Daphné Josselin and William Wallace, 'Non-State Actors in World Politics: A Framework', David Ryall, 'The Catholic Church as a Transnational Actor', and Katerina Dalacoura, 'Islamist Movements as Non-State Actors and Their Relevance to International Relations', all in *Non-State Actors in World Politics,* eds. Josselin and Wallace. Mark Peffley and Robert Rohrschneider, 'Democratisation and Political Tolerance in Seventeen Countries: A Multi-Level Model of Democratic Learning', *Political Research Quarterly* 56:3 (September 2003), pp. 243–257. Karl-Heinz Ladeur, 'Globalisation and the Conversion of Democracy to Polycentric Networks: Can Democracy Survive the End of the Nation-State?' in *Public Governance in the Age of Globalisation,* ed. Ladeur. Michael Walzer, 'The Civil Society Argument', in *Theorising Citizenship,* ed. Beiner. Gideon Baker, *Civil Society and Democratic Theory: Alternative Voices* (London: Routledge, 2002). Peter P. Ekeh, 'Colonialism and the Two Publics in Africa: A Theoretical Statement', *Comparative Studies in Society and History* 17:1 (January 1975), pp. 91–112. Hasan Hanafi, 'Alternative Conceptions of Civil Society: A Reflective Islamic Approach', in *Islamic Political*

Ethics, ed. Hashmi. Ali Bulaç, 'The Most Recent Reviver in the 'Ulama Tradition: The Intellectual 'Alim, Fethullah Gülen', in *Muslim Citizens of the Globalised World: Contributions of the Gülen Movement,* eds. Robert A. Hunt and Yuksel Aslandogan (Houston, TX: Institute of Interfaith Dialogue, 2007). Carlos A. Forment, *Democracy in Latin America, 1760–1900* (Chicago, IL: University of Chicago Press, 2003).

50 Thomas Glyn Watkin, *An Historical Introduction to Modern Civil Law* (Aldershot: Dartmouth, 1999), pp. 163–64 and pp. 220–21. Martina Saltamacchia, 'The Prince and the Prostitute: Competing Sovereignties in Fourteenth Century Milan', in *Law and Sovereignty in the Middle Ages and Renaissance,* ed. Robert S. Sturges (Turnhout: Brepols, 2011). Denis Twitchett, 'The Fan Clan's Charitable Estate, 1050–1760', in *Confucianism in Action,* eds. David S. Nivison and Arthur F. Wright (Stanford, CA: Stanford University Press, 1959). Hasan Hanafi, 'Alternative Conceptions of Civil Society: A Reflective Islamic Approach', in *Islamic Political Ethics,* ed. Hashmi, pp. 67–68. Claude Cahen, 'The Body Politic', in *Unity and Variety in Muslim Civilisation,* ed. Gustave E von Grunebaum (Chicago IL: University of Chicago Press, 1955), p. 141. Henry Cattan, 'The Law of Waqf', in *Law in the Middle East,* eds. Khadduri and Liebesny. Miriam Hoexter, 'Charity, the Poor, and Distribution of Alms in Ottoman Algiers', and Amy Singer, 'Charity's Legacies: Reconsideration of Ottoman Imperial Endowment-Making', both in *Poverty and Charity in Middle Eastern Contexts,* eds. Bonner, Ener, and Singer, pp. 145–51.

51 Anver M. Emon, *Religious Pluralism and Islamic Law: Dhimmīs and Others in the Empire of Law* (Oxford: Oxford University Press, 2012), pp. 193–94. Timur Kuran, 'The Absence of the Corporation in Islamic Law: Origins and Persistence', *American Journal of Comparative Law* 53:4 (Autumn 2004), pp. 800–802; and 'The Political Consequences of Islam's Economic Legacy', *Philosophy and Social Criticism* 39:4/5 (2013), pp. 395–505. Abū al Ḥasan al-Mawardī, *The Ordinances of Government [Al-Aḥkām al-Sulṭāniyya w'al-Wilāyāt al-Dīniyya],* trans. Wafaa H. Wahba (Reading, MA: Garnet Publishing, 1996), pp. 79–81. Jeffrey A. Schoenblum, 'The Role of Legal Doctrine in the Decline of the Islamic Waqf: A Comparison with the Trust', *Vanderbilt Journal of Transnational Law* 32 (1999), pp. 1191–227. David Runciman, *Pluralism and the Personality of the State* (Cambridge: Cambridge University Press, 1997), pp. 64–85.

52 Edmund Burke, *Reflections on the Revolution in France,* ed. J. G. A. Pocock (Cambridge: Hackett Publishing Company, 1987 [1790]), pp. 88–92 and pp. 138–39. Ian Williams, *The Alms Trade: Charities, Past, Present, and Future* (London: Unwin Hyman, 1989), pp. 6–8. Lawrence M. Friedman, *Dead Hands: A Social History of Wills, Trusts, and Inheritance Law* (Stanford, CA: Stanford University Press, 2009). Hasan Hanafi, 'Alternative Conceptions of Civil Society: A Reflective Islamic Approach', in *Islamic Political Ethics,* ed. Hashmi, p. 61. Jeffrey G. Sherman, 'Posthumous Meddling: An Instrumentalist Theory of Testamentary Restraints on Conjugal and Religious Choices', *University of Illinois Law Review* 4 (1999), pp. 1273–330. Ray D. Madoff, *Immortality and the Law: The Rising Power of the American Dead* (New Haven, CT: Yale University Press, 2010). Ben Whitaker, *The Foundations: An Anatomy of Philanthropy and Society* (London: Eyre Methuen, 1974). Other analyses of the problem of civil society accountability include Fred Halliday, 'The Romance of Non-State Actors', in *Non-State Actors in World Politics,* eds. Josselin and Wallace; and Anders Uhlin, 'Democratic Legitimacy of Transnational Actors: Mapping Out the Conceptual Terrain', Enrique Peruzzotti, 'Democratic Credentials or Bridging Mechanisms? Constituents, Representatives, and the Dual Politics of Democratic Representation', Ann Vogel, 'Democratic Legitimacy of Philanthropic Foundations: US Grant-Making in the Middle East',

and Doris Fuchs, Agni Kalfagianni, and Julia Sattelberger, 'Democratic Legitimacy of Transnational Corporations in Global Governance', all in *Legitimacy Beyond the State?,* eds. Erman and Uhlin.

53 David Runciman, *Pluralism and the Personality of the State* (Cambridge: Cambridge University Press, 1997). H. L. Laski, *The Foundations of Sovereignty and Other Essays*, reprinted in *The Pluralist Theory of the State: Selected Writings of G D H Cole, J N Figgis, and H J Laski,* ed. Paul Q Hirst (London: Routledge, 1989), chapters 8–10. G. D. H. Cole, *The Social Theory*, reprinted in *The Pluralist Theory of the State,* ed. Hirst, pp. 51–67. John Neville Figgis, *Churches in the Modern State*, 2nd ed. (London: Longmans, Green and Company, 1914), chapter 7. Kuyper, 'Uniformity: The Curse of Modern Life' [1869], pp. 38–41; and 'Sphere Sovereignty', both in *Abraham Kuyper: A Centennial Reader,* ed. Bratt. Bertrand de Jouvenel, *Sovereignty: An Inquiry into the Political Good* (Indianapolis, IN: Liberty Fund, 1997 [1957]), p. 13. Robert A. Nisbet, *Tradition and Revolt: Historical and Sociological Essays* (New York: Vintage Books, 1970), pp. 15–29. Robert P. George, *Conscience and Its Enemies: Confronting the Dogmas of Liberal Secularism* (Wilmington, DE: ISI Books, 2014).

54 Johan Sturm and Siebren Miedema, 'Kuyper's Educational Legacy: Schooling for a Pluralist Society', in *Kuyper Reconsidered,* eds. van der Kooi and de Bruijn.

55 John Burnheim, *Is Democracy Possible? The Alternative to Electoral Politics* (Cambridge: Polity Press, 1985), p. 21. On the friction among groups with strong boundaries, see also Cornford, p. 59; Louis Dumont, *Homo Hierarchicus: The Caste System and Its Implications,* trans. Mark Sainsbury, Louis Dumont, and Basia Gulati (Chicago, IL: University of Chicago Press, 1980 [1966]), pp. 179–80; and James D. Fearon and David D. Laitin, 'Explaining Interethnic Cooperation', *American Political Science Review* 90:4 (December 1996), pp. 715–35.

56 Robert P. George, *Conscience and Its Enemies: Confronting the Dogmas of Liberal Secularism* (Wilmington, DE: ISI Books, 2014). For liberal arguments sympathetic to such pressure, see Paul Schiff Berman, *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders* (Cambridge: Cambridge University Press, 2012), p. 289; and Cass R. Sunstein, 'Should Sex Equality Law Apply to Religious Institutions?' in *Is Multiculturalism Bad for Women?,* eds. Joshua Cohen, Matthew Howard, and Martha C. Nussbaum (Princeton, NJ: Princeton University Press, 1999).

57 Thomas Glyn Watkin, *An Historical Introduction to Modern Civil Law* (Aldershot: Dartmouth, 1999), pp. 253–54. Lawrence M. Friedman, *Dead Hands: A Social History of Wills, Trusts, and Inheritance Law* (Stanford, CA: Stanford University Press, 2009), pp. 120–39. Ray D. Madoff, *Immortality and the Law: The Rising Power of the American Dead* (New Haven, CT: Yale University Press, 2010), pp. 92–93.

58 Lawrence M. Friedman, *Dead Hands: A Social History of Wills, Trusts, and Inheritance Law* (Stanford, CA: Stanford University Press, 2009), p. 153. Ray D. Madoff, *Immortality and the Law: The Rising Power of the American Dead* (New Haven, CT: Yale University Press, 2010), pp. 84–85, p. 102, and pp. 106–09.

59 Ann K. S. Lambton, *State and Government in Mediæval Islam: An Introduction to the Study of Islamic Political Theory* (Oxford: Oxford University Press, 1981), p. 215. Charles Adams, *For Good and Evil: The Impact of Taxes on the Course of Civilisation* (London: Madison Books, 1993), pp. 61–64.

60 A. J. Culyer, *The Economics of Social Policy* (New York: Dunellen, 1973), pp. 34–35. Saul Levmore, 'Taxes as Ballots', *University of Chicago Law Review* 65:2 (Spring 1998), pp. 387–431. Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (New Haven, CT: Yale University Press, 2008), p. 230. A more critical view of tax choice follows in Ray D.

Madoff, *Immortality and the Law: The Rising Power of the American Dead* (New Haven, CT: Yale University Press, 2010), p. 110.

61 Julian Le Grand, *Motivation, Agency, and Public Policy: Of Knights and Knaves, Pawns and Queens* (Oxford: Oxford University Press, 2003), pp. 51–70. Marcel Mauss, *The Gift: The Form and Reason for Exchange in Archaic Societies* (London: Routledge, 1990 [1950]). Richard M. Titmuss, *The Gift Relationship: From Human Blood to Social Policy* (London: George Allen and Unwin, 1970).

62 John Stuart Mill, *Considerations on Representative Government* (London: Parker, Son, and Bourne, 1861), chapter VIII.

63 Sandra Cavallo, 'The Motivations of Benefactors: An Overview of Approaches to the Study of Charity', in *Medicine and Charity Before the Welfare State,* eds. Barry and Jones. Michael Bonner, 'Poverty and Charity in the Rise of Islam', in *Poverty and Charity in Middle Eastern Contexts,* eds. Bonner, Ener, and Singer. A more modern version of this rationale appears in Andrew Carnegie, 'The Gospel of Wealth', 1889 essay reprinted in *The Gospel of Wealth and Other Timely Essays* (New York: The Century Company, 1901), pp. 1–44.

64 Charles Adams, *For Good and Evil: The Impact of Taxes on the Course of Civilisation* (London: Madison Books, 1993). Isaac William Martin, Ajay K. Mehrotra, and Monica Prasad, 'The Thunder of History: The Origins and Development of the New Fiscal Sociology', in *The New Fiscal Sociology: Taxation in Comparative and Historical Perspective,* eds. Isaac William Martin, Ajay K Mehrotra, and Monica Prasad (Cambridge: Cambridge University Press, 2009).

65 Karl Wittfogel, *Oriental Despotism: A Comparative Study of Total Power* (New Haven, CT: Yale University Press, 1963), pp. 84–85. Thomas Nagel, 'Liberal Democracy and Hereditary Inequality', *Tax Law Review* 63 (2009), pp. 114–19. Thomas Nagel and Liam Murphy, *The Myth of Ownership: Taxes and Justice* (Oxford: Oxford University Press, 2002). Wendy C. Gerzog, 'What's Wrong with a Federal Inheritance Tax?' *Real Property, Trust, and Estate Law Journal* 49 (Spring 2014), pp. 163–201. Roberto Unger, *Democracy Realised: The Progressive Alternative* (London: Verso Books, 1998). Anne L. Alstott, 'Equal Opportunity and Inheritance Taxation', *Harvard Law Review* 121 (2007), pp. 470–542.

66 Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (New York: Basic Books, 1983), p. 126. Ray D. Madoff, *Immortality and the Law: The Rising Power of the American Dead* (New Haven, CT: Yale University Press, 2010), p. 6, p. 58, and p. 68. John Burnheim, *Is Democracy Possible? The Alternative to Electoral Politics* (Cambridge: Polity Press, 1985), pp. 125–55. Corey Brettschneider and David McNamee, 'Sovereign and State: A Democratic Theory of Sovereign Immunity', *Texas Law Review* 93 (2015), pp. 1229–97. Daniel W. Drezner, *White Whale or Red Herring? Assessing Sovereign Wealth Funds* (Stockholm: Glasshouse Forum, 2008). A Gabriel von Roda, 'The State Advances, the Private Sector Retreats: Crisis Economic Policy in China', *Global Policy* (14 May 2010), https://www.globalpolicyjournal.com/blog/14/05/2010/state-advances-private-sector-retreats-crisis-economic-policy-china, accessed 10 August 2018.

67 Itai Grinberg, 'Building Institutions for a Globalised World: Automatic Information Exchange', Nicholas Shaxson and John Christensen, 'Tax Competitiveness: A Dangerous Obsession', Vito Tanzi, 'Lakes, Oceans, and Taxes: Why the World Needs a World Tax Authority', and Edward D Kleinbard, 'Stateless Income and Its Remedies', all in *Global Tax Fairness,* eds. Thomas Pogge and Krishen Mehta (Oxford: Oxford University Press, 2016). Adam Harmes, 'New Constitutionalism and Multilevel Governance', and Dries Lesage, Mattias Vermeiren, and Sacha Dierckx, 'New Constitutionalism, International Taxation, and Crisis', both in *New Constitutionalism and World Order,* eds. Gill and Cutler, pp. 155–56. Tony

Porter and Verónica Rubio Vega, 'Global Forum on Transparency and Exchange of Information for Tax Purposes', in *Handbook of Transnational Governance: Institutions and Innovations,* eds. Thomas Hale and David Held. William Vlcek, *Offshore Finance and Global Governance: Disciplining the Tax Nomad* (New York: Palgrave Macmillan, 2017). Peter Dietsch, *Catching Capital: The Ethics of Tax Competition* (Oxford: Oxford University Press, 2015). For a critical view of the same trends, cf. Rainer Hülsse, 'Creating Demand for Global Governance: The Making of a Global Money-Laundering Problem', *Global Society* 21:2 (2007), pp. 155–78.

68 Richard A. Epstein, *Takings: Private Property and the Power of Eminent Domain* (Cambridge, MA: Harvard University Press, 1985), pp. 283–305. Hans-Hermann Hoppe, *Democracy: The God That Failed: The Economics and Politics of Monarchy, Democracy, and Natural Order* (London: Transaction Publishers, 2001). Geoffrey Brennan and James M. Buchanan, *The Power to Tax: Analytical Foundations of a Fiscal Constitution* (Indianapolis, IN: Liberty Fund, 2000 [1980]). Friedrich A. Hayek, *The Constitution of Liberty* (London: Routledge and Kegan Paul, 1960), pp. 90–91 and pp. 125–30; and *The Denationalisation of Money: An Analysis of the Theory and Practice of Concurrent Currencies*, 2nd ed. (London: Institute of Economic Affairs, 1990 [1976]), pp. 125–26. Chris Edwards and Daniel J. Mitchell, *Global Tax Revolution: The Rise of Tax Competition and the Battle to Defend It* (Washington, DC: Cato Institute, 2008). Geoffrey Brennan and James M. Buchanan, *The Power to Tax: Analytical Foundations of a Fiscal Constitution* (Indianapolis, IN: Liberty Fund, 2000 [1980]), pp. 160–80. For a more critical view of how territorial layering works, cf. Wallace E. Oates, 'On the Theory and Practice of Fiscal Decentralisation', IFIR Working Paper 2006-05, Institute for Federalism and Intergovernmental Relations, Lexington, KY (May 2006).

69 Will Wilkinson, 'What If We Can't Make Government Smaller?', Niskanen Centre Commentary (19 October 2016), https://www.niskanencenter/org/cant-make-government-smaller/, accessed 1 October 2019. Charles Adams, *For Good and Evil: The Impact of Taxes on the Course of Civilisation* (London: Madison Books, 1993), especially pp. 339–41. Geoffrey K. Fry, *The Growth of Government: The Development of Ideas About the Role of the State and the Machinery and Functions of Government in Britain Since 1780* (London: Frank Cass, 1979). United States Supreme Court, *McCulloch v. Maryland* (1819), p. 327.

70 Bertrand de Jouvenel, *Sovereignty: An Inquiry into the Political Good* (Indianapolis, IN: Liberty Fund, 1997 [1957]), pp. 212–14 and pp. 222–23. Harro Höpfl, *Jesuit Political Thought: The Society of Jesus and the State, c. 1540–1630* (Cambridge: Cambridge University Press, 2004), p. 309. John W. Spellman, *Political Theory of Ancient India: A Study of Kingship from the Earliest Times to Circa AD 300* (Oxford: Clarendon Press, 1964), pp. 179–200. Ann K. S. Lambton, *State and Government in Mediæval Islam: An Introduction to the Study of Islamic Political Theory* (Oxford: Oxford University Press, 1981), p. 200. Abū al Ḥasan al-Mawardī, *The Ordinances of Government [Al-Aḥkām al-Sulṭāniyya w'al-Wilāyāt al-Dīniyya],* trans. Wafaa H. Wahba (Reading, MA: Garnet Publishing, 1996), pp. 158–72 and pp. 208–16. Julian Le Grand, *Motivation, Agency, and Public Policy: Of Knights and Knaves, Pawns and Queens* (Oxford: Oxford University Press, 2003), pp. 147–62. A. J. Culyer, *The Economics of Social Policy* (New York: Dunellen, 1973), pp. 95–96. Ranjit S. Teja and Barry Bracewell-Milnes, *The Case for Earmarked Taxes: Government Spending and Public Choice* (London: Institute of Economic Affairs, 1991). For a related analysis of tax burdens and regime type, cf. Charles Tilly,

'Extraction and Democracy', in *The New Fiscal Sociology,* eds. Martin, Mehrotra, and Prasad.

71 Julian Le Grand, *Motivation, Agency, and Public Policy: Of Knights and Knaves, Pawns and Queens* (Oxford: Oxford University Press, 2003), pp. 120–36. Anne L. Alstott, 'Equal Opportunity and Inheritance Taxation', *Harvard Law Review* 121 (2007), pp. 470–542.

72 Johannes Althusius, *The Politics of Johannes Althusius,* trans. Frederick S. Carney (London: Eyre and Spottiswoode, 1964 [1603]), pp. 79–80.

73 Abū al Ḥasan al-Mawardī, *The Ordinances of Government [Al-Aḥkām al-Sulṭāniyya w'al-Wilāyāt al-Dīniyya],* trans. Wafaa H. Wahba (Reading, MA: Garnet Publishing, 1996), pp. 261–80. Adam Sabra, '"Prices Are in God's Hands": The Theory and Practice of Price Control in the Mediæval Islamic World', in *Poverty and Charity in Middle Eastern Contexts,* eds. Bonner, Ener, and Singer. Anton F. P. Hulsewé, '"Contracts" of the Han Period', in *Il diritto in Cina: Teoria e applicazioni durante le dinastie imperiali e problematica del diritto cinese contemporáneo,* ed. Lionello Lanciotti (Florence: Leo S Olschki Editore, 1978). On the differentiation of commercial from civil codes, see Thomas Glyn Watkin, *An Historical Introduction to Modern Civil Law* (Aldershot: Dartmouth, 1999), p. 151; and John Henry Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford, CA: Stanford University Press, 1985 [1969]), p. 68.

74 Anthony de Jasay, *The State* (Oxford: Basil Blackwell, 1985), pp. 227–32. James M. Buchanan, 'Property as a Guarantor of Liberty', especially pp. 49–59, in *Property Rights and the Limits of Democracy,* ed. Charles K. Rowley (Fairfax, VA: The Locke Institute, 1993), pp. 43–45 and p. 56. Geoffrey Brennan and James M. Buchanan, *The Power to Tax: Analytical Foundations of a Fiscal Constitution* (Indianapolis, IN: Liberty Fund, 2000 [1980]), pp. 129–59. Friedrich A. Hayek, *The Constitution of Liberty* (London: Routledge and Kegan Paul, 1960), pp. 334–35; and *The Denationalisation of Money: An Analysis of the Theory and Practice of Concurrent Currencies*, 2nd ed. (London: Institute of Economic Affairs, 1990 [1976]).

75 Geoffrey Ingham, *The Nature of Money* (Cambridge: Polity Press, 2004). David Graeber, *Debt: The First 5000 Years* (Brooklyn, NY: Melville House, 2011).

76 Hanna Halaburda and Miklos Sarvary, *Beyond Bitcoin: The Economics of Digital Currencies* (New York: Palgrave Macmillan, 2016). P. Carl Mullan, *A History of Digital Currency in the United States: New Technology in an Unregulated Market* (New York: Palgrave Macmillan, 2016). Sarah Jeong, 'How a Cashless Society Could Embolden Big Brother', *The Atlantic Monthly* (8 April 2016), https://www.theatlantic.com/technology/archive/2016/04/cashless-society/477411, accessed 10 August 2018.

77 John Brigham, *Property and the Politics of Entitlement* (Philadelphia, PA: Temple University Press, 1990). Charles A. Reich, 'The New Property', *Yale Law Journal* 73 (April 1964), excerpted in *Property,* ed. Macpherson. Bruno Théret, 'The Socio-Political Dimensions of the Currency: Implications for the Transition to the Euro', *Journal of Consumer Policy* 22 (1999), pp. 51–79. Bruno Théret and Wojtek Kalinowski, 'The Euro as Common Money, Not a Single Currency: A Plea for a European Monetary Federalism', Veblen Institute for Economic Reforms (September 2012), http://www.cepn-paris13.fr/epog/wp-content/uploads/2015/09/THERET_a_plea_for_a_european_monetary_federalism.pdf, accessed 14 April 2016. John Grahl, 'Money as Sovereignty: The Economics of Michel Aglietta', *New Political Economy* 5:2 (2000), pp. 291–316. David Graeber, *Debt: The First 5000 Years* (Brooklyn, NY: Melville House, 2011), pp. 55–71. Evan S. Lieberman, 'The Politics of Demanding Sacrifice: Applying Insights from Fiscal Sociology to

the Study of AIDS Policy and State Capacity', in *The New Fiscal Sociology,* eds. Martin, Mehrotra, and Prasad.

78 Ernest Gellner, *Conditions of Liberty: Civil Society and Its Rivals* (New York: Penguin Press, 1994), pp. 202–203.

Chapter 5

1 John Henry Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford, CA: Stanford University Press, 1985 [1969]), p. 2.

2 H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law*, 3rd ed. (Oxford: Oxford University Press, 2007), pp. 61–63 and p. 70. Bertrand de Jouvenel, *On Power: The Natural History of Its Growth* trans J. F. Huntington (Indianapolis, IN: Liberty Fund, 1993 [1945]), p. 227. Friedrich A. Hayek, *The Constitution of Liberty* (London: Routledge and Kegan Paul, 1960), p. 163; and *Law, Legislation, and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy* (London: Routledge, 1982 [1973–1979]), volume I, p. 72ff. Antony Black, *Political Thought in Europe, 1250–1450* (Cambridge: Cambridge University Press, 1992), p. 34 and pp. 152–55. Jeffrey Goldsworthy, *The Sovereignty of Parliament: History and Philosophy* (Oxford: Clarendon Press, 1999), pp. 42–43. Roberto Mangabeira Unger, *Law in Modern Society: Toward a Criticism of Social* Theory (New York: The Free Press, 1976), pp. 66–86. Ann K. S. Lambton, *State and Government in Mediæval Islam: An Introduction to the Study of Islamic Political Theory* (Oxford: Oxford University Press, 1981), pp. xiv–xv and p. 2. H. A. R. Gibb, 'Constitutional Organisation', in *Law in the Middle East,* eds. Khadduri and Liebesny, p. 3 and pp. 12–13. Tamara Sonn, 'Elements of Government in Classical Islam', in *Islamic Democratic Discourse: Theory, Debates, and Philosophical Perspectives,* ed. M. A. Muqtedar Khan (Oxford: Lexington Books, 2006). S. G. Vesey-Fitzgerald, 'Nature and Sources of the Shariah', in *Law in the Middle East,* eds. Khadduri and Liebesny, p. 85 and p. 99. W. Montgomery Watt, *Islamic Political Thought* (Edinburgh: Edinburgh University Press, 1968), pp. 73–74 and pp. 121–22. Abū al Ḥasan al-Mawardī, *The Ordinances of Government [Al-Aḥkām al-Sulṭāniyya w'al-Wilāyāt al-Dīniyya],* trans. Wafaa H. Wahba (Reading, MA: Garnet Publishing, 1996), pp. 112–15 and p. 206. Anver M. Emon, 'Case Studies: On Sovereignties in Islamic Legal History', *Middle East Law and Governance* 4 (2012), pp. 280–87. John W. Spellman, *Political Theory of Ancient India: A Study of Kingship from the Earliest Times to Circa AD 300* (Oxford: Clarendon Press, 1964), p. 103 and p. 106. Werner Menski, 'Hindu Law as a "Religious" System', in *Religion, Law, and Tradition: Comparative Studies in Religious Law,* ed. Andrew Huxley (London: Routledge Curzon, 2002), p. 121.

3 Robert A. Nisbet, *Tradition and Revolt: Historical and Sociological Essays* (New York: Vintage Books, 1970), pp. 203–24. Roberto Mangabeira Unger, *Law in Modern Society: Toward a Criticism of Social* Theory (New York: The Free Press, 1976), p. 86ff.

4 H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law*, 3rd ed. (Oxford: Oxford University Press, 2007), p. 128, p. 137, pp. 151–52, p. 157, and p. 166.

5 Bertrand de Jouvenel, *On Power: The Natural History of Its Growth,* trans. J. F. Huntington (Indianapolis, IN: Liberty Fund, 1993 [1945]), p. 179 and p. 214ff. John Emerich Edward Dalberg Acton, *The History of Freedom and Other Essays,* eds. John Neville Figgis and Reginald Vere Laurence (London: Macmillan and Company, 1909), pp. 150–87. and pp. 272–89. Thomas Glyn Watkin, *An Historical*

Introduction to Modern Civil Law (Aldershot: Dartmouth, 1999), pp. 121–47. John Henry Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford, CA: Stanford University Press, 1985 [1969]), pp. 17–22.

6 Patrick Devlin, 'Morals and the Criminal Law', in *The Philosophy of Law,* ed. R. M. Dworkin (Oxford: Oxford University Press, 1977).

7 H. L. A. Hart, 'Immorality and Treason', in *The Philosophy of Law,* ed. Dworkin. Robert P. George, *Making Men Moral: Civil Liberties and Public Morality* (Oxford: Oxford University Press, 1993), pp. 48–82. Chaim Gans, 'The Liberal Foundations of Cultural Nationalism', *Canadian Journal of Philosophy* 30:3 (September 2000), pp. 441–66.

8 Rainer Bauböck, 'Political Boundaries in a Multilevel Democracy', in *Identities, Affiliations, and Allegiances,* eds. Benhabib, Shapiro, and Petranović. David Held, 'Culture and Political Community: National, Global, and Cosmopolitan', in *Conceiving Cosmopolitanism,* eds. Vertovec and Cohen. James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995). cf. John Tomlinson, 'Interests and Identities in Cosmopolitan Politics', in *Conceiving Cosmopolitanism,* eds. Vertovec and Cohen.

9 Henry Sumner Maine, *Ancient Law* (London: J.M. Dent and Sons, 1917 [1861]).

10 Herman Dooyeweerd, *Roots of Western Culture: Pagan, Secular, and Christian Options,* trans. John Kraay (Grand Rapids, MI: Paideia Press, 2012 [1963]), pp. 50–55, pp. 58–74, and pp. 83–85. P. J. Strauss, 'Abraham Kuyper and Pro-Apartheid Theologians in South Africa: The Former Misused by the Latter?' and J. C. Adonis, 'The Role of Abraham Kuyper in South Africa: A Critical Historical Evaluation', both in *Kuyper Reconsidered,* eds. van der Kooi and de Bruijn.

11 Ferdinand Mount, *The Subversive Family: An Alternative History of Love and Marriage* (London: Unwin, 1982). Matthew Franklin Cooper, 'Familial Love Against the Nationalist Myth', *The Heavy Anglo-Orthodox* (23 August 2019), www.heavyangloorthodox.blogspot.com, accessed 25 August 2019. Edward King-tung Chen, 'Communist China's War on the Family', *Southwestern Social Science Quarterly* 33:2 (September 1952), pp. 148–55. Kathryn Libal, '"The Child Question": The Politics of Child Welfare in Early Republican Turkey', in *Poverty and Charity in Middle Eastern Contexts,* eds. Bonner, Ener, and Singer. Thomas Glyn Watkin, *An Historical Introduction to Modern Civil Law* (Aldershot: Dartmouth, 1999), p. 182. Hugh LaFollette, 'Licensing Parents Revisited', *Journal of Applied Philosophy* 27:4 (2010), pp. 327–43. Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, MA: Harvard University Press, 2000). Lorraine Fox Harding, *Family, State, and Social Policy* (London: Macmillan, 1996). Carl E. Schneider, 'The Channelling Function in Family Law', *Hofstra Law Review* 20:3 (1992), pp. 495–532. On the history of civil law treatment of family obligations, see Thomas Glyn Watkin, *An Historical Introduction to Modern Civil Law* (Aldershot: Dartmouth, 1999), p. 166 and pp. 192–217.

12 Lynn Welchman, 'Islamic Law: Stuck with the State?' in *Religion, Law, and Tradition,* ed. Huxley. C. P. James, 'Céad Míle Fáilte: Ireland Welcomes Divorce: The 1995 Irish Divorce Referendum and the Family (Divorce) Act of 1996', *Duke Journal of Comparative and International Law* 8 (1997). John Witte, Jr. and Joel A. Nichols, 'Who Governs the Family? Marriage as a New Test Case of Overlapping Jurisdictions', *Faulkner Law Review* 4 (2013), pp. 321–49. United States Supreme Court, *Obergefell vs Hodges* (2015). Michael Brendan Dougherty, 'In Defence of the Natural Family', *The Week* (21 May 2015), http://theweek.com/articles/556203/defense-natural-family, accessed 28 April 2016. Mary Eberstadt, *How the West Really Lost God: A New Theory of Secularisation* (West Conshohocken, PA:

Templeton Press, 2013). Lisa Duggan, 'Queering the State', *Social Text* 39 (Summer 1994), pp. 1–14.

13 Mark Strasser, 'Interstate Marriage Recognition and the Right to Travel', *Wisconsin Journal of Law, Gender, and Society* 25:1 (Spring 2010), pp. 1–34. Chris Hilson, 'The Unpatriotism of the Economic Constitution? Rights to Free Movement and Their Impact on National and European Identity', *European Law Journal* 14:2 (March 2008), pp. 186–202.

14 Lynn D. Wardle, 'International Marriage Recognition: A World Dilemma', Don MacDougall, 'Transnational Litigation in Family Matters', Helge Thue, 'Connecting Factors in International Family Law', and Dieter Henrich, 'Family Law Across Frontiers: Facts, Conflicts, Trends', all in *Families Across Frontiers,* eds. Nigel Lowe and Gillian Douglas (The Hague: Martinus Nijhoff Publishers, 1996). Paul Weis, *Nationality and Statelessness in International Law* (London: Steven and Sons, 1956), p. 11. Paul Schiff Berman, *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders* (Cambridge: Cambridge University Press, 2012), p. 191 and pp. 215–23.

15 Joseph Schacht, 'The Law', in *Unity and Variety in Muslim Civilisation,* ed. von Grunebaum. Anver M. Emon, *Religious Pluralism and Islamic Law: Dhimmīs and Others in the Empire of Law* (Oxford: Oxford University Press, 2012), pp. 167–326. Karen Barkey, 'Aspects of Legal Pluralism in the Ottoman Empire', in *Legal Pluralism and Empires, 1500–1850,* eds. Lauren Benton and Richard J. Ross (New York: New York University Press, 2013). James D. Bratt, *Abraham Kuyper: Modern Calvinist, Christian Democrat* (Grand Rapids, MI: William B. Eerdmans Publishing Company, 2013), chapter 16.

16 H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law*, 3rd ed. (Oxford: Oxford University Press, 2007), p. 210. Ann K. S. Lambton, *State and Government in Mediæval Islam: An Introduction to the Study of Islamic Political Theory* (Oxford: Oxford University Press, 1981), pp. 13–14. M. Raquibuz Zaman, 'Islamic Perspectives on Territorial Boundaries and Autonomy', in *Islamic Political Ethics: Civil Society, Pluralism, and Conflict,* ed. Sohail H Hashmi (Princeton, NJ: Princeton University Press, 2002), p. 91. Robert Rehrmann, 'A Legendary Place of Encounter: The Convivencia of Moors, Jews, and Christians in Mediæval Spain', in *The Historical Practice of Diversity,* eds. Hoerder, Harzig, and Shubert. Majid Khadduri, 'International Law', in *Law in the Middle East: Origin and Development of Islamic Law,* eds. Majid Khadduri and Herbert J. Liebesny (Washington, DC: Middle East Institute, 1955), p. 360. Tamim al-Barghouti, *The Umma and the Dawla: The Nation State and the Arab Middle East* (London: Pluto Press, 2008), p. 42. Claude Cahen, 'The Body Politic', in *Unity and Variety in Muslim Civilisation* ed. Gustave E von Grunebaum (Chicago: University of Chicago Press, 1955), p. 144 and pp. 155–56. Joseph Schacht, 'The Schools of Law and Later Developments of Jurisprudence', in *Law in the Middle East,* eds. Khadduri and Liebesny, p. 76. John Kelsay, 'Civil Society and Government in Islam', in *Islamic Political Ethics,* ed. Hashmi, pp. 22–23.

17 Herbert Franke, 'The Role of the State as a Structural Element in Polyethnic Societies', in *Foundations and Limits of State Power in China,* ed. Schram. Têng Ssu-yü [Deng Siyu], 'The Role of the Family in the Chinese Legal System', *Journal of Asian History* 11:2 (1977), pp. 121–55. Liu Hui-Chen Wang, 'An Analysis of Chinese Clan Rules: Confucian Theories in Action', in *Confucianism in Action,* eds. Nivison and Wright. H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law*, 3rd ed. (Oxford: Oxford University Press, 2007), p. 312. Émile Tyan, 'Judicial Organisation', in *Law in the Middle East,* eds. Khadduri and Liebesny, p. 242. Richard J. Ross and Philip J. Stern, 'Reconstructing Early Modern

Notions of Legal Pluralism', in *Legal Pluralism and Empires,* eds. Benton and Ross. Brian Z. Tamanaha, 'Understanding Legal Pluralism: Past to Present, Local to Global', *Sydney Law Review* 30 (2008), pp. 375–411. Thomas Glyn Watkin, *An Historical Introduction to Modern Civil Law* (Aldershot: Dartmouth, 1999), p. 77. Fikret Adanir, 'Religious Communities and Ethnic Groups under Imperial Sway: Ottoman and Habsburg Lands in Comparison', in *The Historical Practice of Diversity,* eds. Hoerder, Harzig, and Shubert.

18 Jane Burbank and Frederick Cooper, 'Rules of Law, Politics of Empire', Brian P. Owensby, 'Between Justice and Economics: "Indians" and Reformism in Eighteenth Century Spanish Imperial Thought', and Philip J. Stern, '"Bundles of Hyphens": Corporations as Legal Communities in the Early Modern British Empire', all in *Legal Pluralism and Empires,* eds. Benton and Ross. Herbert J. Liebesny, 'The Development of Western Judicial Privileges', in *Law in the Middle East,* eds. Khadduri and Liebesny. Liu Shih-shun, *Extraterritoriality: Its Rise and Its Decline* (New York: Longmans, Green and Company, 1925), p. 29. M. B. Hooker, *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws* (Oxford: Clarendon Press, 1975). David Nicholls, *The Pluralist State* (London: Macmillan Press, 1975), pp. 120–23. Boaventura de Sousa Santos, 'The Heterogeneous State and Legal Pluralism in Mozambique', *Law and Society Review* 40:1 (March 2006), pp. 39–75. Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge: Cambridge University Press, 2001), p. 161. Warwick Tie, *Legal Pluralism: Toward a Multicultural Conception of Law* (Brookfield, VT: Ashgate, 1999).

19 Lawrence M. Friedman, 'Frontiers: National and Transnational Order', in *Public Governance in the Age of Globalisation,* ed. Karl-Heinz Ladeur (Aldershot: Ashgate, 2004), pp. 34–37. Andrea Bianchi, 'Globalisation of Human Rights: The Role of Non-State Actors', in *Global Law Without a State,* ed. Gunther Teubner (Aldershot: Dartmouth, 1997). Mireille Delmas-Marty, *Towards a Truly Common Law: Europe as a Laboratory for Legal Pluralism,* trans. Naomi Norberg (Cambridge: Cambridge University Press, 2002 [1994]). Nico Krisch, 'The Case for Pluralism in Postnational Law', Law, Society and Economy Working Paper 12, London School of Economics and Political Science, London (2009). Paul Schiff Berman, *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders* (Cambridge: Cambridge University Press, 2012).

20 Gunther Teubner, 'Global Private Regimes: Neo-Spontaneous Law and Dual Constitution of Autonomous Sectors?' in *Public Governance in the Age of Globalisation,* ed. Ladeur, pp. 76–82. Gunter Teubner, '"Global Bukowina": Legal Pluralism in the World Society', Jean-Philippe Robé, 'Multinational Enterprises: The Constitution of a Pluralistic Legal Order', Peter T. Muchlinski, '"Global Bukowina" Examined: Viewing the Multinational Enterprise as a Transnational Law-Making Community', and Hans-Joachim Mertens, 'Lex Mercatoria: A Self-Applying System Beyond National Law?' all in *Global Law Without a State,* ed. Teubner. Jurgen Brauer and Robert Haywood, 'Non-State Sovereign Entrepreneurs and Non-Territorial Sovereign Organisations', United Nations University World Institute for Development Economics Research, Helsinki, Working Paper 2010/09 (February 2010). Roger Cotterrell, 'Does Global Legal Pluralism Need a Concept of Law?', in *Law's Ethical, Global, and Theoretical Contexts,* eds. Upendra Baxi, Christopher McCrudden, and Abdul Paliwala (Cambridge: Cambridge University Press, 2015). Poul F. Kjaer, *Constitutionalism in the Global Realm: A Sociological Approach* (London: Routledge, 2014), pp. 4–5. A. Claire Cutler, *Private Power and Global Authority: Transnational Merchant Law in the Global Political Economy* (Cambridge: Cambridge University Press, 2003). Bouventura de Sousa Santos,

'Law: A Map of Misreading: Toward a Postmodern Conception of Law', *Journal of Law and Society* 14:3 (Autumn 1987), p. 294.

21 Tamara Metz, *Untying the Knot: Marriage, the State, and the Case for Their Divorce* (Princeton, NJ: Princeton University Press, 2010). Dorian Solot and Marshall Miller, 'Taking Government Out of the Marriage Business: Families Would Benefit', Mary Lyndon Shanley, 'The State of Marriage and the State in Marriage: What Must Be Done?' Martha Albertson Fineman, 'The Meaning of Marriage', and Linda C. McClain, 'What Place for Marriage (E)quality in Marriage Promotion?' all in *Marriage Proposals: Questioning a Legal Status,* ed. Anita Bernstein (New York: New York University Press, 2006). Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (New Haven, CT: Yale University Press, 2008), pp. 215–26. Elizabeth Brake, 'Minimal Marriage: What Political Liberalism Implies for Marriage Law', *Ethics* 120 (January 2010), pp. 302–37. Ronald C. Den Otter, *In Defence of Plural Marriage* (Cambridge: Cambridge University Press, 2015). Samuel D. Brunson, 'Taxing Polygamy', *Washington University Law Review* 91 (2013), pp. 113–68.

