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## A Legal Presumption in Modernist Interpretations of Nationalism

Nationalism has been a dominant force in modern industrial societies (Hutchinson and Smith 1994; Özkirimli 2000: 1; Delanty 2003: 2873); Delanty and O'Mahoney 2002: ix). In contrast to this central significance, the study of nationalism has been largely neglected in the social sciences until relatively recently (Özkirimli 2000: 1; Delanty and O'Mahony 2002: ix). The marginal position that the study of nationalism has had in modern sociology has been linked to the lack of interest in the topic in the classical sociology of key authors, such as Weber and Durkheim (Delanty 2003: 288). Generally, up until “1918 the study of nationalism was closely linked to the formation of nation states and of a historical profession. Nationalism was regarded as a component of national history rather than as a distinct subject” (Breuilly 2008: xvi).

Özkirimli proposes to distinguish between four stages in the history of the scholarly study of nationalism. During the eighteenth and nineteenth centuries, the notion of nationalism was formed; between 1918 and 1945, the subject attracted some academic interest; between 1945 and 1980,

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the topic gained popularity in sociology and political science; and since then, the classical understandings of nationalism have been scrutinized (Özkişimli 2000: 15). The latter part of the twentieth century often has been highlighted as a time in which the academic interest in nationalism grew and diversified (Guibernau and Hutchinson 2001: 1; Delanty and Kumar 2006: 1). The many forms that nationalism can take, and the wide number of disciplines and approaches from which it can be studied, have been argued to pose significant problems in the study of nationalism (Hutchinson and Smith 1994: 3–5). Nations and nationalism have passed from being a taken-for granted notion associated with the histories of modern nation-states to be at the center of a debate that taps into and scrutinizes core scholarly concepts in social science, such as culture, society, the state, and modernity. To this day, “the concept of the nation continues to pose analytical problems to social scientist” (Dannreuther and Kennedy 2007: 12). Some scholars claim that the subject is one of the most complicated and challenging themes of modernity (Chernilo 2006: 129; Smith 2010: 10).

This chapter engages with one of the central debates in the study of nationalism, that of debating the modernity or antiquity of nations and nationalism. From modernist perspectives, it is generally argued that nationalisms emerged in Europe from the late eighteenth century onward following the social transformations produced by the scientific and industrial revolutions. Three perspectives can be distinguished from which the antiquity of nationalism is defended: perennialism, primordialism, and ethnosymbolism. They differ in that they link national sentiments to different factors. The debate between modernist and primordialism (as it is sometimes framed) has been argued to have at its core “the question of the degree to which modern nation constructions are dependent on real rather than imagined historical experiences of nationhood” (Delanty and O’Mahony 2002: 83). If these historical experiences are real, nationalist political claims can be considered to have some validity, and their legitimacy is linked to notions of culture or ethnicity. If the experiences are imagined, nationalist political claims are not given much validity, and they connect legitimacy to a concept of law contained in theories of modernization.

## The Antiquity of Nationalism

Three perspectives—perennialism, primordialism, and ethnosymbolism—maintain that nationalism has ancient origins. According to Özkirimli (2000: 64), primordialism was the first dominant paradigm to understand nations and nationalism. Its primacy lasted until the second half of the twentieth century, when it lost ground in favor of modernism. Nonetheless, the label “primordialism” was not used until 1957 (Özkirimli 2000: 65). Rather than a theory, it can be better thought of as “a related family of concerns and approaches” (Hearn 2006: 20). The nation tends to be regarded as “a primordial element of nature, and intrinsic to the human condition” (Smith 2001: 10); and it is often negatively associated with “the sins of naturalism, essentialism and retrospective nationalism” (Smith 2009: 8).

In contrast to primordialism, perennialism proposes an empirical and historical approach to understanding nationalism (Smith 2001: 10). It does not link national identity to quasi-biological factors that cannot be sociologically explained. However, Smith argues that the dominant understanding of nationalism up to the mid-twentieth century was not only primordial but also perennial, because it was thought “that nations, like races, were given in nature and therefore perennial and primordial” (Smith 2009: 3). From such perspectives, not only the existence of national identity is naturalized, but it is also considered a key factor shaping modern European history. The notion of national identity, far from being conceived as alien to the process, is seen as a key factor making possible the formation of a modern international state system. The origin of this idea has conventionally been linked to one historical event, the Peace of Westphalia (Lessafer 2004; Neff 2006; Fabry 2010). The peace has been conventionally considered a key event that “laid down the basic principles of the modern law of nations, such as sovereignty, equality, religious neutrality and the balance of power” (Lesaffer 2004: 9).

