National Self-Determination and Justice in Multinational States

by

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Introduction

Centers of political and military influence in world politics change, as the fading away of the bipolar arrangement of the Cold War has made clear. But regardless of whether one or two great powers or a coalition of states dominates international politics, there ought to be a set of norms that allows us to evaluate the actions of governments and individuals in the international arena from a moral standpoint.[1] Labeling an action or a policy as morally wrong cannot prevent it, of course, but moral norms have some power to shape individual and group actions, even if these actions consciously counter the norms. When both the citizens of a state and outsiders are able to evaluate the moral status of state actors by reference to an established moral ideal, they can find a way to mobilize around the moral ideal and make it known to those who violate that ideal that their actions are wrong. Establishing a moral foundation for international relations would also demand consistency: if actions are to be prohibited for one type of group actors and allowed for others, the norms behind these regulations would need to be aligned.

From a moral standpoint, human rights are a set of inviolable standards of international and domestic politics. Many governments of the world fail to respect them, however, and individual enjoyment of this basic entitlement depends on what group one belongs to, which is itself a function of the vagaries of personal and societal history. The country one is born into, its geographical location and political and economic fortunes, often are not and cannot be chosen. Some may say that because all individuals enjoy benefits or are denied benefits on the basis of their group membership, the goal of the international community should be to minimize the influence of the historical contingencies that determine group membership and bridge the gap separating individuals around the globe from the pursuit of a decent life. If we wish to do away with the inequality of persons worldwide, however, we must find a principled way to determine what contingencies ought to be addressed and under what circumstances. This requires a set of norms subsidiary to the universal standard of human rights but nonetheless moral in nature.

Determining under what circumstances national belonging matters to the exercise of human rights enables us to attend to a number of factors relevant to individual quality of life: being Croatian or Serbian does not matter that much in the sense of affecting one's political activity if one lives in Canada or the United States, for example, but it matters a great deal if one lives in Bosnia. More important, if

we treat individuals as moral agents, not simply as moral recipients, we need to account for their preferences for group membership and consider the nature of their present engagement with the group under which they live and whether it is voluntary. Finally, every contingent framework can easily acquire normative features if considered in terms of the relations of individuals. Being born in a certain territory and enjoying remaining there is contingent. If others claim the territory as their own, then one's decision to remain there or, even more, one's claim to possess a right to do so is a contingent event that acquires a normative dimension. When individuals advance competing or conflicting claims—any claims that affect others—they may explicitly support the claims using a norm or standard that endorses the kind of relationship to others that they wish to maintain or achieve. This background norm or standard needs to be evaluated at least in relation to the standard used by the other party or parties against whom their claim is advanced. If competing claims to territory are not made with explicit reference to a standard, the claims' very advancement implies that the individuals who advance them rank their own entitlement higher than that of others. Thus, the basis for the entitlement to the right to the territory or its absence is moral in nature.

That individuals' preferences to be included in the group of their choice ought to be respected does not imply that groups should be unimpeded in the aspects of their functioning that violate their members' human rights. Specifying what facet of group existence must be regulated to safeguard group members' human rights requires us to pay special attention to group constitution. Groups are constituted through the modes of their members' interaction. To alter a group's influence on its members, we need to alter the mode of their interaction, and for a change to be lasting, group members must cooperate and embrace it. An effective change cannot be produced by a third party alone, even if it is motivated by the quest for justice. It needs to engage the group members on the right terms. Determining what these terms are is the task of a theory of international justice.

In this book, I propose an element of such a theory, focusing on membership in national groups. The basic intuition that I develop and defend in this book is that national groups are collective agents (or "group agents") of a certain kind. Given that group agents may take shape or interact in ways that threaten the rights of members or nonmembers, we need to determine which modes of organization are acceptable and on what terms groups agents should interact. Because groups formulate their demands upon others using the discourse of rights, even engaging in war over these "rights" in the worst-case scenario, we need to define a principled basis for group entitlements in conflicts between national groups. Only a set of norms concerning groups' status in relation to the rest of the world can provide the international community with an idea of the proper state of affairs to which the warring groups ought to be restored. This is not a simple task, because warring groups often aspire to control a contested territory. For the sake of world peace, such territories need to be governed efficiently and justly, and setting the terms of acceptable group interaction is vital to achieving this goal. One precondition for encouraging a group to cooperate, I argue in this book, is to ensure that its status as a world actor or within its political community is determined in accordance with the particular

shared good around which the group is organized, whether it be territory, language, religion, culture, political rights, or something else.

Substate nationalism, especially in the past fifteen years, has noticeably affected the political and territorial stability of many countries, both democratic and democratizing. The United Kingdom and Fiji, Spain and Russia, Canada and the former Yugoslavia, and many other states have encountered problems, from political crisis to long-lasting asymmetrical warfare, caused by stateless national groups' advancing self-determination claims. Because most states are multinational—that is, they have more than one national group living within their boundaries—the challenge of accommodating multiple claims to self-determination within a single territory is unlikely to diminish in the future. It would be impractical for every national group to acquire a state of its own, and international law does not normally permit stateless national groups to secede, yet they are usually not willing to give up their claims to self-determination, especially given the high value placed on the acquisition of independent statehood, which is normally associated with the realization of self-determination in the current international context.

Secessionist movements are a typical but extreme challenge to the stability and territorial integrity of multinational states. The pursuit of self-determination by secessionist national groups often leads to protracted conflicts accompanied by severe deterioration in the political and economic situations of secessionist regions, sometimes leading to total paralysis and the groups' failure to effectively govern themselves. We have seen such a situation develop in Chechnya, for example. A widely accepted framework for the consideration of such conflicts that is based on the norms of international law regards wars of secession as matters internal to the host states or, if more than one state is concerned, as matters to be dealt with by the recognized state units involved. The secessionist claims of Abkhazia and Southern Ossetia, for example, have been treated as matters internal to Georgia or, when there is Russian covert involvement, placed in the context of relations between Russia and Georgia. This perspective treats Georgia as the legitimate state in the conflict because Georgia was a union-level national republic in the former USSR, while Abkhazia and South Ossetia were its autonomous national republics. This historical classification established a hierarchy that continues to be respected by international law. But the very ranking presupposes that the ranked units are separate *national* groups, and this important constitutive feature should figure in the perspective on the conflict between Abkhasia and Georgia or Southern Ossetia and Georgia taken by the international community.

In addition to secessionist claims, federations currently face a number of other problems related to substate groups. The advantages and prerogatives that minority nations can acquire within a federal system are affected by the internal composition of their federal state. Many federations are mixed: they contain national and territorial subjects. The Russian Federation, for example, includes both territorial-administrative and national units.[2] All eighty-nine subjects of the Russian Federation were considered equal in the federal treaty signed after the fall of the Soviet Union. In reality, however, the status of the national and territorial-administrative units is different. Many of the twenty-one national republics have

declared themselves to be sovereign states within the federation.[3] "Sovereign" here has a specific and historically defined meaning. The former Soviet (union-level) republics nominally retained their sovereignty through the constitutional right of exit. Others (non-union-level republics) only qualified as national minorities with various levels of self-government (as autonomous republics, regions, and districts) within the boundaries of the union-level republics and were not sovereign.