22 Gary Chartier, *Anarchy and Legal Order: Law and Politics for a Stateless Society* (Cambridge: Cambridge University Press, 2013), pp. 242–62. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 14 and pp. 316–25. Edward Stringham, 'Market Chosen Law', *Journal of Libertarian Studies* 14:1 (1999), pp. 53–77. Bryan Caplan and Edward P. Stringham, 'Privatising the Adjudication of Disputes', *Theoretical Inquiries in Law* 9:2 (2008), pp. 503–28.

23 Robert C. Ellickson, *Order Without Law: How Neighbours Settle Disputes* (Cambridge, MA: Harvard University Press, 1991). A less sympathetic account of violent self-help appears in Steven Pinker, *The Better Angels of Our Nature* (New York: Penguin Books, 2011), pp. 83–85.

24 Alasdair MacIntyre, 'Is Patriotism a Virtue?' in *Theorising Citizenship,* ed. Beiner. Sam Crane, *Life, Liberty, and the Pursuit of Dao: Ancient Chinese Thought in Modern American Life* (Chichester: Wiley Blackwell, 2013), pp. 93–115. George P. Fletcher, *Loyalty: An Essay on the Morality of Relationships* (Oxford: Oxford University Press, 1993), pp. 25–40 and pp. 78–100. Franz Rosenthal, *The Muslim Concept of Freedom Prior to the Nineteenth Century* [Leiden: E. J. Brill, 1960], pp. 697–728. Bertrand de Jouvenel, *Sovereignty: An Inquiry into the Political Good* (Indianapolis, IN: Liberty Fund, 1997 [1957]), pp. 320–25.

25 Robert M. Cover, 'Nomos and Narrative', *Harvard Law Review* 97:4 (1983), pp. 4–68. Samuel Scheffler, 'Normativity and Tradition', in *Equality and Tradition: Questions of Value in Moral and Political Theory* (Oxford: Oxford University Press, 2010), pp. 287–310.

26 Harry G. Frankfurt, 'Freedom of the Will and the Concept of a Person', *Journal of Philosophy* 68:1 (January 1971), pp. 5–20.

27 Jonathan Chaplin, *Herman Dooyeweerd: Christian Philosopher of State and Civil Society* (Notre Dame, IN: University of Notre Dame Press, 2011), pp. 153–55. Nicholas Wolterstorff, 'Abraham Kuyper's Model of a Democratic Polity for Societies with a Religiously Diverse Citizenry', in *Kuyper Reconsidered,* eds. van der Kooi and de Bruijn. From within Catholicism, see also John Emerich Edward Dalberg Acton, *The History of Freedom and Other Essays,* eds. John Neville Figgis and Reginald Vere Laurence (London: Macmillan and Company, 1909), pp. 203–205; Víctor Pradera, *El estado nuevo* (Madrid: Cultura Española, 1935), pp. 67–70; Silvio Ferrari, 'Canon Law as a Religious Legal System', in *Religion, Law, and Tradition,* ed. Huxley; and Robert P. George, *Making Men Moral: Civil Liberties and Public Morality* (Oxford: Oxford University Press, 1993), pp. 134–37 and pp.

189–229, and *Conscience and Its Enemies: Confronting the Dogmas of Liberal Secularism* (Wilmington, DE: ISI Books, 2014).

28 Lawrence Rosen, 'Anthropological Perspectives on the Abolition of Marriage', in *Marriage Proposals,* ed. Bernstein. Robert P. George, *Making Men Moral: Civil Liberties and Public Morality* (Oxford: Oxford University Press, 1993), and *Conscience and Its Enemies: Confronting the Dogmas of Liberal Secularism* (Wilmington, DE: ISI Books, 2014). Franz Rosenthal, *Knowledge Triumphant: The Concept of Knowledge in Mediæval Islam* (Leiden: E. J. Brill, 1970), p. 239. Roger T. Ames, *The Art of Rulership: A Study in Ancient Chinese Political Thought* (Honolulu, HI: University of Hawaii Press, 1983), pp. 110–41.

29 Robert P. George, *Conscience and Its Enemies: Confronting the Dogmas of Liberal Secularism* (Wilmington, DE: ISI Books, 2014).

30 Alexis de Tocqueville, *Democracy in America,* ed. J. P. Mayer and trans. George Lawrence (New York: Harper and Row, 2006 [1835]). The drawback of 'ossification' in even a society-centred tightly wound moral code is discussed in Bertrand de Jouvenel, *Sovereignty: An Inquiry into the Political Good* (Indianapolis, IN: Liberty Fund, 1997 [1957]), pp. 143–45. On the relationship between religious engagement and civil society, see Norris and Inglehart, pp. 191–92.

31 Christopher McCrudden, 'Human Rights and Traditional Values', in *Law's Ethical, Global, and Theoretical Contexts,* eds. Baxi, McCrudden, and Paliwala.

32 Rowan Williams (Archbishop of Canterbury), 'Civil and Religious Law in England: A Religious Perspective', lecture at Royal Courts of Justice (7 February 2008). Jonathan Chaplin, 'Legal Monism and Religious Pluralism: Rowan Williams on Religion, Loyalty, and Law', *International Journal of Public Theology* 2 (2008), pp. 418–41.

33 Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995), pp. 34–48. Susan Moller Okin, 'Is Multiculturalism Bad for Women?', Will Kymlicka, 'Liberal Complacencies', and Yael Tamir, 'Siding with the Underdogs', all in *Is Multiculturalism Bad for Women?,* eds. Cohen, Howard, and Nussbaum. Russell Hardin, 'Group Boundaries, Individual Barriers', in *Boundaries and Justice,* eds. Miller and Hashmi. Chandran Kukathas, 'Are There Any Cultural Rights?', *Political Theory* 20:1 (February 1992), pp. 105–39. Laurie Shrage, 'Reforming Marriage: A Comparative Approach', *Journal of Applied Philosophy* 32 (2013), pp. 107–21. Puleng Letuka and Alice Armstrong, '"Which Law? Which Family? Which Women?" Problems of Enforcing CEDAW in Southern Africa', Thandabantu Nhlapo, 'Cultural Diversity, Human Rights, and the Family in Contemporary Africa: Lessons from the South African Constitutional Debate', all in *Families Across Frontiers,* eds. Lowe and Douglas. Diane Polan, 'Toward a Theory of Law and Patriarchy', in *The Politics of Law,* ed. Kairys. Denis MacEoin, *Sharia Law or 'One Law for All'?* (London: Civitas, 2009).

34 Steven L. Nock, 'Time and Gender in Marriage', *Virginia Law Review* 86:8 (November 2000), pp. 1971–87.

35 Bonnie Honig, '"My Culture Made Me Do It", in *Is Multiculturalism Bad for Women?,* eds. Cohen, Howard, and Nussbaum.

36 Azizah Y. al-Hibri, 'Is Western Patriarchal Feminism Good for Third World/Minority Women?' and Katha Pollitt, 'Whose Culture?' both in *Is Multiculturalism Bad for Women?,* eds. Cohen, Howard, and Nussbaum. Sherene H. Razack, 'The "Sharia Law Debate" in Ontario: The Modernity/Premodernity Distinction in Legal Efforts to Protect Women from Culture', *Feminist Legal Studies* 15 (2007), pp. 3–32. James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995), p. 193.

37 Hillie J. van der Streek, 'Kuyper's Legacy and Multiculturalism: Gender in His Conception of Democracy and Sphere Sovereignty', in *On Kuyper,* eds. Bishop and

Kok. Mary Steward van Leeuwen, 'The Carrot and the Stick: Kuyper on Gender, Family, and Class', in *Religion, Pluralism, and Public Life,* ed. Lugo.

38 Dooyeweerd, 'Calvinism and Natural Law', in *Essays in Legal, Social, and Political Philosophy* (Lampeter: Edwin Mellen Press, 1996), p. 19 and p. 37; and 'The Relation of the Individual and Community', trans. Daniël F. M. Strauss [1946], in *Essays in Legal, Social, and Political Philosophy*, pp. 97–98. On this issue with regard to the English pluralists, see David Nicholls, *The Pluralist State* (London: Macmillan Press, 1975), pp. 92–92 and pp. 101–102.

39 Neil Addison, foreword to Denis MacEoin, *Sharia Law or 'One Law for All'?* (London: Civitas, 2009).

40 Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge: Cambridge University Press, 2001).

41 Muhammad Abu Zahra, 'Family Law', in *Law in the Middle East,* eds. Khadduri and Liebesny, p. 146. Muhammad ibn al-Hasan al-Shaybānī, *The Islamic Law of Nations: Shaybānī's Siyar,* trans. Majid Khadduri (Baltimore, MD: Johns Hopkins Press, 1966).

42 Muhammad Abu Zahra, 'Family Law', in *Law in the Middle East,* eds. Khadduri and Liebesny, p. 133, p. 137, and p. 147ff. Thomas Glyn Watkin, *An Historical Introduction to Modern Civil Law* (Aldershot: Dartmouth, 1999), p. 176 and pp. 440–42. John Henry Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford, CA: Stanford University Press, 1985 [1969]), pp. 105–106. Kaylah Campos Zelig, 'Marriage: Making a Case for Mandatory Prenuptials', *University of Colorado Law Review* 64 (1993), pp. 1223–45. Katherine Brown Rosier and Scott L. Feld, 'Covenant Marriage: A New Alternative for Traditional Families', *Journal of Comparative Family Studies* 31:3 (2003), pp. 385–94.

43 e.g. John Neville Figgis, *Churches in the Modern State*, 2nd ed. (London: Longmans, Green and Company, 1914), pp. 99–134.

44 Choucri Cardahi, 'Conflict of Law', in *Law in the Middle East,* eds. Khadduri and Liebesny, pp. 341–42.

45 Akolda M. Tier, 'Techniques of Choice of Law in Conflict of Personal Laws', *Journal of African Law* 30:1 (Spring 1986), pp. 1–19. Anver M. Emon, *Religious Pluralism and Islamic Law: Dhimmīs and Others in the Empire of Law* (Oxford: Oxford University Press, 2012), p. 254. Paul Schiff Berman, *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders* (Cambridge: Cambridge University Press, 2012), p. 207.

46 Martha R. Mahoney, 'Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings', *Southern California Law Review* 65 (1991/1992), pp. 1283–319. Yael Tamir, 'Siding with the Underdogs', in *Is Multiculturalism Bad for Women?,* eds. Cohen, Howard, and Nussbaum. Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (New Haven, CT: Yale University Press, 2008), p. 238.

47 Gopika Solanki, *Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, and Gender Equality in India* (Cambridge: Cambridge University Press, 2011).

48 Roger T. Ames, *The Art of Rulership: A Study in Ancient Chinese Political Thought* (Honolulu, HI: University of Hawaii Press, 1983), p. 125. Henry Sumner Maine, *Ancient Law* (London: J.M. Dent and Sons, 1917 [1861]), chapter III. Antony Black, *Political Thought in Europe, 1250–1450* (Cambridge: Cambridge University Press, 1992), p. 36 and p. 39.

49 Tariq Ramadan, 'Ijtihad and Maslaha: The Foundations of Governance', in *Islamic Democratic Discourse,* ed. Khan, pp. 3–4 and pp. 15–17. Anver M. Emon, *Religious*

Pluralism and Islamic Law: Dhimmīs and Others in the Empire of Law (Oxford: Oxford University Press, 2012), pp. 8–9. Tamim al-Barghouti, *The Umma and the Dawla: The Nation State and the Arab Middle East* (London: Pluto Press, 2008), pp. 11–19. Ann K. S. Lambton, *State and Government in Mediæval Islam: An Introduction to the Study of Islamic Political Theory* (Oxford: Oxford University Press, 1981), pp. 10–12 and pp. 227–28. Joseph Schacht, 'The Schools of Law and Later Developments of Jurisprudence', in *Law in the Middle East,* eds. Khadduri and Liebesny, pp. 70–71.

50 Joseph Schacht, 'The Law', in *Unity and Variety in Muslim Civilisation,* ed. von Grunebaum, pp. 82–85.

51 Martin Chanock, *Law, Custom, and Social Order: The Colonial Experience in Malawi and Zambia* (Portsmouth, NH: Heinemann, 1998). On India, see Marc Galanter, 'The Displacement of Traditional Law in Modern India', *Journal of Social Issues* 24:4 (1968), pp. 65–91.

52 John Henry Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford, CA: Stanford University Press, 1985 [1969]), pp. 48–55. Richard A. Epstein, 'The Static Conception of the Common Law', *Journal of Legal Studies* 9:2 (March 1980), pp. 253–275. S. F. C. Milsom, *Historical Foundations of the Common Law* (London: Butterworths, 1981 [1969]), p. 6 and pp. 150–51. Lawrence M. Friedman, *Dead Hands: A Social History of Wills, Trusts, and Inheritance Law* (Stanford, CA: Stanford University Press, 2009). Hayek, *Law, Legislation, and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy* (London: Routledge, 1982 [1973–1979]), volume I, pp. 88–89. H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law*, 3rd ed. (Oxford: Oxford University Press, 2007), p. 142 and p. 239.

53 H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law*, 3rd ed. (Oxford: Oxford University Press, 2007), p. 107, p. 111, and p. 180.

54 Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organisations, and States* (Cambridge, MA: Harvard University Press, 1970). George P. Fletcher, *Loyalty: An Essay on the Morality of Relationships* (Oxford: Oxford University Press, 1993).

55 Silvio Ferrari, 'Canon Law as a Religious Legal System', in *Religion, Law, and Tradition,* ed. Huxley. Vitoria, 'On the Power of the Church' (1532), in *Political Writings,* eds. Pagden and Lawrance.

56 Jeffrey Goldsworthy, *The Sovereignty of Parliament: History and Philosophy* (Oxford: Clarendon Press, 1999), pp. 48–50. Seyla Benhabib, *The Rights of Others: Aliens, Residents, and Citizens* (Cambridge: Cambridge University Press, 2004), pp. 218–19.

57 H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law*, 3rd ed. (Oxford: Oxford University Press, 2007), pp. 248–53.

58 R. C. van Caenegem, *An Historical Introduction to Western Constitutional Law* (Cambridge: Cambridge University Press, 1995), pp. 35–36.

Chapter 6

1 S. F. C. Milsom, *Historical Foundations of the Common Law* (London: Butterworths, 1981 [1969]), p. 25. Umar Faruk Abdullahi, 'Interrelations Between Common Law and Shariah Law', presentation at the International Society for the Reform of Criminal Law, Vancouver (22–26 June 2007).

2 Michael Freeman, 'Law, Religion, and the State: The *Get* Revisited', in *Families Across Frontiers,* eds. Lowe and Douglas. Irving A. Breitowitz, *Between Civil*

and Religious Law: The Plight of the Agunah in American Society (Westport, CT: Greenwood Press, 1993).

3 Irving A. Breitowitz, *Between Civil and Religious Law: The Plight of the Agunah in American Society* (Westport, CT: Greenwood Press, 1993).

4 Ernest Gellner, 'The Importance of Being Modular', in *Civil Society: Theory, History, Comparison,* ed. John A Hall (Cambridge: Polity Press, 1995).

5 Henry Sumner Maine, *Ancient Law* (London: J.M. Dent and Sons, 1917 [1861]), chapter V. L. T. Hobhouse, *Morals in Evolution: A Study in Comparative Ethics* (London: Chapman and Hall, 1951 [1906]), pp. 220–32. Muhammad Abu Zahra, 'Family Law', in *Law in the Middle East,* eds. Khadduri and Liebesny, pp. 159–61 and pp. 165–66. Thomas Glyn Watkin, *An Historical Introduction to Modern Civil Law* (Aldershot: Dartmouth, 1999), p. 177. Ayelet Shachar, *Multicultural Jurisdictions: Cultural Differences and Women's Rights* (Cambridge: Cambridge University Press, 2001), p. 132 note 27.

6 Article 1059, Code of Canon Law, 1983, http://www.intratext.com/ixt/eng0017/_index.htm, accessed 9 July 2018. Diane J Klein, 'Plural Marriage and Community Property Law', *Golden Gate University Law Review* 41 (2010), pp. 33–89.

7 Thomas Glyn Watkin, *An Historical Introduction to Modern Civil Law* (Aldershot: Dartmouth, 1999), p. 323, pp. 327–28, and pp. 397–98. On the mechanisms of civil enforcement, cf. John Henry Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford, CA: Stanford University Press, 1985 [1969]), pp. 54–55 and pp. 122–23.

8 Muhammad ibn al-Hasan al-Shaybānī, *The Islamic Law of Nations: Shaybānī's Siyar,* trans. Majid Khadduri (Baltimore, MD: Johns Hopkins Press, 1966), verses 1249–1156. Barbara Bennett Woodhouse, 'Protecting Children's Rights of Identity Across Frontiers of Culture', in *Families Across Frontiers,* eds. Lowe and Douglas.

9 S. F. C. Milsom, *Historical Foundations of the Common Law* (London: Butterworths, 1981 [1969]), pp. 82–93. John Henry Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford, CA: Stanford University Press, 1985 [1969]), pp. 52–53.

10 Madjid Khadduri, 'Maslaha', in *Encyclopædia of Islam,* eds. Bearman *et al*. Tariq Ramadan, 'Ijtihad and Maslaha: The Foundations of Governance', in *Islamic Democratic Discourse,* ed. Khan. Anver M. Emon, 'Case Studies: On Sovereignties in Islamic Legal History', *Middle East Law and Governance* 4 (2012), pp. 277–80. S. G. Vesey-Fitzgerald, 'Nature and Sources of the Shariah', in *Law in the Middle East,* eds. Khadduri and Liebesny, p. 101.

11 Wendy Brown, *Regulating Aversion: Tolerance in the Age of Identity and Empire* (Princeton: Princeton University Press, 2006). Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995), pp. 107–15. Charles Taylor, 'How to Define Secularism', and Ira Katznelson, 'A Form of Liberty and Indulgence: Toleration as a Layered Institution', both in *Boundaries of Toleration,* eds. Alfred Stepan and Charles Taylor (New York: Columbia University Press, 2014). Pascale Fournier and Gökçe Yurdakul, 'Unveiling Distribution: Muslim Women with Headscarves in France and Germany', in *Migration, Citizenship, Ethnos,* eds. Bodemann and Yurdakul.

12 Katheryn F Voyer, 'Continuing the Trend Toward Equality: The Eradication of Racially and Sexually Discriminatory Provisions in Private Trusts', *William and Mary Bill of Rights Journal* 7:3 (1999), pp. 943–73. Broader discussions related to this issue appear in Paul Schiff Berman, *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders* (Cambridge: Cambridge University Press, 2012), p. 289; Cass R. Sunstein, 'Should Sex Equality Law Apply to Religious Institutions?' in *Is Multiculturalism Bad for Women?,* eds. Joshua Cohen, Matthew Howard, and

Martha C. Nussbaum (Princeton, NJ: Princeton University Press, 1999); and Robert P. George, *Conscience and Its Enemies: Confronting the Dogmas of Liberal Secularism* (Wilmington, DE: ISI Books, 2014).

13 James Madison, 'The Federalist, Number 10', *The Independent Journal* (23 November 1787). John Neville Figgis, *Churches in the Modern State*, 2nd ed. (London: Longmans, Green and Company, 1914), p. 31, p. 101, pp. 105–06, and pp. 180–221.

14 Jonathan Chaplin, *Herman Dooyeweerd: Christian Philosopher of State and Civil Society* (Notre Dame, IN: University of Notre Dame Press, 2011), pp. 250–54. Víctor Pradera, *El estado nuevo* (Madrid: Cultura Española, 1935), pp. 110–16. Nomi Stolzenberg, 'The Profanity of Law', in *Law and the Sacred,* eds. Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey (Stanford: Stanford University Press, 2007).

15 Claude Cahen, 'The Body Politic', in *Unity and Variety in Muslim Civilisation,* ed. Gustave E von Grunebaum (Chicago, IL: University of Chicago Press, 1955), p. 133 and p. 140. W. Montgomery Watt, *Islamic Political Thought* (Edinburgh: Edinburgh University Press, 1968), p. 29, p. 50, and pp. 58–59. Ann K. S. Lambton, *State and Government in Mediæval Islam: An Introduction to the Study of Islamic Political Theory* (Oxford: Oxford University Press, 1981), pp. 201–04 and p. 307. Abū al Ḥasan al-Mawardī, *The Ordinances of Government [Al-Aḥkām al-Sulṭāniyya w'al-Wilāyāt al-Dīniyya],* trans. Wafaa H. Wahba (Reading, MA: Garnet Publishing, 1996), p. 161 and pp. 223–24. Anver M. Emon, *Religious Pluralism and Islamic Law: Dhimmīs and Others in the Empire of Law* (Oxford: Oxford University Press, 2012), pp. 78–87 and pp. 113–19. Yohanan Friedmann, *Tolerance and Coercion in Islam: Interfaith Relations in the Muslim Tradition* (Cambridge: Cambridge University Press, 2003), pp. 39–53 and pp. 160–93.

16 H. A. R. Gibb, 'Constitutional Organisation', in *Law in the Middle East,* eds. Khadduri and Liebesny, p. 13. Clifford Edmund Bosworth, Ian R. Netton, and Frank E. Vogel, 'Siyasa', in *Encyclopædia of Islam*, 2nd edition, eds. Peri Bearman, Thierry Bianquis, Clifford Edmund Bosworth, Emericus Joannes van Donzel, and Wolfhart Peter Heinrichs (Leiden: E. J. Brill, 1960–2005). Émile Tyan, 'Qadi', in *Encyclopædia of Islam,* eds. Peri Bearman *et al*. Marion Holmes Katz, 'Pragmatic Rule and Personal Sanctification in Islamic Legal Theory', in *Law and the Sacred,* eds. Sarat, Douglas, and Umphrey. W. Montgomery Watt, *Islamic Political Thought* (Edinburgh: Edinburgh University Press, 1968), pp. 75–76 and pp. 94–96. Choucri Cardahi, 'Conflict of Law', in *Law in the Middle East,* eds. Khadduri and Liebesny, pp. 337–40. Bernard Lewis, 'Islamic Concepts of Revolution', in *Revolution in the Middle East,* ed. P. J. Vatikiotis (London: George Allen and Unwin, 1972), pp. 33–35.

17 Yohanan Friedmann, *Tolerance and Coercion in Islam: Interfaith Relations in the Muslim Tradition* (Cambridge: Cambridge University Press, 2003). Sudipta Kaviraj, 'Modernity, State, and Toleration in Indian History: Exploring Accommodations and Partitions', in *Boundaries of Toleration,* eds. Stepan and Taylor.

18 Uriah Furman, 'Minorities in Contemporary Islamist Discourse', *Middle Eastern Studies* 36:4 (October 2000, pp. 1–20. Özlem Denli, 'An Islamic Quest for a Pluralistic Political Model: A Turkish Perspective', in *Islamic Democratic Discourse,* ed. Khan. Bulaç, *op. cit*. Leonid Sykiainen, 'Democracy and the Dialogue Between Western and Islamic Legal Cultures: The Gülen Case', in *Muslim Citizens of the Globalised World,* eds. Hunt and Aslandogan.

19 Tamara Sonn, 'Elements of Government in Classical Islam', in *Islamic Democratic Discourse: Theory, Debates, and Philosophical Perspectives,* ed. M. A. Muqtedar Khan (Oxford: Lexington Books, 2006), pp. 31–32. Taha Jābir al-'Alwānī, *Towards*

a Fiqh for Minorities: Some Basic Reflections trans. Ashur A Shamis (London: International Institute of Islamic Thought, 2010). Tāriq Ramadān, *Western Muslims and the Future of Islam* (New York: Oxford University Press, 2005).

20 Abdulaziz Sachedina, *The Islamic Roots of Democratic Pluralism* (Oxford: Oxford University Press, 2001), and 'The Role of Islam in the Public Square: Guidance or Governance?' in *Islamic Democratic Discourse,* ed. Khan.

21 Hasan Hanafi, 'Alternative Conceptions of Civil Society: A Reflective Islamic Approach', in *Islamic Political Ethics,* ed. Hashmi.

22 Majid Khadduri, 'International Law', in *Law in the Middle East: Origin and Development of Islamic Law,* eds. Majid Khadduri and Herbert J. Liebesny (Washington, DC: Middle East Institute, 1955). Halil Inalcik, 'Dar al-'Ahd', Duncan Black MacDonald and Armand Abel, 'Dar al-Sulh', and Madjid Khadduri, 'Hudna', all in *Encyclopædia of Islam,* eds. Bearman *et al*. Yohanan Friedmann, *Tolerance and Coercion in Islam: Interfaith Relations in the Muslim Tradition* (Cambridge: Cambridge University Press, 2003), p. 55. Anver M. Emon, 'Case Studies: On Sovereignties in Islamic Legal History', *Middle East Law and Governance* 4 (2012), pp. 301–02.

23 W. Montgomery Watt, *Islamic Political Thought* (Edinburgh: Edinburgh University Press, 1968), pp. 6–9, p. 11, p. 14, and p. 55; the original text of the Constitution of Medina is reprinted in W. Montgomery Watt, *Islamic Political Thought* (Edinburgh: Edinburgh University Press, 1968), pp. 130–34. Tamim al-Barghouti, *The Umma and the Dawla: The Nation State and the Arab Middle East* (London: Pluto Press, 2008), pp. 61–62.

24 Tamim al-Barghouti, *The Umma and the Dawla: The Nation State and the Arab Middle East* (London: Pluto Press, 2008). On the history of political fragmentation amid Islamic civilisational unity, see Majdid Khadduri's introduction to Muhammad ibn al-Hasan al-Shaybānī, *The Islamic Law of Nations: Shaybānī's Siyar,* trans. Majid Khadduri (Baltimore, MD: Johns Hopkins Press, 1966), p. 21; and Anver M. Emon, 'Case Studies: On Sovereignties in Islamic Legal History', *Middle East Law and Governance* 4 (2012), pp. 287–93. On the history of the dawla concept, see Bernard Lewis, 'Islamic Concepts of Revolution', in *Revolution in the Middle East,* ed. P. J. Vatikiotis (London: George Allen and Unwin, 1972), pp. 30–31.

25 Louis Dumont, *Homo Hierarchicus: The Caste System and Its Implications,* trans. Mark Sainsbury, Louis Dumont, and Basia Gulati (Chicago, IL: University of Chicago Press, 1980 [1966]), p. 74 and p. 193.

26 Sohail H. Hashmi, 'Political Boundaries and Moral Communities: Islamic Perspectives', in *States, Nations, and Borders,* eds. Buchanan and Moore. On the security threat of apostasy in this context, see Yohanan Friedmann, *Tolerance and Coercion in Islam: Interfaith Relations in the Muslim Tradition* (Cambridge: Cambridge University Press, 2003), p. 137, and Abdulaziz Sachedina, *The Islamic Roots of Democratic Pluralism* (Oxford: Oxford University Press, 2001), pp. 99–101.

27 Émile Tyan, 'Bay'a', in *Encyclopædia of Islam,* eds. Bearman *et al*.

28 Franz Rosenthal, *The Muslim Concept of Freedom Prior to the Nineteenth Century* [Leiden: E. J. Brill, 1960], and *The Herb: Hashish versus Mediæval Muslim Society* [Leiden: E. J. Brill, 1971], both reprinted in *Man versus Society in Mediæval Islam,* ed. Gutas, pp. 70–72 and p. 79.

29 Friedrich A. Hayek, *The Constitution of Liberty* (London: Routledge and Kegan Paul, 1960), p. 19.

30 For a traditionalist argument on the varying definitions of free expression, cf. Robert P. George, *Making Men Moral: Civil Liberties and Public Morality* (Oxford: Oxford University Press, 1993), pp. 199–200.

31 Charles O. Hucker, 'Confucianism and the Chinese Censorial System', in *Confucianism in Action,* eds. Nivison and Wright.
32 R. C. van Caenegem, *An Historical Introduction to Western Constitutional Law* (Cambridge: Cambridge University Press, 1995), pp. 2–3. Ernest Barker, 'The Rule of Law' (1914), reprinted in *Church, State, and Study*. Joseph M Jacob, *The Republican Crown: Lawyers and the Making of the State in Twentieth Century Britain* (Aldershot: Dartmouth, 1996). Sebastian Payne, 'The Royal Prerogative', and Martin Loughlin, 'The State, the Crown, and the Law', both in *The Nature of the Crown: A Legal and Political Analysis,* eds. Maurice Sunkin and Sebastian Payne (Oxford: Oxford University Press, 1999).
33 Ernst-Wolfgang Böckenförde, *State, Society, and Liberty: Studies in Political Theory and Constitutional Law* (Oxford: Berg Publishers, 1991), pp. 47–70. Thomas Glyn Watkin, *An Historical Introduction to Modern Civil Law* (Aldershot: Dartmouth, 1999), pp. 423–32.
34 Friedrich A. Hayek, *The Constitution of Liberty* (London: Routledge and Kegan Paul, 1960), pp. 193–204 and pp. 211–14; and *Law, Legislation, and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy* (London: Routledge, 1982 [1973–1979]), volume I, p. 137ff.
35 John Marini, *Unmasking the Administrative State: The Crisis of American Politics in the Twenty-First Century,* ed. Ken Masugi (New York: Encounter Books, 2019). Richard A Epstein, *The Dubious Morality of Modern Administrative Law* (New York: Rowman and Littlefield, 2020). The evolution of administrative law under the modern regulatory state is discussed more favourably in Cass R Sunstein and Adrian Vermeule, 'The Morality of Administrative Law', *Harvard Law Review* 131 (2018), pp. 1924–1978.
36 e.g. Anton F P Hulsewé, 'Law as One of the Foundations of State Power in Early Imperial China', in *Foundations and Limits of State Power in China,* ed. Schram.
37 Thomas Glyn Watkin, *An Historical Introduction to Modern Civil Law* (Aldershot: Dartmouth, 1999), pp. 147–48 and pp. 452–53. John Henry Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford, CA: Stanford University Press, 1985 [1969]), pp. 26–33. On the tighter specification of offences, see also John Henry Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford, CA: Stanford University Press, 1985 [1969]), p. 125.
38 Theo Vogler, 'Reflections on the Creation of a Unified Criminal Law', *Michigan Yearbook of International Legal Studies* 198 (1983), pp. 271–277.
39 Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (New Haven, CT: Yale University Press, 2008), p. 233.
40 Abū al Ḥasan al-Mawardī, *The Ordinances of Government [Al-Aḥkām al-Sulṭāniyya w'al-Wilāyāt al-Dīniyya],* trans. Wafaa H. Wahba (Reading, MA: Garnet Publishing, 1996), pp. 82–83. Thomas Glyn Watkin, *An Historical Introduction to Modern Civil Law* (Aldershot: Dartmouth, 1999), p. 371. Ernest Barker, 'The Rule of Law' (1914), reprinted in *Church, State, and Study*.
41 John Henry Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford, CA: Stanford University Press, 1985 [1969]), p. 16 and pp. 34–38.
42 On loyalty oaths for American lawyers in the McCarthy and post-9/11 eras, see Mary Elizabeth Basile, 'Loyalty Testing for Attorneys: When Is It Necessary and Who Should Decide?' *Cardozo Law Review* 30:5 (2009), pp. 1843–84.
43 For a discussion of the debates over juries and lay assessor panels, see Jon Elster, *Securities Against Misrule: Juries, Assemblies, Elections* (Cambridge: Cambridge University Press, 2013), pp. 124–30; Víctor Pradera, *El estado nuevo* (Madrid:

Cultura Española, 1935), p. 356; and Peter Harris, 'Judging Thy Neighbour: An Exploration of How the Lay Judge System to Be Implemented in 2009 Will Affect Japanese Society', *Japan Inc* (September/October 2007), pp. 22–25.

44 Nancy S Marder, 'Juries, Justice, and Multiculturalism', *Southern California Law Review* 75 (2002), pp. 659-726. Jon Elster, *Securities Against Misrule: Juries, Assemblies, Elections* (Cambridge: Cambridge University Press, 2013), p. 105. Andrew Guthrie Ferguson, 'Why Restrict Jury Duty to Citizens?' *The Atlantic Monthly* (9 May 2013), http://www.theatlantic.com/national/archive/2013/05/why-restrict-jury-duty-to-citizens/275685/, accessed 28 April 2016. Amy R Motomura, 'The American Jury: Can Noncitizens Still Be Excluded?' *Stanford Law Review* 64 (June 2012), pp. 1503–1550.

45 John Henry Merryman, *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America* (Stanford, CA: Stanford University Press, 1985 [1969]), pp. 56–67.

Chapter 7

1 Víctor Pradera, *El estado nuevo* (Madrid: Cultura Española, 1935), pp. 100–106. Alexander I. Orwin, 'Can Humankind Deliberate on a Global Scale? Alfarabi and the Politics of the Inhabited World', *American Political Science Review* 108:4 (November 2014), pp. 830–39. Naṣīr al-Dīn Ṭūsī, *The Nasirean Ethics* trans. G M Wickens (London: George Allen and Unwin, 1964), p. 93 and pp. 211–17. Abū Nasr al-Fārābī, *Mabādi' ārā' ahl al-madīnat al-fāḍilah/On the Perfect State* trans. Richard Walzer [Arabic/English texts] (Oxford: Oxford University Press, 1985). Louise Marlow, *Hierarchy and Egalitarianism in Islamic Thought* (Cambridge: Cambridge University Press, 1997), pp. 7–8.

2 Jonathan Chaplin, *Herman Dooyeweerd: Christian Philosopher of State and Civil Society* (Notre Dame, IN: University of Notre Dame Press, 2011), chapters 8–10.

3 G. D. H. Cole, *The Social Theory*, reprinted in *The Pluralist Theory of the State,* ed. Hirst, pp. 76–81 and pp. 98–106. Bertrand de Jouvenel, *Sovereignty: An Inquiry into the Political Good* (Indianapolis, IN: Liberty Fund, 1997 [1957]), pp. 19–21 and pp. 138–39.

4 Laura Dodsworth, *A State of Fear: How the UK Government Weaponised Fear During the Covid-19 Pandemic* (London: Pinter and Martin, 2021). Giorgio Agamben, 'L'invenzione di un'epidemia', *Quodlibet* (26 February 2020), https://www.quodlibet.it/giorgio-agamben-l-invenzione-di-un-epidemia, accessed 28 October 2020; and 'Chiarimenti', *Quodlibet* (17 March 2020), https://www.quodlibet.it/giorgio-agamben-chiarimenti?fbclid=IwAR21rQwju7pwa7uk1MwFj9Jz5cW1_ex0-s_jKwqrBo3IC wmo8o6slwjoLo4, accessed 28 October 2020.

5 e.g. Christina Eastman, 'Charities are Shock Absorbers for Blows to the Economy. Government Bailouts Are Not', *Philanthropy Daily* (20 April 2020), https://www.philanthropydaily.com/charities-are-shock-absorbers-for-blows-to-the-economy-government-bailouts-are-not/, accessed 24 April 2020.

6 Liu Haifeng [刘海峰], '科举制的起源与进士科的起源', 历史研究 6 (2000), pp. 3–16. Qian Mu [钱穆], 中国历代政治得失 (北京: 三联书店, 2018 [1969]), *passim*. He Huaihong [何怀宏], 选举社会及其终结: 秦汉至晚清历史的一种社会学阐释 (Beijing: Sanlian Shudian, 1998). Bai Tongdong, *Against Political Equality: The Confucian Case* (Princeton, NJ: Princeton University Press, 2020).

7 Roger T. Ames, *The Art of Rulership: A Study in Ancient Chinese Political Thought* (Honolulu, HI: University of Hawaii Press, 1983), pp. 3–5, and Book 9 §18 in *The Art of Rulership*. William Theodore de Bary, *The Liberal Tradition in China* (Hong Kong: The Chinese University Press, 1983), pp. 58–59. Alan T. Wood,

Limits to Autocracy: From Sung Neo-Confucianism to a Doctrine of Political Rights (Honolulu, HI: University of Hawai'i Press, 1995), p. 65. Charles O. Hucker, 'Confucianism and the Chinese Censorial System', in *Confucianism in Action,* eds. Nivison and Wright, p. 198. C. K. Yang, 'Some Characteristics of Chinese Bureaucratic Behaviour', and James T. C. Liu, 'Some Classifications of Bureaucrats in Chinese Historiography', both in *Confucianism in Action,* eds. Nivison and Wright. Yuri Pines, *Envisioning Eternal Empire: Chinese Political Thought of the Warring States Era* (Honolulu, HI: University of Hawai'i Press, 2009), pp. 115–84. David McMullen, 'Views of the State in Du You and Liu Zongyuan', in *Foundations and Limits of State Power in China,* ed. Schram. Joseph R. Levenson, *Confucian China and Its Modern Fate* (Berkeley, CA: University of California Press, 1968), p. 57.

8 David Slakter, 'On Matsayanyaya: The State of Nature in Indian Thought', in *The State of Nature in Comparative Political Thought: Western and Non-Western Perspectives,* eds. Jon D. Carlson and Russell Arben Fox (New York: Lexington Books, 2014). John W. Spellman, *Political Theory of Ancient India: A Study of Kingship from the Earliest Times to Circa AD 300* (Oxford: Clarendon Press, 1964), pp. 47–49, pp. 72–79, and pp. 201–209. Louis Dumont, *Homo Hierarchicus: The Caste System and Its Implications,* trans. Mark Sainsbury, Louis Dumont, and Basia Gulati (Chicago, IL: University of Chicago Press, 1980 [1966]), p. 196 and p. 235.

9 Louise Marlow, *Hierarchy and Egalitarianism in Islamic Thought* (Cambridge: Cambridge University Press, 1997). W. Montgomery Watt, *Islamic Political Thought* (Edinburgh: Edinburgh University Press, 1968), p. 35. Franz Rosenthal, *Knowledge Triumphant: The Concept of Knowledge in Mediæval Islam* (Leiden: E. J. Brill, 1970), especially pp. 317–31.

10 W. Montgomery Watt, *Islamic Political Thought* (Edinburgh: Edinburgh University Press, 1968), p. 73 and p. 102. Claude Cahen, 'The Body Politic', in *Unity and Variety in Muslim Civilisation,* ed. Gustave E von Grunebaum (Chicago, IL: University of Chicago Press, 1955), p. 152. Abū ʿUthman ʿAmr ibn Baḥr al-Kinānī al-Baṣrī, 'Fī madḥ al-tujjār wa dhamm 'amal al-sulṭān', and 'Dhamm al-kuttāb', excerpted in Charles Pellat, *The Life and Works of Jāḥiẓ,* trans. D. M. Hawke (London: Routledge and Kegan Paul, 1969 [1967]), pp. 272–75. Louise Marlow, *Hierarchy and Egalitarianism in Islamic Thought* (Cambridge: Cambridge University Press, 1997), pp. 66–90, pp. 105–106, and pp. 171–72. Geert Jan van Gelder, 'The Conceit of Pen and Sword: On an Arabic Literary Debate', *Journal of Semitic Studies* 32:2 (Autumn 1987), pp. 329–60. S. N. Eisenstadt, 'Patterns of Stratification in the Middle East in a Comparative Framework', in *Commoners, Climbers, and Notables,* ed. Nieuwenhuijze. John Kelsay, 'Civil Society and Government in Islam', in *Islamic Political Ethics,* ed. Hashmi, p. 16.

11 William Edward Hartpole Lecky, *Democracy and Liberty* (Indianapolis, IN: Liberty Fund, 1981 [1896]. Kenneth H. F. Dyson, *The State Tradition in Western Europe: A Study of an Idea and Institution* (Oxford: Martin Robertson, 1980), pp. 189–90 and p. 249. Peregrine Worsthorne, *Democracy Needs Aristocracy* (London: Harper Perennial, 2010 [2004]). Carl J. Friedrich, *Constitutional Government and Democracy: Theory and Practice in Europe and America* (New York: Ginn and Company, 1950 [1937]), pp. 389–92. Robert Colls, 'After Bagehot: Rethinking the Constitution', *Political Quarterly* 78:4 (October/December 2007), p. 520.

12 Edmund Burke, 1791 letter, and 1791 essay 'An Appeal from the New to the Old Whigs', excerpted in *Burke's Politics: Selected Writings and Speeches of Edmund Burke on Reform, Revolution, and War,* eds. Ross J. S. Hoffman and Paul Levack (New York: Alfred A. Knopf, 1959), pp. 384–90 and pp. 397–98 respectively; *Reflections on the Revolution in France,* ed. J. G. A .Pocock (Cambridge: Hackett

Publishing Company, 1987 [1790]), pp. 36–40, pp. 44–45, p. 57, p. 60, p. 66, and p. 69.