Ethnosymbolism has emerged as an alternative perspective that argues for the premodern origins of nationalism. It was put forward in the 1980s by John Armstrong and Anthony Smith (Hutchinson 2000: 660). According to Smith (2009: 1), it does not pretend to be a scientific

theory: The perspective aims instead at providing “a social and cultural understanding of nations and nationalism, and the emphasis on culture stems, in large part, from the perceived need to supplement modernist approaches that focus on political and economic factors” (129). The formation of nationalisms during modernity is not related only to socio-economic or administrative factors but also to ethnic and cultural. Smith (1981) argued that the cultural revival that took place during the second half of the twentieth century was a reaction by ethnic communities to the possibilities offered by the concept of nationalism. Rather than discrediting their political ambitions, Smith interpreted them as a sociological reaction of communities often isolated, or politically excluded, which found in nationalism a concept to become “active, participant and self-conscious in their historic identities” (24). Despite their modernity, nationalist movements originate in “deeper” sociological roots from what they normally were granted. Nationalist political claims are linked to the political utility perceived by cultural communities to articulate their rights to be empowered.

The latter part of the twentieth century developed two contrasting tendencies towards nationalism. Whilst it regained political importance in Europe, central concepts to the notion of nationalism, such as culture or identity, were revised and widely criticised in academia. It is perhaps due to this theoretical turn in social science that modernism has become the most popular way to understand nationalism (Smith 2010: 50–53), although the debate between modernist and ethnosymbolists continues (Ichijo 2013: 1). The concepts of culture and identity, so closely related to that of nationalism, have been similarly scrutinized (e.g., Somers 1994; Brubaker and Cooper 2000 regarding identity; Whiteley 2003 regarding culture). It was in the 1980s when the notion of culture started to be challenged in social and cultural anthropology and its usefulness questioned. Scholars began to argue that the idea of culture was not empirically supported and that it responded to a particular historical time (Wolf 1982 in Spencer 1990). Richard Handler’s (1985) work on Quebecois nationalism was influential in raising awareness about the political implications of academic representations based on the concept of “culture,” around which nationalists based their claims. Jean Jackson (1995) showed how indigenous communities in Colombia constructed their “cultures” based on the

western concept of culture in order to empower their positions and interests. She in fact offers a great description showing how the notion of “culture” was understood and how it is being reconceptualized:

[The] conventional concept of culture [is] based on a quasibiological analogy in which a group of people are seen as “having” or “possessing” a culture somewhat in the way an animal species has fur or claws. In addition, people are thought to acquire culture slowly, during their childhoods, as part of their development. The culture they acquire existed before them and will be their legacy; they neither create nor invent it. Although culture is understood to change over time, this is a gradual process; rapid change is described as acculturation, with one group losing some of its culture...If, however, we see culture as something dynamic, something that people use to adapt to changing social conditions—and as something that is adapted in turn—we have a more serviceable sense of how culture operates over time, particularly in situations demanding rapid change. It is helpful sometimes to see culture as less like an animal’s fur and more like a jazz musician’s repertoire: the individual pieces come out of a tradition, but improvisation always occurs. (18)

The validity that should be given to political projects based on notions of culture or identity was at the center of the debate. Iris Jean-Klein (2001: 84) noted that anthropologists had become increasingly aware of the extent to which their “studies colluded with reprehensible political projects, as the model of ‘culture’ employed in the discipline played directly into the hands of contemporary nationalist representation.”

Like the concept of culture, the concept of identity has suffered similar transformations. Margaret R. Somers (1994), for instance, argues that “to avoid the hazards of rigidifying aspects of identity into a misleading categorical entity is to incorporate into the core conception of identity the categorically destabilizing dimensions of *time, space and relationality*” (606; her emphasis). Identity is seen as changing, dynamic, and constructed; it is political and instrumental rather than natural or inevitable. Behind an identity there is not a particular way of being. It has been argued that identity “is a matter of claims, not character; persona, not personality; and representation, not self” (Ybema et al. 2009: 306). Identity is not something that is ever achieved (Brubaker and Cooper 2000);

it needs to be continuously performed and enacted (Ybema et al. 2009). Identities are constructed within particular social contexts and in relation to other existing identities. This is because identities are not formed in isolation but instead through the interaction of different social agents in social life: “it seems that an intrinsic part of the process by which we come to understand who *we* are is intimately connected to notions of who we are *not*” (Ybema et al. 2009: 306, his emphasis). Identities are co-constructed, generated in the dialogue between different social agents who negotiate who they are and who they are not in relation to each other. The study of the construction of collective national identity requires the study of the social context in which the existing national identities are together constructed in relation to each other.

These theoretical developments have made it problematic to maintain the claim that ethnic ties produce shared understandings that motivate united social action. Culture has come to be understood as a battleground for power. The emerging understandings have affected not only how researchers write about these concepts, but it has also raised serious questions about the extent to which linguistic, ethnic, or cultural features can be associated with a factor creating shared views and actions. It thus becomes problematic to link historical continuities to notions of ethnicity or national identity.

