

INTERNATIONAL LEGAL THEORY

Beyond Empty, Conservative, and Ethereal: Pluralist Self-Determination and a Peripheral Political Imaginary

ZORAN OKLOPCIC*

Abstract

Over the last couple of years, a stream of pluralist theories of international legal order has developed at the intersection of international law and political theory, having immediate implications for conceptualizing self-determination. The understanding of self-determination under the framework of *bounded*, *constitutional*, and *radical* pluralism markedly departs from the previous wave of normative theories in the 1990s: self-determination is now evacuated from the field of national pluralism and struggles over territory.

This article does not question the thrust of pluralists' recent work, but complements their critical attunement to global disparities of power, and complicates their neglect of nationalism and rejection of territorial reconfigurations as self-determination's core meaning. In doing so, it unearths two visions that come from the (semi-)periphery of the international political order. The first belongs to Edvard Kardelj, pre-eminent Yugoslav theorist of socialist self-management and the Non-Aligned Movement. The second belongs to Leopold Sédar Senghor, the poet and politician, advocate of *négritude*, a proponent of French West African integration, and a constitutional advocate for the reconfiguration – not abolition – of the French Union, the heir to the French Empire. While they are suspicious of extensive territorial reconstruction, like contemporary pluralists, unlike them they have seen a role for territorial reconfigurations in the name of national plurality.

Key words

pluralism; self-determination; Non-Aligned Movement; French West Africa; all-affected interests principle; Kardelj; Senghor

I. INTRODUCTION

Since the early 1990s, territorial self-determination has been under constant theoretical scrutiny. Over the last couple of years, however, a fresh stream of pluralist theories of international legal order has developed at the intersection of international law and political theory, having immediate implications for

* Assistant Professor, Department of Law and Legal Studies, Carleton University [zoran.oklopcic@carleton.ca]. The first version of this paper was presented at the International Law and the Periphery conference in Cairo in February 2012. I wish to thank the participants at the conference for their comments. The article has also greatly profited from stimulating conversations with Amy Bartholomew, Luis Eslava, Rose Parfitt, Neil Sargent, and Adrian Smith. I am also indebted to Helena Kolozetti, Ingo Venzke, and two anonymous reviewers for their incisive remarks. The mistakes remain only mine.

conceptualizing self-determination. The understanding of self-determination under the framework of *bounded*,¹ *constitutional*² and *radical*³ pluralism – which I discuss in section 2 of the article – markedly departs from the previous wave of normative theories that have developed over the previous twenty years. Unlike its normative cousin, territorial self-determination in the work of contemporary international pluralists does not feature an ambition to guide territorial reconfigurations.⁴ Equally unlike their normative cousins, contemporary international pluralists are more concerned to curb the hegemonic pretensions of great powers and to safeguard spaces for non-Western forms of social organization – much less so with accommodating nationalist aspirations.

The purpose of this article is not to question the thrust of pluralists' recent work, but to complement their critical attunement to global disparities of power, and complicate their neglect of nationalism and rejection of territorial reconfigurations as self-determination's core meaning.

To do so, in section 3, I will unearth two neglected configurations of 'the national', 'the social', and 'the geopolitical' that are generally not associated with the common view of self-determination. Both complicating pluralist visions come from the (semi-) periphery of the international political order. The first belongs to Edvard Kardelj, pre-eminent Yugoslav theorist of socialist self-management and the Non-Aligned Movement. The second belongs to Leopold Sédar Senghor, the poet and politician, advocate of *négritude*, and proponent of French West African integration, and a constitutional advocate for the reconfiguration – not abolition – of the French Union, the heir to the French Empire.

Both visions are highly attuned to disparities between the powerful and the powerless in the global arena, and both feature a commitment to national and social plurality. But the way in which they weave these considerations together departs from the way in which we today casually think about territorial self-determination – the way according to which a nation wants, is denied, fights for, and finally obtains a sovereign state, only for that state to be seamlessly plugged back into the international legal order. Instead, to radicalize the theme emerging from the way pluralists frame their projects, self-determination is part of not one – nationalist – but rather three overlapping registers: registers of the national, the social, and the global counterhegemonic emancipation. This was the view of self-determination dominant in decolonization, a view mostly suppressed and abandoned in our contemporary political imaginary. There, self-determination not only gives a

1 B. Roth, *Sovereign Equality and Moral Disagreement: Premises of a Pluralist International Legal Order* (2011).

2 J. Cohen, *Globalization and Sovereignty: Rethinking Legality, Legitimacy and Constitutionalism* (2012).

3 N. Krisch, *Beyond Constitutionalism: The Pluralist Structure of Postnational Law* (2010).

4 My qualification of self-determination as 'territorial' is deliberate if somewhat idiosyncratic. It straddles the binary of 'external' and 'internal' self-determination, 'principle' and 'right', and 'ethnic' and 'civic' self-determination. Qualified this way, it hopefully enables me to capture different phenomena that appear on the register of left politics, which escape the simple divide between an 'independent' statehood and mere political participation, between the invocation of an ethnic nation and a territorially defined people. Equally, it enables me to commensurate self-determination in practice with theoretical approaches that do not make much use of the categories deployed in international law. When I speak of 'self-determination' in the remainder of the article I will be referring to its 'territorial' variant.

nation – irrespective of how defined – a vehicle for its flourishing, but also provides autonomous space for constructing alternative modes of social organization. Finally, this self-determination was implicated in a larger geopolitical struggle that undermines not only local loci of political domination, but also transcontinental empires – global centres of political hegemony.

To call for a more historically nuanced approach to self-determination is not an end in itself. In the final, third part of the article, I will argue that Kardelj's and Senghor's views both complement and contest recent pluralist accounts of self-determination. They complement them on the one hand, more obviously, by serving as a reminder of the fragility of ambitious political projects that have sought to combine the national, the social, and the global registers of self-determination in a way that fends off or undermines projects of global or regional hegemony. On the other hand, however, these projects are an invitation to contemporary pluralists – irrespective of historical failures – to reconsider the political imaginaries that continue to rely on various forms of affective attachment and which seek to complement the juridical arguments about sovereignty and political autonomy with larger transcontinental constitutional alliances. In so doing, and not unlike bounded, constitutional and radical pluralists, Kardelj and Senghor were ambivalent about extensive territorial self-determination. They have maintained, however, that in different forms, national attachments – understood in the Leninist or African key irrespective – have an important role to play in territorial reconfigurations along federalist lines. Finally, one of them, Senghor, in advocating the reconstruction of the French Empire along inclusive, federal lines, has not upset our neat picture of decolonization and self-determination, but has gestured toward an institutional constellation that remains a blind spot in current pluralist thinking.

