Peoples and Sovereignty: Constitutional Law Lessons from Greenland and Denmark

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A: Introduction

Greenland was catapulted into international headlines in the summer of 2019, when President Donald Trump expressed a desire to buy it for the USA, and was most aggrieved to be very firmly turned down. One particularly unfortunate dimension in the whole debacle was that he at no stage made any reference to the wishes or views of the Greenlandic Government or its People.[1] Such a move could not have been more out of step with the culture of Danish politics in recent decades.

From the later part of the twentieth century onwards, developments towards building Greenlandic territorial autonomy have been rolling along peacefully and incrementally. The situation has not garnered much attention in comparison with paradigms of ongoing tension and conflict, such as clashes between the Spanish State and the Catalan regional authorities,[2] or political flashpoints in the Brexit process around Scotland and Northern Ireland.[3] Journalists and academics alike are enticed by confrontation and dysfunction: calm progress

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[1] 'I thought it was a joke: Former Greenland PM on Trump wanting to buy the country' *Channel 4 News* (21 August 2019) https://www.channel4.com/news/i-thought-it-was-a-joke-former-greenland-pm-on-trump-wanting-to-buy-the-country

[2] S Balbour, "The Catalan and Spanish Crisis: A European Perspective" *LSE European Politics and Policy Blog* (3 July 2018) *https://blogs.lse.ac.uk/europpblog/2018/07/03/the-catalan-and-spanish-crisis-a-european-perspective/*

[3] N Skoutaris "Brexit is a Form of Secession: Scotland and Northern Ireland Might Soon Follow" *LSE European Politics and Policy Blog* (2 May 2019) *https://blogs.lse.ac.uk/brexit/2019/05/02/brexit-is-a-form-of-secession/*

mediated through democratic decision-making is not especially rock and roll. Nevertheless, we may often derive crucial insights from success stories, if we are minded to look for them.

The final destiny of Greenland is still to be written, its population may conclude that their interests are best served by enjoying a high degree of self-governance within Denmark, or alternatively, their trajectory may ultimately be to assume sovereign status.[4] The purpose of this article is not to speculate about which pathway would be preferable; rather, we are interested in one particular aspect of the situation, and any general conclusions which constitutional lawyers may gain from it. Our lens is focused on the implications of the Greenlandic People as an identifiable community with in the Danish State.

As we shall discuss further and in depth below, academic and political commentators alike acknowledge that the population of Greenland are a "People" for the purposes of International Law.[5] This has been a crucial factor in successive Danish Governments accepting their claim to chart their own future course. In this article, we propose to explore how constitutional lawyers might respond to the challenge of distinct Peoples within States, taking account both of the collective rights of such groups, and also the need to maintain stability and cohesion for the State.

We use the Greenlandic paradigm to draw out two points: firstly, how arriving at the designation of a People is an inherently complex process; and secondly, why reaching an affirmative conclusion on the question of peoplehood for a distinct population need not automatically have negative implications for the stability, integrity or social cohesion of a

[4] For a consideration of some of the competing issues at stake, see *D Rezvani*, *Surpassing the Sovereign State: The Wealth. Self-Rule and Security Advantages of Partially Independent Territories (Oxford: OUP, 2014)*
[5] E.g. A Henriksen, *International Law* (Oxford: OUP) 2019, 68

State. In carrying out our analysis, we shall approach our key question via the following stepping stones:

1) What is the definition of a People for the purposes of International Law?
2) How does this definition relate to Greenland?
3) What lessons can we learn about the relationship between membership of Peoples and citizenship of States?
4) What is the proper response of States to the existence of distinct Peoples when it comes to ordering their constitutional and legal frameworks?

B: What is the definition of a People for the purposes of International Law?

The term People appears in the text of some key international instruments. For example, the United Nations Friendly Relations Declaration of 1970 applies it in relation to self-determination.[6] This document aims to restate the guiding principles of the United Nations, which include self-determination for all Peoples.[7] However, there is a double sting in the tail: 1) an universally agreed or accepted definition of a People for the purposes of International Law does not exist;[8] and 2) there is great controversy as to whether any legally binding right to self-determination applies *beyond* of the context of decolonisation.[9] As a starting point,

[6] *Declaration on Principles of International Law concerning Friendly Relations and cooperation among States in accordance with the Charter of the United Nations)* adopted by UNGA Resolution 2625 (XXV) of 24 October 1970

[7] This was already set out in the *International Covenant on Civil and Political Rights* GA Res 2200A (XXI) (16/12/1966) signed in 1966 and coming into force in 1976. Furthermore, a recent decision of the International Court of Justice stated that the right to self-determination had been part of customary law from as early as 1960. See Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, International Court of Justice 25/2/19

[8] *S Wheatley*, *Democracies, Minorities and International Law (Cambridge: CUP, 2005)* 117

[9] *A Coleman, Resolving Claims to Self-Determination: Is there a role for the International Court of Justice (Abingdon: Routledge, 2013),* 60

the work of Raič demonstrates that the characteristics of statehood are undoubtedly distinct from those of peoplehood.[10] Furthermore, as Thornberry persuasively argues, the concept of a People may actually be a malleable one, which is construed differently in relation to different rights.[11] For current purposes, self-determination is the sphere which currently interests us most, and therefore we shall focus on this context in assessing the meaning of self-determination.

Academic commentators in this arena have attempted to fill the formal definitional gap. For example, the leading scholar Wheatley asserts that the term People undoubtedly covers the populations of sovereign States and independent territories, as well as non-self-governing territories and populations of trust.[12] The statement opens up a complexity to which we shall return later: if this contention is correct and the populations of sovereign States *and* territories within them can both simultaneously constitute Peoples, there is clearly scope for overlap at an individual and community level, e.g. a person or a group may be Greenlandic *and* Danish, claiming membership of two distinct Peoples for the purposes of International Law.

Wheatley also quotes with approval Anaya's contention that the 'plain meaning' of the term must surely encompass indigenous groups.[13] Given that the population of Greenland are resident within a sub-State entity which might reasonably be classified as at least a quasi-independent territory, and as Hubbard shows, are also accepted as an indigenous group for

[10] *D Raič, Statehood and the Law of Self-Determination (New York: Kluwer, 2002)* 10-17
[11] P Thornberry, "The Democratic or Internal Aspect of Self-Determination, with some remarks on Federalism" in C Tomuschat (ed) *The Modern Law of Self-Determination* (*Dordrecht: Martinus Nijhoff, 1993)* 109-138, 124
[12] *S Wheatley*, *Democracies, Minorities and International Law (Cambridge: CUP, 2005)* 117
[13] *S J Anaya*, *Indigenous Peoples in International Law* (*Oxford: OUP, 1996*) 77

the purposes of various international instruments,[14] there is ample support for the contention by commentators (for instance Said[15] and Gilbert[16]) that they fit very comfortably within the definition of a People. Furthermore, this is a position officially accepted by the Danish Government, which as Takahashi argues, unequivocally recognises this status, whilst desiring, if possible, to maintain the territory's place within its State for strategic and economic reasons.[17] Independently of any International Law obligation, Denmark acknowledged the reality on the ground, and has taken legal and constitutional steps to address it. Furthermore, this added another dimension to the Danish indignation at President Trump's bid to buy Greenland like a strip of garden.[18] The mere suggestion that the authorities in Copenhagen would be willing to barter effectively implied a lack of sincerity in their moral commitments.