Should territorial and national subjects in federal states receive differential treatment? The clear but hierarchical definition of various national groups in the former USSR constructed the official evaluation of their status as just, but it was not always perceived as such by the groups themselves. The hierarchy of nationalities, a cornerstone of Soviet national policy, was clearly arbitrary (Armenia, for example, was a union republic, while Bashkortostan, which is comparable in size, was only an autonomous republic). Mikhail Gorbachev, just before the fall of the Soviet Union, tried to elevate the status of some autonomous republics to the union republic level and thus acknowledge their sovereignty. On April 26, 1990, the Supreme Council of the USSR issued a law on "the division of powers between the USSR and the subjects of the federation" that gave equal legal status to union-level and autonomous republics. The latter acquired a right to interact with the federal authority directly, rather than through their host union republics. The autonomous districts and regions, still acknowledged by the Soviets to be a lower level of national identity, were now required to have treaty-based relations with their republics, which elevated their status as national groups.[4] While this move was prompted by the autonomous republics' desire to sign the USSR treaty, Boris Yeltsin wanted them to sign the Russian federal treaty instead. In the end, the USSR fell apart, and the republics signed the Russian Federation's federal treaty.[5] Thus, when the USSR was disbanded, the former autonomous republics of the Soviet Russian Federation became the national republics in the present federation. Their constitutions demand a significant degree of independence from the Russian federal state: Tatarstan's constitution considers the federal law void if it contradicts treaties the republic has signed with other subjects of the federation, while the constitution of Sakha grants its legislature the right to ratify federal laws before they acquire force in the republic.[6] The territorial-administrative units (49 *oblasts,* 6 *krai*, and 2 cities), on the other hand, do not have the statelike status of the national republics in either internal or international relations, and they perceive that the sovereignty of the republics puts them in an unequal position in the federal state.[7] In the course of the 1990s, some of them attempted to elevate their status by declaring themselves republics. Adding to the confusion, the Federal Constitution says that neither the federal treaty nor the republics' own constitutions determine their status and that the republics are not sovereign.[8] Thus, what the groups that perceive themselves as national can in principle claim and how they can justifiably relate to the territorial units are open questions.

As the example of the Russian Federation demonstrates, while historical factors such as power asymmetries and the role of previous political leadership causally define groups' present status, the historical demarcation of groups is dynamic and often unhelpful in identifying group agents in present-day conflicts. Moreover, the

intentions of group agents adjust to and often escalate based upon their officially recognized status.

In addition to the status struggle with the federal state and the territorial districts, the national republics of the Russian Federation inherited the problem of "substate" nationalities, wherein formerly autonomous districts and regions have become their national minorities.[9] What needs to be determined is, first, whether there is any difference in principle between territorial and national subjects of federations that can justify the special status of national republics in the Russian Federation and, second, whether differences in size and historical standing among national groups in a federal state, such as the present division into national republics and national minorities in the Russian Federation, warrant differential treatment based solely on these factors.

One approach to national minorities is offered by the Council of Europe's Framework Convention for the Protection of National Minorities. It introduces norms for the equal treatment of individuals from both national minorities and majorities before the law and in economic, political, and cultural spheres. In this document, the essential elements of national minorities' identity are considered to be religion, traditions, language, and cultural heritage. The rights that the convention aims to promote are given to individuals and not to groups, although it acknowledges that individuals can enjoy their rights "in community with others."[10] The convention does not address self-determination claims, however, and thus it does not provide a fully adequate response to the demands of minorities.

To settle problems related to the status of various groups presently referred to as "national" in relation to one another and to arbitrate the various claims of minority national groups, including the claim to self-determination, we need to decide which groups possess a moral right to self-determination. Substate groups' perception of unjust treatment is warranted only if substate and state-endowed national groups are similar kinds of communities—if, in other words, both are "nations" with a moral right to self-determination. And even if substate groups are in principle entitled to the same treatment with respect to self-determination as state-endowed groups, it may still be the case that they cannot be afforded that treatment due to pragmatic limitations. If so, the basis for the denial of the exercise of the right to self-determination would be different from what it would be if the group did not possess the right at all, and thus being denied the right may entitle the group to some form of compensation. In short, the regulation of self-determination claims on a moral basis requires us to define nationhood and to explain the moral entitlements of national groups in relation to self-determination by specifying which groups are the subjects of the right to self-determination and how they may exercise that right, particularly in regard to statehood.

The very different international status and privileges presently enjoyed by stateless and state-endowed groups provide a difficult setting for the regulation of their relations. State-endowed nations are full members of the international community and have control over their political futures, whereas non-state national groups do not have an internationally recognized legal right to self-determination unless they are occupied or colonized.[11] They are not even considered nations according to

the prevalent understanding of the term in international relations, which associates "nation" with "state." There are no legal international means for addressing a minority's claim to self-determination except indirectly through an appeal to the principles of human rights. Once human rights are violated, however, it is usually too late to resolve conflict by peaceful means.

To address destabilizing self-determination claims, we must regulate the behavior of substate groups with respect to one another and to their host states. Norms exist to limit the behavior of collective agents in relation to individuals; the set of universally accepted human rights provides a basic framework. There is a lacuna in international law, however, in the regulation of the behavior of groups toward other groups, with the exception of relations among states. International law does not define the status or powers that non-state groups that claim to be nations but reside within multinational states should have in relation to other groups, their citizens, or their own national minorities.

Solving the self-determination problem can be seen as a purely practical exercise: multinational states' territorial integrity can better be preserved if an improved set of measures is put in place to ensure the enforcement of the present norms of international law, which protect the territorial integrity of states and allow secession only in exceptional circumstances. A strict adherence to current norms, however, will not eliminate tensions introduced by the norms themselves. A non-state group's claim to self-determination is illegal if unsupported by its host state, because the claim violates the host state's sovereignty and territorial integrity. Thus, the international system is organized in such a way that it poses a dilemma to groups that advance claims to self-determination (unless they are occupied or colonized): they can either follow the rules and give up their claims or break the rules and try to secede, which usually leads to violent conflict. The first option is designed to maintain the current formal order of international society, which continues to be provided by the collectivity of sovereign states.[12] The second option is backed up by the existing moral right of all peoples to self-determination but is not straightforwardly practicable in the terms of an international system that associates the exercise of self-determination with the acquisition of independent statehood.