## The Modernity of Nationalism

The modernist approach was formed after World War II partly as a reaction to the racist and nationalistic ideas driving the Holocaust (Smith 2009: 4). Modernists reinterpreted nationalism by disentangling political legitimacy from ethnic and racial factors. The old idea that national identities had played a key role in the formation of European states and a modern international state system was rejected, and national identity was no longer considered to be a natural or almost inevitable characteristic of the human condition. Instead, nationalism was thought to be a product of modernity, having mostly emerged during the

nineteenth and twentieth centuries (Özkirimli 2000: 85). The reference for modernity tended to be the Enlightenment rather than the Renaissance:

From the modernist perspective, nations are outgrowths of modernization or rationalization as exemplified in the rise of the bureaucratic state, industrial economy, and secular concepts of human autonomy. The premodern world of heterogeneous political formations (of empire, city-state, theocratic territories) legitimated by dynastic and religious principles, marked by linguistic and cultural diversity, fluid or disaggregated territorial boundaries, and enduring social and regional stratifications, putatively disappears in favour of a world of nation-states. (Hutchinson 2000: 652)

However, other than the modernity of nationalism, there is little agreement as to which of the changes that brought about modernity was the cause of the emergence of nationalism (Hechter 2001: 3). Jonathan Hearn (2006: 67–94) has identified three main themes within modernism: the economy and industrialism; politics (the modern state); and mass culture (language and education). Although the themes generally are combined, each emphasizes a different factor to link to the emergence of nationalism. The work of Ernest Gellner (1983), John Breuilly (1993), and Benedict Anderson (1983) illustrate the different emphases placed on these approaches.

To Gellner (1983: 1), nationalism was primarily a “political principle, which holds that the political and the national unit should be congruent.” The modernity of nationalism was related to the social changes that turned agrarian societies into industrial ones. There was a gap in agrarian societies between a high-cultured minority exercising power and a disempowered and uncultured food-producing majority. Culture itself was associated with religion, and the food-producing majority “were tied to a faith and church rather than to a state and pervasive culture” (Gellner 1983: 141). This vertical social hierarchy and the connection between culture and religion impeded the existence of a communal national identity. In industrial society, by contrast, high culture is no longer linked to religion, and it is made available to larger parts of the population, as they need to learn the knowledge necessary to labor in more complex industrial economies.

Industrial society relies on a “growth-bound economy dependent on cognitive renovation” (141). The cultural and sociological references are shifted from religion and the church to the particular culture of a given social context. “So the culture needs to be sustained as a culture, and not as the carrier of scarcely noticed accompaniment of faith. Society can and does worship itself or its own culture” (141–142). The emergence of nationalism can be linked to the creation of horizontal bonds in the French and American revolutions, which “would replace the vertical hierarchies of the ancient regime” (Esherick et al. 2006: 2).

Key to explaining the emergence of nationalism are the differences between agrarian and industrial societies. Gellner put forward a modernist theory of nationalism that linked the social transformations produced by economic and technological developments to the emergence of national identities. The importance that theories of modernization had in his thought has been noted by John Breuilly, who in the introduction to the second edition of Gellner’s *Nations and Nationalism* states that Gellner, to develop his modernist interpretation of nationalism, had to “identify the central feature of modernity,” which was articulated in a historical break, “the transition from pre-industrial (usually agrarian) to industrial society” (Breuilly 2008: xxi–xxii). The processes of social upheaval associated with this change were characterized by a neat legal, political, and epistemological distinction. Gellner understood this process of modernization as a clearly defined transition from a social system dominated by “a violent and coercive ruling class, and closed non-cumulative cognitive framework imposed by a self-perpetuating revelation-holding clerisy, to industrial society, characterised by affluence, dynamic and cumulative cognitive growth and the prospect, if not the guarantee, of liberty” (Dannreuther and Kennedy 2007: 340). Nationalism is conceived of as a political doctrine produced in industrial society due to the culturalization of the masses and the utilization of secular cultural references.

The second main theme in modernist theories is the state. It has been argued that Gellner paid little attention to the state (O’Leary 1998 in Hearn 2006: 74). Arguably, Gellner preferred using the term “high culture” than “state,” perhaps to void the anachronism of referring to the past with terms and ideas developed later on in history. Nevertheless, Gellner is often associated to a lack of attention to the figure of the state.



In contrast, John Breuilly (1993: 1) is an example of an influential academic who places the emphasis directly in modern politics and the modern state. My purpose here is to highlight the extent to which both Breuilly and Gellner consider nationalism to be modern:

I do not regard the nation as having a significant pre-modern history, or as a “real” group with an identity and consciousness which produces political effects such as nation-states, or as a discursive construct. Rather I treat the nation as a modern political and ideological formation which developed in close conjunction with the emergence of the modern, territorial, sovereign and participatory state. (Breuilly 2001: 32)

Nationalism is modern, and there are therefore no continuities in nationalist sentiments or conflicts. The emergence and effects of nationalism are to be interpreted solely in relation to modernity. The same is true for the interpretation of the rise of nationalism normally associated with the third main theme noted by Hearn, mass culture. Benedict Anderson (1983: 4) is a key figure in this. To him nationalism was a historical “cultural artefact,” which had formed toward the end of the eighteenth century and which had had different meanings. He defined nationalism as “an imagined political community – and imagined as both inherently limited and sovereign” (6). He linked the emergence of nationalism to key cultural changes and to the influence exercised by “the convergence of capitalism and print technology on the fatal diversity of human language [which] created the possibility of a new form of imagined community, which in its basic morphology set the stage for the modern nation” (Anderson 1983: 46). Although these three themes do not exhaust all possible modernist interpretations of nationalism, they serve to illustrate the extent to which modernity exercises an influence in the form of a key historical discontinuity. There was an epoch without nations or nationalisms, then came the Enlightenment, as a symbol of an epistemological shift, triggering a process of transformations, social, legal, political, economic, and technological. There emerged within the transformed society new social classes, issues, contexts, and ideas. Modern industrial states are generally thought to have produced urban and secular contexts within which populations developed new forms of identities,

