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## The Idea of the Binational State. An institutional Analysis

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**THE IDEA OF THE BINATIONAL STATE  
AN INSTITUTIONAL ANALYSIS**

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AN INSTITUTIONAL ANALYSIS**

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“Par la même raison que la souveraineté est inaliénable, elle est indivisible.”

Supprimé : ¶  
¶

Jean-Jacques ROUSSEAU<sup>1</sup>

”Sovereignty is an entire thing – to divide, is – to destroy it.”

John C. CALHOUN<sup>2</sup>

## A. INTRODUCTION:

### 1. PRELIMINARY REMARKS:

Both the notion of binationalism and, to an even greater extent, the idea of the binational state are puzzlingly scarce in political discourse as well as in academic literature. As a matter of fact, when they sporadically emerge, they are mostly used in very circumscribed political contexts and employed in normative and programmatic, rather than descriptive terms. Thus, the idea of a binational state came up in 1947 as a political programme for the transformation of the British Mandate in Palestine<sup>3</sup> and it has some well-known critics and proponents even today<sup>4</sup>. Some time ago, ethnic Albanians unsuccessfully proposed a binational state for Macedonia and in the context of Iraq’s reconstruction, Kurds put forward the idea of a binational federation with the Arab population. Will the idea of a binational state be reinvigorated again in the case of Cyprus after the unfortunate attempt to reunite the island this year<sup>5</sup>?

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<sup>1</sup> Jean-Jacques ROUSSEAU, *Du contrat social ou principes du droit politique*, livre II, ch. II, 1762

<sup>2</sup> John C. CALHOUN, *A Discourse on the Constitution and Government*, [1851-56] in: *Union and Liberty: The Political Philosophy of John C. Calhoun*, (ed. by Ross M. Lence), Liberty Fund, Indianapolis, 1992, p. 105

<sup>3</sup> Martin BUBER, Judah Leib MAGNES, and Ernst SIMON, *Towards Union in Palestine*, presented to the Anglo-American Committee of Inquiry in 1946 and to the United Nations Special Committee on Palestine in 1947

<sup>4</sup> Michael WALZER, “On Arabs and Jews: Chimera of a binational State”, *Dissent* (Summer), 1972; Edward SAID, “The One-State Solution”, *The New York Times*, 10th January 1999; Michel WARSCHAWSKI, *Israël-Palestine: le défi binational*, Textuel, Paris, 2001

<sup>5</sup> Thomas DIEZ, “Last Exit to Paradise. Cyprus, the European Union, and the Problematic “Catalytic Effect””, Copenhagen Peace Research Institute, COPRI-Working Papers 4/200; Tozun BAHCHELI

Thus, despite their ephemeral and transient appearances, the ideas of binationalism and of the binational state are of remarkable steadfastness, a spectre that periodically haunts the political mind.

Today, one can think of Belgium and Canada as binational states, considering that these states each consist of two large national communities. At the same time, we have witnessed the peaceful disintegration of binational Czechoslovakia at the end of the Cold War, another of the rare concrete examples of a binational state<sup>6</sup>. The United Arab Republic, formed as the result of a merger between Syria and Egypt in 1958, lasted no more than three years. Its binational character seems dubious, since it was originally designed to form the nucleus of pan-Arabism based on the logic “one people, one state” and when Yemen joined the union it became effectively trinational. Other historical examples like the Swedish-Norwegian Union (that was dissolved in 1905) or the Republic of two Nations formed between Poland and Lithuania in 1569, seem quite distant from what one might associate with the notion of binationalism because their respective political regimes were based on monarchical rather than national sovereignty. Nevertheless, these historical examples share their *dualist* nature with any modern binationalist state construction.

At this point, one might ask whether it is worthwhile to analyse a short-lived concept that seems to be not much more than a chimera or at best a curiosity both in history and theory. The silence surrounding the binational state would seem to indicate not only that it is a subject of little interest, stipulating, in general terms, that the ephemeral and scarce is of low interest since it approximates the impossible, but perhaps even that the very idea of the binational state requires no justification in particular.

Still, the flagrant contrast between the tenacious character of the idea of the binational state on the one hand and the seemingly sketchy reality of such a construction on the other hand is striking and possibly not of pure coincidence. Indeed, binationalism, and even more so, the binational state are squeezed between

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and Nicholas X. RIZOPOULOS, “The Cyprus Impasse: What Next?”, *World Policy Journal* 13 (4): 27-39, 1996

the historically powerful concept of the nation-state and the increasingly strong paradigm of multinational and multiethnic pluralism; their position in political discourse is anything but stable. This uncomfortable sandwich-position is exacerbated by the fact that the concepts appear to be almost self-contradictory and as such 'un-things'; they are thus subsumed under the implicit argument of "it cannot exist since it does not exist". The verdict concerning the binational state, both in political and academic debate, seems to be that of a political 'non-lieu' and therefore of everlasting utopia.

Despite the apparent limitations that the study of the idea of the binational state might encounter due to its evasive character and scarcity both within the existing corpus of state theory and the studies of nationalism I shall argue that the binational state can be regarded as a state model in its own right that deserves our attention. In this respect, it is neither to be considered a simple derivative of the traditional nineteenth century model of the nation-state in which the political community is ideally synonymous and isomorphic with a single cultural or national community<sup>7</sup>, nor a subcategory of the multinational state model where the diversity of national or cultural identities is constitutive of the pluralistic state that differentiates between national community and the community of citizens<sup>8</sup>.

The curious *a priori* disavowal of the idea of the binational state as an independent model might explain the surprising absence of any general theoretical scholarly work on the subject. In contrast, if one accepts the argument of the *sui generis* character of the binational state construction - if only in a heuristic sense - I will have to generate an adequate arsenal of analytical tools that will help me to demonstrate the present argument. If I can show by means of these tools that a binational state construction is not *necessarily* precarious (precariousness being an

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<sup>6</sup> Robert KAISER, "Czechoslovakia: The Disintegration of a Binational State", in: Graham SMITH (ed.), *Federalism. The Multiethnic Challenge*, Longman, London, 1995, pp. 208-36

<sup>7</sup> Johann Gottlieb FICHTE, *Reden an die deutsche Nation*, [1808]; Ernest RENAN, *Qu'est qu'une nation?*, [conference held at the Sorbonne the 11 march 1882]

<sup>8</sup> William CONNOLLY, "Pluralism, Multiculturalism and the Nation-State: Rethinking the Connections", *Journal of Political Ideologies*, 1 (1): 53-73, 1996; Will KYMLICKA and Wayne NORMAN, "Return of the Citizen: A Survey of Recent Work on Citizenship Theory", *Ethics* 104: 352-81, 1994; Charles TAYLOR, *Multiculturalism and The Politics of Recognition*, Princeton University Press, Princeton, New Jersey, 1992; Stéphane PIERRÉ-CAPS, *La multination. L'avenir des minorités en Europe centrale et orientale*, Odile Jacob, Paris, 1995

indicator of approximating the impossible) and that this state construction has some fundamental traits that differ both from the nation-state model and the multinational model, then the road will be paved for advancing the position that the idea of the binational state ought to be a genuine object of enquiry that should be taken much more seriously.

Obviously, the specificity argument is closely linked to the question of the viability and stability and the institutional persistence of the respective state construction. Therefore the main focus of this study can only be on the state and the state institutions enabling the binational state to survive (or not).

As a first step and for the sake of further analysis and demonstration of these assumptions, the expression 'binationalism' has to be defined in an operational manner. In this context, an operational definition is a definition that contains only the constitutive elements of a concept. As I hope that the results of the ensuing institutional analysis will give some insights concerning the mechanisms at work within a binational state, I still need at the beginning of the proceeding a "ready-to-go"-definition that is consistent with the basic premises of what one can legitimately call "binationalism". This definition will allow me to identify pragmatically the difficulties and the levels of analysis upon which I will subsequently concentrate.

The second part of this study will be more theoretical, attempting to specify the general configuration of the binational state. It will be suggested that the institutional analysis of the binational state has to go beyond the dimension of power between the two actors. It is perhaps the (implicit) over-emphasising of that power-dimension that is responsible for the swift disavowal of the binational state idea.

The institutional analysis of the third part poses the question of how the behaviour of the two political actors and their choices of options are influenced by the constraints and incentives specific to the binational state. This part constitutes an exercise to formulate the basic institutional arrangements that could render a binational polity viable and feasible.

## 2. WHAT IS BINATIONALISM? AN OPERATIONAL DEFINITION

In the first place, I have to point out that the (operational) definition that I am about to put forth differs substantially from recent conceptualisations in identity politics and citizenship studies that one can associate with such perceptions as Iris Marion YOUNG's 'differentiated citizenship'<sup>9</sup>, from the more dualistic 'hyphenated identity'<sup>10</sup> put forward by Michael WALZER in his studies of pluralism in the United States of America, and from the notion of 'patriotic constitutionalism' suggested by Jürgen HABERMAS as a normative modality of a supposedly post-national era<sup>11</sup>. Although these three recent examples dealing with the 'identity problem' have quite different origins and are grouped in diverse schools of thought, they have an ultimate focus in common: the individual. This final focus is consistent with a liberal stream of political thought that is, normatively speaking, rather critical of 'aggregate bodies' such as groups, nations and communities etc. These latter aggregate bodies, so the liberal argument goes, do not reflect the great diversity of mankind, but reduce identity to some fiction that one can never ever have dinner with.

It would indeed be quite odd to argue that individual identity can and should be reduced to one single cultural or national facet, and it is clearly not the purpose of the present statement to criticise the liberal approach. For this purpose, I will suggest a definition of binationalism that does not restrict the individual (citizen) to a single (national or cultural) identity at a time once and for ever.

Hence, the definition that I propose can be of a complementary nature to the liberal approach, it being understood that the communitarian argument is not.

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<sup>9</sup> Iris Marion YOUNG, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship", *Ethics* 99: 250-74, 1989

<sup>10</sup> Michael WALZER, *What it means to be an American*, Marsilio Press, New York, 1996

<sup>11</sup> Jürgen HABERMAS, "European Citizenship and National Identity: Some Reflections on the Future of Europe", *Praxis International* 12 (1): 1-19, 1992; Jürgen HABERMAS, *Faktizität und Geltung*, Suhrkamp, Frankfurt am Main, 1992; Jürgen HABERMAS, *Die Einbeziehung des Anderen. Studien zur politischen Theorie*, Suhrkamp, Frankfurt am Main, 1996; Jürgen HABERMAS, *Die postnationale Konstellation*, Suhrkamp, Frankfurt am Main, 1998; Jean-Marc FERRY, „Pertinence du postnational“, *Esprit* (septembre): 80-90, 1999

There is a lot of potential confusion in the terms and use of ‘multiculturalism’, ‘multinationalism’ if the ultimate focus is not put straight<sup>12</sup>. The problem of the present paper is the idea of the binational *state* and not of the binational *individual* or the individual (citizen) within such a setting even though the question of the impact of a binational state construction on the individual citizen is certainly of paramount interest and importance to any (further) debate. Hence, I am here only and exclusively dealing with the relationships *between the two nations* and the state.

The quest for a definition of the ‘nation’ is a longstanding one and conflicting views have developed as to the sources and movements surrounding this historically powerful notion<sup>13</sup>. Because this many-sided debate cannot be exhaustively presented here, I will, for the present endeavour, accept the existence of the ‘nation’ as a given social phenomenon. One definitional trait of the nation is analytically indispensable: the postulate of inner homogeneity. This postulate is both necessary and problematic at the same time for it would be self-contradictory if the ‘nation’ as a collective self accepted the principle of “inner national pluralism” as constitutive.

Thus, while national pluralism can be a feature of the state, for instance, in a multinational state or by conceding large regional autonomy, it cannot apply to the nation itself. Therefore the logic of the nation is not reducible to the logic of citizenship. Given the fundamental need for inner homogeneity at the level of the nation - I shall subsequently call it the *homogeneity principle* - one cannot analyse it by analogy with the individual level of the citizenry that is possibly more inclined to “inner pluralism”. The ‘nation’ matters *on its own* and any critique of the nation has to take into account its quest for homogeneity.

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<sup>12</sup> Will KYMLICKA, *Multicultural Citizenship. A Liberal Theory of Minority Rights*, Clarendon Press, Oxford, 1995

<sup>13</sup> Benedict ANDERSON, *Imagined Communities*, 2<sup>nd</sup> edition, Verso, London, 1991; Etienne BALIBAR et Immanuel WALLERSTEIN, *Race, nation, classe : Les identités ambiguës*, La Découverte, Paris, 1988; Walker CONNOR, *Ethnonationalism. The Quest for Understanding*, Princeton University Press, Princeton, New Jersey, 1994; Rupert EMERSON, *From Empire to Nation: The Rise to Self-assertion of Asian and African Peoples*, Harvard University Press, Cambridge, Mass., 1960; Ernest GELLNER, *Nations and Nationalism*, Blackwell, Oxford, 1983; Anthony D. SMITH, *National Identity*, University of Nevada Press, Las Vegas, 1991

Thus I will suggest a definition of binationalism that is largely independent of considerations of individual identities or even individual rights. As such it is possible that individuals might not be definitively collated to one or the other national community. Certainly, equal individual rights *as citizens* for both members of the two national communities, and of any other national minority within a binational polity, are a prerequisite for the rule of law, yet, such formal equality is not a necessary condition within the layout of the suggested definition.

