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## Sub-State Nationalism and International Law

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# SUB-STATE NATIONALISM AND INTERNATIONAL LAW

Margaret Moore\*

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This Article explores the relationship between international law, defined broadly as the principles, norms, and rules governing the international order and the aspirations for collective self-government by minority national communities.<sup>1</sup> It argues that there will be increasing challenges to the current international legal rules by minority nationalists, and that it is important to develop a principled response to this challenge. It also argues that the current system privileges state actors to a great extent, and that any attempt to channel self-determination claims in a more benign, non-secessionist direction needs to address the state-centric biases of the current rules.

The argument of this Article proceeds by examining a fairly dominant view of the appropriate relationship between international law and ethical arguments, and, related to this, the inconsistencies of the current international law regime with respect to minority nationalist claims to self-determination. Part Two examines the normative argument underlying minority nationalist claims to self-determination. The upshot of these two Parts is the conclusion that claims made by and on behalf of minority nationalists are not likely to wither away, and that the current ad hoc method of dealing with them is profoundly unsatisfactory. In the third Part of the Article, two dominant approaches to dealing with self-determination claims, without secession, are examined in relation to the

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1. By minority national communities, I am referring to nations without a state, but who live within another state, dominated by another national group or groups. Examples of such groups are Kurds in Turkey, Iran, and Iraq; Catalans, Basques, and Galicians in Spain; the Scots and Welsh in the U.K.; Quebec in Canada; and numerous other groups in all parts of the world.

current lack of support by the international legal order. The Article concludes by arguing that we should expect demands for self-determination and conflicts between majority and minority nations to continue until there are changes in the international legal order which undermines the current statist status quo and which makes more likely the exercise of collective self-government by minority nations.

## I. INTERNATIONAL LAW AND MINORITY NATIONALIST SELF-DETERMINATION<sup>2</sup>

There are at least two rival conceptions of international law, demarcated according to their different views of the appropriate relationship between law and morals.<sup>3</sup> The dominant conception of international law, arguably stemming from the 1648 Peace of Westphalia settlement, which ended the Thirty Years War, is that of a system of minimal rules centered on the mutual recognition of state sovereignty.<sup>4</sup> This settlement is commonly viewed as a *modus vivendi* among the various parties to the Thirty Years War not to interfere in one another's territories or internal matters.<sup>5</sup>

There are a number of elements implicit in this view of international relations and the rules that should govern it. At the heart of the Westphalian settlement is a principle of the absoluteness of state sovereignty. All the other rules that later developed into a system of international law are based on the acceptance of myriad state authorities and power relations.<sup>6</sup>

The ethical merits of this system rest on the claim that a system based on respecting state sovereignty is necessary to maintain order and

2. The argument of the first half of Part One of this Article is drawn from my book, MARGARET MOORE, *THE ETHICS OF NATIONALISM* 165–201 (2001).

3. Andrew Hurrell, *International Law and the Making and Unmaking of Borders, in STATES, NATIONS, AND BORDERS* 275–297 (Allen Buchanan & Margaret Moore eds., 2003). In this article, Hurrell identifies three images of international law. I have adapted his typology. What he refers to as the “pluralist statist” image, I call here the “Westphalian” system.

4. I am neutral on the issue of whether the 1648 Peace of Westphalia settlement constituted a dramatic break with the system in place or whether it merely consolidated a number of moves made over a period of time in international relations. For the latter view, see CHARLES TILLEY, *COERCION, CAPITAL, AND EUROPEAN STATES, AD 990–1992*, 166–67 (1990).

5. This does not bear on the debate between Daniel Philpott and Stephen Krasner concerning the meaning of the Peace of Westphalia settlement, since it is not part of my argument here to consider what in practice this settlement means, only that it is commonly identified with a particular image of the appropriate relation between moral and religious commitments and boundaries. For a clear discussion of the importance of the Westphalian model in the development of international relations, see Daniel Philpott, *Sovereignty: An Introduction and Brief History*, 48 J. INT'L AFF. 353, 353–68 (1995). For a rival view of the impact of that event, see STEPHEN KRASNER, *SOVEREIGNTY: ORGANIZED HYPOCRISY* (1999).

6. See Hurrell, *supra* note 3.

stability. The guiding intuition here is that it is better to permit injustices and evils within domestic states than to allow domestic matters to serve as a pretext or justification for intervention, for there will then be no end to war and strife. This view presupposes two further claims. The first, empirical claim is that there is no consensus, or common ground, on more substantive issues. The most that can be hoped for is coexistence based on the allocation of jurisdictional authority. The second related claim is that the system has the virtue of permitting many different kinds of societies to coexist. It is therefore a framework for liberty and pluralism.

The minimalist rules vision of international law implicit above, and often associated with the Westphalian order, has increasingly been challenged by a more solidarist conception of international law, which has been on the ascendant throughout the twentieth century. This rival, solidarist view is characterized by an emphasis on substantive norms and values to govern international society, rather than mere coexistence. Sometimes these solidarist values have been pursued by states acting together; at other times, they have been pursued through international institutions, such as the United Nations. In both cases, there have been attempts to cultivate common values, such as the promotion of human rights or democratic governance. In other areas too, broader understandings and increased co-operation have been viewed as necessary to deal with common global interests—to manage the global economy or to deal with environmental problems or international crime.

This solidarist vision is a direct challenge to the view associated with the Westphalian system and especially the primacy of the territorial integrity and sovereignty of states. In a number of cases, which are typically viewed as evidence of this increasing push to a solidarist vision of the rules governing international society, the United Nations has intervened in the domestic affairs of states. These states include Somalia, Bosnia, Rwanda, Haiti, Iraqi Kurdistan, Kosovo, East Timor, and others. Intervention has not been applied generally, and has not always been entirely successful, but in these cases, the intervention was not solely motivated by the self-interest of the most powerful states, but was at least partly aimed at either preventing a humanitarian disaster or grave injustices; and these humanitarian aims were viewed, at least in those cases, as outweighing the norm of the sovereignty of the states concerned.

This solidarist vision is at the heart of minority nationalist claims that the rules governing the international state system should be changed. At one level, of course, the appeal is not for a new rule but for the rule regarding state sovereignty to be applied more generally to include all

national groups. However, in order for that to be effective, there need to be changes to other rules in the system, and increased support for non-secessionist types of self-determination.