including national ones. Nationalism is to be explained primarily in this context. It plays a key role in distinguishing two distinct historical epochs that are to be interpreted in relation to contrasting analytical frameworks. The emergence of nations and nationalism is to be understood in relation to a historical discontinuity. There is modernity within which the emergence of nationalism can be studied, and there is a time before, which is to be explained in relation to other factors (Smith 2009: 16). However, Hearn (2006: 106) has argued that “our tendency to make sense of history through stadial models is driven partly by the historical record, partly by our cognitive need for simplification and partly by our normative perspective.”

## A Legal Presumption in Theories of Modernization

Modernist scholars studying nationalism have noted the relevance that theories of modernization have for their theoretical positions (Hearn 2006: 92). I argue that there is a legal presumption contained in theories of modernization that influences the analytical framework from which the modernity of nationalism tends to be understood. This assumption is embedded in the very notion of modernization.

The terms “modernity” and “modernization” are related, yet they have different histories. The term “modernization” started to be used around the eighteenth century and would become an academic term during the twentieth century (He 2012: 3). It has been generally used to refer to “the sum of the processes of large-scale change through which a certain society tends to acquire the economic, political, social and cultural characteristics considered typical of modernity” (Martinelli 2005: 5). In contrast, the term “modernity” has a much older history. It comes from the Latin term “*modernus*,” and from early on in history, “it was used as a means of describing and legitimizing new institutions, new legal rules, or new scholarly assumptions” (5). Since the eighteenth century, the term “modernity” has been used in reference to the different society constructed over the ideas of the Enlightenment (7).

The subject is broad, and it refers to a large and varied number of social transformations taking place over two centuries. The social changes associated with the idea of modernization have been a central concern in the social sciences since their emergence (Martinelli 2005: 8–9), and modernization has become “one of the most discussed concepts in social and political theory over the last two decades” (Delanty and O’Mahony 2002: 1). “Modernity is a complex field of many forces, ranging from long-run historical processes, which we have termed civilizational processes, to cultural and social projects” (25). However, it is generally the case that the very notion of modernity is built around an epistemological shift associated with the Enlightenment. This epistemological shift embedded in the idea of modernity supposedly is responsible for the social and technological changes that make up modernity. Martinelli traces the origins of this conception of progress and modernity to the ideas of seventeenth century’s intellectuals such as Descartes and Bacon. Convinced by the principle that knowledge had to be achieved through human reasoning, they challenged the dominant belief established during the Renaissance about knowledge, which posited that knowledge stemmed from ancient history (Martinelli 2005: 5–9). With the Enlightenment, the notion of modernity itself was identified with the present in rejection of the past (6–7). A progressive model to understand history emerged, in which modernity implied a process of constant change and development, triggered by the desire to know more accurately about the world. Modernity was thus “the condition of ‘permanent revolution’” (Delanty and O’Mahony 2002: 2). Martinelli (2005: 8) speaks of a twofold revolution: “[i]f the French Revolution gave modernity its form and characteristic conscience, based on reason, the Industrial Revolution gave it its material substance.”

An epistemological shift resulted that ultimately transformed the social and material world. History, ancient wisdom, and religious dogma were rejected as valid sources on which to construct knowledge. This shift had implications for most human affairs. A key one was law. The law not only constructs a legal order, but it also contains justifications for its existence constructed in theories of knowledge. Bendix (1978: 16) considered the replacement of absolutist social systems with constitutional ones a matter of “power and the mandate to rule, that is, the use of force as an attribute

of authority and the justification which attempts to make use of force legitimate.” Modernity itself can be partly understood in relation to the comparison of the ancient and modern forms to justify the existence of law and social authority. During the Enlightenment the conviction grew that “the possession of a formally prescribed and written political constitution was a hallmark of progressively realized or *enlightened* modern societies” (Thornhill 2011: 8–9; his emphasis). Despite the complexities and nuances making up modernity, it is generally thought that “[t]he beginning of modernity is marked by the all-conquering rise of the bourgeoisie, which finally gains political ascendancy with the French Revolution at the end of the eighteenth century” (Grossi 2010: 70). The centrality of this idea is illustrated in the Declaration of the Rights of Man and Citizen, approved in 1789 by the National Assembly of France. The declaration became an important document, the symbol of the ideals that the revolution was fighting for. Doyle (1989: 118), for instance, goes as far as to argue that the declaration was “the founding document of the Revolution and, as such, sacrosanct.”