A state-centered attitude, while motivated by practical considerations of stability and supported by the current principles of international law, is not, in the end, a practical one, because it does not resolve conflicts, and to some extent it even encourages them. While there is simply no good normative explanation for why stateless national minorities' exercise of the right to self-determination should be second to that of groups with states of their own, or for why stateless groups are not entitled—or are significantly less entitled than state-endowed groups—to control their future political status, it may be said that, given the costs of accommodation, stateless groups cannot be granted the right to self-determination for practical reasons. But restricting the exercise of the right to self-determination by substate groups could not be justified pragmatically on the basis of the need to preserve the stability and territorial integrity of multinational states if an approach were developed that served this need while granting moral claims to substate groups. This book suggests such an approach to the entitlements of national groups, which I will

call the "nations approach." I begin by considering what guidance the current international norms provide for the regulation of relations among national groups and briefly review various theoretical approaches to self-determination and nationhood in the first chapter. I argue that we cannot reduce the right to self-determination of a group to the individual rights of group members and that we need to differentiate self-determination from other types of group entitlement.

The existence of the collective legal right to self-determination is commonly acknowledged, but the notion that collectives have moral rights is often contested. On one side of the debate is the claim that moral rights can inhere only in individuals and that, at most, collectives can acquire "derivative" moral rights, which belong to individuals but can be exercised by individuals only through their participation in a group. Using this reasoning, the right to be educated in French in Manitoba belongs to individual Francophone Manitobans, but it cannot be exercised unless there are a sufficient number of Francophone children present in a given area who warrant the right of the Francophone minority to receive instruction in French schools.[13] On the other side of the debate is the claim that moral rights can belong to collectives as such as "primary" collective rights.[14] In line with the spirit of this position, Nunavut, an autonomous Inuit territory in Canada, was created in recognition of the moral right of the Inuit people to self-government. Reversing the viewpoints in the two examples, could Nunavut's autonomy derive from its individual members' right to democratic self-governance? And could the right to be educated in French belong to the Francophone citizens of Manitoba as a group?

I address these questions in the second chapter, wherein I distinguish between the two types of group moral rights and argue that the type of group entitlement can be determined by how a group is constituted in relation to non-members. All group rights belong to collective agents sharing in the good that the right in question promotes. I argue that only collective agents constituted so that they are capable of exercising equal freedom can have a primary moral right. A collective right to self-determination can be primary because self-determination concerns the relation of a collective to other collectives as free equals. Collective moral rights of groups organized around such shared goods as language, culture, or religion are derivative because these groups are identified by the circumstances of their inclusion in the host self-determining communities and do not have the capacity for equal freedom. I argue that self-determination is an important shared good to which certain group agents have a moral right.

I define the subjects of the right to self-determination in Chapter 3, in which I introduce a new definition of nationhood. A number of conceptions of nationhood have recently been advanced,[15] and some theorists argue that the very notion is amorphous and passé.[16] I define "nationhood" as a political culture shared by the members of a group with the collective end of maintaining or acquiring effective agency of a certain kind. Nations are organized around the ideal of self-determination: the members of a nation believe that membership in the group defines the bounds within which political authority can originate meaningfully for those the group governs. Finally, for a political culture to characterize a national group, the group's members have to identify with that culture. By focusing on political culture,

I capture how national groups relate to one another and provide a conception of nationhood that reflects the self- and mutual understanding of the members of a national group.

The present international community's inability to manage issues of substate nationalism affects not only societies with established democratic traditions and clearly defined nations but also newly democratizing countries in all parts of the world. Regulating relations among national groups in transitional societies is important for democratization. The scholarship on minority nationalism has paid little attention, however, to the instability of national identities in transitional societies. I extend the theory of nationhood to account for the presence of changeable or unknown national identities in transitional and oppressive societies in Chapter 4, in which I introduce the concepts of "potential" and "vacuous" political cultures to demonstrate how my definition of nationhood can be applied in such societies. A vacuous culture represents official norms and political goals rather than societal values and beliefs. Citizens usually do not identify with a vacuous political culture. Instead, they relate to often-fragmented attitudes toward or beliefs about politics that are not fully expressed or even articulated. These beliefs and attitudes reflect a potential political culture, which coexists with the vacuous culture. The existence of vacuous political cultures explains why self-identification with a political culture is so important to my definition of nationhood. The presence of a vacuous culture tells us that we should pay attention to changing or murkily expressed national identities and that in some circumstances we should suspend our judgment concerning the national makeup of a society. Although the notion of political culture does not produce a theory of nationhood that has the unfailing capacity to identify all groups that qualify as nations in transitional societies, defining the terms of interaction for any national groups that might emerge during the transition to democracy in advance, even before national identities crystallize, could help control the newly formed nations' relations and thereby facilitate peaceful political changes in transitional periods. I conclude Chapter 4 by formulating a general strategy for transition based on a set of normative guidelines about the treatment of substate national groups.

I next defend in Chapter 5 that national communities have a moral right to self-determination and that the just treatment of substate national groups requires the equality of different national groups to be the norm governing the treatment of self-determination claims. Because I do not associate nationhood or self-determination with statehood, my approach to self-determination can accommodate the pragmatic limitations on normative ideals posed by the requirements of security and stability. I argue that the right to national self-determination must go beyond self-government but to stop short of statehood, and thus I introduce a modified right to self-determination, which states that all national groups have an equal right to self-determination provided that the realization of the right does not require the acquisition of independent statehood as its necessary condition. It is unjust not to allow national communities to live according to their internal constitutions provided they do not harm others. National groups should be given an opportunity equal to those

of other members of their host multinational states to determine their future political status within these states.

Many treatments of self-determination concentrate on conditions for secession, a much-debated topic in recent scholarship. Presently, a national group has the right to secede from a state if the state is subjecting the group to colonization or illegal occupation. A common approach to secession allows secession also if the host state is guilty of gross violations of human rights.[17] This approach, however, ignores states that respect human rights but harbor competing claims to self-determination. The modified right requires that states respect not only human rights but also the equal right of the national groups within their territory to self-determination. Substate national groups can secede either by mutual agreement with other national groups present within the territory of a multinational state after their equality within the state has been achieved or if they are persistently denied the right to exercise self-determination on an equal basis with other groups within the state.

Since the modified right to self-determination can be afforded in an equitable fashion to all national groups without breaking up existing states, it has the potential to become a universal legal right. The current international system is prone to conflict partly because it treats similar groups unequally. Expanding the sphere of international regulation to include national groups within multinational states could help improve the stability of such states by establishing norms for the just treatment of national groups within these states. The idea behind this approach is that normalizing relationships among groups is most effective when it takes into consideration groups' motivations for acting, which allows it to address instability associated with their behavior. This book suggests a positive theory of self-determination—the nations approach—that aims to foster the systematic regulation of relations of self-determination among national groups rather than simply specify conditions for secession. This approach would preserve the territorial integrity of multinational states better than alternative proposals that make respect for human rights the only criterion for multinational states' legitimacy.