13 Bertrand de Jouvenel, *On Power: The Natural History of Its Growth,* trans J. F. Huntington (Indianapolis, IN: Liberty Fund, 1993 [1945]), pp. 88–95, pp. 200–206, p. 241, p. 318, and p. 331; and *Sovereignty: An Inquiry into the Political Good* (Indianapolis, IN: Liberty Fund, 1997 [1957]), pp. 83–100.

14 Norbert Elias, *The Civilising Process: Sociogenetic and Psychogenetic Investigations,* trans. Edmund Jephcott (Oxford: Blackwell Publishers, 1994 [1939]).

15 Karl Wittfogel, *Oriental Despotism: A Comparative Study of Total Power* (New Haven, CT: Yale University Press, 1963), pp. 336–37 and pp. 365.

16 Têng Ssu-yü, 'Chinese Influence on the Western Examination System', *Harvard Journal of Asiatic Studies* 7:4 (September 1943), pp. 267–312. Lisa Stampnitzky, 'How Does "Culture" Become "Capital"? Cultural and Institutional Struggles Over "Character and Personality" at Harvard', *Sociological Perspectives* 49:4 (Winter 2006), pp. 461–81. Michael Walzer, *Spheres of Justice: A Defence of Pluralism and Equality* (New York: Basic Books, 1983), pp. 249–59. Edward Shils, 'No Salvation Outside Higher Education', *Minerva* 9:3 (July 1971), pp. 313–21. On typical critiques, see Ivan Illich, *Deschooling Society* (New York: Harper and Row, 1970); Charles Murray, *Real Education: Four Simple Truths for Bringing America's Schools Back to Reality* (New York: Crown Forum, 2008); John Milbank and Adrian Pabst, *The Politics of Virtue: Post-Liberalism and the Human Future* (London: Rowman and Littlefield, 2016); and Pierre Bourdieu, 'Cultural Reproduction and Social Reproduction', in *Knowledge, Education, and Social Change: Papers in the Sociology of Education,* ed. Richard Brown (Tavistock: Tavistock Publications, 1973), and *The State Nobility: Elite Schools in the Field of Power,* trans. Loïc D. Wacquant (Stanford, CA: Stanford University Press, 1998 [1989]).

17 Robert A. Nisbet, *Tradition and Revolt: Historical and Sociological Essays* (New York: Vintage Books, 1970), pp. 70–71, p. 106, and p. 119. Geoffrey Barraclough, *Turning Points in World History* (London: Thames and Hudson, 1979), pp. 50–52. M. Halpern, 'Towards a Transforming Analysis of Social Classes', in *Commoners, Climbers, and Notables,* ed. Nieuwenhuijze.

18 Edward Shils, *The Intellectuals and the Powers and Other Essays* (Chicago, IL: University of Chicago Press, 1972), pp. 3–22. Robert Nozick, 'Why Do Intellectuals Oppose Capitalism?', in *The Future of Private Enterprise: Ideas for a Changing World,* eds. Craig E. Aronoff, Randall B. Goodwin, and John L. Ward (Atlanta, GA: Georgia State University, 1986). Anthony de Jasay, *The State* (Oxford: Basil Blackwell, 1985), pp. 78–82.

19 eg. Daniel A. Bell, 'Toward Meritocratic Rule in China? A Response to Professors Dallmayr, Li, and Tan', *Philosophy East and West* 59:4 (October 2009), pp. 555–59; and *The China Model: Political Meritocracy and the Limits of Democracy* (Princeton, NJ: Princeton University Press, 2015). On the historical tensions within this view, see Yuri Pines, *Envisioning Eternal Empire: Chinese Political Thought of the Warring States Era* (Honolulu, HI: University of Hawai'i Press, 2009), pp. 187–219.

20 Li Chenyang, 'Where Does Confucian Virtuous Leadership Stand?', Fred Dallmayr, 'Exiting Liberal Democracy: Bell and Confucian Thought', and Tan Sor-hoon, 'Beyond Elitism: A Community Ideal for a Modern East Asia', all in *Philosophy East and West* 59:4 (October 2009), pp. 531–536, pp. 524–530, and pp. 537–553 respectively.

21 Kim Sungmoon, 'Self-Transformation and Civil Society: Lockean vs Confucian', and Russell Arben Fox, 'The Confucian Tradition, Nature, and Civil Education',

both in *The State of Nature in Comparative Political Thought,* eds. Carlson and Fox. Peregrine Worsthorne, *Democracy Needs Aristocracy* (London: Harper Perennial, 2010 [2004]). Víctor Pradera, *El estado nuevo* (Madrid: Cultura Española, 1935), pp. 365ff.

22 Richard Falk and Andrew Strauss, 'On the Creation of a Global People's Assembly: Legitimacy and the Power of Popular Sovereignty', *Stanford Journal of International Law* 36 (2000), pp. 191–220, and 'Toward Global Parliament', *Foreign Affairs* 80:1 (January/February 2001), pp. 212–220. Hayley Stevenson, 'The Wisdom of the Many in Global Governance: An Epistemic-Democratic Defence of Diversity and Inclusion', *International Studies Quarterly* 60 (2016), pp. 400–412. Johan Galtung, 'Alternative Models for Global Democracy', in *Global Democracy: Key Debates,* ed. Barry Holden (London: Routledge, 2000). Kenneth Baynes, 'Cosmopolitanism and International Law', *Nomos* 49 (2009), pp. 219–39. Peter Kemp, 'The Cosmopolitan Foundation of International Law', in *The Idea of Kosmopolis: History, Philosophy, and Politics of World Citizenship,* eds. Rebecka Lettevall and My Klockar Linder (Huddinge: Södertörns Högskola, 2008).

23 Paul Kennedy, *The Parliament of Man: The Past, Present, and Future of the United Nations* (New York: Random House, 2006), pp. 213–15. Samuel H. Beer, *To Make a Nation: The Rediscovery of American Federalism* (Cambridge, MA: Harvard University Press, 1993), pp. 90–91. Andrew Kuper, *Democracy Beyond Borders: Justice and Representation in Global Institutions* (Oxford: Oxford University Press, 2004). Robert A. Dahl, 'Can International Organisations Be Democratic? A Sceptic's View', in *Democracy's Edges,* eds. Shapiro and Hacker-Cordón. Thomas Christiano, 'A Democratic Theory of Territory and Some Puzzles About Global Democracy', *Journal of Social Philosophy* 37:1 (Spring 2006), pp. 81–107.

24 Vitoria, 'On Civil Power' (1528), in *Political Writings,* eds. Pagden and Lawrance. Carl J. Friedrich, *Constitutional Government and Democracy: Theory and Practice in Europe and America* (New York: Ginn and Company, 1950 [1937]), pp. 268–71 and p. 297. Jeffrey Goldsworthy, *The Sovereignty of Parliament: History and Philosophy* (Oxford: Clarendon Press, 1999). Friedrich A. Hayek, *The Constitution of Liberty* (London: Routledge and Kegan Paul, 1960), p. 110 and p. 116. Bertrand de Jouvenel, *On Power: The Natural History of Its Growth* trans J. F. Huntington (Indianapolis, IN: Liberty Fund, 1993 [1945]), p. 229ff.

25 J. P. Canning, 'Law, Sovereignty, and Corporation Theory, 1300–1450', and Jeannine Quillet, 'Community, Counsel, and Representation', both in *The Cambridge History of Mediæval Political Thought,* ed. Burns. Antony Black, *Political Thought in Europe, 1250–1450* (Cambridge: Cambridge University Press, 1992), pp. 162–78. Jeffrey Goldsworthy, *The Sovereignty of Parliament: History and Philosophy* (Oxford: Clarendon Press, 1999), pp. 28–30. Aurelio Espinosa, 'Sovereignty of the People: Discourses of Popular Sovereignty in Renaissance Spain', in *Law and Sovereignty in the Middle Ages and Renaissance,* ed. Sturges, pp. 211–12.

26 Bertrand de Jouvenel, *Sovereignty: An Inquiry into the Political Good* (Indianapolis, IN: Liberty Fund, 1997 [1957]), pp. 208–12. Víctor Pradera, *El estado nuevo* (Madrid: Cultura Española, 1935), p. 117, pp. 137–55, pp. 276–84, and pp. 309–20. Henk E. S. Woldring, 'Kuyper's Formal and Comprehensive Conceptions of Democracy', in *Kuyper Reconsidered,* eds. van der Kooi and de Bruijn.

27 Guanzi, 'Overseeing Government' 13:6–7, and 'Xiao Kuang' 100:10–102:2.

28 James M. Blythe, *Ideal Government and the Mixed Constitution in the Middle Ages* (Princeton, NJ: Princeton University Press, 1992). Antony Black, *Political Thought in Europe, 1250–1450* (Cambridge: Cambridge University Press, 1992), pp. 15–16. John Emerich Edward Dalberg Acton, *The History of Freedom and Other Essays,* eds. John Neville Figgis and Reginald Vere Laurence (London:

Macmillan and Company, 1909), p. 19. Jeffrey Goldsworthy, *The Sovereignty of Parliament: History and Philosophy* (Oxford: Clarendon Press, 1999), pp. 63–141. Corinne Comstock Weston, *English Constitutional Theory and the House of Lords, 1556–1832* (London: Routledge and Kegan Paul, 1965). Aurelio Espinosa, 'Sovereignty of the People: Discourses of Popular Sovereignty in Renaissance Spain', in *Law and Sovereignty in the Middle Ages and Renaissance,* ed. Sturges. Víctor Pradera, *El estado nuevo* (Madrid: Cultura Española, 1935), pp. 301–302. Thomas Denman, 'Parliament and the Courts', *Edinburgh Review* 83 (1846), p. 40.

29 Antony Black, *Political Thought in Europe, 1250–1450* (Cambridge: Cambridge University Press, 1992), p. 185. Kenneth H. F. Dyson, *The State Tradition in Western Europe: A Study of an Idea and Institution* (Oxford: Martin Robertson, 1980), pp. 136–43. Bertrand de Jouvenel, *On Power: The Natural History of Its Growth,* trans J. F. Huntington (Indianapolis, IN: Liberty Fund, 1993 [1945]), p. 267. John P. McCormick, 'People and lites in Republican Constitutions, Traditional and Modern', in *The Paradox of Constitutionalism,* eds. Loughlin and Walker. Samuel H. Beer, *To Make a Nation: The Rediscovery of American Federalism* (Cambridge, MA: Harvard University Press, 1993), p. 285. Robert A. Dahl, *Democracy and Its Critics* (New Haven, CT: Yale University Press, 1989), pp. 26–27.

30 Hanna Fenichel Pitkin, 'Representation', in *Political Innovation and Conceptual Change,* eds. Ball, Farr, and Hanson, p. 142. Edmund Burke, 3 November 1774 speech to Bristol electors, in *Burke's Politics,* eds. Hoffman and Levack, pp. 115–116. Samuel H. Beer, *To Make a Nation: The Rediscovery of American Federalism* (Cambridge, MA: Harvard University Press, 1993), pp. 117–18 and pp. 164–77. Carl J. Friedrich, *Constitutional Government and Democracy: Theory and Practice in Europe and America* (New York: Ginn and Company, 1950 [1937]), p. 324. Jon Elster, *Securities Against Misrule: Juries, Assemblies, Elections* (Cambridge: Cambridge University Press, 2013).

31 Dennis F. Thompson, 'Representing Future Generations: Political Presentism and Democratic Trusteeship', *Critical Review of International Social and Political Philosophy* 13:1 (2010), pp. 17–37. Emmanuel Agius, 'Obligations of Justice Towards Future Generations: A Revolution in Social and Legal Thought', in *Future Generations and International Law,* eds. Emmanuel Agius and Salvino Busuttil (London: Earthscan, 1998).

32 Antony Black, *Political Thought in Europe, 1250–1450* (Cambridge: Cambridge University Press, 1992), pp. 156–61. J. Enoch Powell and Keith Wallis, *The House of Lords in the Middle Ages: A History of the English House of Lords to 1540* (London: Weidenfeld and Nicolson, 1968). Peter Raina, *House of Lords Reform: A History* (Oxford: Peter Lang, 2011), volume I, pp. 115–44, p. 175, and pp. 443–57. Corinne Comstock Weston, *English Constitutional Theory and the House of Lords, 1556–1832* (London: Routledge and Kegan Paul, 1965), pp. 176–77. Walter Bagehot, *The English Constitution* (London: Chapman and Hall, 1867), pp. 119–23 and p. 143. Luke Owen Pike, *A Constitutional History of the House of Lords from Original Sources* (New York: Burt Franklin, 1963 [1894]), p. 357 and p. 390. E. A. Smith, *The House of Lords in British Politics and Society, 1815–1911* (London: Longman, 1992). Peregrine Worsthorne, *Democracy Needs Aristocracy* (London: Harper Perennial, 2010 [2004]).

33 Meg Russell, *The Contemporary House of Lords: Westminster Bicameralism Revived* (Oxford: Oxford University Press, 2013). George Tsebelis and Jeannette Money, *Bicameralism* (Cambridge: Cambridge University Press, 1997).

34 Robert A. Dahl, *Democracy and Its Critics* (New Haven, CT: Yale University Press, 1989), pp. 65–79.

35 G. D. H. Cole, *The Social Theory*, reprinted in *The Pluralist Theory of the State,* ed. Hirst, pp. 82–90, p. 96, and p. 106. Abraham Kuyper, *Our Programme: A Christian Political Manifesto,* trans. Harry van Dyke (Bellingham, WA: Lexham Press, 2015 [1879]), chapter 12.
36 Bertrand de Jouvenel, *On Power: The Natural History of Its Growth,* trans J. F. Huntington (Indianapolis, IN: Liberty Fund, 1993 [1945]), pp. 290–97.
37 Hayek, *Law, Legislation, and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy* (London: Routledge, 1982 [1973–1979]), volume III, pp. 3–17, pp. 23–33, and pp. 104–27.
38 John Milbank and Adrian Pabst, *The Politics of Virtue: Post-Liberalism and the Human Future* (London: Rowman and Littlefield, 2016), pp. 179–240 and pp. 351–56.
39 Jiang Qing [蒋庆], '王道政治是当今中国政治的发展方向', August 2008, http://www.confuchina.com/03%20lunlizhengzhi/wangdaozhengzhi.htm, accessed 17 November 2019.
40 The point was put forcefully by P. S. Gerbrandy, Dutch prime minister during the Second World War (cited in Bob Goudzwaard, 'The Principle of Sphere-Sovereignty in a Time of Globalisation', *Koers* 76:2 (2011), p. 360 note 4).
41 On the application of this formula in general, see Donald S. Lutz, *Principles of Constitutional Design* (Cambridge: Cambridge University Press, 2006), pp. 145–46 and p. 233.
42 Julie Smith, 'Political Parties in a Global Age', in *Non-State Actors in World Politics,* eds. Josselin and Wallace. Christopher Chase-Dunn, Ellen Reese, Erika Gutiérrez, Rebecca Giem, Christine Petit, and Linda Kim, 'Global Party Formation in World Historical Perspective', Institute for Research on World-Systems, University of California–Riverside, Riverside, CA, Working Paper 21 (July 2006).
43 Terence Ball, 'Party', in *Political Innovation and Conceptual Change,* eds. Ball, Farr, and Hanson. Harvey C. Mansfield, *Statesmanship and Party Government: A Study of Burke and Bolingbroke* (Chicago, IL: University of Chicago Press, 1965). Víctor Pradera, *El estado nuevo* (Madrid: Cultura Española, 1935), p. 327.
44 Joseph A. Schumpeter, *Capitalism, Socialism, and Democracy* (New York: Harper, 1962 [1942]), pp. 269–73.
45 Ernest Callenbach and Michael Phillips, *A Citizen Legislature* (Charlottesville, VA: Imprint Academic, 2008 [1985]). Keith Sutherland, *A People's Parliament* (Exeter: Imprint Academic, 2008). David Ramsey Steele, 'Why Stop at Term Limits?' *National Review* (11 September 1995), pp. 38–43. John Burnheim, *Is Democracy Possible? The Alternative to Electoral Politics* (Cambridge: Polity Press, 1985). Oliver Dowlen, *The Political Potential of Sortition: A Study of the Random Selection of Citizens for Public Office* (Exeter: Imprint Academic, 2017 [2008]). Gil Delannoi, 'Reflections on Two Typologies for Random Selection', Oliver Dowlen 'Sortition and Liberal Democracy: Finding a Way Forward', and Hubertus Buchstein and Michael Hein, 'Randomising Europe: The Lottery as a Political Instrument for a Reformed European Union', all in *Sortition: Theory and Practice,* eds. Gil Delannoi and Oliver Dowlen (Exeter: Imprint Academic, 2016 [2010]). Robert A. Dahl, *Democracy and Its Critics* (New Haven, CT: Yale University Press, 1989), p. 340. Anna Coote and Jo Lenaghan, *Citizens' Juries: Theory Into Practice* (London: Institute for Public Policy Research, 1997). Robert E. Goodin and John S. Dryzek, 'Deliberative Impacts: The Macro-Political Uptake of Mini-Publics', *Politics and Society* 34:2 (June 2006), pp. 219–44. William Smith, 'Anticipating Transnational Publics: On the Use of Mini-Publics in Transnational Governance', *Politics and Society* 41:3 (2013), pp. 461–84.

Chapter 8

1 Donald S. Lutz, *Principles of Constitutional Design* (Cambridge: Cambridge University Press, 2006), pp. 62–63. Carl J. Friedrich, *Constitutional Government and Democracy: Theory and Practice in Europe and America* (New York: Ginn and Company, 1950 [1937]), pp. 128–38. Martin Loughlin, 'Constituent Power Subverted: From English Constitutional Argument to British Constitutional Practice', in *The Paradox of Constitutionalism,* eds. Loughlin and Walker. Samuel H. Beer, *To Make a Nation: The Rediscovery of American Federalism* (Cambridge, MA: Harvard University Press, 1993). Mikael Spång, *Constituent Power and Constitutional Order: Above, Within, and Beside the Constitution* (New York: Palgrave Macmillan, 2014). Andreas Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt* (Cambridge: Cambridge University Press, 2008).

2 Fassbender, 'We the Peoples'. Neil Walker, 'Post-Constituent Constitutionalism? The Case of the European Union', in *The Paradox of Constitutionalism,* eds. Loughlin and Walker. Tore Vincents Olsen, 'Europe: United Under God? Or Not?' in *Political Theory and the European Constitution,* eds. Dobson and Follesdal. Anne-Marie Slaughter, 'Global Government Networks, Global Information Agencies, and Disaggregated Democracy', and Joshua Cohen and Charles F Sabel, 'Sovereignty and Solidarity: EU and US', both in *Public Governance in the Age of Globalisation,* ed. Ladeur. Stephen Tierney, '"We the Peoples": Constituent Power and Constitutionalism in Plurinational States', in *The Paradox of Constitutionalism,* eds. Loughlin and Walker, pp. 244–45. Samantha Besson, 'Whose Constitution(s)? International Law, Constitutionalism, and Democracy', in *Ruling the World?,* eds. Dunoff and Trachtman. Michel Rosenfeld, 'Modern Historical Antecedents of Global Constitutionalism in Theoretical Perspective', and Peter Niesen, 'Constituent Power in Global Constitutionalism', both in *Handbook on Global Constitutionalism,* eds. Lang and Wiener.

3 Sidney Tarrow, 'Transnational Politics: Contention and Institutions in International Politics', *Annual Review of Political Science* 4 (2001), pp. 1–20.

4 Vitoria, 'On Civil Power' (1528), in *Political Writings,* eds. Pagden and Lawrance, §14.

5 Daniel J. Elazar, 'Constitution-Making: The Preeminently Political Act', in *Redesigning the State: The Politics of Constitutional Change,* eds. Keith G. Banting and Richard Simeon (Toronto: University of Toronto Press, 1985), pp. 242–44.

6 Peri Bearman et al., 'Ahl al-Hall w'al-Aqd', in *Encyclopædia of Islam,* eds. Bearman et al. Asma Afsaruddin, 'Obedience to Political Authority: An Evolutionary Concept', in *Islamic Democratic Discourse,* ed. Khan.

7 Stephen M. Griffin, 'Constituent Power and Constitutional Change in American Constitutionalism', in *The Paradox of Constitutionalism,* eds. Loughlin and Walker. Jon Elster, *Securities Against Misrule: Juries, Assemblies, Elections* (Cambridge: Cambridge University Press, 2013), pp. 206–35. Andrew Arato, 'Constitution Making', in *Handbook on Global Constitutionalism,* eds. Lang and Wiener. Anthony F. Lang, Jr, 'From Revolutions to Constitutions: The Case of Egypt', *International Affairs* 89:2 (2013), pp. 345–63. Justus Schönlau, 'The Convention on the Future of Europe and Its Antecedents', in *Constitutional Politics in the European Union: The Convention Moment and Its Aftermath,* eds. Dario Castiglione, Justus Schönlau, Chris Longman, Emanuela Lombardo, Nieves Pérez-Solorzano Borragán, and Miriam Aziz (New York: Palgrave Macmillan, 2007).

8 F. M. Cornford, *From Religion to Philosophy: A Study in the Origins of Western Speculation* (Sussex: Harvester Press 1980 [1912]), pp. 27–39.

9 Donald S. Lutz, *Principles of Constitutional Design* (Cambridge: Cambridge University Press, 2006), pp. 184–86.
10 Bertrand de Jouvenel, *Sovereignty: An Inquiry into the Political Good* (Indianapolis, IN: Liberty Fund, 1997 [1957]), pp. 22–37.
11 George Heiman, introduction to Otto Friedrich von Gierke, *Associations and Law: The Classical and Early Christian Stages,* trans. George Heiman (Toronto: University of Toronto Press, 1977), p. 60.
12 John Dunn, 'Revolution', in *Political Innovation and Conceptual Change,* eds. Ball, Farr, and Hanson.
13 Roberto Unger, *Democracy Realised: The Progressive Alternative* (London: Verso Books, 1998); *Law in Modern Society: Toward a Criticism of Social* Theory (New York: The Free Press, 1976), pp. 129–32, pp. 238–42, and p. 266; and *Plasticity into Power: Comparative-Historical Studies on the Institutional Conditions of Economic and Military Success* (Cambridge: Cambridge University Press, 1987). Boaventura de Sousa Santos, 'Towards a Socio-Legal Theory of Indignation', in *Law's Ethical, Global, and Theoretical Contexts,* eds. Baxi, McCrudden, and Paliwala.
14 Edmund Burke, *Reflections on the Revolution in France,* ed. J. G. A .Pocock (Cambridge: Hackett Publishing Company, 1987 [1790]), pp. 29–31, p. 80, and p. 84–85. Burke, letter of October 1789, and 1791 essay 'An Appeal from the New to the Old Whigs', both in *Burke's Politics,* eds. Hoffman and Levack, p. 279 and pp. 390–400 respectively. Martin Blinkhorn, *Carlism and Crisis in Spain, 1931–1939* (Cambridge: Cambridge University Press, 1975). Víctor Pradera, *El estado nuevo* (Madrid: Cultura Española, 1935), p. 41. Steven P. Millies, '"We Do Not Know from Where": Transcendence and Openness in Burke and Voegelin', paper presented at the conference of the American Political Science Association, Washington, DC (2010). Friedrich A. Hayek, *The Constitution of Liberty* (London: Routledge and Kegan Paul, 1960), pp. 54–70.
15 Bertrand de Jouvenel, *On Power: The Natural History of Its Growth* trans J. F. Huntington (Indianapolis, IN: Liberty Fund, 1993 [1945]), pp. 237–40.
16 Hannah Arendt, 'The Concept of History: Ancient and Modern', and 'What Is Authority?' both in *Between Past and Future*, pp. 71–74 and pp. 139–41 respectively; and *On Revolution* (New York: Viking Books, 1963).
17 Jenna Bednar, 'Authority Migration in Federations: A Framework for Analysis', *PS: Political Science and Politics* 37:3 (July 2004), pp. 403–408.
18 Jonathan Chaplin, *Herman Dooyeweerd: Christian Philosopher of State and Civil Society* (Notre Dame, IN: University of Notre Dame Press, 2011), pp. 210–18.
19 Friedrich A. Hayek, *The Constitution of Liberty* (London: Routledge and Kegan Paul, 1960), pp. 178–79. Jon Elster, *Securities Against Misrule: Juries, Assemblies, Elections* (Cambridge: Cambridge University Press, 2013), pp. 80–81. Robert P. George, *Conscience and Its Enemies: Confronting the Dogmas of Liberal Secularism* (Wilmington, DE: ISI Books, 2014). C. Neal Tate and Torbjörn Vallinder, 'Judicialisation and the Future of Politics and Policy', as well as other chapters in *The Global Expansion of Judicial Power,* eds. C Neal Tate and Torbjörn Vallinder (New York: New York University Press, 1995). Robert H. Bork, *Coercing Virtue: The Worldwide Rule of Judges* (Washington, DC: AEI Press, 2003).
20 Bertrand de Jouvenel, *On Power: The Natural History of Its Growth,* trans J. F. Huntington (Indianapolis, IN: Liberty Fund, 1993 [1945]), pp. 316–17 and pp. 345ff. Anthony de Jasay, *The State* (Oxford: Basil Blackwell, 1985), pp. 187–95.
21 William E. Scheuerman, 'Executive and Exception', in *The Handbook on Global Constitutionalism,* eds. Lang and Wiener.

22 Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty,* trans. George Schwab (Cambridge, MA: The MIT Press, 1985 [1922]), p. 5, pp. 36–52, and p. 65.

23 Qian Mu [钱穆], 中国历代政治得失 (北京: 三联书店, 2018 [1969]), pp. 1–10. Guanzi, *passim*. Roger T. Ames, *The Art of Rulership: A Study in Ancient Chinese Political Thought* (Honolulu, HI: University of Hawaii Press, 1983), pp. 28–31, pp. 41–42, p. 46, and pp. 65–107, and Book 9 in *The Art of Rulership*. Dong Zhongshu, 'The Way of the King Penetrates Three', *Chunqiu fanlu yizheng*, 11:9a–12a, in *Sources of Chinese Tradition,* eds. William de Bary and Irene Bloom (New York: Columbia University Press, 1999), pp. 300–301. Yuri Pines, *Envisioning Eternal Empire: Chinese Political Thought of the Warring States Era* (Honolulu, HI: University of Hawai'i Press, 2009), pp. 13–111. Jon D. Carlson, 'Chinese Sage Kings and the Hobbesian State of Nature: Bridging Comparative Political Thought and International Relations Theory', in *The State of Nature in Comparative Political Thought,* eds. Carlson and Fox. Hahm Chaihark, 'Ritual and Constitutionalism: Disputing the Ruler's Legitimacy in a Confucian Polity', *American Journal of Comparative Law* 57:1 (Winter 2009), pp. 135–203. John B. Henderson, *The Development and Decline of Chinese Cosmology* (New York: Columbia University Press, 1984). Mircea Eliade, *The Sacred and the Profane: The Nature of Religion,* trans. Willard R. Trask (New York: Harcourt, Brace, and World, 1959), pp. 21–65. Sarah Allan, *Buried Ideas: Legends of Abdication and Ideal Government in Early Chinese Bamboo-Slip Manuscripts* (Albany, NY: SUNY Press, 2015), pp. 289–303, and 'On the Identity of Shang Di 上帝and the Origin of the Concept of a Celestial Mandate (Tian Ming 天命)', *Early China* 31 (2007), pp. 1–46. Song Jaeyoon, 'The Zhou Li and Constitutionalism: A Southern Song Political Theory', *Journal of Chinese Philosophy* 36:3 (September 2009), pp. 424–38.

24 John W. Spellman, *Political Theory of Ancient India: A Study of Kingship from the Earliest Times to Circa AD 300* (Oxford: Clarendon Press, 1964), pp. 9–11 and pp. 211–20. Stuart Gray, 'The State of Nature and Domesticated Differences in Ancient Indian Political Thought: A Historical-Comparative Approach', in *The State of Nature in Comparative Political Thought,* eds. Carlson and Fox; and *A Defence of Rule: Origins of Political Thought in Greece and India* (Oxford: Oxford University Press, 2017). H. Patrick Glenn, *Legal Traditions of the World: Sustainable Diversity in Law*, 3rd ed. (Oxford: Oxford University Press, 2007), p. 285.

25 W. Montgomery Watt, *Islamic Political Thought* (Edinburgh: Edinburgh University Press, 1968), pp. 41–42 and p. 80. Ṭūsī, pp. 191–92 and pp. 228–30. Abū al Ḥasan al-Mawardī, *The Ordinances of Government [Al-Aḥkām al-Sulṭāniyya w'al-Wilāyāt al-Dīniyya],* trans. Wafaa H. Wahba (Reading, MA: Garnet Publishing, 1996), pp. 3–16. Cahen, pp. 134–35. Asma Afsaruddin, 'Obedience to Political Authority: An Evolutionary Concept', in *Islamic Democratic Discourse,* ed. Khan, p. 54. H. A. R. Gibb, 'Constitutional Organisation', in *Law in the Middle East,* eds. Khadduri and Liebesny, pp. 4–5 and p. 23.

26 Antony Black, *Political Thought in Europe, 1250–1450* (Cambridge: Cambridge University Press, 1992), p. 93, p. 109, and pp. 136–37. Bertrand de Jouvenel, *Sovereignty: An Inquiry into the Political Good* (Indianapolis, IN: Liberty Fund, 1997 [1957]), pp. 114–24.

27 Roger T. Ames, *The Art of Rulership: A Study in Ancient Chinese Political Thought* (Honolulu, HI: University of Hawaii Press, 1983), pp. 59–60, and Book 9 §6 in in *The Art of Rulership*. John W. Spellman, *Political Theory of Ancient India: A Study of Kingship from the Earliest Times to Circa AD 300* (Oxford: Clarendon Press, 1964), pp. 170–75. Linda T. Darling, '"The Vicegerent of God, from Him We Expect Rain": The Incorporation of the Pre-Islamic State in Early Islamic Political Culture',

Journal of the American Oriental Society 134:3 (2014), pp. 407–29. Bertrand de Jouvenel, *Sovereignty: An Inquiry into the Political Good* (Indianapolis, IN: Liberty Fund, 1997 [1957]), pp. 52–61.

28 G. K. Chesterton, *Orthodoxy* (London: John Lane, 1908), chapter II.

29 Vernon Bogdanor, *The Monarchy and the Constitution* (Oxford: Clarendon Press, 1995), p. 35, p. 73, pp. 232–33, and p. 288. Evatt. See also Johannes Althusius, *The Politics of Johannes Althusius,* trans. Frederick S. Carney (London: Eyre and Spottiswoode, 1964 [1603]), pp. 87–114, on the analogous role of the ephors.

30 eg. Antonin Scalia, testimony to Senate Judiciary Committee (5 October 2011).

31 Walter Bagehot, *The English Constitution* (London: Chapman and Hall, 1867), p. 7, pp. 52–54, pp. 61–79, p. 86, and pp. 103–108.

32 Eric Hobsbawm, 'Inventing Traditions' and 'Mass-Producing Traditions: Europe, 1870–1914', and David Cannadine, 'The Context, Performance, and Meaning of Ritual: The British Monarchy and the "Invention of Tradition" c1820–1977', all in *The Invention of Tradition,* eds. Eric Hobsbawm and Terence Ranger (Cambridge: Cambridge University Press, 2013 [1983]). Vernon Bogdanor, *The Monarchy and the Constitution* (Oxford: Clarendon Press, 1995), pp. 1–41. Robert Colls, 'After Bagehot: Rethinking the Constitution', *Political Quarterly* 78:4 (October/December 2007), p. 520. Frank Prochaska, *Royal Bounty: The Making of a Welfare Monarchy* (New Haven, CT: Yale University Press, 1995).

33 Paul Preston, *Juan Carlos: A People's King* (London: Harper Collins, 2004). Kenneth J. Ruoff, *The People's Emperor: Democracy and the Japanese Monarchy, 1945–1995* (Cambridge, MA: Harvard University Press, 2001). Naoki Kojiro, 'The History of the Tennō (Emperor) System and Its Role in Japanese Politics', in *Forms of Control and Subordination in Antiquity,* eds. Yuge and Doi. Warren M. Tsuneishi, *Japanese Political Style: An Introduction to the Government and Politics of Modern Japan* (New York: Harper and Row, 1966), p. 2, pp. 25–35, pp. 55–60, and p. 181.

34 Vlad Constantinesco, 'Does the Constitutional Treaty Have a Future?', in *Fifty Years of the European Treaties: Looking Back and Thinking Forward,* eds. Michael Dougan and Samantha Currie (Oxford: Hart Publishing, 2009). Nigel Farage, speech to the European Parliament, 24 February 2010. Kent J. Kille, *From Manager to Visionary: The Secretary-General of the United Nations* (New York: Palgrave Macmillan, 2007); and 'The Secular Pope: Insights on the UN Secretary-General and Moral Authority', in *The UN Secretary-General and Moral Authority: Ethics and Religion in International Leadership,* ed. Kent J. Kille (Washington, DC: Georgetown University Press, 2007). Simon Chesterman, 'Secretary or General?', Shashi Tharoor, '"The Most Impossible Job" Description', and Ian Johnstone, 'The Secretary-General as Norm Entrepreneur', all in *Secretary or General? The UN Secretary-General in World Politics,* ed. Simon Chesterman (Cambridge: Cambridge University Press, 2007).

35 Bryan S. Turner, 'In Defence of Monarchy', *Society* 49 (2012), pp. 84–89.

36 Carl Schmitt, *Constitutional Theory,* trans. Jeffrey Seitzer (Durham, NC: Duke University Press, 2008 [1928]), pp. 239–49.

37 Mircea Eliade, *The Sacred and the Profane: The Nature of Religion,* trans. Willard R. Trask (New York: Harcourt, Brace, and World, 1959), pp. 93–94 and pp. 202–209.

38 Ernst H. Kantorowicz, *The King's Two Bodies: A Study in Mediæval Political Theology* (Princeton, NJ: Princeton University Press, 1957), p. 18 and pp. 70–84. See also the debates over the monarchy as a 'corporation sole', in Runciman, pp. 100–101, and Frederic Maitland, 'The Corporation Sole', *Law Quarterly Review* 16 (1900), pp. 335–54 and 'The Crown as Corporation', *Law Quarterly Review* 17 (1901), pp. 131–46.

39 Joseph R. Levenson, 'The Suggestiveness of Vestiges: Confucianism and Monarchy at the Last', in *Confucianism in Action,* eds. Nivison and Wright. On the historical importance of leaders being ethnically representative of the population, see Carl J. Friedrich, *Constitutional Government and Democracy: Theory and Practice in Europe and America* (New York: Ginn and Company, 1950 [1937]), p. 357.
40 Marshall Sahlins, 'The Stranger-King, or Elementary Forms of the Politics of Life', *Indonesia and the Malay World* 36:105 (July 2008), pp. 177–99.
41 Abū al Ḥasan al-Mawardī, *The Ordinances of Government [Al-Aḥkām al-Sulṭāniyya w'al-Wilāyāt al-Dīniyya],* trans. Wafaa H. Wahba (Reading, MA: Garnet Publishing, 1996), pp. 3–15. Ann K. S. Lambton, *State and Government in Mediæval Islam: An Introduction to the Study of Islamic Political Theory* (Oxford: Oxford University Press, 1981), pp. 94–95. H. A. R. Gibb, 'Constitutional Organisation', in *Law in the Middle East,* eds. Khadduri and Liebesny, p. 10. Sarah Allan, *Buried Ideas: Legends of Abdication and Ideal Government in Early Chinese Bamboo-Slip Manuscripts* (Albany, NY: SUNY Press, 2015), and *The Heir and the Sage: Dynastic Legend in Early China* (San Francisco, CA: Chinese Materials Centre, 1981). Kim Sungmoon, 'Confucian Constitutionalism: Mencius and Xunzi on Virtue, Ritual, and Royal Transmission', *Review of Politics* 73 (2011), pp. 371–99. For analogous debates in Hinduism, see John W. Spellman, *Political Theory of Ancient India: A Study of Kingship from the Earliest Times to Circa AD 300* (Oxford: Clarendon Press, 1964), pp. 15–24.
42 Anthony de Jasay, *The State* (Oxford: Basil Blackwell, 1985), pp. 27–32.
43 Walter Bagehot, *The English Constitution* (London: Chapman and Hall, 1867), pp. 152–53.
44 Kenneth J. Ruoff, *The People's Emperor: Democracy and the Japanese Monarchy, 1945–1995* (Cambridge, MA: Harvard University Press, 2001), p. 99 and p. 118. Vernon Bogdanor, *The Monarchy and the Constitution* (Oxford: Clarendon Press, 1995), pp. 185.
45 Georges Dumézil, *Mitra-Varuna: An Essay on Two Indo-European Representations of Sovereignty* trans. Derek Coltman (New York: Zone Books, 1988 [1948]). There are also parallels in Bertrand de Jouvenel, *Sovereignty: An Inquiry into the Political Good* (Indianapolis, IN: Liberty Fund, 1997 [1957]), p. 117.
46 Richard Louis Walker, *The Multi-State System of Ancient China* (Hamden, CT: Shoestring Press, 1953).
47 The cultural aspect of future global pacification is also noted, significantly, in Norbert Elias, *The Civilising Process: Sociogenetic and Psychogenetic Investigations* trans. Edmund Jephcott (Oxford: Blackwell Publishers, 1994 [1939]), pp. 445–47.
48 On the varying cultures of policing, see David H. Bayley, 'The Police and Political Development in Europe', in *The Formation of National States in Western Europe,* ed. Tilly.
49 Dooyeweerd, 'The Christian Idea of the State' [1936], in *Essays in Legal, Social, and Political Philosophy* (Lampeter: Edwin Mellen Press, 1996), pp. 148–49.
50 eg. Carl J. Friedrich, *Constitutional Government and Democracy: Theory and Practice in Europe and America* (New York: Ginn and Company, 1950 [1937]), p. 60.
51 Mencius, *The Works of Mencius,* trans. James Legge (New York: Dover Publications, 1970 [1895]), I:2:viii:3. Justin Tiwald, 'A Right of Rebellion in the Mengzi?', *Dao* 7:3 (September 2008), pp. 269–82. John W. Spellman, *Political Theory of Ancient India: A Study of Kingship from the Earliest Times to Circa AD 300* (Oxford: Clarendon Press, 1964), pp. 229–38. Abū al Ḥasan al-Mawardī, *The Ordinances of Government [Al-Aḥkām al-Sulṭāniyya w'al-Wilāyāt al-Dīniyya],* trans. Wafaa H. Wahba (Reading, MA: Garnet Publishing, 1996), pp. 64–71. H. A. R. Gibb,

'Constitutional Organisation', in *Law in the Middle East,* eds. Khadduri and Liebesny, p. 15. John Kelsay, 'Civil Society and Government in Islam', in *Islamic Political Ethics,* ed. Hashmi, pp. 26–27. Evangelos Chrysos, 'The Right of Resistance in Late Antiquity and Byzantium', in *Forms of Control and Subordination in Antiquity,* eds. Yuge and Doi. Braun. David Graeber, 'The Divine Kingship of the Shilluk: On Violence, Utopia, and the Human Condition, or Elements for an Archæology of Sovereignty', *HAU: Journal of Ethnographic Theory* 1:1 (2011), pp. 1–62.

52 Thomas Jefferson, letter to William S. Smith (Paris, 13 November 1787). Joyce Lee Malcolm, 'The Right of the People to Keep and Bear Arms: The Common Law Tradition', *Hastings Constitutional Law Quarterly* 10 (1983), pp. 285–314. Robert E. Shalhope, 'The Ideological Origins of the Second Amendment', *Journal of American History* 69 (1982), pp. 599–614. Roy G. Weatherup, 'Standing Armies and Armed Citizens: An Historical Analysis of the Second Amendment', *Hastings Constitutional Law Quarterly* 2 (1975), pp. 961–1001. Edward Abbey, 'The Right to Arms', in *Abbey's Road* (New York: Plume, 1991 [1979]), pp. 130–32. Richard E. Wagner, 'Parchment, Guns, and Constitutional Order', p. 13, both in *Property Rights and the Limits of Democracy,* ed. Charles K. Rowley (Fairfax, VA: The Locke Institute, 1993), p. vii. On the gendered dimension of republican self-defence, cf. Wendy Brown, 'Guns, Cowboys, Philadelphia Mayors, and Civic Republicanism: On Sanford Levinson's The Embarrassing Second Amendment', *Yale Law Journal* 99:3 (December 1989), pp. 661–67.

53 Bernard Lewis, 'Islamic Concepts of Revolution', in *Revolution in the Middle East,* ed. P. J. Vatikiotis (London: George Allen and Unwin, 1972), pp. 35–36.