2. EMPTY, CONSERVATIVE, ETHEREAL: SELF-DETERMINATION IN THE WORLDS OF BOUNDED, CONSTITUTIONAL, AND RADICAL PLURALISM

The diminished normative ambition of the recent spate of pluralist theorizing concerning territorial aspects of self-determination is not only the result of the genre – international legal theory – in which self-determination is thematized. Because they feature a blend of international law, and legal and political theory, one could argue that bounded, constitutional, and radical pluralists are more obliged by their own disciplinary positioning to respect the strictures imposed by existing international legal material than were their liberal pluralist counterparts, such as Will Kymlicka, a decade and a half ago.⁵ This abandoning of nationalism is not a disciplinary necessity: even pluralists who took international legal order seriously, such as Neil McCormick, have not abandoned nationalism as an important part of theorizing

5 For the liberal pluralist vision see generally W. Kymlicka, 'Western Political Theory and Ethnic Relations in Eastern Europe', in W. Kymlicka and M. Opalski (eds.), *Can Liberal Pluralism Be Exported? Western Political Theory and Ethnic Relations in Eastern Europe* (2001).

territorial reconstructions in the key of self-determination, but have sought to recast its meaning and role in the post-sovereign context.⁶

Beyond the question in which genre international pluralists theorize, then, abandoning the prescriptive promise of self-determination must also be a reflection of other concerns. While this shift may require a more searching sociopolitical analysis, it is, I believe, safe to say that the shift corresponds to changes in the perception of urgent political problems facing the world today. While the 1990s saw the resurgence of murderous nationalist conflict over territory, the 2000s have been marked by external military interventions and economic crisis, which, while originating in one country, soon spilled over to profoundly affect the global economy as a whole. It is no wonder, then, that bounded, constitutional, and radical pluralists have no enthusiasm for territorial reconfigurations in the name of nationalism and self-determination. While their vantage points, conceptual commitments, and normative arguments differ, they reach the same conclusion: self-determination is evacuated from the field of nationalist struggles over territory.

Brad Roth's *bounded pluralism* 'empties' self-determination at three mutually reinforcing levels: prudential, normative, and doctrinal. From the prudential point of view, abandoning self-determination's prescriptive content is a consequence of Roth's overarching account of the *telos* of international legal order – the respectful accommodation of ideological differences among sovereign states where the smaller among them are always under threat by the hegemonic designs of great powers. While bounded pluralism still grounds territorial integrity and sovereign equality of states in the norm of self-determination, that justification remains formal – divorced both from nationalism and from the democratic ideal of the consent of the governed. Respectful accommodation of ideological differences is best accomplished if challenges to legitimacy are fought out internally, where the test of legitimacy is the principle of effectivity, not an independent normative standard that would provide a springboard for the self-serving and damaging meddling of powerful external actors.⁷

While 'nationalism' is not Roth's explicit target, his rejection of cultural pluralism as the normative basis of 'bounded pluralism' applies to many recent and sophisticated defences of national self-determination.⁸ To embrace the role of culture, and by implication nationalism, in justifying the international legal order would, argues Roth, logically lead us to embrace oppressive practices, and would silence 'local liberal dissidents'.⁹ While these claims are relatively familiar in recent literature, Roth's contribution lies in pitting the ideological (in effect, 'the social') against the national: culture-based pluralism should also be rejected because it privileges 'traditional – hierarchical non-liberalism [against] revolutionary – egalitarian non-liberalism'.¹⁰

6 N. McCormick, *Questioning Sovereignty: Law, State and Nation in the European Commonwealth* (1999), 167 and *passim*.

7 Roth, *supra* note 1, at 81 and *passim*.

8 Y. Tamir, *Liberal Nationalism* (1995), 36 and *passim*.

9 Roth, *supra* note 1, at 100.

10 *Ibid*.

Finally, self-determination is emptied through a doctrinal analysis. No jurisprudential developments, during or after the Cold War, point in the direction of the norm of self-determination. The 1970 Friendly Relations Declaration, for Roth, was not intended to create a right to remedial secession for oppressed or discriminated groups. Rather, it should be understood in its context: as a victory for Third World countries seeking to deny legitimacy to the apartheid regime of South Africa, and Israel, while at the same time legitimizing the sovereignty of other Third World, non-liberal democratic polities.¹¹ Equally, more recent jurisprudential developments that have tackled state dissolution have left the principle of self-determination vague and inoperative. The Badinter Committee Opinions, hailed as the ‘advent of the self-determination of peoples’, for Roth are nothing more than a well-intentioned ‘improvisation’ with no bearing on the principle of self-determination.¹² Finally, the recent ICJ Advisory Opinion on Kosovo’s unilateral declaration of independence bespeaks only ‘the ad hoc nature of the international order’s solutions’ to what constitutes a state, and not the advent of a new post-colonial understanding of self-determination.¹³

Featuring a strong doctrinal component, Roth’s bounded pluralism does not explicitly establish a link between the absence of a prescriptive component in territorial self-determination and vigilance against great-power hegemony, nor does it give pride of place to the trade-off between accommodating national and ideological (social) pluralism. In contrast, Jean Cohen’s constitutional pluralism is more explicit in making this link. With a vigilant eye on external interventions, she posits self-determination as a normative, *regulative* principle that should be interpreted in a ‘conservative’ way as prohibiting external intrusive constitutional reconstruction of the affected polities.¹⁴ The conservative descriptor here should be understood in a threefold sense: first, as requiring the conservation of existing sovereign states; second, as demanding self-restraint on behalf of the intervener, once the intervention has taken place – the intervener should strive to create as inclusive political structures as are possible – but stop short of participating in the process of domestic constitution making. Finally, third, Cohen’s version of self-determination is ‘conservative’ because it does not carry any *explicit* message for territorial reconstructions and nationalism.

In making this argument, Cohen’s pluralism overlaps with Roth’s bounded variant, insofar as it continues to affirm the principle of sovereign equality. She does so without lending dignity to the principle of effectivity, as a putatively legitimate political ‘trial by ordeal’. While fully aware of the ideological manipulations of great powers, Cohen does not go as far as to consider free and fair elections and the ideal of democratic government as morally contingent, or inextricably linked to Western liberal democracy. Cohen’s pluralism becomes ‘constitutional’ at the point when it realizes that ‘conservative’ self-determination qua sovereign equality

¹¹ *Ibid.*, at 182.

¹² *Ibid.*, at 186.

¹³ *Ibid.*, at 199.

¹⁴ Cohen, *supra* note 2, at 227.

alone – going back to the original promise of the UN system – is not enough to combat global ‘liberal imperialism’ and ‘neo-imperialist efforts of the sole existing superpower and . . . re-emerging great powers’.¹⁵ Her pluralism turns constitutional when it, on the one hand, presents a proposal for the reform of the UN system, along constitutionalist – more specifically federalist – lines, which would require abandoning ‘quasi-absolutist powers’ of the Security Council’s permanent members, and which would, in the final analysis, do away with great-power veto over the UN Charter amendment process itself.¹⁶ Equally, constitutional pluralism finds its application in regional supra-national constitutional polities, which can be used as a counterbalance to the hegemony of great powers.¹⁷ While implicated in a constitutional relationship which prizes ‘conflict avoidance, circumspection, and political judgment’, the member states of these associations continue to be self-determining, sovereign, and co-equal members of the international community.¹⁸ To put it differently, then, our self-determination must be conservative enough to be used as a building block not of a sprawling but of a constrained and counterhegemonic constitutional pluralism.