Ultimately, I contend that the nations approach, which promotes equal access to self-determination for minority and majority nations within their host states, is not only justified but also can be implemented and will improve the stability and preserve the territorial integrity of multinational states. In Chapter 6, I discuss which principles for the institutional arrangement of multinational states properly address the self-determination claims of national minorities, and thus which principles can be put into place for the implementation of the modified right to self-determination. I also consider a number of challenges that substate self-determination poses for multinational federations. I argue that the employment of my nations approach to self-determination will have positive consequences for international peace. If this approach were to become an accepted part of the international legal framework, it would undermine the moral basis of justifications for asymmetrical warfare, provide incentives for non-state groups to participate in negotiations, and help them transform themselves into responsible members of the international community. I demonstrate that since the norms for the regulation of self-determination that I propose respect the principle of territorial integrity, these norms have a good chance

of being accepted by the members of the international community. The modified right embedded in the nations approach would afford substate groups the equal status with respect to self-determination that they desire and serve their host states' interest in stability. This would facilitate the voluntary compliance of the collective agents holding the modified right to self-determination—both state-endowed and substate—with the requirements it places upon them to qualify for membership in the international community. I consider various approaches to the empirical effects of implementing theories like mine and conclude that the approach to self-determination I propose would provide the most stable and morally appealing arrangement of multinational states and therefore is consequentially beneficial. The introduction of the modified right to self-determination would help to alter stateless groups' goals for achieving self-determination by demoting the status of statehood. Rather than compete for a state of their own, their goal would become to cooperate within their host states, which they would share with a number of national groups in an equal relationship, creating conditions for peace within the boundaries of multinational states.

Readers fairly familiar with the various theoretical approaches to self-determination may choose to skip Chapter 1, which highlights the differences of these approaches with my approach. Those readers who are more interested in the practical applications of my theory may want to skip Chapter 3, in which I defend my definition of nationhood.

Notes

1. Allen Buchanan argues persuasively for the need for a moral theory of international law in *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004). Michael Walzer engages in a deeply moral discussion of conventions of war in *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3rd ed. (New York: Basic, 2000). For a good discussion of the need for normative theorizing, see Allen Buchanan and David Golove, "Philosopy of International Law," in *The Oxford Handbook of Jurisprudence and Philosophy of Law*, ed. J. Coleman and S. Shapiro (Oxford: Oxford University Press, 2003), pp. 868–934.
2. There is a similar tension between federal subjects in Canada, where Quebec's demands for special recognition are deemed excessive by the other provinces, which view Quebec on a par with themselves and not as a different type of federal subject.
3. A. N. Arinin, "Rossiiskaja Gosudarstvennost' i problemi federalizma," in *Issledovania po prikladnoi I neotlozhnoi etnologii*, no. 105 (Moscow: Institut etnologii i antropologii RAN), p. 9.
4. Ibid., p. 19.
5. Ibid., p. 9.
6. L. M. Drobizheva, A. R. Aklaev, V. V. Koroteeva, and G. U. Soladtova *Democratizatsiia i obrazi nationalizma v Rossiiskoi Federatsii 90-x godov* (Moscow: Misl', 1996), p. 169.
7. V. A. Mikhailov, *Natsional'naja Politika Rossii: istoria I sovremennost* (Moscow: Pusskii mir, 1997), pp. 383–85.
8. Drobizheva, Aklaev, Koroteeva, and Soladtova, *Democratizatsiia*, p. 186.
9. The situation is also complicated by the fact that many title nationalities in the national republics of the federation are not even majorities in the territories named after them. The overall percentage of the title nationalities in the republics is 42.4 percent, though some republics have the title nationality as a majority, including Dagestan (80.2%), Chuvashia (67.8%), Tuva

(64.3%), Kabardino-Balkaria (57.6%), and North Ossetia (52.9%). See M. Guboglo, *Mozhet li dvuglavii oriol letat's odnim krilom? Pazmishlenia o zakonotvorchestve v sphere ehnogosudarstvennikh otnoshenii* (Moscow: Russian Academy of Sciences, 2000), p. 84.

10. Council of Europe, Framework Convention for the Protection of National Minorities, Strasbourg, 1.II.1995, CETS no. 157, http://conventions.coe.int/ Treaty/en/Treaties/Html/157.htm, art. 4.1, 4.2, 5.1, 3.2.
11. The UN Charter acknowledges that "all peoples have a right to self-determination," but that right is limited in the current international law to occupied and colonized national groups. Cassese states, for example, that self-determination is firmly entrenched in the corpus of international general rules in three areas only: as an anticolonialist standard, as a ban on foreign military occupation, and as a standard requiring racial groups be given full access to government. See *Self-Determination of Peoples: A Legal Reappraisal* (New York: Cambridge University Press, 1995), p. 319. For another argument supporting this interpretation, see Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996).
12. For more on this argument, see James Mayall, "Sovereignty, Nationalism, and Self-Determination," *Political Studies* 47 (1999): 474–502.
13. Canadian Charter of Rights and Freedoms, art. 23.
14. Bhikhu Parekh considers religious, cultural, and linguistic rights to be primary collective rights. See *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (Cambridge, MA: Harvard University Press, 2000), pp. 213–19. Michael McDonald argues that there is a need for primary collective rights based on the possession of significant collective goods. See "The Personless Paradigm," *University of Toronto Law Journal* 37, no. 2 (Spring 1987): 223.
15. See David Miller, *On Nationality* (Oxford: Oxford University Press, 1995); Yael Tamir, *Liberal Nationalism* (Princeton: Princeton University Press, 1993); Margaret Canovan, *Nationhood and Political Theory* (Cheltenham, UK: Edward Elgar, 1996).
16. See Rogers Brubaker, *Nationalism Reframed: Nationhood and the National Question in the New Europe* (Cambridge: Cambridge University Press, 1996).
17. Allen Buchanan, "Recognitional Legitimacy and the State System," *Philosophy and Public Affairs* 28, no. 1 (Winter 1999), pp. 46–78, p. 55.

Chapter 1
Multinational States and Moral Theories of International Legal Doctrine

When those of us armed with a typical liberal sense of right and wrong read historical accounts of liberation movements directed against either domestic tyrants or colonizers, we intuitively agree that the oppressed peoples deserved their freedom, because they deserved to govern themselves. But what lies behind our intuition? How do we establish that the oppressed are a people and explain why they deserve this freedom? Furthermore, groups with internationally recognized governments sometimes oppress their members in the name of their right to self-determination, as do groups whose internal organization is neither properly institutionalized nor internationally endorsed. Thus while self-determination, especially qualified as a "moral" right, may seem fine as a general rule, in its application it is potentially dangerous and destabilizing, and even contrary to human rights. The questions that need to be answered to unpack our intuition concerning self-determination are very basic: Does a moral right to self-determination exist? If so, who holds the right? This chapter begins to examine these questions by first considering the current international norms that control self-determination and then looking at the various theories that attempt to provide a moral foundation for the regulation of relations among different types of national groups. In the course of this brief survey, I discuss the ways in which major theoretical accounts of self-determination can be modified to deal with substate nationalism and identify the areas in which my approach to nationhood and self-determination can be particularly useful. I continue the discussion concerning who holds group rights in the next chapter.