There are at least two kinds of reasons why we can expect the challenge that minority nations pose to the international state system, and the rules governing this system, to continue. The first reason is connected to the process by which international law is made and international norms become recognized and institutionalized. This process is dominated, not by overt power, but by discussion. In many cases, international norms emerge from a broad consensus among state actors—no doubt of course this consensus is disproportionately affected by the more powerful states—but it is still a consensus forged through discussion and the giving of reasons, not overt threats and coercion. The process by which international law is made—and especially the space that it provides for discussion and debate—means that it will always be a site of contestation. It will be a political space in which different moral and self-interested visions compete with one another to shape the institutional structure of international society.

Moreover, the sharp distinction between law and norms that is implicit in the Westphalian model is extremely problematic, both in theory and in practice. International law is not something independent of norms, but institutionalizes the norms of the international system. It empowers some international actors, while disempowering others. For example, the principle of absolute state sovereignty is itself a norm, which privileges state actors and marginalizes non-state actors, such as national communities and non-governmental agencies, and so on. Because international law is itself a system of institutionalized norms—indeed, it is the *only* set of global institutionalized norms—there is hope on the part of national minorities that international law can be brought to bear on oppressive states.

It is not only the *process* by which international law is made that fuels the pressure by minorities for changes in the international legal regime, but also its *content*. Specifically, international law is riddled with ethical contradictions and incoherence, many of which are the result of compromises between principles and political practice, or between the two rival conceptions of international law canvassed here. These contradictions create space to challenge the current norms, or to use some norms of international law to challenge others.

The contradictions are of course embedded in the United Nations Charter itself, which states its commitment both to human rights and to

the sovereignty of States.<sup>7</sup> The contradictions with respect to the principle of self-determination in international law and political practice since 1945 have been extensively documented,<sup>8</sup> but, like a commitment to any other substantive norm, it runs directly up against the commitment to the sovereignty and territorial integrity of States. The right to “self-determination of peoples” is endorsed in the U.N. Charter.<sup>9</sup> This principle has of course potentially far-reaching consequences, and so, is qualified by numerous other articles in the U.N. Charter affirming the sanctity of the principle of the territorial integrity of States and denying the right of the United Nations or its Member States to intervene in the internal affairs of recognized States.<sup>10</sup> For example, the 1970 U.N. Declaration regarding the right of secession makes it clear that the United Nations condemns “any action aimed at the partial or total disruption of the national unity and territorial integrity of any other State or country.”<sup>11</sup> In 1970, U.N. Secretary General U Thant argued that the recognition of a State by the international community and its acceptance into the United Nations implied acceptance of its territorial integrity and sovereignty. He added, “the United Nations’ attitude is unequivocal. As an international organization, the United Nations has never accepted and does not accept and I do not believe it will ever accept the principle of secession of a part of its Member State.”<sup>12</sup>

The main strategy adopted by the Member States and the United Nations to limit the potentially destabilizing scope of the principle of self-determination is to narrowly define the right-holders. Thus, the right to self-determination has been qualified by a whole series of resolutions passed by sovereign States, concerned about the potentially destructive effects for them of this principle. The main effect of this is to make it clear that the “peoples” in question are not national groups, but rather peoples within territorial states; and that the right to self-determination could only be invoked by people under colonial rule or people living

7. MARIANNE HEIBERG, *SUBDUING SOVEREIGNTY: SOVEREIGNTY AND THE RIGHTS TO INTERVENE* 9 (1994);

8. See ROSEMARY HIGGINS, *PROBLEMS AND PROGRESS: INTERNATIONAL LAW AND HOW WE USE IT* 111–28 (1994). Rupert Emerson, *Self-Determination*, 65 AM. J. INT’L L. 459, 459–76 (1971); Alexis Heraclides, *Secession, Self-Determination and Non-Intervention: In Quest of a Normative Symbiosis*, 45 J. INT’L AFF. 399, 399–420 (1992); Brendan O’Leary, *Determining Our Selves: On the Norm of National Self-Determination*, Paper Presented to the International Political Science Association (Aug. XX, 1994) (unpublished manuscript, on file with the Michigan Journal of International Law/author).

9. See U.N. CHARTER art. 1, ¶ 2; *Id.* art. 55.

10. See Emerson, *supra* note 8, at 463.

11. ALEXIS HERACLIDES, *THE SELF-DETERMINATION OF MINORITIES IN INTERNATIONAL POLITICS* 21 (1991).

12. Emerson, *supra* note 8, at 46 (quoting U.N. Secretary General U Thant, who spoke in the context of the attempted secession by Biafra of Nigeria).

under alien or racist regimes—Palestinians under Israeli occupations or blacks under apartheid in South Africa, respectively.

The strategy of narrowing the right to self-determination to certain classes of right-holders is both unconvincing and ethically problematic.<sup>13</sup> It is difficult to justify why the right to self-determination of people living under colonial rule can only be exercised *once* to restore sovereignty to the people, who had been illegitimately deprived of it by the colonial power, but can never be used again.<sup>14</sup> This makes sense in terms of the political interests of sovereign States who are concerned about their territorial integrity, but certainly not to unhappy national groups inside these States who question the legitimacy of the States.

In summary, the moral idea justifying both democracy and decolonization is surely that political power should be in the hands of the people over whom it is exercised. This provides some basis for condemning States dominated by a particular national group that exercises power and control over another national group. It might be “politically correct” to describe only Western powers that control overseas territories as “imperialists” but it is not factually correct. The term “imperialism” can be coherently and persuasively applied to any attempt by one people to dominate politically another people, especially if the latter perceive the rule to be hostile to their national identity.

Whatever one might think of the reasons for the current international legal treatment of the self-determination of minority nations, it is widely accepted that the various principles are confusing and contradictory, and that the international community’s response when faced with minority rebellion tends to be disturbingly *ad hoc* and so not facilitative of either stability or peace. The idea of national self-determination has profound resonance across the globe, and it is necessary to elaborate ways of dealing with the national dimension of these conflicts, so that a peaceful solution can be achieved.

## II. THE NORMATIVE BASIS OF MINORITY NATIONALISM

Minority nations challenge the assumed coincidence between politically significant identities and political boundaries. At least since the 18<sup>th</sup> Century, when conceptions of democracy and self-determination first reared their head, it was assumed that the borders of the State would correspond to politically significant identities—that States would be nation-states. This does not necessarily mean that they would be culturally ho-

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13. See discussion *infra* Part II.