54 Carl J. Friedrich, *Constitutional Government and Democracy: Theory and Practice in Europe and America* (New York: Ginn and Company, 1950 [1937]), p. 143 and p. 149. Donald S. Lutz, *Principles of Constitutional Design* (Cambridge: Cambridge University Press, 2006), p. 68, pp. 153–56, and p. 178. Gerhard Lehmbruch, 'Constitution-Making in Young and Ageing Federal Systems', in *Redesigning the State,* eds. Banting and Simeon.

55 James Kenneth Rogers, 'The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process', *Harvard Journal of Law and Public Policy* 30:3 (2007), pp. 1005–22. Phyllis Schlafly, 'Top Ten Reasons to Oppose a Con Con', PS Eagles, http://www.pseagles.com/Top_ten_reasons_ to_ oppose_a_Con_Con (accessed 16 February 2019).

Conclusion

1 G. D. H. Cole, *The Social Theory*, reprinted in *The Pluralist Theory of the State,* ed. Hirst, p. 107.

2 Yash Ghai and Jill Cottrell, 'The State and Constitutionalism in Postcolonial Societies in Africa', in *Law's Ethical, Global, and Theoretical Contexts,* eds. Baxi, McCrudden, and Paliwala. Margaret Kohn and Keally McBride, *Political Theories of Decolonisation: Postcolonialism and the Problem of Foundations* (Oxford: Oxford University Press, 2011).

3 Jean-Jacques Rousseau, *The Social Contract*, trans. G D H Cole (London: J M Dent, 1913), Book II, Chapter VIII.

4 Richard E. Wagner, 'Parchment, Guns, and Constitutional Order', p. 13, both in *Property Rights and the Limits of Democracy,* ed. Charles K. Rowley (Fairfax, VA: The Locke Institute, 1993), p. 18.

5 On the legal concept of 'universal succession' to a complex of rights and obligations pertaining to a previous institution, see Henry Sumner Maine, *Ancient Law* (London: J.M. Dent and Sons, 1917 [1861]), chapter VI.
6 Bertrand de Jouvenel, *Sovereignty: An Inquiry into the Political Good* (Indianapolis, IN: Liberty Fund, 1997 [1957]), pp. 38–39.
7 Anthony de Jasay, *The State* (Oxford: Basil Blackwell, 1985), p. 15.

References

Abbey, Edward. *Abbey's Road*. New York: Plume, 1991 [1979].

Abbey, Edward. *Desert Solitaire: A Season in the Wilderness*. New York: McGraw-Hill, 1968.

Abdelal, Rawi. 'Markets and Meanings: Nationalism, Land, and Property in Lithuania'. In *Land Rights, Ethno-Nationality, and Sovereignty in History*. Stanley L. Engerman and Jacob Metzer (eds.). London: Routledge, 2004.

Abdullahi, Umar Faruk. 'Interrelations Between Common Law and Shariah Law'. Presentation at the International Society for the Reform of Criminal Law, Vancouver, 22–26 June 2007.

Abizadeh, Arash. 'Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders'. *Political Theory*, 36:1, February 2008, pp. 37–65.

Abizadeh, Arash. 'Does Liberal Democracy Presuppose a Cultural Nation? Four Arguments'. *American Political Science Review*, 96:3, September 2002, pp. 495–509.

Abou El Fadl, Khaled. 'The Unbounded Law of God and Territorial Boundaries'. In *States, Nations, and Borders: The Ethics of Making Boundaries*. Allen Buchanan and Margaret Moore (eds.). Cambridge: Cambridge University Press, 2003.

Abu Zahra, Muhammad. 'Family Law'. In *Law in the Middle East: Origin and Development of Islamic Law*. Majid Khadduri and Herbert J Liebesny (eds.). Washington, DC: Middle East Institute, 1955.

Acton, John Emerich Edward Dalberg. *The History of Freedom and Other Essays*. John Neville Figgis and Reginald Vere Laurence (eds.). London: Macmillan and Company, 1909.

Adams, Charles. *For Good and Evil: The Impact of Taxes on the Course of Civilisation*. London: Madison Books, 1993.

Adanir, Fikret. 'Religious Communities and Ethnic Groups under Imperial Sway: Ottoman and Habsburg Lands in Comparison'. In *The Historical Practice of Diversity: Transcultural Interactions from the Early Modern Mediterranean to the Postcolonial World*. Dirk Hoerder, Christiane Harzig, and Adrian Shubert (eds.). Oxford: Berghahn Books, 2003.

Adonis, J. C. 'The Role of Abraham Kuyper in South Africa: A Critical Historical Evaluation'. In *Kuyper Reconsidered: Aspects of His Life and Work*. Cornelis van der Kooi and Jan de Bruijn (eds.). Amsterdam: VU Uitgeverij, 1999.

el-Affendi, Abdelwahab. 'Democracy and Its (Muslim) Critics: An Islamic Alternative to Democracy?' In *Islamic Democratic Discourse: Theory, Debates, and Philosophical Perspectives*. M. A. Muqtedar Khan (ed.). Oxford: Lexington Books, 2006.

Afsaruddin, Asma. 'Obedience to Political Authority: An Evolutionary Concept'. In *Islamic Democratic Discourse*. Muqtedar Khan (ed.).

Agamben, Giorgio. 'Chiarimenti', *Quodlibet*, 17 March 2020, https://www.quodlibet.it/giorgio-agamben-chiarimenti? fbclid=IwAR21rQwju7pwa7uk1MwFj9Jz5cW1_ex0-s_jKwqrBo3IC wmo8o6slwjoLo4, accessed 28 October 2020.

Agamben, Giorgio. 'L'invenzione di un'epidemia', *Quodlibet*, 26 February 2020, https://www.quodlibet.it/giorgio-agamben-l-invenzione-di-un-epidemia, accessed 28 October 2020.

Agius, Emmanuel. 'Obligations of Justice Towards Future Generations: A Revolution in Social and Legal Thought'. In *Future Generations and International Law*. Emmanuel Agius and Salvino Busuttil (eds.). London: Earthscan, 1998.

Akpinar, Snjezana. 'Hospitality in Islam'. *Religion East and West*, 7, October 2007, pp. 23–27.

Albertson, David et al. 'Open Letter Against the New Nationalism: An Appeal to Our Fellow Christians'. *Commonweal*, 19 August 2019, https://www.commonwealmagazine.org/open-letter-against-new-nationalism, accessed 25 August 2019.

Aleinikoff, T. Alexander. 'Symposium on Law and Community: Theories of Loss of Citizenship'. *Michigan Law Review*, 84, June 1986, pp. 1471–1503.

Alexander, Titus. *Unravelling Global Apartheid: An Overview of World Politics*. Cambridge: Polity Press, 1996.

Allan, Sarah. *Buried Ideas: Legends of Abdication and Ideal Government in Early Chinese Bamboo-Slip Manuscripts*. Albany, NY: SUNY Press, 2015.

Allan, Sarah. *The Heir and the Sage: Dynastic Legend in Early China*. San Francisco, CA: Chinese Materials Centre, 1981.

Allan, Sarah. 'On the Identity of Shang Di 上帝and the Origin of the Concept of a Celestial Mandate (Tian Ming 天命)'. *Early China*, 31, 2007, pp. 1–46.

Allard, Silas Webster. 'In the Shade of the Oaks of Mamre: Hospitality as a Framework for Political Engagement Between Christians and Muslims'. *Political Theology*, 13:4, 2012, pp. 414–424.

Allott, Philip. 'The Emerging International Aristocracy'. *New York University Journal of International Law and Politics*, 35, 2002/2003, pp. 309–338.

Alstott, Anne L. 'Equal Opportunity and Inheritance Taxation'. *Harvard Law Review*, 121, 2007, pp. 470–542.

Althusius, Johannes and Frederick S. Carney (trans.). *The Politics of Johannes Althusius*. London: Eyre and Spottiswoode, 1964 [1603].

Alvaré, Helen M. 'Religious Freedom versus Sexual Expression: A Guide'. *Journal of Law and Religion*, 30:3, 2015, pp. 475–495.

al-'Alwānī, Taha Jābir and Ashur A Shamis (trans.). *Towards a Fiqh for Minorities: Some Basic Reflections*. London: International Institute of Islamic Thought, 2010.

Ames, Roger T. *The Art of Rulership: A Study in Ancient Chinese Political Thought*. Honolulu, HI: University of Hawaii Press, 1983.

Amighetti, Sara and Alasia Nuti. 'A Nation's Right to Exclude and the Colonies'. *Political Theory*, 44:4, August 2016, pp. 541–566.

Anderlini, Jamil and Clare MacCarthy. 'China Snubs Norway in Visa Reforms'. *Financial Times*, 6 December 2012.

Andrews, Kehinde. *The New Age of Empire: How Racism and Colonialism Still Rule the World*. New York: Bold Type Books, 2021.

Arato, Andrew. 'Constitution Making'. In *Handbook on Global Constitutionalism*. Anthony F. Lang, Jr and Antje Wiener (eds.). Cheltenham: Edward Elgar Publishing, 2017.

Arendt, Hannah. *Between Past and Future: Eight Exercises in Political Thought*. New York: Viking Press, 1968 [1954].

Arendt, Hannah. *The Human Condition*. Chicago, IL: Chicago University Press, 1958.

Arendt, Hannah. *Men in Dark Times*. New York: Harcourt, Brace, and World, 1955.

Arendt, Hannah. *On Revolution*. New York: Viking Books, 1963.

Arendt, Hannah. *The Origins of Totalitarianism*. New York: Meridian Books, 1958 [1951].

Austin, Gareth. 'Sub-Saharan Africa: Land Rights and Ethno-National Consciousness in Historically Land-Abundant Economies'. In *Land Rights, Ethno-Nationality, and Sovereignty in History*. Engerman and Metzer (eds.).

Backer, Larry Catá. 'From Constitution to Constitutionalism: A Global Framework for Legitimate Public Power Systems'. *Penn State Law Review*, 113:3, 2009, pp. 101–177.

Bagehot, Walter. *The English Constitution*. London: Chapman and Hall, 1867.

Bai Tongdong. *Against Political Equality: The Confucian Case*. Princeton, NJ: Princeton University Press, 2020.

Bajc, Vida. 'Sociological Reflections on Security Through Surveillance'. *Sociological Forum*, 28:3, September 2013, pp. 615–623.

Baker, Alan R. H. 'On Ideology and Landscape'. In *Ideology and Landscape in Historical Perspective: Essays on the Meanings of Some Places in the Past*. Alan R H Baker and Gideon Biger (eds.). Cambridge: Cambridge University Press, 1992.

Baker, Gideon. *Civil Society and Democratic Theory: Alternative Voices*. London: Routledge, 2002.

Baker, Gideon. '"Now We Have Been Delivered from the Law": Thoughts Towards a Genealogy of Anarchism'. *Griffith Law Review*, 21:2, 2012, pp. 369–390.

Baker, Gideon. 'Right of Entry or Right of Refusal? Hospitality in the Law of Nature and Nations'. In *Hospitality and World Politics*. Gideon Baker (ed.). New York: Palgrave Macmillan, 2013.

Ball, Terence. 'Party'. In *Political Innovation and Conceptual Change*. Terence Ball, James Farr, and Russell L Hanson (eds.). Cambridge: Cambridge University Press, 1989.

Barbato, Mariano. *Pilgrimage, Politics, and International Relations: Religious Semantics for World Politics*. New York: Palgrave Macmillan, 2013.

al-Barghouti, Tamim. *The Umma and the Dawla: The Nation State and the Arab Middle East*. London: Pluto Press, 2008.

Barkan, Elazar. *The Guilt of Nations: Restitution and Negotiating Historical Injustices*. Baltimore, MD: Johns Hopkins University Press, 2000.

Barker, Ernest. *Church, State, and Study*. London: Methuen and Company, 1930.

Barkey, Karen. 'Aspects of Legal Pluralism in the Ottoman Empire'. In *Legal Pluralism and Empires, 1500–1850*. Lauren Benton and Richard J. Ross (eds.). New York: New York University Press, 2013.

Barkey, Karen. 'Empire and Toleration: A Comparative Sociology of Toleration Within Empire'. In *Boundaries of Toleration*. Alfred Stepan and Charles Taylor (eds.). New York: Columbia University Press, 2014.

Barraclough, Geoffrey. *Turning Points in World History*. London: Thames and Hudson, 1979.

Barrett, Nicholas. Comment on 'Readers Respond to the EU Referendum Vote', *The Financial Times,* 24 June 2016, http://www.ft.com/cms/s/2/f4dcdf62-399d-11e6-9a05-82a9b15a8ee7.html?siteedition=uk#axzz4GkhZDRz3, accessed 8 August 2016.

Bartelson, Jens. *A Genealogy of Sovereignty*. Cambridge: Cambridge University Press, 1995.

Bartelson, Jens. *Visions of World Community*. Cambridge: Cambridge University Press, 2009.

de Bary, William Theodore. *The Liberal Tradition in China*. Hong Kong: The Chinese University Press, 1983.

de Bary, William Theodore and Irene Bloom (eds.). *Sources of Chinese Tradition*. New York: Columbia University Press, 1999.

Basile, Mary Elizabeth. 'Loyalty Testing for Attorneys: When Is It Necessary and Who Should Decide?' *Cardozo Law Review*, 30:5, 2009, pp. 1843–84.

Bastiat, Frédéric and Patrick James Stirling (trans.). 'The Law'. In *Essays on Political Economy*. New York: G. P. Putnams and Sons, 1874 [1850].

Bauböck, Rainer. 'Political Boundaries in a Multilevel Democracy'. In *Identities, Affiliations, and Allegiances*. Seyla Benhabib, Ian Shapiro, and Danilo Petranović (eds.). Cambridge: Cambridge University Press, 2007.

Bauböck, Rainer. 'Political Community Beyond the Sovereign State, Supranational Federalism, and Transnational Minorities'. In *Conceiving Cosmopolitanism: Theory, Context, and Practice*. Steven Vertovec and Robin Cohen (eds.). Oxford: Oxford University Press, 2002.

Bauböck, Rainer. 'Stakeholder Citizenship and Transnational Political Participation: A Normative Evaluation of External Voting'. *Fordham Law Review*, 75:5, April 2007, pp. 2393–2447.

Bauböck, Rainer. 'Towards a Political Theory of Migrant Transnationalism'. *International Migration Review*, 37:3, Autumn 2003, pp. 700–723.

Bauder, Harald. 'Citizenship as Capital: The Distinction of Migrant Labour'. *Alternatives*, 33, 2008, pp. 315–333.

Baudrillard, Jean and James Benedict (trans.). *The Transparency of Evil: Essays on Extreme Phenomena*. London: Verso Books, 1993 [1990].

Bauer, Otto. 'The Concept of the "Nation" and "Socialism" and the Principle of Nationality'. In *Austro-Marxism*. Tom Bottomore and Patrick Goode (eds.). Oxford: Clarendon Press, 1978.

Baus, Gregory. 'Dooyeweerd's Societal Sphere Sovereignty: Neither Tax-Based Nor Laissez-Faire'. Unpublished paper, February 2006.

Bayley, David H. 'The Police and Political Development in Europe'. In *The Formation of National States in Western Europe*. Charles Tilly (ed.). Princeton, NJ: Princeton University Press, 1975.

Baynes, Kenneth. 'Cosmopolitanism and International Law'. *Nomos*, 49, 2009, pp. 219–239.

Bearman, Peri et al. 'Ahl al-Hall w'al-Aqd'. In *Encyclopædia of Islam*. 2nd ed. Peri Bearman, Thierry Bianquis, Clifford Edmund Bosworth, Emericus Joannes van Donzel, and Wolfhart Peter Heinrichs (eds.). Leiden: E. J. Brill, 1960–2005.

Beauzamy, Brigitte. 'Transnational Social Movements and Democratic Legitimacy'. In *Legitimacy Beyond the State? Re-Examining the Democratic Credentials of Transnational Actors*. Eva Erman and Anders Uhlin (eds.). New York: Palgrave Macmillan, 2010.

Beck, Ulrich. 'The Cosmopolitan Perspective: Sociology in the Second Age of Modernity'. In *Conceiving Cosmopolitanism*. Vertovec and Cohen (eds.).

Beck, Ulrich and Mark Ritter (trans.). *Risk Society: Towards a New Modernity*. London: Sage, 1992 [1986].

Bednar, Jenna. 'Authority Migration in Federations: A Framework for Analysis'. *PS: Political Science and Politics*, 37:3, July 2004, pp. 403–408.

Beer, Samuel H. *To Make a Nation: The Rediscovery of American Federalism*. Cambridge MA: Harvard University Press, 1993.

Beito, David T. *From Mutual Aid to the Welfare State: Fraternal Societies and Social Services, 1890–1967*. Chapel Hill, NC: University of North Carolina Press, 2000.

Beitz, Charles R. *Political Theory and International Relations*. Princeton, NJ: Princeton University Press, 1999 [1979].

Bell, Daniel A. *The China Model: Political Meritocracy and the Limits of Democracy*. Princeton, NJ: Princeton University Press, 2015.

Bell, Daniel A. 'The Making and Unmaking of Boundaries: A Contemporary Confucian Perspective'. In *States, Nations, and Borders*. Buchanan and Moore (eds.).

Bell, Daniel A. 'Toward Meritocratic Rule in China? A Response to Professors Dallmayr, Li, and Tan'. *Philosophy East and West*, 59:4, October 2009, pp. 554–560.

Belton, Kristy A. 'The Neglected Non-Citizen: Statelessness and Liberal Political Theory'. *Journal of Global Ethics*, 7:1, 2011, pp. 59–71.

Benedict XVII [Joseph Ratzinger]. *Caritas in veritate*. Papal encyclical, June 2009, https://www.vatican.va/content/benedict-xvi/en/encyclicals/documents/hf_ben-xvi_enc_20090629_ caritas-in-veritate.html, accessed 11 July 2021.

Benhabib, Seyla. 'Disaggregation of Citizenship Rights'. *Parallax*, 11:1, 2005, pp. 10–18.

Benhabib, Seyla. *The Rights of Others: Aliens, Residents, and Citizens*. Cambridge: Cambridge University Press, 2004.

de Benoist, Alain and Jon Graham (trans.). *On Being a Pagan*. North Augusta, SC: Arcana Europa, 2018 [1981].

Benson, Michaela and Karen O'Reilly. 'Migration and the Search for a Better Way of Life: A Critical Exploration of Lifestyle Migration'. *Sociological Review*, 57:4, November 2009, pp. 608–625.

Berger, Peter L. 'The Worldview of the New Class: Secularity and Its Discontents'. In *The New Class?* B. Bruce-Briggs (ed.). New York: McGraw-Hill Book Company, 1979.

Berlin, Isaiah. *Four Essays on Liberty*. Oxford: Oxford University Press, 1969.

Berman, Paul Schiff. *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders*. Cambridge: Cambridge University Press, 2012.

Besson, Samantha. 'Whose Constitution(s)? International Law, Constitutionalism, and Democracy'. In *Ruling the World? Constitutionalism, International Law, and Global Governance*. Jeffrey L. Dunoff and Joel P. Trachtman (eds.). Cambridge: Cambridge University Press, 2009.

Bevir, Mark. 'A History of Modern Pluralism'. In *Modern Pluralism: Anglo-American Debates Since 1880*. Mark Bevir (ed.). Cambridge: Cambridge University Press, 2012.

Bhargava, Rajeev. 'How Should We Respond to the Cultural Injustices of Colonialism?' In *Reparations: Interdisciplinary Inquiries*. Jon Miller and Rahul Kumar (eds.). Oxford: Oxford University Press, 2007.

Bhatt, Chetan. 'The Lore of the Homeland: Hindu Nationalism and Indigenist "Neoracism"'. In *Theories of Race and Racism*. Les Back and John Solomos (eds.). London: Routledge, 2000.

Bhattacharyya, Gargi, John Gabriel, and Stephen Small. *Race and Power: Global Racism in the Twenty-First Century*. London: Routledge, 2002.

Biaggini, Giovanni. '"Identity Building" by Means of a European Constitution? Some Reflections from a Swiss Point of View'. In *Governing Europe Under a Constitution: The Hard Road from the European Treaties to a European Constitutional Treaty*. Hermann-Josef Blanke and Stelio Mangiameli (eds.). Berlin: Springer, 2006.

Bianchi, Andrea. 'Globalisation of Human Rights: The Role of Non-State Actors'. In *Global Law Without a State*. Aldershot: Dartmouth, 1997. Gunther Teubner (ed.).

de Bie, Jasper L., Christianne J. de Poot, and Joanne P. van der Leun. 'Shifting Modus Operandi of Jihadis Foreign Fighters from the Netherlands Between 2000 and 2013: A Crime Script Analysis'. *Terrorism and Political Violence*, 27, 2015, pp. 416–440.

Biggar, Nigel. 'The Value of Limited Loyalty: Christianity, the Nation, and Territorial Boundaries'. In *Boundaries and Justice: Diverse Ethical Perspectives*. David Miller and Sohail H. Hashmi (eds.). Princeton: Princeton University Press, 2001.

Bilgrami, Akeel. 'Secularism: Its Content and Context'. In *Boundaries of Toleration*. Stepan and Taylor (eds.).

Black, Antony. 'The Individual and Society'. In *The Cambridge History of Mediæval Political Thought, c. 350–c. 1450*. J. H. Burns (ed.). Cambridge: Cambridge University Press, 1988.

Black, Antony. *Political Thought in Europe, 1250–1450*. Cambridge: Cambridge University Press, 1992.

Blackstone, William. *Commentaries on the Laws of England*. Oxford: Clarendon Press, 1765–1769.

Blake, Michael. 'Immigration'. In *A Companion to Applied Ethics*. R. G. Frey and Christopher Heath Wellman (eds.). Oxford: Blackwell Publishing, 2003.

Blank, Yishai. 'Spheres of Citizenship'. *Theoretical Inquiries in Law*, 8, July 2007, pp. 411–52.

Bleichmar, Javier. 'Deportation as Punishment: A Historical Analysis of the British Practice of Banishment and Its Impact on Modern Constitutional Law'. *Georgetown Immigration Law Journal*, 14, Autumn 1999, pp. 115–163.

Blinkhorn, Martin. *Carlism and Crisis in Spain, 1931–1939*. Cambridge: Cambridge University Press, 1975.

Block, Walter. 'Rejoinder to Hoppe on Immigration'. *Journal of Libertarian Studies*, 22, 2011, pp. 771–792.

Blumenau, Bernhard. 'Taming the Beast: West Germany, the Political Offence Exception, and the Council of Europe Convention on the Suppression of Terrorism'. *Terrorism and Political Violence*, 27:2, 2015, pp. 310–330.

Blythe, James M. *Ideal Government and the Mixed Constitution in the Middle Ages*. Princeton, NJ: Princeton University Press, 1992.

Böckenförde, Ernst-Wolfgang. *State, Society, and Liberty: Studies in Political Theory and Constitutional Law*. Oxford: Berg Publishers, 1991.

Bodin, Jean. *On Sovereignty* [*Six Books on the Commonwealth*]. Julian H Franklin (ed.). Cambridge: Cambridge University Press, 1992 [1576].

Bogdanor, Vernon. *The Monarchy and the Constitution*. Oxford: Clarendon Press, 1995.

Bonner, Michael. 'Poverty and Charity in the Rise of Islam'. In *Poverty and Charity in Middle Eastern Contexts*. Michael Bonner, Mine Ener, and Amy Singer (eds.). Albany, NY: SUNY Press, 2003.

Bork, Robert H. *Coercing Virtue: The Worldwide Rule of Judges*. Washington, DC: AEI Press, 2003.

Bosniak, Linda. *The Citizen and the Alien: Dilemmas of Contemporary Membership*. Princeton, NJ: Princeton University Press, 2006.

Bosworth, Clifford Edmund, Ian R. Netton, and Frank E. Vogel. 'Siyasa'. In *Encyclopædia of Islam*. Peri Bearman et al. (eds.).

Bou-Habib, Paul. 'Distributive Justice, Dignity, and the Lifetime View'. *Social Theory and Practice*, 37:2, April 2011, pp. 285–310.

Bou-Habib, Paul. 'Who Should Pay for Higher Education?' *Journal of Philosophy of Education*, 44:4, 2010, pp. 479–495.

Bourdieu, Pierre. 'Cultural Reproduction and Social Reproduction'. In *Knowledge, Education, and Social Change: Papers in the Sociology of Education*. Richard Brown (ed.). Tavistock: Tavistock Publications, 1973.

Bourdieu, Pierre and Loïc D. Wacquant (trans.). *The State Nobility: Elite Schools in the Field of Power*. Stanford, CA: Stanford University Press, 1998 [1989].

Bowen, Ezra. 'Nakasone's World-Class Blunder'. *Time*, 6 October 1986.

Brady, Anne-Marie. '"We Are All Part of the Same Family": China's Ethnic Propaganda'. *Journal of Current Chinese Affairs*, 41:4, 2012, pp. 159–181.

Brake, Elizabeth. 'Minimal Marriage: What Political Liberalism Implies for Marriage Law'. *Ethics*, 120, January 2010, pp. 302–337.

Brandvoll, Jorunn. 'Deprivation of Nationality: Limitations on Rendering Persons Stateless Under International Law'. In *Nationality and Statelessness Under International Law*. Alice Edwards and Laura van Waas (eds.). Cambridge: Cambridge University Press, 2014.

Bratt, James D. *Abraham Kuyper: Modern Calvinist, Christian Democrat*. Grand Rapids, MI: William B. Eerdmans Publishing Company, 2013.

Bratt, James D. 'Abraham Kuyper: Puritan, Victorian, Modern'. In *Kuyper Reconsidered*. van der Kooi and de Bruijn (eds.).

Brauer, Jurgen and Robert Haywood. 'Non-State Sovereign Entrepreneurs and Non-Territorial Sovereign Organisations'. United Nations University World Institute for Development Economics Research, Working Paper 2010/09, Helsinki, February 2010.

Braun, H. E. '"Lawless Sovereignty" in Sixteenth Century Spain: Juan de Mariana's *De rege et regis institutione*'. In *Law and Sovereignty in the Middle Ages and Renaissance*. Robert S. Sturges (ed.). Turnhout: Brepols, 2011.

Breitowitz, Irving A. *Between Civil and Religious Law: The Plight of the Agunah in American Society*. Westport, CT: Greenwood Press, 1993.

Brennan, Geoffrey and James M. Buchanan. *The Power to Tax: Analytical Foundations of a Fiscal Constitution*. Indianapolis, IN: Liberty Fund, 2000 [1980].

Breton, Albert and Margot Breton. 'Nationalism Revisited'. In *Nationalism and Rationality*. Albert Breton, Gianluigi Galeotti, Pierre Salmon, and Ronald Wintrobe (eds.). Cambridge: Cambridge University Press, 1995.

Brettschneider, Corey and David McNamee. 'Sovereign and State: A Democratic Theory of Sovereign Immunity'. *Texas Law Review*, 93, 2015, pp. 1229–1297.

Brewster, Leonard. 'The Impossibility of the State'. *Journal of Libertarian Studies*, 16:3, Summer 2002, pp. 19–34.

Brigham, John. *Property and the Politics of Entitlement*. Philadelphia, PA: Temple University Press, 1990.

Brint, Steven. '"New-Class" and Cumulative Trend Explanations of the Liberal Political Attitudes of Professionals'. *American Journal of Sociology*, 90:1, July 1984, pp. 30–69.

British National Party. 'Immigration'. http://www.bnp.org.uk/policies/immigration, accessed 21 February 2013.

Brodie, Janine. 'New Constitutionalism, Neoliberalism, and Social Policy'. In *New Constitutionalism and World Order*. Stephen Gill and A. Claire Cutler (eds.). Cambridge: Cambridge University Press, 2014.

Brooks, Richard R. W. and Carol M. Rose. *Saving the Neighbourhood: Racially Restrictive Covenants, Law, and Social Norms*. Cambridge MA: Harvard University Press, 2013.

Brown, Chris. 'Marxism and the Transnational Migration of People: Ethical Issues'. In *Free Movement: Ethical Issues in the Transnational Migration of People and of Money*. Brian Barry and Robert E Goodin (eds.). University Park, PA: Pennsylvania State University Press, 1992.

Brown, Garrett Wallace. 'Between Naturalism and Cosmopolitan Law: Hospitality as Transitional Global Justice'. In *Hospitality and World Politics*. Baker (ed.).

Brown, Garrett Wallace. 'Cosmopolitanism and Global Constitutionalism'. In *Handbook on Global Constitutionalism*. Lang and Wiener (eds.).

Brown, Wendy. 'Guns, Cowboys, Philadelphia Mayors, and Civic Republicanism: On Sanford Levinson's The Embarrassing Second Amendment'. *Yale Law Journal*, 99:3, December 1989, pp. 661–667.

Brown, Wendy. *Regulating Aversion: Tolerance in the Age of Identity and Empire*. Princeton, NJ: Princeton University Press, 2006.

Brunson, Samuel D. 'Taxing Polygamy'. *Washington University Law Review*, 91, 2013, pp. 113–168.

Bryan, Ian. 'Sovereignty and the Foreign Fighter Problem'. *Orbis*, 54:1, Winter 2010, pp. 115–129.

Buchanan, Allen. 'The Making and Unmaking of Boundaries: What Liberalism Has to Say'. In *States, Nations, and Borders*. Buchanan and Moore (eds.).

Buchanan, James M. 'Federalism and Individual Sovereignty'. *Cato Journal*, 15:2/3, Autumn/Winter 1995/1996, pp. 259–268.

Buchanan, James M. 'Property as a Guarantor of Liberty'. In *Property Rights and the Limits of Democracy*. Charles K. Rowley (ed.). Fairfax, VA: The Locke Institute, 1993.

Buchanan, James M. 'A Two-Country Parable'. In *Justice in Immigration.* Warren F. Schwartz (ed.). Cambridge: Cambridge University Press, 1995.

Buchstein, Hubertus and Michael Hein. 'Randomising Europe: The Lottery as a Political Instrument for a Reformed European Union'. In *Sortition: Theory and Practice*. Gil Delannoi and Oliver Dowlen (eds.). Exeter: Imprint Academic, 2016 [2010].

Bulaç, Ali. 'The Most Recent Reviver in the 'Ulama Tradition: The Intellectual 'Alim, Fethullah Gülen'. In *Muslim Citizens of the Globalised World: Contributions of the*

Gülen Movement. Robert A. Hunt and Yuksel Aslandogan (eds.). Houston, TX: Institute of Interfaith Dialogue, 2007.

Bulley, Dan. 'Conducting Strangers: Hospitality and Governmentality in the Global City'. In *Hospitality and World Politics*. Baker (ed.).

Bünger, Karl. 'Concluding Remarks on Two Aspects of the Chinese Unitary State as Compared with the European State System'. In *Foundations and Limits of State Power in China*. S. R. Schram (ed.). London: European Science Foundation, 1987.

Burbank, Jane and Frederick Cooper. 'Rules of Law, Politics of Empire'. In *Legal Pluralism and Empires, 1500–1850*. Benton and Ross (eds.).

Burke, Edmund. *Burke's Politics: Selected Writings and Speeches of Edmund Burke on Reform, Revolution, and War*. Ross J. S. Hoffman and Paul Levack (eds.). New York: Alfred A. Knopf, 1959.

Burke, Edmund. *Reflections on the Revolution in France*. J. G. A. Pocock (ed.). Cambridge, MA: Hackett Publishing Company, 1987 [1790].

Burnheim, John. *Is Democracy Possible? The Alternative to Electoral Politics*. Cambridge: Polity Press, 1985.

Burton, John W. *World Society*. Cambridge: Cambridge University Press, 1972.

Buruma, Ian and Avishai Margalit. *Occidentalism: A Short History of Anti-Westernism*. London: Atlantic Books, 2004.

Butt, Daniel. 'Repairing Historical Wrongs and the End of Empire'. *Social and Legal Studies*, 21:2, 2012, pp. 227–242.

Buzan, Barry. *From International to World Society? English School Theory and the Social Structure of Globalisation*. Cambridge: Cambridge University Press, 2004.

Buzan, Barry and Mathias Albert. 'Differentiation: A Sociological Approach to International Relations Theory'. *European Journal of International Relations*, 16:3, 2010, pp. 315–337.

Bylund, Per. 'The Modern Welfare State: Leading the Way on the Road to Serfdom'. In *Back on the Road to Serfdom: The Resurgence of Statism*. Thomas E. Woods, Jr. (ed.). Wilmington, DE: ISI Books, 2011.

Byrne, Liam (Minister of State for Immigration, Nationality, and Citizenship). Written statement read by Baroness Scotland of Asthal, House of Lords Hansard text of 19 February 2007, http://www.publications.parliament.uk/pa/ld200607/ldhansrd/text/70219-wms0001.htm, accessed 13 February 2015.

van Caenegem, R. C. *An Historical Introduction to Western Constitutional Law*. Cambridge: Cambridge University Press, 1995.

Cahen, Claude. 'The Body Politic'. In *Unity and Variety in Muslim Civilisation*. Gustave E. von Grunebaum (ed.). Chicago, IL: University of Chicago Press, 1955.

Caldwell, Robert G. 'Exile as an Institution'. *Political Science Quarterly*, 58:2, June 1943, pp. 239–262.

Callenbach, Ernest and Michael Phillips. *A Citizen Legislature*. Charlottesville, VA: Imprint Academic, 2008 [1985].

Cannadine, David. 'The Context, Performance, and Meaning of Ritual: The British Monarchy and the "Invention of Tradition" c1820–1977'. In *The Invention of Tradition*. Eric Hobsbawm and Terence Ranger (eds.). Cambridge: Cambridge University Press, 2013 [1983].

Canning, J. P. 'Law, Sovereignty, and Corporation Theory, 1300–1450'. In *The Cambridge History of Mediæval Political Thought*. Burns (ed.).

Caplan, Bryan and Edward P. Stringham. 'Privatising the Adjudication of Disputes'. *Theoretical Inquiries in Law*, 9:2, 2008, pp. 503–528.

Cardahi, Choucri. 'Conflict of Law'. In *Law in the Middle East*. Khadduri and Liebesny (eds.).

Cardoso, Fernando Henrique. 'On the Characterisation of Authoritarian Regimes in Latin America'. In *The New Authoritarianism in Latin America*. David Collier (ed.). Princeton, NJ: Princeton University Press, 1979.

Carens, Joseph H. 'Aliens and Citizens: The Case for Open Borders'. In *Theorising Citizenship*. Ronald Beiner (ed.). Albany, NY: State University of New York Press, 1995.

Carens, Joseph H. 'Citizenship and Civil Society: What Rights for Residents?' In *Dual Nationality, Social Rights, and Federal Citizenship in the US and Europe: The Reinvention of Citizenship*. Randall Hansen and Patrick Weil (eds.). Oxford: Berghahn Books, 2002.

Carens, Joseph H. *The Ethics of Immigration*. Oxford: Oxford University Press, 2013.

Carens, Joseph H. 'Immigration, Political Community, and the Transformation of Identity: Quebec's Immigration Politics in Critical Perspective'. In *Is Quebec Nationalism Just? Perspectives from Anglophone Canada*. Joseph H Carens (ed.). Montreal: McGill-Queen's University Press, 1995.

Carens, Joseph H. 'In Defence of Birthright Citizenship'. In *Migration in Political Theory: The Ethics of Movement and Membership.* Sarah Fine and Lea Ypi (eds.). Oxford: Oxford University Press, 2016.

Carens, Joseph H. 'Migration and Morality: A Liberal Egalitarian Perspective'. In *Free Movement*. Barry and Goodin (eds.)

Carlson, Jon D. 'Chinese Sage Kings and the Hobbesian State of Nature: Bridging Comparative Political Thought and International Relations Theory'. In *The State of Nature in Comparative Political Thought: Western and Non-Western Perspectives*. Jon D Carlson and Russell Arben Fox (eds.). New York: Lexington Books, 2014.

Carnegie, Andrew. *The Gospel of Wealth and Other Timely Essays*. New York: The Century Company, 1901.

Carneiro, Robert L. 'The Political Unification of the World: Whether, When, and How—Some Speculations'. *Cross-Cultural Research*, 38:2, May 2004, pp. 162–77.

Carney, Timothy P. 'The Cultural Costs of Corporatism: How Government–Business Collusion Denigrates the Entrepreneur and Rewards the Sycophant'. In *Back on the Road to Serfdom*. Woods (ed.).

Caro de Sousa, Pedro. 'Quest for the Holy Grail: Is a Unified Approach to the Market Freedoms and European Citizenship Justified?' *European Law Journal*, 20:4, July 2014, pp. 499–519.

Carolan, Eoin. 'Balance of Powers'. In *Handbook on Global Constitutionalism*. Lang and Wiener (eds.).

Carvalhaes, Cláudio. 'Borders, Globalisation, and Eucharistic Hospitality'. *Dialog*, 49:1, Spring 2010, pp. 45–55.

Casey, Gerard. 'Religion, the Market, and the State'. In *Back on the Road to Serfdom*. Woods (ed.).

Castles, Stephen. *Ethnicity and Globalisation: From Migrant Worker to Transnational Citizen*. London: Sage Publications, 2000.

Cattan, Henry. 'The Law of Waqf'. In *Law in the Middle East.* Khadduri and Liebesny (eds.).

Cavallar, Georg. 'From Hospitality to the Right of Immigration in the Law of Nations, 1750–1850'. In *Hospitality and World Politics*. Baker (ed.).

Cavallero, Eric. 'Federative Global Democracy'. *Metaphilosophy*, 40:1, January 2009, pp. 42–64.

Cavallo, Sandra. 'The Motivations of Benefactors: An Overview of Approaches to the Study of Charity'. In *Medicine and Charity Before the Welfare State*. Jonathan Barry and Colin Jones (eds.). London: Routledge, 1991.

Cavanaugh, William T. 'The City: Beyond Secular Parodies'. In *Radical Orthodoxy: A New Theology*. John Milbank, Catherine Pickstock, and Graham Ward (eds.). London: Routledge, 1999.

Cavanaugh, William T. 'Killing for the Telephone Company: Why the Nation-State Is Not the Keeper of the Common Good'. *Modern Theology*, 20:2, April 2004, pp. 243–274.

Cavanaugh, William T. *Migrations of the Holy: God, State, and the Political Meaning of the Church*. Grand Rapids MI: William B Eerdmans Publishing Company, 2011.

Centeno, Miguel Ángel. *Democracy Within Reason: Technocratic Revolution in Mexico*. University Park PA: Pennsylvania State University Press, 1997 [1994].

Cerdà Serrano, Jordi. 'Historicismo y legalismo en los discursos franquistas sobre la monarquía española: La Ley de Sucesión en la Jefatura del Estado de 1947'. *Revista Jurídica de la Universidad Autónoma de Madrid*, 32, 2015, pp. 99–126.

Cha Young-Gil. 'The Function of Peculium in Roman Slavery During the First Two Centuries AD'. In *Forms of Control and Subordination in Antiquity*. Yuge Toru and Doi Masaoki (eds.). Leiden: E J Brill, 1988.

Chalupníček, Pavel and Lukáš Dvořák. 'Health Insurance Before the Welfare State: The Destruction of Self-Help by State Intervention'. *The Independent Review*, 13:3, Winter 2009, pp. 367–387.

Chan, Joseph. 'Democracy and Meritocracy: Toward a Confucian Perspective'. *Journal of Chinese Philosophy*, 34:2, June 2007, pp. 179–193.

Chan, Joseph. 'Territorial Boundaries and Confucianism'. In *Boundaries and Justice: Diverse Ethical Perspectives*. Miller and Hashmi (eds.).

Chandler, David. 'Deriving Norms from "Global Space": The Limits of Communicative Approaches to Global Civil Society Theorising'. *Globalisations*, 4:2, June 2007, pp. 283–298.

Chandra, Satish. 'The Indian Perspective'. In *The New Realism: Perspectives on Multilateralism and World Order*. Robert W Cox (ed.). Tokyo: United Nations University Press, 1997.

Chang Kwang-chih. *The Archæology of Ancient China*. 4th ed. New Haven, CT: Yale University Press, 1986 [1963].

Chang Kwang-chih. *State, Pluralism, and the Indian Historical Tradition*. Oxford: Oxford University Press, 2008.

Chanock, Martin. *Law, Custom, and Social Order: The Colonial Experience in Malawi and Zambia*. Portsmouth NH: Heinemann, 1998.

Chaplin, Jonathan. *Herman Dooyeweerd: Christian Philosopher of State and Civil Society*. Notre Dame IN: University of Notre Dame Press, 2011.

Chaplin, Jonathan. 'Legal Monism and Religious Pluralism: Rowan Williams on Religion, Loyalty, and Law'. *International Journal of Public Theology*, 2, 2008, pp. 418–441.

Chartier, Gary. *Anarchy and Legal Order: Law and Politics for a Stateless Society*. Cambridge: Cambridge University Press, 2013.