Current International Norms

Both the Charter of the United Nations and several subsequent UN documents identify the moral right of "all peoples to self-determination." The United Nations was created in part to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."[1] UN resolution 1514, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights reiterate that "all peoples have the right to self-determination" and that "by virtue of that right they freely

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determine their political status and freely pursue their economic, social and cultural development."[2]

Although these formulations do not specify what kinds of national groups qualify for the right to self-determination—"people" is not clearly defined and does not in principle exclude substate national groups from the entitlement—only a limited number of national groups are acknowledged to have the legal right to self-determination in the current international system. International law understands the right to self-determination as the right to be free from external occupation and colonization. This understanding excludes the self-determination claims of many substate national groups. The self-determination claims of national groups on the territory of the Russian Federation, such as Dagestan, Mordovia, or Tatarstan, for example, are excluded from consideration under the present interpretation of the right to self-determination, whereas the Baltic republics were considered to have this right due to their unjust occupation by the Soviet regime.

National groups currently qualify for the right to self-determination not according to a principle or a norm but as a result of the vagaries of history. In terms of their qualification for the right to self-determination, the difference between the peoples of Tatarstan and the Baltic republic of Estonia—two peoples who each have institutions of political self-government and a sense of national identity—lies in the Estonians' prior possession of an independent state. This is a contingent historical factor that does not *morally* justify the allocation of the right to self-determination to Estonia and not to Tatarstan. The legal right to self-determination is in fact not backed by a moral justification for what stateless groups perceive to be the unfair limitation on the subjects of the right, the enjoyment of which is distributed in a way that is rather arbitrary. Tatarstan could take a broad historical approach and trace its political institutions to the times of the Golden Horde, when the Khanate of Kazan was independent of Russia before being defeated by Ivan the Terrible in the late fifteenth century. In reply, the international community might insist that only those self-governing institutions that existed following the Peace of Westphalia can claim to have a historical lineage that justifies their right to self-determination. But if that is the case, why is one historical dividing line relevant while another is not? This study does not refer to historical timelines to define nations on the basis of when they formed but provides a definition that identifies nations based on the presence of a particular kind of collective agent. The right to self-determination is grounded in the moral entitlement of this type of collective agent, as well as in the need to regulate relations among national groups that act based on their perception of themselves as agents of this type.

It is difficult for the international community to affect states' behavior toward national minorities within the current system. With the exception of violations of internationally recognized individual rights (human rights and some rights guaranteed by treaties, such as the European Framework Convention), rules governing the treatment of minorities remain within the domestic jurisdiction of their host states. The charter of the United Nations states that "nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit

such matters to settlement under the present Charter."[3] There is no law that specifies the duties of states even to provide autonomy to minorities beyond the limited rights to practice their religions and cultures and to use their languages. The international community's reluctance to establish universal duties regarding the autonomy of national minorities leaves the self-determination claims of national groups largely unaddressed.[4] The concluding document of the Copenhagen meeting of the Helsinki Commission's Conference on the Human Dimension, for example, concerns the rights of persons belonging to minorities to establish and maintain their own educational, cultural, and religious institutions, organizations, or associations. It does not deal with political rights, such as self-determination, which often constitute the chief concern of ethnic minorities.[5] The very couching of disputes between states and stateless national groups as "minority disputes" is not helpful to the development of international legal norms for their resolution.

Since substate groups are not proper members of the international community—they are not, for example, members of the UN or parties to the International Court of Justice[6]—they cannot use the same means to pursue and defend their interests as state-endowed national groups can. Stateless national groups cannot legitimately wage a war of self-defense when their political community is in danger, though legally self-determining political entities can. Substate groups' status with respect to self-determination, except for a handful of cases that fall under current international regulations, is covered by international legal norms only negatively: most national groups are prohibited to act so as to exercise self-determination.

The current association of the exercise of self-determination with some form of independent statehood fosters the creation of multinational states that are neither stable nor politically flourishing. It shapes the aspirations of substate national groups in terms of the limited right to self-determination. These aspirations to acquire the rare good of self-determination, which endows a selected few nations with the prerogative of sovereignty, are bound to be frustrated and to complicate stateless groups' relations with their state-endowed host nations. The absence of international norms regulating the status of substate national groups with respect to their host multinational states does not help to resolve internal conflicts within these states and adds to the challenge of protecting national minorities. In the absence of a moral and legal framework that justifies actions taken by the international community to resolve conflicts among national groups, this community is often helpless to stop states from taking aggressive action against national minority groups within their territory or to prevent the belligerent actions taken by national minorities. Before the international community can attempt to regulate the behavior of national groups, it needs to determine substate groups' entitlements with respect to self-determination in order to define what laws stateless national groups and their host states ought to (or need not to) comply with. Thus, while the present world system is centered on sustaining peaceful relations among states, which is certainly necessary to maintain universal peace, it is deficient with respect to the preservation of peace *within* states.

The prospects for the implementation of the normative ideal of the equality of self-determination of all peoples contained in the UN Charter depend on how the terms of this important clause are defined. The current state system has a

limited capacity to accommodate self-determination claims if the exercise of self-determination is equated with the acquisition of independent statehood (while all national groups are considered to be "peoples"). In this case, the normative ideal of equality faces insurmountable practical limitations, and the present international system lacks the ability to accommodate the majority of self-determination claims. The restrictive formulation of the legal right to self-determination, which defines its subjects with an eye only to a very selective set of historical circumstances, simply ignores relations between substate and state-endowed national groups with respect to self-determination claims. This formulation puts the limited legal right in tension with the normative moral ideal of equality of the UN Charter.[7] The modification of international legal norms is necessary to improve on the present approach to self-determination.

Moral Theories of International Legal Doctrine Concerning Self-Determination

Given the present tension between the moral and legal norms concerning self-determination and the infeasibility of granting sovereignty to all substate groups, a normative framework for addressing the challenges posed by substate national groups' claims needs to define the fair conditions for national groups' membership in their host states. Such a framework ties the question of whether substate groups should enjoy the right to self-determination to the justice of their treatment by their host multinational states; it, therefore, requires a moral theory of international legal doctrine and its corresponding institutions.

The extent to which a normative theory of multinational accommodation may be implemented is limited by what is possible in practice, and thus any normative theorizing about international law needs to attend to the realities of the current state-centered international system. We also need to pay attention, however, to the fact that states are not homogenous political communities and that one type of diversity among political communities within states runs along national lines. Within their borders, multinational states contain more than one political community that aspires to be self-determining. It is widely acknowledged that since there are many more national groups than there are possible states, breaking states up is destabilizing. It is simply prudent, therefore, to think of norms as they would govern federal arrangements rather than as they would govern terms of secession: accommodating stateless nations necessitates establishing norms of federation building.

