

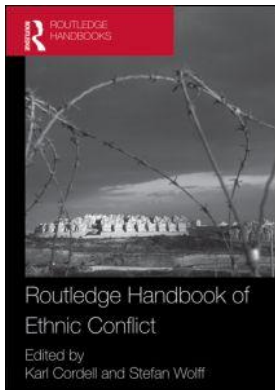
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### Stateless nations in a world of nation-states

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## 5 Stateless nations in a world of nation-states

*Ephraim Nimni*

### **Nations and states: a terminology in trouble**

We are accustomed to understand nations as connected with states, and in many cases, particularly in everyday speech, we use the term nation as transposable with the term state. This assumption is prevalent around the world but it is based on an error. A state is an apparatus of governance and a nation is a cultural community; these are two very different kinds of human groupings. The symbiotic relation between nation and state (a nation-state) is an historical creation of early modern Western Europe, and it became in more than one way, one of its most successful exports. The Western European heirs of the architects of the nation-state, however, are paradoxically relinquishing some of the old sovereign powers of the nation-state with the expansion of the European Union. However, many of those outside Western Europe who copied the idea of the nation-state or inherited it from colonial masters are among its most zealous defenders. The nation-state model is not particularly well suited to govern states with culturally mixed populations who demand political recognition to their cultural identity. The problem is unfortunately common and solutions are hard to find, let alone implement.

There are more nations than states. States require a delimited territorial space to exercise sovereignty. In this regard, the match between nation and state is often problematic, as it is common to find that territorial spaces occupied by states that are home to more than one nation. A cautious estimate puts the number of nations in this world to well above 3,000, while, with the admission of Montenegro in 2006, there are 192 states represented in the United Nations. Fewer than twenty UN member states are ethnically homogeneous in the sense that cultural minorities account for less than 5 per cent of the population (Brown 1993: 6). Others consider that the number of nations is much larger. Minahan (2002: xx) argues that only 3 per cent of the world's 6,000 national groups have achieved statehood. Moreover, it is only from the eighteenth century onwards that one can speak of nation-states in the way we understand the term today, a type of state that derives its legitimacy from being a sovereign entity for a nation (Jáuregui 1994: 3).

Whatever the numbers one might wish to use, nations that have states are only a small fraction of all nations, but we insist in associating nations with states and in regarding the majority of nations that are stateless as problematic or lacking something. It is not an exaggeration to say that the term 'nation-state' – understood as one (cultural) nation in one state – is a misnomer (Govier 1997: 269). Stateless nations are the overwhelming majority of nations and only a small number of states represented in the UN are technically nation-states. The configuration of the political institutions of most

states, democratic or otherwise, often gives the impression that they are culturally homogeneous, trapping cultural minorities that have different national cultures into at best, ambiguity and, at worst, alienation, subordination and, in the worst case scenario, ethnic cleansing. In an influential and thought-provoking work, Michael Mann argues that murderous ethnic cleansing is the dark side of democracy because it carries the possibility that majorities might tyrannise minorities and pervert the ideal of rule by the people. This process converts *demos* into *ethnos* in some extreme cases, generating an organic nationalism that leads to the cleansing of minorities (Mann 2005: 2). In a larger number of less extreme cases, the standardisation and centralisation that is the hallmark of the modern nation-state, puts national and ethnic minorities in a difficult predicament and results in a complicated process of accommodation of stateless nations (Jáuregui 1994: 128).

However, change is on the way. The nation-state is just but one possible way among many on how to organise the political system, and changes in the relationship between territorial spaces, national identity, political institutions, may open up new possibilities (Keating 2001: 2), particularly by developing multination-states, with shared sovereignty and overlapping jurisdictions between two or more nations. In the last three decades we are experiencing a slow but relentless change in the idea that nations must match states. This change takes the form of a devaluation of the nation-state as a model for national emancipation – not only because democratic nation-states are internally and externally devolving power to regional forms of organisation – but crucially because many democratic nation-states have begun transferring jurisdictions to devolved regional governments that in many cases embody minority nations. Here, multi-level governance, understood as the exercise of authority across and within different jurisdictions, is changing the way democratic governance is understood, and this is particularly so in regions inhabited by stateless nations.