Both versions of pluralism – bounded and constitutional – are committed to the territorial status quo among sovereign states. They either tacitly accept (Roth) or complicate (Cohen) – but in any event never abandon – the constitutionalist premises of the modern state order. In contrast, Nico Krisch’s radical pluralism abandons constitutionalism, finding it implicated in hegemonic practices at all levels. The ossification of power relations occurs not only at the international, but also at the level of domestic, constitutional orders. All constitutions ‘stabilize and immunize’ existing social structures; they are ‘tools for powerful groups to protect their vision of society from challenge’.¹⁹

Perhaps because Krisch is concerned with the ‘social hegemony’ of constitutionalism and not explicitly with great-power hegemony and external interventions, Krisch’s embrace of radical pluralism comes with a rich argument in favour of self-determination, which exists not as a norm of international law, but rather as a ‘practice of public autonomy’. Whether a certain political behaviour conforms to this practice is a matter of complex and contextual judgement. In judging its emergence, a new demos should not be the ‘mere expression’ of the citizens’ will. Its legitimacy should also be judged according to the degree of awareness the would-be members show for the interests of others. The inability to provide an account of the ‘balance’ between the desire to self-seclude and the interests of others to be included will not count as an exercise of public autonomy. Finally, the collective claim to ‘public autonomy’ should be judged according to the ‘strength of its social grounding of the participatory practices that support it’.²⁰

15 Ibid., at 17 and 243 respectively.

16 Ibid., at 312.

17 Ibid., at 81.

18 Ibid., at 146.

19 Ibid., at 79 and 259 respectively.

20 Krisch, *supra* note 3, at 101.

Krisch does not state this explicitly, but this malleable and composite *practice* of public autonomy effectively supplants the international legal *norm* of self-determination. He equally does not engage the territorial implications of this practice for national groups struggling for some form of territorial recognition. Collectivities, such as national groups, enjoy a strong ‘initial normative grounding’ but they cannot fully respond to the demands of the outsiders that are affected by their decisions.²¹ Ironically, then, the richest account of self-determination among the three contemporary pluralisms has an *ethereal* presence with respect to the shape of the territorial sphere of democratic politics. Krisch’s account of the practice of public autonomy makes visible criteria that can be used to redraw territorial boundaries, but, without explicit acknowledgement of their role in territorial self-determination, we can never be certain whether we can grasp them, and apply them for the purposes of territorial self-determination.

3. ALTERNATIVE PLURALIST VISIONS OF SELF-DETERMINATION AT THE INTERSECTION OF THE NATIONAL, THE SOCIAL, AND THE GLOBAL

International legal debates about the character and normative force of self-determination have always been rich and variegated, but the image of self-determination’s finest hour is remarkably simple: it is an image of decolonization where nations of the imperial periphery demand independence, fight for it, and obtain it. In that view, all three registers are firmly united: the national goes hand in hand with the social, which coincides with geopolitical emancipation. Self-determination, in this image, emerges almost as a *grundnorm* of an entire international legal order, or as Rupert Emerson had put it: ‘the new higher law of anticolonialism’.²² Writing in 1964, in the heyday of decolonization, Emerson conceded that self-determination ‘is rarely a simple and straightforward matter’, but that in the age of decolonization its basic principle ‘is the simple one that alien rule should give way to rule by the people of the country concerned’.²³ Whatever normative and doctrinal challenges self-determination has endured over subsequent decades, this account of self-determination – decolonization *as* independence – remained canonized in historical accounts of its development.

What remained obfuscated were the alternative imaginaries that articulated the relationship between the registers of the national, social, and geopolitical emancipation in a still mutually reinforcing way, but have qualified an unequivocal insistence on political independence by resorting to geopolitical frames that usually do not feature prominently in histories of self-determination. Both Kardelj and Senghor were pluralists who, each in their own way, embraced nationalism, and connected it with a larger project of social emancipation which in turn relies on an international and geopolitical (Kardelj) or transcontinental and constitutional (Senghor) structure.

²¹ *Ibid.*, at 83.

²² R. Emerson, *Self-Determination Revisited in the Era of Decolonization* (1964), 1.

²³ *Ibid.*, at 25.

Taken together, their visions should not be seen as a direct challenge to a pluralist international legal order, but rather as its political complement and irritant.

3.1. Kardelj's 'indispensable defensive barricade': federal self-determination at the intersection of nationalism, socialism, and non-alignment

Edvard Kardelj (1910–79), one of Marshall Tito's closest associates, was also the chief Yugoslav theoretician of socialist self-management, national self-determination, and non-alignment. In the domestic sphere, Kardelj rejected political pluralism along the lines of Western liberal democracy, advocating instead 'pluralism of self-managing interests' under the leadership of the Communist Party. In the international sphere, Kardelj equally envisaged 'a thoroughly pluralistic system . . . as being in the interest of all nations'.²⁴ Speaking to the UN General Assembly in 1949, Kardelj, though rejecting 'narrow, self-centered nationalism', argued that fighting for 'humanity's progress' entailed not respecting sovereign equality, but 'liberating peoples from all manner of foreign domination'.²⁵

Such views on the national question and on self-determination were tempered by Kardelj's particular reading of Lenin's international writings. As a faithful Lenin exegete, Kardelj insisted throughout his career that socialism 'can neither make nor unmake nations', implying that the 'fate of socialism' would be decided through internal class struggle and not 'struggle across blocs'.²⁶ As a result, he advocated support for authentic, 'home-grown' national liberation movements, but not those engineered from outside.

Kardelj used Lenin's arguments not only to call for a reduction in communist combativeness toward the capitalist bloc, but also to raise awareness of the equally detrimental hegemony developing within the socialist camp. The existence of a socialist system in different countries, it seemed, did not extinguish the possibility of hegemonic pretensions of one socialist country over another. 'We must not lose sight', Kardelj wrote, 'of the fact that as long as the possibility for any form of exploitation exists, candidates for such exploitation will also exist'.²⁷ The very fact of the 'unevenness of socialist development' on the one hand, and the existence of states 'as independent political forces' on the other, created temptations for the stronger socialist country – code for the USSR – to 'climb up on the shoulders of another' in the name of the revolution.²⁸

According to Kardelj's appreciation of the dynamic of international relations, the role of the Non-Aligned Movement (NAM) was to serve both as a *buffer* and as an *accelerator*. As a 'buffer', the NAM would act against the hegemonic pretensions both of the capitalist and communist camps. The NAM was 'steadily [to] narrow the latitude for imperialist policy', and to prevent the Third World from becoming 'an

24 K. E. Bassom, *Edvard Kardelj and the Pluralism of Self-Managing Interests* (1989), 217.

25 *Ibid.*

26 E. Kardelj, 'Points of Departure for a Socialist and Democratic Policy in International Relations', in E. Kardelj, *Yugoslavia in International Relations and Non-Alignment* (1978), 222 at 29.

27 *Ibid.*, at 27.

