Is there a Human Right to Accession? The Turkish Case

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Prepared for Presentation at the SHUR Meeting, Rome, June 2009

Abstract: If suprastate integration has been correlated with the strengthening of human rights within states acceding to the European Union, can there be said to be a "human right to accession" that should be considered in specific cases? The case considered here is that of Turkish accession and whether the citizens of existing EU member states have rights to a referendum on the accession of prospective member states. The question is explored through the theoretical lens of natural duties to uphold human rights. A natural duties approach sees individuals as having strong duties to help protect the rights of others, generally through the creation and maintenance of political institutions empowered to provide such protections. If Turkish accession can be expected to enhance rights protections over time for ordinary citizens within that state, a natural duties approach plausibly would prescribe the extension of EU membership, and those within existing member states would not have categorical rights to reject or accept membership by referendum. While it would be problematic to claim any straightforward universal human right to accession, an appropriate emphasis on individual rights can significantly inform the question of Turkish membership.

When it comes to the European Union, it's up to member states of the European Union to decide… I have always been opposed to [Turkey's] entry, and I remain opposed.

Nicolas Sarkozy
Prague, April 2009
(Vogel 2009)

Even as U.S. President Barack Obama exhorted leaders at a U.S.-EU summit in April 2009 to admit Turkey to full membership, French President Nicolas Sarkozy was most firmly reconfirming his opposition. In doing so, Sarkozy was implicitly claiming for the people of France a right to in part determine the size and especially the composition of the European polity. This paper offers an alternative approach to conceiving of the appropriate scope of democratic decision making in such contexts. It is grounded not in some form of consent to rule, but in natural duties to protect the rights of other persons. In such an approach, individuals are seen as possessing certain core rights regardless of their group status, and others are seen as

having duties to help secure those rights. Rights are deemed to be most secure when they are protected by strongly empowered political institutions. Thus, a general duty of aid or protection is transformed into an effective duty to create and sustain – or in many accounts obey – political institutions capable of enhancing rights protections.

The essay is structured as follows. First, I discuss a natural-duties approach to political legitimacy and political obligation, and I give reasons to think that such duties should extend across state boundaries. I examine the European Union as a context within which many such duties are being discharged across boundaries, and I give some reasons to think that Turkish accession could enhance rights protections within that state. I close by considering the issues in democratic theory that are highlighted by some resistance to that accession. In discussing approaches to weighing participatory rights against other kinds of rights, I outline a qualified right to accession that should be salient in the Turkish case.

Natural Duties and Suprastate Integration

An increasingly prominent strain in the discourse on state legitimacy and political obligation suggests that if there are duties to support political institutions, obey the state, etc., they are grounded in positive natural duties to others, rather than in consent to an explicit or implied social contract, or some other form of acquired obligation. A natural duty is understood as one owed by individuals to all others, rather than one arising from voluntary actions such as promises made or contracts otherwise entered, or from any membership in a nation-state or other set of political institutions (Klosko 2005, 78-97; see Buchanan 2004, 86). It is characterized as positive because it would require action to benefit another, whereas a negative duty would be one to avoid harming another person. In a natural duties approach to political legitimacy and obligation it is argued that, if individuals have some duties of assistance to others in need, they

can justifiably be coerced in order to provide security and related goods that cannot be assured in the absence of political institutions, and to contribute to the creation and/or maintenance of such institutions.

Questions of legitimacy are understood here as those addressing the justifiability of coercion exercised by a political entity on those within its jurisdiction. Examples of such coercion would include requiring individuals to pay taxes to provide communal goods, or requiring them to abide by certain common rules, with the threat of penalty if they do not comply. By contrast, political obligation is concerned with the obligation of each individual to obey the rules imposed by a political entity or set of political institutions. Whereas in legitimacy terms, coercion might be justified according to the need to provide some common goods such as physical and economic security, political obligation requires some additional justification for why each individual should obey the laws when the obedience or participation of each is not strictly required to provide the communal goods. The present discussion will focus on questions of legitimacy, given its implications for a duty to create or transform political institutions, and the corresponding link to questions around the expansion of the suprastate European political project.

A natural duties approach is held by proponents to avoid some of the longstanding problems associated with grounding institutional legitimacy or political obligation in consent, or by acquired means. Consent theory is seen by numerous commentators as facing insurmountable difficulties in demonstrating that individuals actually have consented to being ruled, or that they have or would have given such consent in a suitably framed thought experiment or consultation of self-interest (see Simmons 1979; 2005). “Reformist” consent procedures, exploring ways of redesigning political institutions to make consent more explicit -- as in expecting individuals

coming of age in a society to choose consent or exit – or otherwise eliciting actual consent, are similarly vulnerable to critique (Klosko 2005, Ch. 6).