Nevertheless, from the point of view of Constitutional Law, it is not satisfactory to simply assert that a "People" is like an elephant, in the sense of being easy to identify but hard to describe. When addressing the context of Quebec, Van der Vyver usefully provided a summary of the characteristics which afford a community the status of a People:

"*a group of persons living in a given country or locality, having a race, religion, language and traditions of their own, united by this identity of race, religion, language and traditions in a sentiment of solidarity, with a view to preserving their traditions, maintaining their form of*

[14] R Hubbard, "Mining in Greenland and Free, Prior and Informed Consent: A Role for Corporations?" Nordic Environmental Law Journal (2014) 1, 98, 102
[15] M Said, "Birth-pangs: Greenland's Struggle for Independence" Loyola of Los Angeles Comparative Law Review, 281, 283
[16] *J Gilbert*, *Indigenous Peoples' Land Rights Under International Law: From Victims to Actors (New York: Transnational Publishers, 2007)*, 244
[17] M Takahashi, "The Politics of the Right to Self-Determination: Reframing the Debate on Greenland's Autonomy" Eurasia Border Review (2016) 6:1, 25, 31-32
[18] 'Donald Trump and Greenland: Why would he want to buy it?' *BBC News* (21 August 2019) https://www.bbc.co.uk/news/newsbeat-49422832

worship, ensuring the instruction and upbringing of their children in accordance with the spirit and traditions of their race and rendering mutual assistance to each other."[19]

We would argue that this definition is useful and worth pursuing for two reasons. Firstly, the very fact that Peoples are a reality which International Law takes cognisance of is highly relevant. Even though claims to self-determination, or indeed other rights, on this basis may be shaky (in light of both the lack of a definition, and also the debate around scope of its application beyond paradigms of decolonisation), they still provide leverage in the political sphere.[20] And secondly, distinct Peoples within the wider State population are an observable reality in many countries, and would demand a domestic constitutional response irrespective of International Law.

It would be difficult to cite an example of a group or territory embroiled in debates around autonomy or independence, such as Quebec, Scotland, Catalonia or Easter Island, which did not at least have an arguable case to come within Van de Vyver's definition. In light of this, we propose to pause to consider how the various elements of this formula relate to Greenland, as a particularly solid and archetypal example of a People. We have chosen it precisely because of the unanimity in this regard, as the degree of ambiguity even in such quintessential paradigm reveals how much scope there is for uncertainty in other, less clear-cut cases.

But beforehand, it is necessary to place this analysis within the framework of the Danish constitutional context, given that some of our definitional factors are closely related to this

[19] J Van Der Vyver, "Self-Determination of the Peoples of Quebec Under International Law" Journal of Translation Law & Policy "(2000) 10:1, 17.
[20] A Cassese, *Self-Determination of Peoples: A Legal Reappraisal (Cambridge: CUP, 1995),* 143-154; D Murswiek,"The Right to Secession Reconsidered" (*Dordrecht: Martinus Nijhoff, 1993),* 21-40, 25

context. For instance, having asserted above that Greenland might be described as at least a quasi-independent territory, it is incumbent upon us to justify that contention.

C: How does our definition of a People relate to the Greenlandic context?

C1: Greenland and the Danish Constitutional Framework

Greenland, the world's largest island, is an autonomous territory of the Danish State. It has legislative powers, and control over all government areas excepting foreign policy and security, monetary systems, certain aspects of the police and justice frameworks, and of course, constitutional matters.[21] But beyond this, where does it sit at present within the Danish jurisdictional backdrop?

Denmark is a constitutional Monarchy and a parliamentary Democracy.[22] Although still undeniably a unitary State,[23] Denmark is now organised on a decentralised basis, with five regions[24] and ninety-eight municipalities.[25] It also has two autonomous territories, each with a special status, Greenland being one, and the Faroe Islands the other. As far as the Faroe Islands are concerned, it is interesting to note that, as Suksi observes, their unique position

[21] European Committee of the Regions, Division of Powers, Denmark https://portal.cor.europa.eu/divisionpowers/countries/MembersNLP/Denmark/Pages/default.aspx
[22] The Constitutional Act of Demark 1953, Arts 2 and 3
[23] See for example The Constitutional Act of Demark 1953, Arts 2 and 3
[24] Nordjylland, Midtjylland, Syddanmark, Sjælland (Zealand) and Hovedstaden (the capital region)
[25] V Andersen, 'Denmark' in *Changing Government Relations in Europe: From Localism to Intergovernmentalism, M Goldsmith and C Page (eds) (Abingdon: Routledge, 2010)*, 47-50

has been granted by legislation,[26] and it is *not* enshrined in the Constitution, despite the fact that its arrangements predated the current 1953 Constitution by five years.[27]

It is true that certain provisions of the Constitution do concern the Faroe Islands and Greenland. For instance, Art 28 stipulates that each territory shall send two members to the Folketing (the unicameral State Parliament, consisting of 179 MPs).[28] Nevertheless, the fundamental form and status for each territory is only guaranteed by legislation, which could in theory be repealed. Of course, as a sovereign State, Denmark is in theory at liberty to change its Constitution, meaning that no mechanism would ever secure its current rights in perpetuity. Even so, the requirements for constitutional amendment in Denmark are deliberately very onerous and heavily favour the status quo. Thus, the purely legislative nature of the existing arrangements is not an insignificant consideration.[29]

Having taken stock of the domestic legal framework in relation to Greenland, we now return to the factors within Van de Vyver's definition and the basis for concluding that we are not dealing simply with governance structure of a province, but the provisions in place in respect of a distinct People within the State of Denmark.

C2: Characteristics which define a People

a) Persons living in a given country or locality"

[26] Home Rule Act 1948

[27] *M Suksi*, *Double Enumeration of Legislative Powers in a Sub-State Context: A Comparison between Canada, Denmark and Finland (London: Springer, 2018)* 6

[28] *J Magone*, *Contemporary European Politics A Comparative Introduction (Abingdon: Routledge, 2011*), 206

[29] Constitution of Denmark Part 10 para 88 provides that amendments require a majority in two consecutive Folketing: before and after a general election. In addition, the change must be approved by referendum, with at least 40% of voting age population endorsing it.