28 Kardelj, 'The Historical Roots of Non-Alignment', in Kardelj, *supra* note 26, at 165.

appendage' of the developed world.²⁹ As an 'accelerator', the NAM was to promote the 'speedier advancement of the under-developed countries'.³⁰ Since the newly independent countries '[did] not possess sufficient means of their own for more rapid advancement', the role of the NAM was to fight for a new world economic order that would enable those countries to escape the 'monopoly grip' of the 'transmuted forms of imperialist policy'.³¹

In this wider geopolitical context, the function of self-determination coincides with the functions of the NAM. Self-determination was to serve as 'an indispensable defensive barricade',³² the aim of which was not to undermine the hegemonic core directly, but instead to give ideological protection to weaker polities emerging from the vestiges of colonialism – buying time, as it were – as the objective process of global social transformation unfolded in the direction of socialism's imminent victory. The NAM therefore supported 'further strengthening of the historical trend of national . . . emancipation of peoples and countries of Asia, Africa, Latin America and other regions'.³³ The true value of self-determination – internationally – lay, then, in its *internal* aspect, where self-determination functions as a principle that justifies the nation's control over natural resources, prevents external exploitation, and justifies its right to choose the economic system 'most propitious for its development'.³⁴ In his writings on international relations and the NAM, Kardelj did not explicitly contemplate a dynamic role for self-determination that would justify the reconfiguration of the boundaries *within* newly emancipated socialist and/or Third World countries. We do not hear from him whether multinational states should remain united or what their internal constitutional make-up ought to be.

In terms of daily politics, as well, Kardelj was intent not to cross the line and annoy great powers too much. Speaking with Kardelj in 1976, after the NAM's Colombo Summit, the United States envoy reproached Yugoslavia for its attitude towards Puerto Rico. For W. Averell Harriman, 'it is not enough that the minority wants independence – the whole people should be in favour of it, and the people doesn't want it'.³⁵ Responding apologetically to Harriman's claims, Kardelj stated that Yugoslavia is not alone in the Non-Aligned Movement, and that it is itself sometimes exposed to various pressures in the name of solidarity. So, with respect to Puerto Rico, 'Yugoslavia strove to prevent things going beyond the existing phase', adding that all Yugoslavia wanted was the 'recognition of the right of the people of Puerto Rico to self-determination', and that, according to Kardelj, that right is 'mostly recognized'.³⁶

Both because of its principled stance on self-determination, and due to its conciliatory approach to territorial conflict, one could be tempted, with Roth, to understand

29 Ibid., at 187.

30 Kardelj, 'The National Question and the Policy of Non-Alignment', in Kardelj, *supra* note 26, at 112.

31 Kardelj, *supra* note 28, at 147.

32 Ibid.

33 Kardelj, *supra* note 28, at 185.

34 Ibid.

35 Đ. Tripković, 'Kardelj-Harriman: Šta posle Tita', (2011) 29 (2) *Istorija 20. veka* 173, at 185.

36 Ibid.

Kardelj's approach to the Non-Aligned Movement and self-determination as a project and a construct conducive only to the project of 'bounded pluralism'. In Roth's view, the Non-Aligned Movement was one of the chief agents in ushering in the era of 'bounded pluralism'. The movement 'successfully played off the Cold War blocs against each other so as to obtain influence over the ground rules of the international order'.³⁷ In doing that, the movement failed in some of its more ambitious initiatives, such as the creation of the New International Economic Order, but succeeded 'in converting Charter references to sovereign equality and non-intervention into legal strictures against the most heavy-handed cross-border exercises of power'.³⁸

But, extrapolating from Kardelj's writings on Yugoslavia, and from his role as Yugoslavia's chief constitutional architect, we can understand self-determination as accommodating of national pluralism in the context of voluntary federal structures, always mindful of the need for an internal balance of power. Writing in the 1970s, Kardelj established a link between the success of the Yugoslav popular-liberation war and the 'self-management' of equal nations, which – only on this condition – accepted Yugoslavia as a reconstituted state. The same logic of voluntariness also safeguarded Yugoslav independence once again after the war, when Yugoslav independence was threatened by the Soviet Union. For Kardelj, 'the pressure exerted against Yugoslavia . . . was such that the young social system might not have been able to resist it had it not started to combine with another revolutionary process that shook the entire world'.³⁹

For Kardelj, Yugoslav participation in the Non-Aligned Movement was an organic reflection of the domestic imperative of accommodating national plurality. It was 'the logical and most consistent reflection of our internal policy of socialism, self-management and democracy, particularly in internationality [*sic*], that is, inter-republic relations'.⁴⁰ Some commentators see Kardelj as a proponent of Althusius, one of the most important early modern precursors of federalism.⁴¹ In the Althusian vein, for Kardelj, political communities emerge locally, grow nationally, and establish global 'frameworks . . . of mutual cooperation and reciprocal responsibility'.⁴²

Seen through a federal lens, 'as a matter of principle, the national question in the new Yugoslavia is resolved. The guarantee for this is the federal system, and the entire political, constitutional and social mechanism which provides . . . self-determination to all nations of Yugoslavia'.⁴³ But the legitimacy of Yugoslavia is only derivative and tentative. 'Our federation', Kardelj wrote, 'is not a framework for any new Yugoslav nation, nor for any national integration about which in their

37 Roth, *supra* note 1, at 14.

38 Ibid.

39 E. Kardelj, 'Self-Management and Non-Alignment', in E. Kardelj, *Yugoslavia in International Relations and Non-Alignment* (1978), 222.

40 E. Kardelj, 'Remarks during Discussion in the Plenary Session of the Tenth Congress of the League of Communists of Yugoslavia, Belgrade, May 27, 1974', in Kardelj, *supra* note 26, at 140.

41 M. McCulloch, 'Polyvalent Federalism: Johannes Althusius to Edvard Kardelj and Titoism', in L. Ward and A. Ward (eds.), *Ashgate Research Companion to Federalism* (2009), 331.

42 E. Kardelj, 'The Historical Roots of Non-Alignment' in Kardelj, *supra* note 26, at 178.

43 E. Kardelj (Sperans), *Razvoj slovenačkog nacionalnog pitanja (treće, pregledano i dopunjeno izdanje)* (1988), xxxii–xxxiii (translation mine).

time some advocates of hegemony and denationalizing terror used to dream'.⁴⁴ Yugoslavia was justified only as a framework – a mini NAM – for the national self-determination of its constituent nations, and only as long as it pursued its project of socialist self-management, in contrast to the Soviet 'real socialism'. In this way, Kardelj was, as a matter of doctrine, able to reconcile the registers of national, social, and global emancipatory struggles under the umbrella of pluralism. In comparison to Roth and Cohen, Kardelj's 'pluralism of self-managing interests' was 'bounded' externally, but 'constitutional' internally.

Such theoretical innovations always depended for their success on the global 'ratio of social forces' which Kardelj thought was irretrievably changing in favour of global socialism. In hindsight, it is not difficult to see these prognostications as desperately misplaced. When the global 'ratio of social forces' decisively changed in 1989, there was nothing in the idea of self-determination, as such, to prevent the crumbling of communist states. Retrospectively, self-determination, conjoined with the geopolitical structure of non-alignment, failed both as a counterhegemonic *buffer* and as a development *catalyst*. Quite against its intended purpose in the socialist world, the vocabulary of self-determination was aptly employed as a potent claim-making construct throughout the post-communist world – including Kardelj's native Slovenia – in favour of abandoning socialist federations and joining the camp of liberal democracies.⁴⁵ For all his emphasis on voluntariness, applying self-determination to the point at which it would endanger global socialism was never Kardelj's intention. Writing in 1967, he warned: 'In the modern world, the power of the reactionary force of imperialism and political hegemony is still extremely great. The Yugoslav nations would need each other's support to be able to guarantee their economic and political independence'.⁴⁶

Kardelj's attempt to (re)instill self-awareness into a Leninist account of self-determination and of the structural possibility of nested hegemonies – within multinational states, the wider communist world, and, finally, the system of international relations generally – did not make the component parts of Yugoslavia any less prone to capitalist co-optation when the time came. But this does not mean that the Yugoslav socialist project was undermined by external exploitation of the vocabulary of self-determination. If this is indeed one of the implicit worries in Roth's 'bounded pluralism', it is misplaced in the context of the former Yugoslavia. If Yugoslavia was undermined from the outside, it was mostly, as Anne Orford rightly argued, through the imposition of the IMF's 'shock therapy' that created the socioeconomic conditions for the rise of nationalist politicians such as Slobodan Milošević of Serbia.⁴⁷

44 E. Kardelj, 'The Federation and the Republics: Speech to the National Assembly, 20 September 1962', in *The Nations and Nationalism* (1981), at 137–40, quoted from D. Jović, 'Yugoslavism and Yugoslav Communism: From Tito to Kardelj', in D. Djokić (ed.), *Yugoslavism: Histories of a Failed Idea 1918–1992* (2003), 168.