Consider the following few examples. Nunavut is the most recent and federal territory of Canada, and was created to allow for the autonomy of its indigenous populations, mainly the Inuit people. Quebec is a province of Canada, but one that has a special identity as the homeland of the Québécois nation. In a historic ruling, the Canadian parliament approved by acclamation in 2006 a motion submitted in French by Stephen Harper, the then Conservative Prime Minister of Canada, ‘que cette Chambre reconnaisse que les Québécoises et les Québécois forment une nation au sein d’un Canada uni’ (this House recognises that Quebecers form a nation within a united Canada).<sup>1</sup> Catalonia is an autonomous region in the Spanish state, and the parliament of Catalonia has defined Catalonia as a nation, and this is specified in the Statute of Autonomy of Catalonia. Euzkadi is an autonomous region composed of three provinces in the Spanish state and whose peoples consider themselves a distinct nation, a part of the Basque Homeland (Euskal Herria). In the United Kingdom, devolved assemblies operate in the territories of the Scottish and Welsh nations. In settler liberal democracies, agreements between settler societies and indigenous peoples are transforming the way in which national self-determination is understood. Consider among many *La Paix des Braves* (the Peace of the Brave), an agreement between the government of Quebec and the Grand Council of the Cree Nation in Canada, to share governance, land and resources. In Northern Ireland a consociational arrangement is in place to allow for the representation of two national communities. This is only a small sample; there are many other similar cases in different parts of the world.

## **Stateless nations and demands for cultural recognition**

One of the salient characteristics of the turn of the twenty-first century is that we are witnessing an extraordinary expansion of a variety of demands for cultural recognition. These increased demands come in many forms and shapes, including indigenous emancipatory movements, minority nationalisms and the politics of recognition for ethnic minorities. This extraordinary expansion in the politicisation of cultural communities signals, in Will Kymlicka's words, 'a veritable revolution' (2007: 1) in the relation between states and ethnonational communities. The reasons for this are clearly explained by Tony Judt:

Most of the readers of this essay live in pluralist states which have long since become multiethnic and multicultural. 'Christian Europe,' pace M. Valéry Giscard d'Estaing, is a dead letter; Western civilisation today is a patchwork of colours and religions and languages, of Christians, Jews, Muslims, Arabs, Indians, and many others – as any visitor to London or Paris or Geneva will know.

(Judt 2003)

From the perspective of the study of nations, the most mystifying dimension of this expansion is that it is taking place mostly among cultural communities that have no possibilities or indeed the desire to build separate nation-states. We can still identify a diminishing number of nationalist movements that steadfastly persist in the aim to build separate states. In these cases, intractable bloody conflicts fester without the prospect of resolution. Chief among these is the Israeli–Palestinian conflict. But in other increasing number of cases, ethnonational communities exercise self-determination without constituting separate states, using instead mechanisms of devolution or national accommodation. In such cases, conflicts are defused, become institutionalised and manageable because they are represented in the democratic interplay of political forces, or they simply disappear. Consider the case of Northern Ireland after the Good Friday Agreement. In sharp distinction with the Israeli–Palestinian case, and following the slow process of institution-building in Northern Ireland, the conflict has not disappeared. It was rather transformed through the mechanisms of power sharing into a manageable difference that finds its expression in democratic institutions.

## **The perplexing impasse of theories of nationalism**

In whatever way we look at it, the relationship between nationalism, ethnicity and self-determination has changed significantly in the last three decades. But enigmatically, these changes have not been adequately reflected in the paradigms that dominate the study of nationalism. These paradigms continue to see that the goal of nations is to create nation-states because they are considered to be the best shell for the protection of nations. The tone is set by what is one of the most influential contemporary books for the study of nationalism, Ernest Gellner's *Nations and Nationalism*. Here Gellner in the opening sentences of the book argues that 'Nationalism is primarily a political principle, which holds that the political and the national unit should be congruent' (2006: 1).

Anthony Smith, a prolific and influential scholar in the study of nationalism, similarly argues that the aim of nationalism is to make the nation the mould and measure of the

state, to make the state bend to and express the will of the nation. 'In and of itself, the state is nothing but an instrument for executing the will of the nation,' and furthermore, 'the state that nationalism aims to create is a culturally defined and suffused polity; it derives its *raison d'être* as well as its character from the historic culture of the dominant *ethnie*' (Smith 1995: 112–13).