14. See O’Leary, *supra* note 8, at 3.

mogenous, but that, at the minimum, the territory of the State would coincide with a political identity of the people as constituting a single, sovereign nation, to which the democratic political system was, ideally, ultimately accountable. Many people assumed that, to achieve this, cultural difference would need to be eradicated. Jean Jacques Rousseau, for example, in one of the earliest discussions of the need to create a “nation”—a people who identified with each other and with the territory or “homeland”—thought that this required a uniform education in the history and culture of the society to inculcate the necessary feelings of social solidarity.<sup>15</sup> The coercive policies to achieve linguistic and cultural homogeneity in France to create a single French nation<sup>16</sup> attest to the fear and concern that cultural difference would translate into political difference; that, to achieve the national dream and a shared political identity, cultural differences would need to be eliminated.

The existence, and persistence, of minority national identities have almost from the beginning, challenged the territorial and institutional framework associated with democratic self-government. Minority nations pose a challenge to the conception of popular sovereignty, and especially the assumption that popular sovereignty is indeed popular.<sup>17</sup> For members of national minorities, the exercise of undifferentiated majoritarian rule within a single State-wide political community is enormously problematic, because they constitute minorities who can be consistently outvoted, and whose aspirations and identities are denied in unified sovereign states.

The existence of minority nations also challenges the principle or right of self-determination, which is thought to accompany political

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15. JEAN-JACQUES ROUSSEAU, *THE SOCIAL CONTRACT AND DISCOURSES* 136 (G.D.H. Cole et al. eds. & trans., 1973). The relevant passage from *A Discourse on Political Economy* reads:

If children are brought up in common . . . imbued with the laws of the State and the precepts of the general will; if they are taught to respect these above all things; if they are surrounded by examples and objects which constantly remind them of the tender mother who nourishes them, of the love she bears them, of the inestimable benefits they receive from her, and of the return they owe her, we cannot doubt that they will learn to cherish one another mutually as brothers, to will nothing contrary to the will of society . . . and to become in time defenders and fathers of the country of which they will have been so long the children.

*Id.*

16. EUGEN WEBER, *PEASANTS INTO FRENCHMEN: THE MODERNIZATION OF RURAL FRANCE, 1870–1914* (1976).

17. For an interesting discussion of the very close relationship between nationalism and democracy, see LIAH GREENFELD, *NATIONALISM: FIVE ROADS TO MODERNITY* 9–11 (1992). In addition to laying out a general and theoretical account of the relationship, Greenfeld describes the different forms that the relationship took in England, France, Russia, Germany, and America. *Id.*



self-government and to be important at least since the demise of the norm of imperial rule. This challenge can be easily seen through distinguishing between two conceptions of "the people" who are entitled to be self-determining. On the conception of "peoples" as majorities within political units, the issue of what is the relevant territorial unit is crucial, for the territory essentially defines who counts as the people. On the ethnic or linguistic conception of "the peoples" who are entitled to be self-determining, the ethnic identity of "the peoples" defines where the boundaries should be drawn. These two conceptions, obviously, do not coincide, and the possibility of conflict and disaffection is very real. Indeed, the principle of self-determination is unproblematic only in the rare and ideal case that the administrative boundary coincides with the ethnic or national group; the group is territorially concentrated, with no significant minorities; and the members of the group are strongly mobilized in favor of self-determination. Most cases fall far short of that ideal, although Iceland is a rare exception, in which both definitions of the "people" (those resident in the administrative boundaries of the unit, and those who are members of the nation) happen to coincide.<sup>18</sup> But in most cases, the definitions of "the people" and the territorial units in which self-determination is to occur are contested, and the possibility of alienated minorities within the state, stranded minorities on the other side of the border, contested homelands, and mobilized unionist groups against the possible exercise of self-determination (e.g., secession) are very real indeed.

Moreover, members of minority nations can legitimately claim that the current State system is unfair. Like majority nations, they are politically mobilized, they have a history and a homeland, and they seek to exercise political self-government. Indeed, they are as capable of being the bearers of modernity—to exercise democratic governance and to adhere to the rules of justice and respect for human rights—as majority nations. It is a majoritarian fallacy to think that national minorities are backward, ethnic, and chauvinistic, whereas majority nations are civic and inclusive, when, in many cases, the terms of the inclusion (into the majority nation) are unfair and help to jeopardize the communal existence of the minority group.

National minorities also suffer from other significant forms of unfairness. Minority status is clearly a problem when the regime is discriminatory and even murderous, or when it is a strongly nationalizing State, intent on privileging—economically or culturally—one

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18. See John McGarry & Brendan O'Leary, *The Macropolitical Regulation of Ethnic Conflict*, in *THE POLITICS OF ETHNIC CONFLICT REGULATION* 15 (John McGarry & Brendan O'Leary eds., 1993).

national group in the territory. However, even in cases where the worst abuses are avoided, minority status is still a problem. While members of the majority community feel that the public culture is continuous with their culture, this is not true of members of the minority nation. The language that a member of a minority nation speaks at home and in her community is not the language of the state; typically, she must acquire facility in a second language, and ensure that her children acquire a second language, to have good jobs in the political and economic spheres. She may be disadvantaged in numerous ways, often unintentional, by the laws, procedures, and public life of the state, which reflect the culture, history, and traditions of the majority community.

Moreover, this person is acutely aware of her minority status. Unlike members of the majority community, who can be individuals in the sense that they are regarded as individuals, she is always regarded as an Other, as a member of the minority group. In cases where there has been historic enmity between the minority and majority group, minority status may carry with it a certain amount of physical insecurity, especially in the context of the breakdown of state order. In addition to the economic and insecurity implications of minority status, and the potential for discrimination and prejudice, there is significant psychological loss, in so far as the minority identity is denied or rejected. This has been well documented with respect to various groups in Central Europe in the period following the First World War. With the collapse of the German and Austro-Hungarian Empire, Hungarians found themselves converted from majority to minority status in Romania, Serbia, and Czechoslovakia. Germans in Czechoslovakia, Poland, and Denmark found themselves similarly converted from majority to minority status. The psychological loss associated with this transition is not just the notion of being transferred from dominant status to being dominated, but the psychological loss that accompanies the denial of their aspiration to be a political community. Nor is this loss simply connected to cultural or linguistic issues, or to economic consequences of minority culture and language. A significant problem is that the border, or more precisely where the border is drawn, denies their aspirations to be a politically self-governing community. There is a sense of unfairness associated with this, for the border permits some groups to be collectively self-governing, to have institutional expression of their identity as members of a specific political community, but denies it to national minorities.