45 For an example of the use of Kardelj's account of self-determination for the purposes of creating an independent liberal-democratic Slovenia, see P. Jambrek, 'Pravica do samoodločbe slovenskega naroda' quoted from D. Jović, 'Fear of Becoming *Minority* as a Motivator of Conflict in the Former Yugoslavia', (2001) 5 *Balkanologie*, available at www.balkanologie.revues.org/index674.html.

46 Jović, *supra* note 44, at 165.

47 A. Orford, *Reading Humanitarian Intervention: Human Rights and the Use of Force in International Law* (2003), 13.

If the project of self-determination is to be blamed, the blame rests not with its opportunistic invocation by powerful external actors, but rather with the ultimate vacuity of the self-determination clauses written into Yugoslavia's constitutions, which proved incapable of providing a framework for orderly secessions from Yugoslavia.⁴⁸ While all Yugoslav constitutions affirmed the various nations' right to self-determination, including the right of secession, a fundamental ambiguity remained as to whom exactly this right belonged to: South-Slavic Yugoslav ethnoi, or the demoi of Yugoslavia's component republics.⁴⁹ Though Kardelj might have thought that constructive ambiguity about the implications of constitutionalizing Leninist self-determination would make the *sui generis* Yugoslav federation – predicated on a delicate balance of power among the republics and provinces – more stable, the opposite was the case. The subsequent quasi-judicial treatment of the Yugoslav constitutional conundrum by the EC Arbitration Committee in 1991 did little to dissolve the self-determination controversy, but it did contribute, rightly, to the demise of self-determination's reputation as a tool that would bring about social transformation, in addition to solving ethno-national conflict.

3.2. Senghor's 'old hunting rifle': federalism, not independence, in the context of the French Union and French West Africa

In contrast to the British Empire's anti-colonial activists, with their explicit demands for full 'external' self-determination, one influential group of mostly Senegalese leaders sought to transform, rather than destroy, the relationship of the former colony to the metropole through the creation of a multinational French West African federation. In terms of their ideological disposition, these French West African leaders belonged, like Kardelj, to 'the left'.⁵⁰ The most important among them was Leopold Sédar Senghor (1906–2001), a poet, politician, and president (1960–80) of Senegal. If Kardelj was the internationally noted author of the 'pluralism of self-managing interests', Senghor was ultimately 'a disciple of cultural pluralism'.⁵¹ While impressed by the 'method of Marx and Engels', he argued that West Africans chose socialism 'as a political doctrine' partly for strategic purposes: to make 'our anticolonialist struggle effective'.⁵² This effectivity, however, does not come from armed struggle, the aim of which is to create an independent state: the most formidable revolts are generated 'by men whose arms are folded in passive resistance'.⁵³ In a claim that is not usually associated with decolonization, Senghor argued that the Africans and the French would 'together . . . create a new civilization whose center will be in Paris,

48 See 'Osnovna načela' (Basic principles), *Ustav SFRJ* (1974) (Constitution of SFRY) available online: [www.hr.wikisource.org/wiki/Ustav_Socijalisti%C4%8Dke_Federativne_Republike_Jugoslavije_\(1974\)](http://www.hr.wikisource.org/wiki/Ustav_Socijalisti%C4%8Dke_Federativne_Republike_Jugoslavije_(1974)). For an extended discussion see also R. Hayden, *Blueprint for a House Divided: Constitutional Logic of the Yugoslav Conflicts* (1999).

49 S. Samardzic, 'Yugoslav Federalism: Unsuccessful Model of a Multinational Community', (1996) 6 *International Review of Sociology: Revue internationale de sociologie* 249, at 252.

50 For a description of the variety of French West African views on 'African Socialism' see J. Mohan, 'Varieties of African Socialism', (1966) 3 *Socialist Register* 220.

51 E. Jones, 'Diallo and Senghor as Interpreters of the New French Africa', (1948) 21(6) *French Review* 444, at 449.

52 L. Senghor, *On African Socialism* (1964), 107.

53 Ibid.

a new humanism which will be the measure of the universe and of man at the same time'.⁵⁴

On a cultural plane, building this new, *mongrelized* transcontinental civilization required, paradoxically, the construction of a narrower, African, identity anchored in the poetic concept of *négritude*. Unlike Kardelj, who believed that socialism 'cannot make or unmake nations', Senghor was more optimistic about the capacity of imaginative powers to call forth a new political sensibility, and ultimately a new political subject. For Senghor, *négritude* is 'the sum total of the values of civilization of the Black World'.⁵⁵ Some have argued that *négritude* is a form of 'anti-racist racism', but Senghor and other proponents of *négritude* have vehemently rejected this. While it is true that he argued that 'l'émotion est nègre, comme la raison héllène', Senghor equally used *négritude* in a deracialized way which enabled him to enlist Picasso, Rimbaud, and Bergson under its banner.⁵⁶ As Souleymane Diagne argued, 'ultimately and maybe not so paradoxically . . . one does not have to be black to be a "nègre"'.⁵⁷

The constitutional complement to this poetic vision was to maintain the unity of French West Africa (AOF) within the French Union, which should not be abolished, nor turned into an ineffectual 'commonwealth', but should rather be reconstituted as a multinational federation. This project to a certain extent resonated with the views of anti-Vichy French politicians, who appreciated the role of the colonies in the liberation of France, and understood the need to reconstruct the French Empire along more inclusive lines. Already in 1944, Henri Laurentie, De Gaulle's specialist for colonial issues, stated that the Free French policy toward the French colonies was, in fact, 'the exact application of the principle of equality, that is . . . the suppression of the colonial concept, properly speaking'.⁵⁸ The French Union, the heir to the empire, though still apparently indestructible, was to be 'a more or less federal ensemble in which each French country, morally equal to each other, including the metropole, will be capable of following its distinct vocation, while sharing in the rights and obligations of the same human society'.⁵⁹

This rhetoric was soon tested in the elections for the first *Constituante* in January of 1946. While it was accepted that the participation of the colonies in the process of drawing up the new imperial constitution would be essential to its legitimacy, the representation of the colonies was far from proportional. Indeed, criteria such as education, military service, or employment for a French company were used to 'keep the numbers down' and have significantly reduced the presence of the colonial population the Constituent Assembly.⁶⁰

54 I. Markovitz, *Leopold Sédar Senghor and the Politics of Negritude* (1969), 89.

55 S. Diagne, 'Négritude' (2010), in *Stanford Encyclopedia of Philosophy*, available at www.plato.stanford.edu/entries/negritude/#NegPol.