The rejection of consent or other acquired obligation in favor of a natural duties approach can be traced at least to Rawls (1971: 1999). His account is significant in the present context for its foregrounding of possible duties to create – or in the European context expand – political institutions. Rawls posits that a natural duty of justice, applicable to non-elites within states, would be acknowledged by participants in his original position, the now-familiar heuristic in which individuals ignorant of their own social standing and other factors would devise fair principles for social cooperation.

> This duty has two parts: first, we are to comply with and to do our share in just institutions when they exist and apply to us; and second, we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves (1999, 293-94).

We can note that a just institution is understood by Rawls as one that would conform to principles of justice that also would emerge from the original position. Such institutions would recognize equal basic liberties for individuals, and they would arrange any inequalities in income, wealth, opportunity, etc., so that they are to the greatest benefit of the least advantaged societal group (Rawls 1999, 98-99). A natural duty to support institutions that upheld or operated according to such principles of justice would be affirmed in the original position, Rawls argues, primarily for reasons of societal stability. The natural duty of justice, manifest in social relations as an "effective sense of justice," would help to overcome potential stability problems stemming from temptations for individuals to shirk, or fail to do their fair share in helping to provide public goods, as well as temptations for individuals to resist contributing their share if they have good reason to believe that others are not contributing their own share (1999, 295-96). Again, the

second part of the duty, to create just institutions, potentially would have far-reaching implications, including for European integration, on which more below.

Rawls's account has been criticized for ostensibly presuming, rather than justifying, the legitimacy of state coercion. It has been seen further as possibly dictating obedience to any insurgent group or other entity that could meet the criteria for just institutions (Simmons 1979, 143-56; see Dworkin 1986, 193) and for ostensibly failing to justify the compliance costs that could be required of individuals (Klosko 2005, 84-85). An alternate natural duties approach would focus on positive duties to benefit others, rather than potential conflict. Specific arguments emphasize, for example, widely accepted "Samaritan" duties to rescue other individuals from peril in situations where the cost to the rescuer is not unduly high (Wellman 1996; 2001; 2005). In such a frame, state coercion is said to be similarly justified or acceptable, because the protection it provides is necessary for the large majority of individuals to lead secure lives.

Allen Buchanan has argued persuasively that the Samaritan account is indefensibly limited in the package of benefits or mutual aid which individuals are presumed to owe to one another. An emphasis on duties to rescue from peril would justify the creation of only a minimal state designed to ensure physical security, and as such could permit, for example, violations of the equal respect for individuals that is at the root of natural duties accounts of legitimacy. Such a minimal state conceivably could use internally unjust or oppressive means to ensure the security of all within its borders, and it would not necessarily provide the package of redistributive benefits that are presumed in Wellman's description of it as a Liberal state (Buchanan 2002, 709, fn. 15; 2004, 248). Alternately, an emphasis on easy rescue, and its corollary of strictly limiting the costs that individuals could be asked to incur, might restrict such

duties so far that an adequately functioning state could not be sustained. In other words, such relatively weak principles of duty could not justify possibly costly requirements to comply with specific laws (Klosko 2005, 92-96).

Buchanan would emphasize not only the significance of observing a positive duty of easy rescue, but a more comprehensive "Natural Duty of Justice, according to which each of us—independently of which institutions we find ourselves in or the special commitments we have undertaken—has a limited moral obligation to help ensure that all persons have access to institutions that protect their basic rights" (Buchanan 2004, 26). The approach to human rights that underpins Buchanan's account begins with a presumption of human moral equality, and it derives state-transcendent human rights from vital human interests (Buchanan 2004, 131-37; see Raz 1986; Shue 1996; Caney 2005). Such interests are presumed to be strong enough and basic enough to human well-being, or the leading of what could be characterized as a minimally decent human life, that they deserve protections that the status of right provides against standard or generalizeable threats. Thus, it is not the rights themselves but a conception of vital interests common to all human beings that are the bedrock principles or building blocks of this approach to moral requirement (c.f. Gewirth 1982, Ch. 1; Gewirth 1996).[1]

The duties corresponding to such rights are seen as natural positive ones. To reinforce, natural duties obtain irrespective of individuals' voluntarily assumed obligations or group memberships. Positive duties would require action to protect the rights of others, rather than simply avoid violating the rights of others (see Luban 1985, 209; Campbell 2007). The resultant rights are understood to be related to institutions, but they are not seen as arising from or within

[1] Gewirth objects to an approach to grounding rights in interests per se (1982, 44) but there is some significant overlap between his approach, which sees rights to freedom and well-being as logically necessary to any form of purposive individual action, and approaches which see rights as necessary to secure vital interests in, for example, a basic human liberty to act.

institutional frameworks. Rather, human rights posit constraints that institutions should observe, or, institutions are important as one means of securing human rights (see Scanlon 1979; Buchanan 2004, 66). Vital interests would include ones in not dying prematurely, having physical integrity, rendered as not being subjected to unchosen physical harm; interests in having sufficient nourishment, shelter and access to medical care, as well as in not facing unjust discrimination (Buchanan 2004, 134-35; see Shue 1996; Jones 1999, 61-62; Caney 2005, 72-77).