In this respect, the proposed definition of binationalism is surely a minimal one but of an irreducible nature since it embraces the fundamental difference between the logic of the nation and the logic of the citizen without necessarily infringing on the needs of the individual (citizen).

Michael WALZER distinguishes between “false” and “true” binationalism. The first kind is only a “rhetorical mask” of the demanding side to change a status quo that is not in its favour<sup>14</sup>. For the advocate of “false binationalism” the obvious goal is to invert the given situation in terms of power, changing the present majority into a minority and vice versa.

WALZER concludes that for binationalism the “surely relevant measuring principle is equality. What is required is equal political recognition” for the (two) nations that accept the equality principle<sup>15</sup>. Hence power imbalances at this level are of no formal relevance and have to be counter-balanced if one wants to stay on the side of “true binationalism”. Hence the size of national territory or demographic strength or any other resources that can be mobilised against the formal principle of equality cannot be tributary of “true binationalism”. If there is to be “true binationalism” according to WALZER, the equality principle must accommodate the principle of state sovereignty providing for the overall framework of two separate national institutional settings that have the same weight at state-level: “True binationalism [...] would provide for separate and equal national institutions within a framework of state sovereignty. Religious, cultural, and social separatism would be permitted (whether on a territorial basis or in some other way), economic co-operation encouraged, and political unity maintained”<sup>16</sup>. One has to emphasise that the

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<sup>14</sup> Michael WALZER, “On Arabs and Jews: Chimera of a binational State”, *op. cit.*, p. 494

<sup>15</sup> *Ibid.*, p. 496

<sup>16</sup> *Ibid.*, p. 494

necessary separation between the two nations that translates their distinctiveness is, according to WALZER's conception, not necessarily and systematically to be operated on a territorial basis. Indeed, one can imagine that for the cultural or religious realm a territorial boundary condition does not make any sense.

In any case, the equality principle implies a further criterion: for the mutual recognition of any separation. If there is no mutual understanding on what criteria should apply, the only solution compatible with the equality principle is the rule of the lowest common denominator. Otherwise, the balance would again tilt towards "false binationalism" where one would usurp the powers of the other side. In the absence of a common denominator, the formal equality principle implies that the two national communities have to provide autonomously for themselves.

Up to now I have already specified a set of minimal conditions to be respected for the study of the idea of the binational state. The *equality principle* suggested by WALZER provides for a mechanism of recognition counterbalancing the need for political unity on the state level and the separation commanded and necessitated by the *homogeneity principle* intrinsic to the logic of the nation. One can hardly imagine any other means to reconcile these two antagonistic moments. Only a homogeneity principle that is devoid of the need for sovereign national rights or allows for fundamental alienation of these could constitute another case to be analysed.

However, the proposed definition precluded this possibility and it will not be taken into account within this paper. One can easily think that an alienation of sovereign rights on the national level needs, first of all, to be reciprocal and symmetrical if the possibility of domination by one nation of the other is to be excluded. The fear of losing national identity within a state that does not recognise their respective national sovereign rights inhibits any state-building effort; in this case, both sides will prefer the status quo of complete separation. Even complete cultural rights for both national communities may not be sufficient to induce them to bind themselves to each other within the framework of a binational state, as long as they do not both have sovereign rights. As we shall see below, the fear of asymmetry between actors is particularly acute when there are only two and not more than two to play the game of state-building.

Once the absolute necessity of counterbalancing state unity against national homogeneity has provided for the adequate arrangements, the equality principle, outside of this framework, still promotes reciprocity e.g. an equal amount of what is not shared. This can only mean that the national communities have to look after their respective community by themselves in an autonomous manner. Hence I have to confront the following levels of analysis that seem to be indispensable to any study of the idea of the binational state:

- Levels of analysis derived from the formal condition of equality:
- 3. The level of recognition
  - 4. The level of autonomy

Mise en forme : Puces et numéros

Will KYMLICKA defines the multinational state in the following discrete manner: “ [...] a given state of more than one nation, where ‘nation’ means a historical community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and culture. [...] A country which contains more than one nation is then, not a nation-state but a multination state, and the smaller cultures form ‘national minorities’ “<sup>17</sup>.

In analogy to KYMLICKA’s multinational state definition, and integrating the Walzerian “true binationalism” condition i.e. the equality principle that provides for formal symmetry between the two actors at the level of recognition, we can say that binationalism stands for **“a present or historic situation where in a given territory two nations are to be identified as distinct historical and cultural communities that are more or less institutionally complete irrespective of their respective (demographic) strength”**.

As I have stated earlier, the individual identity level is not the focus of my analysis and can be considered as relatively independent from the “aggregate” level of the nation since the homogeneity principle, *strictu sensu*, only commands for the individual not be part of *more than one* national constituency (that is exclusive belonging) at a time and that an individual cannot be a national of *both* national

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<sup>17</sup> Will KYMLICKA, *Multicultural Citizenship. A Liberal Theory of Minority Rights*, *op. cit.*, p. 11

communities at a time. In turn, from the point of view of the homogeneity principle, there is no mandatory belonging of the individual to *one or the other specific* constituency or community. Hence exclusivity is, effectively, not frustrating any individual choice by suppressing any form of “external pluralism”, as long as that pluralism is based on criteria that do not endanger the taboo of “inner pluralism”, which is the corollary of the homogeneity principle from the point of view of the “nation”. Such religious, cultural or value-based criteria are permitted to found a multitude of groups and communities. Consequently, the present definition of the binational state is not meant to foreclose that such entities bear specific rights and privileges or that they be officially recognised as contributing to the richness and the public good of (civil) society, *as long as they do not compete for sovereignty*. Other minorities, groups, national or not, can have every right imaginable with the exception of the exercise of sovereign rights. It is only if they claim sovereign rights that the unity and integrity of the binational state is directly threatened and undermined<sup>18</sup>.

To conclude the issue of individual identity and the question of exclusive belonging commanded by the homogeneity principle, I suggest that a reserved space of identity choice may even be conducive to political unity as the possibility of change and multiple belonging of the individual alleviates the feeling of being imprisoned by one unique dimension of identity-setting. This postulate is coherent with Yael TAMIR’s liberal approach of nationalism that holds that: “a national culture is not a prison”<sup>19</sup>.

I will now complete the (operational) definition by integrating the individual choice condition and the principle of exclusivity of the two nations to exercise state sovereignty.

Before that, a further consideration pursuant to the territorial question: the space inhabited by the two national communities need neither be of equivalent size – the equality principle declares it formally irrelevant – nor does autonomy necessarily

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<sup>18</sup> Admittedly, this fact is potentially discriminatory towards national communities that legitimately strive for sovereign rights and self-determination. However, this problem cannot be discussed here any further for it is not a problem that is reserved to the binational state: discrimination towards national communities striving for legitimate sovereign rights is a known hitch and source of conflict in the modern nation-state as well as in the multinational state.

have to operate on a territorial basis. Hence territorial homogeneity is not a condition either within the proposed definition: “**The respective territorial space inhabited by the two nations need not be territorially homogenous and individuals may not be unilaterally collated to one or the other national group**”.

As I have stated, the permission for groups or communities to bear specific rights and privileges can also be extended to national minorities that live on the same territory as the two nations. Nonetheless, sovereign authority is, by definition, only exercised by the two nations. This condition is potentially discriminatory if one considers that a third national community is legitimately striving for sovereign authority. Here the binational state is closer to the oppressive character of the nation-state that cannot tolerate more than one national constituency that is exercising sovereign rights on its territory and population. Analogously, the binational state cannot tolerate more than two national constituencies that strive for sovereignty.

Accordingly, the definition has to be completed as follows: “It is not excluded either that other national or cultural minorities live on the same given territory contingently bearing specific rights. Still, state sovereignty is exercised solely by the two nations”.

I have already identified the potential source of conflict that might arise out of the limitation of actors that bear and exercise sovereign rights. This problem is not reserved to the binational state but is potentially controversial in every state where the absolute co-extension of state and nation is challenged. In a multinational state however, the number of sovereignty-sharing national communities is potentially open. This formal “openness” within the multinational state compared to the nation-state or binational state can be seen as potentially less discriminatory and hence conflict-defusing. In reality however, the multinational state often restricts the number of national communities and access and recognition of a national minority’s sovereign rights is seldom self-evident without prior power struggle.

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<sup>19</sup> Yael TAMIR, *National Liberalism*, Princeton University Press, Princeton, New Jersey, 1995, p. 89 and pp. 33-7

What one can identify here at the level of recognition irrespective of the particular setting is the well-known problem of majority that appears in *every* state.

Still, one has to ask whether in a binational state this issue is particularly challenging. Formally speaking, the equality principle entails, that in the case of recognition of the sovereign rights of a national minority, the minority ceases to be a minority since at the level of recognition, power is formally equalised; the principle that applies *at the state level* and founds authority is rather unanimity than majority: “two nations, one voice”. On the national level, the technical observation amounts to concurrent majorities. This mechanism is, of course, potentially inconsistent with the individual democratic principle of “one man, one vote” or the aggregate majority principle of “one national constituency, one voice”. In a state where there are more than two nations bearing sovereign national rights, no national community has ever a majority of its own if one accepts the equality of weight at the level of recognition. It must either form a coalition with another national community or found itself in a *de facto* majority position. In a binational state however, the stakes are not exactly the same since none of the two nations can constitute a majority *of its own* at the state level but cannot be “minorised” either.

How does the binational-state deal with these sources of conflict that may challenge the legitimacy of authority and the government’s efficiency within its territory? The stakes of this tension define the third level of analysis that I have to include in our proceedings: the *majority problem* that seems to have a particular nature within the binational state.

At present, I have identified the levels of analysis to concentrate on and established an operational definition that will allow me to examine the justifications and foundations of the argument proposed here, namely that the binational state is a *specific* construction in contrast to other models such as the nation-state or the multinational state.

As already stipulated, the subsequent analysis concentrates only on the institutional ambit of binational state-building. In connection with the notion of the binational state this approach has a certain advantage with regard to other (possible) points of

view. The presumed *autonomous character* of political institutions<sup>20</sup> allows to conduct an abstract enquiry regardless of the question of the reality of a binational state construction. Otherwise I would have to adopt a more historical or sociological view and possibly conduct some case studies.

The suggested levels of institutional analysis :

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| <ol style="list-style-type: none"><li>1. Recognition</li><li>2. Autonomy</li><li>3. The majority problem: authority</li></ol> |
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The present definition of binationalism shall fulfil the function of the case in an idealtypical manner and serve as a compendium for the institutional analysis on all the three levels. The elements that compose the definition are necessary for it to stand. It is in this sense that I call it an operational (and therefore minimal) definition and not a comprehensive one since it neglects everything that could give it any further “thickness” at this point. Further proceedings analysing the possible institutions of a *binational state* will have to contribute to that lacking “thickness”: therefore the definition of binationalism that I will suggest here at the end of this chapter is only and deliberately composed of the necessary elements that *justify* the use of the term ‘binationalism’.

Having said this, I explicitly do not pretend to have a sufficient definition at this stage and I hope not to expose myself to the critique of adventurism. Ultimately, definitional sufficiency might only be achieved by the end of the analysis when I will integrate the role of the state institutions.

Moreover, the operational definition takes into account the conditions of modernity i.e., on one hand, the principle of sovereignty and, on the other, the legitimate desire for individual emancipation. As such it is a statement that cannot be easily categorised as tributary to a specific line of political thought such as liberalism or communitarianism.

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<sup>20</sup> James G. MARCH and Johan P. OLSON, “The New Institutionalism: Organizational Factors in

Consequently, the operational definition of binationalism can be set up as follows:

**“A present or historic situation where in a given territory two nations are to be identified as distinct historical and cultural communities that are more or less institutionally complete irrespective of their (demographic) strength.**

**The respective territorial space inhabited by the two nations may not be territorially homogenous and individuals may not be unilaterally collated to one or the other national group. It is not excluded that other national or cultural minorities live on the same given territory contingently bearing specific rights. Still, state sovereignty is exercised solely by the two nations.**

Before carrying on with the proposed theoretical institutional analysis, two considerations of the suggested definition surely need some further explanation: on the one hand, the problem that I have already identified and that one can call the *homogeneity problem*, and, on the other hand, the term of ‘*state sovereignty*’. Here, I propose to identify and discuss only those aspects that are of importance with regard to the binational state.