The question of land is always powerful and painful where aboriginal Peoples are concerned. [30] The Inuit are considered indigenous people in Greenland, and a deep connection with the land is embedded into their identity and spirituality.[31] Approximately 89% of the population are Inuit,[32] meaning that the territory is overwhelmingly indigenous in character. Yet, arguably, none of the current residents are truly autochthonous, given that the first waves of Palaeolithic settlers died out, and there is no strong genetic link between them and the modern population.[33] As a result, the use of rhetoric surrounding the "original" human settlement of Greenland is controversial, with some of the contemporary Inuit community highlighting the strong cultural associations between themselves and societies occupying the land for millennia, whilst others vociferously rejecting what they see as foundational narratives based on a lie.[34]

History of the Nordic occupation of the island is, if anything, even more mired in controversy. Without question, Viking settlors arrived in the Middle Ages, and maintained a successful and sophisticated society for several hundred years, but ultimately perished or departed. [35] Beyond these bare bones though, the story is hotly contested, and it is not known whether the descendants of the Viking arrivals fell victims of climate change, plague, political pressure or even violent conflict with the Inuit population.[36] Continental Europe last heard from the

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[30] For example, the International Labour Organisation, *Convention Concerning Indigenous and Tribal Peoples* No 169 (1989), 29

[31] M Plato, "Participatory engagement and empowerment of the Arctic Indigenous Peoples" Environmental Law Review *(*March 2017) 19(1), 30

[32] *J Ferrante*, *Sociology: A Global Perspective (Stamford: Cengage Learning, 2013),*360

[33] See further: *R McGhee*, *Ancient People of the* Arctic (Vancouver: University of British Columbia Press: Vancouver 2001)

[34] *M Breum, The Greenland Dilemma: The quest for independence, underground riches and the troubled relations with Denmark (Copenhagen: Royal Danish Defence College, 2015)* Chapter 10

[35] *A Nedkvitne, Norse Greenland: Viking Peasants in the Arctic (Abingdon: Routledge, 2018*). See in particular Chapters 2-5

[36] *K Seaver*, *The Last Vikings: The Story of the Great Norse* Voyages (New York: Palgrave Macmillan: New York, 2010) 160-169

Norse population in Greenland in the late XIV century, and when long-term contact between European and Inuit communities was finally re-established in 1721,[37] Hans Egede, the Lutheran priest who led the expedition, was motivated primarily by the hope of finding the lost community.[38]

Regardless, events of the Middle Ages did not render later Danish colonial activity any less oppressive for the Inuit communities who lived through it,[39] and nothing in our argument should be read as a plea in mitigation for eighteenth and nineteenth century imperialism.

b) Race

It cannot be denied that the meaning, and indeed usefulness, of the term race is the subject of academic dispute amongst anthropologists.[40] There are multiple understandings of the concept and systems of classification, a reality which has profound practical implications. For instance, the options for those completing the 2011 UK census[41] were very different from those currently provided by the United States Census Bureau when it came to self-identification.[42] In Europe, very few people would consider a native Spanish speaker, particularly one who happened to have light skin and green eyes, as a different race from a

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[37] *G Gibon, The Sioux: The Lakota and Dakota Nations (Oxford: Blackwell Publishing, 2004)*

[38] C Markham, "Hans Egede and Danish Greenland" *The Lands of Silence: A history of Arctic and Antarctic Exploration (Cambridge: CUP, 2015)* Chapter 13, 158-164, 158-159

[39] *D Brown, Bury my Heart at Wounded Knee: An Indian History of the American West (New York: Sterling, 2000)* Parallels might be drawn with the North American mainland. Conflict and displacement between Native Peoples did not lessen the injustice of US government policy in the 19th century.

[40] *P Wade, What is race? An Introduction (Cambridge: CUP, 2015)*

[41] Ethnicity and National Identity in England and Wales 2011 https://www.ons.gov.uk/peoplepopulationandcommunity/culturalidentity/ethnicity/articles/ethnicityandnationalidentityinenglandandwales/2012-12-11

[42] United States Census Bureau https://www.census.gov/quickfacts/fact/table/US/PST045218

British, French or Italian individual with the same physical characteristics. In contrast, the default categorisation would be Hispanic in the contemporary United States.[43]

Equally, at the risk of stating the obvious, despite its malleable and disputed nature, race as a concept is recognised across a multitude of jurisdictions, and a plethora of legal instruments, both international and domestic. [44] It is unquestionable that race is a concern for lawyers and policymakers, and that negative experiences of racial discrimination and prejudice have a real and all too observable impact on lives.[45]

Notwithstanding, where a community is seeking to assert its collective identity as a People, the fluid and controversial dimension to the definition of race can prove a complicating factor, because there is a real risk that racial lines may be drawn in places which suit the political or ideological ends of the observers.[46]

As has already been stated, the majority of the population living within Greenland identify as Inuit.[47] Ironically, the individuals who drew the modern political maps struggled to survive in this extreme environment, and the entire thrust of the *East Greenland Case* lay in Denmark's ability to assert its sovereignty over the land without the need to demonstrate a great deal in the way of active occupation. [48]

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[43] *C Rodriguez*, *Changing Race: Latinos, the Census and the History of Ethnicity in the United States (New York: New York University Press, 2000)*

[44] See for example European Convention on Human Rights, Article 14 "*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."*

[45] *S Virdee*, *Race, Class and the Racialized Outsider (New York: Palgrave Macmillan, 2014)*

[46] *A Fieras, Racisms in a Multicultural Canada: Paradoxes, Politics and Resistance (Ontario: Wilfred Lerner University, 2014)* 72

[47] *L Dorais, Language of the Inuit: Syntax, Semantics and Society in the Arctic (Montreal: McGill Queens University Press, 2010*), 3

[48] *Eastern Greenland Case (Denmark v Norw ay)* [1933] PCIJ Reports, Series A/B No: 53

It is also the case that the totemic power of the imagined "lost Vikings" has exerted a real influence at various moments in history, with the legend of the "blond Eskimo,[49] and as late as the early twentieth century, the Anglican Church launched a campaign to convert these "lost" Europeans.

As Zeitzen argues, the survival of the Inuit in conditions which defeated the Norse posed problems for those who deemed them primitive.[50] The inference that they had at the very least mixed their genetics with the Vikings provided a palatable explanation for prejudiced observers, and fitted with the politicised use of Darwinian theory.[51] However, from a XXI century vantage point, all scientific indicators point towards the two historical populations having remained separate.[52] The myth of the blond Eskimo remains just that, but myths hold power, and it has shaped the destiny of Greenland.