The resultant rights would, in fact, correspond fairly closely to those enumerated in the Charter of Fundamental Rights of the European Union (European Parliament 2009). The Charter, emerging from a process initiated by heads of member states in 1999, specifies six discrete categories of rights in sections titled Dignity, Freedoms, Equality, Solidarity, Citizens' rights, and Justice. The Charter has not yet been formally incorporated into any binding EU treaty, but it was a component of the draft Treaty Establishing a Constitution for Europe, which was signed in 2004 by representatives of all of the then-25 EU member states. The Constitution's ratification was rejected by referendum voters in France and the Netherlands, in May and June 2005 respectively, and the ratification process was halted (see Bailey 2008), but its core components have been incorporated into more recent proposals. I say more about the EU human rights regime below.

I have argued at length elsewhere (Cabrera forthcoming 2010, Ch. 2) that there is little reason to think that duties to protect the rights of others by creating or sustaining political institutions would halt at the borders of any particular state. This "particularity" problem has been seen by some (Simmons 2005) as a significant obstacle in the way of demonstrating any form of state legitimacy or political obligation. Yet, we need not conclude with Simmons that we should thus reject most institutionally mediated duties altogether. Rather, the appropriate

response to the particularity problem is to consider ways in which natural duties could be discharged through adopting a supra-state institutional focus, where significantly more effort is devoted to altering and further developing existing institutions above the state, as well as establishing ones that do not yet exist, in order to promote the political coordination that would provide many more individuals with adequate physical security and material provision. This again would have clear implications for European Union governance and EU expansion.

Leading natural duties theorists generally reject any categorical claims that their approach implies a supra-state institutional or distributive focus. It is beyond the scope of this essay to offer a fully developed argument for a global imperative to pursue rights-enhancing institutional reforms. It is, however, appropriate to consider some aspects of such an argument, or critiques of arguments which presume that natural duties to contribute to the protection of others effectively halt at existing state boundaries. The discussion will help to highlight ways in which an emphasis on natural duties intersects with issues arising in EU governance and expansion, especially in relation to individual rights to protection and participation in the case of Turkish accession.

How, then, do natural duties theorists attempt to justify the general restriction of their accounts of legitimacy and obligation to already existing sovereign states? We can observe first that most such accounts appear to begin not with the natural duties themselves, but with three facts or considerations. The first is the fact of coercion by existing states. States simply do require their citizens to discharge a range of very specific duties. They also claim the legitimate authority to exercise such coercion, and the authority to penalize those who do not comply. Secondly, natural duties accounts tend to begin by presuming a general intuition that such coercion is justifiable. The great majority of persons in most states, most of the time, believe that their state has the legitimate authority to compel their compliance with its laws. Thus, thirdly,

natural duties theorists are concerned in large part with identifying a defensible and systematic justification for intuitions about state legitimacy, and also political obligation, that most individuals already hold. Some references are made to Rawls's initial duty to *establish* just institutions (Waldron 1993, 29), or in Buchanan's frame, to possible duties beyond existing states. The general institutional duty, however, is seen in practical terms either as a justification for coercion already exercised by states, or an obligation for each individual to make a fair contribution to the maintenance of an existing state in order to ensure that all individuals within its boundaries are duly protected.

Wellman, for example, draws an analogy between a state exercising coercion in order to rescue individuals from peril, and a scenario in which a mechanic coerces individuals who each own a necessary part of a bus that could transport them out of dangerous territory. "Samaritanism permits a mechanic to take all the parts from each of the people (even without their permission) because this is the only way to assemble a vehicle that can transport anyone to safety" (Wellman 2001, 745). Yet it is not clear why we should presume the pre-existence of the mechanic, i.e., an entity with sufficient expertise and coercive power to actually rescue from peril all individuals in a given set. Rather, the analogy could be more faithful to the actual duty if it conformed to Rawls's specification that, in addition to complying with just institutions "when they exist and apply to us," that we also must assist in establishing arrangements able to protect others. Given that the stranded individuals are presumed to be in the state of nature, the existence of an entity able to exercise state-like powers of coercion to perform effective rescue cannot simply be presumed. The fundamental duty is not to submit to such an entity, but to help protect other individuals, and by extension to use the means available to do so. Thus, all could be viewed as

having a duty to surrender the part for the vehicle, or to otherwise contribute to the creation of the means by which individuals could be rescued from peril.

It can be noted that this change to the scenario brings us to a duty that is not strictly related to political legitimacy or political obligation. Since there is no state as such, there is no fundamental question of the legitimacy of its coercion, and there can be no strict, formal political obligation to obey the law in the law's absence. Buchanan argues that in such a situation, individuals acting according to his robust natural duty of justice (2002, 717-18) will identify and support the best available potential coercive agent. He does not consider, however, whether such a duty might also be viewed as strongly obtaining above the state, as a duty to be discharged by promoting more comprehensive suprastate institution building. The question, of course, is foregrounded in the European context. If it were the case that more individuals' rights would be enhanced through the feasible creation of a different sort of institutional vehicle, e.g., a geographically more expansive European Union, then that could establish a potentially strong imperative to pursue such expansion.