### 3. THE HOMOGENEITY PROBLEM

Benedict ANDERSON states that cultural homogenisation is one of the principal functions of nationalism<sup>21</sup>. It is understood that every social group needs a form of internal cohesion to assure its continuity. Homogeneity is an extreme form of cohesion since it is not only looking for common ground; it is effectively aiming at eliminating any differences. This quest for (national) homogeneity can vary considerably as far as the line of argument is concerned and hence bear different consequences, but the principle of homogeneity is invariably at work. One can identify two different visions that attempt to effectuate homogeneity that confront each other and compete with each other in modern political theory. I will show that according to the point of view adopted with regard to the homogeneity problem, different outcomes are furthered.

In a classical nation-state, the boundaries of the state coincide with the scope of the nation. Carl SCHMITT synthesised this point of view by means of the short formula: “People=nation=state” (Volk=Nation=Staat)<sup>22</sup>. The first quotient of this formula suggests the existence of an entity – the people – that is prior to the state, at least logically if not historically. This conception of an objective pre-state homogeneity has been influential within the framework of state theories until today<sup>23</sup>. In this 19<sup>th</sup> century view, the state or state-building is ultimately but a mere institutional reflection of what already exists as a distinct homogenous culture, as “Kulturnation”.

At the same time, these alleged objective criteria of homogeneity implied in the classical nation-state suffer from inconsistencies: the homogeneity is in fact less homogeneous than it is accounted for. Liah GREENFELD points out that: “Nation and state rarely have coincided in the history of nation-states. State boundaries have rarely conformed to a particular linguistic, religious, and/or cultural community. Therefore, the persistence of representations of the state as a homogeneous national community has had tremendous costs for those marginalized by the national

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<sup>21</sup> Benedict ANDERSON, *Imagined Communities. Reflections on the Origin and Spread of Nationalism*, Verso, London, 1991 [1983], pp. 36-46

<sup>22</sup> Carl SCHMITT, *Verfassungslehre*, Duncker & Humblot, München, Leipzig, 1928, p. 251

community. Such representations have brought to bear on these peoples powers of self-discipline (e.g. to make oneself assimilate to the dominant national ideal) as well as overt force and covert surveillance, because those outside the dominant nationality are, in principle, suspect and seen as potential threats”<sup>24</sup>. Thus within this postulate of pre-state homogeneity a considerable dose of violence has to be deployed in order to smooth out heterogeneous elements deemed incompatible with the national idea and the unity of the nation.

Within this perspective, one can outline what might happen to a given binational situation where strong nationalist movements imply popular (‘völkisch’) pre-state homogeneity for the two nations and the two national movements claim the same inhabited territory, partially or entirely. The outcomes of this confrontation are summarised in the following three ideal typical possibilities:

1. Negotiated separation
2. Violent separation (civil strife)
3. Domination of the weaker nation by the stronger nation (by means of voluntary or forced assimilation, expulsion etc.)

In the case where only one nationalist movement is strong, the third possibility will most plausibly prevail. It appears at first sight that in the case of pre-state homogeneity conceived as purely popular (‘völkisch’), a binational state construction is fundamentally flawed and that a considerable amount of violence is expected within the process of state-building

In reality, nation-building is rarely exclusively based solely on pure ethnic-cultural grounds since there are of course other factors like language, religion or common history that convey thickness to what one might call ‘culture’. When incorporating these factors into the state-building model one has to expect incongruity far away from the perfect fit of an idealtypical unicultural, unilingual nation-state. In addition, the processes of nation-building and state-building are not necessarily

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<sup>23</sup> Johann Gottlieb FICHTE, *Reden an die deutsche Nation*, [1808]

<sup>24</sup> Walter C. OPPELLO and Stephan J. ROSOW, *The Nation-State and Global Order: A Historical Introduction to Contemporary Politics*, Lynne Rienner Publishers, Boulder, 1999, p. 236

synchronic as economic and military differentiation may follow some other pathways than national differentiation<sup>25</sup>.

Hence, at the other end of the spectrum, lies a conception of the state as a community of values and not of given pre-state cultural homogeneity. In this view, there is no homogeneity independently from the state and that homogeneity is first instituted *by* the state. This vision accentuates the rational will of people to abide by some primordial principles governing social and political life as “Willensnation”<sup>26</sup>. Formal rights to political participation and communication enshrined in constitutional maxims are the backbone of such a nation state (‘Staatsnation’)<sup>27</sup>.

According to Jürgen HABERMAS, modernity having brought about the differentiation between state and society, it is the state of law (‘Rechtsstaat’) that embodies this principle of formal homogeneity quite perfectly in the struggle against arbitrary treatment and discrimination. In such an idealtypical state of law, ethnic-national differences and particularities are to be overcome and overruled by state membership (‘Staatszugehörigkeit’); at this juncture state membership rather than national membership commands and legitimises social and political life<sup>28</sup>: the people as citizens has become the people of the state (‘Staatsvolk’/’demos’)<sup>29</sup>.

Within the framework of this other stance, one can imagine again what might happen to a given binational situation where state-building is governed by the constitutional principle rather than the ethnic principle. Claus OFFE, writing about the difficulty to “consolidate a homogeneous demos”, attests that of the strategies available to that effect “identity group rights” are “less promising in its effect”<sup>30</sup>. This is, *a fortiori*, true in a binational polity as I will show in a further statement. For the time being let us hold on to the initial definition: accordingly, if only one of the two nations is to get comprehensive autonomy or is to be assimilated to the constitutional state then the binational situation has effectively disappeared. Indeed, the definition as it is proposed is not to promote one nation in terms of minority

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<sup>25</sup> Stein ROKKAN, “Cities, states, and nations: a dimensional model for the study of contrasts in development” in: Shmuel Noah EISENSTADT and Stein ROKKAN (ed.), *Building States and Nations*, Sage, Beverly Hills, Ca., London, 1973, pp. 73-97

<sup>26</sup> Johann Caspar BLUNTSCHLI, *Lehre vom modernen Staat*, Cotta, Stuttgart, 1885

<sup>27</sup> Hans KELSEN, *Wer soll der Hüter der Verfassung sein?*, Berlin, 1932

<sup>28</sup> Jürgen HABERMAS, *Faktizität und Geltung*, Suhrkamp, Frankfurt am Main, 1992; Jürgen HABERMAS, *Die Einbeziehung des Anderen. Studien zur politischen Theorie*, Suhrkamp, Frankfurt am Main, 1996

<sup>29</sup> Georg JELLINEK, *Allgemeine Staatslehre*, Berlin, 1900

<sup>30</sup> Claus OFFE, ““Homogeneity” and Constitutional Democracy”, *The Journal of Political Philosophy* 6 (2): 113-41, 1998, p. 139

rights only. In a binational polity this exercise would most probably result in tremendous difficulties for the process of state-building as will be demonstrated below.

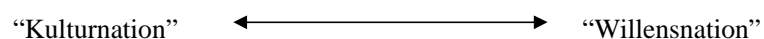
Hence, the outcome of the state-building process pursuant to the constitutional principle results in one of the following two idealtypical possibilities:

4. Comprehensive autonomy for both national communities
5. Assimilation of the two nations into the constitutional state

Up to now I have identified five idealtypical outcomes of a binational polity within the framework of state-building. It is obvious that none of these five outcomes is truly satisfactory (with the possible exception of the fourth outcome but only insofar as through comprehensive autonomy the binational state effectively continues to exist). The fragility of a binational state construction seems to have been verified once more.

However, as per definition, these outcomes are all idealtypical. I have not yet analysed any mixed outcomes. As a matter of fact, state-building is more of a developmental process and shows a multitude of forms<sup>31</sup>. In the further discussion, I will understand the ‘state’ as a conceptual variable in its institutional shaping<sup>32</sup>. As to the distinction that I have established between two visions of state-building pursuant to the homogeneity principle, this means that one has to understand it as a conceptual continuity and not as one-or-the-other-exclusive choice.

The real question one has to ask in this context is: where on this continuity the binational state has to be located? Closer to the “Kulturnation” or the “Willensnation”?



The quest for homogeneity introduces not only the problem of homogeneity within the given entity but also the question how to consider other attempts to homogenise

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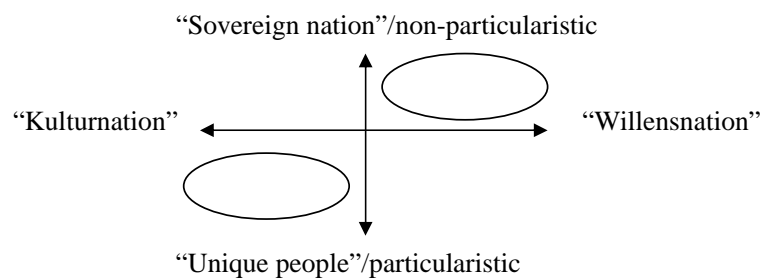
<sup>31</sup> Gianfranco POGGI, *The State: Its Nature, Development and Prospects*, Polity Press, Cambridge, 1990

<sup>32</sup> J. P. NETTL, “The State as a Conceptual Variable”, *World Politics* 20 (4): 559-92, 1968

outside the given entity<sup>33</sup>. Hence, there is another axis of understanding that has to be taken into account: a particularistic versus a more universalist view of the nation. Liah GREENFELD observes that the idea of the ‘nation’ has undergone a semantic transformation from its early medieval understanding until its modern acceptance. The last two stages of meaning are that of the non-particularistic notion of “sovereign nation” and, subsequently, of ‘unique people’ that ultimately disjoined the instances of the ‘people’ from that of the ‘nation’<sup>34</sup>. Again, this view is schematic and one has to concede that in a modern state the two views are seldom pure for different reasons that I cannot discuss here: “Because of the persistence and [...] in certain places development and extension of structural conditions responsible for the evolution of the original, non-particularistic idea of the nation, the concepts now coexist”<sup>35</sup>.

One might argue that the state based on a constitutional principle is “by nature” closer to a non-particularistic view. This is not necessarily so. One has only to imagine a “Willensnation” with a restrictive foreigner policy to refute this presumption. Likewise, one might object that the “ethnic” principle is much closer to the particularistic view, but how to interpret then an expansionist (e.g. colonialist) endeavour within a strict particularistic vision? Consequently and despite some obvious affinities, all combinations remain possible.

As we shall see later, in the binational state polity the particularistic and the non-particularistic views coexist on different levels. For the time being, one has to bear in mind the two dynamic axes of understanding underlying the process of state-building with regard to the homogeneity problem. Where does the binational state find its ideal position?



<sup>33</sup> Andrew VINCENT, *Nationalism and Particularity*, Cambridge University Press, Cambridge, New York, 2002

<sup>34</sup> Liah GREENFELD, *Nationalism. Five Roads to Modernity*, Cambridge University Press, Cambridge Mass., 1992, p. 5 et passim

<sup>35</sup> *Ibid.*, p. 9

As shall be demonstrated later, the indispensable process of mutual recognition is of immense importance in a binational state compared to a multinational polity, whereas the level of decision-making or authority seems to be a good deal less problematic from the point of view of the need for stability (However, it is in some regards contrary to the democratic principle of “One man, one vote”.)

As stipulated in the definition, the two national communities are to recognise each other as legitimately exercising core sovereign power and as having an equal share in promoting state unity.

I will come to the formal implications of the recognition mechanism in the binational polity in a later chapter. However, in order to complete the preliminary definitional efforts I shall try to clarify at this stage what I mean by (effective) core sovereignty.

#### 4. STATE SOVEREIGNTY AND THE BINATIONAL STATE?

Since the conclusion of the Peace of Westphalia in 1648 the *problématique* of sovereignty is viewed as the “radix malorum”<sup>36</sup>. Some argue that the concept of sovereignty is more than 2000 years old and that it has shown up under many names and aspects, and they identify it as a “fundamental phenomenon of human beings living together”<sup>37</sup>.

Here, I will not discuss the sources and foundations of modern sovereignty, nor what sort of actor can or should be invested with sovereign power. What is needed again here is an operational definition, viz. to identify those aspects of modern sovereignty that are necessary to grasp the idea of the binational state and binational state-building.

A classic definition of sovereignty in international public law equates state sovereignty with “independence”<sup>38</sup> and immediate submission to international law<sup>39</sup>. According to that definition, sovereignty is closely assimilated to statehood but nevertheless not always recognised as a constitutive criterion because sovereignty can be diminished without prejudice to the legal personality of the state<sup>40</sup>. For the sake of this study, I am not going to define sovereignty in its entirety and all its aspects. Indeed, what I am actually looking for is *core sovereignty* that is the incompressible part of sovereignty. For Jean BODIN “La souveraineté est la puissance *absolue* et *perpétuelle* d'une République”<sup>41</sup>. Consequently, sovereign power has to be *permanent*. In other words: sovereign power in the first place has to assure its *own* permanence and existence and, in this sense, sovereignty is foremost permanently state-supporting (“staatstragend”). The term ‘absolute’ can and has been interpreted as ‘indivisible and one’. In this sense sovereign power is compelled to ensure its own integrity and unity (“einheitsbildend”). Only if the state is to assure unity it becomes *effective* (“wirklich”) and has a concrete impact

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<sup>36</sup> Hugo PREUSS, *Gemeinde, Staat, Reich als Gebietskörperschaften*, Berlin, 1889, p. 98

<sup>37</sup> “Sie versteht das Souveränitätsproblem [...] als ein Grundphänomen des menschlichen Zusammenlebens”. In: Wilhelm HENNIS, *Das Problem der Souveränität*, Mohr Siebeck, Tübingen, 2003 [1951], p. 2

<sup>38</sup> Max HUBER, *Island of Palmas Case*, 1928; Ian BROWNLIE, *Principles of Public International Law*, 4<sup>th</sup> edition, Clarendon Press, Oxford, 1990, p. 78

<sup>39</sup> “La soumission immédiate des Etats souverains au droit des gens est appelée indépendance”. In: Paul GUGGENHEIM, *Traité de Droit international public*, vol. 1, 1953, p. 174

<sup>40</sup> Charles ROUSSEAU, 73 *Hague Recueil* (1948, II), 178 ff.