According to the declaration, there was only one justification for the existence of social authority: the protection and the promotion of the well-being of the citizens of the state. The first article states this explicitly: “Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good.” The idea that social authority can exist only to ensure that no one violates that principle underpins the rest of the articles. In the second article, political association is justified as a way to ensure the creation of a society that respects these rights. The third article directly links social authority to the sovereignty of the nation, disallowing individual claims to authority. The fourth article sets the limits of liberty in relation to the harm made to other members of society and establishes that these limits will be identified by the law. In the fifth article, law is defined only as able to prohibit actions that are hurtful to society. The sixth article clarifies that every citizen has the right to participate in person or by a representative in the construction of the law. In the seventh to the eleventh articles, limits to the action of the law are established. The twelfth article justifies military authority to secure the rights of individuals. The thirteenth article justifies taxation to maintain the administration that will execute said taxation. The fourteenth article

recognizes the right of citizens to participate in deciding how to apply taxation. The fifteenth article gives to society the right to control the administration. In the sixteenth article, it is stated that a society without law, and without the separation of powers, has no constitution. Finally, in the seventeenth article, private property is asserted, with the exception in which public necessity will demand it, and providing compensation to the legitimate owner.

As can be seen, the main concern of those designing the new social order was that of anchoring its legitimacy to the protection and well-being of all members of society. The document shows the perceived necessity of creating an effective referential and defining source stating and securing what was seen as primordial: replacing the validity of previously existing ideas legitimating social authority and distinction. Associating social authority uniquely to the protection of the social members implied deep changes in regard to what is valid knowledge, what justifies legislation, and the types of arguments and evidence that carry value in law. The existence of law was to be justified not in history or in religious ideas but solely in its normative value. This understanding of law is rooted in natural law (Grossi 2010; Thornhill 2011).

This normative claim, which was questioned during the nineteenth century from legal positivism as well as from early sociology, gained popularity again following World War II. Its significance today can be seen in current understandings of modernization, such as Bendix's, who defined it "as a breakdown of the ideal-typical traditional order: Authority loses its sanctity, monarchy declines, hierarchical social order is disrupted. Secular authority, rule in the name of the people, and an equalitarian ethos are typical attributes of modern society" (Bendix 1978: 10). It also comes to the fore in how key related terms, such as constitutionalism and absolutism, tend to be defined. For example, the definition of constitutionalism provided in the *Encyclopaedia of Political Theory* (2010) states that:

The *raison d'être* of constitutionalism is the legalization of political rule, which it achieves by tying law making and law enforcement to positive law. Constitutions not only constitute, but also regulate, the highest power. In so doing constitutionalism promotes a normative understanding of law

by focusing on attributes and qualities that law should possess. (Murkens 2010: 294)

Constitutions are understood and studied as mechanisms regulating the relationship between the government and citizens (Finer et al. 1995: 1). It has been stated that “the purpose of a constitution is to lay down fixed rules that can affect human conduct and thereby keep government in good order” (Alexander 2001: 4). The intention behind constitutions is thus to create a society in which free individuals can pursue their own goals and ambitions (Andrews 1963: 9). This is also the case with the Constitution of the United States: “the Founding Fathers in drawing the American Constitution had...[the aim]...to draw up a structure of government that could serve to protect the people from government, from the danger of a tyranny of the majority in the legislature” (Bogdanor 1988: 3). The centrality of law becomes fully evident once it is compared with the social system it came to replace, absolutism. The latter is defined as “essentially a doctrine about the absence of limits to royal power” (Antaki 2010: 3). The creation of systems of governance defined by the rule of law and political participation is presented as an achievement of constitutionalism, of modernity, materialized in the modern state.

## The Meaning of Social Action

The normative distinction embedded in the notion of modernity in the legal dimension as put forth in the Declaration of the Rights of Man and Citizen carries important implications for how to make sense of social conflict during processes of modernization. Social conflicts during the eighteenth and nineteenth centuries are understood as being concerned with the achievement of this legal change. The creation of constitutional European states is often thought to have been mostly influenced by a struggle over such values, and the legitimacy of constitutional states relates to the values that produced them.

Societies before modernity were characterized by the absolute sovereignty of monarchies, somehow colluding with the church, and based on religious dogma. Then the Enlightenment and eighteenth-century social

revolutions occurred, starting a process by which absolutist monarchies were replaced initially by constitutional democracies. Social action regarding legal change during this time can be interpreted as a clash between defenders of the Ancient Regime and those who, following the ideas of the Enlightenment, aspired to create a more rational and just legal system. Normally, national sentiments are not thought to be the engine of these processes. The idea of modernity itself is intertwined with a new way of justifying the existence of social authority. The emergence of nationalism tends to be associated instead with the time that followed that initial transition.

Such an understanding of modernization normally leads to contextualizing the study of nationalism within the history of social science. Within this context, the intellectual developments of nationalism are normally explained in relation to the influence that modern sociological knowledge could have exercised on people's views. An association is often made between two schools of thought during early modernity, positivism and German Romanticism, and two kinds of nationalism, civic and ethnic, or between liberalism and nationalism. The civic nation is normally linked to constitutionalism, rule of law, and democracy; in contrast, ethnic nationalism tends to be associated with a historicist tradition influenced by Herder and the nineteenth century's romanticism (Delanty 2003: 292–293).