However, these assertions are not only becoming conceptually dubious, but as we enter the twenty-first century they are empirically incorrect. Consider the case of Puerto Rico, a nation with a vibrant national culture by any prevailing criteria. Its members have decided in plebiscites and elections not only *not* to become an independent state but, to the contrary, the electorate wishes to remain part of the United States. Notwithstanding the impassioned pleas of a tiny minority of nationalists demanding independence, the majority wish to remain as a commonwealth associated to the United States, while a large minority wish to join the United States as the fifty-first state of the Union. Only a mere 3 per cent of the electorate voted in a referendum for independence. An even larger majority, however, consider that Puerto Rican national culture is not negotiable, yet they emphatically reject independent statehood (Oquendo 2004: 299). Consider also the increasing numbers of multicultural nationalisms, such as the Catalan, Basques or Quebecois among others, who accept an accommodation within a multination-state, and are therefore left outside the domain of Gellner's mistaken generalisations. The large numbers of indigenous peoples in postcolonial settler societies as well as in Europe are also left outside Gellner's generalisations. Indigenous peoples use the terms 'nation' and 'self-determination' in cultural ways that show no interest in separate statehood (Keating 2001: 7).

But Gellner was not the only voice expressing the idea that nation-states should be monocultural (Tambini 1996). The argument has a long history associated with liberal thinkers at the onset of modernity. For a very long time the dominant conception of nation building was that stable democracies could not be maintained in the face of cultural diversity (Gagnon and Tully 2001: 319). The best known and most influential example was John Stuart Mill's assertion that:

Free institutions are next to impossible in a country made up of different nationalities. ... Among people without fellow-feeling, especially if they speak different languages, the united public opinion, necessary to the working of representative government cannot exist.

(Mill 1976: 361)

Walker Connor, in a prophetic article over thirty years ago, argued that what developmental scholars called 'nation building' was in fact a process of nation destroying, because these nation-building scholars ignored the question of stateless nations or they treated ethnic diversity superficially as merely a minor impediment for state integration (Connor 1972: 319). In conceptual and comparative perspectives, the juridical concept of the state made sense in conjunction with a sanitised idea of the nation that emanated from the pre-eminence of a hegemonic fascination with the sovereign state model. The absence of ethnic minorities and stateless nations in theoretical and comparative literature on nationalism resulted from a conceptual myopia that reflected the low salience of cultural pluralism and a high salience of Western ethnocentrism (Young 1983: 655). Nowadays a decisive break with this fruitless tradition appears to be under way. A paradigm change since 1980 is giving

birth to a different, more plural and multidimensional understanding of the relationship between stateless nations and democratic governance, particularly in settings that encourage multiple jurisdictions. A common element across the various versions of the new paradigm is that the dispersal of governance across multiple jurisdictions is both more efficient than and normatively superior to a central state sovereign monopoly (Bache and Flinders 2005: 5). These new theoretical insights first emerged in the area of conflict resolution and multiculturalism. They advocate, in a vast array of empirical and comparative cases, a system of governance based on the participation of several democratically organised ethnonational communities operating in multiple jurisdictions. Here the governmental process is not of discrete, centralised, homogeneous units, as in the old nation-state model, but one in which governance is understood as a multilayered and multicultural mechanism, with regional and minority devolution, one that will allow stateless nations the possibility of self-determination without constituting a separate state and without dismembering an existing one.<sup>2</sup>

These new forms of democratic administration emerged precisely because they come to terms with a problem that paralysed old versions of nation-state sovereignty and centralised government. This problem is at the centre of the move for a paradigm change in relation to stateless nations in a world of nation-states. The shift responds to the crying need to break with the oppressive governance of stateless nations and end centuries of bickering about minority nation representation. Here forms of post-sovereign citizenship that retain the political and territorial dimension of citizenship, while experimenting with alternative forms of representation for national and ethnic minorities (non-territorial autonomy and concurrent or shared sovereignty) appear as influential tools of compromise and accommodation (Murphy and Harty 2003: 185). The need for a compromise with stateless nations is urgent and important because these stateless nations can be disempowered by a nation-state without violating the civil and political rights of their individual members. Consider settlement/migration policies, the gerrymandering of boundaries and, in official language, policies. While on the surface these policies appear not to violate individual rights, their effect is to alienate, demoralise and destroy the cultural identity of minority stateless nations (Kymlicka 2001: 23; Nimni 2008: 98–99). To avoid the pain and wanton destruction that minorities and majorities experience as a result of bitter struggles for secession, we urgently need to find ways to provide stateless nations with cultural recognition, equal rights, governance and political participation – without dismembering existing states.