Both Buchanan and Wellman do presume that their conceptions of natural duties would entail possibly significant obligations to individuals in other states. Those could include obligations of humanitarian assistance in times of famine or similar emergency, assistance in state-building or reconstruction in the aftermath of civil war, and a greater willingness by states to intervene militarily in cases of genocide or otherwise grave oppression (Buchanan, 1999; Wellman 1996, 233-34). Even so, they resist or do not fully engage with the question of whether duties to rescue from peril or ensure broader rights fulfillment also would be likely to require the creation of suprastate institutions to protect against persistent such threats. Buchanan, for example, cites an ostensible lack of agreement on distributive principles among states, as well as

a lack of capacity at the supra-state level to monitor compliance within states, as reasons not to give strong emphasis to trans-state distributive justice in a natural duties frame (2004, 219-30). If, however, the securing of rights is so precarious in many states precisely because of a lack of institutional capacity, it would seem incumbent within a natural duties approach to place much more emphasis on building that capacity. That is, it appears paradoxical to cite the very problems that would give rise to a duty to protect others via institutions as the reason not to pursue such institution building.

One possible response by those who argue for more geographically limited duties is that, while duties to rescue or secure rights do extend in emergency circumstances across borders, they can in general be limited to existing states by reference to an unreasonable cost proviso. Buchanan, for example, has been explicit that he is not offering a first-order impartialist theory. That is, he makes clear that he does not presume that the interests of all persons should be weighed equally regardless of relationships of blood, mutual benefit, etc. Such an approach would lay excessive costs on potential donors. Thus, citizens of states can display greater partiality to their own joint interests (Buchanan 1999; c.f. Singer 2004). Wellman references the relations between individuals that obtain after states have been constructed in arguing that such priority is justified. In calculating what is owed to compatriots and non-compatriots, he argues, we must bear in mind that "the former contribute to one's own political benefits whereas foreigners do not. This explains why we may have more substantial and more frequent Samaritan duties to our fellow citizens (since the reasonableness of the chores we must perform is measured in terms of the burdens we endure minus the benefits we receive)" (1996, 233).

A straightforward mutual benefits approach will have difficulty explaining why priority should be given to compatriots who contribute little to the social product, and why it is justifiable

to exclude those who do not hold formal membership in the compatriot or distributive set but may nonetheless make significant contributions, e.g., unauthorized immigrants. There are, of course, numerous other possible approaches to arguing in favor of priority to compatriots in distributions of material goods, and by extension in distributions of the security and related goods that are foregrounded in natural duties accounts (see Beitz 1983; Shue 1996, Ch. 6; Cabrera 2004, Ch. 1; Moellendorf 2002; Caney 2005). In a natural duties frame, however, any approach attempting to justify priority to compatriots within the existing system will face a significant challenge. This is related to the problem identified above, where those working within the approach were seen to devote overwhelming attention to demonstrating that the coercion exercised by existing states is in fact legitimate, while giving relatively little attention to the possible full extent of prior duties to promote security or rights fulfillment. If the natural duty is a duty incumbent on all to help secure the rights of others, we cannot simply presume that the boundaries of existing states, or more broadly the existing global system, are configured so as to enable individuals to discharge that duty. We cannot hold up benefits already given and received by compatriots as evidence that they do owe each other more, and that they are permitted to restrict their major efforts to secure rights to existing state boundaries, unless we can say with confidence that the existing scheme of political requirements is at least in broad harmony with the underlying duties owed by all (see Nagel 1977).

Further, if the justice of the existing global scheme of institutions is in some way suspect, failing to rescue from peril huge numbers of individuals whose rights could be better secured under some feasible institutional alternative, then benefits given and received among those fortunate enough to already have their rights effectively secured may actually constitute instances of injustice or rights violations, if we presume that they have not contributed fully to

the discharge of the foundational duty. If we fully acknowledge that duties to protect or secure rights for individuals is primary, and that its relationship to the means used is simply instrumental, then reference to transactional or associative obligations that have been taken on before the duty has been discharged cannot provide strong reasons to reject the duty.

Buchanan offers a similar point in a critique of fiduciary Realism, noting that even if a state is acting to promote and protect its own citizens' interests in the global system, that does not give it free rein to commit any act it chooses, regardless of the moral consequences. In other words, "one cannot contract out of one's basic moral obligations" (2004, 37). This point again would seem in tension with his approach to distributive justice, where he cites an ostensible lack of agreement on distributive principles among states, as well as a lack of capacity at the supra-state level to monitor compliance within states, as reasons not to give strong emphasis to trans-state distributive justice in a natural duties frame (2004, 219-30). If the securing of subsistence rights is so precarious in the current global system precisely because of a lack of institutional capacity, it would seem incumbent within a natural duties approach to place much more emphasis on building that capacity. It is paradoxical to cite the very problems that would give rise to a duty to protect others via institutions as the reason not to pursue such institution building.