Neither have we moved beyond confused or divisive thinking on race. For instance, in writing about Greenland, Loukacheva acknowledges that she frequently applies the term 'Greenlander' to mean "*indigenous residents who identify themselves as Greenlanders and represent Greenland as a nation of Greenlanders".*[53]

This is a worrying direction of travel. A substantial minority of the population, more than one in ten in fact, are not ethnically Inuit,[54] and being Inuit and part of the Greenlandic society are clearly *not* coterminous as concepts. In the Greenlandic Representation to the European

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[49] *J Steckley, White Lies About the Inuit (Ontario: Broadview Press: Ontario, 2008)* 89
[50] *M Zeitzen*, *Polygamy: A Cross Cultural Analysis (London: Bloomsbury, 2008)* 43
[51] *R Weikart*, *From Darwin to Hitler: Evolutionary Ethics, Eugenics and Racism in* Germany (Hampshire: Palgrave Macmillan,2006)
[52] *N Lynnerup*, *The Greenland Norse: A biological anthropological study (Copenhagen: Commission for Scientific Research on Greenland,1998),* 121
[53] *N Laukacheva*, *The Arctic Promise: Legal and Political Autonomy of Greenland and Nunavut (Toronto: TUP,2007*), 6-7
[54] *J Ferrante, Sociology: A Global Perspective (Stamford: Cengage Learning: Stamford,2013),*360

Union, the Government of Greenland itself emphasises that during colonial times there was intermarriage between the Inuit and Danish population, meaning that many Greenlanders today have mixed heritage.[55] As a result, race cannot be held up as a distinctive characteristic of the Greenlandic People.

c) **Religion**

The Norse population in the Middle Ages became Christian around the time of their arrival,[56] and were a fully integrated part of the international network of Western Catholicism,[57] but the Inuit population did not belong to this movement.[58] One of the motivating factors for Denmark staking a claim to the territory of Greenland in the XVIII century was religious conversion.[59] Danish missionaries were successful in altering the religious landscape, Greenlanders embraced Christianity and Evangelical Lutheranism is now identified as the national faith.[60]

A further layer of complexity is added by the Church/State arrangements which are in place in Greenland. Denmark still has an established Church, and the Lutheran Church of Greenland is technically one of its dioceses.[61] However, as part of the extensive legislative and

[55] Government of Greenland, International Relations, Facts about Greenland https://naalakkersuisut.gl/en/About-government-of-greenland/About-Greenland/Facts-on-Greenland
[56] *N Lynnerup, The Greenland Norse: A biological anthropological study (Copenhagen: Commission for Scientific Research on Greenland, 1998),* 51
[57] *T Lacy, Ring of Seasons: Iceland, its Culture and History (Michigan: University of Michigan Press, 2000*), 127
[58] *M Juergensmeyer and W Roof, Encyclopaedia of Global Religion (London: Sage, 2012)* Vol 1, 483
[59] M Said, "Birth-pangs: Greenland's Struggle for Independence" Loyola of Los Angeles Comparative Law Review, 281, 282
[60] Government of Greenland, International Relations, Facts about Greenland https://naalakkersuisut.gl/en/About-government-of-greenland/About-Greenland/Facts-on-Greenland
[61] *A Kjaersgaard, Funerary Culture and the Limits of Secularization in Denmark (Zurich: Lit 2017),* 26-28

administrative powers which have been delegated to the Greenlandic Parliament, in 2010 the legislature in Nuuk passed a law granting the Lutheran Church a great deal of autonomy.[62]

Pockets of pre-existing Pagan practices and beliefs are to be found, even amongst those who identify as Lutheran, [63] but in general terms the religious tradition which was originally imposed by external colonial forces has now been freely adopted. Arguably Greenland is not different from the rest of northern Europe in that respect, given that Christianity came along with the Roman Empire. [64] Historical oppression does not invalidate the autonomy of individuals who now choose to be part of the Church of Denmark, or for that matter the Church of England. Neither does it change the ways in which these denominations have shaped, and been shaped by, the unique cultural context in which they are set.

Yet the fact that the national Lutheran religion, which has become a prevailing and cohesive force in terms of characterising the Greenlandic population as a People, is a comparatively recent import from the Danish culture, is crucial for our analysis.

d) Language and Traditions

Greenland is a bilingual territory, and both Greenlandic and Danish may be used in the public administration. Greenlandic is a polysynthetic language, [65] which belongs to the Eskimo-

[62] S Andersen and M Kjaer, "The Legal Framework of Lutheran Churches: An Historical European Perspective" *On Secular Governance: Lutheran Perspectives on Contemporary Legal Issues* R Duty and M Failinger (eds), (Eerdmans: Michigan) (2016) 247-265, 264

[63] J Robert-Lamblin, "Ammassalik, East Greenland, end or persistence of an isolate? Anthropological and Demographical Study on Change" *Man and Society* Vol 10 (1986) 138

[64] *R Fletcher*, *The Conversion of Europe: From Paganism to Christianity 371-1386 AD* (*London: Harper-Collins: London, 2012)*

[65] K Murasugi, "Noun incorporation, non-configurationality and polysynthesis" A Carnie, Y Sato, and D Siddiqi (eds) *The Routledge Handbook of Syntax* (Routledge: Abingdon) (2014)

Aleutic family.[66] For speakers of Indo-European languages like Danish or English, Greenlandic is challenging to learn, even at a fairly basic level. On the one hand, this signifies that it would be difficult to contest Greenland's claim to a distinct linguistic character which is very much alive and strong, but on the other, the advantages of maintaining a bilingual framework are readily apparent in terms of trade, working arrangements and wider economic and social engagement with the rest of Europe, Canada and the USA.

It is also demonstrable that the Danish language belongs to the current infrastructure of Greenland. For instance, secondary education is primarily delivered through the medium of Danish, in large part due to the challenges of finding teaching staff who are sufficiently fluent in Greenlandic.[67] Even though Greenland has its own language, it also shares, and in functional terms remains dependent upon, the majority language of the Danish State.

In relation to cultural traditions, whilst there are many features common to other Inuit societies, and also to mainland Denmark, Greenland undoubtedly does have its own particular character.[68] To an extent this is due to its unique geography: for instance, there are no roads or rail links between settlements, meaning that life-styles have been shaped around travel by plane, helicopter or sea.[69]

Greenland is proud of its distinctive architecture, art, craft, fashion and culture, fusing many influences.[70] For example, the modern Greenlandic art scene is heavily influenced by

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[66] Government of Greenland, International Relations, Facts about Greenland https://naalakkersuisut.gl/en/About-government-of-greenland/About-Greenland/Facts-on-Greenland
[67] *A Sørensen, Denmark-Greenland in the Twentieth Century (Copenhagen: Kirsten Caning, 2006),* 133
[68] *I Jensen, Things to Know About Greenland (Greenland: Greenland Travel, 2018)*
[69] Government of Greenland, International Relations, Facts about Greenland https://naalakkersuisut.gl/en/About-government-of-greenland/About-Greenland/Facts-on-Greenland
[70] Explore Greenland https://visitgreenland.com/

traditional tattoo-art and the local raw materials, but also by the touch of European impressionism.[71]

Equally, many sub-State regions around the world can boast a distinctive geography, aestheticism or cuisine. It is often possible to break down areas into even decreasing units, whilst still identifying independent communities with particular identity, values and traditions. This is sometimes observed with certain districts within large cities, yet at some point lines have to be drawn around the scale and significance of divisions.