Despite the moral persuasiveness of their claim that the current nation-state structure is unfair, it is very difficult to respond to minority nationalist concerns. This is because one response, and often the response that minority nationalists seek, is to redraw political boundaries,

but such territorial reconfigurations would be extremely costly and disruptive, and would not, in any case, completely get rid of the problem.<sup>19</sup> Most critics of nationalism have also made these points. Ernest Gellner argued that there are at least 8,000 groups in the world that are potential nations, according to his linguistic criterion of "potential nation." Conferring a right to national self-determination on each of them, and redrawing territorial boundaries, if and when they developed a national consciousness, would be extremely destabilizing and counter-productive, leading possibly to civil war and bloodshed.<sup>20</sup> One of the most often cited quotes by critics of nationalism concerning the redrawing of boundaries is associated with Robert Lahnsing, Woodrow Wilson's secretary of state. Lahnsing complained that Wilson should never have uttered the phrase "self-determination," a phrase "simply loaded with dynamite. It will raise hopes, which can never be realized. It will, I fear, cost thousands of lives."<sup>21</sup> Most critics of national self-determination cite this passage from Lahnsing approvingly, although with the caveat that Lahnsing seriously under-estimated the costs involved.<sup>22</sup> It is, however, misleading to suggest that the problem of "national self-determination" arose because Woodrow Wilson uttered an "unfortunate phrase." The problem was not created by the ill-considered phrasing of a single person. The problem is inherent in the structure of the nation-State system: minorities are responding to their disadvantaged position within that structure, and expressing their legitimate aspirations to persist as their own particular community and to be collectively self-governing.

This leads us to the uncomfortable realization that, on the one hand, national minorities have legitimate claims of fairness, or justice, but that these cannot be met because of legitimate concerns about peace and security. If this were right, it would mean not only that we have prioritized stability considerations over justice, but that we have sacrificed some groups and some peoples so that we can all live in a more stable world. Moreover, because "stability" is purchased at the cost of justice, and minorities are mobilized around the justice of their cause, there is always the potential for instability, minority disaffection, and even secessionist mobilization to rear its head.

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19. For a discussion of the problem in drawing boundaries, see John McGarry, *Orphans of Secession*, in NATIONAL SELF-DETERMINATION AND SECESSION 215-232 (Margaret Moore ed., 1998).

20. See ERNEST GELLNER, *NATIONS AND NATIONALISM* 44-45 (1983).

21. Sanford Levinson, *Is Liberal Nationalism an Oxymoron?*, 105 *ETHICS* 626, 631 (1995).

22. *Id.*; see also Ronald S. Beiner, *Self-Determination and Rights*, in NATIONAL SELF-DETERMINATION AND SECESSION, *supra* note 19, at 158, 175 n.9.

Concerns about national minorities—and the potential challenge that they pose to the nation-State system—are not new. Indeed, it was perhaps best understood when, after the First World War, the Boundaries Commission was established to carve up new national states from the ruins of the Russian, German, Austro-Hungarian, and Ottoman Empires. It was soon renamed the Boundaries and Minorities Commission, and its ambit was extended to consider the fate of minorities, because it was clear that the creation of boundaries also created minorities.<sup>23</sup> The Minority Rights Treaties were a response to the awareness that boundaries were not equally beneficial to all groups, and that there should be some attempt to remedy (admittedly unavoidable) unfairness and to assuage minority concerns and grievances. The solution was to create institutional procedures and structures that would deal with the worst forms of unfairness. That institutional structure was, as is now almost universally recognized, flawed and susceptible to abuse<sup>24</sup>—but this does not impugn the general idea underlying the treaties. This idea was, essentially, that boundaries create minorities, minorities suffer disadvantages, and there should be some protection afforded to minorities by the international community.

### III. NATIONAL SELF-DETERMINATION WITHOUT SECESSION

The arguments in the two Parts above suggest that the idea of national self-determination has profound resonance across the globe, and it is useful to develop a principled response to minority nationalist aspirations for collective self-government.

In this Part, I will consider two likely methods of dealing with nationalist aspirations: the first is offering minority national communities cultural rights, or non-territorial autonomy, within existing states; the second is more robust forms of territorial autonomy, such as federal arrangements or international autonomy regimes.

This Part of the Article argues that non-territorial autonomy—while currently the most likely to be offered—is unlikely to be satisfactory to minority nationalists. The second is less likely to be on offer by states, but is more likely to satisfy the minority nationalists' aspirations, especially if it is accompanied by robust international protection mechanisms.

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23. See generally JENNIFER JACKSON PREECE, *NATIONAL MINORITIES AND THE EUROPEAN NATION-STATES SYSTEM* (1998).

24. Jackson Preece details the flaws in the Minorities Rights Treaties, and how the process contributed to this abuse. *Id.* at 67–94.

### A. Non-Territorial Autonomy

One of the most popular recent proposals for dealing with national minorities is to offer them cultural rights, or autonomy over certain functions of importance to them, which recognize their different culture and identity.<sup>25</sup> This form of autonomy is also referred to in the political science literature as “cultural autonomy,” “segmental autonomy,” “functional autonomy,” “corporate autonomy,” and “corporate federalism.”<sup>26</sup>

This type of institutional mechanism has a long and venerable history. Non-territorial autonomy was used by the Ottomans originally to manage religious diversity.<sup>27</sup> From the fifteenth century, Greek Orthodox, Armenian Catholic, Jewish, and Muslim communities administered their own affairs in religion, education, and family law. With the growth of national sentiment, these religious *millets* later split into linguistically based units.<sup>28</sup> An equivalent of the millet, the *kahal*, was introduced in the old Polish-Lithuanian Commonwealth, where it was used to give autonomy to the Jewish community. The millet system has contributed to the current legal systems in India, Israel, and Lebanon where different religious communities have autonomy over family law. In most western liberal-democratic jurisdictions, non-territorial autonomy for religious communities is generally restricted, as in Canada and the United Kingdom, to limited control over their own publicly-funded school system.

A significant application of non-territorial autonomy occurred in inter-war Estonia where a Cultural Autonomy Law was passed in 1925. The law enabled ethnic groups numbering at least 3,000 to establish cultural councils capable of taxing the groups' members and exercising jurisdiction over a wide range of cultural activities, including education, culture, libraries, theatres, museums, and sports.<sup>29</sup> Cyprus' consociational constitution of 1960 also provided for non-territorial autonomy for the interspersed Greek and Turkish Cypriot communities. These were given

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25. Autonomy should be distinguished from mere regional self-administration (where regions implement policies decided by central governments) and from local/municipal government (where there is only a capacity to pass minor regulations or by-laws). It should also be distinguished from sham varieties of “autonomy” associated with control strategies, such as when a state devolves power to co-opted and unrepresentative elites, concedes the form of autonomy without the substance, or imposes autonomy on groups that do not want it.