Natural Duties and European Integration

In fact, in the European Union, individuals already do discharge a range of duties within a framework of institutions that stretches far beyond single nation states. That is not to say that the EU now constitutes a straightforward tax-and-redistribute regime of social welfare provision for all of the approximately 500 million persons within its current 27 member states. The union's

direct social provision to individuals historically has been quite limited, and social welfare regimes continue to vary significantly across existing member states (see Bailey 2008b), though there has been some increased provision secured through individual cases in the European Court of Justice and European Court of Human Rights (Conant 2006). Direct provision of unemployment benefits, housing or other income support, however, is not the only means by which forms of institutional expansion can be said to enhance individual economic rights for those within member states. In fact, EU citizens hold a significant package of actionable civil, political and social rights that are fully portable across state boundaries, including a right to free movement to pursue economic opportunities across those boundaries.

EU citizenship was codified in the Treaty on European Union, or Maastricht Treaty, which entered into force in 1993, but some boundary-crossing individual rights were present from the beginning of formal European integration. For example, at the strong urging of immigrant-sending Italy, the initial European Coal and Steel Union (1951) included a limited right to free movement for workers in the named sectors. Other individual rights, including the effective right to pose a legal challenge to a specific state action, were affirmed over time in the European Court of Justice. Further, in a major departure from standard international law, in which states are the subjects, the Court specified in the *Van Gend en Loos* case (ECJ 1963) that individuals also had standing as the subjects of European law.

The Maastricht Treaty specifies four formal categories of rights held by EU citizens. They include an expansive right of free movement across borders, trans-border voting and other political rights, the right to seek assistance from the consular offices of any member state when outside the EU, and the right to petition for redress directly to the European Parliament and/or a special European Ombudsman created by the Treaty. The 1997 Amsterdam Treaty made some

further changes in free movement and other areas, which are incorporated into the discussion here. For some observers, free movement rights are at the heart of European Citizenship, not only providing "Europeans with choices about where to live and work but [requiring] EU member states to respect those choices" (Maas 2007, vii). Free movement was phased in, rather than immediately granted union-wide, for individuals within the ten Central and Eastern European states acceding to EU membership in 2004 and two more in 2007. It also had been phased in after previous state accessions, while some member states in the recent expansion did permit immediate mobility.

In fact, after the accession of the "EU 10" Central and Eastern European states, the United Kingdom, Ireland and Sweden, seeking to fill labor gaps, waived phase-in requirements for citizens of eight Eastern European states. The effects were in some cases quite dramatic. For example, the number of Polish citizens living in other EU states more than doubled from 2004-07, to 1.9 million. The number of Poles in the United Kingdom increased from 150,000 to 690,000 in that period, while in Ireland, the total went from a mere 15,000 to around 200,000 by 2007 (World Bank 2008). Some $11 billion in remittances was received in Poland in 2007, and $9 billion in Romania (Ratha et al., 2008). By mid-2007, the Polish government actually was sounding alarms about a growing domestic labor shortage and launched advertising campaigns in EU recipient states, among other moves, to persuade workers to return (Dempsey 2007). Amid rising wages in Poland and elsewhere, and cooling demand for external labor in other EU states as the global economic crisis intensified in late 2008, some return migration was observed (World Bank 2008).

We also should consider also aspects of European integration that fall outside of citizenship per se, but which are significant in enhancing the provision of economic opportunities

correlated to individual economic rights. First, we can note the significant transfers of resources that occur across borders as part of cohesion policy, a set of formal initiatives designed to reduce regional and social disparities and promote development (see Hooghe 1996). Such transfers have been highlighted by some researchers as significant for promoting forms of economic convergence between member states and regions (Beugleskdijk and Eijffinger 2005), as well as a key attraction for newer members in pursuing accession (Leonardi 2005), though there is variation in the literature on the effectiveness of specific policies or development initiatives. Cohesion policy was formalized in the European treaty system in the Single European Act of 1986. The bulk of transfers have been made via "cohesion funds," focusing on environmental and transport projects; and especially "structural funds," focusing on regional development, employment and training, and to some extent fisheries and agriculture. Under the European Social Fund, for example, a total of €75 billion was allocated at the European level for distribution to less-affluent regions within the 27 member states to address unemployment and job training from 2007-2013 (European Commission 2009a). Overall, some €480 billion was invested from 1988 to the 2004 enlargement in multiple incarnations of Structural Funds programs. The primary recipients were Greece, Portugal, Ireland, East Germany under reunification, Southern Italy (Mezzogiorno), and Spain (Euractiv 2007). The accession of the twelve central and Eastern European states from 2004-07 effectively doubled the "development gap" among member states, significantly shifting the development emphasis eastward.[2]

[2] For example, the EU designates "Convergence Regions" within states that are eligible for targeted structural funds. Regions so designated are those with a population of between 800,000-3 million whose GPD per capita is 75 percent or less of the EU-25 average. In 2008, about 154 million people lived in such regions, which were located throughout the newly acceded states of Central and Eastern Europe, as well as parts of East Germany, Southern Italy, Southern Spain, nearly all of Portugal, Greece, Malta, and Wales and Cornwall in Britain (European Commission/Eurostat 2009a).