Chase-Dunn, Christopher, Ellen Reese, Erika Gutiérrez, Rebecca Giem, Christine Petit, and Linda Kim. 'Global Party Formation in World Historical Perspective'. Institute for Research on World-Systems, University of California–Riverside, Working Paper 21, Riverside, CA, July 2006.

Chen, Edward King-tung. 'Communist China's War on the Family'. *Southwestern Social Science Quarterly*, 33:2, September 1952, pp. 148–155.

Chesterman, Simon. 'Secretary or General?' In *Secretary or General? The UN Secretary-General in World Politics*. Simon Chesterman (ed.). Cambridge: Cambridge University Press, 2007.

Chesterton, G. K. *Orthodoxy*. London: John Lane, 1908.

Christiano, Thomas. 'Democratic Legitimacy and International Institutions'. In *The Philosophy of International Law*. Samantha Besson and John Tasioulas (eds.). Oxford: Oxford University Press, 2010.

Christiano, Thomas. 'A Democratic Theory of Territory and Some Puzzles About Global Democracy'. *Journal of Social Philosophy*, 37:1, Spring 2006, pp. 81–107.

Christoyannopoulos, Alexandre. *Christian Anarchism: A Political Commentary on the Gospel*. Exeter: Imprint Academic, 2011.

Chrysos, Evangelos. 'The Right of Resistance in Late Antiquity and Byzantium'. In *Forms of Control and Subordination in Antiquity*. Yuge and Doi (eds.).

Cicero, Marcus Tullius and Walter Miller (trans.). *De Officiis* [On Duties]. Cambridge, MA: Harvard University Press, 1913.

Citti, Vittorio. 'The Idea of Metics in Attic Tragedy'. In *Forms of Control and Subordination in Antiquity.* Yuge and Doi (eds.).

Clark, Charles M. A. 'Wealth as Abundance and Scarcity: Perspectives from Catholic Social Thought and Economic Theory'. In *Rediscovering Abundance: Interdisciplinary Essays on Wealth, Income, and Their Distribution in the Catholic Social Tradition*. Helen Alford, Charles M. A. Clark, S. A. Cortright, and Michael J. Naughton (eds.). Notre Dame IN: University of Notre Dame Press, 2006.

Code of Canon Law (Roman Catholic), 1983. http://www.intratext.com/IXT/ENG0017/_INDEX.HTM, accessed 9 July 2018.

Codell, Julie F. 'Decentring and Doubling Imperial Cosmopolitan Discourse in the British Press: Dadabhai Naoroji and M.M. Bhownaggree'. *Media History*, 15:4, 2009, pp. 371–384.

Cohen, Elizabeth F. 'The Political Economy of Immigrant Time: Rights, Citizenship, and Temporariness in the Post-1965 Era'. *Polity*, 47:3, July 2015, pp. 337–51.

Cohen, Elizabeth F. 'When Democracies Denationalise: The Epistemological Case Against Revoking Citizenship'. *Ethics and International Affairs*, 30:2, 2016, pp. 253–259.

Cohen, Joshua and Charles F Sabel. 'Sovereignty and Solidarity: EU and US'. In *Public Governance in the Age of Globalisation*. Karl-Heinz Ladeur (ed.). Aldershot: Ashgate, 2004.

Cohen, Morris. 'Property and Sovereignty'. *Cornell Law Quarterly*, 13, 1927. Reprinted in *Property: Mainstream and Critical Positions*. C. B. Macpherson (ed.). Toronto: University of Toronto Press, 1978.

Cohn, Bernard S. 'Representing Authority in Victorian India'. In *The Invention of Tradition*. Hobsbawm and Ranger (eds.).

Cole, G. D. H. *The Social Theory*. Reprinted in *The Pluralist Theory of the State: Selected Writings of G. D. H. Cole, J. N. Figgis, and H. J. Laski*. Paul Q. Hirst (ed.). London: Routledge, 1989.

Coleman, Janet. 'Property and Poverty'. In *The Cambridge History of Mediæval Political Thought*. Burns (ed.).

Coleman, Jules L. and Sarah K. Harding. 'Citizenship, the Demands of Justice, and the Moral Relevance of Political Borders'. In *Justice in Immigration*. Schwartz (ed.).

Colls, Robert. 'After Bagehot: Rethinking the Constitution'. *Political Quarterly*, 78:4, October/December 2007, pp. 518–526.

Confucius and James Legge (trans.). *Confucian Analects, The Great Learning, and The Doctrine of the Mean*. [Chinese/English texts.] New York: Dover Publications, 1893.

Constant, Benjamin. 'The Liberty of the Ancients Compared with That of the Moderns'. In *The Political Writings of Benjamin Constant*. Biancamaria Fontana (ed.). Cambridge: Cambridge University Press, 1988 [1819].

Constantinesco, Vlad. 'Does the Constitutional Treaty Have a Future?' In *Fifty Years of the European Treaties: Looking Back and Thinking Forward*. Michael Dougan and Samantha Currie (eds.). Oxford: Hart Publishing, 2009.

Cooley, Alexander and Hendrik Spruyt. *Contracting States: Sovereign Transfers in International Relations*. Princeton, NJ: Princeton University Press, 2009.

Coons, John E. and Stephen D. Sugarman. *Education by Choice: The Case for Family Control*. Berkeley, CA: University of California Press, 1978.

Cooper, Matthew Franklin. 'Familial Love Against the Nationalist Myth'. *The Heavy Anglo-Orthodox*, 23 August 2019, www.heavyangloorthodox.blogspot.com, accessed 25 August 2019.

Coote, Anna and Jo Lenaghan. *Citizens' Juries: Theory Into Practice*. London: Institute for Public Policy Research, 1997.

Cornford, F. M. *From Religion to Philosophy: A Study in the Origins of Western Speculation*. Sussex: Harvester Press, 1980 [1912].

Cott, Nancy F. 'Marriage and Women's Citizenship in the United States, 1830–1934'. *American Historical Review*, 103:5, December 1998, pp. 1440–1474.

Cott, Nancy F. *Public Vows: A History of Marriage and the Nation*. Cambridge MA: Harvard University Press, 2000.

Cotterrell, Roger. 'Does Global Legal Pluralism Need a Concept of Law?' In *Law's Ethical, Global, and Theoretical Contexts*. Upendra Baxi, Christopher McCrudden, and Abdul Paliwala (eds.). Cambridge: Cambridge University Press, 2015.

Cover, Robert M. 'Nomos and Narrative'. *Harvard Law Review*, 97:4, 1983, pp. 4–68.

Cox, Oliver Cromwell. *Race, Caste, and Class*. New York: Monthly Review Press, 1948.

Crane, Sam. *Life, Liberty, and the Pursuit of Dao: Ancient Chinese Thought in Modern American Life*. Chichester: Wiley Blackwell, 2013.

Crenshaw, Kimberlé. 'Demarginalising the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics'. *University of Chicago Legal Forum*, 1:8, 1989, pp. 139–167.

Crone, Patricia. 'The Tribe and the State'. In *States in History*. John A Hall (ed.). Oxford: Basil Blackwell, 1986.

Crumley, Carole L. 'Heterarchy and the Analysis of Complex Societies'. *Archæological Papers of the American Anthropological Association*, 6:1, January 1995, pp. 1–5.

Culyer, A. J. *The Economics of Social Policy*. New York: Dunellen, 1973.

Cutler, A. Claire. 'New Constitutionalism and the Commodity Form of Global Capitalism'. In *New Constitutionalism and World Order*. Gill and Cutler (eds.).

Cutler, A. Claire. *Private Power and Global Authority: Transnational Merchant Law in the Global Political Economy*. Cambridge: Cambridge University Press, 2003.

Czaika, Mathias and Hein de Haas. 'The Globalisation of Migration: Has the World Become More Migratory?' *International Migration Review*, 48:2, Autumn 2015, pp. 283–323.

Dahl, Robert A. 'Can International Organisations Be Democratic? A Sceptic's View'. In *Democracy's Edges*. Ian Shapiro and Casiano Hacker-Cordón (eds.). Cambridge: Cambridge University Press, 1999.

Dahl, Robert A. *Democracy and Its Critics*. New Haven, CT: Yale University Press, 1989.

Dalacoura, Katerina. 'Islamist Movements as Non-State Actors and Their Relevance to International Relations'. In *Non-State Actors in World Politics*. Daphné Josselin and William Wallace (eds.). New York: Palgrave Macmillan, 2001.

Dallmayr, Fred. 'Exiting Liberal Democracy: Bell and Confucian Thought'. *Philosophy East and West*, 59:4, October 2009, pp. 524–530.

Daly, Lew. *God's Economy: Faith-Based Initiatives and the Caring State*. Chicago, IL: University of Chicago Press, 2009.

Daniels, Norman. 'Health-Care Needs and Distributive Justice'. *Philosophy and Public Affairs*, 10:2, Spring 1981, pp. 146–179.

Darling, Linda T. '"The Vicegerent of God, from Him We Expect Rain": The Incorporation of the Pre-Islamic State in Early Islamic Political Culture'. *Journal of the American Oriental Society*, 134:3, 2014, pp. 407–429.

Davies, Gareth. 'Services, Citizenship, and the Country of Origin Principle'. Europa Institute Mitchell Working Paper 2/2007, Leiden, 2007.

'Declaration of the World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance'. United Nations, 2 January 2002.

Dell'Aringa, Carlo and Claudio Lucifora. 'The Role of "Indirect Employers" in Wage Distribution: Economic Data and *Laborem exercens*'. In *Rediscovering Abundance*. Alford, Clark, Cortright, and Naughton (eds.).

Delannoi, Gil. 'Reflections on Two Typologies for Random Selection'. In *Sortition: Theory and Practice*. Delannoi and Dowlen (eds.).

Delmas-Marty, Mireille; Naomi Norberg (trans.). *Towards a Truly Common Law: Europe as a Laboratory for Legal Pluralism*. Cambridge: Cambridge University Press, 2002 [1994].

Denli, Özlem. 'An Islamic Quest for a Pluralistic Political Model: A Turkish Perspective'. In *Islamic Democratic Discourse*. Muqtedar Khan (ed.).

Denman, Thomas. 'Parliament and the Courts'. *Edinburgh Review*, 83, 1846, pp. 1–47.

Den Otter, Ronald C. *In Defence of Plural Marriage*. Cambridge: Cambridge University Press, 2015.

Devlin, Patrick. 'Morals and the Criminal Law'. In *The Philosophy of Law*. R. M. Dworkin (ed.). Oxford: Oxford University Press, 1977.

Diène, Doudou. 'Racism, Racial Discrimination, Xenophobia, and All Forms of Discrimination: Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance'. United Nations Economic and Social Council Commission on Human Rights, 24 January 2006. https://www.un.org/WCAR/durban.pdf

Dietsch, Peter. *Catching Capital: The Ethics of Tax Competition*. Oxford: Oxford University Press, 2015.

Dietz, Mary G. 'Patriotism'. In *Political Innovation and Conceptual Change*. Ball, Farr, and Hanson (eds.).

Dikötter, Frank. *The Discourse of Race in Modern China*. London: Hurst and Company, 1992.

Djilas, Milovan. *The New Class: An Analysis of the Communist System*. New York: Frederick A. Praeger, 1957.

Dobson, Lynn. 'Conceptions of Freedom and the European Constitution'. In *Political Theory and the European Constitution*. Lynn Dobson and Andreas Follesdal (eds.). London: Routledge, 2004.

Dodge, William S. 'Understanding the Presumption Against Extraterritoriality'. *Berkeley Journal of International Law*, 16:1, 1998, pp. 85–125.

Dodsworth, Laura. *A State of Fear: How the UK Government Weaponised Fear During the Covid-19 Pandemic*. London: Pinter and Martin, 2021.

Dooyeweerd, Herman. *Essays in Legal, Social, and Political Philosophy*. Lampeter: Edwin Mellen Press, 1996 [1963].

Dooyeweerd, Herman and John Kraay (trans.). *Roots of Western Culture: Pagan, Secular, and Christian Options*. Grand Rapids, MI: Paideia Press, 2012.

Dorf, Michael C. and Charles F Sabel. 'A Constitution of Democratic Experimentalism'. *Columbia Law Review*, 98:2, March 1998, pp. 267–473.

Dougherty, Michael Brendan. 'In Defence of the Natural Family'. *The Week*, 21 May 2015, http://theweek.com/articles/556203/defense-natural-family, accessed 28 April 2016.

Dowlen, Oliver. *The Political Potential of Sortition: A Study of the Random Selection of Citizens for Public Office*. Exeter: Imprint Academic, 2017 [2008].

Dowlen, Oliver. 'Sortition and Liberal Democracy: Finding a Way Forward'. In *Sortition: Theory and Practice*. Delannoi and Dowlen (eds.).

Dowty, Alan. *Closed Borders: The Contemporary Assault on Freedom of Movement*. New Haven, CT: Yale University Press, 1987.

Doyle, Michael W. 'The UN Charter: A Global Constitution?' In *Ruling the World?* Dunoff and Trachtman (eds.).

Drew, Alexi. 'The Critical Geopolitics of Standards Setting'. *Transatlantic Dialogue on China Blog* (Royal United Services Institute), 7 May 2021, https://www.transatlantic-dialogue-on-china.rusi.org/article/the-critical-geopolitics-of-standards-setting, accessed 11 May 2021.

Drezner, Daniel W. *White Whale or Red Herring? Assessing Sovereign Wealth Funds*. Stockholm: Glasshouse Forum, 2008.

Duggan, Lisa. 'Queering the State'. *Social Text*, 39, Summer 1994, pp. 1–14.

Dumaine, Brian. 'Can a Billionaire Hedge Fund Manager Fix Income Inequality?' *Fortune*, 1 September 2015.

Dumézil, Georges and Derek Coltman (trans.). *Mitra-Varuna: An Essay on Two Indo-European Representations of Sovereignty*. New York: Zone Books, 1988 [1948].

Dummett, Ann. 'The Transnational Migration of People Seen from Within a Natural Law Tradition'. In *Free Movement.* Barry and Goodin (eds.).

Dumont, Louis, Mark Sainsbury, Louis Dumont, and Basia Gulati (trans.). *Homo Hierarchicus: The Caste System and Its Implications*. Chicago, IL: University of Chicago Press, 1980 [1966].

Dunn, John. 'Revolution'. In *Political Innovation and Conceptual Change*. Ball, Farr, and Hanson (eds.).

Dunoff, Jeffrey L. and Joel P. Trachtman. 'A Functional Approach to International Constitutionalisation'. In *Ruling the World?* Dunoff and Trachtman (eds.).

Dupuis-Déri, Francis. 'Global Protesters Versus Global Elites: Are Direct Action and Deliberative Politics Compatible?' *New Political Science*, 29:2, June 2007, pp. 167–186.

Dyson, Kenneth H. F. *The State Tradition in Western Europe: A Study of an Idea and Institution*. Oxford: Martin Robertson, 1980.

Eastman, Christina. 'Charities are Shock Absorbers for Blows to the Economy. Government Bailouts Are Not'. *Philanthropy Daily*, 20 April 2020, https://www.philanthropydaily.com/charities-are-shock-absorbers-for-blows-to-the-economy-government-bailouts-are-not/, accessed 24 April 2020.

Eberstadt, Mary. *How the West Really Lost God: A New Theory of Secularisation*. West Conshohocken, PA: Templeton Press, 2013.

Edwards, Alice. 'The Meaning of Nationality in International Law in an Era of Human Rights: Procedural and Substantive Aspects'. In *Nationality and Statelessness Under International Law*. Edwards and van Waas (eds.).

Edwards, Chris and Daniel J. Mitchell. *Global Tax Revolution: The Rise of Tax Competition and the Battle to Defend It*. Washington, DC: Cato Institute, 2008.

Egan, Michelle P. *Single Markets: Economic Integration in Europe and the United States*. Oxford: Oxford University Press, 2015.

van Eijken, Hanneke. 'European Citizenship and the Competence of Member States to Grant and to Withdraw the Nationality of Their Nationals'. *Merkourios*, 27:72, 2010, pp. 65–69.

Eisenstadt, S. N. 'The Axial Age Breakthroughs: Their Characteristics and Origins'. In *The Origins and Diversity of Axial Age Civilisations*. S. N. Eisenstadt (ed.). Albany, NY: State University of New York Press, 1986.

Eisenstadt, S. N. 'Patterns of Stratification in the Middle East in a Comparative Framework'. *Commoners, Climbers, and Notables: A Sampler of Studies on Social Ranking in the Middle East*. C A O Nieuwenhuijze (ed.). Leiden: E. J. Brill, 1977.

Ekeh, Peter P. 'Colonialism and the Two Publics in Africa: A Theoretical Statement'. *Comparative Studies in Society and History*, 17:1, January 1975, pp. 91–112.

Elazar, Daniel J. 'Constitution-Making: The Preeminently Political Act'. In *Redesigning the State: The Politics of Constitutional Change*. Keith G Banting and Richard Simeon (eds.). Toronto: University of Toronto Press, 1985.

Elazar, Daniel J. 'Extending the Covenant: Federalism and Constitutionalism in a Global Era'. In *Religion, Pluralism, and Public Life: Abraham Kuyper's Legacy for the Twenty-First Century*. Luis E. Lugo (ed.). Grand Rapids, MI: William B. Eerdmans Publishing Company, 2000.

Eliade, Mircea and Willard R. Trask (trans.). *The Sacred and the Profane: The Nature of Religion*. New York: Harcourt, Brace, and World, 1959.

Elias, Norbert and Edmund Jephcott (trans.). *The Civilising Process: Sociogenetic and Psychogenetic Investigations*. Oxford: Blackwell Publishers, 1994 [1939].

Ellickson, Robert C. *Order Without Law: How Neighbours Settle Disputes*. Cambridge, MA: Harvard University Press, 1991.

Elster, Jon. *Securities Against Misrule: Juries, Assemblies, Elections*. Cambridge: Cambridge University Press, 2013.

Elver, Hilal. 'New Constitutionalism and the Environment: A Quest for Global Law'. In *New Constitutionalism and World Order*. Gill and Cutler (eds.).

Embree, Ainslee T. 'Indian Civilisation and Regional Cultures: The Two Realities'. In *Region and Nation in India*. Paul Wallace (ed.). New Delhi, India: American Institute of Indian Studies, 1985.

Emon, Anver M. 'Case Studies: On Sovereignties in Islamic Legal History'. *Middle East Law and Governance*, 4, 2012, pp. 265–305.

Emon, Anver M. *Religious Pluralism and Islamic Law: Dhimmīs and Others in the Empire of Law*. Oxford: Oxford University Press, 2012.

Epstein, Richard A. *The Dubious Morality of Modern Administrative Law*. New York: Rowman and Littlefield, 2020.

Epstein, Richard A. 'The Static Conception of the Common Law'. *Journal of Legal Studies*, 9:2, March 1980, pp. 253–275.

Epstein, Richard A. *Takings: Private Property and the Power of Eminent Domain*. Cambridge, MA: Harvard University Press, 1985.

Espinosa, Aurelio. 'Sovereignty of the People: Discourses of Popular Sovereignty in Renaissance Spain'. In *Law and Sovereignty in the Middle Ages and Renaissance*. Sturges (ed.).

Etzioni, Amitai. 'Corporations as Communities'. In *Business Ethics*. Michael Boylan (ed.).

EUR-Lex. 'Subsidiarity'. http://eur-lex.europa.eu/summary/glossary/subsidiarity.html, accessed 22 July 2017.

European Court of Human Rights. 'French Ban on the Wearing in Public of Clothing Designed to Conceal One's Face Does Not Breach the Convention'. Press release ECHR 191, 1 July 2014.

Evatt, Herbert Vere. *The King and His Dominion Governors: A Study of the Reserve Powers of the Crown in Great Britain and the Dominions*. Oxford: Oxford University Press, 1936.

Faist, Thomas. 'The Transnational Social Question: Social Rights and Citizenship in a Global Context'. *International Sociology*, 24:1, 2009, pp. 7–35.

Falk, Richard and Andrew Strauss. 'On the Creation of a Global Peoples Assembly: Legitimacy and the Power of Popular Sovereignty'. *Stanford Journal of International Law*, 36, 2000, pp. 191–220.

Falk, Richard and Andrew Strauss. 'Toward Global Parliament'. *Foreign Affairs*, 80:1, January/February 2001, pp. 212–220.

al-Fārābī, Abū Nasr and Richard Walzer (trans.). *Mabādi' ārā' ahl al-madīnat al-fāḍilah/ On the Perfect State* [Arabic/English texts]. Oxford: Oxford University Press, 1985.

Fassbender, Bardo. 'Rediscovering a Forgotten Constitution: Notes on the Place of the UN Charter in the International Legal Order'. In *Ruling the World?* Dunoff and Trachtman (eds.).

Fassbender, Bardo. '"We the Peoples of the United Nations": Constituent Power and Constitutional Form in International Law'. In *The Paradox of Constitutionalism: Constituent Power and Constitutional Form*. Martin Loughlin and Neil Walker (eds.). Oxford: Oxford University Press, 2007.

Fearon, James D. and David D. Laitin. 'Explaining Interethnic Cooperation'. *American Political Science Review*, 90:4, December 1996, pp. 715–735.

Fei Xiaotong [费孝通]. 乡土中国. 北京: 人民出版社, 2008 [1947].

Feng Youlan [Fung Yu-lan]; Derk Bodde (trans.). *A History of Chinese Philosophy*, vol 1. Princeton, NJ: Princeton University Press, 1952.

Ferguson, Andrew Guthrie. 'Why Restrict Jury Duty to Citizens?' *The Atlantic Monthly*, 9 May 2013, http://www.theatlantic.com/national/archive/2013/05/why-restrict-jury-duty-to-citizens/275685/, accessed 28 April 2016.

Ferrari, Silvio. 'Canon Law as a Religious Legal System'. In *Religion, Law, and Tradition: Comparative Studies in Religious Law*. Andrew Huxley (ed.). London: Routledge Curzon, 2002.

Figgis, John Neville. *Churches in the Modern State*, 2nd ed. London: Longmans, Green and Company, 1914.

Fine, Sarah. 'Freedom of Association Is Not the Answer'. *Ethics*, 120, January 2010, pp. 338–356.

Fine, Sarah. 'Immigration and Discrimination'. In *Migration in Political Theory.* Fine and Ypi (eds.).

Fineman, Martha Albertson. 'The Meaning of Marriage'. In *Marriage Proposals: Questioning a Legal Status*. Anita Bernstein (ed.). New York: New York University Press, 2006.

Finnis, John. 'Commentary on Dummett and Weithman'. In *Free Movement*. Barry and Goodin (eds.).

Flanagan, Owen and Hu Jing. 'Han Fei Zi's Philosophical Psychology: Human Nature, Scarcity, and the Neo-Darwinian Consensus'. In *The State of Nature in Comparative Political Thought.* Carlson and Fox (eds.).

Fletcher, George P. *Loyalty: An Essay on the Morality of Relationships*. Oxford: Oxford University Press, 1993.

Follesdal, Andreas. 'Subsidiarity and the Global Order'. In *Global Perspectives on Subsidiarity*. Michelle Evans and Augusto Zimmermann (eds.). London: Springer, 2014.

Forcese, Craig. 'The Capacity to Protect: Diplomatic Protection of Dual Nationals in the "War on Terror"'. *European Journal of International Law*, 17:2, 2006, pp. 369–94.

Forcese, Craig. 'When Can Canadians Fight in Foreign Wars? Key Legal Issues'. National Security Law Blog: Canadian Practice in International Perspective, 21 November 2014, http://craigforcese.squarespace.com/national-security-law-blog/2014/11/21/when-can-canadians-fight-in-foreign-wars-key-legal-issues.html, accessed 19 May 2016.

Forment, Carlos A. *Democracy in Latin America, 1760–1900.* Chicago, IL: University of Chicago Press, 2003.

Foucault, Michel and Alan Sheridan (trans.). *Discipline and Punish*. New York: Pantheon Books, 1977 [1975].

Fournier, Pascale and Gökçe Yurdakul. 'Unveiling Distribution: Muslim Women with Headscarves in France and Germany'. In *Migration, Citizenship, Ethnos*. Y. Michal Bodemann and Gökçe Yurdakul (eds.). New York: Palgrave Macmillan, 2006.

Fox, Russell Arben. 'The Confucian Tradition, Nature, and Civil Education'. In *The State of Nature in Comparative Political Thought.* Carlson and Fox (eds.).

Franke, Herbert. 'The Role of the State as a Structural Element in Polyethnic Societies'. In *Foundations and Limits of State Power in China*. Schram (ed.).

Frankfurt, Harry G. 'Freedom of the Will and the Concept of a Person'. *Journal of Philosophy*, 68:1, January 1971, pp. 5–20.

Franks, Angela. 'The Body as Totem in the Asexual Revolution'. *Church Life Journal*, 21 January 2021, https://churchlifejournal.nd.edu/articles/the-body-as-totem-in-the-asexual-revolution/, accessed 22 January 2021.

Fraser, Nancy. 'Transnationalising the Public Sphere: On the Legitimacy and Efficacy of Public Opinion in a Post-Westphalian World'. In *Identities, Affiliations, and Allegiances*. Benhabib, Shapiro, and Petranović (eds.).

Freeman, Michael. 'Law, Religion, and the State: The *Get* Revisited'. In *Families Across Frontiers*. Nigel Lowe and Gillian Douglas (eds.). The Hague: Martinus Nijhoff Publishers, 1996.

Freeman, Richard. *The Politics of Health in Europe*. Manchester: Manchester University Press, 2000.

Frey, Bruno S. and Reiner Eichenberger. 'A Proposal for a Flexible Europe'. *World Economy*, 23:10, November 2000, pp. 1323–1334.

Friedman, Lawrence M. *Dead Hands: A Social History of Wills, Trusts, and Inheritance Law*. Stanford, CA: Stanford University Press, 2009.

Friedman, Lawrence M. 'Frontiers: National and Transnational Order'. In *Public Governance in the Age of Globalisation*. Ladeur (ed.).

Friedmann, Yohanan. *Tolerance and Coercion in Islam: Interfaith Relations in the Muslim Tradition*. Cambridge: Cambridge University Press, 2003.

Friedrich, Carl J. *Constitutional Government and Democracy: Theory and Practice in Europe and America*. New York: Ginn and Company, 1950 [1937].

Fry, Geoffrey K. *The Growth of Government: The Development of Ideas About the Role of the State and the Machinery and Functions of Government in Britain Since 1780*. London: Frank Cass, 1979.

Fuchs, Doris, Agni Kalfagianni, and Julia Sattelberger. 'Democratic Legitimacy of Transnational Corporations in Global Governance'. In *Legitimacy Beyond the State?* Erman and Uhlin eds.

Fujiyoshi, Ronald S. 'The Nature of Japanese Racism'. *Chinese American Forum*, 10:4, April 1995.

Furman, Uriah. 'Minorities in Contemporary Islamist Discourse'. *Middle Eastern Studies*, 36:4, October 2000, pp. 1–20.

Gabel, Peter and Jay M. Feinman. 'Contract Law as Ideology'. In *The Politics of Law: A Progressive Critique*. David Kairys (ed.). New York: Pantheon Books, 1982.

Galanter, Marc. 'The Displacement of Traditional Law in Modern India'. *Journal of Social Issues*, 24:4, 1968, pp. 65–91.

Galston, William A. 'The Idea of Political Pluralism'. *Nomos*, 49, 2009, pp. 95–124.

Galston, William A. *Liberal Purposes: Goods, Virtues, and Diversity in the Liberal State*. Cambridge: Cambridge University Press, 1991.

Galston, William A. 'Pluralism and Civic Virtue'. *Social Theory and Practice*, 33:4, October 2007, pp. 625–35.

Galston, William A. Review of Stephen Macedo, *Diversity and Distrust: Civic Education in a Multicultural Democracy*. *Ethics*, 112:2, January 2002, pp. 386–391.

Galtung, Johan. 'Alternative Models for Global Democracy'. In *Global Democracy: Key Debates*. Barry Holden (ed.). London: Routledge, 2000.

Gamble, Clive. 'Hunter-Gatherers and the Origin of States'. In *States in History*. Hall (ed.).

Gans, Chaim. 'The Liberal Foundations of Cultural Nationalism'. *Canadian Journal of Philosophy*, 30:3, September 2000, pp. 441–66.

Gardbaum, Stephen. 'Human Rights and International Constitutionalism'. In *Ruling the World?* Dunoff and Trachtman (eds.).

Gardiner, Stephen M. 'A Call for a Global Constitutional Convention Focused on Future Generations'. *Ethics and International Affairs*, 28:3, 2014, pp. 299–315.

van Gelder, Geert Jan. 'The Conceit of Pen and Sword: On an Arabic Literary Debate'. *Journal of Semitic Studies*, 32:2, Autumn 1987, pp. 329–360.

Gellner, Ernest. *Conditions of Liberty: Civil Society and Its Rivals*. New York: Penguin Press, 1994.

Gellner, Ernest. 'The Importance of Being Modular'. In *Civil Society: Theory, History, Comparison*. John A Hall (ed.). Cambridge: Polity Press, 1995.

George, Robert P. *Conscience and Its Enemies: Confronting the Dogmas of Liberal Secularism*. Wilmington, DE: ISI Books, 2014.

George, Robert P. *Making Men Moral: Civil Liberties and Public Morality*. Oxford: Oxford University Press, 1993.

Gerzog, Wendy C. 'What's Wrong with a Federal Inheritance Tax?' *Real Property, Trust, and Estate Law Journal*, 49, Spring 2014, pp. 163–201.

Ghai, Yash and Jill Cottrell. 'The State and Constitutionalism in Postcolonial Societies in Africa'. In *Law's Ethical, Global, and Theoretical Contexts*. Baxi, McCrudden, and Paliwala (eds.).

Ghosh, Bimal. 'Managing Migration: Towards the Missing Regime'. In *Migration Without Borders: Essays on the Free Movement of People*. Antoine Pécoud and Paul de Guchteneire (eds.). Oxford: Berghahn Books, 2007.

Gibb, H. A. R. 'Constitutional Organisation'. In *Law in the Middle East*. Khadduri and Liebesny (eds.).

Giddens, Anthony. 'Risk and Responsibility'. *Modern Law Review*, 62:1, January 1999, pp. 1–10.

von Gierke, Otto Friedrich and George Heiman (trans.). *Associations and Law: The Classical and Early Christian Stages*. Toronto: University of Toronto Press, 1977.

Gill, Nick. 'Whose "No Borders"? Achieving Border Liberalisation for the Right Reasons'. *Refuge*, 26:2, 2009, pp. 107–120.

Gill, Stephen. 'Market Civilisation, New Constitutionalism, and World Order'. In *New Constitutionalism and World Order*. Gill and Cutler (eds.).

Gilles, Stephen G. 'On Educating Children: A Parentalist Manifesto'. *University of Chicago Law Review*, 63:3, Summer 1996, pp. 937–1034.

Glanville, Luke. 'Retaining the Mandate of Heaven: Sovereign Accountability in Ancient China'. *Millennium: Journal of International Studies*, 39:2, December 2010, pp. 323–343.

Glenn, H. Patrick. *Legal Traditions of the World: Sustainable Diversity in Law*. 3rd ed. Oxford: Oxford University Press, 2007.

Glover, Robert W. 'Eyes Wide Shut: The Curious Silence of The Law of Peoples on Questions of Immigration and Citizenship'. *Eidos*, 14, 2011, pp. 10–49.

Goldsmith, Peter. 'Citizenship: Our Common Bond'. Independent report prepared for British Government, 11 March 2008.

Goldsworthy, Jeffrey. *The Sovereignty of Parliament: History and Philosophy*. Oxford: Clarendon Press, 1999.

Goodfield, Eric. 'States of Nature: Counter-Confucianism and the Daoist Encounter with Contemporary Liberal Thought'. In *The State of Nature in Comparative Political Thought.* Carlson and Fox (eds.).

Goodin, Robert E. 'Designing Constitutions: The Political Constitution of a Mixed Commonwealth'. In *Constitutionalism in Transformation: European and Theoretical Perspectives*. Richard Bellamy and Dario Castiglione (eds.). Oxford: Blackwell Publishers, 1996.

Goodin, Robert E. 'Enfranchising All Affected Interests, and Its Alternatives'. *Philosophy and Public Affairs*, 35:1, Winter 2007, pp. 40–68.

Goodin, Robert E. 'If People Were Money...'. In *Free Movement*. Barry and Goodin (eds.).

Goodin, Robert E. and John S. Dryzek. 'Deliberative Impacts: The Macro-Political Uptake of Mini-Publics'. *Politics and Society*, 34:2, June 2006, pp. 219–244.

Gorman, Daniel. *Imperial Citizenship: Empire and the Question of Belonging*. Manchester: Manchester University Press, 2006.

Gosden, P. H. J. H. *Self-Help: Voluntary Associations in the Nineteenth Century*. London: B. T. Batsford, 1973.

Goudzwaard, Bob. 'Christian Politics in a Global Context'. In Excerpted in *Political Order and the Plural Structure of Society.* James W. Skillen and Rockne M. McCarthy (eds.). Atlanta, GA: Scholars Press, 1991.

Goudzwaard, Bob. 'The Principle of Sphere-Sovereignty in a Time of Globalisation'. *Koers*, 76:2, 2011, pp. 357–371.

Goulard, Hortense. 'Britain's Youth Voted Remain'. *Politico,* 24 June 2016, http://www.politico.eu/article/britains-youth-voted-remain-leave-eu-brexit-referendum-stats/, accessed 8 August 2016.

Gouldner, Alvin W. *The Future of Intellectuals and the Rise of the New Class*. New York: Seabury Press, 1979.

Graeber, David. *Debt: The First 5000 Years*. Brooklyn, NY: Melville House, 2011.

Graeber, David. 'The Divine Kingship of the Shilluk: On Violence, Utopia, and the Human Condition, or Elements for an Archæology of Sovereignty'. *HAU: Journal of Ethnographic Theory*, 1:1, 2011, pp. 1–62.

Graeber, David and David Wengrow. 'How to Change the Course of Human History'. *Eurozine*, 2 March 2018, https://www.eurozine.com/change-course-human-history, accessed 31 March 2018.

Grahl, John. 'Money as Sovereignty: The Economics of Michel Aglietta'. *New Political Economy*, 5:2, 2000, pp. 291–316.

Gray, Stuart. *A Defence of Rule: Origins of Political Thought in Greece and India*. Oxford: Oxford University Press, 2017.

Gray, Stuart. 'The State of Nature and Domesticated Differences in Ancient Indian Political Thought: A Historical-Comparative Approach'. In *The State of Nature in Comparative Political Thought.* Carlson and Fox (eds.).

Green, David G. and Lawrence G. Cromwell. *Mutual Aid or Welfare State? Australia's Friendly Societies*. Sydney: George Allen and Unwin, 1984.

Griffin, Stephen M. 'Constituent Power and Constitutional Change in American Constitutionalism'. In *The Paradox of Constitutionalism*. Loughlin and Walker (eds.).

Grinberg, Itai. 'Building Institutions for a Globalised World: Automatic Information Exchange'. In *Global Tax Fairness*. Thomas Pogge and Krishen Mehta (eds.). Oxford: Oxford University Press, 2016.

Groebner, Valentin. 'Describing the Person, Reading the Signs in Late Mediæval and Renaissance Europe: Identity Papers, Vested Figures, and the Limits of Identification, 1400–1600'. In *Documenting Individual Identity: The Development of State Practices*

in the Modern World. Jane Caplan and John Torpey (eds.). Princeton, NJ: Princeton University Press, 2001.

Groenendijk, Kees. *Local Voting Rights for Non-Nationals in Europe: What We Know and What We Need to Learn*. Washington, DC: Migration Policy Institute, 2008.

Gross, Emanuel. 'Defensive Democracy: Is It Possible to Revoke the Citizenship, Deport, or Negate the Civil Rights of a Person Instigating Terrorist Action Against His Own State?' *University of Missouri Kansas City Law Review*, 72, 2003, pp. 1–71.

Guanzi [Guan Zhong] and W. Allyn Rickett (trans.). *Guanzi: Political, Economic, and Philosophical Essays from Early China*. Princeton, NJ: Princeton University Press, 1985.

'Guild Socialism: The Storrington Document'. [1914 Report by Guild Socialists]. In *Essays in Labour History, 1886–1923*. Asa Briggs and John Saville (eds.). London: Palgrave Macmillan, 1971, pp. 332–349.

Gutmann, Amy. 'Civic Education and Social Diversity'. *Ethics*, 105, April 1995, pp. 557–579.

Haas, Peter M. 'Epistemic Communities and International Policy Coordination'. *International Organisation*, 46:1, Winter 1992, pp. 1–35.

Hahm Chaihark. 'Ritual and Constitutionalism: Disputing the Ruler's Legitimacy in a Confucian Polity'. *American Journal of Comparative Law*, 57:1, Winter 2009, pp. 135–203.

Halaburda, Hanna and Miklos Sarvary. *Beyond Bitcoin: The Economics of Digital Currencies*. New York: Palgrave Macmillan, 2016.

Hale, Thomas and David Held. 'Mapping Changes in Transnational Governance'. In *Handbook of Transnational Governance: Institutions and Innovations*. Thomas Hale and David Held (eds.). Cambridge: Polity Press, 2011.

Hallas, Christine. *In Sickness and in Health: Askrigg Equitable, Benevolent, and Friendly Society*, 1809–2000. York: Ebor Press, 2000.

Halliday, Fred. 'The Romance of Non-State Actors'. In *Non-State Actors in World Politics*. Josselin and Wallace (eds.).

Halpern, M. 'Towards a Transforming Analysis of Social Classes'. In *Commoners, Climbers, and Notables*. Nieuwenhuijze (ed.).

Hampton, Jean. 'Immigration, Identity, and Justice'. In *Justice in Immigration*. Schwartz (ed.).

Hanafi, Hasan. 'Alternative Conceptions of Civil Society: A Reflective Islamic Approach'. In *Islamic Political Ethics: Civil Society, Pluralism, and Conflict*. Sohail H. Hashmi (ed.). Princeton, NJ: Princeton University Press, 2002.

Hanafi, Hasan. 'An Islamic Approach to Multilateralism'. In *The New Realism*. Cox (ed.).

Hannafey, Francis T. 'Entrepreneurship in Papal Thought: Creation of Wealth and the Distribution of Justice'. In *Rediscovering Abundance*. Alford, Clark, Cortright, and Naughton (eds.).

Hannaford, Ivan. *Race: The History of an Idea in the West*. Washington, DC: Woodrow Wilson Centre Press, 1996.

Hannerz, Ulf. 'Cosmopolitans and Locals in World Culture'. In *Global Culture: Nationalism, Globalisation, and Modernity*. Mike Featherstone (ed.). London: Sage Publications, 1990.

Hansen, Randall. 'The Dog that Didn't Bark: Dual Nationality in the United Kingdom'. In *Dual Nationality, Social Rights, and Federal Citizenship in the US and Europe*. Hansen and Weil (eds.).

Hardin, Russell. 'Group Boundaries, Individual Barriers'. In *Boundaries and Justice: Diverse Ethical Perspectives*. Miller and Hashmi (eds.).

Harding, Lorraine Fox. *Family, State, and Social Policy*. London: Macmillan, 1996.

Harlow, Carol. 'Global Administrative Law: The Quest for Principles and Values'. *European Journal of International Law*, 17:1, February 2006, pp. 187–214.

Harmes, Adam. 'New Constitutionalism and Multilevel Governance'. In *New Constitutionalism and World Order*. Gill and Cutler (eds.).

Harries, Jill. 'Global Constitutionalism: The Ancient Worlds'. In *Handbook on Global Constitutionalism*. Lang and Wiener (eds.).

Harris, Peter. 'Judging Thy Neighbour: An Exploration of How the Lay Judge System to Be Implemented in 2009 Will Affect Japanese Society'. *Japan Inc*, September/October 2007, pp. 22–25.

Harrison, Malcolm and Laura Hemingway. 'Social Policy and the New Behaviourism: Towards a More Excluding Society'. In *Social Policies and Social Control: New Perspectives on the 'Not-So-Big' Society*. Malcolm Harrison and Teela Sanders (eds.). Bristol: Policy Press, 2014.

Hart, H. L. A. 'Immorality and Treason'. In *The Philosophy of Law*. Dworkin (ed.).

Harvey, Thomas. 'Sphere Sovereignty, Civil Society, and the Pursuit of Holistic Transformation in Asia'. *Transformation*, 33:1, 2016, pp. 50–64.

Hashmi, Sohail H. 'Political Boundaries and Moral Communities: Islamic Perspectives'. In *States, Nations, and Borders*. Buchanan and Moore (eds.).

Hawtrey, R. G. *Economic Aspects of Sovereignty*. 2nd ed. London: Longmans Green, 1952 [1930].