The opposing solution to multinational integration, partition, has proved to be disastrous for the predicament of stateless nations. The examples of Palestine, Cyprus, Kashmir, Sri Lanka and more recently Kosovo, among many others, show that rather than resolving ethnic security dilemmas endemic to ethnic civil wars, partitions have the effect of institutionalising ethnic conflicts in the post-war period because they result in segregated communities that leave confrontational mechanisms intact (Jenne 2009: 274–75). Moreover, partitions are often the result of instigations by outside parties with ulterior interests rather than forms of ethnic conflict resolution. When minority nationalist leaders are confident of external support, their leaders will radicalise and reject attempts to compromise (Jenne 2007: 53). The tragic and senseless prolongation of the Israeli–Palestinian conflict results from this cruel equation.

### **Models for the self-determination of stateless nations**

Fortunately, some models are available to alleviate the predicament of stateless nations. The first is more radical and it is normally applied in extreme cases of ethnic conflict. It involves the reorganisation of nation-states into multination-states with collective rights for all participant national communities. The national cultural autonomy (NCA) model and consociationalism use this organisational logic in societies deeply divided by ethnic and national conflict, when the residence of contending stateless nations overlaps and when there are marked and long-standing disagreements that cause the political system to be paralysed by violent struggles.

The NCA model has its origins in the late Habsburg Empire and the attempt of Austrian socialists to convert the decaying empire from a conglomerate of squabbling cultural communities into a democratic federation of nationalities (Nimni 2000: xxii–xxiii). In sharp contrast to most other forms of national autonomy, the NCA model rests on the idea that autonomous cultural communities could be organised as autonomous collectivities whatever their residential location within a multinational state. NCA is model for national self-determination without partitioning existing states and without infringing on the rights of overlapping national communities. As in the millet system in the Ottoman Empire, peoples of different cultural identities can coexist in a single polity without straining the principle of national autonomy, but, in sharp distinction from the millet system, these communities are organised in accordance with the principles of the rule of law and democratic representation of nations.<sup>3</sup> The model is very well designed to resolve demands of self-determination of nations that share the same territory with other nations. This is, unfortunately, not an uncommon situation and one that cannot be resolved by internationally sectioned models of territorial self-determination that prescribe the creation of a separate state for the aggrieved nation. A much watered down version of the NCA model was approved by the Duma of the Russian Federation in the Federal Law on the National-Cultural Autonomy in May 1996 (Bowring 2005: 164).

Consociationalism is a better known form of governance encompassing collective (group) representation. It presents an alternative to the principles of majoritarian democracy and for that reason it is normally used to manage conflict in deeply divided societies. The term was popularised by Arend Lijphart (1997) and was further developed by John McGarry and Brendan O’Leary in a series of seminal works on conflict resolution and on Northern Ireland (O’Leary 2005; McGarry and O’Leary 2006); for a debate and discussion of the model see Taylor (2009). It is more elite-based than the NCA model, and it is based on the principles of a grand coalition across cultural divides, mutual veto on matters vital for the continuity of the minority communities, proportionality in representation and the segmental autonomy of each community. As with NCA, the aim is to make government more responsive to the concerns of minorities and offer alternative outcomes to territorial nationalism and secession. In this way, secessionist groups are neutralised and cultural minorities are encouraged to feel confident of representation and protection for their vital concerns (Lustick et al. 2004: 210–11).

A second, less radical route is available to nation-states that have unresolved problems of representation of stateless nations. This model is the preferred option in societies that are not deeply divided, meaning that the inter-ethnic tension does not lead to paralysis or a breakdown of the political system. In these situations, it might seem

impractical to endorse *tout court* the model of a multination-state advocated by consociationalism or NCA. For one, nation-states are unlikely to concede willingly to wide-ranging demands for the restructuring of their state sovereignty, unless of course, the alternative is institutional breakdown. Even if the power of the nation-state as an institution has diminished in the contemporary world, states still remain the principal focus of institutional organisation. In these circumstances, when states are not paralysed by conflicts, these states are invited to recognise the representational problems of stateless nations, and implement internationally accepted standards and instruments, such as the Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999). This important international document argues that the effective participation of stateless nations in the governance of the state requires specific arrangements to facilitate their inclusion within the system of governance, one that allows these stateless nations to maintain their identity and characteristics, and in that way promote the good governance and participation of all, not only individual citizens but also national or ethnic collectivities (Palermo and Woelk 2003: 225).