Some former developing or relatively poor states have made impressive gains in both absolute and relative terms following EU accession. Some benefits of accession are credited with helping raise per capita GDP in the previously poorest members of the EU – Spain, Portugal, Ireland and Greece – from 65 percent to 78 percent of the average for all member states (Pastor 2004). States more recently acceded may not be able to hope for precisely the same gains, at least in the relatively near term, but significant economic benefits related to immigration have been reported for less-affluent members acceding since 2004 (Baas and Brucker 2008), and some significant income convergence with the EU average has been recorded for Central and Eastern European member states (Matkowski and Prochniak 2007).

The Turkish Case

Certainly the plausible hopes for ongoing economic convergence springing from inclusion in a joint economic and trade project, in addition to development aid to support more recent members, and some individual opportunities in the form of free movement across specified state borders, help to explain continued interest by neighboring states such as Turkey in joining the union. Turkey is a member of the "rich state club," the Organization for Economic Cooperation and Development (OECD), but in fact it continues to rank among mid-level or even lower-level developing states on many key indicators of individual well being. Its per capita income of about $11,535 puts it below such mid-level developing states as Mexico and Argentina, at 61st place among just over 190 states. Turkey ranks 74th in adult literacy, 87th in life expectancy, and 106th in enrollment beyond primary school (United Nations HDR 2009). Overall, Turkey ranked well below most European states in the UN's comprehensive Human Development Index, at 71st place. Further, it ranked 41st among 135 developing states assessed in

the UN Human Poverty Index, which measures the percentage of individuals living in situations of severe deprivation, e.g., without access to clean water, adequate nutrition, health care, education. Some 8.7 percent of Turkey's population of around 70 million was found to be living under such circumstances.

The above is not meant as any sort of indictment of Turkish development efforts, etc., but rather to indicate some existing needs which deeper European integration could be expected to help address. In fact, as a formal accession candidate, Turkey already has received significant amounts of targeted aid to support movement toward meeting economic, political, and civil liberties standards for accession. Gates (2008) would criticize the relatively small proportion of EU aid that is targeted at human rights promotion, meaning primarily the protection of civil and political liberties. Yet, in the four calendar years from 2004-2007, human rights-specific aid totaled no less than €20.5 million, and as much as €48.6 million. In 2006, when the EU spent €20.5 million on human rights promotion in Turkey, it also spent €182 million to promote "economic and social cohesion" in the country, much of which in the theoretical frame advocated in this article would represent efforts at enhancing economic-rights protections. Such efforts give some indication of the potential for the integration process to enhance within Turkey individual civil and political rights, as well as opportunities that could be seen as corresponding to economic rights.

More generally, numerous commentators have emphasized ways in which European integration has contributed to more robust protections for civil and political rights within states including Turkey—rights dealing more with physical security and negative liberties than protection from deprivation (see Moravcsik 1995; Celik 2005; Mayerfeld forthcoming). Mayerfeld, for example, argues that the European human rights regime, which he sees as

comprising not only the European Court of Human Rights and the European Court of Justice, but also actions conducted under the auspices of the North Atlantic Treaty Organization, and Organization for Security and Cooperation in Europe, is significantly rights reinforcing, in that it establishes a system of concurrent responsibility. That is, if states fall down on their human rights obligations, suprastate institutions have the remit and capacity to intervene. Tocci (2005), would give causal emphasis to domestic factors in explaining political and rights reforms in Turkey since 2001, but she also emphasizes the role the accession process has played in reinforcing momentum for such reforms.

Further, acceding states, under the Copenhagen Criteria of 1993 and provisions of the Maastricht Treaty, must demonstrate respect for democratic and civil rights as a condition of membership. Mayerfeld notes ways in which the increasing hopes for full EU membership contributed to moves by Turkish political and military elites to comply with human rights-based proscriptions against, for example, torture. Turkey was a longtime signatory to the European Convention on Human Rights but had not actually recognized the jurisdiction of the European Court of Human Rights until 1990. Rights reforms gained steam as movement toward accession intensified in the late 1990s and early 2000s. Turkey's rights and economic reforms were officially acknowledged when the European Commission and Council admitted the country to formal accession negotiations in 2005. None of this is to say that concerns about the civil and political liberties have been fully addressed, and some efforts by the Turkish government toward rights protections have been criticized as inadequate (see Rumford 2001; Hale 2003; LaGro and Jorgensen eds., 2007). Some have raised concerns in particular about ongoing threats to the country's sizeable Kurdish minority (see Zwaak 1998; Yildiz and Muller 2008). It is to say, however, that we can plausibly presume that European integration has been rights enhancing,

and that formal accession could be expected to increase the avenuues available to individuals in protecting not only their own civil and political liberties, but their access to life resources and opportunities through regional development assistance and training programs, as well as through opportunities opportunities over time to move across national boundaries to pursue a range of employment opportunities.