Overview

In light of the foregoing, what does the Greenlandic context demonstrate about identifying a People? It reveals something of a paradox. On the one hand, nobody in either the political or the academic sphere is attempting to deny that the population of this island does in fact constitute a People. This reality was officially recognised by the international community in the era of decolonisation and has remained a matter of consensus ever since. [72] In addition, we should find this unsurprising, since we have established that all of the elements of our working definition of a People have been satisfied. Yet at the same time, we cannot escape from the unsettling observation that each of these individual factors has proved somewhat ambiguous when placed under a microscope.

This reminds us that the current position was not the inevitable end point of historical events, and also that the paradigm is subject to change. Peoples are not created by legislation or treaty, they are a factual reality, of which the law take cognisance. As Greenland, or any other

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[71] Visit Greenland, 'Greenlandic Art Through Time' https://visitgreenland.com/about-greenland/modern-art/#top-section

[72] E *Beukel, F Jensen and J Rytter*, *Phasing Out the Colonial Status of Greenland 1945-54: An Historical Study (Copenhagen: Museum Tusculanum Press, 2010).* See in particular 67-86

society, drifts or evolves, its claim to peoplehood may grow or diminish. Constitutions and constitutional lawyers cannot impose stasis, because Peoples are a question of fact, not law. The position at the moment when constitutional structures crystallised may not reflect the reality on the ground in later generations.

In concrete terms, this means that constitutionalists must grapple with two distinct dimensions to these paradigms. On the one hand, the very existence of Peoples is fragile and potentially precarious. As we shall discuss, the legal duties placed upon States include an obligation to respect the rights of Peoples to exist and to safeguard their future. Yet on the other hand, it cannot be denied that there is an inevitable ebb and flow of human populations and cultures, as communities emerge or become subsumed.

The implications of this have not as yet been thoroughly explored, precisely because these developments unfold over decades and centuries, and current modes of legal thinking about statehood, human rights and the autonomy of Peoples, only began to emerge in the second half of twentieth century.[73] To begin filling some of the remaining gaps in the legal commentary, we shall start by considering how the membership of a People interacts conceptually with citizenship of States.

D: What is the relationship between membership of Peoples and Citizenship of States?

As noted above, the respected commentator Wheatley cited the population of sovereign States as one clear example of a People for the purposes of International Law. We propose

[73] *A Cassese*, *Self-determination of Peoples: A Legal Reappraisal (Cambridge: CUP, 1995)* 37-65

that this is correct for a number of reasons.[74] Firstly, it is closely allied to the philosophical and theoretical ideas which have underpinned our understanding of States and sovereignty since at least the Enlightenment.[75] Any conception of sovereignty residing in the People must be predicated on the People being an identifiable reality. Secondly, it is difficult to find a State unable to satisfy most of the diagnostic criteria proposed by Van der Vyver, and even where there is considerable diversity, there are generally pan-cultural, historical, artistic and linguistic strands. Consider, for instance, the United Kingdom, the identity and uniqueness of its component parts do not render the concept of 'British culture' an empty vessel.[76]

It might, of course, be argued that there are contexts where States were artificially manufactured for political reasons, and claims for overarching commonalities would be harder to substantiate. We do not entirely foreclose that possibility: the anthropology of nation States is a field of study in itself, and one which resists hard certainties and sweeping generalisations.[77] Even so, it is undeniable that the common and normative pattern is for a State to have a shared meta-culture and identity.

The finding that the population of a sovereign State constitute a People, when coupled with the point that distinct communities within States are also at times Peoples for the purposes of International Law, leads us to an important conclusion to which we have briefly alluded: sometimes individuals are members of two (or potentially more) Peoples. In anthropological terms, noting that human beings may embrace multiple identities is hardly ground-breaking,[78]

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[74] *S Wheatley*, *Democracies, Minorities and International Law (Cambridge: CUP, 2005)* 117

[75] *R Jackson*, *Sovereignty: The Evolution of an Idea (Wiley, 2013)* See in particular, Chapter 4 'Popular

[76] *M Higgins, C Smith and J Storey (eds) The Cambridge Companion to Modern British Culture (Cambridge: CUP, 2010)*

[77] *M Herzfeld, Social Poetics in the Nation State (Routledge, New York) 2005*, 73-92

[78] See for example, *L Beaman, Religion and Canadian Society: Context, Identities and Strategies (Toronto: Canadian Scholars Press, 2005)*

but it is a dimension of the situation which is frequently either overlooked or obscured in legal debates.

There is a tendency for constitutional lawyers to consider multiple Peoples within States primarily in the context of political debates around devolution or independence, and as a consequence, the discussion is usually framed in terms of *clashing* claims and identity. For example, even in the analysis of authors like Rezvani[79] and Said,[80] who cite the advantages of Peoples exercising autonomy *within* a parent State, as opposed to seeking independent statehood, there is an understanding of States and sub-State entities being distinct nuclei, sharing out rights and control. The centre and regions are opposing bodies with competing interests, and a push and pull between in relation to the distribution of powers.

At one level that is an entirely accurate description of the situation on the ground, and the parcelling out of powers and spheres of responsibility between parent States and territories is premised on a straightforward reflection of reality.[81] Wrangling between regional and central Governments, of the type witnessed in recent years in Spain between Madrid and the pro-independence executive in Barcelona, are a stark example of this phenomenon. [82] There are hard-edged questions about which body is ultimately empowered to make decisions on public taxation, administration and spending, and to whom exactly are its representatives accountable.

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[79] *D Rezvani*, *Surpassing the Sovereign State: The Wealth. Self-Rule and Security Advantages of Partially Independent Territories (Oxford: OUP 2014),* 3

[80] M Said, "Birth-pangs: Greenland's Struggle for Independence" Loyola of Los Angeles Comparative Law Review , 281, 289-290

[81] A Trench, "The Framework of Devolution: the formal structure of devolved power" in *Devolution and Power in the United Kingdom, A Trench (ed) (Manchester: Manchester University Press,2007*), 48-72

[82] J García Oliva, 'Challenges on the 40th Anniversary of the Spanish Constitution: Can Spain find a way to accommodate Catalonia?' LSE European Politics and Policy Blog 18/10/18 https://blogs.lse.ac.uk/europpblog/2018/10/18/challenges-on-the-40th-anniversary-of-the-spanish-constitution-can-spain-find-a-way-to-accommodate-catalonia/

Yet it remains true that once we have moved away from colonial paradigms, in which one People is subject or subordinate to another People (a position which is rightly condemned in modern International Law),[83] we must conclude that at least two Peoples will *necessarily* exist in a coterminous fashion, *whenever* a distinct population nested within a State constitutes a People. This will produce a range of responses from individual citizens, inter alia: proud ownership of multiple cultural identities,[84] conscious rejection of one identity,[85] fluctuation between identities and indifference to the whole question.