The Lund international standards have also the important function of ensuring coherent implementation. They provide a far-reaching set of specific recommendations that are designed to encourage and facilitate the adoption by states of concrete and specific measures designed to overcome the alienation of minority communities and alleviate the tensions inherent in situations of territorial cohabitation (Packer 2000: 41–42). They set standards to provide for representation of stateless nations without creating new states.

The world of nation-states poses limitations to the enforcement of real equality for stateless nations and, moreover, courtesy of its own example, the nation-state model provides solutions that exacerbate rather than alleviate the problem of secession and partition. Superficially, secession of stateless nations and their ‘normalisation’ into nation-states appears to some as a seductive remedy. However, the secessionist route is clouded with difficulties, for it almost always incurs the veto of the dominant nation (exceptions are Singapore and Slovakia), and the problem is further exacerbated when the residence of different cultural-national communities overlaps. When cultural grievances become entangled with territorial disputes they become bitter, protracted, bloody and extremely difficult to resolve. Cultural-territorial conflicts are classic zero-sum situations: the gain of one is by definition a loss for the other. The problem is aggravated by the sheer impossibility of finding in the contemporary world sufficient ‘portions of real estate’ to allow each and every national community to have a territorial state of its own. For the insurmountable problems that result from minority secession, see Dion (1996). The UN Charter offers contradictory advice here: on the one hand it sees the right of self-determination as the right to constitute separate states, but on the other it opposes the dismemberment of its members (Musgrave 2000: 69–77). The problem can be resolved only by a redefinition of national self-determination into something other than separate nation-states, and the principled application of asymmetrical modes of autonomous governance for stateless national communities.

### **Stateless nations and asymmetrical modes of governance**

The egalitarian ethos of liberalism required until recently that each unit of a system of governance receive the same symmetrical rights and competences. The assumption is that each unit has the same needs and obeys the same organisational or cultural



arrangements, and therefore the egalitarian ethos makes sure that no one receives privileges or disadvantages. This system assumes equal needs, uniformity and equal distribution of resources, and is thus unreceptive to the diversity and flexibility required for the accommodation of cultural and national minorities with different needs. Asymmetrical governance, in contrast, is more appropriate for the accommodation of stateless nations because it caters for units that experience different circumstances and needs, such as different cultural, linguistic or administrative arrangements. In culturally diverse multination-states, equality of rights paradoxically requires that competences be distributed unevenly. Stateless nations and minority cultures require asymmetrical forms of autonomy to cater for their cultural and linguistic distinctiveness and their initial alienation from the dominant culture. For this reason, asymmetrical decentralisation along territorial or cultural lines (or both simultaneously), is an increasingly common form of territorial autonomy in cases of alienated stateless nations that experience protracted conflicts. This model requires constitutional rights that give special protection to the stateless nations. This usually takes the form of special rights to administer the own affairs of the stateless nations independently of other forms of state authority, but in a manner that is integrated within an existing overall legal order. In this way asymmetrical governance can address the stateless nations desire for more autonomy, while simultaneously allowing the continuity of the central administrative functions of the multination-state (Adeney 2007: 117–18). Slowly but surely, this model is understood as a form of national self-determination, but one that is markedly different from the international legal understanding of self-determination as state independence. This particular form of self-determination is often demanded by indigenous groups in settler societies. Faced with an invasion of settlers that made them to be minorities in their ancestral lands, indigenous peoples demand forms of self-governance that allow them to be governed and live in accordance with their millenarian customs and ways of life (Shaw 2008: 140). This does not entail building separate nation-states, but the asymmetrical recognition of the culture, traditions and ways of life of indigenous people. This model empowers them with self-governance jurisdictions that do not challenge the territorial unity of the state.