56 Ibid.

57 Ibid.

58 F. Cooper, 'Alternatives to Empire: France and Africa after World War II', in D. Howland and L. White (eds.), *The State of Sovereignty: Territories, Laws, Populations* (2009), 97.

59 Ibid.

60 Ibid., at 98.

But irrespective of the ensuing dilution of the African vote, French West African representatives such as Leopold Senghor, Mamadou Dia, Aimé Césaire, and Lamine Guèye, together with other overseas deputies, were part of a powerful bloc that sustained a left-wing majority in the first *Constituante*. And in good part due to their efforts, it seemed that the days of domination by metropolitan France were over. Article 41 of the draft constitution stipulated that France, together with its overseas territories and associate states, formed ‘a union of free consent [*librement consentie*]’.⁶¹ Though symbolically important, this provision was overshadowed by Article 18, which would have transformed the French Union not only into a quasi-federation, but also into a union of equal social citizenship. According to this article’s provisions, ‘[a]ccess to all professions, posts and private employment is open under the same positions to all subjects of the French Union. . . . For equality of work, everyone has a right to equality of moral and material position’.⁶²

The draft of the constitution, which for some commentators is best characterized as the ‘price the Marxist parties were prepared to pay for the opportunity to restructure domestic French institutions according to their own specifications’, was defeated in a referendum in May 1946, and a new, more conservative majority emerged in the second Constituent Assembly.⁶³ In the different political context of France, with far fewer communists and socialists, and many more representatives of the centre-right, West Africans formed the Intergroup of Native Deputies. Together with newly elected Algerian deputies, the Intergroup was intent on salvaging the essence of the defeated April draft. According to its own constitutional proposal, ‘[t]he French Union is a federation of nations and peoples who freely agree to coordinate or combine their resources and their efforts to develop their respective civilizations’.⁶⁴ In the federal parliament, the constituent territories, including France, would have been represented ‘in each case proportional to its population’.⁶⁵

The possibility of the demographic strength of the periphery spilling into the metropolis, and, by implication, diluting French political domination, provoked a form of existential anxiety among the French deputies. According to Edouard Herriot, a radical-socialist deputy and France’s interwar prime minister, France risked becoming a ‘colony of its colonies’ if it condoned this mechanism for integrating overseas masses into the political life of the metropole.⁶⁶ Fully aware of perceived implications of equal citizenship in France and their capacity to undermine his project, Senghor’s proposal to create multinational federalism sought to allay French fears – emerging even among otherwise progressive politicians such as Herriot – with a proposal for self-government for each constitutive unit (including France) combined with the complete set of pan-federal citizenship rights, which would nonetheless have enabled the Africans to draw on the resources of metropolitan France. The Intergroup members also sought to dispel fears that the voluntariness

61 B. Marshall, *French Colonial Myth and Constitution-Making in the Fourth Republic* (1973), 216.

62 *Ibid.*, at 215.

63 J. Lewis, ‘The MRP and the Genesis of the French Union’, (1998) 12 *French History* 276, at 284.

64 Marshall, *supra* note 61, at 229.

65 *Ibid.*, at 230.

66 Cooper, *supra* note 58, at 102.

built into the foundations of the union would be used by those who sought to claim external self-determination for France's overseas territories.

Habituated as we now are to the narrative of decolonization, the Intergroup's vigorous, albeit qualified, rejection of external self-determination is striking. According to a contemporary account by Ferhat Abbas, these native parliamentarians

reject separatism for sentimental reasons and for reasons of a practical nature. The sentimental reasons! We do not recognize for ourselves a right to separate from France at a time when she is in distress. Practical reasons: we have no right, through a hasty separation, to leave the door open to the return of certain feudalisms or to the intervention of certain foreign states that would attempt to take the place of France.⁶⁷

The institutional arrangement that finally emerged from the second *Constituante* fell far short of the expectations of the Intergroup deputies. The new Constitution's Article 64 provided that the executive of the union would be headed by the president of the French Republic and representatives of the associate states.⁶⁸ The federal president would chair the executive, the High Council, but the powers of the Council would be merely consultative, 'assisting' the French metropolitan government in 'the general conduct of the affairs of the union'.⁶⁹ Equally, the *Assemblée de l'Union Française* was envisaged merely as a consultative, and not a legislative, body. The prime minister of the union – the prime minister of France – would be responsible not to the federal Assembly but to the French National Assembly, such that metropolitan France would have been grossly overrepresented. For influential contemporary commentators such as Dechamps, the 'generosity of these articles . . . [in] dealing with the French Union is indisputable'.⁷⁰ For Dechamps it was more problematic that the overseas representatives might use their presence to influence 'ever-precarious French parliamentary majorities [and] pervert French domestic policies [which] may result in having French laws passed by persons whom they don't concern'.⁷¹ While Dechamps worried about the dilution of French metropolitan influence, he recognized that overseas representatives ought to have 'a voice in a parliament which discusses their laws'. 'This', he said, 'is a general principle of the Rights of Man'.⁷²

Needless to say, the arrangement proposed by the second Constituent Assembly was not the French West African first-order constitutional preference. What made these arrangements bearable for African leaders was the fact that the citizenship provisions remained entrenched in the constitution according to Article 80: 'all subjects of the Overseas Territories shall be citizens [of France] . . . Special laws shall determine the conditions under which they may exercise their rights as citizens'.⁷³

It did not take long before the French elite realized that African populations would see their newly acquired political rights not only as a badge of their dignity but more importantly as a strategically valuable springboard for social claims on the former

67 Marshall, *supra* note 61, at 231.

68 H. Dechamps, *The French Union: History, Institutions, Reality* (1956), 96.

69 *Ibid.*, at 96.

70 *Ibid.*, at 97.

71 *Ibid.*, at 102.

72 *Ibid.*, at 103.

73 *Ibid.*, at 97.

metropole.⁷⁴ Within a decade – and not because of newfound appreciation for self-determination – the French metropolitan government began to backpedal, and to strategically devolve power to its African colonies in order to undercut demands for social equality across the French Union.⁷⁵ In 1956, it passed the so-called *loi cadre*, which gave an important degree of political autonomy to all overseas territories. Through devolution, the French government sought to cut off any possibility that its possessions might make material demands on the metropole. These territories were given not only budgetary autonomy but also a corresponding responsibility for financing their own affairs. Through the *loi cadre*, local elites in turn obtained their own territorial electoral base – tempting state-building tools and patronage resources, as it turned out.

Another effect of the 1956 devolution was to undercut the project of maintaining French West Africa as a wider French African federation, which would itself – as opposed to the individual territories – be a constituent unit of a future Francophone multinational polity. The proponents of a strong West African federation, Senghor and Dia, greeted the *loi cadre* with profound disappointment. '[I]n spite of us', they lamented, 'West Africa was balkanized, cut into fragments'.⁷⁶ The only truncated effort to create something resembling a French West African federation, the Federation of Mali, did not survive four months from its formally recognized international independence.