<sup>41</sup> Jean BODIN, *Les six Livres de la République*, ch. VII, [1576]

on societal life, otherwise it remains a purely formal and an *abstractum*<sup>42</sup>. One of the means to guarantee effective unity is the exclusive use of sovereign power within a given territory like the Weberian state definition “as the monopoly on the legitimate use of physical force” suggests<sup>43</sup>.

In a binational state, this exclusivity principle has to get our special attention. A corollary of sovereignty, is the power to recognise other sovereign powers as its own mirror-image. As I have framed it, the two nations are both by definition sovereign and could therefore legitimately constitute a state of their own. Since they have to recognise each other according to the equality principle they need to preserve the exclusivity of sovereign powers to effectuate that recognition. However, if it is their permanent will to found a binational state, then state unity is only to be achieved through this very specific institutional setting. Consequently, because the core function of sovereignty is to generate and preserve state unity, the two sovereign nations have to give up the exclusivity principle insofar and only insofar as the permanent existence and unity of the state is concerned. In this perspective, the *effective* sovereign functionality to preserve the unity and integrity of the state does not constitute a delegation or alienation of sovereign power but is the mere expression of the necessity for state integrity whilst the power to recognise other sovereign powers and other attributes of sovereignty that are not necessary to foster state unity rest exclusively with both sovereign nations.

In conclusion, the following two aspects of sovereignty are of paramount importance for the binational state construction. These two aspects of sovereignty are, by definition, necessary for the binational state to stand and have to be counterbalanced:

- **the ability of the sovereign power(s) to preserve the permanent existence and unity of the state**
- **the power to recognise other sovereign units, i.e. the other nation**

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<sup>42</sup> Hermann HELLER, *Die Souveränität. Ein Beitrag zur Theorie des Staats- und Völkerrechts*, Berlin und Leipzig, 1927

<sup>43</sup> Max WEBER, *Politik als Beruf*, 1918

## B. THEORETICAL OUTLINE

### 1. METHODOLOGY

#### 1.1 THE THOUGHT EXPERIMENT

The primary argument that I have encountered concerning the binational state – in the preliminary remarks – stipulated that the idea cannot be actualised since it does not exist anywhere and if it existed then only for a very short period of time. Implicitly, this means that only something that has a verifiable empirical existence can be part of the world of the possible. This point of view may seem plausible at first, but must surely be scrutinised more closely. Even if one accepts the statement that no binational state exists as an empirical reality one is not necessarily compelled to conclude that it is to its intrinsically impossible.

But how can one gain access to the world of the possible and test the stipulated impossibility of the construction in question?

From the methodological point of view, I have already been in a very specific way though without explicitly naming and explaining my way of thinking: the thought experiment. The thought experiment allows us to conduct an imaginary inquiry independent of the reality of the examined object. In a thought experiment, one simply *assumes* the existence of the object and proceeds *as if* it were there. The main purpose of the proceeding is to check if the experiment will conclude with a paradoxical situation. In this case, I would have to accept the impossibility postulate and halt the investigation or else adapt the setting of the experiment, which would need further explanation and testing.

The method that comes closest to the thought experiment in social sciences is the Weberian *idealtypus*. One of the main features of the thought experiment is the possibility to let constant parameters interact, whereas the empirical comparative method needs at least one factor to be variable<sup>44</sup>. An additional advantage of this approach is that spurious correlations are by definition excluded since the main

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<sup>44</sup> Roy A. SORENSEN, *Thought Experiments*, Oxford University Press, Oxford, 1992; Andrew Murray FAURE, "Some Methodological Problems in Comparative Politics", *Journal of Theoretical Politics* 6 (3): 307-22, 1994, p. 313

factors are by definition independent (*explicantes*)<sup>45</sup>. In the present case, the binational state is a given constant as are the political institutions that I am about to develop. This is an advantage with respect to any empirical approach. One would only risk exposing oneself to the critique of reductionism if one decided to apply the model to *existing* state constructions. Hence, I prefer not to do so hoping to gain sufficient insight without empirical testing.

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<sup>45</sup> D. COLE, "Thought and Thought Experiments", *Philosophical Studies* 45: 431-44, 1984; T. HOROWITZ and G. J. MASSEY (eds.), *Thought Experiments in Science and Philosophy*, Rowman & Littlefield, Lanham, 1991; M. CARRIER, "Critical Discussion of Horowitz and Massey 1991", *Erkenntnis* 39: 413-19, 1991

## 1.2 INSTITUTIONALISM AND CONSTRAINT THEORY

Prior to develop the approach any further I surely need to define more precisely what I mean by the term ‘institution’. In the contemporary literature on ‘institutionalism’ there is an apparent divide between sociological (or holistic) institutionalism<sup>46</sup> and rational choice institutionalism<sup>47</sup>. Motivated by the reasons I exposed previously I opted for the thought experiment as device of institutional analysis. According to its methodological premises I am led to minimise the number and possible states of the variables. In other words: I will have to adopt a definition of the institution that is quite at a distance from sociological institutionalism. Hence the institution in my understanding is primarily behaviour-constraining and behaviour-inducing in consequence of the ‘rules of the game’. These ‘rules of the game’ have to determine such features as to *who* is entitled to act, *under what conditions* and *in what order*, if there is *veto power* and possibly if veto power can be overridden and how.

I will base my considerations predominantly on Constraint Theory as it has been shaped by Jon ELSTER<sup>48</sup>. Constraint Theory stipulates that it can be beneficial to constrain one’s liberties, opportunities or options and that in this sense “sometimes *less is more*”<sup>49</sup>. Economic theory suggests that one can insulate an actor from future transaction costs<sup>50</sup>. There are two modalities of self-constraining behaviour: on the

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<sup>46</sup> e.g. Sven STEINMO and Frank LONGSTRETH (eds.), *Structuring Politics. Historical Institutionalism in Comparative Analysis*, Cambridge University Press, Cambridge, 1992; Paul DIMAGGIO and Walter POWELL (eds.), *The New Institutionalism in Organizational Analysis*, Chicago University Press, Chicago, 1991; James G. MARCH and Johan P. OLSON, “The New Institutionalism: Organizational Factors in Political Life”, *American Political Science Review* 78 (3): 734-49, 1984

<sup>47</sup> Kenneth A. SHEPSLE, “Studying Institutions: Some Lessons from the Rational Choice Approach”, *Journal of Theoretical Politics* 1: 131-47, 1989; Elinor OSTROM, “Rational Choice Theory and Institutional Analysis. Toward Complementarity”, *American Political Science Journal* 85: 237-243, 1991

<sup>48</sup> Jon ELSTER, *Ulysses and the Sirens*, rev. Ed., Cambridge University Press, Cambridge, 1984; Jon ELSTER and Rune SLAGSTAD (eds.), *Constitutionalism and Democracy*, Cambridge University Press, Cambridge, 1988; Jon ELSTER, *Ulysses Unbound. Studies in Rationality, Precommitment, and Constraints*, Cambridge University Press, Cambridge, 2000;

<sup>49</sup> Jon ELSTER, *Ulysses Unbound. op. cit.*, p. 1

<sup>50</sup> Oliver E. WILLAMSON, “Transaction Cost Economics: The Governance of Contractual Relations”, *Journal of Law and Economics* 22: 233-261, 1979; Douglass C. NORTH, “Transaction Costs, Institutions, and Economic History”, *Journal of Institutional and Theoretical Economics (JITE)* 140 (1): 7-17, 1984

one hand, it can be beneficial to have some *specific* options<sup>51</sup> excluded from free disposal and on the other hand, it can be conducive just to have *fewer* options available<sup>52</sup>. In this context, the specificity of options will be more important than the mere quantity of options available.

ELSTER distinguishes between two sorts of constraints: incidental and essential ones. *Incidental constraints* are not “there” for the sake of some specific expected benefit, even though they may ultimately produce one. These are constraints that are chosen by the actor, by some other entity or are just a “fact of life” for some reason other than expected future benefits. A contrario, essential constraints are constraints that are there to serve at least one specific expected benefit.

In constraint analysis, preferences are not necessarily fixed, nor are they considered as exogenously given. Interestingly in this perspective, preferences are subject to readjustment *over time*. The mechanism at work here is called time-inconsistency: a policy projected today is not considered the best option anymore at a subsequent point in time: “[...] preference reversal involved in time inconsistency is not caused by exogenous and unforeseen changes in the environment, nor by a subjective change in the agent over and above the reversal itself. The reversal is caused by the mere passage of time”<sup>53</sup>.

ELSTER’s theory distinguishes itself from other rational choice approaches as it allows for preference to be “unfixed” and utilities that are not strictly cardinal over time. The “thickness” of this rational theory seems particularly appropriate to analyse the process of state-building one is concerned with, since one might have to explain why an actor (one of the two nations) would like to change or adjust its preferences. This problem of opting for adjusting one’s preferences is particularly acute when one is dealing with collective or social choice. Here a theory is needed that both allows for preferences to change over time and a theory that is not reducible to one single utility maximisation function.

Hence the distinction brought forward by ELSTER between essential and incidental constraints will be of great importance to my further considerations.

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<sup>51</sup> Jon ELSTER, *Ulysses Unbound. op. cit.*, ch. I and II

<sup>52</sup> *Ibid.*, ch. III

<sup>53</sup> *Ibid.*, p. 24

## 2. THE MODEL

Having exposed summarily the methodological and conceptual anchoring I will continue the proceeding by setting up the model that is to serve as basis for the institutional analysis of the binational state.

Although I have accepted their autonomous nature, political institutions are not “just there”; they are there for specific and limited functional ends. One can think that in a modern society these minimal *strategic functions* are the subsequent ones: *stability, legitimacy, efficiency*<sup>54</sup>. Studying the historical example of Florence, ELSTER also proposes participation as a fundamental strategic function. In the context however, as I do not include either the state of law principle or the democratic principle as necessary prerequisites for the analysis, I subsume this function under the theme of legitimacy.

Stability signifies the absence of civil strife and a great deal of formal predictability of possible institutional outcomes. Legitimacy means that the entity invested with sovereign powers or the procedures to invest an entity with sovereign powers is regarded by the investing power as valid and justifiable. Efficiency stands for the capacity to equate as closely as possible set and estimated outcomes with real outcomes and with the expectancies of the beneficiaries.

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| <ol style="list-style-type: none"><li>1. Stability (F<sub>1</sub>)</li><li>2. Legitimacy (F<sub>2</sub>)</li><li>3. Efficiency (F<sub>3</sub>)</li></ol> |
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According to this definition, an institution has to serve at least one of these strategic objectives to be called political. Combinations of strategic functions are of course possible and even likely. However, to make the analysis clear I will postulate that one institution serves just one strategic objective at a time.

ELSTER distinguishes also between transitional effects and steady-state effects: “the transitional effects of *introducing* a certain institution, and the steady-state

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<sup>54</sup> Jon ELSTER, “Introduction”: 1-17 in: ELSTER and Rune SLAGSTAD (eds.), *Constitutionalism and Democracy*, *op. cit.*, p. 13; Karl Wolfgang DEUTSCH, “State functions and the Future of the State”, *International Political Science Review* 7: 209-22, 1986

effect of *having* that institution”<sup>55</sup>. I will include this distinction in the model by formulating the following two postulates.

Firstly, a necessary postulate for the completion of the framework concerns continued existence: for the institution to serve its objective it has to continue to exist since the political objective is not a punctual one that can be achieved once and for all. I call this requirement the *institutional persistence condition* or *stasis* (P<sub>1</sub>).

A second postulate concerns the initial conditions: the shaping and form of the institution can depend on the initial conditions in which it has been created. Hence this condition translates the historic process into institution-building or, in more neutral terms, sensitivity of choice to the decision frame<sup>56</sup>. The impact of the “history” is not regarded here as a necessity but only as a possibility<sup>57</sup>. I call this possibility *initial conditions path-dependency* (P<sub>2</sub>). Sometimes this condition is also referred to as *hysteresis*.

As we shall see, the circumstances and the timing for introducing institutional constraints is closely linked to the inconsistency problem and the devices for precommitment as we shall see. It is this condition that allows for institutions to exist *over time*.