This is not to suggest that mobility is costless for individuals in any sense, or that they may not be subject to workplace exploitation, ascriptive discrimination and forms of social inclusion even despite their suprastate rights protections (Weishaar 2008). It is to say that significant movement toward a morally defensible system of trans-state institutions has been made within the EU region, in large part because of portable rights protections for individuals. In regard to the latter, it can be noted that Turkish workers have long been a presence in Germany and other European countries under specific guest worker programs. However, the formalized social exclusion of workers often associated with such programs highlights additional reasons why those within Turkey could be expected to make significant gains in rights protection under formal accession, as they would work and live in other EU states with the full status and portable rights protections of EU citizens.

Natural Duties, Accession, and Participatory Rights

If we presume that full accession could serve to significantly enhance individual and economic rights for those within a state such as Turkey, is there a straightforward right to accession for those within less-affluent states? Elsewhere I have argued that individual human rights do establish individual duties on all persons to promote democratically accountable suprastate economic and political integration where practicable (Cabrera 2004; forthcoming).

The caveat at the last references primarily empirical barriers. It would not seem economically feasible, for example, to expect the European Union to admit in the immediate future all of the Eastern European and Mediterranean states that hold various forms of associate membership or have indicated an interest in joining the project, much less the dozens of deeply impoverished sub-Saharan states whose residents could have very strong interests indeed in enjoying the rights protections and expanded opportunities of the European citizen. Individuals within affluent states may have duty-based reasons to pursue rights-enhancing suprastate institutional integration or reform -- at the regional level, through the World Trade Organization, etc. -- if such efforts would be the most effective means of ensuring that duties to help secure the core rights of others actually are discharged. Such an approach would not recommend in the immediate term some declaration of global free immigration, a throwing open of the EU accession gates to all comers, or other moves that plausibly could damage rights protections over time, rather than enhance them.

Any right to accession would, then, be a qualified or secondary right, corresponding to a duty to promote the protection of core human rights for all persons. Again, as evinced in the discussion above, Turkish accession to the European Union, while remaining controversial, is not implausible in any strong sense. Further, rights protections would stand to be significantly strengthened for those within Turkey through full accession. The most pressing theoretical question thus becomes how much such a qualified right to accession is to be weighed against opposition to that accession. To reinforce, French leaders such as Sarkozy and former President Valéry Giscard d'Estaing, himself the architect of the failed EU Constitution, as well as German and other political elites, have expressed vigorous opposition to Turkish accession (Teitelbaum and Martin 2003). Former French Prime Minister Jacques Chirac had, in fact, backed an

amendment to the French Constitution requiring a public referendum on the accession of any EU member-state candidate containing a population equal to more than 5 percent of total EU population—a guarantee that voters would have a direct say on Turkish accession. That amendment was dropped, with Sarkozy's support, in 2008, over concerns that it could hamper the accession of other candidate states (Euractiv 2008). As noted however, Sarkozy continued in his firm public opposition to Turkish accession through early 2009, and EU accession rules, which demand consensus on new member admittance, ensured that French voters would have an effective veto power through Sarkozy, even if they were not granted direct up-or-down privileges.

Do individuals have a straightforward right of political participation that extends to determining the size and especially composition of their own polity? Here we can consider the increasingly prominent "all-affected" framework in democratic theory, where those who stand to feel the impacts of a policy or set of rules agreed at the suprastate level are seen as having a right to give input into the formation of the policy or rules (see Kaul et., al., 2003; Held 2004, Ch. 6; Archibugi 2008). In an era of increasing suprastate economic integration, this position holds, individuals increasingly are limited in the input they may have on specific policies, yet they also increasing feel the impact of policies set in mostly non-transparent intergovernmental organizations such as the World Trade Organization. Others have offered broadly similar claims about a "democratic deficit" operating within the European Union, which could be appropriately addressed through increasing channels of direct representation or possibly participation (see Follesdal and Hix 2006).

I have argued elsewhere for an all-inclusive (see Marchetti 2008), rather than all-affected, principle of "democratic symmetry," which would attempt to match roughly the impact on

individuals of suprastate decision making at the World Trade Organization in the first instance, to their input into the process (Cabrera 2007). I advocated the creation of a co-decisionary WTO parliament roughly analogous to the European Parliament, able to better represent individuals within member states and transmit their interests at the suprastate level. Here, the salient point is that the creation of such an institution would not be grounded directly in some human right to autonomy expressed as a right to participate democratically (see Held 2004). I do not dispute that there may be a foundational right to some form of input in the public sphere that is grounded in autonomy, but a right to participate specifically in such institutions as the WTO would be qualified, a defensive means of protecting more fundamental economic and civil rights. Direct democratic participation is one possible means among many of affording individuals the opportunity to protect their own rights. Direct rights of access to a suprastate court such as the ECJ or the European Court of Human Rights represent other potential means of protecting rights.