26. AREND LIJPHART, *DEMOCRACIES: PATTERNS OF MAJORITARIAN AND CONSENSUS GOVERNMENT IN TWENTY-ONE COUNTRIES 183-85* (1984).

27. John Coakley, *Approaches to the Resolution of Ethnic Conflict: The Strategy of Non-Territorial Autonomy*, 15 INT'L POL. SCI. REV. 297, 299 (1994).

28. Jean Laponce, *The Government of Dispersed Minorities: From Constantinople to Ottawa*, in *DIVIDED NATIONS* 62 (Tamas Kozma & Peter Drahos eds., 1993).

29. Coakley, *supra* note 27, at 307.

separately elected communal chambers with exclusive legislative powers over religious, educational, and cultural matters.<sup>30</sup>

The demise of Marxism-Leninism in Eastern Europe has led to resurgence in the popularity of non-territorial autonomy. Unlike Lenin, the new rulers of the region appear to view it as preferable to what they see as more dangerous and destabilizing forms of territorial autonomy. In 1993, Estonia re-introduced its inter-war arrangements for non-territorial autonomy. In the same year, Hungary passed an Act On the Rights of National and Ethnic Minorities.<sup>31</sup> In 1996, the Russian parliament adopted the National Cultural Autonomy Act, which allows individuals to form National Cultural Associations with rights over culture, language, education, and the media as well as the right to represent the interests of minorities in State (federal, republic and local) institutions. By mid 1999, 227 National Cultural Associations (NCAs) had been registered (160 local, 60 regional and 7 federal).<sup>32</sup> Other non-territorial autonomy arrangements have been implemented in Ukraine, for Russians in eastern Ukraine and for Hungarians in Transcarpathia.<sup>33</sup>

The normative arguments for non-territorial autonomy arrangements most frequently employed by state elites are of the peace and stability sort. They involve a negative judgment about the secessionist dangers of territorial autonomy, while recognizing the need to go some way to accommodating the linguistic, ethnic, or religious diversity of the population. Estonia, Slovakia, and Croatia have all rejected schemes of territorial autonomy, but have implemented schemes of non-territorial autonomy. Israel's Menachem Begin was also prepared to consider cultural autonomy, but not territorial autonomy, for the Palestinian citizens of Israel. In Russia, where there is a system of territorial autonomy, critics promoted non-territorial autonomy as an alternative or at least as a countervailing force. The first politician to recommend it in the post-communist era, Gavril Popov, linked it to a proposal for scrapping Russia's system of ethno-federalism and restoring the Tsarist system of ethnically neutral administrative regions.<sup>34</sup> Some have speculated that the

30. See AREND LIJPHART, *DEMOCRACY IN PLURAL SOCIETIES* 159 (1977) ("[T]hese provisions went far toward setting up a 'federal' system without actual territorial federalism, which was thwarted by the highly interspersed residential patterns of the two populations.").

31. Andrea Krizsán, *The Hungarian Minority Protection System: A Flexible Approach to the Adjudication of Ethnic Claims*, 26 J. ETHNIC & MIGRATION STUD. 247, 248 (2000).

32. Cristiano Codagnone & Vassily Fillipov, *Equity, Exit and National Identity in a Multinational Federation: The "Multicultural Constitutional Patriotism" Project in Russia*, 26 J. ETHNIC & MIGRATION STUD. 263, 280 (2000).

33. Will Kymlicka, *Western Political Theory and Ethnic Relations in Eastern Europe*, in *CAN LIBERAL PLURALISM BE EXPORTED? WESTERN POLITICAL THEORY AND ETHNIC RELATIONS IN EASTERN EUROPE* 68 (Will Kymlicka & Magda Opalski eds., 2001).

34. Codagnone & Fillipov, *supra* note 32, at 275.

country's adoption of "national cultural autonomy" is aimed at replacing ethno-federalism over the long run.<sup>35</sup> The idea that non-territorial autonomy will suffice as a way to manage the concerns of national minorities has become, apparently, a "veritable mantra" among East European intellectuals.<sup>36</sup>

These arguments are not restricted to Eastern Europeans. Western states have also expressed a preference for non-territorial autonomy in Eastern Europe because of concerns about stability or because, as in France and Greece, they fear that accommodation through territorial autonomy will give rise to similar demands from their own minorities. Since the Copenhagen Document of 1990 suggested territorial autonomy as an option for the accommodation of minorities, there has been a steady retreat of support for it in international documents, in part as a result of the conflicts arising from the breakup of Yugoslavia and the Soviet Union. These documents are now more likely to stress non-territorial methods of accommodation than the territorial sort.<sup>37</sup> The OSCE's High Commissioner on National Minorities has recently warned minority groups that:

Even though the [OSCE's] Copenhagen Document mentions territorial autonomy as an option, minorities should take into account the fact that such a demand will probably meet maximum resistance, whereas they might be able to achieve more if they concentrated on legislation that enabled them to have a greater say in fields of special interest to them, such as education and culture.<sup>38</sup>

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35. See Paul Goble, *A New Kind of Autonomy*, in RFE/RL RUSSIAN FEDERATION REPORT, vol. 2, no. 17 (Julie A. Corwin ed., May 10, 2000). Valery Tishkov, a leading Russian academic and head of the State Committee on Nationalities (in 1992), promoted non-territorial autonomy because he thought it would strengthen a statewide civic nationalist identity. See Magda Opalski, *Can Will Kymlicka be Exported to Russia?*, in CAN LIBERAL PLURALISM BE EXPORTED? WESTERN POLITICAL THEORY AND ETHNIC RELATIONS IN EASTERN EUROPE, *supra* note 33, at 308.

36. Will Kymlicka, *Reply and Conclusion*, in CAN LIBERAL PLURALISM BE EXPORTED? WESTERN POLITICAL THEORY AND ETHNIC RELATIONS IN EASTERN EUROPE, *supra* note 33, at 365.

37. International documents that are concerned with protecting minorities have generally little to say about territorial autonomy. See, e.g., COUNCIL OF EUROPE, FRAMEWORK CONVENTION FOR THE PROTECTION OF NATIONAL MINORITIES (1995), available at <http://conventions.coe.int/Treaty/EN/Treaties/Html/157.htm>; FOUNDATION ON INTER-ETHNIC RELATIONS, LUND RECOMMENDATIONS ON THE EFFECTIVE PARTICIPATION OF NATIONAL MINORITIES IN PUBLIC LIFE (1999), available at <http://www.osce.org/hcnm/documents/recommendations/lund/index.php>.