As with the nation, I accept the state as a constant factor within the model. The role and continued importance of the state model cannot be discussed here any further<sup>58</sup>. The institutional approach stipulates that state institutions as political institutions matter for outcomes and that they deserve attention as independent variables. At this stage, one is now able to synthesise formally the framework of a binational state as far as the constant factors are concerned:

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<sup>55</sup> Jon ELSTER, “Consequences of constitutional choice: reflections on Tocqueville”: 81-101 in: Jon ELSTER and Rune SLAGSTAD (eds.), *Constitutionalism and Democracy*, *op. cit.*, p. 88

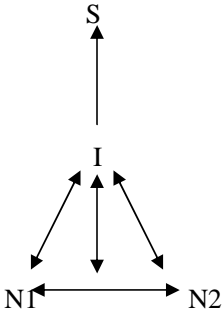
<sup>56</sup> Daniel KAHNEMAN, Paul SLOVIC, and Amos TVERSKY (eds.), *Judgment under Uncertainty: Heuristics and Biases*, Cambridge University Press, Cambridge, 1982

<sup>57</sup> Juan L. LINZ, “Il fattore tempo nei mutamenti di regime”, *Teoria politica* 2 (1): 3-47, 1986

<sup>58</sup> George M. THOMAS and John W. MEYER, “The Expansion of the State,” *Annual Review of Sociology* 10: 461-82, 1984; John J. SCHWARZMANTEL, *The State in Contemporary Society: An Introduction*, Hemel Hemstead, Harvester Wheatsheaf, 1994; Susan STRANGE, “The Defective State”, *Daedalus* 124 (2): 55-70, 1995

1. Given overall constants: Nation A ( $N_1$ ), Nation B ( $N_2$ ), the State (S)
2. Institutional complex: I
  - Constant institutional (political) objectives or functions ( $F_1, F_2, F_3$ )
  - Constant institutional postulates ( $P_1, P_2$ )

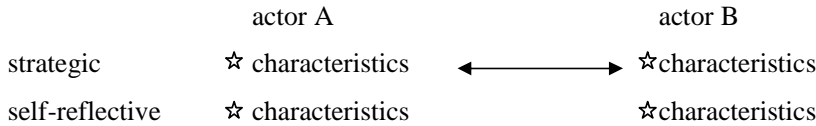
At this stage one has to qualify the proper *interaction* between the three constants and possible institutions driven by the defined political objectives and confined by the two preassigned institutional postulates. The institutional complex constitutes here the variable part of the interaction scheme and the given constants are interacting through it.



Institutional interaction between the constituent nations and the state are best described as political power relations having the ability to alter the state of a specific institution from given state to another. Within such a definition the intention of the actor is not primordial but rather the final impact of mobilisation of the actor's resources.

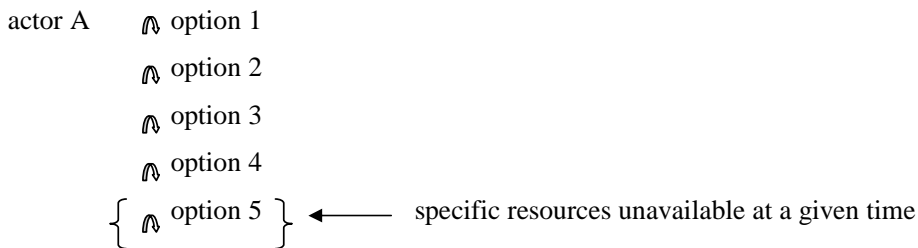
Unwilling to reinvigorate here a discussion about the definition of power, I will adopt again a minimalist point of view: a power relation is shaped by the *characteristics of resources* – such as military and economic endowment, capabilities and potential, demographic strength, social factors such as propensity to mobilisation, comprehensiveness of public opinion or psychological factors like social frustration etc.

For the sake of further demonstration, I take a simple example to show how the theoretical outline is integrating ELSTER's fundamental distinction between essential and incidental constraints: At first, the characteristics of resources that are introduced by the actor A, into the relationship process with actor B dependent (strategic mobilisation) or independent of the characteristics of resources mobilised by actor B (self-reflective mobilisation).



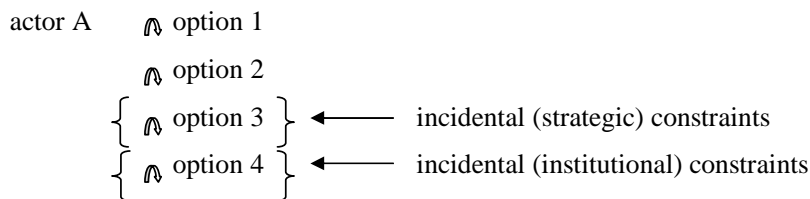
Within the theoretical approach developed until now I described institutions as of constraining nature to the actors. What does this imply with regard to the interaction process through power relations? Here the specific characteristics of resources to be mobilised are directly linked to the institutional framework: The actor has to mobilise *the* resources at its disposal that result in feasible options taking into account, at the same time, incidental institutional constraints. Due to lack of resources, some theoretical options might be unavailable right from the beginning.

In the present example option 5 is not feasible *independently* from external institutional constraints. This constraint is still incidental in the sense of being of “non-beneficial” value, at least from the *ex ante* perspective. Lack of mobilisation concerning some specific resources can be a mere “fact of life” without any intrinsic “expectative” value for the concerned actor.

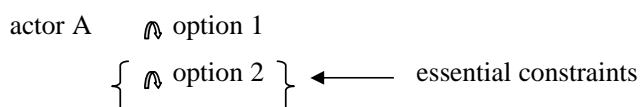


At the next stage, in the present example actor A has now four options left. Yet another incidental constraint of institutional nature is taking out option 3 that is no

longer available for choice. The same constraining fate has option 4 as a result of strategic interaction with an actor B.



How are essential constraints as proposed by ELSTER integrated into this scheme? Essential constraints are constraints that are chosen by means of self-constraining by an actor A in order to get some expected benefits that it would not expect not to obtain *in the absence of that constraint*. In the present example, actor A had originally five options at his disposal but is left with no choice at all; its behaviour is completely and entirely determined by constraints: option 1 is no option anymore; *it is the only possible action*.



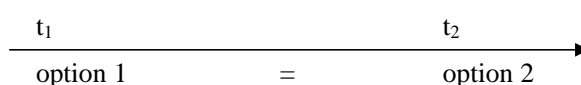
In the present example, actor A might fear that its preferences are likely to change over time, for example from option 1 to option 2. This phenomenon is broadly called time-inconsistency. According to ELSTER “time inconsistency, or dynamic inconsistency “occurs when the best policy available currently planned for some future period is no longer the best when that period arrives”<sup>59</sup>. This inconsistency is a direct consequence of the distinction between essential and incidental constraints since preferences or best options are allowed to change *over time* within the assumptions of essential constraining.

Given the possibility of time-inconsistency, one wonders which option actor A will choose at time<sub>1</sub>?

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<sup>59</sup> *Ulysses Unbound, op. cit.* p. 24, see also Alex CUKIERMAN, *Central Bank Strategy, Credibility, and Independence : Theory and Evidence*, MIT Press, Cambridge, Mass., 1992, p. 15

If actor A fears that option 1 will have a certain probability not to be the best option in the future it will possibly refrain from willing to achieve the aimed goal behind it and might choose directly the other one (option 2) that is silently promoted from second-best to best. That way, the actor frustrates *ex ante* any possible best-option change over time. Estimated high probability of change is of course a major argument for the foreclosing of option 1 in this setting: if the probability of change was estimated to be small by actor A, the balance would lean towards the (preferred) option 1 at time<sub>1</sub>. But the definition of essential constraints suggests that the probability of change over time is unknown. In this case, the actor is unable (indifferent) to take any clear decision between option 1 and option 2 (since they appear *intrinsically equivalent over time*).



The nature of time-inconsistency is such that if there is no further factor that can influence the decision-making process, no meaningful decision can be taken and the actor is virtually lost in the ocean of indifference. Accordingly, one might ask what devices are available to the actor from the rational point of view that allow it to decide *nevertheless*?

Despite its apparent inability to choose between options due to indifference the actor in the example may eventually be able to decide if the fear of inconsistency is duly dealt with. Engagement for one or the other option can be achieved by intertemporal planning i.e. if the actor can be convinced that a change of preferences or option-orderings will not prejudice the potential (stable) outcome.

**In other words: the propensity to self-binding of an actor may be enhanced by means of the belief in *stable outcomes* independently of potential change over time.**

With that small example I think to have demonstrated the plausibility of the inconsistency problem that can emerge for any actor confronted with choice.

Time-inconsistency is the usual but not the only problem of inconsistency that might arise for the choosing actor. Following the distinction put forth by ELSTER, five main reasons underlie inconsistency and the consequent introduction of essential constraining conducive to precommitment at a given time: overcome passion, overcome self-interest, overcome time-inconsistency caused by hyperbolic discounting<sup>60</sup>, overcome time-inconsistency by strategic interaction<sup>61</sup> or prevent or neutralise preference change<sup>62</sup>. Generally speaking, individuals discount when they “plan their behavior over time” discounting “future welfare to a smaller present value. When faced with options whose welfare effects will be felt at various times in the future, they choose the one for which the sum of the present value of these effects is the largest”<sup>63</sup>. ELSTER supposes that discounting is hyperbolic and not exponential as neoclassical economists would suggest. I won’t discuss here the evidence for this suggestion but accept the conclusion: actors who discount “hyperbolically will tend to deviate from plans unless they take precautionary measures”<sup>64</sup>. Strategic time-inconsistency is caused by the interaction with another actor. Here the problem can be “stated as a problem of credibility”<sup>65</sup>. If an actor A cannot credibly threat or promise, warn and encourage stable outcomes are less likely and the actor B is prone to see its preferences alter over time thus giving rise to another form of time-inconsistency due to strategic interaction.

However, in order for the present example to be directly useful for the case of the binational state, I will have to focus primarily on the reasons of inconsistency and devices for precommitment available for collective actors exclusively and not for the individual<sup>66</sup>. Indeed, there is a dissimilarity between the individual and the collective actor. The problem of time-inconsistency is, inter alia, of different nature for the collective actor as time is not necessarily of definite nature constrained by (individual) life-time. In the case of the collective actor, ELSTER identifies an

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<sup>60</sup> Time-inconsistency caused by hyperbolic discounting does not require interaction.

<sup>61</sup> Time-inconsistency caused by strategic interaction does not require discounting.

<sup>62</sup> *Ulysses Unbound*, *op. cit.*, p. 6; pp. 7-77

<sup>63</sup> *Ibid.*, p. 25

<sup>64</sup> *Ibid.*, p. 29

<sup>65</sup> *Ibid.*, p. 37

<sup>66</sup> *Ibid.*, p. 90

additional reason for precommitment due to the inconsistency problem: the need to ensure efficiency of action for other entities than oneself, i.e. the public<sup>67</sup>.

Reasons for precommitment<sup>68</sup>:

- Overcome passion and interest
- Overcome hyperbolic discounting
- Overcome strategic time-inconsistency
- Ensure efficiency

Henceforth, the precautionary measures or precommitment devices to counterbalance the reasons for inconsistency for collective actors will be my principal focus. How then can incidental (for example institutional) constraints help overcome the inconsistency problem that are due to essential constraints? ELSTER proposes five devices for precommitment that can deal with the inconsistency problem on the institutional (or constitutional) level:

Devices for precommitment<sup>69</sup>:

- Imposing costs
- Eliminating options
- Creating delays
- Requiring supermajorities
- Separation of power

Keeping these devices and mechanisms in mind for the more practical account of the proper problem that I am dealing with in this paper namely the binational state, I will ask the following question:

*Is it possible to give the interaction process as described so far an even more general outlook than ELSTER did through the depiction of reasons and devices for dealing with essential constraints?*

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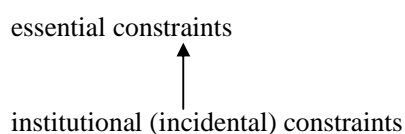
<sup>67</sup> *Ulysses Unbound, op. cit.*, p. 91

<sup>68</sup> *Ibid.*, p. 91, pp.1-87

<sup>69</sup> *Ibid.*, p. 91, pp. 88-174

## 2.1 SYMMETRY/ASYMMETRY

Incidental or non-essential constraints can be either of institutional nature (promoting necessary political objectives through the institutional framework) or of strategic character (promoting self-interest within the given framework of interaction). In either case, these incidental constraints can have their impact on essential constraints. The essential constraints, not the incidental ones, are the source of the inconsistency problem that inhibits self-binding. Self-binding as proposed by ELSTER is an instrument of *creating* and instituting incidental constraints that can eventually become institutional. It is this process of institutionalisation that is of interest in our framework of analysis.



Technically speaking, incidental constraints can have two different impacts on the actor: they may either induce certainty or promote uncertainty about the outcomes i.e. they are consistency or inconsistency-creating. And as I have shown by means of the brief example the problem of inconsistency is directly linked to the propensity of an actor to commitment or precommitment (self-binding). *The more inconsistency there is the less the actor is prone to commit itself.*

Ultimately, what I am interested in more specifically in this case is the *propensity to self-binding* of the two actors. To what extent the two national communities within that framework of the binational state as their framework of interaction are inclined to bind *themselves* through incidental (institutional) constraints. In order to answer this question, an appropriate general analytical tool is needed to measure the propensity of self-binding under essential constraint conditions.