One theory of the substate accommodation of self-determination is offered by Margaret Moore, who treats national groups as moral communities and argues that the strongest claim they can make to be accommodated within multinational states is the claim to fair treatment.[8] I agree that fairness should play an important role in designing a set of international legal norms to prescribe how national minorities ought to be treated by their host states. It is hard to predict whether making the legal standards of interaction between stateless and state-endowed groups conform to moral norms of fairness will solve the problem of conflicting self-determination

claims on its own, but it is certainly true that morally unjustifiable legal norms have lesser force. To *be* a legal system, the international legal system needs to be coherent and clear in its principles. Norms that prescribe treating similar subjects differently are likely to be difficult to enforce. Even a very generous accommodation based on existing principles, such as autonomy within the host state—an accommodation proposed by many theories of federalism—countenances inequalities between state-endowed and stateless nations if the host state is considered the possession of the majority nation and not of the stateless minority nation. When legal norms resonate with existing tensions, moreover, they contribute to the instability of multinational states. Thus, a theory of federalism that prescribes the norms for a fair federal arrangement also needs to have an international normative dimension that describes a fair status for all national groups in relation to one another.

A critic might say that we can deal with stateless groups' problems on a case-by-case basis rather than by determining norms to define their status and entitlements in advance. But such an approach would be a compromise, the result of an inability to establish a set of norms.[9] If it is possible to establish norms of what Allen Buchanan and David Golove call "transnational justice," compromise is unnecessary. In this book, I define such norms and show that pragmatic limitations on the exercise of the right to self-determination by substate groups can be largely overcome if self-determination is disassociated from statehood. I argue that the requirement of treating substate national groups justly should be primarily concerned with the satisfaction of their self-determination claims *within* their host multinational states and only secondarily with the conditions of secession. This approach is sound, of course, only if non-state groups have a moral right to self-determination. Thus, we need to consider whether national groups deserve a right to self-determination on moral grounds and, if so, whether the international community has the corresponding moral duty to make sure that multinational states properly respond to their substate groups' claims.

Below, I examine two major perspectives on the justification of group rights. The first holds that the right to self-determination can be reduced to the individual rights of group members, while the second considers self-determination as a group right. I will deal with different approaches to this second perspective on group rights in the next chapter.

Individual Rights-Based Theories

Theoretical approaches to the self-determination of minorities range widely, from ignoring them under the rubric of "equal citizenship for all" to granting them the right to secede. A number of theorists argue that self-determination claims should not be singled out and can be dealt with on the basis of respect for individual rights.[10] According to theories that ground the right to self-determination in individual rights, members of national groups express preferences related to their identity in the process of participating politically in their larger society, and these preferences are satisfied by the state through its regular means of satisfying all individual

preferences. We can therefore provide equality of identity to citizens by ensuring their equal individual participation in politics. Two considerations make the individual rights-based approach questionable when applied to minority groups' self-determination claims, however. The first has to do with the fact that the weight given to the minority preference varies according to how preferences are counted. If the preferences of a national minority are counted in the context of the larger state as a whole, the minority can easily be outvoted. If the preferences of minority group members are considered within a portion of the state territory where it is a majority, on the other hand, the existence of the group is implicitly supported. This situation is likely to result eventually in an open expression of the group's claim to self-determination and in its mobilization to achieve its goals. Such a mobilization ensures that the group's preferences are clearly expressed and, according to some models of the democratic process (e.g., deliberative democracy) ought to give those preferences significant political weight in the country's decision-making process. Therefore, the preferences of the individual members of a substate national group in a politically open host state are likely either not to be accommodated at all, if the group is dispersed, or, if the group is concentrated in a single territory, to be expressed as group preferences that ought to be treated as such.

The second important consideration in assessing the individual rights-based approach is that self-determination claims primarily have to do with how members of a political community define the boundaries of that community, and this translates for the members of a minority group into the question of whether to belong to the larger community at all. If individual rights given to minority members within a host community are premised on the notion that the larger community is the political community of their choice, these rights will be inadequate to address the preferences of the members of a minority group who wish to change their political status within the larger community or to exit. If individual rights are given to the minority members *in their capacity as national group members*, on the other hand, this may have implications for the political reorganization of the state that need to be considered. Hence, the point at which a minority groups mobilizes to express its claim to self-determination is the starting point of my inquiry concerning the terms of accommodation for conflicting self-determination claims in a multinational state.

Allen Buchanan suggests that there is nothing special about national identity that distinguishes it from other identities associated with various comprehensive conceptions of the good and with individual projects that citizens perceive as extending across their whole lives. He argues that a society characterized by "dynamic pluralism" is composed of numerous groups of individuals with such projects. This pluralism is "dynamic" because individual allegiances change and can be multiple. Hence, "singling out nations as such as being entitled to self-government is nothing less than a public expression of conviction that allegiances and identities have a single, true rank order of value, with nationality reposing at the summit."[11] Disagreeing with such an ordering, Buchanan goes on to uncouple self-determination from both statehood and nationhood. I agree with Buchanan that there is no inherent need for self-determination claims to be accommodated through the acquisition of independent statehood and that secession should be allowed only under exceptional

circumstances. I believe, however, that there is an essential connection between nationhood and self-determination.

Buchanan's discussion of autonomy arrangements is indicative of the difficulties that his refusal to admit this connection presents. Buchanan argues that self-determination can be realized through autonomy arrangements within a host state. The conditions of autonomy that could be supported by his conception of "transnational justice," however, cover a very limited range of claims to self-determination. According to Buchanan, arrangements ought to be made for groups only if (1) they have the right to secede but decide to stay, (2) their autonomy arrangements or their individual members' rights have been violated by the state, or (3) they are indigenous groups for whom autonomy would rectify past injustices and their ongoing effects. While the first and the last conditions seem to be sensible bases for entitlement to autonomy, they still require an explanation of the basis for determining the terms of fair inclusion. Moreover, self-determination is the capacity of a group to determine its future political status, while self-government is the capacity of a group to make and apply rules within the parameters of its existing political status. It is important to ask whether granting self-government to the groups in question (as distinct from self-determination) constitutes a fair arrangement. By disassociating nationhood from self-determination, Buchanan avoids answering the question of what national communities and their members are entitled to.

Concerning Buchanan's second condition for autonomy, it is necessary to clarify what obtaining self-government has to do with protecting against the violation of individual rights. If self-government takes the oppressed out of the sphere of influence of the oppressor or punishes the state by making it relinquish at least some of its power over the group's members, could it be given to an ethnic minority or to women in a state that oppresses them? If the violation of human rights signals a circumstance in which a group that is prima facie entitled to self-government can finally exercise it, the characteristics of this kind of group and its corresponding entitlement, again, need to be specified.