38. MAX VAN DER STOEL, PEACE AND STABILITY THROUGH HUMAN AND MINORITY RIGHTS: SPEECHES BY THE OSCE HIGH COMMISSIONER ON NATIONAL MINORITIES 111-12 (Wofgang Zellner & Falk Lange eds., 1999).

In the High Commissioner's view, "insufficient attention has been paid to the possibilities of non-territorial autonomy."<sup>39</sup> The OSCE has been engaged, apparently, in an "almost ritual invoking of 'non-territorial autonomy'" as a way of accommodating national minorities.<sup>40</sup>

Non-territorial autonomy has some advantages over territorial autonomy. First, it is useful for national minorities that are too dispersed or few in number to exercise or to aspire to territorial autonomy. There is some evidence that Estonia's inter-war arrangements for non-territorial autonomy improved the position of its dispersed minorities. In Coakley's view, "its existence did much to reconcile the Germans to life within the Estonian state."<sup>41</sup> Jews also appear to have been happy with Estonia's autonomy arrangements. Dispersed groups, like the Roma of Hungary and Russia, stand to benefit from those countries' arrangements for non-territorial autonomy, as these will provide the Roma with institutions and resources that they currently lack. In Canada, non-territorial autonomy has enabled francophones outside Quebec to maintain some control over their own schools. The over fifty percent of natives who live in Canada's cities would also benefit from a scheme of non-territorial autonomy, as it is difficult to see how plans for giving self-government to native reserves addresses their situation.<sup>42</sup>

However, it is probable that such schemes for dispersed minorities, who do not have the demographic basis to reproduce their culture and identity, are a way to make assimilation more gentle rather than a way to stop it.<sup>43</sup>

Non-territorial autonomy is also useful in combination with power-sharing arrangements and territorial autonomy in nationally divided societies. It is a mechanism that helps minorities to feel that the State is a State that belongs to them, that the public culture, symbols, and character of the State also include them. Many consociational or power-sharing systems—in Belgium, the Netherlands and Lebanon—have allowed

39. *Id.* at 172.

40. Kymlicka, *supra* note 36, at 382.

41. Coakley, *supra* note 27, at 307. Georg von Rauch wrote that "the Estonian government was able to claim, with every justification, that it had found an exemplary solution to the problem of its minorities." LIJPHART, *supra* note 26, at 184 (quoting GEORG VON RAUCH, *THE BALTIC STATES—ESTONIA, LATVIA AND LITHUANIA: THE YEARS OF INDEPENDENCE, 1917–1946* (Gerald Onn trans., 1974)).

42. DEPARTMENT OF INDIAN AFFAIRS AND NORTHERN DEVELOPMENT, REPORT OF THE ROYAL COMMISSION ON ABORIGINAL PEOPLES vol. 4, ch. 7, no. 5 (1996), at [http://www.aicn-ac.gc.ca/ch/rcap/index\\_e.html](http://www.aicn-ac.gc.ca/ch/rcap/index_e.html).

43. This is certainly true for the francophone community outside Quebec. In the case of Canada's natives, they might be able to retain their identity as native—particularly as they face racism, and are resistant to adopting the identity of the very people who decimated their culture, but it is unlikely that they can reproduce their culture in a meaningful way, even with non-territorial autonomy.



degrees of non-territorial (or segmental) autonomy to various religious and secular communities.<sup>44</sup> More recently, Belgium has sought to manage its ethno-linguistic communities through a mixture of consociational power-sharing, federal or territorial autonomy, and non-territorial autonomy. The French and Flemish language communities have non-territorial jurisdiction over French and Flemish speakers in Brussels.<sup>45</sup> In New Zealand, the Maori Council supervises matters of interest to Maoris.<sup>46</sup> In Canada, francophone communities outside Quebec and anglophone minorities inside Quebec enjoy control over their own school boards.

It may also be the case that large minorities that are territorially concentrated will find non-territorial autonomy better than the alternatives on offer. The Kurds in Turkey would see such arrangements, which the European Union is pushing for, and whereby they could control their own state-funded cultural institutions, as a considerable advance over the Kemalist regime of coercive assimilation that they have been subjected to.

It would be wrong to impugn the theory of non-territorial autonomy by burdening it with the limited forms that the practice has taken, and thereby suggest that “non-territorial autonomy” must necessarily consist of the kinds of limited forms of recognition and autonomy on offer in many cases. For example, the autonomy regimes in Hungary were implemented primarily to promote the benign treatment of Hungarian minorities in neighboring countries and to polish Hungary’s image as a way of gaining entry into the European Union.<sup>47</sup> In Estonia’s case, the non-territorial autonomy scheme for minorities appears to be consistent with the closing and the defunding by the state of Russian language schools and other public institutions as part of its nation-building policy.<sup>48</sup> In other cases, the schemes do not appear to offer autonomy at all, but rather involve the creation of an officially recognised agency to lobby or advise the government on the minority’s behalf.<sup>49</sup> While the Roma in Russia and Hungary may be better off with non-territorial autonomy than without, their position remains “marginal” in spite of these reforms.<sup>50</sup>

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44. LUPHART, *supra* note 30, at 41–44.

45. LUPHART, *supra* note 26, at 184–85.

46. Coakley, *supra* note 27, at 309.

47. Krizsán, *supra* note 31, at 250.

48. See DAVID D. LAITIN, *IDENTITY IN FORMATION: THE RUSSIAN-SPEAKING POPULATIONS IN THE NEAR ABROAD* 94 (1998).

49. Codagnone and Fillipov argue that the influence of National Cultural Associations in Russian politics has been minimal. Codagnone & Fillipov, *supra* note 32, at 275.

50. See, e.g., Peter Vermeersch, *Romani Political Participation and Racism: Reflections on Recent Developments in Hungary and Slovakia*, in 4 *ROMA RIGHTS* 160 (2000), at [http://lists.ercr.org/tr\\_nr4\\_2000/noteb4.shtml](http://lists.ercr.org/tr_nr4_2000/noteb4.shtml).