Early on, commentators noted Senghor's 'lack of nationalistic fervor'⁷⁷ (as well as West Africa's more generally) with ambivalence, and called his position 'schizophrenic',⁷⁸ in that it sought to reconcile the creation of a wider African political subject, based on the idea of *négritude*, with French culture.⁷⁹ But recent scholarship has manifested a more positive – or at least more sympathetic – view of West African constitutional aspirations. Their aspiration – an ambitious territorial and constitutional reconfiguration – was simultaneously more moderate and more self-confident than the outright demands for independence with which the right of self-determination is associated. It rejected external self-determination as an 'old hunting rifle',⁸⁰ and called on Africans to 'assimilate, [and not] be assimilated'.⁸¹ This vision – of inclusion, equality, and citizenship – shows that there might be a strategy even more powerful than putting the source of your domination at arm's length through means of an independent state – and that is to dilute it by means of close constitutional involvement.

74 This yielded some important legislative victories: the labour code of 1952 guaranteed equal pay and equal benefits for equal work, the 40-hour week and paid vacations for all workers, and the right to unionize and strike irrespective of race, religion, or origins.

75 A. Keese, "'Quelques Satisfactions d'Amour-propre': African Elite Integration, the Loi-cadre, and Involuntary Decolonization of French Tropical Africa', (2003) 27 *Itinerario* 33, at 36.

76 Cooper, *supra* note 58, at 109.

77 Markovitz, *supra* note 54, at 80.

78 V. Levine, 'Political-Cultural Schizophrenia in Francophone Africa', in I. Mowoe and R. Bjornson (eds.), *Africa and the West: The Legacies of Empire* (1986), 156.

79 Markovitz, *supra* note 54, at 94–7.

80 F. Cooper, 'Alternatives to Nationalism in French Africa, 1945–60', in J. Dülffer and M. Frey (eds.), *Elites and Decolonization in the Twentieth Century* (2011), 110 at 117.

81 *Ibid.*, at 113.

Against this picture, the right of self-determination in French West Africa appears as a regrettable second-best, a finely tuned act of political triage, in good part orchestrated by the metropolitan core – not as the heroic culmination of decolonization. Yet, when Senghor's role is mentioned today in self-determination treatises, it is only to accentuate the role of *négritude* as a form of reverse black racism still entangled with the heritage of colonial humanism, rather than to highlight his role in devising an unusual, potentially even more subversive, vision of decolonization.⁸² This omission is unfortunate, as it impoverishes our imagination at a conjuncture when self-determination needs a new interpretation, either to re-establish its role in progressive territorial reconfigurations, or to counsel an alternative counterhegemonic vision. Such a vision would not be compelled to abandon either pluralism, or large-scale affective (national) solidarity, in order to mount a claim to being represented meaningfully at political sites, which are otherwise out of reach of both conceptual imagination and radical political mobilization.

4. ALTERNATIVE PLURALISMS AS POLITICAL COMPLEMENTS TO RECENT PLURALIST THINKING IN INTERNATIONAL LAW

In this article I have so far argued that self-determination in recent pluralist projects is either empty, conservative, or ethereal. Fearing greatpower hegemony (Roth and Cohen), or hegemony in general (Krisch), pluralists have rejected conceptualizing self-determination as a tool for legitimate territorial reconfigurations implicated in wider social or geopolitical projects. Kardelj and Senghor shared these preoccupations, but have not in turn rejected some form of nationalism, seeing it instead as a necessary complement to two other registers in which self-determination partakes: the social and the global.

For all their sobriety concerning the potential of self-determination – Kardelj called it 'an indispensable *defensive* barricade', and Senghor 'an old-hunting rifle' – both have seen a role for it in the context of creating a safe space for diverse social projects and for fending off global and regional hegemonies. Granted, in practice, Kardelj's particular articulation of the relationship between the 'national' and 'the social' was ultimately a resounding failure. But Kardelj's principled message to 'bounded pluralists', such as Roth, remains valid: if the marriage between national and social emancipation is always fragile, this does not mean that one has to be traded against the other. If that is the case, an implicit assumption of Roth's project – that by providing a more normatively rich account of self-determination we would provide an additional foothold for great powers to intervene in the affairs of weaker ones – demands empirical verification. If empirical verification proves inconclusive the case could be made that the project of bounded pluralism would be strengthened by a double commitment both to national and to ideological diversity.

In contrast to Roth, Cohen's 'constitutional pluralism' is more attuned to the need for a geopolitical complement to her vision of United Nations' reform along more

82 J. Summers, *Peoples and International Law: How the Right of Self-Determination and Nationalism Shape a Contemporary Law of Nations* (2007), 68.

federal lines. But the regional political blocs she proposes as a complement to this project can themselves feature ‘nested hegemonies’. The threat of nested hegemonies within such promising geopolitical blocs, such as the Bolivarian Alliance for the Peoples of Our America (ALBA) built around ‘complementarity’ and ‘solidarity’, is perhaps far-fetched at this point.⁸³ But as regional blocs become more integrated, and as financial crises hit their shores, political – in addition to economic – disparities quickly become visible: Greece’s political self-determination is held hostage by a financial, political, and, ultimately, moral vision coming from Brussels and Berlin. Here, Kardelj’s greatest contribution lies perhaps in clearly recognizing that what peripheral countries need, if they are intent on securing autonomy for their visions of social development – *in addition* to membership in regional political associations – is membership in transcontinental projects that counterpoise not only global hegemonic, but also regional, counterhegemonic political projects.

Transcontinental projects need not necessarily take the shape of the global counterpoise – a buffer against hegemony and accelerator for development – theorized by Kardelj, and materialized in the Non-Aligned Movement. They could also take form as demands for direct constitutional presence by peripheral countries in the regional centres of political domination; or, the creation of constitutional organizations that dilute the hegemony of the great powers. The counterhegemonic intent of such a project is not always readily visible from Senghor’s political engagement, in part because it was couched in the vocabulary of allegiance to France, and its republican principles. For those in the global South, it is therefore less clear what principle could justify, *today*, their presence in the centres of political power that profoundly affect them.

Perhaps surprisingly, this principle could be intimated from radical pluralism – the richest normative account among the pluralist projects discussed in this article. Krisch’s ‘practice of public autonomy’ has, among other component principles, raised the profile of ‘affected interests’. In Krisch’s radical pluralism, though, we are never certain whether this principle can have territorial application: there is nothing in the idea of ‘the practice of public autonomy’ that would prevent it from being grafted onto the territorial plane, though it is more plausible to argue that Krisch would prefer the multiplication of new functional demoi, over the realignment of territorial boundaries.⁸⁴

In recent democratic theory, ‘affected interests’ have been used to justify porous borders,⁸⁵ or even the authority of the international community to have final say over the creation of a territorial polity.⁸⁶ But, beyond these projects, the trope of ‘affected interests’ can also be used to justify transcontinental constitutional projects

83 M. Al Attar and R. Miller, ‘Towards an Emancipatory International Law: The Bolivarian Reconstruction’, (2010) 31(3) *Third World Quarterly* 347, 353.

84 Not all voices in contemporary international legal debates share that opinion. See S. Wheatley, ‘A Democratic Rule of International Law’, (2011) 22 *EJIL* 525, at 541, for an opinion that the ‘all-affected-interests’ principle is inapplicable beyond a nation-state.