The "equal citizenship for all" approach to self-determination assumes that the boundaries of political communities are self-evident, that they do not require explanation. While I agree that geographic boundaries ought to be changed as little as possible, I would argue that the institutional structure of multinational states requires justification in terms of political legitimacy. If an autonomy arrangement that has been violated is bound to be restored, as happened in Kosovo after Serbia abolished its autonomy, a theory like Buchanan's, which deals with the legitimacy of states, needs to explain what norms underlay the autonomy arrangement in the first place and whether they made that arrangement just. If the autonomy arrangement is not just, furthermore, we need to explain what could make it just in the future. Acknowledging that under some circumstances some political communities can exercise self-government implicitly validates the value of these communities unless the restoration of autonomy to a national group is viewed by Buchanan as due to the group merely by virtue of a political deal struck between the government of the state and the past group leadership, thus respecting the terms of a prior contract or treaty. The latter would designate one circumstance under which a restoration of

autonomy may be in order, but we can enjoin such a restoration only if we carefully examine the makeup of the community in question. That a nation was artificially constructed in the past in what had been an autonomous area, as happened in the former Checheno-Ingushetia in the USSR, whose two national groups were conjoined in one political space without their consent, does not warrant the restoration of the area's autonomy unless the group in question (the Chechen-Ingush national composite in my example) requests it. This brings us back to considering the importance of the meaning of the limits of political communities to their members. By glossing over this, Buchanan's approach countenances violations of the collective right of national minorities to self-determination when no prior autonomy agreement existed. Even when considered in purely pragmatic terms, states' failure to satisfy substate groups' aspirations for self-determination is these groups' main point of contention, and multinational states are prone to conflict when they ignore that aspiration.

If the endorsement of the government by those it governs is not a factor in the consideration of whether an autonomy agreement is required and, should it be required, what its terms ought to be, the legitimacy of the state is questionable from the point of view of the minority group, and this fact alone violates the right to equal treatment of individuals who belong to minorities. For even if, in the best-case scenario, a national minority acquires an autonomy arrangement but this arrangement gives it a status inferior to that of the majority nation with respect to self-determination, the minority members' preference for self-determination has still been given less weight than the preference of the members of the majority, which violates the norm of the equality of individuals with respect to their membership in the larger state. This is so because the right to self-determination, in part, concerns the ability of the members of a substate group to have a say, as a group, in *whether* to be members of the host state—not merely in the acceptable terms of inclusion in the host state when their membership in the host state cannot in principle be challenged and is a *fait accompli* from the point of view of the majority and the international community. A liberal commitment to respect individuals as persons in devising the principles of political association requires that these principles must be justifiable to everyone whom they are to bind.[12] Individuals from a minority national group cannot be said to have been treated equally by the state if their group does not receive proper accommodation within the state and if, as the result of this (as is often the case), their substate national membership is a handicap in the larger society, to which they do not want to belong.

Members of a national group may derive benefits from their group's inclusion in a multinational state that create obligations toward the state on their part.[13] Those obligations do not create their membership in the state, however, unless they cause the group to choose to belong to the state and to agree to the terms of membership. Therefore, respecting the individual, democratic rights of the members of a national group does not directly address the group's claim to self-determination. We must take into consideration the political status of national minorities in their host states if we are to avoid treating individuals from minorities differently than individuals from majorities with respect to their citizenship in the larger state.

The argument that national groups have a prima facie group right to self-determination on the basis of a consent theory of legitimacy is provided by Christopher Wellman. In his view, those groups whose members do not consent to membership in a state, instead advancing self-determination claims, have a right to secede.[14] This theory highlights members' consent as an important condition for both their proper membership in a state and the state's legitimacy from the point of view of its members. This account, however, can only tell us why each individual member of a minority group *is not* a proper member of the larger state; it does not describe what, if anything, would make them proper members. The members of a one-nation state that turns into a totalitarian regime through a coup d'état do not consent to be governed by their new leaders. They may not want to secede, however, preferring instead to change their government. Thus, when considering individual consent, we need to pay attention to the *shared goals of group members* in relation to political authority over them. So modified, the consent theory of secession would highlight an important aspect of nationhood: the existence of a collective that aspires to be governed by political authority that expresses the shared preferences of its members. Thus, we need to explain what self-determination has to do with the constitution of groups that are said to have the right, which I do in the next chapter.

In his more recent work, Wellman introduces an account of legitimacy not based on consent. He considers states as producers of essential political benefits and allows secessions that do not interfere with this production for either a secessionist group or the remainder state.[15] A state, nevertheless, can restrict a right to secede to groups of a certain size and further require that the interested parties demonstrate their ability to govern in a satisfactorily capable and just manner.[16] The latter is justified because states, according to Wellman, may permissibly coerce citizens to discharge duties they owe to others without these citizens' prior consent; in particular, it may prohibit the citizens' freedom of association if this freedom interferes with the state's ability to perform its requisite political functions. Wellman supports his view of legitimate coercion with an example: if B, morally speaking, owes A assistance, the state can legitimately coerce B to assist A without B's consent. He then generalizes from this example and concludes that a state can disallow any freedom of association that interferes with the state's ability to provide the political benefits essential to individuals in its territory. I agree with Wellman that legitimate states are owed respect, and that viable units' self-determination is to be respected; but his individualistic view of political membership misses some important details.

For example, the Russians who compactly populate Eastern Estonia can form a viable political unit, and the remainder state, should this unit secede, can perfectly fulfill its political functions. But there are many facts about the history of the region and the corresponding group identities that make the issue of secession in this area not as straightforward as that of finding geographically compact units that are also politically viable. Since both sides can appeal to the notion of harm resulting from either secession or its prohibition, it needs to be determined under which circumstances it is legitimate to prioritize state-wide membership over other group memberships, and under which circumstances a sub-state group's interests and intentions trump preferences of the remainder state.

Wellman claims that his account of legitimacy precludes impermissible coercion and exploitation.[17] To determine what actions are permissible in a state the citizenry of which is not homogenous, he needs to specify which political benefits are essential to individuals in light of what benefits should belong to them by virtue of their various group memberships. We cannot gauge political culture of a multinational or multicultural unit as an aggregate of an "average" citizen's beliefs and attitudes toward politics. This is because the political cultures that individuals espouse cannot be entirely divorced from the joint enjoyment of the collective good around which their group is constituted; furthermore, there exists a plurality of these goods in a multicultural state. Individuals have special attachments to cultures, languages, religions, and so on, and they can only enjoy many goods that are vital for their well-being as members of groups. The political benefits they are owed because of their membership in the larger state need to be adjusted accordingly. Thus, to make sure we have an explanation of what it means for a multicultural state to perform its requisite political functions well—and, correspondingly, when a group's actions amount to an impermissible coercion or exploitation of its compatriots—we need to first provide an account of differentiated group rights, or what groups are entitled to based on their constitution. Wellman doesn't provide such an account, and thus offers no ground for determining, in a principled manner, what citizens (and the state on their behalf) owe one another.