Consequently, constitutional lawyers should be aware that dissatisfaction and tension between dual identities ought not to be treated as the expected, default position, and even where historically there has been systemic oppression, individuals may opt for dual identity.

For example, the leading Welsh independence party, Plaid Cymru, currently has around 8000 members, in contrast to the 125,500 of the Scottish National Party.[86] This represents approximately 0.26% of the Welsh population,[87] compared with the much higher 2.5% in Scotland.[88] Thus, political support for an independent Wales, and abandonment of British identity, is comparatively weak at the present time, even though pride, celebration and

[83] *Declaration on Principles of International Law concerning Friendly Relations and cooperation among States in accordance with the Charter of the United Nations)* adopted by UNGA Resolution 2625 (XXV) of 24 October 1970

[84] *D Cohen, 'Methods in Cultural Psychology', in Handbook of Cultural Psychology S Kitayama and D Cohen (London: Guilford Press, 2010)* 195-236, 225

[85] L Savantyg and C Thomas, 'The Role of Political Parties: Weak Organizations, Strong Caucuses, Intermittant Bipartisanship' in *Alaska Politics and Public Policy*: *The Dynamics of Beliefs, Institutions, Personalities and Power (Fairbanks: University of Alaska Press, 2016),* 411-436, 419

[86] House of Commons Library, Membership of UK Political Parties (3/9/18) https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05125

[87] Welsh Government, Mid Year Estimates of the Population (28/6/18) https://gov.wales/statistics-and-research/mid-year-estimates-population/?lang=en

[88] National Records of Scotland, Scotland's Population 2017 https://www.nrscotland.gov.uk/news/2018/scotlands-population-2017

consciousness of Welsh national identity remain very strong,[89] and devolved government is firmly embedded in the legal framework at both Welsh and UK level.[90]

It is inevitable that successful paradigms attract less academic and political comment, but it is essential to stress that these contexts are not invariably a source of friction. Distinct populations are part of the composition of the State People, and for this reason, we have adopted the term "Component Peoples" to describe them, bringing us to the final stepping stone in our analysis:

E: What is the proper response of States to the existence of Component Peoples, when it comes to ordering their constitutional and legal frameworks?

In answering this question, we shall divide our analysis into two parts: the external legal obligations which States are required to meet, and the domestic considerations in ordering their constitutional arrangements.

E1) International law duties which must be satisfied

To begin with, there is the question of International Law rights and duties. What are the implications of the right to self-determination which we have seen to be vested in Peoples? In a seminal discussion, Cristescu[91] concluded that it does not amount to a *general* right of unilateral secession, and a large number of other highly influential commentators, including

[89] See for example, Eisteddofd 2019 https://eisteddfod.wales/2019-eisteddfod
[90] H Pritchard "Revisiting Legal Wales" *Edin. L.R*. 2019, 23(1), 123-130
[91] *A Cristescu*, *The Right to Self-Determination: Historical and Current Development on the Basis of UN Instruments UN Doc ECN4/Sub2/404/Rev 1, 1981, para 173*

Higgins[92] and Cassese,[93] follow his lead in this respect. The same authors do, nevertheless, acknowledge that there may be a right to secession where *'peoples, territories and entities [are] subjugated in violation of international law'*.[94]

Said argues persuasively that there is an inherent tension between what she terms the right of communities to independent government, and the desirability of peace, stability and certainty.[95] In broad terms, moves which jeopardise the integrity of sovereign States are not seen in a positive light, and assertions of a right to secession are not readily accepted by the international community. Consequently, there is no universal obligation to follow Denmark's pattern in facilitating the possibility of independent statehood.

Nonetheless, this does not mean that the right to self-determination is weak. As stated, making the leap to full sovereignty is only one of the ways in which it may be exercised. Importantly, although not entirely uncontested, the overwhelming weight of academic opinion is now in favour of the idea that the right to self-determination includes the right to *internal* self-determination, or in other words, the freedom of Peoples to enjoy autonomy *within* the sphere of the Sovereign State.[96]

At first glance this appears to be a neat solution to the conundrum, as it preserves the status quo with regard to the territorial integrity of Sovereign States, whilst simultaneously enabling communities to enjoy their legally mandated freedoms. The stumbling block is that it leaves open the troublesome question of what such self-determination actually looks like.

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[92] *R Higgins, Problems and Processes: International Law and How We Use It (Oxford: OUP, 1994) (2004 Edition),* 123-125

[93] *A Cassese*, *Self-determination of Peoples: A Legal Reappraisal (Cambridge: CUP, 1995)* 146

[94] *A Cristescu*, *The Right to Self-Determination: Historical and Current Development on the Basis of UN Instruments UN Doc ECN4/Sub2/404/Rev 1, 1981, para 173*

[95] M Said, "Birth-pangs: Greenland's Struggle for Independence" Loyola of Los Angeles Comparative Law Review , 281, 289-290

[96] *A Cassese*, *Self-determination of Peoples: A Legal Reappraisal (Cambridge: CUP, 1995)* 154

Murswiek[97] suggests that action taken by State authorities which is aimed at depriving a People of its specific characteristics (i.e. those facets which make it a People) is incompatible with the right to self-determination. This must be correct, as if the right to self-determination is not predicated on a right to continued existence, it is an empty shell, but how far does it go beyond this, and how much autonomy is sufficient? The uncertainty provides scope for dissatisfied voices to argue that *whatever* arrangements a State has in place, they fail to satisfy the true requirements of self-determination, triggering claims of subjugation and an accompanying right to secession.

Against this backdrop, Higgins observes that the intensity of the desire for secession is ordinarily linked to the degree of human rights oppression experienced by the group wishing to secede.[98] At one level, it is extremely difficult to argue with the contention that secure communities whose freedom and dignity are respected will have less reason to agitate for independence than those who are persecuted and abused. In other words, States can be proactive in preserving their territorial integrity by eschewing maltreatment of Component Peoples.[99] The difficulty is that when we turn out attention to the level of Constitutional Law, as we are about to do, the position becomes more complex.

E2) Constitutional Law Responses

[97] *D Murswiek, The Right to Secession Reconsidered* (*Dordrecht: Martinus Nijhoff, 1993),* 21-40, 227
[98] *R Higgins, Problems and Processes: International Law and How We Use It (Oxford: OUP, 1994) (2004 Edition)* 124
[99] Although Higgins does, quite correctly, stress that whilst the right to self-determination is linked with minority rights, it is a distinct concept. See *Ibid* 125

From this angle, we are confronted with a stumbling block in Higgins' argument, but also a means of addressing the same.

E2a) The Problem of Competing Demands

As we have established, legal and constitutional frameworks ought to be constructed in a way which respects the right to self-determination enjoyed by Component Peoples. The difficulty is that there are other, equally key imperatives, which a liberal, democratic State is bound to uphold in respect of its citizens. Guarantees of human rights and equality flowing from constitutional and international instruments cannot be bypassed, meaning that fundamental problems arise when there is a head on collision between collective and individual rights.