From such an analytical frame, a normative distinction between liberal states and nationalist movements has been articulated. As the twentieth century came to an end, McCrone (1998: vii) noted that “we live in an age” in which “centres of power” (presumably states) tend to disassociate themselves from nationalism. Instead, they generally propose that they “employ the common-sense that they are patriotic while their enemies are nationalistic.” An example of this is the work of Maurizio Viroli (2003), who has argued that since the late eighteenth century, two distinct linguistic traditions developed in relation to the terms “nationalism” and “patriotism”: patriotism associated with the French Revolution and ideas of freedom (2003: 95), and nationalism related to eighteenth-century German Romanticism, and Herder in particular (2003: 119). Viroli presents the case as a moral one: you can choose to be patriot and have as your enemy “tyranny, despotism, oppression, and corruption...[or be a

nationalist and have as enemies]...cultural contamination, heterogeneity, racial impurity, and social, political, and intellectual disunion” (Viroli 2003: 1–2).

There has also been a tendency to equate liberalism with modernity. Overlooking the nuances of liberal thought, many liberal commentators have simplified both liberalism and modernity and made them pretty much the same thing. Quentin Skinner (1999), in his book *Liberty before Liberalism*, has argued indeed that the intellectual heritage of western Europe is broader, richer, and displays a more nuanced and complex history of ideas than what the study of a handful of classics would suggest. As he noted, “[w]ith the rise of the liberal theory to a position of hegemony in contemporary political philosophy...the liberal analysis has come to be widely regarded as the only coherent way of thinking about the concept involved” (113). Other authors such as Fawcett (2014: 3) have similarly stated that “[l]iberty-driven history survives in the recent fashion for books that recount modernity’s unstoppable success as a happy ménage à trois of free enquiry, unobstructed new technology, and liberal politics.”

From such positions, commonsense patriotism is normally associated with attachments to political structures that represent liberal values, while nationalism tends to be perceived as something alien that poses a threat to such values (Jean-Klein 2001: 85; Canovan 1996: 2; Kissane and Sitter 2010: 2; Özkirimli 2000: 3). The legitimacy of the liberal state is related not to assumptions about social reality contained in the idea of nationalism but to the values and principles materialized in constitutional states, a transition that is explained by the idea of modernity. However imperfect states may be in their embodiments and materializations of key liberal principles—as has been argued by a variety of authors, including Kymlicka and Straehle (1999) and Margaret Canovan (1996)—European modern history presents states as the political triumph of values and principles. States’ legitimacy stems from their embodiment of political values and relates to a key historical time in which sovereignty was transferred from monarchies to the people. Modernity itself is defined in relation to European history of law. Regardless of the nationalizing features that European states may have acquired resulting in what



Billig (1995) called banal forms of nationalism, the idea of nationalism is thought to have played no role in the processes that created them. However, this idea leads to interpreting nationalism not only as modern but also as a new kind of social conflict. There is little theoretical space to grant meanings to jurisdictional disputes across processes of modernization other than a contention between conservative and progressive ideas within the framework of the nation-state.

## Methodological Nationalism

Daniel Chernilo (2006: 129, his own emphasis) has argued that an ongoing problem in the study of nationalism relates to what he says is known as “methodological nationalism,” which he defines “as the all-pervasive equation within the social sciences between the concept of ‘society’ and the nation state. Methodological nationalism presupposes that the nation-state is the natural and necessary form of society in modernity and that the nation-state becomes the *organizing principle* around which the whole project of modernity coheres.” This does not necessarily mean that the nation-state should not be understood to have been a key factor influencing the evolution of modernity. Chernilo considers, however, that methodological nationalism should be rejected because it does not allow identifying nationalisms’ own histories and the disputes they have endured against rival concepts (131).

The acknowledgment of the existence of different conceptualizations about the nation-state is the first step to “start disentangling the equation between nation-state and society” (133). Chernilo’s rejection of methodological nationalism proposes to decontextualize the study of nationalism from its taken-for-granted—“natural”—contexts and proposes that its study also take into account the formation and disputes over the existence of such contexts on the first place. This idea has important similarities with Roger Brubaker’s (1997) proposed approach to understanding nationalism. Brubaker argues that nationalism should not be understood in the terms through which nationalists make sense of social reality, the “nation,” “culture,” “identity,” and so on. These are categories of practice that aim at producing a social effect by conceptualizing society in a particular way. Instead, Brubaker states that “we have to understand the

practical uses of the category ‘nation,’ the ways it can come to structure perception, to inform thought and experience, to organize discourse and political action” (7).

Rather than distancing the meaning of nationalist conflict from issues of legitimacy, such approaches direct the study of nationalism toward the role played by the idea of nationalism in the formation of the governing structures existing today. Chernilo (2007: 19) argues that methodological nationalism has to be rejected because it “not only distorts social theory’s legacy but also prevents us from capturing the opacity of the nation-state in modernity.” As a path to leave methodological nationalism, Chernilo argues that social theory has historically attempted to provide an explanation to the problematics created by the nation-state (20). In a departure from legal theory, Chris Thornhill (2011, 2013) shares a similar view. He argues that sociological theory was initially formed as a critique to the definition of law and constitutionalism put forward in the French Revolution. Early sociology sought to provide more sociological explanations of society to the account presented by normative law. These authors emphasize the centrality that inquiring into the idea of society had in early sociological thought and argue that this critical approach should be recuperated in order to provide a sociological explanation of the state or constitutionalism.