As I have already demonstrated, an actor is inclined to commit itself when it has some certainty about the probability of the projected outcome. If one imagines total ignorance of the probable outcome of an action, action A and action B – the latter action can also be simple inaction – have the same value or utility *over time*.

In such a situation, when the utility of action A and action B is strictly equivalent the only rational device that can help the actor out is to appeal to an outside force (e.g. chance or a third party). I suggest that state institutions can play this role as permanent incidental constraints.

The analytical tool that I suggest to develop here is the concept of *asymmetry* (or symmetry for that matter). This tool will allow us to understand in a more general manner the underlying force of the self-binding mechanism as I have presented it so far. Asymmetry is often defined as equal access to resources of “players” (ethnic groups or states) with (possibly) different strength and (possibly) asymmetric persuasion ability<sup>70</sup> within the process of interaction between two strategic actors. An argument, inspired by Jack HIRSHLEIFER’s “Paradox of Power”<sup>71</sup> and put forth by Ivo WELCH states that asymmetry can be conflict-reducing since it tends to minimise over-all costs *over time* unlike a symmetrical setting.

I will not discuss here the plausibility of this argument per se. Nonetheless, I will take up the idea of *asymmetry* and connect it with the ELSTERIAN inconsistency problem. WELCH splits conflict into an *ex-ante* and *ex-post* position which is tributary to the idea that the less endowed side in conflict might, *ex ante*, be investing more in the struggle than the stronger side, which is less conflict-prone and hence investing less to win. Ultimately, i.e. *ex post*, the weaker side is catching up and checking the stronger actor. Consequently, the stronger side has to mobilise more resources if it wants to remain strong. The battle for symmetry is particularly resource-consuming since over all costs are steadily rising. This condition is close to the well-known arms race condition.

On the other hand, if the weaker side is to remain, by definition or by some specific constraint, weak and hence perpetuating the asymmetrical setting over-all conflict costs can be minimised. Hence, according to WELCH, from an *ex post* perspective it appears to be rational for the two strategic actors not to pursue symmetry in power relations, in order to keep over-all costs low. Still, the problem is that the actors either have to formally agree to that or the weaker side has to be constantly weakened by the other actor or by an outside force.

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<sup>70</sup> Ivo WELCH, “Asymmetry and Power: Can Ethnic Dominance minimize Conflict?”, *Anderson Graduate School of Management, University of California, Los Angeles*, paper 698, 1998, p. 5

<sup>71</sup> Jack HIRSHLEIFER, “The Paradox of Power”, *Economics and Politics* (3): 177-99, 1991

In the (operational) definition of binationalism I have formally excluded *ex ante* power asymmetry between the two national communities that would violate the equality principle advocated by WALZER and be conducive to “false binationalism”. For WALZER there must be recognition of equal sovereign rights. In this context, I shall interpret this condition as a need for institutionalised recognition. This need equals a symmetry condition as far as power resources are concerned and one could argue in view of WELCH’s argument that in an ex-post-perspective this condition might be conflict-maximising through the paradox of power-mechanism. The argument of the precarious nature of the binational state seems again accentuated.

However, the operational definition does not make it impossible for the actors to face any inconsistency problem in the ELSTERIAN sense that is created *over time*. Neither the formal equality principle instituting power symmetry at the level of recognition nor a WELCHIAN asymmetry can fundamentally remedy the inconsistency problem that is created by essential constraints and not by incidental ones. Eventually, only precommitment or self-binding can overcome this inconsistency problem. The main point is that inconsistency cannot be overcome by committing others.

**It is not only power that is the underlying point at issue within the binational state construction but the potential inconsistency of its essential constraints. These essential constraints are problematic for both the two actors *separately*.**

What are the essential constraints both the two nations have to stick to according to the definition? On the one hand, there is the fear of dominance of the other nation through power asymmetry partly remedied by the equality principle; together with the homogeneity condition this fear represents the drive of the ‘nation’ for continued existence. The expected benefits of this essential constraint are continued sovereign rights and self-determination. On the other hand, there is the constraint of state unity. Here the expected benefit is, somehow paradoxically, to overcome the fear of power asymmetry and dominance of the other nation by means of recognition by the other, hence guaranteeing its national existence. In a binational state, unity can only be achieved through instituted unanimity: if there is the

slightest doubt of defection of one nation, state unity is threatened. Therefore, recognition has to be strong to compensate for the fear of power asymmetry and dominance by the other nation.

As I have stated before, inconsistency can be expressed as the probability of change as far as best choices or preferences are concerned. The lower the probability of stable outcomes the more inconsistency there is.

Within the binational state, inconsistency defines fundamentally the doubt for the stability of the necessary outcome that is continued existence of both the two nations and the state at the same time. This inconsistency is *accentuated* in a binational state because there the need and constraint for the state's unity depends only on one other actor i.e. the other nation; if there is any distrust that the other nation might defect the whole state construction can collapse rapidly *qua* binational state whereas in a multinational state, the defection of one national actor does not necessarily endanger the continued existence of *that* state. The essential constraint of state unity as outcome is therefore intrinsically unstable and both the actors face maximal inconsistency over time (that is a probability of outcomes of 0.5 at *any* time)

In conclusion, it seems that in a binational state, the problem of inconsistency induces a maximum of turbulence through its essential constraints regarding the absolute necessity of continued existence both of the two nations and the state. And there seems to be not much room left for manoeuvring.

The only way out of the maximised inconsistency that inhibits any self-binding and precommitment is to provide for strict symmetry of inconsistency for both actors. If any change in the inconsistency function of the other matches the other, the outcomes can be stabilised. In other words: any outcome due to precommitment of one actor has to induce the same outcome for the other actor. Only in this way can outcomes be stabilised and inconsistency minimised for both actors; otherwise the binational state will inevitably disintegrate.

*Symmetry means the same probability of stable outcomes for (both) actors at a given time.*

Generally speaking, if the state institutions (incidental constraints) can provide for symmetry in outcomes at a given time, the inconsistency problem can be overcome and the actors will be inclined to bind themselves more easily over time. On the other hand, if one of the actors believes that outcomes are asymmetrically unstable for the two actors and that the inconsistency functions are not tending to be identical i.e. symmetrical, any self-binding mechanisms make no sense in this context and are therefore inhibited.

Symmetry <i>in time</i> for both actors	promoting self-binding
Asymmetry <i>over time</i> for both actors	inhibiting self-binding

The uncovering of the symmetry condition in time through the analysis of the inconsistency problem has shown that the questions of power symmetry or asymmetry are of certain importance. Nonetheless, the analysis from the point of view of power only concludes with an impasse for the binational state and portrays it again as a very precarious and unsound construction. Indeed, if one analyses the binational state through these lenses, one is compelled to conclude that the binational state is a chimera. Integrating the ELSTERIAN approach into the analysis, one is able to describe a general condition or configuration that might allow the binational state to exist inasmuch as the design of the state institutions take it sufficiently into account. The advantage of the ELSTERIAN approach is the shift of focus from pure power questions to problems of inherent principles and values. In this sense, power is but an aspect of a greater configuration.

At this stage after having generated a general tool describing the proper constellation between the two actors that is conducive to self-binding, I am now ready to proceed and analyse the three levels I have identified as of relevant character to the binational state in the first part of this paper. In this regard, the question of the strength or weakness of the state through its institutions is not the primary focus<sup>72</sup>.

I have stated that the general configuration for self-binding is given when the probability of stable outcomes for both nations are equalised (symmetry). In a second step, I therefore have to imagine what devices of precommitment can assure

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<sup>72</sup> Bertrand BADIE et Pierre BIRNBAUM, *Sociologie de l'Etat*, Grasset, Paris, 1979

this general condition within the framework of state institutions at the highest level i.e. the constitutional level. ELSTER argues that “the imposition of delays and supermajorities is at the core of constitutional precommitment”<sup>73</sup>. These two devices will be of paramount importance to the practical analysis. One has to remember that they have to satisfy the strategic functions of political institutions that were already identified: stability, legitimacy, efficiency.

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<sup>73</sup> *Ulysses Unbound, op. cit.*, p. 115

## C. THE BINATIONAL STATE IN PRACTICE

### 1. ON RECOGNITION AND AUTONOMY OR THE STABILITY-LEGITIMACY DILEMMA

“The extent of a man’s, or a people’s, liberty to choose to live as they desire must be weighted against the claims of many other values, of which equality, or justice, or happiness, or security, or public order are perhaps the most obvious examples”<sup>74</sup>.

Isaiah BERLIN

Having identified at this stage the general and formal configuration underlying any political institutions within the binational state, one can analyse the first level of state-building that is, logically though not necessarily historically speaking, the first step in the process: the foundation of sovereignty. I shall argue that it is the indispensable goal of the state to assure unity or else the state will eventually disintegrate. The strategic institutional objective that translates this paramount necessity is the stability condition (F<sub>1</sub>): How can one assure stability in a binational state?

In accordance to the operational definition of binationalism, core sovereignty is exercised by two nations irrespective of their characteristics in terms of territory, institutionalisation, demographic strength and so forth. This means that basic national sovereignty remains with the two nations. If the two nations simply founded a single state without each maintaining sovereign rights, the singularity of the two nations based on the homogeneity principle could not be upheld. How can one assure, on the one hand, that the source of sovereignty remains within the two nations, thus guaranteeing legitimacy (F<sub>2</sub>) and, on the other hand, generate the unity

of the state? There is a clear trade-off between maintaining the distinctiveness of the two national communities directly expressed by their *pouvoir constituant* and assuring state unity once the binational state exists. KYMLICKA described this dilemma as follows: “The sense of being a distinct nation within a larger country is potentially destabilising. On the other hand, the denial of self-government is also destabilising, since it encourages resentment and even secession. Concerns about social unity will arise however we respond to self-government claims”<sup>75</sup>. Nevertheless, the trade-off at this level is not exactly between the will for self-government and hence identity preservation and the necessity of state unity and stability, but between formal legitimacy and the need for state stability. The question of identity preservation or autonomy, admittedly closely linked to the question of legitimacy, will be addressed in a further chapter.

What can be the formal instrument that founds a binational state, while respecting both the terms of stability and legitimacy in accordance with the (operational) definition of binationalism? As I have stipulated, the indispensable corollary of sovereignty translating the will for unity in the binational state is the discretionary power of the sovereign to recognise other sovereign powers. In the present case, this power does not primarily foster the existence of the sovereign national community but of the state only. This means that national identity is not mediated or even determined by the recognition of the other in a dialectical process. Hence the mutual recognition relation is not necessarily to be seen as a constituent of a nation’s subjectivity as the Hegelian tradition would suggest in this respect<sup>76</sup>.

However, in the absence of recognition by one of the national communities i.e. a lack of mutual recognition, one can imagine that the potential (physical) existence of the other (non-recognised) national community is directly threatened and undermined. In such a scenario a binational state construction ceases to make sense: unilateral non-recognition or sheer denial concerning the existence of the other constituent nation by one of the national communities will eventually – through the drive for homogeneity – provide for the domination of the non-recognised by the non-recogniser, for instance through forced assimilation, violent expulsion or even

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<sup>74</sup> Isaiah BERLIN, *Four Essays on Liberty*, Oxford University Press, New York, 1969, p. 170

<sup>75</sup> Will, KYMLICKA, *Multicultural Citizenship. A Liberal Theory of Minority Rights*. Clarendon Press, Oxford, 1995, p. 192

genocide. A struggle for national liberation or self-determination of the non-recognised power is likely to ensue whenever enough power resources can be mobilised. Interestingly, this outcome comes very close either to the second or third idealtypical possibility developed in the introductory chapter within the framework of the “Kulturnation”- violent separation and domination of the weaker nation.

A second scenario can be based on the hypothesis of “mutual non-recognition”. In this view, the national principle as the primary source of sovereignty is to be relinquished for the profit of the constitutional principle. Under this eventuality the two nations assimilate into the constitutional state or even one “nation-state”. This outcome looks very similar to the fifth idealtypical possibility of the chapter on the homogeneity problem. As I have stated there, none of the five idealtypical possibilities is compatible with a binational setting in its pure form.

In either case the binational polity would cease to exist.

As I have shown in the methodological section, what the two actors legitimately fear are asymmetry in power and inconsistency. Both potentially create an involuntary and unaccounted for condition that hinder the parties to engage *ex ante*. The institutional setting, i.e. the need of the state political institutions for stability and legitimacy, have to accommodate and counterbalance these asymmetries that are state-destroying in their tendencies. Less formally speaking, one needs a *concomitant act* by both national communities that guarantees the unity of the state and at the same time respects formal sovereignty of the two nations effectively preserving the binational state. The precommitment device that is at work here is the mechanism of the “supermajority”. In the case of the binational state “supermajority” equals unanimity, at least at the level of recognition I analyse here in the present chapter.