Hay, Douglas. 'Property, Authority, and the Criminal Law'. In *Albion's Fatal Tree: Crime and Society in Eighteenth Century England*. Douglas Hay et al. (eds.). London: Allen Lane, 1975.

Hayek, Friedrich A. *The Constitution of Liberty*. London: Routledge and Kegan Paul, 1960.

Hayek, Friedrich A. *The Denationalisation of Money: An Analysis of the Theory and Practice of Concurrent Currencies.* 2nd ed. London: Institute of Economic Affairs, 1990 [1976].

Hayek, Friedrich A. *Law, Legislation, and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy.* London: Routledge, 1982 [1973–1979].

Hayek, Friedrich A. *The Road to Serfdom*. Chicago, IL: University of Chicago Press, 1944.

He Huaihong [何怀宏]. 选举社会及其终结：秦汉至晚清历史的一种社会学阐释. 北京: 三联书店, 1998.

Held, David. 'Culture and Political Community: National, Global, and Cosmopolitan'. In *Conceiving Cosmopolitanism*. Vertovec and Cohen (eds.).

Held, David. *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*. Stanford, CA: Stanford University Press, 1995.

Helm, Toby and Jon Henley. '"We Cannot Change What We Are": Michel Barnier Stares Down Tory Threats'. *The Guardian*, 5 October 2019, https://www.theguardian.com/politics/2019/oct/05/barnier-joins-brexit-blame-game, accessed 6 October 2019.

Hemleben, Sylvester John. *Plans for World Peace Through Six Centuries*. Chicago, IL: University of Chicago Press, 1943.

Henderson, John B. *The Development and Decline of Chinese Cosmology*. New York: Columbia University Press, 1984.

Henrich, Dieter. 'Family Law Across Frontiers: Facts, Conflicts, Trends'. In *Families Across Frontiers.* Lowe and Douglas (eds.).

Herbst, Jeffrey. *States and Power in Africa: Comparative Lessons in Authority and Control*. Princeton, NJ: Princeton University Press, 2000.

Herrnstein, Richard J. and Charles Murray. *The Bell Curve: Intelligence and Class Structure in American Life*. New York: Free Press, 1994.

Herzog, Ben. 'The Democratic Roots of Expatriations'. *Ethics and International Affairs*, 30:2, 2016, pp. 261–264.

Hetherington, H. J. W. 'The Conception of a Unitary Social Order'. *Proceedings of the Aristotelian Society*, 18, 1917–1918, pp. 286–316.

al-Hibri, Azizah Y. 'Is Western Patriarchal Feminism Good for Third World/Minority Women?' In *Is Multiculturalism Bad for Women?* Joshua Cohen, Matthew Howard, and Martha C Nussbaum (eds.). Princeton, NJ: Princeton University Press, 1999.

Hieber, Danny. 'Why Do Languages Die?' Mises Institute, 4 January 2012, https://mises.org/library/why-do-languages-die, retrieved 2 April 2016.

Hilson, Chris. 'The Unpatriotism of the Economic Constitution? Rights to Free Movement and Their Impact on National and European Identity'. *European Law Journal*, 14:2, March 2008, pp. 186–202.

Hirschl, Ran. 'The Origins of the New Constitutionalism: Lessons from the "Old" Constitutionalism'. In *New Constitutionalism and World Order*. Gill and Cutler (eds.).

Hirschman, Albert O. *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organisations, and States*. Cambridge, MA: Harvard University Press, 1970.

Hirschman, Albert O. 'Exit, Voice, and the State'. *World Politics*, 31:1, October 1978, pp. 90–107.

Hobbes, Thomas. *Leviathan: The Matter, Form and Power of a Commonwealth Ecclesiastical and Civil*. London: Andrew Crooke, 1651.

Hobhouse, L. T. *Morals in Evolution: A Study in Comparative Ethics*. London: Chapman and Hall, 1951 [1906].

Hobsbawm, Eric. 'Inventing Traditions'. In *The Invention of Tradition*. Hobsbawm and Ranger (eds.).

Hobsbawm, Eric. 'Mass-Producing Traditions: Europe, 1870–1914'. In *The Invention of Tradition*. Hobsbawm and Ranger (eds.).

Hodgen, Margaret T. *Early Anthropology in the Sixteenth and Seventeenth Centuries*. Philadelphia, PA: University of Pennsylvania Press, 1964.

Hodgson, Marshall G. S. *The Venture of Islam: Conscience and History in a World Civilisation*. 3 vols. Chicago, IL: University of Chicago Press, 1974.

Hoerder, Dirk. 'Transcultural States, Nations, and People'. In *The Historical Practice of Diversity*. Hoerder, Harzig, and Shubert (eds.).

Hoexter, Miriam. 'Charity, the Poor, and Distribution of Alms in Ottoman Algiers'. In *Poverty and Charity in Middle Eastern Contexts*. Bonner, Ener, and Singer (eds.).

Holzmann, Robert and Johannes Koettl. 'Portability of Pension, Health, and Other Social Benefits: Facts, Concepts, and Issues'. *CESifo Economic Studies*, 61:2, 2015, pp. 377–415.

Honig, Bonnie. *Democracy and the Foreigner*. Princeton, NJ: Princeton University Press, 2001.

Honig, Bonnie. '"My Culture Made Me Do It."' In *Is Multiculturalism Bad for Women?* Cohen, Howard, and Nussbaum (eds.).

Hooker, M. B. *Legal Pluralism: An Introduction to Colonial and Neo-Colonial Laws*. Oxford: Clarendon Press, 1975.

Höpfl, Harro. *Jesuit Political Thought: The Society of Jesus and the State, c. 1540–1630*. Cambridge: Cambridge University Press, 2004.

Hoppe, Hans-Hermann. *Democracy: The God That Failed: The Economics and Politics of Monarchy, Democracy, and Natural Order*. London: Transaction Publishers, 2001.

Hoskins, W. G. *The Making of the English Landscape*. Dorset: Little Toller Books, 2013 [1955].

Howley, Kerry. 'Ending Global Apartheid'. *Reason*, 39:9, February 2008, https://reason.com/2008/01/24/ending-global-apartheid/, accessed 13 October 2024.

Hu Di. *The Fabric of Resistance: Textile Workshops and the Rise of Rebellious Landscapes in Colonial Peru*. Tuscaloosa, FL: University of Alabama Press, 2022.

Hucker, Charles O. 'Confucianism and the Chinese Censorial System'. In *Confucianism in Action*. David S. Nivison and Arthur F. Wright (eds.). Stanford, CA: Stanford University Press, 1959.

Hulsewé, Anton F. P. '"Contracts" of the Han Period'. In *Il diritto in Cina: Teoria e applicazioni durante le dinastie imperiali e problematica del diritto cinese contemporaneo*. Lionello Lanciotti (ed.). Florence: Leo S. Olschki Editore, 1978.

Hulsewé, Anton F. P. 'Law as One of the Foundations of State Power in Early Imperial China'. In *Foundations and Limits of State Power in China*. Schram (ed.).

Hülsse, Rainer. 'Creating Demand for Global Governance: The Making of a Global Money-Laundering Problem'. *Global Society*, 21:2, 2007, pp. 155–178.

Hurrell, Andrew. 'International Law and the Making and Unmaking of Boundaries'. In *States, Nations, and Borders*. Buchanan and Moore (eds.).

Illich, Ivan. *Deschooling Society*. New York: Harper and Row, 1970.

Inalcik, Halil. 'Dar al-'Ahd'. In *Encyclopædia of Islam*. Peri Bearman et al. (eds.).

Ingham, Geoffrey. *The Nature of Money*. Cambridge: Polity Press, 2004.

Ip, Eric C. 'The Political Determinants of China's New Health Constitution'. *Medical Law Review*, 29:1, Winter 2021, pp. 3–23.

Irving, Helen. 'Still Call Australia Home: The Constitution and the Citizen's Right of Abode'. *Sydney Law Review*, 30, 2008, pp. 133–53.

Isaacs, Tracy. 'Collective Moral Responsibility and Collective Intention'. *Midwest Studies in Philosophy*, 30, 2006, pp. 59–73.

Ishiwata, Eric. '"Probably Impossible": Multiculturalism and Pluralisation in Present-Day Japan'. *Journal of Ethnic and Migration Studies*, 37:10, December 2011, pp. 1605–1626.

Jackson, Kevin T. 'Economy of Mutuality: Merging Financial and Social Sustainability'. *Journal of Business Ethics*, 133, 2016, pp. 499–517.

Jacob, Joseph M. *The Republican Crown: Lawyers and the Making of the State in Twentieth Century Britain*. Aldershot: Dartmouth, 1996.

Jacobsen, Knut A. *Pilgrimage in the Hindu Tradition: Salvific Space*. London: Routledge, 2013.

Jacques, Martin. *When China Rules the World: The Rise of the Middle Kingdom and the End of the Western World*. London: Allen Lane, 2009.

James, C. P. 'Céad Míle Fáilte: Ireland Welcomes Divorce: The 1995 Irish Divorce Referendum and the Family (Divorce) Act of 1996'. *Duke Journal of Comparative and International Law*, 8, 1997.

de Jasay, Anthony. *The State*. Oxford: Basil Blackwell, 1985.

Jaspers, Karl and Michael Bullock (trans.). *The Origin and Goal of History*. London: Routledge and Kegan Paul, 1953.

Jefferson, Thomas. Letter to William S. Smith, Paris, 13 November 1787.

Jensen, Richard Bach. 'Anarchist Terrorism and Global Diasporas, 1878–1914'. *Terrorism and Political Violence*, 27:3, 2015, pp. 441–453.

Jeong, Sarah. 'How a Cashless Society Could Embolden Big Brother'. *The Atlantic Monthly*, 8 April 2016, https://www.theatlantic.com/technology/archive/2016/04/cashless-society/477411, accessed 10 August 2018.

Jerry, Robert H., Jr. 'Life, Health, and Disability Insurance: Understanding the Relationships'. *Journal of Law, Medicine, and Ethics*, 35, Summer 2007, pp. 80–89.

Jiang Qing [蒋庆]. '王道政治是当今中国政治的发展方向'. August 2008, http://www.confuchina.com/03%20lunlizhengzhi/wangdaozhengzhi.htm, accessed 17 November 2019.

Jiménez Lobeira, Pablo Cristóbal. 'Pre-Political Foundations of the Democratic Constitutional State: Europe and the Habermas–Ratzinger Debate'. Social Science Research Network, 2 July 2010, http://ssrn.com/abstract=1633715, accessed 15 May 2016.

Johnson, Dominic D. P. and Monica Duffy Toft. 'Grounds for War: The Evolution of Territorial Conflict'. *International Security*, 38:3, Winter 2013/2014, pp. 7–38.

Johnstone, Ian. 'The Role of the UN Secretary-General: The Power of Persuasion Based on Law'. *Global Governance*, 9, 2003, pp. 441–458.

Johnstone, Ian. 'The Secretary-General as Norm Entrepreneur'. In *Secretary or General? The UN Secretary-General in World Politics*. Chesterman (ed.).

Jon Jae-Eun. 'Power Dynamics with International Students: From the Perspective of Domestic Students in Korean Higher Education'. *Higher Education*, 64:4, October 2012, pp. 441–454.

Jones, Chris and Tony Novak. *Poverty, Welfare, and the Disciplinary State*. London: Routledge, 1999.

Joppke, Christian. 'Citizenship Between De- and Re-Ethnicisation'. In *Migration, Citizenship, Ethnos*. Bodemann and Yurdakul (eds.).

Joppke, Christian. 'Exclusion in the Liberal State: The Case of Immigration and Citizenship Policy'. *European Journal of Social Theory*, 8:1, 2005, pp. 43–61.

Joppke, Christian. *Selecting by Origin: Ethnic Migration in the Liberal State*. Cambridge, MA: Harvard University Press, 2005.

Joppke, Christian. 'Terrorists Repudiate Their Own Citizenship'. European Union Democracy Observatory on Citizenship, 2014, http://eudo-citizenship.eu/commentaries/citizenship-forum/1268-the-return-of-banishment-do-the-new-denationalisation-policies-weaken-citizenship, accessed 26 October 2017.

Joppke, Christian. 'Why Liberal States Accept Unwanted Immigration'. *World Politics*, 50:2, January 1998, pp. 266–293.

Josselin, Daphné and William Wallace. 'Non-State Actors in World Politics: A Framework'. In *Non-State Actors in World Politics*. Josselin and Wallace (eds.).

de Jouvenel, Bertrand. *The Ethics of Redistribution*. Cambridge: Cambridge University Press, 1951.

de Jouvenel, Bertrand. *Sovereignty: An Inquiry into the Political Good.* Indianapolis, IN: Liberty Fund, 1997 [1957].

de Jouvenel, Bertrand and J. F. Huntington (trans.). *On Power: The Natural History of Its Growth*. Indianapolis, IN: Liberty Fund, 1993 [1945].

Joyce, Colin. 'MP's Warning over "Blue-Eyed Foreigner" on Japanese Throne'. *The Telegraph*, 3 February 2006.

Jung Yeong-Hae. 'Can Japan Become "A Society Attractive for Immigrants"? Identity, Gender, and Nation-States Under Globalisation in East Asia'. *International Journal of Japanese Sociology*, 13, 2004, pp. 53–68.

Kaczynski, Theodore. *The Unabomber Manifesto and Other Essays*. Seattle, WA: Amazon Digital Services, 2009.

Kahn, Jeffrey. 'The Extraordinary Mrs Shipley: How the United States Controlled International Travel Before the Age of Terrorism'. *Connecticut Law Review*, 43:3, February 2011.

Kalyvas, Andreas. *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt*. Cambridge: Cambridge University Press, 2008.

Kanstroom, Daniel. *Aftermath: Deportation Law and the New American Diaspora*. Oxford: Oxford University Press, 2012.

Kanstroom, Daniel. *Deportation Nation: Outsiders in American History*. Cambridge, MA: Harvard University Press, 2007.

Kantorowicz, Ernst H. *The King's Two Bodies: A Study in Mediæval Political Theology*. Princeton, NJ: Princeton University Press, 1957.

Kark, Ruth. 'Land–God–Man: Concepts of Land Ownership in Traditional Cultures in Eretz-Israel'. In *Ideology and Landscape in Historical Perspective*. Baker and Biger (eds.).

Karlsson, Johan. 'The Stability of a Cosmopolitan Political Order: Functionalism Versus Federalism'. Paper Presented at International Studies Association Annual Convention, New Orleans, LA, February 2010.

Karpat, Kemal H. 'Some Historical and Methodological Considerations Concerning Social Stratification in the Middle East'. In *Commoners, Climbers, and Notables*. Nieuwenhuijze (ed.).

Katz, Marion Holmes. 'Pragmatic Rule and Personal Sanctification in Islamic Legal Theory'. In *Law and the Sacred*. Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey (eds.). Stanford, CA: Stanford University Press, 2007.

Katznelson, Ira. 'A Form of Liberty and Indulgence: Toleration as a Layered Institution'. In *Boundaries of Toleration*. Stepan and Taylor (eds.).

Kautilya and R. Shamasastry (trans.). *Arthasastra*. Bangalore, India: Government Press, 1915.

Kaviraj, Sudipta. 'Modernity, State, and Toleration in Indian History: Exploring Accommodations and Partitions'. In *Boundaries of Toleration*. Stepan and Taylor (eds.).

Keck, Margaret E. and Kathryn Sikkink. *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca, NY: Cornell University Press, 1998.

Kelsay, John. 'Civil Society and Government in Islam'. In *Islamic Political Ethics*. Hashmi (ed.).

Kemp, Peter. 'The Cosmopolitan Foundation of International Law'. In *The Idea of Kosmopolis: History, Philosophy, and Politics of World Citizenship*. Rebecka Lettevall and My Klockar Linder (eds.). Huddinge: Södertörns Högskola, 2008.

Kennedy, David. 'Challenging Expert Rule: The Politics of Global Governance'. *Sydney Journal of International Law*, 27, 2005, pp. 5–28.

Kennedy, David. 'The Mystery of Global Governance'. In *Ruling the World?* Dunoff and Trachtman (eds.).

Kennedy, Duncan. 'Legal Education as Training for Hierarchy'. In *The Politics of Law*. Kairys (ed.).

Kennedy, Paul. *The Parliament of Man: The Past, Present, and Future of the United Nations*. New York: Random House, 2006.

Kennedy, Robert G. 'Wealth Creation within the Catholic Social Tradition'. In *Rediscovering Abundance*. Alford, Clark, Cortright, and Naughton (eds.).

Kerferd, G. B. *The Sophistic Movement*. Cambridge: Cambridge University Press, 1981.

Khadduri, Madjid. 'Hudna'. In *Encyclopædia of Islam*. Peri Bearman et al. (eds.).

Khadduri, Madjid. 'International Law'. In *Law in the Middle East*. Khadduri and Liebesny (eds.).

Khadduri, Madjid. 'Maslaha'. In *Encyclopædia of Islam*. Peri Bearman et al. (eds.).

Khalaf, Sulayman and Saad Alkobaisi. 'Migrants' Strategies of Coping and Patterns of Accommodation in the Oil-Rich Gulf Societies: Evidence from the UAE'. *British Journal of Middle Eastern Studies*, 26:2, November 1999, pp. 271–298.

Kille, Kent J. *From Manager to Visionary: The Secretary-General of the United Nations*. New York: Palgrave Macmillan, 2007.

Kille, Kent J. 'The Secular Pope: Insights on the UN Secretary-General and Moral Authority'. In *The UN Secretary-General and Moral Authority: Ethics and Religion in International Leadership*. Kent J. Kille (ed.). Washington, DC: Georgetown University Press, 2007.

Kim Bumsoo. 'From Exclusion to Inclusion? The Legal Treatment of "Foreigners" in Contemporary Japan'. *Immigrants and Minorities*, 24:1, March 2006, pp. 51–73.

Kim Keechang. *Aliens in Mediæval Law: The Origins of Modern Citizenship*. Cambridge: Cambridge University Press, 2000.

Kim Sookyung. 'Racism in the Global Era: Analysis of Korean Media Discourse Around Migrants, 1990–2009'. *Discourse Society*, 23:6, 2012, pp. 657–678.

Kim Sungmoon. 'Confucian Constitutionalism: Mencius and Xunzi on Virtue, Ritual, and Royal Transmission'. *Review of Politics*, 73, 2011, pp. 371–399.

Kim Sungmoon. 'Self-Transformation and Civil Society: Lockean vs Confucian'. In *The State of Nature in Comparative Political Thought.* Carlson and Fox (eds.).

King, Peter. *Reaction: Against the Modern World*. Exeter: Societas, 2012.

King, Russell and Anastasia Christou. 'Of Counter-Diaspora and Reverse Transnationalism: Return Mobilities to and from the Ancestral Homeland'. *Mobilities*, 6:4, November 2011, pp. 451–466.

Kingsbury, Benedict. '"Indigenous Peoples" in International Law: A Constructivist Approach to the Asian Controversy'. *American Journal of International Law*, 92:3, July 1998, pp. 414–457.

Kingsbury, Benedict, Nico Krisch, and Richard B. Stewart. 'The Emergence of Global Administrative Law'. *Law and Contemporary Problems*, 68:3/4, Summer/Autumn 2005, pp. 15–61.

Kinnvall, Catarina and Bo Petersson. 'Diaspora Groups, Transnational Activism, and Democratic Legitimacy'. In *Legitimacy Beyond the State?* Erman and Uhlin (eds.).

Kjaer, Poul F. *Constitutionalism in the Global Realm: A Sociological Approach*. London: Routledge, 2014.

Klausen, Jimmy Casas. 'Reservations on Hospitality: Contact and Vulnerability in Kant and Indigenous Action'. In *Hospitality and World Politics*. Baker (ed.).

Klein, Diane J. 'Plural Marriage and Community Property Law'. *Golden Gate University Law Review*, 41, 2010, pp. 33–89.

Kleinbard, Edward D. 'Stateless Income and Its Remedies'. In *Global Tax Fairness*. Pogge and Mehta (eds.).

Kochenev, Dimitry. 'EU Citizenship Without Duties'. *European Law Journal*, 20:4, July 2014, pp. 482–498.

Kofman, Daniel. 'The Normative Limits to the Dispersal of Territorial Sovereignty'. *The Monist*, 90:1, 2007, pp. 65–85.

Kohn, Margaret and Keally McBride. *Political Theories of Decolonisation: Postcolonialism and the Problem of Foundations*. Oxford: Oxford University Press, 2011.

Kohr, Leopold. *The Breakdown of Nations*. Totnes: Green Books, 2001 [1957].

Konczal, Mike. 'The Voluntarism Fantasy'. *Democracy Journal*, 32, Spring 2014, https://democracyjournal.org/magazine/32/the-voluntarism-fantasy/, accessed 1 October 2019.

Kostakopoulou, Dora. *The Future Governance of Citizenship*. Cambridge: Cambridge University Press, 2008.

Kotkin, Joel. *The Coming of Neo-Feudalism: A Warning to the Global Middle Class*. New York: Encounter Books, 2020.

Kraus, Peter A. 'A Union of Peoples? Diversity and the Predicaments of a Multinational Polity'. In *Political Theory and the European Constitution*. Dobson and Follesdal (eds.).

Krisch, Nico. 'The Case for Pluralism in Postnational Law'. Law, Society and Economy Working Papers 12/2009, London School of Economics and Political Science, London, 2009.

Kuiper, D. T. 'Groen and Kuyper on the Racial Issue'. In *Kuyper Reconsidered*. van der Kooi and de Bruijn (eds.).

Kukathas, Chandran. 'Are There Any Cultural Rights?' *Political Theory*, 20:1, February 1992, pp. 105–139.

Kumm, Mattias. 'The Cosmopolitan Turn in Constitutionalism: On the Relationship Between Constitutionalism in and Beyond the State'. In *Ruling the World?* Dunoff and Trachtman (eds.).

Kupchan, Charles A. *The West, The Rising Rest, and the Coming Global Turn*. Oxford: Oxford University Press, 2012.

Kuper, Andrew. *Democracy Beyond Borders: Justice and Representation in Global Institutions*. Oxford: Oxford University Press, 2004.

Kuperus, Tracy. 'An Eclectic Inheritance: Kuyper's Politics Today'. *Comment (Cardus)*, 25 October 2013, . http://www.cardus.ca/comment/article/4067/an-eclectic-inheritancekuypers-politics-today/, accessed 13 October 2024.

Kuran, Timur. 'The Absence of the Corporation in Islamic Law: Origins and Persistence'. *American Journal of Comparative Law*, 53:4, Autumn 2004, pp. 785–834.

Kuran, Timur. 'Islamic Economics and the Islamic Subeconomy'. *Journal of Economic Perspectives*, 9:4, Autumn 1995, pp. 155–173.

Kuran, Timur. 'Islamic Redistribution Through Zakat: Historical Record and Modern Realities'. In *Poverty and Charity in Middle Eastern Contexts*. Bonner, Ener, and Singer (eds.).

Kuran, Timur. 'The Political Consequences of Islam's Economic Legacy'. *Philosophy and Social Criticism*, 39:4/5, 2013, pp. 395–505.

Kuyper, Abraham. *Abraham Kuyper: A Centennial Reader*. James D. Bratt (ed.). Grand Rapids, MI: William B. Eerdmans Publishing Company, 1998.

Kuyper, Abraham. *Calvinism: Six Stone Lectures*. Princeton, NJ: Princeton Theological Seminary, 1898.

Kuyper, Abraham and Harry van Dyke (trans.). *Our Programme: A Christian Political Manifesto*. Bellingham, WA: Lexham Press, 2015 [1879].

Kuyper, Jonathan W. 'Against Global Parliament'. *Swiss Political Science Review*, 21:1, 2015, pp. 158–179.

Kymlicka, Will. 'Liberal Complacencies'. In *Is Multiculturalism Bad for Women?* Cohen, Howard, and Nussbaum (eds.).

Kymlicka, Will. *Multicultural Citizenship*. Oxford: Oxford University Press, 1995.

Laborde, Cécile. *Pluralist Thought and the State in Britain and France, 1900–25*. Basingstoke: Palgrave Macmillan, 2000.

Laborde, Cécile. 'Republican Citizenship and the Crisis of Integration in France'. In *Lineages of European Citizenship: Rights, Belonging, and Participation in Eleven Nation-States*. Richard Bellamy, Dario Castiglione, and Emilio Santoro (eds.). New York: Palgrave Macmillan, 2004.

La Croix, Sumner J. 'Explaining Divergence in Property Rights: Fiji and Hawai'i in the Nineteenth Century'. In *Land Rights, Ethno-Nationality, and Sovereignty in History*. Engerman and Metzer (eds.).

Ladeur, Karl-Heinz. 'Globalisation and the Conversion of Democracy to Polycentric Networks: Can Democracy Survive the End of the Nation-State?' In *Public Governance in the Age of Globalisation.* Ladeur (ed.).

LaFollette, Hugh. 'Licensing Parents Revisited'. *Journal of Applied Philosophy*, 27:4, 2010, pp. 327–343.

Lake, David A. 'Rightful Rules: Authority, Order, and the Foundations of Global Governance'. *International Studies Quarterly*, 54, 2010, pp. 587–613.

Lambton, Ann K. S. *State and Government in Mediæval Islam: An Introduction to the Study of Islamic Political Theory*. Oxford: Oxford University Press, 1981.

Lang, Anthony F., Jr. 'From Revolutions to Constitutions: The Case of Egypt'. *International Affairs*, 89:2, 2013, pp. 345–363.

Lang, Anthony F., Jr. and Antje Wiener. 'A Constitutionalising Global Order'. In *Handbook on Global Constitutionalism*. Lang and Wiener (eds.).

Larrivee, John. 'It's Not the Markets, It's the Morals: How Excessively Blaming Markets Undermines Civil Society'. In *Back on the Road to Serfdom*. Woods (ed.).

Lasch, Christopher. *The Culture of Narcissism: American Life in an Age of Diminishing Expectations*. New York: W. W. Norton, 1979.

Laski, H. L. *The Foundations of Sovereignty and Other Essays*. Reprinted in *The Pluralist Theory of the State*. Hirst (ed.).

Laski, H. L. *Studies in Law and Politics*. Reprinted in *The Pluralist Theory of the State*. Hirst (ed.).

Laughland, John. *The Tainted Source: The Undemocratic Origins of the European Idea*. London: Warner Books, 1998.

Lavi, Shai. 'Citizenship Revocation as Punishment: On the Modern Duties of Citizens and Their Criminal Breach'. *University of Toronto Law Journal*, 61, 2011, pp. 783–810.

Lear, Floyd Seyward. *Treason in Roman and Germanic Law: Collected Papers*. Austin, TX: University of Texas Press, 1965.

LeBlanc, Steven A. *Constant Battles: Why We Fight*. New York: St Martin's Press, 2004.

Lechner, Frank J. *Globalisation: The Making of World Society*. Chichester: Wiley-Blackwell, 2009.

Lecky, William Edward Hartpole. *Democracy and Liberty*. Indianapolis, IN: Liberty Fund, 1981 [1896].

van Leeuwen, Mary Stewart. 'The Carrot and the Stick: Kuyper on Gender, Family, and Class'. In *Religion, Pluralism, and Public Life*. Lugo (ed.).

Le Grand, Julian. *Motivation, Agency, and Public Policy: Of Knights and Knaves, Pawns and Queens*. Oxford: Oxford University Press, 2003.

Le Grand, Julian and Bill New. *Government Paternalism: Nanny State or Helpful Friend?* Princeton, NJ: Princeton University Press, 2015.

Lehmbruch, Gerhard. 'Constitution-Making in Young and Ageing Federal Systems'. In *Redesigning the State*. Banting and Simeon (eds.).

Lenard, Patti Tamara. 'Culture, Free Movement, and Open Borders'. *Review of Politics*, 72:4, Autumn 2010, pp. 627–652.

Lenard, Patti Tamara. 'Democracies and the Power to Revoke Citizenship'. *Ethics and International Affairs*, 30:1, 2016, pp. 73–91.

Lepsius, M. Rainer. 'The Ability of a European Constitution to Forge a European Identity'. In *Governing Europe Under a Constitution*. Blanke and Mangiameli (eds.).

Lesage, Dries, Mattias Vermeiren, and Sacha Dierckx. 'New Constitutionalism, International Taxation, and Crisis'. In *New Constitutionalism and World Order*. Gill and Cutler (eds.).

Letuka, Puleng and Alice Armstrong. '"Which Law? Which Family? Which Women?" Problems of Enforcing CEDAW in Southern Africa'. In *Families Across Frontiers*. Lowe and Douglas (eds.).

Levenson, Joseph R. *Confucian China and Its Modern Fate*. Berkeley, CA: University of California Press, 1968.

Levenson, Joseph R. 'The Suggestiveness of Vestiges: Confucianism and Monarchy at the Last'. In *Confucianism in Action*. Nivison and Wright (eds.).

Levinson, Bernard M. 'The First Constitution: Rethinking the Origins of Rule of Law and Separation of Powers in Light of Deuteronomy'. *Cardozo Law Review*, 27:4, 2006, pp. 1853–1888.

Levitt, Peggy. 'The Ties that Change: Relations to the Ancestral Home over the Life Cycle'. In *The Changing Face of Home: The Transnational Lives of the Second Generation*. Peggy Levitt and Mary C. Waters (eds.). New York: Russell Sage Foundation, 2002.

Levitt, Peggy. 'Variations in Transnational Belonging: Lessons from Brazil and the Dominican Republic'. In *Dual Nationality, Social Rights, and Federal Citizenship in the US and Europe.* Hansen and Weil (eds.).

Levitt, Peggy and B. Nadya Jaworsky. 'Transnational Migration Studies: Past Developments and Future Trends'. *Annual Review of Sociology*, 33, 2007, pp. 129–156.

Levmore, Saul. 'Taxes as Ballots'. *University of Chicago Law Review*, 65:2, Spring 1998, pp. 387–431.

Levy, Jacob T. 'From Liberal Constitutionalism to Pluralism'. In *Modern Pluralism*. Bevir (ed.).

Lewis, Bernard. 'Islamic Concepts of Revolution'. In *Revolution in the Middle East*. P. J. Vatikiotis (ed.). London: George Allen and Unwin, 1972.

Li Chenyang. 'Where Does Confucian Virtuous Leadership Stand?' *Philosophy East and West*, 59:4, October 2009, pp. 531–536.

Libal, Kathryn. '"The Child Question": The Politics of Child Welfare in Early Republican Turkey'. In *Poverty and Charity in Middle Eastern Contexts*. Bonner, Ener, and Singer (eds.).

Lieberman, Evan S. 'The Politics of Demanding Sacrifice: Applying Insights from Fiscal Sociology to the Study of AIDS Policy and State Capacity'. In *The New Fiscal Sociology: Taxation in Comparative and Historical Perspective*. Isaac William Martin, Ajay K. Mehrotra, and Monica Prasad (eds.). Cambridge: Cambridge University Press, 2009.

Liebesny, Herbert J. 'The Development of Western Judicial Privileges'. In *Law in the Middle East*. Khadduri and Liebesny (eds.).

Linker, Damon. 'The Benedict Option: Why the Religious Right Is Considering an All-Out Withdrawal from Politics'. *The Week*, 19 May 2015, http://theweek.com/articles/555734/benedict-option-why-religious-right-considering-allout-withdrawal-from-politics, accessed 25 April 2016.

Linklater, Andro. *Owning the Earth: The Transforming History of Land Ownership*. London: Bloomsbury, 2013.

Liss, Ryan. 'A Right to Belong: Legal Protection of Sociological Membership in the Application of Article 12(4) of the ICCPR'. *NYU Journal of International Law and Politics*, Summer 2014, pp. 1097–1191.

Liu Hui-Chen Wang. 'An Analysis of Chinese Clan Rules: Confucian Theories in Action'. In *Confucianism in Action*. Nivison and Wright (eds.).

Liu, James T. C. 'Some Classifications of Bureaucrats in Chinese Historiography'. In *Confucianism in Action*. Nivison and Wright (eds.).

Liu Haifeng [刘海峰]. '科举制的起源与进士科的起源'. 历史研究, 6, 2000, pp. 3–16.

Liu Qingping. 'Filiality Versus Sociality and Individuality: On Confucianism as "Consanguinitism"'. *Philosophy East and West*, 53:2, April 2003, pp. 234–250.

Liu Shih-shun. *Extraterritoriality: Its Rise and Its Decline*. New York: Longmans, Green and Company, 1925.

Locke, John. *Two Treatises of Government*. London: Awnsham Churchill, 1690.

Loewe, Michael. 'Imperial Sovereignty: Dong Zhongshu's Contribution and His Predecessors'. In *Foundations and Limits of State Power in China*. Schram (ed.).

Longman, Chris. 'The Debate on European Values'. In *Constitutional Politics in the European Union: The Convention Moment and Its Aftermath*. Dario Castiglione,

Justus Schönlau, Chris Longman, Emanuela Lombardo, Nieves Pérez-Solorzano Borragán, and Miriam Aziz (eds.). New York: Palgrave Macmillan, 2007.

López, Jane Lilly. '"Impossible Families": Mixed-Citizenship Status Couples and the Law'. *Law and Policy*, 37:1/2, January 2015, pp. 93–118.

López Guerra, Claudio. 'Should Expatriates Vote?' *Journal of Political Philosophy*, 13:2, 2005, pp. 216–234.

Lorberbaum, Menachem. 'Making and Unmaking the Boundaries of Holy Land'. In *States, Nations, and Borders*. Buchanan and Moore (eds.).

Loughlin, Martin. 'Constituent Power Subverted: From English Constitutional Argument to British Constitutional Practice'. In *The Paradox of Constitutionalism*. Loughlin and Walker (eds.).

Loughlin, Martin. 'The State, the Crown, and the Law'. In *The Nature of the Crown: A Legal and Political Analysis*. Maurice Sunkin and Sebastian Payne (eds.). Oxford: Oxford University Press, 1999.

Loury, Glenn C. 'Transgenerational Justice—Compensatory Versus Interpretative Approaches'. In *Reparations*. Miller and Kumar (eds.).

Lu, Catherine. 'World Government'. In *Stanford Encyclopædia of Philosophy*, 2012, http://plato.stanford.edu/entries/world-government/ accessed 8 May 2016.

Lull, Vicente and Rafael Micó; Peter Smith (trans.). *Archæology of the Origin of the State*. Oxford: Oxford University Press, 2011.

Lutz, Donald S. *Principles of Constitutional Design*. Cambridge: Cambridge University Press, 2006.

Lyman, Rick. 'Eastern Bloc's Resistance to Refugees Highlights Europe's Cultural and Political Divisions'. *New York Times,* 12 September 2015, https://www.nytimes.com/2015/09/13/world/europe/eastern-europe-migrant-refugee-crisis.html?_r=0, accessed 26 October 2017

Lyon, David. 'Under My Skin: From Identification Papers to Body Surveillance'. In *Documenting Individual Identity*. Caplan and Torpey (eds.).

Maas, Willem. 'Free Movement and Discrimination: Evidence from Europe, the United States, and Canada'. *European Journal of Migration and Law*, 15, 2013, pp. 91–110.

Mabbett, Deborah. 'Mutuality in Insurance and Social Security'. In *The New Mutualism in Public Policy*. Johnston Birchall (ed.). London: Routledge, 2001.

MacDonald, Duncan Black and Armand Abel. 'Dar al-Sulh'. In *Encyclopædia of Islam*. Peri Bearman et al. (eds.).

MacDougall, Don. 'Transnational Litigation in Family Matters'. In *Families Across Frontiers*. Lowe and Douglas (eds.).

MacEoin, Denis. *Sharia Law or 'One Law for All'?* London: Civitas, 2009.

MacIntyre, Alasdair. 'Is Patriotism a Virtue?' In *Theorising Citizenship.* Beiner (ed.).

MacIntyre, Alasdair. *Whose Justice? Which Rationality?* Notre Dame, IN: University of Notre Dame Press, 1988.

Macklin, Audrey. 'Citizenship Revocation, the Privilege to Have Rights, and the Production of the Alien'. *Queen's Law Journal*, 40:1, 2014, pp. 1–54.

Macklin, Audrey. 'The Return of Banishment: Do the New Denationalisation Policies Weaken Citizenship?' European Union Democracy Observatory on Citizenship, http://eudo-citizenship.eu/commentaries/citizenship-forum/1268-the-return-of-banishment-do-the-new-denationalisation-policies-weaken-citizenship, accessed 5 December 2014.

Macpherson, C. B. 'The Meaning of Property'. In *Property: Mainstream and Critical Positions*. C. B. Macpherson (ed.).

Macpherson, C. B. *The Political Theory of Possessive Individualism*. Oxford: Oxford University Press, 1962.

Madison, James. 'The Federalist, Number 10'. *The Independent Journal*, 23 November 1787.

Maddox, Graham. 'Constitution'. In *Political Innovation and Conceptual Change*. Ball, Farr, and Hanson (eds.).

Madoff, Ray D. *Immortality and the Law: The Rising Power of the American Dead*. New Haven, CT: Yale University Press, 2010.

Mahoney, Martha R. 'Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings'. *Southern California Law Review*, 65, 1991/1992, pp. 1283–1319.

Maine, Henry Sumner. *Ancient Law*. London: J.M. Dent and Sons, 1917 [1861].

Maitland, Frederic. 'The Corporation Sole'. *Law Quarterly Review*, 16, 1900, pp. 335–354.

Maitland, Frederic. 'The Crown as Corporation'. *Law Quarterly Review*, 17, 1901, pp. 131–146.

Malcolm, Joyce Lee. 'The Right of the People to Keep and Bear Arms: The Common Law Tradition'. *Hastings Constitutional Law Quarterly*, 10, 1983, pp. 285–314.

Malet, David. 'Foreign Fighter Mobilisation and Persistence in a Global Context'. *Terrorism and Political Violence*, 27:3, 2015, pp. 454–473.

Malet, David. *Foreign Fighters: Transnational Identity in Civil Conflicts*. Oxford: Oxford University Press, 2013.

Mancini, Susanna. 'Global Religion in a Post-Westphalia World'. In *The Handbook on Global Constitutionalism*. Lang and Wiener (eds.).

Manion, Lee. 'Sovereign Recognition: Contesting Political Claims in the *Alliterative Morte Arthure* and *The Awyntyrs off Arthur*'. In *Law and Sovereignty in the Middle Ages and Renaissance*. Sturges (ed.).

Mann, Michael. 'The Autonomous Power of the State: Its Origins, Mechanisms, and Results'. In *States in History*. Hall (ed.).

Mansfield, Harvey C. *Statesmanship and Party Government: A Study of Burke and Bolingbroke*. Chicago IL: University of Chicago Press, 1965.

Marder, Nancy S. 'Juries, Justice, and Multiculturalism'. *Southern California Law Review*, 75, 2002, pp. 659-726.

Marini, John. *Unmasking the Administrative State: The Crisis of American Politics in the Twenty-First Century*. Ken Masugi (ed.). New York: Encounter Books, 2019.

Marlow, Louise. *Hierarchy and Egalitarianism in Islamic Thought*. Cambridge: Cambridge University Press, 1997.

Marshall, T H. 'Citizenship and Social Class'. In *Citizenship and Social Class and Other Essays*. Cambridge: Cambridge University Press, 1950.

Martin, David. 'New Rules for Dual Nationality'. In *Dual Nationality, Social Rights, and Federal Citizenship in the US and Europe.* Hansen and Weil (eds.).

Martin, Isaac William, Ajay K. Mehrotra, and Monica Prasad. 'The Thunder of History: The Origins and Development of the New Fiscal Sociology'. In *The New Fiscal Sociology*. Martin, Mehrotra, and Prasad (eds.).

Martinich, A. P. and Tsoi Siwing. 'Mozi, Hobbes, and Locke on the State of Nature'. In *The State of Nature in Comparative Political Thought.* Carlson and Fox (eds.).

Marx, Gary T. 'Identity and Anonymity: Some Conceptual Distinctions and Issues for Research'. In *Documenting Individual Identity*. Caplan and Torpey (eds.).

Mau, Steffen, Fabian Gülzau, Lena Laube, and Natascha Zaun. 'The Global Mobility Divide: How Visa Policies Have Evolved over Time'. *Journal of Ethnic and Migration Studies*, 41:8, 2015, pp. 1192–1213.

Mauss, Marcel. *The Gift: The Form and Reason for Exchange in Archaic Societies*. London: Routledge, 1990 [1950].

al-Mawardī, Abū al Ḥasan; Wafaa H. Wahba (trans.). *The Ordinances of Government [Al-Aḥkām al-Sulṭāniyya w'al-Wilāyāt al-Dīniyya]*. Reading: Garnet Publishing, 1996.

May, Christopher. 'The Rule of Law as the Grundnorm of the New Constitutionalism'. In *New Constitutionalism and World Order*. Gill and Cutler (eds.).