I want to review two approaches to understanding the state and nationalism that question central concepts such as society and modernity and attempt to develop an alternative explanation to understand the state or nationalism. These are Michael Mann’s (1986, 1992) theory of social power and Shmuel Eisenstadt’s (2000) theory of multiple modernities. These theories move away from prevailing understandings of society and modernity in the same direction and for reasons similar to those that are reviewed in relation to legal realism and pluralism in Chap. 4. They put forward perspectives that understand social action in reference to social pluralities, and they coincide in conceiving of the creation of Europe’s modern state system as centuries’-long processes of social interaction rather than as a linear or sudden intellectual, institutional, or material change.

## Michael Mann's Sociological Theory

For Mann (1986: 15), the creation of law (institutionalization of social interaction) is not an end in itself but rather is rooted in the need to regulate interconnected social action. Although directed toward different ends (such as the management of distinct forms of power), the law requires the development of “common ideological and normative understandings.” Mann summarizes his theory in two key ideas. First, he argues that most sociological orthodoxy unproblematically endorses the concept of society as a proper context in which to study social relations, society being generally equated to states. Mann's paragraph explaining why this is mistaken (though as he notes takes the idea to its extreme), illustrates the reasons:

Societies are not unitary. They are not social systems (closed or open); they are not totalities. We can never find a single bounded society in geographical or social space. Because there is no system, no totality, there cannot be “subsystems,” “dimensions,” or “levels” of such a totality. Because there is no whole, social relations cannot be reduced “ultimately,” “in the last instance,” to some systemic property of it—like the “mode of material production,” or the “cultural” or “normative system,” or the “form of military organization.” Because there is no bounded totality, it is not helpful to divide social change or conflict into “endogenous” and “exogenous” varieties. Because there is no social system, there is no “evolutionary” process within it. Because humanity is not divided into a series of bounded totalities, “diffusion” of social organization does not occur between them. Because there is no totality, individuals are not constrained in their behavior by “social structure as a whole,” and so it is not helpful to make a distinction between “social action” and “social structure.” (1–2)

In Mann's approach, the study of social power does not involve the study of how power is exercised within a polity; the study of power has to do with how people have sought social powers and produced organizational forms to acquire and exercise them. The history of social power is a history in which different social organizations negotiated and disputed the exercise of social power. Organizations, however, do not uniquely exist next to other organizations; they also overlap; they may exist inside and/or

outside one another and make different claims to types of social power (Mann 1986: 17–18).

Second, Mann proposes approaching the study of social power not in relation to just one form of power but in relation to different forms of power. He identifies four: political, ideological, military, and economic. Any organization—say the state, the church, or financial institutions—is not to be seen as a “natural” context for the exercise of one or another type of social power. Each organization may at different times and places use, or attempt to control, more than one social power. Mann’s approach points toward the existence and interaction of different types of resources that empower social actors differently and toward the influence that such resources can exercise in social life at different times and under different circumstances. The histories of societies are not to be interpreted in relation to the existence of any organization somehow conceived and defined around the exercise of types and degrees of social powers. The histories of European peoples should be interpreted in relation to disputes and negotiations over the exercise of social powers that are formalized in institutional relations. Mann’s sociology does not presume that the state as the social organization that exists today has been created by a single factor, whether this might be national identity or liberal values.

The preeminence of European states is studied by Mann in relation to their organizational features. In Mann’s analysis, the success of states comes from a social feature that he perceives to be unique to states: “the state’s unique ability to provide a *territorially centralized* form of organization” (Mann 1992: 1; his emphasis). The idea that only the state had this capacity is in my view not entirely accurate. In the state of Spain, for example, the jurisdictions of territories such as Navarre and Vascongadas also had such territorially centralizing forms of organization, with similar degrees of administrative and political power as the central state.

I believe that an understanding of states as possessing such unique features stems from the influence exercised by modern legal thought. Mann’s definition of state despotic power suggests this. He defines state despotic powers as “the range of actions which the elite is empowered to undertake without routine, institutionalized negotiation with civil society groups” (Mann 1992: 5). This concept of despotism, in abstract, may be accurate, yet it does not accurately portray the legal orders of most

absolutist monarchies during the Ancient Regime. Such a concept can be related to modern definitions of law, which tend to assume or justify the sovereignty of state authority. However, if one takes as reference the legal definitions proposed by alternative legal approaches, such as legal realism or legal pluralism, the absolutist legal order appears to be different. The variety of legal claims that existed is not dismissed in relation to a modern definition of law. Based on the meanings of these jurisdictional conflicts, it seems that these jurisdictional contexts could be thought of as having fulfilled the role of a civil society understood as a collection of social organizations limiting state authority.