However, it is highly unlikely that significant and territorially concentrated minorities will be *satisfied* with non-territorial autonomy, even genuine and generous non-territorial autonomy, particularly if they have a history of territorial autonomy. There are a number of reasons for this. The types of powers that such minorities seek, including power over the economy and policing, and control over population influxes and which language is dominant, require control over territory. This is connected to the territorial nature of the modern state, and the fact that the exercise of its most important functions tends to be on a territorial basis.

Moreover, non-territorial autonomy fails to take into account the vital relationship that most nations have with their homeland or "national territory." For many groups, there is a conception of a "homeland," a geographical area with symbolic and emotional significance, which is not captured simply by the provision for self-government over members. This relationship to the land is clearly evident in the discourse of indigenous people, but it is true of all national minorities, including Scots, Catalans, or Uighurs.<sup>51</sup> Their aspirations for collective self-government typically involve a desire to *control* this land, including its monuments, cemeteries, churches, as well as access to it. Nationalists seek not simply self-government, but self-government in *and* over their national homeland.<sup>52</sup> In part, this is because the most significant functions of government operate on a territorial basis, and control over territory is important to the successful reproduction of a group's language and culture. The contrasting fortunes of linguistic minorities with territorial autonomy and non-territorial autonomy can be observed by looking at the Swedes of Finland. The Aland Islanders, who enjoy territorial autonomy, including control over demographic influxes, and who have promoted their language in the public sphere, have been able to ensure that they are able to reproduce their culture and their identity over time. By contrast, Swedish speakers on the Finnish mainland, who are

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51. See Walker Conner, *The Impact of Homelands upon Diasporas*, in *MODERN DIASPORAS IN INTERNATIONAL POLITICS* 16 (Gabriel Sheffer ed., 1986).

52. Think of the case of Irish nationalism. The Irish demand for self-determination has had relatively little to do with the desire to protect a distinct language or religion. See JOHN MCGARRY & BRENDAN O'LEARY, *EXPLAINING NORTHERN IRELAND: BROKEN IMAGES* 207 (1995). It has had more to do with getting the "Brits out" and securing "Ireland for the Irish," i.e., with achieving self-determination for the Irish people *in* Ireland, their "national territory." Think also of the problem of contested sites such as Kosovo or Jerusalem. These are among the more intractable disputes in nationalist conflicts, and non-territorial autonomy fails to deal with them because it abstracts from the territorial dimension of nationalism.

territorially concentrated and enjoy some language rights, but who lack territorial autonomy, have not fared nearly as well.<sup>53</sup>

The argument of this Section of the Article has suggested that non-territorial autonomy arrangements are unlikely to be satisfactory for most territorially concentrated national minorities, who seek to be collectively self-governing over significant areas of their collective lives, and who seek to govern their national homelands. The inadequacy of most forms of non-territorial autonomy should be evident from the fact that most national minorities do not seek it, at least not as a first preference, and particularly not those minorities that have the demographic concentration and capacity to exercise territorial self-government.

### B. *Territorial Autonomy Regimes and the International Order*

The previous Section argued that non-territorial autonomy is unlikely to assuage minority nationalist aspirations to self-government, and that territorial autonomy is more acceptable to minority nationalists. This Section considers two distinct forms that territorial autonomy can take, the limitations of each of them, and the challenges that they pose for international law.

The most typical method of granting territorial autonomy is to draw internal boundaries of the federation in such a way that a national or ethnic group controls at least some of the states that make up the federation. In some cases, more than one national group can be explicitly recognized as co-founder of the federation. The first such federation was Switzerland, founded, in its current form, in 1848. Since then, there have been a number of others, such as Canada, established in 1867, and the Indian subcontinent, which was divided after decolonization into the two multiethnic federations of India and Pakistan. The Communist Soviet Union, Yugoslavia, and Czechoslovakia were federal in structure, although they were not democratic, and the practice of Communist Party centralism undermined their genuinely federal and decentralized character. Belgium has recently evolved into a federation and multinational federations have been proposed for a number of other divided societies—from Afghanistan to Cyprus to Iraq and Indonesia.<sup>54</sup>

A federation, by its very nature, implies a codified or written constitution, a supreme court, and a bicameral legislature. Because the federal

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53. Antony Alcock, *Finland: The Swedish-Speaking Community*, in *MINORITIES AND AUTONOMY IN WESTERN EUROPE* 13 (Minority Rights Group ed., 1991). The Aland islanders also have the advantage, of course, of living on islands, insulated from the mainland.

54. See John McGarry & Brendan O'Leary, *Federation, Conflict-Regulation and National and Ethnic Power-Sharing*, Paper Presented at the Annual Meeting of the American Political Science Association 1–4 (Aug. 27, 2003) (unpublished manuscript, on file with the Michigan Journal of International Law).

government cannot unilaterally alter the horizontal division of powers, the minority group enjoys some security in the exercise of collective self-government. Of course, federations differ in the kinds of competencies that the different levels have and the level of power they enjoy, and the acceptability of a particular federal arrangement will depend on the degree of mobilization of the national minority group, the kind of national identity that it evinces, and the type of powers and guarantees that it possesses.

A second type of territorial autonomy involves the grant or devolution of power only to the region in which the minority is demographically strongest, without changing the constitutional structure of the State as a whole. Because the grant of autonomy does not affect the federalization of the State as a whole, there is typically less security for the minority in "federacy" or "partial federalization" arrangements.<sup>55</sup> Examples include: the autonomous institutions established in the Aland Islands; the UK devolution of power to Scotland, Wales and Northern Ireland; the very limited form granted by France to Corsica in 1982; and the South Tyrol region of Italy, among others.

One of the main concerns expressed by leaders of majority nations or over-holding states with federalism and autonomy arrangements that provide for collective self-government for minority nations within states is that these institutional forms will lead to secession. This does not seem to be borne out by the evidence, however. A major study of ethnic conflict around the globe by Ted Gurr concludes that federal systems have been an effective remedy for conflict in a significant number of cases.<sup>56</sup> Michael Hechter in a recent book and John McGarry in a recent study of institutional arrangements have both independently, and for different reasons, concluded that federal structures are helpful in dealing with multi-nationality, and it is this (multi-nationality or diversity) that poses a challenge to the state.<sup>57</sup>

Although both kinds of internal political arrangements that promote self-government by minority nationalists are vastly superior to a unitary Jacobin state, from the point of view of most national minorities, neither are wholly satisfactory. In part this is because the international order privileges independent States, and it is less desirable to be a region

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55. John McGarry, *Autonomy* (2003) (unpublished manuscript, on file with the Michigan Journal of International Law/author).