Added to which the overlapping membership between Component Peoples and State Peoples, and the sometimes porous borders between the two, further complicate conflicts of collective and individual rights. One of the motivations for our dissecting the Greenlandic paradigm so carefully in previous sections, was to reveal just how intricate the interplay between Peoples can in fact become. If there still so much fluidity and ambiguity in a setting like that, how much more might exist in less hard-edged paradigms?

Lest it should be imagined that these problems are in any way abstract or removed from reality. Consider some of the disputes around language in public administration and education, in contexts like Quebec[100] or Catalonia.[101] These debates are too complex to

[100] *W Davies and S Dubinsky, Language Conflict and Language Rights: Ethnolinguistic Perspectives on Human Conflict (Cambridge: CUP, 2018)* 340
[101] *D Cetra, Nationalism, Liberalism and Language in Catalonia and Flanders (London: Palgrave Macmillan, 2019)* 87-124

rehearse in detail here, but similar tropes are reprised again and again. In essence, the recurrent question is that of when it is appropriate to prioritise the language of a Component People, particularly to the exclusion or marginalisation of the tongue of the State People.

For instance, the linguistic medium through which public universities and school operate is a hotly contested area. Is the availability of French and Catalan in schools in those territories sufficient, or is it necessary to ensure that educational provision is predominantly or even exclusively delivered in that language? How can the desire to protect the future of the language of a Component People[102] be balanced against the rights of individuals whose interests or preferences may be opposed to this (e.g. children for whom the language of the State People is already a second language, students who have additional education needs or whose families may relocate to another part of the country in the medium term)?

This is just one example of one kind of debate which can arise. Our point for present purposes, is that an ingrained constitutional stance of automatically prioritising the collective rights of the Component People (as asserted by organs of regional Government) would not be compatible with the requirement to respect the individual human rights of those who wished to oppose the policy. As Handler demonstrates, social and legal fissures around language use are not amenable to simplistic analysis or resolution, and any blunt instrument approach would undermine, rather than uphold, human rights.[103]

Consequently, in order to honour the liberal democratic project of respecting both individual human rights, and international law obligations, the competing interests in these situations

[102] Which arguably goes to preserving the very continuing existence of the Component People, a key facet of the wider right to self-determination.

[103] *R Handler, Nationalism and the Politics of Culture in Quebec (Madison, University of Wisconsin Press*, *1988)* 174

must be carefully weighed in the balance by organs of the State.[104] Inevitably, there will be some occasions when the scales tip *against* the collective rights of the Component People. It is only to be expected that factions on the losing sides of legal and political tussles will feel some resentment at the outcome, which in turn may manifest as a resurgence of pro-independence agitation.[105] Thus, Higgins suggestion that safeguarding human rights may ward off secessionist sentiment, needs to be at the very least qualified.

So where does this leave constitutional lawyers when faced with these competing demands? This is a key question, and we would suggest that the answer lies in the very nature of Constitutions, and one facet in particular of the constitutional project. We contend that public "buy-in" to constitutional norms has the capacity to assist in reducing the resentment experienced by groups who feel themselves to be on the losing side in cases of conflict, and also to address some of the human complexity around the identities of State and Component Peoples in a positive way. Therefore, we now turn out attention to exploring the importance of "Constitutional Culture" in this context, as we propose that this phenomenon has a critical role to play in simultaneously meeting the dual demands of assuring autonomy for Component Peoples, on the one hand, and providing parity of individual rights for all persons within the State, on the other.

E2b) The Role of a Constitution and Constitutional Culture

[104] *M Perry, The Political Morality of Liberal Democracy (Cambridge, CUP, 2010)* 9-26
[105] *M Francis* "We should revitalize the Alaskan Independence Party: Here's Why" *Anchorage Daily News* 19/11/18

The role and nature of Constitutions is undeniably a legal and philosophical question of great depth and antiquity, and is not a subject into which we would hope to delve deeply in the span of a brief article.[106] For our present purposes, it suffices to observe that at one level, a Constitution may be properly understood as the body of law within which the juridical and political framework of a State is encased.[107] Whilst there is nothing incorrect about such a definition, a number of influential commentators have demonstrated that it is only one dimension of a multidimensional reality, pleading that Constitutions should be understood as a more profound social force and entrenched collective project.

As Frankenberg argues, every Constitution is the product of its own unique history moulded by the values, prejudices and preoccupations of its architects.[108] Furthermore, he endorses the contention of Llewellyn, that this holds good even in the absence of a unified written instrument,[109] on the basis that a Constitution is an institution, and "*a set of ways of living and doing".*[110] On this basis, all States have a Constitutional Culture, whatever form their constitutional arrangements take as far as legal theorists are concerned. There will always be identifiable shared practices and expectations about the organisation of collective life and governance.

Nevertheless, it should come as no surprise that much of the discussion around Constitutions as societal institutions, and the closely related concept of Constitutional Culture, originated

[106] *R Brock and S Hodkinson (eds), Alternatives to Athens: Varieties of Political Organisation and Community in Ancient Greece (Oxford, OUP, 2000)*
[107] *W Voermans, M Stremler, P Cliteur, Constitutional Premables: A Comparative Analysis (Cheltenham, Edward Elgar, 2017)* 2.1
[108] *G Frankenberg, Comparative Constitutional Studies: Between Magic and Deceit (Cheltenham, Elgar, 2018)* x
[109] Ibid, 65
[110] K Llewellyn "The Constitution as an Institution" 34 *Columbia Law Review* (1934) 1, 33

in the United States, a country quite literally founded on a Constitution, and in which the text still has totemic value for citizens on the street, as well as lawyers.[111]

Mazzone[112] makes a persuasive case that although the "Founding Fathers" and subsequent political elites have tended to hog the limelight in academic discussion, the entire American experiment with constitutional government could never have succeeded without Constitutional Culture, which he interprets as the disposition of the majority of ordinary individuals to recognise and accept their society being ordered according to the constitutional document.