There is one way in which I suggest that Mann's approach could benefit from incorporating the legal approach that I propose in Chap. 4. The suggestion here is that one of Mann's identified sources of social power, the political, could benefit from being analyzed in relation to jurisdictional relations. Some definitions of the term "politics" can be rather vague. The *Oxford Dictionary of English* (2010) defines it as "[t]he activities associated with the governance of a country or area, especially the debate between parties having power". The concept of politics contains both a reference to the exercise of social power from a sovereign state (a country) and a reference to the participation in government of a degree of the citizenship through political parties. Conceiving the histories of states as political histories becomes problematic because such understandings contain a "truth" as well as a "lie." This is the case because the history of the state as an organization is packed with subtleties that can be interpreted differently. As it will be shown in the next chapter through Lesaffer's (2004) analyses of peace treaty practices, internal and external sovereignty were increasingly achieved by monarchical governments throughout the centuries. In some cases, increasing a state's sovereign authority involved the abolition of the institutions that disputed the authority of the monarchy. The elimination of traditional local governing institutions could result in increasing degrees of "politization" of the monarchical institutional context, as the social actors participating in the abolished political, legislative, and judicial contexts had to gravitate toward the institutions and administrations proposed by the monarchy to exercise governance.

Yet such profound institutional changes often happened during or after war. Changes were often resisted, and the ambitions of the monarchy were softened by the practical (im)possibilities it encountered in applying its desired reforms. Sometimes the legal and institutional relations changed, but not necessarily always, nor were they always immediately or even at all accepted; different jurisdictional aspirations are likely to have survived. Absolutist monarchies were not political units in the sense of a system of governance associated with the political participation of a community of people. This participation arguably took place to different degrees in different jurisdictional contexts. To better understand states as political organizations, the political—meaning the exercise of governance in a given social context—has to be broken down in relation to the number of jurisdictions that existed and the legal powers they had. To the complexity of the multiplicity of social actors and types of social power, there should be added the different degrees to which social actors could exercise these social powers. Strength, wealth, and persuasion are not qualities that people either have or do not have. Social actors have them to different degrees. The same is true of distributions of legislative, executive, or juridical powers, which could be possessed in different degrees by different social actors.

## The Theory of Multiple Modernities

The theory of multiple modernities was put forward by Shmuel N. Eisenstadt (Ichijo 2013: 7). Eisenstadt (2000: 1) considers that the classical theories of modernization assumed “that the cultural program of modernity as it developed in modern Europe and the basic institutional constellations that emerged there would ultimately take over in all modernizing and modern societies.” He reflects that instead, since World War II, modernity has unfolded in a variety of ways influenced “by specific cultural premises, traditions, and historical experiences” (2). His suggestion is thus a conception of modernity that takes account of this varied reality. Modernity is not defined anymore in relation to a particular idea; it is rather to be seen “as a story of continual constitution and reconstitution of a multiplicity of cultural programs” (2). Similar to Mann’s

theory of social power, the existence of diverse sets of interests and meanings are emphasized. Processes of modernization are not to be explained in relation to the achievements of an idea of progress but in relation to the existence of a variety of conflicting views and interests. The notion of agency that is often associated with modernity is emphasized as a notion that implies degrees of plurality. “In the theory of multiple modernities, modernity is about the centrality of human agency in interpreting the surrounding environment rather than a particular pattern in institutional development and differentiation” (Ichijo 2013: 29).

Atsuko Ichijo (2013: 2) rightly argues that, given the reliance of modernist theories of nationalism on theories of modernization, the reinterpretation of modernity proposed from the theory of multiple modernities invites a reconsideration of the modernity of nationalism. Departing from a predominantly postmodernist concept of identity, processes of modern state-building are “not simply seen as an Enlightenment-inspired rational process” (32) but are instead understood as outcomes of a clash of different views and tendencies. The modernity of nationalism “is not found in the banishing of the premodern elements as the conventional theories would have it, but in the continuous clashing of different elements of collective identities driven by autonomous and self-reflective agents who would draw from different traditions as they see fit” (32). Such a theoretical approach opens up the possibility to account for, from a critical legal approach, the validity of the meaning of jurisdictional conflict that preceded modernity and questioned the sovereignty of state authority. Modernization can be explained by including the views and claims that have been traditionally rejected under the influence of modern legal thought. The next chapter argues that modern legal thought has significantly influenced how the state and its role in processes of modernization generally have been understood. It maintains that some of the problems noted by these theories could be overcome by the incorporation into sociological theory of a critical approach to definitions of law.

## Conclusion

I have argued that modernist interpretations of nationalism are problematic insofar as they implicitly endorse a concept of law contained in theories of modernization. This understanding of law simplifies absolutist states as despotic legal contexts exploited by monarchies and the church and overlooks the meanings of legal and jurisdictional conflicts within such organizational contexts. By dyeing all preconstitutional legal forms with the same color, the original meanings of some jurisdictional conflicts before constitutionalism are stripped away. Theories of modernization, influenced by such an understanding of law, create a too-narrow analytical framework for interpreting the meanings of political action during processes of modernization, including the emergence of modern nationalism. Much of the linearity and lack of plurality associated with modernity has to do with interpretations of law and the effect definitions of law have on the analytical frameworks employed to interpret the meanings of political action.

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