McCaffery, Edward. 'Where's the Sex in Fiscal Sociology? Taxation and Gender in Comparative Perspective'. In *The New Fiscal Sociology*. Martin, Mehrotra, and Prasad (eds.).

McCann, Dennis P. 'Inequality in Income and Wealth: When Does It Become Immoral, and Why?' In *Rediscovering Abundance*. Alford, Clark, Cortright, and Naughton (eds.).

McCarthy, Rockne, Donald Oppewal, Walfred Peterson, and Gordon Spykman. *Society, State, and Schools: A Case for Structural and Confessional Pluralism*. Grand Rapids, MI: William B. Eerdmans Publishing Company, 1981.

McClain, Linda C. 'What Place for Marriage (E)quality in Marriage Promotion?' In *Marriage Proposals*. Bernstein (ed.).

McConnell, Michael W. 'The Origins and Historical Understanding of Free Exercise of Religion'. *Harvard Law Review*, 103, 1990, pp. 1410–1517.

McCormick, John P. 'People and Elites in Republican Constitutions, Traditional and Modern'. *The Paradox of Constitutionalism*. Loughlin and Walker (eds.).

McCrudden, Christopher. 'Human Rights and Traditional Values'. In *Law's Ethical, Global, and Theoretical Contexts*. Baxi, McCrudden, and Paliwala (eds.).

McGuinness, Terry and Melanie Gower. 'The Common Travel Area and the Special Status of Irish Nationals in UK Law'. House of Commons Library Briefing Paper 7661, 9 June 2017. https://borderpeople.info/site/wp-content/uploads/CBP-7661.pdf

McIlroy, David H. 'Subsidiarity and Sphere Sovereignty: Christian Reflections on the Shape and Scope of Government'. *Journal of Church and State*, 45:4, September 2003, pp. 739–763.

McIlwain, Charles Howard. *Constitutionalism Ancient and Modern*. Ithaca, NY: Cornell University Press, 1947 [1940].

McMullen, David. 'Views of the State in Du You and Liu Zongyuan'. In *Foundations and Limits of State Power in China*. Schram (ed.).

McNeill, William H. *The Global Condition: Conquerors, Catastrophes, and Community*. Princeton, NJ: Princeton University Press, 1992.

Mehta, Pratap Bhanu. 'Death and the Sovereign'. *The Indian Express*, 19 August 2015.

Meilaender, Peter C. *Toward a Theory of Immigration*. New York: Palgrave Macmillan, 2001.

Meinig, D. W. 'The Beholding Eye: Ten Versions of the Same Scene'. In *The Interpretation of Ordinary Landscapes: Geographical Essays*. D. W. Meinig and John Brinckerhoff Jackson (eds.). New York: Oxford University Press, 1979.

Meinig, D. W. 'Territorial Strategies Applied to Captive Peoples'. In *Ideology and Landscape in Historical Perspective*. Baker and Biger (eds.).

Memmi, Albert. *Dominated Man: Notes Toward a Portrait*. Boston, MA: Beacon Press, 1969.

Mencius and James Legge (trans.). *The Works of Mencius*. New York: Dover Publications, 1970 [1895].

Menski, Werner. 'Hindu Law as a "Religious" System'. In *Religion, Law, and Tradition*. Huxley (ed.).

Merryman, John Henry. *The Civil Law Tradition: An Introduction to the Legal Systems of Western Europe and Latin America*. Stanford, CA: Stanford University Press, 1985 [1969].

Mertens, Hans-Joachim. 'Lex Mercatoria: A Self-Applying System Beyond National Law?' In *Global Law Without a State*. Teubner (ed.).

Meserve, Ruth I. 'The Inhospitable Land of the Barbarian'. *Journal of Asian History*, 16:1, 1982, pp. 51–89.

de Mestral, Armand. 'The Extraterritorial Extension of Laws: How Much Has Changed?' *Arizona Journal of International and Comparative Law*, 31:1, 2014, pp. 43–54.

Metz, Tamara. *Untying the Knot: Marriage, the State, and the Case for Their Divorce*. Princeton, NJ: Princeton University Press, 2010.

Metzer, Jacob. 'Jewish Land, Israel Lands: Ethno-Nationality and Land Regime in Zionism and in Israel, 1897–1967'. In *Land Rights, Ethno-Nationality, and Sovereignty in History*. Engerman and Metzer (eds.).

Metzer, Jacob and Stanley L. Engerman. 'Some Considerations of Ethno-Nationality (and Other Distinctions), Property Rights in Land, and Territorial Sovereignty'. In *Land Rights, Ethno-Nationality, and Sovereignty in History*. Engerman and Metzer (eds.).

Meyer, John W. 'The World Polity and the Authority of the Nation-State'. In *Institutional Structure: Constituting State, Society, and the Individual*. George M. Thomas, John W. Meyer, Francisco O. Ramírez, and John Boli (eds.). London: Sage Publications, 1987.

Meyer, John W., John Boli, George M. Thomas, and Francisco O. Ramírez. 'World Society and the Nation-State'. *American Journal of Sociology*, 103:1, July 1997, pp. 144–181.

Meyer, Philippe, Judith Ennew, and Janet Lloyd (trans.). *The Child and the State: The Intervention of the State in Family Life*. Cambridge: Cambridge University Press, 1977.

Migdal, Joel. *Strong Societies and Weak States: State–Society Relations and State Capabilities in the Third World*. Princeton, NJ: Princeton University Press, 1988.

Milbank, John. 'Knowledge: The Theological Critique of Philosophy in Hamann and Jacobi'. In *Radical Orthodoxy*. Milbank, Pickstock, and Ward (eds.).

Milbank, John and Adrian Pabst. *The Politics of Virtue: Post-Liberalism and the Human Future*. London: Rowman and Littlefield, 2016.

Mill, John Stuart. *Considerations on Representative Government*. London: Parker, Son, and Bourne, 1861.

Miller, David. 'Bounded Citizenship'. In *Cosmopolitan Citizenship*. Kimberly Hutchings and Roland Dannreuther (eds.). New York: St. Martin's Press, 1999.

Miller, David. 'Democracy, Exile, and Revocation'. *Ethics and International Affairs*, 30:2, 2016, pp. 265–270.

Miller, David. *Strangers in Our Midst: The Political Philosophy of Immigration*. Cambridge, MA: Harvard University Press, 2016.

Miller, Maureen C. *Power and the Holy in the Age of the Investiture Conflict*. New York: Bedford/St Martins, 2005.

Miller, Richard B. 'Christian Attitudes Toward Boundaries: Metaphysical and Geographical'. In *Boundaries and Justice: Diverse Ethical Perspectives*. Miller and Hashmi (eds.).

Miller, Seumas and Pekka Makela. 'The Collectivist Approach to Collective Moral Responsibility'. *Metaphilosophy*, 36:5, October 2005, pp. 634–651.

Millies, Steven P. '"We Do Not Know from Where": Transcendence and Openness in Burke and Voegelin'. Paper presented at conference of the American Political Science Association, Washington, DC, 2010.

Milsom, S. F. C. *Historical Foundations of the Common Law*. London: Butterworths, 1981 [1969].

Minter, William. 'Invisible Hierarchies: Africa, Race, and Continuities in the World Order'. *Science and Society*, 69:3, July 2005, pp. 449–457.

Mirabelli, Cesare. 'The Religious Element in the Constitution for Europe'. In *Governing Europe Under a Constitution*. Blanke and Mangiameli (eds.).

Mitchell, Allan. 'The Function and Malfunction of Mutual Aid Societies in Nineteenth Century France'. In *Medicine and Charity Before the Welfare State*. Barry and Jones (eds.).

Moens, Gabriël A and John Trone. 'Subsidiarity as Judicial and Legislative Review Principles in the European Union'. In *Global Perspectives on Subsidiarity*. Evans and Zimmermann (eds.).

van Mol, Christof, Helga A. G. de Valk, and Leo van Wissen. 'Falling in Love With(in) Europe: European Bi-National Love Relationships, European Identification, and Transnational Solidarity'. *European Union Politics*, 16:4, 2015, pp. 469–489.

Moore, Cerwyn. 'Foreign Bodies: Transnational Activism, the Insurgency in the North Caucasus and "Beyond"'. *Terrorism and Political Violence*, 27:3, 2015, pp. 395–415.

Moreno, Luís and Nicola McEwen. 'Exploring the Territorial Politics of Welfare'. In *The Territorial Politics of Welfare*. Luís Moreno and Nicola McEwen (eds.). New York: Routledge, 2005.

Morning, Ann. 'Multiraciality and Census Classification in Global Perspective'. In *International Perspectives on Racial and Ethnic Mixedness and Mixing*. Rosalind Edwards, Suki Ali, Chamion Caballero, and Miri Song (eds.). London: Routledge, 2012.

Moschella, Melissa. 'Natural Law, Parental Rights, and Education Policy'. *American Journal of Jurisprudence*, 59:2, 2014, pp. 197–227.

Moses, Mike. 'Privilege, Oppression, and the Gospel: A Biblical Response to Intersectionality'. *Presbyterion*, 45:1, Spring 2019, pp. 128–152.

Mostov, Julie. 'Soft Borders and Transnational Citizens'. In *Identities, Affiliations, and Allegiances*. Benhabib, Shapiro, and Petranović (eds.).

Motomura, Amy R. 'The American Jury: Can Noncitizens Still Be Excluded?' *Stanford Law Review*, 64, June 2012, pp. 1503–1550.

Mount, Ferdinand. *The Subversive Family: An Alternative History of Love and Marriage*. London: Unwin, 1982.

Mouw, Richard J. 'Some Reflections on Sphere Sovereignty'. In *Religion, Pluralism, and Public Life*. Lugo (ed.).

Muchlinski, Peter T. '"Global Bukowina" Examined: Viewing the Multinational Enterprise as a Transnational Law-Making Community'. In *Global Law Without a State*. Teubner (ed.).

Mullan, P. Carl. *A History of Digital Currency in the United States: New Technology in an Unregulated Market*. New York: Palgrave Macmillan, 2016.

Müller, Jan-Werner. 'Value Pluralism in Twentieth Century Anglo-American Thought'. In *Modern Pluralism*. Bevir (ed.).

Murray, Charles. *In Our Hands: A Plan to Replace the Welfare State*. Washington, DC: AEI Press, 2006.

Murray, Charles. *Losing Ground: American Social Policy, 1950–1980*. New York: Basic Books, 1984.

Murray, Charles. *Real Education: Four Simple Truths for Bringing America's Schools Back to Reality*. New York: Crown Forum, 2008.

Nagel, Thomas. 'Liberal Democracy and Hereditary Inequality'. *Tax Law Review*, 63, 2009, pp. 113–121.

Nagel, Thomas and Liam Murphy. *The Myth of Ownership: Taxes and Justice*. Oxford: Oxford University Press, 2002.

Naoki Kojiro. 'The History of the Tennō (Emperor) System and Its Role in Japanese Politics'. In *Forms of Control and Subordination in Antiquity* Yuge and Doi (eds.).

Näsström, Sofia. 'What Globalisation Overshadows'. *Political Theory*, 31:6, December 2003, pp. 808–834.

Nett, Roger. 'The Civil Right We Are Not Ready For: The Right of Free Movement of People on the Face of the Earth'. *Ethics*, 81:3, April 1971, pp. 212–227.

Nettl, J. P. 'The State as a Conceptual Variable'. *World Politics*, 20:4, July 1968, pp. 559–592.

Neuman, Gerald L. 'Extraterritoriality and the Interest of the United States in Regulating Its Own'. *Cornell Law Review*, 99:6, September 2014, pp. 1441–70.

Neuman, Gerald L. '"We Are the People": Alien Suffrage in German and American Perspective'. *Michigan Journal of International Law*, 13, Winter 1992, pp. 259–335.

Neumann, Franz. 'Types of Natural Law'. In *The Democratic and the Authoritarian State: Essays in Political and Legal Theory*. Herbert Marcuse (ed.). Glencoe, IL: The Free Press, 1957.

Ng Kam Weng. 'Covenant Politics and Pluralist Democracy for a New Asia: An Asian Christian Social Vision'. *Transformation*, 21:2, April 2004, pp. 83–92.

Nhlapo, Thandabantu. 'Cultural Diversity, Human Rights, and the Family in Contemporary Africa: Lessons from the South African Constitutional Debate'. In *Families Across Frontiers*. Lowe and Douglas (eds.).

Nicholls, David. *The Pluralist State*. London: Macmillan Press, 1975.

Nicholls, David. *Three Varieties of Pluralism*. London: Macmillan Press, 1974.

Nickels, Bryan. 'Native American Free Passage Rights Under the 1794 Jay Treaty: Survival Under United States Statutory Law and Canadian Common Law'. *Boston College International and Comparative Law Review*, 24:2, 2001, pp. 313–340.

Niesen, Peter. 'Constituent Power in Global Constitutionalism'. In *Handbook on Global Constitutionalism*. Lang and Wiener (eds.).

Nietzsche, Friedrich. 'Thus Spoke Zarathustra'. In *The Portable Nietzsche*. Walter Kaufmann (ed.). New York: Penguin Books, 1954 [1892].

Nisbet, Robert A. *Tradition and Revolt: Historical and Sociological Essays*. New York: Vintage Books, 1970.

Nithiyanandam, V. Nithi and Rukmani Gounder. 'Equals in Markets? Land Property Rights and Ethnicity in Fiji and Sri Lanka'. In *Land Rights, Ethno-Nationality, and Sovereignty in History*. Engerman and Metzer (eds.).

Nitz, Hans-Jürgen. 'Planned Temple Towns and Brahmin Villages as Spatial Expressions of the Ritual Politics of Mediæval Kingdoms in South India'. In *Ideology and Landscape in Historical Perspective*. Baker and Biger (eds.).

Nock, Steven L. 'Time and Gender in Marriage'. *Virginia Law Review*, 86:8, November 2000, pp. 1971–1987.

Noiriel, Gérard. 'The Identification of the Citizen: The Birth of Republican Civil Status in France'. In *Documenting Individual Identity*. Caplan and Torpey (eds.).

Norris, Pippa and Ronald Inglehart. *Sacred and Secular: Religion and Politics Worldwide*. Cambridge: Cambridge University Press, 2004.

Nothwehr, Dawn M. 'Defining "Racisms" in a Globalised, Terrorised, Ecologically Threatened World'. *New Theology Review*, February 2008, pp. 5–17.

Nothwehr, Dawn M. *That They May Be One: Catholic Social Teaching on Racism, Tribalism and Xenophobia*. Maryknoll, NY: Orbis Books, 2008.

Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic Books, 1974.

Nozick, Robert. 'Why Do Intellectuals Oppose Capitalism?' In *The Future of Private Enterprise: Ideas for a Changing World*. Craig E. Aronoff, Randall B. Goodwin, and John L. Ward (eds.). Atlanta, GA: Georgia State University, 1986.

Nussbaum, Martha C. *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge, MA: Harvard University Press, 2006.

Nylan, Michael. 'Boundaries of the Body and Body Politic in Early Confucian Thought'. In *Boundaries and Justice: Diverse Ethical Perspectives*. Miller and Hashmi (eds.).

Oakley, Francis. 'Mediæval Constitutionalism'. In *Handbook on Global Constitutionalism*. Lang and Wiener (eds.).

Oates, Wallace E. 'On the Theory and Practice of Fiscal Decentralization', Working Papers 2006-05, University of Kentucky, Institute for Federalism and Intergovernmental Relations, May 2006. https://ideas.repec.org/p/ifr/wpaper/2006-05.html

Oberman, Kieran. 'Immigration as a Human Right'. In *Migration in Political Theory.* Fine and Ypi (eds.).

Oberman, Kieran. 'Poverty and Immigration Policy'. *American Political Science Review*, 109:2, May 2015, pp. 239–51.

O'Donovan, Oliver. 'Christianity and Territorial Right'. In *States, Nations, and Borders*. Buchanan and Moore (eds.).

Oelofsen, Rianna. 'Group Responsibility in the Aftermath of Apartheid'. *South African Journal of Philosophy*, 27:4, 2008, pp. 340–352.

Ohlander, Erik. 'Enacting Justice, Ensuring Salvation: The Trope of the "Just Ruler" in Some Mediæval Islamic Mirrors for Princes'. *Muslim World*, 99, April 2009, pp. 237–252.

Okin, Susan Moller. 'Is Multiculturalism Bad for Women?' In *Is Multiculturalism Bad for Women?* Cohen, Howard, and Nussbaum (eds.).

Olsen, Tore Vincents. 'Europe: United Under God? Or Not?' In *Political Theory and the European Constitution*. Dobson and Follesdal (eds.).

Orgad, Liav. *The Cultural Defence of Nations*. Oxford: Oxford University Press, 2015.

Orwin, Alexander I. 'Can Humankind Deliberate on a Global Scale? Alfarabi and the Politics of the Inhabited World'. *American Political Science Review*, 108:4, November 2014, pp. 830–839.

Owensby, Brian P. 'Between Justice and Economics: "Indians" and Reformism in Eighteenth Century Spanish Imperial Thought'. In *Legal Pluralism and Empires, 1500–1850*. Benton and Ross (eds.).

Pagden, Anthony. 'The Christian Tradition'. In *States, Nations, and Borders*. Buchanan and Moore (eds.).

Pangalangan, Raul C. 'Territorial Sovereignty: Command, Title, and the Expanding Claims of the Commons'. In *Boundaries and Justice: Diverse Ethical Perspectives*. Miller and Hashmi (eds.).

Paret, Rudolf. 'Istihsan and Istislah'. In *Encyclopædia of Islam*. Peri Bearman et al. (eds.).

Paris, Peter J. 'The African and African-American Understanding of Our Common Humanity: A Critique of Abraham Kuyper's Anthropology'. In *Religion, Pluralism, and Public Life*. Lugo (ed.).

Patapan, Haig. 'Leviathan's Children: On the Origins of Modern Hospitality'. In *Hospitality and World Politics*. Baker (ed.).

Patterson, Orlando. *Slavery and Social Death: A Comparative Study*. Cambridge, MA: Harvard University Press, 1982.

Paulus, Andreas L. 'The International Legal System as a Constitution'. In *Ruling the World?* Dunoff and Trachtman (eds.).

Payne, Sebastian. 'The Royal Prerogative'. In *The Nature of the Crown*. Sunkin and Payne (eds.).

Peerenboom, Randall. *Law and Morality in Ancient China: The Silk Manuscripts of Huang-Lao*. Albany, NY: State University of New York Press, 1993.

Peeters, Miek. 'Free Movement of Patients: Directive 2011/24 on the Application of Patients' Rights in Cross-Border Healthcare'. *European Journal of Health Law*, 19, 2012, pp. 29–60.

Peffley, Mark and Robert Rohrschneider. 'Democratisation and Political Tolerance in Seventeen Countries: A Multi-Level Model of Democratic Learning'. *Political Research Quarterly*, 56:3, September 2003, pp. 243–257.

Pellat, Charles; D M Hawke (trans.). *The Life and Works of Jāḥiẓ*. London: Routledge and Kegan Paul, 1969 [1967].

Pence, Canon. 'Japanese Only: Xenophobic Exclusion in Japan's Private Sphere'. *New York International Law Review*, 101, Summer 2007, pp. 1–73.

Pennington, K. 'Law, Legislative Authority, and Theories of Government, 1150–1300'. In *The Cambridge History of Mediæval Political Thought*. Burns (ed.).

Perry, Jonathan Scott. *The Roman Collegia: The Modern Evolution of an Ancient Concept*. Leiden: Brill, 2006.

Peruzzotti, Enrique. 'Democratic Credentials or Bridging Mechanisms? Constituents, Representatives, and the Dual Politics of Democratic Representation'. In *Legitimacy Beyond the State?* Erman and Uhlin eds.

Peters, Anne. 'Compensatory Constitutionalism: The Function and Potential of Fundamental International Norms and Structures'. *Leiden Journal of International Law*, 19, 2006, pp. 579–610.

Pettit, Philip. 'Legitimate International Institutions: A Neo-Republican Perspective'. In *The Philosophy of International Law*. Besson and Tasioulas (eds.).

Phillips, Brian J. 'What Is a Terrorist Group? Conceptual Issues and Empirical Implications'. *Terrorism and Political Violence*, 27:2, 2015, pp. 225–242.

Pike, Luke Owen. *A Constitutional History of the House of Lords from Original Sources*. New York: Burt Franklin, 1963 [1894].

Pines, Yuri. *Envisioning Eternal Empire: Chinese Political Thought of the Warring States Era*. Honolulu, HI: University of Hawai'i Press, 2009.

Pinker, Steven. *The Better Angels of Our Nature*. New York: Penguin Books, 2011.

Pitkin, Hanna Fenichel. 'Representation'. In *Political Innovation and Conceptual Change*. Ball, Farr, and Hanson (eds.).

Plato, Richard W. Sterling and William C. Scott (trans.). *The Republic*. New York: W. W. Norton, 1985.

Pocock, J. G. A. 'The Ideal of Citizenship Since Classical Times'. In *Theorising Citizenship.* Beiner (ed.).

Pocock, J. G. A. 'Introduction'. In *Reflections on the Revolution in France*. J. G. A. Pocock (ed.).

Pogge, Thomas W. *Realising Rawls*. Ithaca, NY: Cornell University Press, 1989.

Pohl, Christine D. 'Responding to Strangers: Insights from the Christian Tradition'. *Studies in Christian Ethics*, 19:1, 2006, pp. 81–101.

Pokalova, Elena. 'Legislative Responses to Terrorism: What Drives States to Adopt New Counterterrorism Legislation?' *Terrorism and Political Violence*, 27:3, 2015, pp. 474–496.

Polan, Diane. 'Toward a Theory of Law and Patriarchy'. In *The Politics of Law*. Kairys (ed.).

Pollitt, Katha. 'Whose Culture?' In *Is Multiculturalism Bad for Women?* Cohen, Howard, and Nussbaum (eds.).

Poptcheva, Eva-Maria and David Eatock. 'The UK's "New Settlement" in the European Union: Renegotiation and Referendum'. European Parliamentary Research Service Report, February 2016, http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/577983/EPRS_IDA(2016)577983_EN.pdf, accessed 20 January 2018.

Porter, Tony and Verónica Rubio Vega. 'Global Forum on Transparency and Exchange of Information for Tax Purposes'. In *Handbook of Transnational Governance*. Hale and Held (eds.).

Powell, J. Enoch and Keith Wallis. *The House of Lords in the Middle Ages: A History of the English House of Lords to 1540*. London: Weidenfeld and Nicolson, 1968.

de la Pradelle, Géraud. 'Dual Nationality and the French Citizenship Tradition'. In *Dual Nationality, Social Rights, and Federal Citizenship in the US and Europe.* Hansen and Weil (eds.).

Pradera, Víctor. *El estado nuevo*. Madrid: Cultura Española, 1935.

Preston, Paul. *Juan Carlos: A People's King*. London: Harper Collins, 2004.

Preuß, Ulrich K. 'Citizenship and the German Nation'. In *Lineages of European Citizenship.* Bellamy, Castiglione, and Santoro (eds.).

Pritchett, Lant. *Let Their People Come: Breaking the Gridlock on Global Labour Mobility*. Baltimore, MD: Centre for Global Development, 2006.

Prochaska, Frank. *Royal Bounty: The Making of a Welfare Monarchy*. New Haven, CT: Yale University Press, 1995.

Provan, Iain. *Convenient Myths: The Axial Age, Dark Green Religion, and the World That Never Was*. Waco, TX: Baylor University Press, 2013.

Qi Huaigao and Shen Dingli. 'Chinese Traditional World Citizenship Thought and Its Impact on the Cultivation of Chinese World Citizenship Awareness'. *Citizenship Studies*, 19:3/4, 2015, pp. 267–284.

Qian Mu [钱穆]. 中国历代政治得失. 北京: 三联书店, 2018 [1969].

Quadragesimo Anno: Encyclical of Pope Pius XI on Reconstruction of the Social Order, 15 May 1931.

Quillet, Jeannine. 'Community, Counsel, and Representation'. In *The Cambridge History of Mediæval Political Thought*. Burns (ed.).

Rabkin, Jeremy A. *Law Without Nations? Why Constitutional Government Requires Sovereign States*. Princeton, NJ: Princeton University Press, 2005.

Rae, Douglas. 'Democratic Liberty and the Tyrannies of Place'. In *Democracy's Edges*. Shapiro and Hacker-Cordón (eds.).

Raina, Peter. *House of Lords Reform: A History*. Oxford: Peter Lang, 2011.

Ramadān, Tāriq. 'Ijtihad and Maslaha: The Foundations of Governance'. In *Islamic Democratic Discourse*. Muqtedar Khan (ed.).

Ramadān, Tāriq. *Western Muslims and the Future of Islam*. New York: Oxford University Press, 2005.

Ramírez, Francisco O. and John Boli. 'Global Patterns of Educational Institutionalisation'. In *Institutional Structure*. Thomas, Meyer, Ramírez, and Boli (eds.).

Ramírez, Francisco O. and John Boli. 'On the Union of States and Schools'. In *Institutional Structure*. Thomas, Meyer, Ramírez, and Boli (eds.).

Ramírez, Francisco O. and George M. Thomas. 'Structural Antecedents and Consequences of Statism'. In *Institutional Structure*. Thomas, Meyer, Ramírez, and Boli (eds.).

Rapp, John A. *Daoism and Anarchism: Critiques of State Autonomy in Ancient and Modern China*. London: Continuum Books, 2012.

Raustila, Kal. 'The Geography of Justice'. University of California, Los Angeles School of Law, Research Paper 05-7, http://ssrn.com/abstract=693924, accessed 28 May 2018.

Rawls, John. *The Law of Peoples*. Cambridge, MA: Harvard University Press, 1999.

Rawls, John. *Political Liberalism*. New York: Columbia University Press, 1993.

Rawls, John. *A Theory of Justice*. Cambridge, MA: Harvard University Press, 1999 [1971].

Razack, Sherene H. 'The "Sharia Law Debate" in Ontario: The Modernity/Premodernity Distinction in Legal Efforts to Protect Women from Culture'. *Feminist Legal Studies*, 15, 2007, pp. 3–32.

Rehrmann, Norbert. 'A Legendary Place of Encounter: The Convivencia of Moors, Jews, and Christians in Mediæval Spain'. In *The Historical Practice of Diversity*. Hoerder, Harzig, and Shubert (eds.).

Reich, Charles A. 'The New Property'. *Yale Law Journal*, 73, April 1964. In Excerpted in *Property: Mainstream and Critical Positions*. C. B. Macpherson (ed.).

Reich, Rob. 'The Civic Perils of Homeschooling'. *Educational Leadership*, 59:7, April 2002, pp. 56–59.

Renan, Ernst; Ethan Rundell (trans.). 'What Is a Nation?' Lecture Delivered at the Sorbonne on March 11th, 1882, reprinted in *Qu'est-ce qu'une nation?* Paris: Presses-Pocket, 1992.

Robé, Jean-Philippe. 'Multinational Enterprises: The Constitution of a Pluralistic Legal Order'. In *Global Law Without a State*. Teubner (ed.).

Roberts, Adrienne. 'New Constitutionalism, Disciplinary Neoliberalism, and the Locking In of Indebtedness in America'. In *New Constitutionalism and World Order*. Gill and Cutler (eds.).

Roberts, Carey. 'Hamiltonianism: The Origins of the Modern State'. In *Back on the Road to Serfdom*. Woods (ed.).

von Roda, A Gabriel. 'The State Advances, the Private Sector Retreats: Crisis Economic Policy in China'. *Global Policy*, 14 May 2010, https://www.globalpolicyjournal.com/blog/14/05/2010/state-advances-private-sector-retreats-crisis-economic-policy-china, accessed 10 August 2018.

Rogers, James Kenneth. 'The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process'. *Harvard Journal of Law and Public Policy*, 30:3, 2007, pp. 1005–1022.

Rosa, Jean-Jacques. 'The Competitive State and the Industrial Organisation of Nations'. In *Public Governance in the Age of Globalisation.* Ladeur (ed.).

Rose, Matthew. 'The Anti-Christian Alt-Right: The Perverse Thought of Right-Wing Identity Politics'. *First Things*, March 2018, https://www.firstthings.com/article/2018/03/the-anti-christian-alt-right, accessed 3 February 2021.

Rosello, Mireille. *Postcolonial Hospitality: The Immigrant as Guest*. Stanford, CA: Stanford University Press, 2001.

Rosen, Lawrence. 'Anthropological Perspectives on the Abolition of Marriage'. In *Marriage Proposals*. Bernstein (ed.).

Rosenblatt, Rand E. 'Legal Entitlement and Welfare Benefits'. In *The Politics of Law*. Kairys (ed.).

Rosenfeld, Michel. 'Modern Historical Antecedents of Global Constitutionalism in Theoretical Perspective'. In *Handbook on Global Constitutionalism*. Lang and Wiener (eds.).

Rosenstock-Hüssy, Eugen. *Out of Revolution: Autobiography of Western Man*. Eugene, OR: Wipf and Stock, 1969 [1938].

Rosenthal, Franz. *Knowledge Triumphant: The Concept of Knowledge in Mediæval Islam*. Leiden: E J Brill, 1970.

Rosenthal, Franz. *Man versus Society in Mediæval Islam*. Dimitri Gutas (ed.). Leiden: E. J. Brill, 2015.

Rosier, Katherine Brown and Scott L. Feld. 'Covenant Marriage: A New Alternative for Traditional Families'. *Journal of Comparative Family Studies*, 31:3, 2003, pp. 385–394.

Ross, Richard J. and Philip J. Stern. 'Reconstructing Early Modern Notions of Legal Pluralism'. In *Legal Pluralism and Empires, 1500–1850*. Benton and Ross (eds.).

Rotberg, Robert I. (ed.). *When States Fail: Causes and Consequences*. Princeton, NJ: Princeton University Press, 2004.

Rousseau, Jean-Jacques; G D H Cole (trans.). *The Social Contract*. London: J M Dent, 1913.

Rubenfeld, Jed. 'The Two World Orders'. *Wilson Quarterly*, 27:4, Autumn 2003, pp. 22–37.

Rubenstein, Kim and Daniel Adler. 'International Citizenship: The Future of Nationality in a Globalised World'. *Indiana Journal of Global Legal Studies*, 7:2, 2000, pp. 519–548.

Rubenstein, Kim and Niamh Lenagh-Maguire. 'More or Less Secure? Nationality Questions, Deportation, and Dual Nationality'. In *Nationality and Statelessness Under International Law*. Edwards and van Waas (eds.).

Rubin, Vitaly A. and Steven I. Levine (trans.). *Individual and State in Ancient China: Essays on Four Chinese Philosophers*. New York: Columbia University Press, 1976.

Rumbaut, Rubén. 'Severed or Sustained Attachments? Language, Identity, and Imagined Communities in the Post-Immigrant Generation'. In *The Changing Face of Home: The Transnational Lives of the Second Generation*. Levitt and Waters (eds.).

Runciman, David. *Pluralism and the Personality of the State*. Cambridge: Cambridge University Press, 1997.

Ruoff, Kenneth J. *The People's Emperor: Democracy and the Japanese Monarchy, 1945–1995*. Cambridge, MA: Harvard University Press, 2001.

Russell, Meg. *The Contemporary House of Lords: Westminster Bicameralism Revived*. Oxford: Oxford University Press, 2013.

Ryall, David. 'The Catholic Church as a Transnational Actor'. In *Non-State Actors in World Politics*. Josselin and Wallace (eds.).

Sabra, Adam. '"Prices Are in God's Hands": The Theory and Practice of Price Control in the Mediæval Islamic World'. In *Poverty and Charity in Middle Eastern Contexts*. Bonner, Ener, and Singer (eds.).

Sachedina, Abdulaziz. *The Islamic Roots of Democratic Pluralism*. Oxford: Oxford University Press, 2001.

Sachedina, Abdulaziz. 'The Role of Islam in the Public Square: Guidance or Governance?' In *Islamic Democratic Discourse*. Muqtedar Khan (ed.).

Sack, Robert David. *Human Territoriality: Its Theory and History*. Cambridge: Cambridge University Press, 1986.

Sáenz, Rogelio. 'Reflections on the Sociology of Security and Surveillance in the Study of Immigration'. *Sociological Forum*, 28:3, September 2013, pp. 624–626.

Sahlins, Marshall. 'The Stranger-King, or Elementary Forms of the Politics of Life'. *Indonesia and the Malay World*, 36:105, July 2008, pp. 177–199.

Salmond, John W. 'Citizenship and Allegiance'. *Law Quarterly Review*, 18, January 1902, pp. 49–63.

Saltamacchia, Martina. 'The Prince and the Prostitute: Competing Sovereignties in Fourteenth Century Milan'. In *Law and Sovereignty in the Middle Ages and Renaissance*. Sturges (ed.).

Sandel, Michael J. *Liberalism and the Limits of Justice*. New York: Cambridge University Press, 1982.

Sanders, Teela. 'Concluding Thoughts: The Consequences of a "Not-So-Big Society"'. In *Social Policies and Social Control*. Harrison and Sanders (eds.).

Sapio, Flora. 'Carl Schmitt in China'. *The China Story*, 7 October 2015.

Sassen, Saskia. 'De-Nationalised State Agendas and Privatised Norm-Making'. In *Public Governance in the Age of Globalisation.* Ladeur (ed.).

Sassen, Saskia. 'The Repositioning of Citizenship and Alienage: Emergent Subjects and Spaces for Politics'. In *Migration, Citizenship, Ethnos*. Bodemann and Yurdakul (eds.).

Saunders, Ben. 'Scottish Independence and the All-Affected Interests Principle'. *Politics*, 33:1, 2013, pp. 47–55.

Sautman, Barry. 'Anti-Black Racism in Post-Mao China'. *China Quarterly*, 138, June 1994, pp. 413–437.

Sautman, Barry. 'Racial Nationalism and China's External Behaviour'. *World Affairs*, 160:2, Autumn 1997, pp. 78–95.

Scalia, Antonin. Testimony to Senate Judiciary Committee, 5 October 2011.

Schacht, Joseph. 'Aman'. In *Encyclopædia of Islam*. Peri Bearman *et al* eds.

Schacht, Joseph. 'The Law'. In *Unity and Variety in Muslim Civilisation.* von Grunebaum (ed.).

Schacht, Joseph. 'Pre-Islamic Background and Early Development of Jurisprudence'. In *Law in the Middle East*. Khadduri and Liebesny (eds.).

Schacht, Joseph. 'The Schools of Law and Later Developments of Jurisprudence'. In *Law in the Middle East*. Khadduri and Liebesny (eds.).

Schlafly, Phyllis. 'Top Ten Reasons to Oppose a Con Con'. PS Eagles, http://www.pseagles.com/Top_ten_reasons_to_oppose_a_Con_Con, accessed 16 February 2019.

Scheffer, Paul; Liz Waters (trans.). *Immigrant Nations*. Cambridge: Polity Press, 2011 [2007].

Scheffler, Samuel. *Equality and Tradition: Questions of Value in Moral and Political Theory*. Oxford: Oxford University Press, 2010.

Schenk, Caress. 'Open Borders, Closed Minds: Russia's Changing Migration Policies: Liberalisation or Xenophobia?' *Demokratizatsiya*, pp. 101–121.

Scheuerman, William E. 'Cosmopolitanism and the World State'. *Review of International Studies*, 40:3, July 2014, pp. 419–441.

Scheuerman, William E. 'Executive and Exception'. In *The Handbook on Global Constitutionalism*. Lang and Wiener (eds.).

Schmitt, Carl and Jeffrey Seitzer (trans.). *Constitutional Theory*. Durham, NC: Duke University Press, 2008 [1928].

Schmitt, Carl and George Schwab (trans.). *Political Theology: Four Chapters on the Concept of Sovereignty*. Cambridge, MA: The MIT Press, 1985 [1922].

Schmitt, Carl and Samuel Garrett Zeitlin (trans.). *Land and Sea: A World-Historical Meditation*. Candor, NY: Telos Press, 2015 [1942].

Schneider, Carl E. 'The Channelling Function in Family Law'. *Hofstra Law Review*, 20:3, 1992, pp. 495–532.

Schoeman, Ferdinand. 'Rights of Children, Rights of Parents, and the Moral Basis of the Family'. *Ethics*, 91:1, October 1980, pp. 6–19.

Schoenblum, Jeffrey A. 'The Role of Legal Doctrine in the Decline of the Islamic Waqf: A Comparison with the Trust'. *Vanderbilt Journal of Transnational Law*, 32, 1999, pp. 1191–1227.

Scholte, Jan Aart. 'Civil Society and Democracy in Global Governance'. *Global Governance*, 8, 2002, pp. 281–304.

Schönlau, Justus. 'The Convention on the Future of Europe and Its Antecedents'. In *Constitutional Politics in the European Union*. Castiglione, Schönlau, Longman, Lombardo, Pérez-Solorzano Borragán, and Aziz (eds.).

Schrag, Francis. 'The Right to Educate'. *The School Review*, 79:3, May 1971, pp. 359–378.

Schuck, Peter H. 'Plural Citizenships'. In *Dual Nationality, Social Rights, and Federal Citizenship in the US and Europe.* Hansen and Weil (eds.).

Schuck, Peter H. 'Should Those Who Attack the Nation Have an Absolute Right to Remain Its Citizens?' European Union Democracy Observatory on Citizenship, http://eudo-citizenship.eu/commentaries/citizenship-forum/1268-the-return-of-banishment-do-the-new-denationalisation-policies-weaken-citizenship, accessed 5 December 2014.

Schumpeter, Joseph A. *Capitalism, Socialism, and Democracy*. New York: Harper, 1962 [1942].

Schwartz, Benjamin I. 'The Primacy of the Political Order in East Asian Societies: Some Preliminary Generalisations'. In *Foundations and Limits of State Power in China*. Schram (ed.).

Schwartz, Benjamin I. 'Some Polarities in Confucian Thought'. In *Confucianism and Chinese Civilisation*. Arthur F. Wright (ed.). New York: Atheneum, 1964.

Schwartzman, Micah. 'What If Religion Isn't Special?' University of Virginia School of Law, Public Law and Legal Theory, Working Paper Series 2012–03, Charlottesville, VA, January 2012.

Schwöbel-Patel, Christine. 'The Political Economy of Global Constitutionalism'. In *The Handbook on Global Constitutionalism*. Lang and Wiener (eds.).

Scott, James C. *Against the Grain: A Deep History of the Earliest States*. New Have,n CT: Yale University Press, 2017.

Scott, James C. *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia*. New Haven, CT: Yale University Press, 2009.

Scott, James C. *The Moral Economy of the Peasant: Rebellion and Subsistence in Southeast Asia.* New Haven, CT: Yale University Press, 1976.

Scruton, Roger. *A Political Philosophy: Arguments for Conservatism*. New York: Continuum, 2006.

Segall, Shlomi. *Health, Luck, and Justice*. Princeton, NJ: Princeton University Press, 2010.

Seglow, Jonathan. 'Immigration Justice and Borders: Towards a Global Agreement'. *Contemporary Politics*, 12:3/4, September/December 2006, pp. 233–246.

Seldon, Arthur. *The State Is Rolling Back. The Collected Works of Arthur Seldon*, vol 2. Colin Robinson (ed.). Indianapolis, IN: Liberty Fund, 2004.

Sen, Amartya. 'Capability and Wellbeing'. In *The Quality of Life*. Martha Nussbaum and Amartya Sen (eds.). Oxford: Oxford University Press, 1993.

Shachar, Ayelet. 'Against Birthright Privilege: Redefining Citizenship as Property'. In *Identities, Affiliations, and Allegiances*. Benhabib, Shapiro, and Petranović (eds.).

Shachar, Ayelet. *The Birthright Lottery: Citizenship and Global Inequality*. Cambridge, MA: Harvard University Press, 2009.

Shachar, Ayelet. *Multicultural Jurisdictions: Cultural Differences and Women's Rights*. Cambridge: Cambridge University Press, 2001.

Shadd, Philip D. *Understanding Legitimacy: Political Theory and Neo-Calvinist Social Thought*. Lanham, MD: Lexington Books, 2016.

Shalhope, Robert E. 'The Ideological Origins of the Second Amendment'. *Journal of American History*, 69, 1982, pp. 599–614.

Shamir, Ronen. 'Without Borders? Notes on Globalisation as a Mobility Regime'. *Sociological Theory*, 23:2, June 2005, pp. 197–217.

Shanley, Mary Lyndon. 'The State of Marriage and the State in Marriage: What Must Be Done?' In *Marriage Proposals*. Bernstein (ed.).

Shapiro, Martin. '"Deliberative", "Independent" Technocracy v. Democratic Politics: Will the Globe Echo the EU?' *Law and Contemporary Problems*, 68:3/4, Summer/Autumn 2005, pp. 341–356.