Further, democratic rule, in itself, is not necessarily rights enhancing. This oft-made point is worth reinforcing in the present context. Democratic rule, especially referendum rule of the kind that Sarkozy and others initially sought for the citizens of France in relation to Turkish accession, includes no inherent checks on possible injustice perpetrated by the majority. In some local districts of the United States in the mid-20th Century, for example, the persistent African-American minority was excluded wholesale from political leadership by a white majority that voted only for white candidates, and of course often enough used oppressive means to ensure that the minority neither stood nor voted in local elections.

Even excluding consideration of the unjustly coercive means, we can note the importance of distinguishing between quantitative and qualitative fairness in a democratic framework. Qquantitative fairness – one person, one vote – is related to the recognition of individuals as

equal participants in politics. Qualitative fairness is related to how well the actual outcomes of the policy process serve the interests of all individuals. As Beitz (1989, 155-63) notes, if individuals could be granted precisely equal power to influence outcomes, they still might find themselves in a persistent minority and see their actual interests very poorly represented in substantive outcomes. Thus, some form of group-sensitive districting or other measures to improve the visibility of persistent-minority interests could be justified.

In the case of accession, the question is more complex in one direction. That is, in accession debates, those within Turkey are not presumed to "have a say" in any referendum process. Proposals have not been to give the French or Germany people a vote alongside Turks, but to offer them a vote on Turkey's fate exclusive of the voices of the Turkish people. Yet, to move beyond some bare self-interest on the part of voters, such a presumed right to exclude would need some moral grounding, or at least one weightier than that provided by the plausible expectation that core rights will be significantly enhanced or reinforced for those within Turkey by accession. Further complexities are introduced by the fact that other states admitted recently have not been subject to similar referenda. What then, would make the Turkish case distinct?

According to the rhetoric of Sarkozy and other leaders in opposition to accession, the primary factors are cultural. Turkey's size and relatively low level of economic development also is a factor in much opposition, but presumed cultural differences are those perhaps most often cited as reason to exclude Turkey from full membership. In the words of Giscard d'Estaing, Turkey has "a different culture, a different approach, and a different way of life. It is not a European country." Full accession for Turkey, he declared, would be "the end of Europe" (cited in Teitelbaum and Martin 2003). The citing of cultural differences as one justifiable reason to exclude outsiders from political membership is familiar from communitarian or nation-centric

political theory approaches, in particular that of Michael Walzer. Nation-states, Walzer asserts, must be able to exercise a right of closure, else they may lose their distinctive cultural characters, and correspondingly their ability to provide "all the other social goods—security, wealth, honor, culture, and political power—that communal life makes possible" (1983, 63).

A full critique of such an exclusive approach to the distribution of the good of membership is not possible in the space of this essay. It can be noted, however, that in the European context, the already thin claim that current states provide a cohesive and discrete cultural identity for each of their members is stretched probably beyond applicability. Cultural variation among the EU's 27 states and 500 million individuals spread among hundreds of recognized cultures already is vast, and distinctions that are commonly drawn between Turkey and existing EU member states often are overdrawn. As Diez (2007) nicely illustrates, claims that Turkey, as a majority Muslim country, is significantly different than majority Christian EU states in terms of political or societal institutions can quickly fall into contradiction.

> The picture that emerges is one of a still predominantly religious society, a picture that would not only offend many Turks, but also employs double standards when evaluating EU member states: what, one wonders, would the evaluation be, if Turkey's Head of State was also the Head of Turkish sect of Islam (in analogy to the United Kingdom), or if the Turkish state collected taxes on behalf of Islam (Germany)? … One cannot help but feel that this is a prime case of "Othering," the representation of something else as different (and inferior) in order to represent European values as much more unified and positive than they really are (Diez 2007).

If it cannot so easily be demonstrated that the accession of Turkey would represent a significant cultural departure in European expansion, then claims about the dangers to some cohesive European identity or way of life also are on shaky ground. Concomitantly, if the urgency of permitting individuals within existing states to vote directly on accession, or to express their will through a leadership veto at the European level, is not based in a substantive

threat to some cohesive identity and related stability, then the possibility is raised that ostensible participatory rights in this case could be grounded in forms of ethnic discrimination, or possibly in a plain self-interest in not assuming more formally a set of duties related to Turks as full members. In either case, a right of referendum participation would seem clearly outweighed by the prospect of better securing economic, civil and political rights for those within Turkey. The duties incumbent on leaders such as Sarkozy, then, would be not to channel or transmit popular opposition to accession, but to work to minimize conflict on the way to full membership.

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