The model of sovereignty as total and indivisible power is part of the key ingredients that led to the formation of nation-states. This model, however, has been significantly eroded by the modalities of asymmetrical governance described above, as borders are no longer seen as dividing lines between states and societies (Henders 1997: 521). The new modalities of asymmetrical governance also erode traditional constitutional arrangements, and these require new forms of flexible constitutionalism for an age of cultural diversity. This modality of recognition of cultural diversity does not fossilise the majority or minority cultures, but on the contrary, it creates a constitutional association that accommodates cultural diversity in a manner that provides the social basis for critical reflection and dissent from one's own cultural institutions (Tully 1995: 207), regardless as to whether these cultural institutions are part of the minority or majority cultures.

In sharp contrast, symmetrical governance fails to correctly understand that characteristics of most contemporary nation-states, in that their constituencies are different cultural communities (Keating 2001: 102–33). This kind of cultural blindness entrenches cultural divisions, for aggrieved minorities take a defensive stance and majority communities misunderstand and resent minorities with insistent demands. Without asymmetrical arrangements plurinational states will simply fail to function or

will fall into a protracted bickering about competences. Asymmetrical autonomy has merit not only wherever a state's different communities seek different levels of self-government (McGarry 2007: 133), but also in circumstances in which the cultural needs of different communities vary.

### **From a world of nation-states to a world of multinational-states**

The modern state as a political institution is the most important form of political organisation in the contemporary world, and it is likely to remain so for the foreseeable future. It has been weakened by erosions to its sovereignty caused by the process of globalisation, and in the European case, states have devolved large parts of their sovereignty to the European Union, yet, even in its weaker form, it remains the most powerful form of societal organisation. The question however, is not the disappearance of the state as an institution of governance, but its slow transformation from a nation-state into a multinational-state. While there is a long way to go yet to achieve this, in sharp distinction to the prediction of the most influential theories of nationalism, we are experiencing a slow but clear bifurcation between the attributes of the state and the attributes of the nation. This does not mean that nationalism will disappear as some advocates of post-nationalism appear to suggest. Post-national authors argue instead that citizenship in the nation-state is eroded by globalising tendencies and a post-national mode of citizenship emerges with transnational institutions as their main referent (Soysal 1994: 3). For a refutation of the post-national argument see Koopmans and Statham (1999: 652–96). The idea of the nation is *not* nowadays weaker but, to the contrary, indicates a renewed vibrancy in demands for cultural and national accommodation. The politics of recognition in its different forms and modalities is reinvigorating nationalist claims, but this time, crucially, in ways that converge with multicultural demands. Quebec's Consultation Commission on Accommodation Practices related to Cultural Differences (Commission de consultation sur les pratiques d'accommodement reliées aux différences culturelles),<sup>4</sup> best known as the Bouchard–Taylor Commission, is one of the prominent examples of this convergence. Here a stateless nationalism after its reconciliation with the dominant nation, takes stock of its relationship with its own minorities. In the same vein, in Scotland and Catalonia, the stateless nationalism seeks accommodation with its own migrant communities.

The relation between nation and state is changing in ways that are friendlier to stateless nations. Prevailing theories of nationalism have fail understand this, and cannot therefore conceptualise the new modalities for self-determination of nations. The members of the United Nations are slowly moving to accommodate their minority nationalisms, while in contrast, a dwindling minority of UN members zealously holds to the old model of the nation-state, alienating even further stateless nations. But all indications are that the twenty-first century will be a century of accommodation for minority nationalisms. Indigenous peoples are showing the way in a concerted effort to find a *modus vivendi* with the settler state. Multiculturalism and nationalism are converging, and in that, they are both growing stronger.

**Notes**

- 1 Parliament of Canada, Order Paper and Notice Paper No. 86, Government Business No 11, 26 November 2006. See the historical speech at [http://www.youtube.com/watch?v = I2URJuVtRAE](http://www.youtube.com/watch?v=I2URJuVtRAE).
- 2 The proliferation of seminal ideas and works in this area is astonishing. Examples include Kymlicka (1995, 2007), Parekh (2000), Gagnon and Tully (2001), Tully (1995), Nootens (2004), Taylor (1994), Keating (2001), Keating and McGarry (1994) – but there are many others. See also the debate on O’Leary and McGarry’s seminal work in Taylor (2009).
- 3 On the contemporary validity of the model see Smith and Cordell (2008), Roach (2005) and Nimni (1999, 2005).
- 4 See the English site of the Commission, <http://www.accommodements.qc.ca/index-en.html> (accessed 20 February 2009).

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