Shaw, Martin. 'Civil Society and Global Politics: Beyond a Social Movements Approach'. *Millennium*, 23:3, 1994, pp. 647–667.

Shaxson, Nicholas and John Christensen. 'Tax Competitiveness: A Dangerous Obsession'. In *Global Tax Fairness*. Pogge and Mehta (eds.).

al-Shaybānī, Muhammad ibn al-Hasan; Majid Khadduri (trans.). *The Islamic Law of Nations: Shaybānī's Siyar*. Baltimore, MD: Johns Hopkins Press, 1966.

Shefer, Miri. 'Charity and Hospitality: Hospitals in the Ottoman Empire in the Early Modern Period'. In *Poverty and Charity in Middle Eastern Contexts*. Bonner, Ener, and Singer (eds.).

Sherman, Jeffrey G. 'Posthumous Meddling: An Instrumentalist Theory of Testamentary Restraints on Conjugal and Religious Choices'. *University of Illinois Law Review*, 4, 1999, pp. 1273–1330.

Shils, Edward. *The Intellectuals and the Powers and Other Essays*. Chicago, IL: University of Chicago Press, 1972.

Shils, Edward. 'No Salvation Outside Higher Education'. *Minerva*, 9:3, July 1971, pp. 313–321.

Shipper, Apichai W. 'Criminals or Victims? The Politics of Illegal Foreigners in Japan'. *Journal of Japanese Studies*, 31:2, Summer 2005, pp. 299–327.

Shrage, Laurie. 'Reforming Marriage: A Comparative Approach'. *Journal of Applied Philosophy*, 30:2, 2013, pp. 107–21.

Shukert, Douglas. 'Culture, Nationalism, and "Saving Face": Sport and Discrimination in Modern Japan'. *Culture, Sport, Society*, 5:1, Spring 2002, pp. 71–85.

Sidgwick, Henry. *The Elements of Politics*, 2nd ed. New York: Macmillan, 1897.

Sigmund, Paul E. 'Subsidiarity, Solidarity, and Liberation: Alternative Approaches in Catholic Social Thought'. In *Religion, Pluralism, and Public Life*. Lugo (ed.).

Sillitoe, Paul. 'Why Spheres of Exchange?' *Ethnology*, 45:1, 2006, pp. 1–23.

Simon, Thomas. 'Citizenship as a Weapon'. *Citizenship Studies*, 17:3/4, 2013, pp. 505–24.

Singer, Amy. 'Charity's Legacies: Reconsideration of Ottoman Imperial Endowment-Making'. In *Poverty and Charity in Middle Eastern Contexts*. Bonner, Ener, and Singer (eds.).

Singer, Joseph William. 'Titles of Nobility: Property, Poverty, and Immigration in a Free and Democratic Society'. Harvard Public Law Working Paper No. 13-32, Cambridge, MA, 12 June 2013.

Skillen, James W. and Rockne M McCarthy. 'Introduction' and 'Three Views of Social Pluralism: A Critical Evaluation'. In *Political Order and the Plural Structure of Society*. Skillen and McCarthy (eds.).

Skinner, G. William. 'Cities and the Hierarchy of Local Systems'. In *The City in Late Imperial China*. G. William Skinner (ed.). Stanford, CA: Stanford University Press, 1977.

Skinner, Quentin. *Liberty Before Liberalism*. Cambridge: Cambridge University Press, 1998.

Skinner, Quentin. 'The State'. In *Political Innovation and Conceptual Change*. Ball, Farr, and Hanson (eds.).

Slakter, David. 'On Matsayanyaya: The State of Nature in Indian Thought'. In *The State of Nature in Comparative Political Thought.* Carlson and Fox (eds.).

Slater, Angus M. 'The "Comeback of Christendom" or a "Christian Cosmopolis"? Dialogical Possibilities in the Work of John Milbank'. *Journal of Dialogue Studies*, 3:2, 2015, pp. 31–51.

Slaughter, Anne-Marie. 'Global Government Networks, Global Information Agencies, and Disaggregated Democracy'. In *Public Governance in the Age of Globalisation*. Ladeur (ed.).

Slaughter, Anne-Marie. 'The Real New World Order'. *Foreign Affairs*, 76:5, 1997, pp. 183–97.

Smith, Anthony D. 'Towards a Global Culture?' In *Global Culture: Nationalism, Globalisation, and Modernity*. Mike Featherstone (ed.). London: Sage Publications, 1990.

Smith, E. A. *The House of Lords in British Politics and Society, 1815–1911*. London: Longman, 1992.

Smith, Julie. 'Political Parties in a Global Age'. In *Non-State Actors in World Politics*. Josselin and Wallace (eds.).

Smith, William. 'Anticipating Transnational Publics: On the Use of Mini-Publics in Transnational Governance'. *Politics and Society*, 41:3, 2013, pp. 461–484.

Sobel, Richard and Ramón L Torres. 'The Right to Travel: A Fundamental Right of Citizenship'. *Journal of Transportation Law, Logistics, and Policy*, 80:1, 2013, pp. 13–47.

Solanki, Gopika. *Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, and Gender Equality in India*. Cambridge: Cambridge University Press, 2011.

Solot, Dorian and Marshall Miller. 'Taking Government Out of the Marriage Business: Families Would Benefit'. In *Marriage Proposals*. Bernstein (ed.).

Somers, Margaret R. 'Citizenship, Statelessness, and Market Fundamentalism: Arendtian Right to Have Rights'. In *Migration, Citizenship, Ethnos.* Bodemann and Yurdakul (eds.).

Son Bong Ho. 'Relevance of Sphere Sovereignty to Korean Society'. In *Kuyper Reconsidered*. van der Kooi and de Bruijn (eds.).

Song Jaeyoon. 'The Zhou Li and Constitutionalism: A Southern Song Political Theory'. *Journal of Chinese Philosophy*, 36:3, September 2009, pp. 424–438.

Song, Sarah. 'The Significance of Territorial Presence and the Rights of Immigrants'. In *Migration in Political Theory.* Fine and Ypi (eds.).

Sonn, Tamara. 'Elements of Government in Classical Islam'. In *Islamic Democratic Discourse*. Muqtedar Khan (ed.).

Sophocles; David Franklin and John Harrison (trans.). *Antigone*. Cambridge: Cambridge University Press, 2003.

de Sousa Santos, Boaventura. 'The Heterogeneous State and Legal Pluralism in Mozambique'. *Law and Society Review*, 40:1, March 2006, pp. 39–75.

de Sousa Santos, Boaventura. 'Law: A Map of Misreading: Toward a Postmodern Conception of Law'. *Journal of Law and Society*, 14:3, Autumn 1987, pp. 279–302.

de Sousa Santos, Boaventura. 'Towards a Socio-Legal Theory of Indignation'. In *Law's Ethical, Global, and Theoretical Contexts*. Baxi, McCrudden, and Paliwala (eds.).

Soysal, Yasemin Nuhoğlu. *Limits of Citizenship: Migrants and Postnational Membership in Europe*. Chicago, IL: University of Chicago Press, 1994.

Spång, Mikael. *Constituent Power and Constitutional Order: Above, Within, and Beside the Constitution*. New York: Palgrave Macmillan, 2014.

Spector, Horacio. 'Four Conceptions of Freedom'. *Political Theory*, 38:6, December 2010, pp. 780–808.

Spellman, John W. *Political Theory of Ancient India: A Study of Kingship from the Earliest Times to Circa AD 300*. Oxford: Clarendon Press, 1964.

Spiro, Peter J. 'Embracing Dual Nationality'. In *Dual Nationality, Social Rights, and Federal Citizenship in the US and Europe.* Hansen and Weil (eds.).

Spiro, Peter J. 'A New International Law of Citizenship'. *American Journal of International Law*, 105:4, October 2011, pp. 694–746.

Spiro, Peter J. 'The New Sovereigntists: American Exceptionalism and Its False Prophets'. *Foreign Affairs*, 79:6, November/December 2000, pp. 9–15.

Spiro, Peter J. 'Terrorist Expatriation: All Show, No Bite, No Future'. European Union Democracy Observatory on Citizenship, http://eudo-citizenship.eu/commentaries/citizenship-forum/1268-the-return-of-banishment-do-the-new-denationalisation-policies-weaken-citizenship, accessed 5 December 2014.

Spruyt, Hendrik. *The Sovereign State and Its Competitors: An Analysis of Systems Change*. Princeton, NJ: Princeton University Press, 1994.

Sreejesh, N. P. 'Multiculturalism in South Korea: Role of Foreign Brides in the Transformation of Korean Identity'. *Indian Journal of Politics and International Relations*, 4:1/2, 2011, pp. 130–149.

Staeheli, Lynn A. 'Political Geography: Where's Citizenship?' *Progress in Human Geography*, 35:3, 2011, pp. 393–400.

Stampnitzky, Lisa. 'How Does "Culture" Become "Capital"? Cultural and Institutional Struggles Over "Character and Personality" at Harvard'. *Sociological Perspectives*, 49:4, Winter 2006, pp. 461–481.

Stampnitzky, Lisa. 'Toward a Sociology of "Security"'. *Sociological Forum*, 28:3, September 2013, pp. 631–633.

Stangler, Dane. 'Entrepreneurship and Government'. In *Back on the Road to Serfdom*. Woods (ed.).

Stears, Marc. *Progressives, Pluralists, and the Problems of the State: Ideologies of Reform in the United States and Britain, 1909–1926*. Oxford: Oxford University Press, 2002.

Steele, David Ramsay. 'Why Stop at Term Limits?' *National Review*, 11 September 1995, pp. 38–43.

Stehr, Nico. 'Exceptional Circumstances: Does Climate Change Trump Democracy?' *Issues in Science and Technology*, 32, Winter 2016, pp. 37–44.

Stern, Philip J. '"Bundles of Hyphens": Corporations as Legal Communities in the Early Modern British Empire'. In *Legal Pluralism and Empires, 1500–1850*. Benton and Ross (eds.).

Stevenson, Hayley. 'The Wisdom of the Many in Global Governance: An Epistemic-Democratic Defence of Diversity and Inclusion'. *International Studies Quarterly*, 60, 2016, pp. 400–412.

Stilz, Anna. 'Collective Responsibility and the State'. *Journal of Political Philosophy*, 19:2, 2011, pp. 190–208.

Stilz, Anna. 'Is There an Unqualified Right to Leave?' In *Migration in Political Theory.* Fine and Ypi (eds.).

Stilz, Anna. 'Occupancy Rights and the Wrong of Removal'. *Philosophy and Public Affairs*, 41:4, 2013, pp. 324–56.

Stolzenberg, Nomi. 'The Profanity of Law'. In *Law and the Sacred*. Sarat, Douglas, and Umphrey (eds.).

Stone, Diane. 'The "Policy Research" Knowledge Elite and Global Policy Processes'. *Non-State Actors in World Politics*. Josselin and Wallace (eds.).

Storkey, Elaine. 'Sphere Sovereignty and the Anglo-American Tradition'. In *Religion, Pluralism, and Public Life*. Lugo (ed.).

Storme, T, J R Faulconbridge, J V Beaverstock, B Derudder, and F Witlox. 'Mobility and Professional Networks in Academia: An Exploration of the Obligations of Presence'. *Mobilities*, 12:3, 2017, pp. 405–424.

Strasser, Mark. 'Interstate Marriage Recognition and the Right to Travel'. *Wisconsin Journal of Law, Gender, and Society*, *International Studies Quarterly* (2016) 60, 400–412 25:1, Spring 2010, pp. 1–34.

Strauss, P. J. 'Abraham Kuyper and Pro-Apartheid Theologians in South Africa: The Former Misused by the Latter?' In *Kuyper Reconsidered*. van der Kooi and de Bruijn (eds.).

van der Streek, Hillie J. 'Kuyper's Legacy and Multiculturalism: Gender in His Conception of Democracy and Sphere Sovereignty'. In *On Kuyper: A Collection of Readings on the Life, Work, and Legacy of Abraham Kuyper*. Steve Bishop and John H. Kok (eds.). Sioux Centre, IA: Dordt College Press, 2013.

Stringham, Edward. 'Market Chosen Law'. *Journal of Libertarian Studies*, 14:1, 1999, pp. 53–77.

Sturm, Johan and Siebren Miedema. 'Kuyper's Educational Legacy: Schooling for a Pluralist Society'. In *Kuyper Reconsidered*. van der Kooi and de Bruijn (eds.).

Sunstein, Cass R. 'Should Sex Equality Law Apply to Religious Institutions?' In *Is Multiculturalism Bad for Women?* Cohen, Howard, and Nussbaum (eds.).

Sunstein, Cass R. and Adrian Vermeule. 'The Morality of Administrative Law'. *Harvard Law Review*, 131, 2018, pp. 1924–1978.

Surak, Kristin. 'Convergence in Foreigners' Rights and Citizenship Policies? A Look at Japan'. *International Migration Review*, 42:3, Autumn 2008, pp. 550–575.

Sutherland, Keith. *A People's Parliament*. Exeter: Imprint Academic, 2008.

Sykiainen, Leonid. 'Democracy and the Dialogue Between Western and Islamic Legal Cultures: The Gülen Case'. In *Muslim Citizens of the Globalised World*. Hunt and Aslandogan (eds.).

Tamanaha, Brian Z. 'Understanding Legal Pluralism: Past to Present, Local to Global'. *Sydney Law Review*, 30, 2008, pp. 375–411.

Tamir, Yael. 'Siding with the Underdogs'. In *Is Multiculturalism Bad for Women?* Cohen, Howard, and Nussbaum (eds.).

Tamir, Yael. 'Who's Afraid of a Global State?' In *Nationalism and Internationalism in the Post-Cold War Era*. Kjell Goldmann, Ulf Hannerz, and Charles Westin (eds.). London: Routledge, 2000.

Tan Kok-Chor. 'Colonialism, Reparations, and Global Justice'. In *Reparations*. Miller and Kumar (eds.).

Tan Sor-hoon. 'Beyond Elitism: A Community Ideal for a Modern East Asia'. *Philosophy East and West*, 59:4, October 2009, pp. 537–553.

Tanzi, Vito. 'Lakes, Oceans, and Taxes: Why the World Needs a World Tax Authority'. In *Global Tax Fairness*. Pogge and Mehta (eds.).

Tao, Julia and Andrew Brennan. 'Confucian and Liberal Ethics for Public Policy: Holistic or Atomistic?' *Journal of Social Philosophy*, 34:4, Winter 2003, pp. 572–589.

Tarrow, Sidney. 'Transnational Politics: Contention and Institutions in International Politics'. *Annual Review of Political Science*, 4, 2001, pp. 1–20.

Tate, C. Neal and Torbjörn Vallinder. 'Judicialisation and the Future of Politics and Policy'. In *The Global Expansion of Judicial Power*. C. Neal Tate and Torbjörn Vallinder (eds.). New York: New York University Press, 1995.

Taylor, Charles. 'How to Define Secularism'. In *Boundaries of Toleration*. Stepan and Taylor (eds.).

Taylor, Peter J. 'The State as Container: Territoriality in the Modern World-System'. *Progress in Human Geography*, 18:2, 1994, pp. 151–162.

Taylor, Romeyn. 'Chinese Hierarchy in Comparative Perspective'. *Journal of Asian Studies*, 48:3, August 1989, pp. 490–511.

Teja, Ranjit S. and Barry Bracewell-Milnes. *The Case for Earmarked Taxes: Government Spending and Public Choice*. London: Institute of Economic Affairs, 1991.

Têng Ssu-yü [Deng Siyu]. 'Chinese Influence on the Western Examination System'. *Harvard Journal of Asiatic Studies*, 7:4, September 1943, pp. 267–312.

Têng Ssu-yü [Deng Siyu]. 'The Role of the Family in the Chinese Legal System'. *Journal of Asian History*, 11:2, 1977, pp. 121–155.

Tennyson, Alfred. 'Locksley Hall'. In *Poems*. London: Edward Moxon, 1842 [1835].

Teubner, Gunther. '"Global Bukowina": Legal Pluralism in the World Society'. In *Global Law Without a State*. Teubner (ed.).

Teubner, Gunther. 'Global Private Regimes: Neo-Spontaneous Law and Dual Constitution of Autonomous Sectors?' In *Public Governance in the Age of Globalisation*. Ladeur (ed.).

Thaler, Richard H. and Cass R. Sunstein. *Nudge: Improving Decisions About Health, Wealth, and Happiness*. New Haven, CT: Yale University Press, 2008.

Thangaraj, M. Thomas. 'The Clash of World Religions in the Emerging Global Society'. In *Religion, Pluralism, and Public Life*. Lugo (ed.).

Tharoor, Shashi. '"The Most Impossible Job" Description'. In *Secretary or General? The UN Secretary-General in World Politics*. Chesterman (ed.).

Théret, Bruno. 'The Socio-Political Dimensions of the Currency: Implications for the Transition to the Euro'. *Journal of Consumer Policy*, 22, 1999, pp. 51–79.

Théret, Bruno and Wojtek Kalinowski. 'The Euro as Common Money, Not a Single Currency: A Plea for a European Monetary Federalism'. Veblen Institute for Economic Reforms, September 2012, http://www.cepn-paris13.fr/epog/wp-content/uploads/2015/09/THERET_a_plea_for_a_european_monetary_federalism.pdf, accessed 14 April 2016.

Thompson, Dennis F. 'Representing Future Generations: Political Presentism and Democratic Trusteeship'. *Critical Review of International Social and Political Philosophy*, 13:1, 2010, pp. 17–37.

Thornhill, Christopher. 'The Enlightenment and Global Constitutionalism'. In *Handbook on Global Constitutionalism*. Lang and Wiener (eds.).

Thornhill, Christopher. 'A Sociology of Constituent Power: The Political Code of Transnational Societal Constitutions'. *Indiana Journal of Global Legal Studies*, 20:2, 2013, pp. 551–603.

Thue, Helge. 'Connecting Factors in International Family Law'. In *Families Across Frontiers*. Lowe and Douglas (eds.).

Tie, Warwick. *Legal Pluralism: Toward a Multicultural Conception of Law*. Brookfield, VT: Ashgate, 1999.

Tier, Akolda M. 'Techniques of Choice of Law in Conflict of Personal Laws'. *Journal of African Law*, 30:1, Spring 1986, pp. 1–19.

Tierney, Stephen. '"We the Peoples": Constituent Power and Constitutionalism in Plurinational States'. In *The Paradox of Constitutionalism*. Loughlin and Walker (eds.).

van Til, Kent A. 'Abraham Kuyper and Michael Walzer: The Justice of the Spheres'. *Calvin Theological Journal*, 40, 2005.

van Til, Kent A.. 'Subsidiarity and Sphere-Sovereignty: A Match Made in...?' *Theological Studies*, 69, 2008, pp. 610–636.

Tilly, Charles. 'Extraction and Democracy'. In *The New Fiscal Sociology*. Martin, Mehrotra, and Prasad (eds.).

Tilly, Charles.. 'Reflections on the History of European State-Making'. In *The Formation of National States in Western Europe*. Tilly (ed.).

Tilly, Charles.. 'War Making and State Making as Organised Crime'. In *Bringing the State Back In*. Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol (eds.). Cambridge: Cambridge University Press, 1985.

Tinker, Hugh. *Race, Conflict, and the International Order: From Empire to United Nations*. London: Macmillan, 1977.

Tinnevelt, Ronald and Helder de Schutter. 'Global Democracy and Exclusion'. *Metaphilosophy*, 40:1, January 2009, pp. 1–7.

Tirres, Allison Brownell. 'Ownership Without Citizenship: The Creation of Noncitizen Property Rights'. *Michigan Journal of Race and Law*, 19, Autumn 2013, pp. 1–52.

Titmuss, Richard M. *The Gift Relationship: From Human Blood to Social Policy*. London: George Allen and Unwin, 1970.

Tiwald, Justin. 'A Right of Rebellion in the Mengzi?' *Dao*, 7:3, September 2008, pp. 269–282.

de Tocqueville, Alexis and George Lawrence (trans.). *Democracy in America*. J. P. Mayer (ed.). New York: Harper and Row, 2006 [1835].

Tomlinson, John. 'Interests and Identities in Cosmopolitan Politics'. In *Conceiving Cosmopolitanism*. Vertovec and Cohen (eds.).

van Tongeren, Jonathan. 'The Problem of Scale, or Why Sphere Sovereignty Needs Subsidiarity'. Christian Political Foundation for Europe, 23 April 2012, http://www.ecpf.info/k/n30667/news/view/514822/514821/the-problem-of-scale-or-why-sphere-sovereignty-needs-subsidiarity.html, accessed 28 April 2016.

Torpey, John. 'An Avalanche of History: The "Collapse of the Future" and the Rise of Reparations Politics'. In *Historical Justice in International Perspective: How Societies are Trying to Right the Wrongs of the Past*. Manfred Berg and Bernd Schaefer (eds.). Cambridge: Cambridge University Press, 2009.

Torpey, John. *The Invention of the Passport: Surveillance, Citizenship, and the State*. Cambridge: Cambridge University Press, 2000.

Torpey, John. 'Leaving: A Comparative View'. In *Citizenship and Those Who Leave: The Politics of Emigration and Expatriation*. Nancy L. Green and François Weil (eds.). Chicago, IL: University of Illinois Press, 2007.

Toynbee, Arnold J. *A Study of History*. London: Oxford University Press, 1954.

Triadafilopoulos, Triadafilos and Karen Schönwälder. 'How the Federal Republic Became an Immigration Country: Norms, Politics, and the Failure of West Germany's Guest Worker System'. *German Politics and Society*, 24:3, Autumn 2006, pp. 1–19.

Trinh, Quang. 'The Bully Pulpit'. In *Secretary or General? The UN Secretary-General in World Politics*. Chesterman (ed.).

Trueman, Carl R. 'The Impact of Psychological Man and How to Respond'. *Public Discourse*, 10 November 2020, https://www.thepublicdiscourse.com/2020/11/72190/, accessed 23 January 2021.

Trueman, Carl R. 'The Rise of "Psychological Man"'. *Public Discourse*, 9 November 2020, https://www.thepublicdiscourse.com/2020/11/72156/, accessed 23 January 2021.

Tsebelis, George and Jeannette Money. *Bicameralism*. Cambridge: Cambridge University Press, 1997.

Tsuneishi, Warren M. *Japanese Political Style: An Introduction to the Government and Politics of Modern Japan*. New York: Harper and Row, 1966.

Tuck, Richard. 'The Left Case for Brexit'. *Dissent*, 6 June 2016, https://www.dissentmagazine.org/online_articles/left-case-brexit, accessed 17 February 2018.

Tullock, Gordon. 'Rent Seeking'. In *Property Rights and the Limits of Democracy*. Rowley (ed.).

Tully, James. *Strange Multiplicity: Constitutionalism in an Age of Diversity*. Cambridge: Cambridge University Press, 1995.

Turack, Daniel C. *The Passport in International Law*. Toronto: Lexington Books, 1972.

Turner, Bryan S. 'In Defence of Monarchy'. *Society*, 49, 2012, pp. 84–89.

Tushnet, Mark. 'Immigration Policy in Liberal Political Theory'. In *Justice in Immigration*. Schwartz (ed.).

Ṭūsī, Naṣīr al-Dīn and G. M. Wickens (trans.). *The Nasirean Ethics*. London: George Allen and Unwin, 1964.

Twitchett, Denis. 'The Fan Clan's Charitable Estate, 1050–1760'. In *Confucianism in Action*. Nivison and Wright (eds.).

Tyan, Émile. 'Bay'a'. In *Encyclopædia of Islam*. Peri Bearman et al. (eds.).

Tyan, Émile. 'Judicial Organisation'. In *Law in the Middle East*. Khadduri and Liebesny (eds.).

Tyan, Émile. 'Qadi'. In *Encyclopædia of Islam*. Peri Bearman et al. (eds.).

Ugur, Mehmet. 'The Ethics, Economics, and Governance of Free Movement'. In *Migration Without Borders.* Pécoud and de Guchteneire (eds.).

Uhlin, Anders. 'Democratic Legitimacy of Transnational Actors: Mapping Out the Conceptual Terrain'. In *Legitimacy Beyond the State?* Erman and Uhlin (eds.).

Unger, Roberto Mangabeira. *Democracy Realised: The Progressive Alternative*. London: Verso Books, 1998.

Unger, Roberto Mangabeira. *Law in Modern Society: Toward a Criticism of Social Theory.* New York: The Free Press, 1976.

Unger, Roberto Mangabeira. *Plasticity into Power: Comparative-Historical Studies on the Institutional Conditions of Economic and Military Success*. Cambridge: Cambridge University Press, 1987.

United Nations. 'International Migration and Development'. http://www.un.org/esa/population/migration/hld/Text/Migration_factsheet.pdf, accessed 21 February 2013.

United Nations. 'International Migration Report 2015'. http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015_Highlights.pdf, accessed 12 August 2017.

United Nations Human Rights Committee. *Nystrom, Nystrom, and Turner vs. Australia*. Comm. No. 1557/2007, UN Doc. CCPR/C/102/D/1557/2007 (2011).

United Nations Working Group on the Use of Mercenaries. 'Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination'. Report A/70/330, 19 August 2015.

United States Supreme Court. *Afroyim v. Rusk*, 1967.

United States Supreme Court. *McCulloch v. Maryland*. Decided 6 March 1819.

United States Supreme Court. *Obergefell v. Hodges*. Decided 26 June 2015.

United States Supreme Court. *Pérez v. Brownell.* Decided 31 March 1958.

Vasconcelos, José; Didier T Jaen (trans.). *The Cosmic Race*. Baltimore, MD: Johns Hopkins University Press, 1997 [1925].

Vaughan-Williams, Nick. *Border Politics: The Limits of Sovereign Power*. Edinburgh: Edinburgh University Press, 2009.

Venema, Cornelius P. 'Abraham Kuyper: Answering Criticisms of His Worldview'. In *On Kuyper*. Bishop and Kok (eds.).

Vercruysse, W., J. Dhaene, M. Denuit, E. Pitacco, and K. Antonio. 'Premium Indexing in Lifelong Health Insurance'. Catholic University of Leuven, Faculty of Business and Economics, AFI Paper 1274, http://www.actuaries.org/ASTIN/Colloquia/Hague/Papers/Vercruysse.pdf, accessed 24 May 2018.

Vertovec, Steven and Robin Cohen. 'Introduction: Conceiving Cosmopolitanism'. In *Conceiving Cosmopolitanism*. Vertovec and Cohen (eds.).

Vesey-Fitzgerald, S. G. 'Nature and Sources of the Shariah'. In *Law in the Middle East*. Khadduri and Liebesny (eds.).

Veteto, Jeff. 'The Alienability of Allegiance: An International Survey of Economic Citizenship Laws'. *International Lawyer*, 48:1, Summer 2014, pp. 79–104.

Vitoria, Francisco de. *Political Writings*. Anthony Pagden and Jeremy Lawrance (eds.). Cambridge: Cambridge University Press, 1991.

Vlcek, William. *Offshore Finance and Global Governance: Disciplining the Tax Nomad*. New York: Palgrave Macmillan, 2017.

Voegelin, Eric. 'World-Empire and the Unity of Mankind'. *International Affairs*, 38:2, April 1962, pp. 170–188.

Vogel, Ann. 'Democratic Legitimacy of Philanthropic Foundations: US Grant-Making in the Middle East'. In *Legitimacy Beyond the State?* Erman and Uhlin eds.

Vogelsang, Kai. 'Chinese "Society": History of a Troublesome Concept'. *Oriens Extremus*, 51, 2012, pp. 155–92.

Vogler, Theo. 'Reflections on the Creation of a Unified Criminal Law'. *Michigan Yearbook of International Legal Studies*, 198, 1983, pp. 271–277.

Voyer, Katheryn F. 'Continuing the Trend Toward Equality: The Eradication of Racially and Sexually Discriminatory Provisions in Private Trusts'. *William and Mary Bill of Rights Journal*, 7:3, 1999, pp. 943–73.

Vrousalis, Nicholas. 'Libertarian Socialism: A Better Reconciliation Between Equality and Self-Ownership'. *Social Theory and Practice*, 37:2, April 2011, pp. 211–226.

van der Vyver, Johan D. 'The Jurisprudential Legacy of Abraham Kuyper and Leo XIII'. *Journal of Markets and Morality*, 5:1, Spring 2002, pp. 211–49.

van der Vyver, Johan D. 'Sphere Sovereignty of Religious Institutions: A Contemporary Calvinistic Theory of Church–State Relations'. In *Church Autonomy: A Comparative Survey*. Gerhard Robbers (ed.). Frankfurt am Main: Peter Lang, 2001.

Wagner, Richard E. 'Parchment, Guns, and Constitutional Order'. In *Property Rights and the Limits of Democracy*. Rowley (ed.).

Waldinger, Roger. *The Cross-Border Connection: Immigrants, Emigrants, and Their Homelands*. Cambridge, MA: Harvard University Press, 2015.

Waldron, Jeremy. 'Homelessness and the Issue of Freedom'. *UCLA Law Review*, 39, 1991, pp. 295–324.

Waldron, Jeremy. 'Why Is Indigeneity Important?' In *Reparations*. Miller and Kumar (eds.).

Walker, Neil. 'Constitution and Pluralism'. In *The Handbook on Global Constitutionalism*. Lang and Wiener (eds.).

Walker, Neil. 'Constitutional Pluralism Revisited'. *European Law Journal*, 22:3, May 2016, pp. 333–355.

Walker, Neil. 'Post-Constituent Constitutionalism? The Case of the European Union'. In *The Paradox of Constitutionalism*. Loughlin and Walker (eds.).

Walker, Richard Louis. *The Multi-State System of Ancient China*. Hamden, CT: Shoestring Press, 1953.

Wallerstein, Immanuel. 'The Contradictions of the Arab Spring'. *Indian Journal of Politics and International Relations*, 4:1/2, 2011, pp. 7–15.

Walmsley, Andrew. 'Nationality Issues and the Denial of Residence in the Context of the Fight Against Terrorism: Feasibility Study'. Report prepared for the Bureau of the European Committee on Legal Cooperation, Strasbourg, 5 December 2006.

van der Walt, B. J. 'Christian Religion and Society: The Heritage of Abraham Kuyper for (South) Africa'. In *Kuyper Reconsidered*. van der Kooi and de Bruijn (eds.).

Walzer, Michael. 'Citizenship'. In *Political Innovation and Conceptual Change*. Ball, Farr, and Hanson (eds.).

Walzer, Michael. 'The Civil Society Argument'. In *Theorising Citizenship*. Beiner (ed.).

Walzer, Michael. *Spheres of Justice: A Defence of Pluralism and Equality*. New York: Basic Books, 1983.

Wang Hongying. 'Chinese Culture and Multilateralism'. In *The New Realism*. Cox (ed.).

Wardle, Lynn D. 'International Marriage Recognition: A World Dilemma'. In *Families Across Frontiers*. Lowe and Douglas (eds.).

Washington, Robert E. 'Brown Racism and the Formation of a World System of Racial Stratification'. *International Journal of Politics, Culture, and Society*, 4:2, Winter 1990, pp. 209–27.

Watkin, Thomas Glyn. *An Historical Introduction to Modern Civil Law*. Aldershot: Dartmouth, 1999.

Watson, George et al. *The Unservile State: Essays in Liberty and Welfare*. London: George Allen and Unwin, 1957.
Watt, J. A. 'Spiritual and Temporal Powers'. In *The Cambridge History of Mediæval Political Thought*. Burns (ed.).
Watt, W. Montgomery. *Islamic Political Thought*. Edinburgh: Edinburgh University Press, 1968.
Weatherup, Roy G. 'Standing Armies and Armed Citizens: An Historical Analysis of the Second Amendment'. *Hastings Constitutional Law Quarterly*, 2, 1975, pp. 961–1001.
Webb, Adam K. *Beyond the Global Culture War*. London: Routledge, 2006.
Webb, Adam K. 'Can the Global South Take Over the Baton? What Cosmopolitanism in "Unlikely" Places Means for Future World Order'. *Third World Quarterly*, 37:6, 2016, pp. 1016–1034.
Webb, Adam K. *Deep Cosmopolis: Rethinking World Politics and Globalisation*. London: Routledge, 2015.
Webb, Adam K. 'The Health Sphere Beyond Borders: Coverage Portability and Justice in a Global Space'. *Bioethics*, 35:1, January 2021, pp. 79–89.
Webb, Adam K. 'Not an Immigrant Country? Non-Western Racism and the Duties of Global Citizenship'. *Theoria: A Journal of Social and Political Theory*, 62:142, 2015, pp. 1–25.
Webb, Adam K. *A Path of Our Own: An Andean Village and Tomorrow's Economy of Values*. Wilmington, DE: ISI Books, 2009.
Webb, Adam K. 'Supranational Governance and the Problem of the "Dignified Constitution"'. *Telos*, 195, Summer 2021, pp. 115–32.
Webb, Adam K. '"Swanning Back In"? Foreign Fighters and the Long Arm of the State'. *Citizenship Studies*, 21:3, 2017, pp. 291–308.
Webb, Adam K. 'When Open Borders Must Stay Open: Expectations and Freedom of Movement'. *Polity*, 51:2, April 2019, pp. 202–30.
Weber, Max. *From Max Weber: Essays in Sociology*. H. H. Gerth and C. Wright Mills (eds.). New York: Oxford University Press, 1948.
Weinberger, Lael Daniel. 'The Relationship Between Sphere Sovereignty and Subsidiarity'. In *Global Perspectives on Subsidiarity*. Evans and Zimmermann (eds.).
Weindling, Paul. 'The Modernisation of Charity in Nineteenth Century France and Germany'. In *Medicine and Charity Before the Welfare State*. Barry and Jones (eds.).
Weiner, Myron. 'Immigration: Perspectives from Receiving Countries'. *Third World Quarterly*, 12:1, January 1990, pp. 140–165.
Weis, Paul. *Nationality and Statelessness in International Law*. London: Steven and Sons, 1956.
Weiss, Thomas G. 'What Happened to the Idea of World Government?' *International Studies Quarterly*, 53, 2009, pp. 253–271.
Weithman, Paul J. 'Natural Law, Solidarity, and International Justice'. In *Free Movement*. Barry and Goodin (eds.).
Welchman, Lynn. 'Islamic Law: Stuck with the State?' In *Religion, Law, and Tradition*. Huxley (ed.).
Wellman, Christopher Heath. 'Freedom of Movement and the Rights to Enter and Exit'. In *Migration in Political Theory.* Fine and Ypi (eds.).
Wellman, Christopher Heath. 'Immigration and Freedom of Association'. *Ethics*, 119, October 2008, pp. 109–141.

Wellman, Christopher Heath and Phillip Cole. *Debating the Ethics of Immigration: Is There a Right to Exclude?* Oxford: Oxford University Press, 2011.
Wendt, Alexander. 'Collective Identity Formation and the International State'. *American Political Science Review*, 88:2, June 1994, pp. 384–396.
Wendt, Alexander. 'Why a World State is Inevitable: Revisiting the Logic of Anarchy'. http://www.src.uchicago.edu/CSSpapers/worldstate.doc, accessed 27 April 2003.
West, Robin L. 'The Harms of Homeschooling'. *Philosophy and Public Policy Quarterly*, 29:3, Summer 2009, pp. 7–12.
Weston, Corinne Comstock. *English Constitutional Theory and the House of Lords, 1556–1832*. London: Routledge and Kegan Paul, 1965.
Whitaker, Ben. *The Foundations: An Anatomy of Philanthropy and Society*. London: Eyre Methuen, 1974.
Wiener, Antje. *Contestation and Constitution of Norms in Global International Relations*. Cambridge: Cambridge University Press, 2018.
Wilcox, Shelley. 'Immigrant Admissions and Global Relations of Harm'. *Journal of Social Philosophy*, 38:2, Summer 2007, pp. 274–291.
Wilkinson, David. 'Global Civilisation'. In *The Boundaries of Civilisations in Space and Time*. Matthew Melko and Leighton R. Scott (eds.). New York: University Press of America, 1987.
Wilkinson, Will. 'What If We Can't Make Government Smaller?' Niskanen Centre Commentary, 19 October 2016, https://www.niskanencenter/org/cant-make-government-smaller/, accessed 1 October 2019.
Williams, Ian. *The Alms Trade: Charities, Past, Present, and Future*. London: Unwin Hyman, 1989.
Williams, Melissa S. 'Nonterritorial Boundaries of Citizenship'. In *Identities, Affiliations, and Allegiances*. Benhabib, Shapiro, and Petranović (eds.).
Williams, Rowan (Archbishop of Canterbury). 'Civil and Religious Law in England: A Religious Perspective'. Lecture at Royal Courts of Justice, London, 7 February 2008.
Wimmer, Andreas and Nina Glick Schiller. 'Methodological Nationalism and Beyond: Nation-State Building, Migration, and the Social Sciences'. *Global Networks*, 2:4, 2002, pp. 301–334.
Wink, André. *Land and Sovereignty in India: Agrarian Society and Politics Under the Eighteenth Century Maratha Svarājya*. Cambridge: Cambridge University Press, 1986.
Witte, John Jr. and Joel A. Nichols. 'Who Governs the Family? Marriage as a New Test Case of Overlapping Jurisdictions'. *Faulkner Law Review*, 4, 2013, pp. 321–349.
Wittfogel, Karl A. *Oriental Despotism: A Comparative Study of Total Power*. New Haven, CT: Yale University Press, 1963.
Woldring, Henk E. S. 'Kuyper's Formal and Comprehensive Conceptions of Democracy'. In *Kuyper Reconsidered*. van der Kooi and de Bruijn (eds.).
Woldring, Henk E. S. 'Multiform Responsibility and the Revitalisation of Civil Society'. In *Religion, Pluralism, and Public Life*. Lugo (ed.).
Wolf, Eric R. *Peasant Wars of the Twentieth Century.* New York: Harper and Row, 1969.
Wolterstorff, Nicholas. 'Abraham Kuyper's Model of a Democratic Polity for Societies with a Religiously Diverse Citizenry'. In *Kuyper Reconsidered*. van der Kooi and de Bruijn (eds.).

Wood, Alan T. *Limits to Autocracy: From Sung Neo-Confucianism to a Doctrine of Political Rights*. Honolulu, HI: University of Hawai'i Press, 1995.
Woodhouse, Barbara Bennett. 'Protecting Children's Rights of Identity Across Frontiers of Culture'. In *Families Across Frontiers*. Lowe and Douglas (eds.).
Worsthorne, Peregrine. *Democracy Needs Aristocracy*. London: Harper Perennial, 2010 [2004].
Worthy, William. 'The Right to Travel'. *The Christian Century*, 74:51, 18 December 1957, pp. 1505–1507.
Xiao Gongquan [Hsiao Kung Chuan]. *Political Pluralism: A Study in Contemporary Political Theory*. London: Kegal Paul, Trench, Trubner, 1927.
Yang, C. K. 'Some Characteristics of Chinese Bureaucratic Behaviour'. In *Confucianism in Action*. Nivison and Wright (eds.).
Young, Iris Marion. 'Polity and Group Difference: A Critique of the Ideal of Universal Citizenship'. In *Theorising Citizenship*. Beiner (ed.).
Ypi, Lea. 'Justice in Migration: A Closed Borders Utopia?' *Journal of Political Philosophy*, 16:4, 2008, pp. 391–418.
Yunus, Muhammad. *Building Social Business: The New Kind of Capitalism that Serves Humanity's Most Pressing Needs*. New York: Public Affairs, 2010.
Zaman, M Raquibuz. 'Islamic Perspectives on Territorial Boundaries and Autonomy'. In *Islamic Political Ethics.* Hashmi (ed.).
Zapata-Barrero, Ricard. 'Theorising State Behaviour in International Migrations: An Evaluative Ethical Framework'. *Social Research*, 77:1, Spring 2010, pp. 325–352.
Zarrow, Peter. *Anarchism and Chinese Political Culture*. New York: Columbia University Press, 1990.
Zelig, Kaylah Campos. 'Marriage: Making a Case for Mandatory Prenuptials'. *University of Colorado Law Review*, 64, 1993, pp. 1223–1245.
Žižek, Slavoj. 'This Is a Chance for Europe to Awaken'. *The New Statesman*, 6 July 2015.
Zolberg, Aristide R. 'The Exit Revolution'. In *Citizenship and Those Who Leave*. Green and Weil (eds.).
Zolo, Danilo. 'The Lords of Peace: From the Holy Alliance to the New International Criminal Tribunals'. In *Global Democracy*. Holden (ed.).
van Zuijdewijn, Jeanine de Roy. 'The Foreign Fighters' Threat: What History Can (Not) Tell Us'. *Perspectives on Terrorism*, 8:5, October 2014, pp. 59–73.
Zürn, Michael. *A Theory of Global Governance: Authority, Legitimacy, and Contestation*. Oxford: Oxford University Press, 2018.

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