First of all, in order to bias the asymmetrical constraint of the power problem the required recognition process has to be based on strict formal equality between the two nations: right is might and never the other way round. In this manner the institutional setting is set up to forestall a) possible domination by one nation over the other, b) a violent separation because of the discrepancies between the two

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<sup>76</sup> Georg Wilhelm Friedrich HEGEL, *Rechtsphilosophie*, [1821]

nations in their capacity to mobilise resources, c) the dissolution of both the national identities by virtue of a strong constitutional principle that would be inconsistent with the will for continued existence of both the national communities. This also means that power resources that can be mobilised against each other have to be minimised. National armed forces for instance have to be dissolved and reunited but in an *equal manner*.

Secondly, to create the continued will and opportunity for commitment, the inconsistency problem allows for the possibility of asymmetrical binding. This permits each nation to question and re-assess the union *in time and from time to time* in order to preserve legitimacy over time. The postulate of the initial-conditions path-dependency is formally suspended in regular predictable intervals. However, it is only completely suspended if the stability of the outcome is strictly symmetrical: a negative decision of one nation has to be equally binding for the other. Concretely, this can only mean that the question for separation or secession has to be examined in a well-considered and premeditated manner. Ideally, the symmetrical outcome should be guaranteed and eventually enforced by a third party.

In conclusion, in order to establish unity in a binational state mutual recognition has to be strictly symmetrical over time, especially with regard to the balance of power as the equality principle stipulates.

Nonetheless, the symmetry condition does not exclude the possibility of separation as long as the outcome at the given time is stable (identical) for both actors. Even if the power to initiate the separation is asymmetrical in time, the self-binding of the two actors over time is not inhibited in this manner. In order to guarantee the symmetry of the outcome, separation has to be prepared *ex ante* and ideally pre-negotiated by the two parties. The precommitment device for the eventuality of secession or separation that can apply here is naturally the mechanism of delay since one only needs symmetry in time and not over time.

With respect to the principle of homogeneity described in the first part of this paper, one can say that the possibility of secession corresponds more closely to the

conception of the “Kulturnation” and the process of mutual recognition more to the integrative conception of the “Willensnation”.

The following table summarises the results of the institutional analysis at the level of recognition:

	Strategic institutional function	Symmetry condition	Stable outcome	Homogeneity principle	Precommitment device
mutual recognition of national sovereignty	stability	Equal right to self-determination	state unity	“Willensnation”	“Super-majority”; unanimity
possibility of secession	legitimacy	pre-negotiated separation	homogeneity	“Kulturnation”	“delay”

I have now described what can be the specific mechanisms of the foundational drain of the binational state in the present analysing framework. In view of the initial argument presented here, namely that the binational state is a *specific* state construction, one has to ask whether, at the level of recognition, there is a discernible difference between the binational and the multinational state as far as the stability-legitimacy trade-off is concerned.

Walker CONNOR states that “[n]o government of a multination state has found the solution to the dilemma posed by the goal of state unity on the one hand and the centrifugal tendencies of growing national consciousness on the other”<sup>77</sup>. The danger of the “centrifugal tendencies” adjunctive to the desire for homogeneity is of course not exclusive to the multinational state but as the number of actors increases so does the difficulty to assure consistency between essential constraints. In a multinational setting, the stability of the outcomes is more difficult to achieve and the overall probability of secession but also of domination of one of the nation is increased.

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<sup>77</sup> Walker CONNOR, “Self-determination: The New Phase”, *World Politics* 20 (1): 30-53, 1967, p. 53

In a multinational state, this factor of increased inconsistency for the actors has to be compensated by additional guarantees as to state unity that are not based on recognition. This can for instance lead to an institutional constraint that prohibits unilateral secession by one of the national communities without the consent of the others or to the reduction of the number of national communities bearing equal rights as far as the exercise of sovereignty is concerned by considering them as minorities rather than as nations with sovereign rights. Consequently, and given that in a multinational state unanimity is less probable, stability has to be achieved through the tyranny of the majority or even through despotism of one national community. One can imagine that a trinational state is effectively turned into a binational state when one national actor is transformed into a national minority and thus loses its sovereign rights. If the outcomes have to remain stable, legitimacy has to be produced here by means of important consent mechanisms if the outcomes have to remain stable. The only way to “save” the third (and n national actors) is to provide for comprehensive autonomy, for instance within a federal system or by decentralisation.

This suggests at the level of recognition (and also of authority as I shall show), the binational state shows some functional particularities with regard to the multinational state model. At the level of autonomy, however, the setting looks quite similar to the principles of federal arrangements whose purpose is “to unite for common purposes yet remain separate to preserve their respective integrities”<sup>78</sup>. Nonetheless, the binational model as I have depicted it until now is not a federation in ELAZAR’s sense. In particular, it is the territorial dimension that is potentially lacking in the binational state model since the two nations do not have to be framed within regions, provinces or cantons<sup>79</sup>. nor in terms of minority rights<sup>80</sup> according to the operational definition and the process of recognition. What matters most is the respect of the equality principle that finds its justification in the fear of domination of one nation by the other. This fear of power asymmetry is checked by

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<sup>78</sup> Daniel ELAZAR, *Exploring Federalism*, The University of Alabama Press, Tuscaloosa, 1987, p. 33

<sup>79</sup> Ivo D. DUCHACEK, *Comparative Federalism: The Territorial Dimension of Politics*, Holt, Rinehart and Winston, New York, 1970

<sup>80</sup> Graham SMITH (ed.), *Federalism. The Multiethnic Challenge*, Longman, London, 1995

the symmetry of stable outcomes for both nations. The symmetry in turn is the basis for precommitment on the constitutional level.

As I have shown, autonomy is the necessary corollary of mutual recognition within the binational polity as the principle of homogeneity has to accommodate the need for state unity. Autonomy has to be the basic organisational principle of the distribution of competence and prerogatives. However, within the context of the model, autonomy is not power that has been conceded by a central sovereign power, it is rather an autonomy that is directly derived from principle of self-determination that the two nations have mutually recognised as a constitutive principle. In this sense, it is actually sovereign autonomy and is clearly distinguished from other forms of autonomy<sup>81</sup>.

The only important concession that the two parties might undertake in the interest of international credibility and state unity is to permanently abandon their general competence in matters of external security and foreign affairs for the duration that the binational state exists. All other areas can be open for further settlement. The only requirement is again the symmetry condition.

Autonomy in the context of the model means the distribution of competence between the state and the national communities. The symmetry condition provides that the state has to be equally competent for both national polities. If the state is competent in matters of public health for one nation it has to be competent for the other one as well. On the other hand, the principle of sovereign rights stipulates that unilateral revision of state competence has to be possible; if one nation decides to remove competence from the state the other one cannot have any preventive veto right.

What precommitment devices can assure these premises? The device of *concomitant* supermajority is surely not available because it would violate the principle of auto-determination. However, it can be put forward as a rule for the removal of competence operated by one nation only as *unilateral* supermajority. On the other hand, for competence attribution to be effective, concomitant simple majority is sufficient to guarantee the need for legitimacy.

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<sup>81</sup> Ruth LAPIDOTH, *Autonomy: Flexible Solutions to Ethnic Conflicts*, United States Institute of Peace Press, Washington DC, 1996

Two other precommitment tools could be discussed here: delay and imposing costs. A delay can save from passions and particular interests and the possibility of blackmailing by the other national community. A delay of half the time of the governmental legislature could be plausible here.

A more problematic device would be to impose costs on the side that took the initiative to remove competence from the state government; this would create a temporal power asymmetry that both sides fear. It is a possibility to impose the costs of transaction of competence unequally, for instance through a one to two ratio.

The real danger that self-determination through autonomy has to face is the conception of the “uniqueness” of the people as opposed to the conception of the “sovereign nation” that can accept the existence of other sovereign entities on the same territory. The binational polity has to check this danger by drawing legitimacy to the status of the national community rather than their rights in terms of a particularistic vision of the nation. Here the precommitment devices have to work in the direction of identification between the rulers and the ruled<sup>82</sup>. This is only possible if the particularistic vision is sufficiently counterbalanced by state efficiency. In this context, it is indispensable that the state refuses attributions that are insufficient in terms of means to fulfil the assignments. This power to refuse has to remain discretionary. The principle of autonomy stipulates that the national communities have to bear the costs resulting from the refusal of the government.

The following table summarises the results of the institutional analysis at the level of autonomy:

	Strategic institutional function	Symmetry condition	Stable outcome	Homogeneity principle	Precommitment device
Self-determination	legitimacy	equality	homogeneity	“unique people”	“imposing costs “ “delay”
State prerogatives	legitimacy	unity	Efficiency	“sovereign nation ”	“supermajority”

<sup>82</sup> Yael TAMIR, “The Right to national Self-determination”, *Social Research* 58 (3): 565-90, 1991

## 2. AUTHORITY OR THE MAJORITY RULE PROBLEM

“Is it really necessary that the lives of two nations living together in one place depend on the solely political concepts of majority and minority? Has not the time come to try to put the concept in different terms?”<sup>83</sup>

In order to sustain legitimacy within the state, governmental authority has to rest on the consent of the governed at least with regard to the validity and justifiability of the procedures that are instituting that governmental authority. In a democratic state, the rule of majority is the basic procedure to foster legitimacy with the underlying postulate that the majority sufficiently expresses the consent of the governed. Here, the constituent vote is that of the individual.

In a binational state, the problem of majority rule is of paramount importance as well, but rather at the level of the two nations than on the level of the individual. On the one hand, the principle of equality embodied by the strategic function of legitimacy provides for both nations to have an equal weight and share concerning issues that are of common interest. It is then clearly not conceivable that one national community can impose its views on the other. This requirement amounts to effective veto-power in the decision-making process that is symmetrically binding on the other side (under the symmetry condition). The institutional arrangements have to proscribe the possibility of national “minorisation”. In this sense, the concept of minority is to be banned from the process akin to arrangements I suggested within the framework of recognition.

Nonetheless, if both of the nations have effective veto power within the process of investing governmental authority, the democratic principle of “one man, one vote” (individual level) is obviously in danger. One can imagine that there is a majority in terms of individual votes within the state but no agreement on the national level, an agreement that is absolutely required by the principle of equality. This dilemma is potentially of a paralysing nature and could threaten the efficiency of governmental

authority. At this level of analysis, there is obviously a trade-off between the need for (governmental) efficiency and the necessity of legitimacy.

Is it possible to reconcile these two strategic functions that are potentially antagonistic hence limiting any efficient exercise of state authority within the binational state?

The precommitment devices that one can use in this context diffuse power and stabilise the outcomes at the same time, thus creating the necessary symmetry (that is identical probability of stable outcomes). This can be achieved by distinguishing the process of government and the process of authority-creation. In other words, there has to be an articulated separation of power between the *constituent power* that is state-founding on one side and *the power to invest governmental authority* on the other side. Here separation of power is obviously not to be understood in the classical sense between legislative, executive and judiciary.

This implies that the compulsory periodic vote on the continued exercise of core sovereignty through the binational state should not be settled at the same time as the investiture of a government.

A second instrument for the separation of these two powers is the distinction of validity of these two votes since the question of the foundation of the state is logically prior to the establishment of governmental authority, the former duration has longer validity than the latter and would have to be renewed less often. Consequently, I suggest that in this context an almost double duration of validity could plausibly apply for the foundational level.

Another precommitment device on the constitutional level that ELSTER has identified concerns the possibility of eliminating options. Once governmental authority is established it should be protected from being an object of mutual blackmailing between the national communities. This can only mean, that once governmental authority is established, one national community cannot alone bring the government down. According to this mechanism, the government of the binational state is rather a strong one as it cannot be brought down very easily. From the point of view of the international community, this has a certain advantage as it gives an impression of stability that otherwise might be somehow

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<sup>83</sup> Paul R. MENDES-FLOHR (ed). *A Land of Two Peoples: Martin Buber on Jews and Arabs*; Oxford University Press, New York, 1983, p. 298

compromised with regard to the possibility of secession and the consecutive elimination of the binational state. However, the precommitment device of eliminating options should not be absolute; still, the government needs to be counterbalanced. If there is a “supermajority” for disbanding the government for reasons that are not directly linked to interests and passions that concern one national community only, governmental authority should be dissolved and renewed. In addition, there has to be some control of the state government if one wants to avoid that it becomes despotic. A supreme court can fulfil this role and exercise minimal checks to government in the case of quarrels as to the legality of procedures and competence attribution between the state and the national constituencies. This high court has to be strictly based on the equality principle but impartial at the same time. Here, it could be conducive for symmetry to incorporate a certain number of judges who are not bound to either national community. These judges could have the final word if paralysis threatens the court’s decision-making process. In order to enhance further the symmetrical configuration that is required, voting rules have to be identical for both parties. The voting rules have the same role as have the special rules on pre-negotiated separation. Simple concomitant majority can be sufficient to establish or change these rules.