85 A. Abizadeh, ‘Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders’, (2008) 35 *Political Theory* 37, 51.

86 H. Agné, ‘Why Democracy Must Be Global: Self-Founding and Democratic Intervention’, (2010) 2 *International Theory* 381, 389.

that are currently in democratic theory's blind spot, and which are in spirit similar to Senghor's demand for constitutional inclusion. If the political and economic influence of the Western metropolises pervasively, continuously, and profoundly affects the countries of the periphery and the semi-periphery, the trope of 'affected interests' can easily justify not only taking the interests of others into account, but rather – more radically – demanding the constitutional presence of the periphery and semi-periphery in the domestic constitutional process of countries in 'the core'.⁸⁷ This principle was obfuscated in the French constitutional debates in the 1940s and 1950s: the colonies were already, albeit imperfectly, 'in'. At that point it was more propitious to couch claims for inclusion in the verbiage of loyalty towards France and a common civilizational project.

In its time, Senghor's strategy was seen as 'the most striking case of counter-penetration by a colonial into the rules of governance of the metropole'.⁸⁸ There is no doubt that proposals such as these, today, would provoke reactions along the lines of Herriot's ethnocentric anxieties in the late 1940s, where the periphery, if allowed, would arguably 'take over' the core. Equally, any such project would depend on an assessment of the pros and cons of a closer constitutional arrangement between weaker, external polities with the dominant power. Historically, this consideration played an important role in the reasoning of the Scottish elite to join England in the United Kingdom. For MacCormick, for example, in joining the UK the Scots wanted to minimize 'exposure to risk' from the unaccountable monarch they already shared with the English.⁸⁹ Recently, the population of Puerto Rico, an unincorporated territory of the United States, overwhelmingly rejected the independence of the island, opting instead for incorporation as a federal state. The willingness of smaller polities to strategically forfeit their 'self-determination' does not, of course, dispense with the larger question of political realism: we cannot realistically think that France, the UK, the EU or the US would allow for direct constitutional representation of the polities that they have profoundly affected. But, at the very least, it opens a conceptual and normative possibility – beyond territorial self-determination – to create populist alliances, armed with constitutional demands, which would transgress the boundaries of existing sovereign polities.

Finally, what of nationalism and territorial reconstructions? Kardelj and Senghor would side against aggressive projects that would seek to pursue a social or geopolitical agenda through radical territorial reconfigurations. In this way, they would have agreed with contemporary pluralists. However, both made use of nationalism in order to strengthen their larger social and constitutional project. Kardelj's embrace of nationalism stemmed from his Leninist upbringing, which made him view *existing* nations as ineradicable building blocks of political reality at this stage of social development. He did not see, for example, the potential for the Non-Aligned Movement to develop its own form of affective solidarity, as suggested at the

87 R. Smith, 'The Principle of Constituted Identities and the Obligation to Include', (2008) 1 (3) *Ethics & Global Politics* 139, at 149; R. Dahl, *After the Revolution? Authority in a Good Society* (1970), 67.

88 A. Mazrui, 'On Poet-Presidents and Philosopher-Kings' (1990) 21(2) *Research in African Literatures* 13, at 18.

89 MacCormick, *supra* note 6, at 56.

twilight of the movement by some cultural anthropologists, such as Akhil Gupta.⁹⁰ Senghor's vision of nationalism was more poetic and ambitious, as he thought it possible to call forth a new affective political constellation that would include both French West Africa and the French metropole.

While their understandings of nationalism radically differed, both Kardelj and Senghor relied on a territorial federalism that accommodates nationalism as a necessary complement to their political and social agendas. Their joint message is that federalist accommodation of national diversity should not be thrown under the bus for the sake of shoring up doctrinal defences of sovereign equality as a bulwark against great-power hegemony. And in fact, Cohen's constitutional pluralism does gesture in this direction, but never openly. While she has suggested federalist solutions to UN reform, or regional political alliances, Cohen has never proposed extending federalist solutions *all the way down*, so as to apply at the level of an independent sovereign state. This is curious, as one of her explicit justifications for federalism is preservation of diversity; national sovereignty is a myth that has to accommodate 'near universality of multiethnic, multireligious, multicultural polities'.⁹¹

5. CONCLUDING REMARKS

Significant space in this article has been devoted to questioning the predominant impetus in recent pluralist theorizing of international order that both excludes nationalism from an account of self-determination and simultaneously denies a role to self-determination in territorial reconfigurations. While Kardelj and Senghor would be closer to the 'conservative' account of self-determination, they have kept a non-negligible commitment to some form of nationalism that has made their account of self-determination anything but 'empty' and 'ethereal'. This has helped them construct pluralist political visions that, I have argued, may serve as a historical complement to contemporary pluralist thinking.

Mapping these alternative pluralist visions and commensurating them with existing juridical pluralisms on offer will always face the charge of the lack of realism: after all, both Kardelj's and Senghor's visions were historically defeated. But instead of seeing them as 'beautiful losers', retrieving their geopolitical imaginaries should be understood as a friendly provocation, posing an important question: how to get from 'here' to 'there'? In other words, what needs to happen *politically* for the Permanent Five to agree to abandon their veto in the Charter amendment procedure, as Cohen has suggested?⁹² What needs to happen for 'pragmatic accommodation and institutional equidistance' to have 'a subversive effect', as suggested by Krisch, if such putative accommodation would go against the interests of great powers?⁹³

90 A. Gupta, 'The Song of the Nonaligned World: Transnational Identities and Reinscription of Space in Late Capitalism', (1992) 7(1) *Cultural Anthropology* 63, for an account of the germs of such a 'transcontinental' affective political community. I thank Luis Eslava for this reference.

91 Cohen, *supra* note 2, at 99.

92 Cohen, *supra* note 2.

93 Krisch, *supra* note 3, at 305 and 306 respectively.

Finally, Roth's hope for bounded pluralism rests, in part, on great powers realizing that they cannot 'wager on the continued weakness of others . . . and . . . the continued irrelevance of their disposition to cooperate on security issues'.⁹⁴ To what extent can we rely on great powers' self-interest to judiciously observe the principle of self-determination qua sovereign equality, as suggested by Roth?⁹⁵

Persuasion through jurisprudential rearticulations of international legal order (Roth and Cohen), or reframing of its central concepts (Krisch) through confrontation with political theory, is indubitably important, but I believe insufficient. Juridical imagination needs to go hand in hand with wider (geo)political and constitutional visions that do not abandon some form of affective attachment to a common political project as an inescapable 'fuel' that sustains them, nor do such visions have to reject or neglect certain territorial reconfigurations in the name of national pluralism.⁹⁶

94 Roth, *supra* note 1, at 163.

95 Ibid. For a deeper critique of Roth's project that challenges his understanding of political violence see R. Parfitt, 'B. R. Roth. Sovereign Equality and Moral Disagreement: Premises of a Pluralist International Legal Order', (2012) 23 EJIL 1175 (book review).

96 To approve these territorial reconfigurations in the name of 'self-determination', however, will be difficult both because of the lack of grounding in the doctrine (as argued by Roth), and because there are other tropes, such as 'affected interests' that emerged from Krisch's radical pluralism, that complicate the idea of straightforward self-determination of a specific group.