This contention is strengthened by parallel observations from lawyers in other jurisdictions. For instance, Heller's view, forged in the historical German context, is that the content and operation of Constitutions is determined "*not just by text, judges or legislators, but by the citizens who are its addressees and observe its norms"*.[113]

The essence of such arguments is that to function in an effective and meaningful way, Constitutions must be embraced by the People they bring together. If their principles are not respected voluntarily, and their mechanisms for governance and dispute resolution are not perceived as just and reasonable, then they will inevitably break down. The case is persuasive, but not entirely unassailable. For instance, Weis makes the point that in contexts like Australia there is a deficit of Constitutional Culture, in the sense that the Constitution as an institution is not high in the public consciousness and consequently not prominent in popular debates.[114]

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[111] *E Kaspar and Q Vieregge, The United States Constitution in Film: Part of Our National Culture* (New York: Lexington Books, 2018)

[112] *J Mazzone, "*The Creation of a Constitutional Culture"*, Tulsa Law Review,* 2005 671, 683

[113] *H Heller (trans. D Dyzenhaus)*, "The Nature and Structure of the State" *Cardoza Law Review* (1996) 1139

[114] *L Weis,* "Does Australia Need A Popular Constitutional Culture?" *R Levy, M O'Brien, S Rice and M Thornton (eds), New Directions For Law in Australia: Essays in Contemporary Law Reform (Canberra, ANU Press, 2017)* 377-384, 382

This commentator maintains that this is a regrettable and problematic reality, but others such as Goldsworthy suggest that it is not intrinsically negative where no ill effects are being felt.[115]

We would argue that the solution lies in what is really meant by Constitutional Culture. Certainly, the phrase does not need to refer to the incarnation of the concept observable in the United States, in which there is a revered and unified text, with battles over how it should be read in each new generation.[116] Indeed, the crucible in which the US Constitution was formed was that of the Constitutional Culture of Enlightenment Britain. One of the chief and repeated complaints put forward by John Adams, one of the intellectual engines driving the American Revolution, was that imposing tax on citizens without their consent was an affront to fundamental freedoms guaranteed by the British Constitution.[117] Had there not been a strong, pre-existing Constitutional Culture, Adams would not have been able to deploy this as an highly effective and emotive rallying call. People responded because their sense of what it meant to be British was bound up with the belief that Britain's system of government respected liberty. Freedom under the Constitution was part of their sense of identity.

Constitutional Culture comes in many shapes and guises, depending on the politics and society within States, it will be unique in every context, and we would go so far as to suggest that citizens need not necessarily brandish the word Constitution in debates in order for Constitutional Culture to exist. As Weis noted with Australia, this is not invariably the case,

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[115] *J Goldsworthy,* "Constitutional Cultures, Democracy and Unwritten Principles*" University of Illinois Law Review* (2012) 683, 684-90

[116] *R Utiz, The Constitutional Text in the Light of History (Budapest, Central European University Press, 2005),* 109

[117] *J Adams,* "Instructions Adopted by the Braintree Town Meeting" (September 24th 1765) *Adams Papers, Digital Edition, Massachusetts Historical Society, http://www.masshist.org/publications/adams-papers/index.php/view/PJA01d073*

even in liberal democracies,[118] but we do not observe Australia to be falling apart at the seams as we write. In our view, demonstrating a Constitutional Culture is not about pointing to the currency of touchstone, magic words, but about ascertaining that citizens are on board with the legal and political set of ways of "living and doing", which give a Constitution its true form.[119] We need to ask whether citizens in general are aware of, and invested in, the key constitutional *values and rights* which govern collective life. This is what truly matters, as opposed to the labels applied in describing them, which are very much a secondary consideration. This recognition of shared norms worthy of respect is what a Constitution should provide for a State People, naturally including members of Component Peoples as part of that body.

Constitutional Culture exists in the realm beyond legal documents and principles, although these are often an important factor in its formation. Ultimately, it is the praxis and assumptions of collective life which are the bedrock of Constitutional Culture, and these carry more weight than declarations of abstract theory. This is why it is reasonable to assert that freedom of expression was not part of the Constitutional culture of the USSR, even though it was in theory assured by a written instrument.[120] Conversely, this explains why a lack of Constitutional Law level guarantees of self-determination for Greenland is not a source of great angst. It would not be compatible with the Constitutional Culture of modern Denmark to snatch back powers from Greenland, as in practice and by consensus it embraces International Law and respect of minority rights.

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[118] *L Weis,* "Does Australia Need A Popular Constitutional Culture?" *R Levy, M O'Brien, S Rice and M Thornton (eds), New Directions For Law in Australia: Essays in Contemporary Law Reform (Canberra, ANU Press, 2017)* 377-384, 382

[119] K Llewellyn "The Constitution as an Institution" 34 *Columbia Law Review* (1934) 1, 33 K Llewellyn "The Constitution as an Institution" 34 *Columbia Law Review* (1934) 1, 33

[120] 1936 Constitution of the United Socialist Soviet Republics, Article 125

Therefore, the Constitutional Culture of a State may exacerbate or ameliorate frustrations felt by Component Peoples. Needless to say, it would be unrealistic to imagine that many societies will reach a stage where *every* member of a Component People abandons any dream of secession, and ceases political efforts to achieve this. Given the diversity of human beings and the nature of democracy, a broad range of opinions is always to be expected. The mere presence of independentist parties is certainly not a sign of dysfunction! But it is possible to create a context where strong, widely supported, secessionist movements are far less likely. When clashes around competing rights do arise, it is obviously positive if the judicial and administrative processes for their resolution are deemed worthy of respect, even where the outcomes may be disappointing. Additionally, it is even better if these processes are understood as the embodiment of an institution in which individuals feel invested as members of the State People.

As we have already stressed, the flourishing of Constitutional Culture in this sense is not within the gift of lawyers. The tragic experiences of many jurisdictions in Africa demonstrate that the adoption of a constitutional text is not a panacea to end internecine strife,[121] nor a mystical way to instantly conjure up harmony and shared identity. Constitutional Culture is built up by the decisions of succeeding generations, not the proceedings of committees, but if this is the case, what lessons can constitutional lawyers hope to draw about their contribution?

[121] *A Kupeman* "Rethinking Constitutional Reform for Democracy and Stability" *A Kuperman (ed) Constitutions and Conflict Management in Africa: Preventing Civil War Through Institutional Design (Philadelphia, University of Pennsylvania Press, 2015)* 226-236

Conclusion

We have seen that both Peoples and Constitutional Culture are realities of which lawyers must take cognisance, although are moved by societal forces beyond their control. The management of relations between State and Component Peoples is not a comparable exercise to defining the distribution of powers between the executive and the legislature, or the office of Prime Minister. Peoples, and the cultural factors which give them form are fluid, constantly evolving realities, and the number of Component Peoples within a State will not always be a clear-cut question, it may even alter dramatically within the lifespan of a constitutional framework. Additionally, the State People and Component People are not separate entities, as members of Component People also belong to the State People, and in many instances very enthusiastically so.

A positive Constitutional Culture can serve *all* members of the State People, including those who are also within Component Peoples. As we have seen, Constitutional Culture is a societal project, building and developing over time. It does not exist exclusively in legal instruments, but lives in the perceptions, norms and expectations of the prevailing majority of citizens.

Yet this is not to suggest that constitutional lawyers are powerless and condemned to cling passively to driftwood they are buffeted by social tides. Their contribution is critical in helping Constitutional Culture to form and develop in positive directions, and although this may not suffice to maintain harmony and social cohesion, it is certainly necessary. Legal principles, structures and even ideals are what provide the life-sustaining soil which enables growth, and without these, Constitutional Culture cannot even germinate, much less put forth roots and branches. Moreover, like literal soil, the nature and quality of this material will determine the character and health of the organism it nurtures.