56. See John McGarry, *Federal Political Systems and National Minorities*, in *Handbook of Federal Countries* 2002 437 (Ann L. Griffiths ed., 2002); TED ROBERT GURR, *Peoples Versus States: Minorities at Risk in the New Century* 208 (2000).

57. See generally, John McGarry, *Must Pluri-National Federations Fail?*, at 6 (2004) (unpublished manuscript, on file with the Michigan Journal of International Law/author); see generally MICHAEL HECHTER, *Containing Nationalism* (2000).

within a State than to be a State, even when controlling for size, power, and so on. Consider the cases of Ireland and Scotland. Both are similar in size, but Ireland has more clout internationally and in the EU because it is a State. This is a point made repeatedly by the Scottish Nationalist Party in Scotland.<sup>58</sup>

The principal disadvantage of multinational federation as a method of meeting minority national aspirations, however, is that many states are unlikely to concede it. Indeed, the minorities that need self-government the most—those that are encapsulated in states that engage in egregious violations of human rights, cultural repression, and ethnic cleansing—are also the least likely to be granted any measure of collective self-government. In some cases, minorities in such undemocratic States have been granted autonomy arrangements, usually without altering the constitutional structure of the State—but only following a minority rebellion. Minorities have seized control of regions and the “granting” of autonomy by the state has been a response to this *de facto* control. This was true of the Kurdish region of Northern Iraq from 1991, Kosovo since 1997, Abkhazia, South Ossetia, Trans-Dneistra, and Nagorno-Karabakh.

This phenomenon is related to a serious problem that attaches specifically to autonomy arrangements rather than to constitutional federalism. That is, to the extent that autonomy arrangements are “granted” at the “pleasure” of the majority group in the State, they are at risk of being dissolved at the pleasure of the majority group or the State as a whole. There is a symbolic and a very real problem attached to this asymmetrical arrangement. The symbolic problem is that it indicates that a lesser status attaches to the minority national group’s exercise of self-government. The very real problem is the lack of security that this provides to minority national groups. Indeed, in a number of cases, autonomy arrangements have been rescinded by the State. Prominent examples include Kosovo, which found its autonomy unilaterally ended by Serbia in 1989; and the Sudan, which, in 1983, reneged on key elements of the 1972 autonomy settlement for the south.<sup>59</sup>

The incoherence and inadequacies of the current international law as it applies to claims for collective self-determination<sup>60</sup>, and the concerns about a permissive right to secession to deal with this, have led Allen

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58. See James Mitchell & Michael Cavanagh, *Context and Contingency: Constitutional Nationalists and Europe*, in *MINORITY NATIONALISM AND THE CHANGING INTERNATIONAL ORDER* (Michael Keating & John McGarry eds., 2001).

59. Sudan proposed that the south be partitioned into three regions; that Islamic laws be imposed on the whole country; and that former rebel troops be transferred to the north. McGarry, *supra* note 55; TED ROBERT GURR, *MINORITIES AT RISK: A GLOBAL VIEW OF ETHNOPOLITICAL CONFLICTS* 402 n.20 (1993).

60. See discussion *supra* Part I.

Buchanan in a recent, important book, to argue for substantial forms of self-government within the state, which he calls "intrastate autonomy regimes." Indigenous peoples are his main example of the beneficiary of such a regime, but the argument he develops seems to apply to any national minority group that has been and is currently unjustly treated.<sup>61</sup>

According to Buchanan, the international legal order should encourage alternatives to secession, in particular by working for greater compliance with existing international human rights norms prohibiting ethnic and religious discrimination and by supporting intrastate autonomy regimes (self-government arrangements short of full sovereignty).<sup>62</sup> Underlying this strategy is the view that the international legal order has a duty to support states' efforts to preserve their territorial integrity *as long as* they do a credible job of protecting basic human rights. On this view, the international legal order should be based on the protection of human rights, and this requires either major reform of the U.N.-based system of law or the development of alternative international institutions, or both.

To make this effective, international law would need to distinguish clearly between rights to secession and the legitimate interests that groups have to intrastate autonomy, instead of the current very general and contradictory treatments of "rights to autonomy of peoples" and State rights to "territorial integrity." In addition, Buchanan argues for international institutional mechanisms for mediation between majority and minority national groups and a principled approach to recognition of new States. He also argues that international legal protections of basic human rights should be strengthened, and should include the legitimate rights to self-determination, especially those that take a non-secessionist form. These reforms are designed to make intrastate forms of self-determination more attractive by strengthening the international role in developing and guaranteeing internal autonomy arrangements.

Of course, in the absence of these kinds of guarantees, it is reasonable for minority nationalists to fight for the more secure protection that the international community affords to sovereign states, and reasonable therefore to expect the conflict and violence associated with secessionist minority nationalism to continue.

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61. He does not specify the precise relationship between rectificatory justice (for historic injustices) and contemporaneous justice (for current distributive injustices). See ALLEN BUCHANAN, *JUSTICE, LEGITIMACY, AND SELF-DETERMINATION: MORAL FOUNDATIONS FOR INTERNATIONAL LAW* 417 (2004).

62. *Id.* at 401-55.

## IV. CONCLUSION

This Article has developed a number of distinct, albeit related arguments. In Parts One and Two, the Article argued that national self-determination has profound resonance across the globe and that minority nationalists have very real and legitimate aspirations to be collectively self-governing. Following from this, the Article argued that the international community should develop a principled response to those claims to collective self-determination.

The second half of the Article examined two methods of dealing with these aspirations. The first was offering minority national communities cultural rights, or non-territorial autonomy, within existing states.<sup>63</sup> The second was for more robust forms of territorial autonomy, such as federal arrangements of international autonomy regimes.<sup>64</sup> The Article argued that non-territorial autonomy was the most likely to be offered—and in fact is currently on offer in a number of areas of majority-minority tension—but it is unlikely to be satisfactory to minority nationalists, except in certain specified circumstances. The second is less likely to be on offer by states, but is more likely to satisfy their aspirations, especially if it is accompanied by robust international protection mechanisms. Throughout this Part, the Article stressed the advantage, in the current international system, of the status of statehood; and that non-secessionist forms of self-determination need therefore to be accompanied by some form of secure guarantee. In liberal democratic states, which respect the rule of law, the constitutional entrenchment associated with a federal system may be enough, depending on the degree of power and autonomy that the minority enjoys. However, in other states, where the threat that the autonomy will be rescinded is a very real one, international involvement may be necessary.

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63. See *supra* Section III.A.

64. See *supra* Section III.B.