Again, are there some distinguishable features of the binational state with regard to the multinational setting? In a multinational state, veto power for every nation is of an increasingly paralysing nature for the state *over time*; the more nations with “individual” veto power are involved at the level of authority-creating the more the probability for unstable outcomes is heightened.

In such a multinational state, veto powers that prevent a national community from being dominated by another nation or a coalition of other national communities – the latter possibly constituting a numerical majority – can be aggregated into one body. This aggregation can, for instance, find a feasible (and well known) form in a parliamentary chamber where every community has an equal number of representatives. Here veto power is only expressed when there is a majority within this sole body, for instance a council or parliament. Such a parliamentary chamber can be counterbalanced by an assembly that is appointed by the “one man, one vote” principle only. Strict power symmetry between these two instances is admittedly risking paralysis and constitutes an obstacle to immediate state

efficiency. However, it has the possible advantage of cooling down passions and particular interests. In fact, this mechanism is very close to the symmetrical configuration one can find within the binational state where the risk of paralysis, *ex ante*, is even greater since majority-building is by definition an impossible endeavour for the two actors. It is always an all-or-nothing situation for both of them. Hence at the level of recognition it is *unanimity* that is required in order to guarantee a symmetrical configuration, rather than simple majority.

As I have already postulated, in the binational state, legitimacy is closely linked to the precommitment device of “supermajority”, because the two nations and the state have to guarantee and permanently recognise their respective sovereign rights to self-determination.

The following table synthesises the results of the institutional analysis at the level of authority:

	Strategic institutional function	Symmetry condition	Stable outcome	Precommitment devices
Exercising government authority	efficiency	Veto-power	Authority	“Separation of power”, “delay”
Disbanding the government	legitimacy	impartiality	Government control	“Supermajority”;

## C. SEVEN DRAFT ARTICLES FOR THE CONSTITUTION OF A BINATIONAL STATE

### Recognition:

- §1. The Nations A and B recognise their respective permanent sovereign right to self-determination.

### Founding and representation:

- §2. 1. The Nations A and B, exerting their respective core sovereignty, found a permanent binational state being resolved to preserve its unity to that effect.  
2. The State can accord specific rights to national and cultural minorities.  
3. The State represents the two sovereign nations and the whole people of the state before the international community.  
4. Individuals are not obliged to adhere to one or the other national community, but they cannot be member of both of them at one time.

### Armed forces and borders:

- §3. 1. The independence and territorial integrity of the state are guaranteed by the state army composed of the two national armed forces equal in numbers and commanding positions.  
2. There shall be no other armed forces except two national police forces.  
3. There shall be no borders within the State.

### Separation:

- §4. 1. Every 7 years there shall be held a referendum on the question of continued exercise of core sovereignty within the framework of the binational state. The referendum is to be held at least 9 months before or after governmental elections.  
2. If one nation decides to withdraw from the union by simple majority the binational state ceases to exist and all competence attributed to the state falls back onto the national communities.  
3. Special rules are to be decided by the two national communities in the case of separation with regard to the transition period. The international community is to guarantee the separation process.  
4. The first referendum on the foundation of the state adopts the agreed upon special rules.  
5. The special rules can be altered by concomitant simple majority.

### Autonomy:

- §5. 1. Autonomy of the national communities constitutes the organisational principle.  
2. Every national community constitutes a constituency according to the democratic principle.

3. The State is competent only to the extent that both national constituencies have attributed competence to the state by concomitant simple majority.
4. The removal of competence needs the qualified majority of one national constituency only or concomitant simple majority. In this case, the national community bears two thirds of the costs of the said removal.
5. Competence that is removed by one national constituency is equally removed for the other.
6. The removal of competence takes effect 2 years after its formal removal.

Government:

- §6.
1. There shall be a Government and state agencies to administer and fulfil the duties attributed by the national constituencies.
  2. The Government shall be elected every 4 years by the united constituencies of the national communities. Concomitant simple majority is required for the officials to be elected.
  3. The Government can be dissolved by the qualified majority of both national constituencies united.
  4. The Government can refuse competence when it estimates that it has not been given the necessary means to fulfil its duties.

Supreme Court:

- §7.
1. There shall be a Supreme Court that is competent to settle disputes pertaining to state prerogatives and competence attributed by the national constituencies, the present constitutional articles and fundamental rights.
  2. The two national communities send the same number of judges to the Supreme Court and an uneven number of international judges are to be incorporated into the Court.

## CONCLUSION:

“To deny any people statehood is not simply to put forward a theoretical position; it is virtually to make war against them”<sup>84</sup>.

In this paper, I have attempted to demonstrate that the idea of the binational state is not necessarily a “non-lieu” that has to be banned from academic and political discourse as an eternal chimera. Not to equate state and nation must in this case not lead to everlasting war against and between the concerned nations. The main argument put forth against the viability of a binational state remains the fear of domination of one nation by the other through the asymmetry of power that seems inevitable over time. Yet, the risk of domination is not reserved for the binational state; the drive for homogeneity in the nation-state and asymmetry of power in the multinational state can produce discrimination against national minorities. However, the clash between the homogeneity principle and the fear of power asymmetry seems to be particularly acute in the binational state and therefore a source of potentially never-ending conflict.

By theorising the mechanism of inconsistency I have tried to formulate that fundamental problem differently than *only* in terms of power; the problem of asymmetry remains fundamental, but it is to be viewed *in the greater context* of the inconsistency problem. Through this theoretical lens one can begin to think about institutions that enable the binational state construction to survive: the overall condition for viability is a symmetrical configuration as far as the stability of outcomes to preferences are concerned. It is that configuration that allows precommitment devices to function.

The institutional analysis tried to conceive institutions that are in conformity with both the premises of the (operational) definition of binationalism and the necessities of our theoretical conclusions. The annexed draft articles attempted to translate these results into a constitutional reality.

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<sup>84</sup> Michael WALZER, “On Arabs and Jews”, *op. cit.*, p. 499

Through the whole proceeding I have tried to show the specificity of any binational state construction. The result of the institutional analysis seems not to be overwhelming at first glance since many aspects of the institutions I suggested resemble other state constructions or regimes that are well known. Nonetheless, I think I have demonstrated at least some “weak” specificity of the idea of the binational state as the overall result is not to be easily confused with similar models like consociationalism or federalism. Consociationalism shares the idea of mutual veto power and perhaps to some extent the instance of the power-sharing coalition (even if in the case of the binational state there is no coalition in the strict sense). However, segmental autonomy and the principle of proportionality are not quite what I have developed. Instead, the institutional architecture of the binational state is based on national autonomy enshrined in sovereign rights and the equality principle rather than proportionality<sup>85</sup>. Moreover, whereas the consociational model is based on the presence of several cleavages; in our case of the binational state I admitted only one cleavage that is national in character.

What distinguishes the binational state from federalism is the territorial aspect that is lacking or, at least, does not constitute the organisational principle. In this respect, the model resembles more the socialist idea of nationalist multiculturalism by Otto BAUER and Karl RENNER<sup>86</sup>.

A possible criticism of this paper is the insufficient attention paid to questions of territory and boundaries. This is a legitimate point and the issues of territoriality should have got more attention. Perhaps the attempt to distinguish between sovereign rights and state sovereignty and to attribute the question of territory solely to the problem of state sovereignty is artificial. The problem with making territorial boundaries a defining element of the binational state is that this might create a power imbalance in terms of resources that is incompatible with the equality principle.

The process of recognition can absorb a great deal of the preoccupations about the binational state without violating the principles of sovereign rights, homogeneity and state unity (and of state sovereignty on the international scene). The problem of

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<sup>85</sup> Arend LIJPHART, “Consociational Democracy”, *World Politics* 11 (2) : 207-25, 1969

<sup>86</sup> Otto BAUER, *Die Nationalitätenfrage und die Sozialdemokratie*, Wiener Volksbuchhandlung, Wien, 1924; Ephraim NIMNI, “Nationalist multiculturalism in late imperial Austria as a critique of contemporary liberalism: the case of Bauer and Renner”, *Journal of Political Ideologies* 4(3): 289-314, 1999

majority rule however, might deal a blow to the basic principle of democracy of “one man, one vote”. The binational state is therefore potentially undemocratic from this point of view, but on the state level only and not on the level of autonomy<sup>87</sup>. Perhaps one can suggest that the national communities have to compensate and stick closely to the democratic principle *within* the national communities. In the operational definition I have tried not to prejudice individual liberty in the sense of the liberal theory<sup>88</sup>. This individual liberty that can also compensate for the potential lack of democracy at the macro-institutional level induced by the fear of power asymmetry and the necessity of symmetrical outcomes to assure precommitment. In this context it would be preferable for the civil society to be strong with regard to that state<sup>89</sup>.

At this stage, I shall conclude with some methodological remarks. Whereas in 1968 one could write “The concept of state is not much in vogue in the social sciences right now”<sup>90</sup> the figure of the state triggered renewed interest in academic circles in the mid eighties<sup>91</sup>. This approach has competed with neo-Marxism<sup>92</sup> and to some extent pluralism in creating a vast research programme of Comparative Politics; in this framework “The nation-state is generally not only the primary unit of analysis, it is also the foremost unit of action”<sup>93</sup>. In parallel to the renewal of state theory during a decade of passionate debate<sup>94</sup> the paradigm of civil society found its way back to academia. The main criticism of Comparative Politics is “its state-centred

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<sup>87</sup> In fact, the strict respect of the democratic principle is seldom. Many states that have some federalist arrangements or vote according to majoritarian election rules do not fully respect that basic democratic principle.

<sup>88</sup> Ephraim NIMNI, “Polynational States; Liberal, Illiberal or Post-Liberal?”, *The Association for the Study of Nationalism Bulletin* 13: 3-12, 1997

<sup>89</sup> Joel S. MIGDAL, *Strong Societies and Weak States. State-Society Relations and State Capabilities in the Third World*, Princeton University Press, Princeton, New Jersey, 1988

<sup>90</sup> J. P. NETTL, “The State as a Conceptual Variable”, *World Politics* 20 (4): 559-92, 1968, p. 559

<sup>91</sup> Bertrand BADIE et Pierre BIRNBAUM, *Sociologie de l'Etat*, Grasset, Paris, 1979; Special Issue “On the State”, *Daedalus* 108(4), 1979; Martin CARNOY, *The State and Political Theory*, Princeton University Press, Princeton, New Jersey, 1984; Martin CARNOY, *The State and Political Theory*, Princeton University Press, Princeton, New Jersey, 1984

<sup>92</sup> Louis ALTHUSSER, “Idéologie et appareils idéologiques de l'Etat”, *La Pensée* 151: 3-38, 1970; Claus OFFE, “Structural Problems of the Capitalist State”, *German Political Studies* 1: 31-55, 1974; Nicos POULANTZAS, *State, Power, Socialism*, Verso, London, 1978

<sup>93</sup> James A. CAPORASO, “Introduction: The State in Comparative and International Perspective” in: James A. CAPORASO, *The Elusive State. International and Comparative Perspectives*, Sage Publications, Newbury Park, California, 1989, p. 9

<sup>94</sup> Gabriel A. ALMOND, “The Return to the State”, *American Political Science Review* 82: 853-74, 1988; Paul CAMMACK, “Review Article: Bringing the State Back In?”, *British Journal of Political Science* 19: 261-90, 1989; Andrew VINCENT, *Theories of the State*, Basil Blackwell, Oxford, 1987

perspective [that] has obscured an important dimension of what is new in the political debates and in the stakes of social contestation”<sup>95</sup>.

With the present study of the idea of the binational state I have deliberately concentrated my analysis on the institutional state level. The subsequent results of this analysis are exclusively of constitutional nature. The role of civil society in this process has not been discussed since civil society has not been defined as a participating constant within the system I have developed. This deliberate exclusion might contribute to the criticism of reductionism that is however inherent in the methodology of the thought experiment. The idealtypical approach that I chose to elucidate the idea of the binational state and its possible functioning should at this point be put to the test of empirical data. The theoretical bases on which I based the thought experiment are of various origins: there are elements of the paradigm of new institutionalism, constraint theory and functionalism. Functionalism bears the danger of circular reasoning, and I am aware of the fact that the model is not devoid of some circular argumentation as well.

Nonetheless and despite all the possible criticisms of eclecticism, circular reasoning and reductionism, I emphasise that my only initial ambition was to demonstrate that the idea of the binational state can be taken seriously and that it is possible to examine the idea in a plausible manner.

If I succeeded in persuading the reader that a binational state construction is not *necessarily* precarious and therefore approximating the impossible and that this state construction has some fundamental traits that differ both from the nation-state model and the multinational model, then the road is paved for defending the position that the idea of the binational state should be a genuine object of academic inquiry.

“Once the initial acknowledgment of the other as an equal is made, I believe the way forward becomes not only possible but also attractive”<sup>96</sup>.

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<sup>95</sup> Jean COHEN and Andrew ARATO, *Civil Society*, MIT Press, Cambridge, Mass., 1992, p. 1

<sup>96</sup> Edward SAID, “The One-State Solution”, *The New York Times*, 10th January 1999

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