Wellman claims that "a group of citizens who are able and willing to perform the requisite political functions have a right to group self-determination."[18] Sometimes a group may be too small to become a viable independent state, and Wellman's account wouldn't consider the group as entitled to self-determination. For many groups, however, political efficiency is only part of the equation and membership in no other group but their own, rooted in their group history and its present intentionality will offer a proper milieu of political legitimacy. Not allowing such a group the freedom of association is unjust. If, contrary to Wellman's account, statehood is not considered to be a minimal level at which self-determination can and should be exercised, the group can still have control over its political future within its host state without struggling to form a state of its own.

Moreover, if we are dealing with a severely oppressed group that has had no political institutions of self-government but aspires to be self-determining, we cannot attest to the group's ability to self-govern. At the same time, the group's entitlements need to be determined, at least tentatively, before it is fully capable to provide its members with the enjoyment of self-determination, in order to guide the political transition which brings about the changes to the group's status. Wellman needs to provide a guide to group entitlements that goes beyond their de facto status to apply his theory to transitional societies.

Given that secession is not practicable as a universal mode of satisfying minority claims, we need a set of conditions that describes under what circumstances a state is justified in prohibiting secession—that is, what terms of agreement with a national group are to be considered fair. Many liberal theorists implicitly presuppose that the scheme of justice or fairness they design applies to a society whose members already think of themselves as a "people," who have a common life, and who are already

interested in devising principles of political association. They assume that such individuals share enough to think of themselves as engaged in a common project and that they understand their bonds as setting them off from other people, since their aim is to live with one another, and not with everyone else, in political association.[19] John Rawls, for example, associates self-determination with peoples, not states, but he bypasses a debate about the justice or legitimacy of multinational states that contain several peoples within their territory.[20] Since most self-determination claims do in fact contest the limits of political communities, two questions arise: how to construe the terms of membership within a multinational state both for individual and collective agents and how to define the boundaries of political space that designate the limits of political communities meaningful to their individual members. Something other than just an account of individual preferences connected to membership is clearly required to determine the norms of fair arrangements for multinational states.

Group-Based Liberal Approaches

Will Kymlicka's theory of minority rights creates a much-improved version of the liberal theory of individuals' participation in groups by including cultural identity as a necessary condition of autonomy. Kymlicka's justification for this inclusion is based on the necessity of culture to belief revision: one's own culture provides a context for meaningful choice, and minority rights protecting group cultures can enlarge the freedom of their individual members.[21] He distinguishes three types of rights for minorities to account for moral, ethnic, and cultural (national) plurality: self-government rights for national minorities, polyethnic rights for immigrant groups, and special representation rights for women, sexual and racial minorities, religious groups, and the like.

In explaining why national minorities, unlike other types of minorities, are entitled to self-government, Kymlicka considers not culture but the shared attitudes of individuals from minority groups toward political authority, as represented by the institutional structures of the host society. National minority rights to self-government are the rights of differentiated citizenship, whereas the rights of ethnic immigrant groups exist to ensure that immigrants can exercise their citizenship in common with the rest of the society. Activities connected to immigrants' home cultures, for example, are funded by the state in order to promote the immigrants' integration in the larger society. Since immigrants migrate with an intention to integrate in the mainstream culture,[22] such support is often temporary, and the need for it is likely to disappear as immigrants' children and grandchildren mature. National minorities, unlike immigrant minorities, have institutions of self-government as well as territory. They are what Kymlicka calls "societal cultures," with a set of common economic, political, and educational institutions.[23] Mohawks in Canada, for example, are a national minority with a right to self-government, while the Greek community in Quebec is an immigrant group without such a right.

While it is clear that special rights are required for the proper accommodation of minorities and that culture provides an important context for belief revision, it is not entirely apparent that self-government rights are necessary for the protection of national minorities' culture on the basis of Kymlicka's argument alone. Basic conditions of belief revision, such as access to information and its reflective evaluation and freedom of expression and association, can be satisfied by institutions that guarantee the rights of the members of a minority culture to education, newspapers, theaters, a film board, and the other components necessary for examining and revising beliefs about value available to them in their own language. Granting political autonomy, on the other hand, has little to do with allowing access to belief revision. It has to do, rather, with establishing limits of political authority meaningful to the members of a national group that justify the mutually reduced influence between federal authorities and the national minority in particular areas of law, such as immigration, health care, trade, and so forth. Furthermore, if culture provides us with beliefs about the value of practices important to us, and if many immigrants reinterpret the societal culture they are supposed to assimilate into in the language of their previous societal culture's tradition, they may require self-government rights to recreate some of the self-governing institutions of their former culture in order to promote their autonomy. Or, conversely, members of national minorities may have a better chance of revising beliefs about value if they assimilate into the widely accessible and better financed system of culture of the larger society rather than remaining within their own system of culture.

I support the distinction Kymlicka makes between the rights of national and other types of minorities, but it needs to be clarified. Unless we pay special attention to the *political cultures* of substate groups and the modes of collective mobilization associated with these cultures, as well as corresponding individual intentions, it is hard to explain why assimilation is the wrong policy for national minorities but the right one for immigrants. Thus, we need to make it explicit that backing national minorities' self-government rights is their groups' possession of a political culture associated with the shared goal of achieving or maintaining self-determination. David Miller places a similar emphasis on the political aspects of national cultures. He argues that nations have a prima facie right to self-determination. Miller describes a nation as "a group of people who recognize one another as belonging to the same community, who acknowledge special obligations to one another, and who aspire to political autonomy—this by virtue of characteristics that they believe they share, typically a common history, attachment to a geographical place, and a public culture that differentiates them from their neighbors."[24] When Miller wants to distinguish between national and ethnic groups, he similarly emphasizes their members' intentions and points out that national groups make a claim to self-determination and create the appropriate organizations and institutions to fulfill that claim, while ethnic groups do not.[25] The elements of national culture that he isolates to distinguish between the entitlements of national and ethnic minorities are related to the political culture (and not the culture) of a collective agent that aspires to be self-determining.

A number of theorists criticize the distinction between polyethnic and self-government rights presented by Kymlicka. Some, like Joseph Carens, criticize

Kymlicka for the rigidity of the distinction, arguing that we should view minorities contextually based on their specific needs and situations.[26] Chaim Gans notices the difficulty of identifying which culture satisfies the freedom-based interest of individuals in culture: it is not clear whether it should be the culture of origin or the culture in which the individuals' endeavors are undertaken.[27] Kymlicka might answer such criticism by specifying the *type of culture* that is required for the right to self-government, making the move I indicate above. He does this implicitly when he acknowledges that a territorially concentrated immigrant group that mobilizes to demand institutions of self-government should in principle be able to receive the rights of differentiated citizenship.[28] This move also challenges David Hollinger's criticism that Kymlicka's distinction between national minorities and immigrants is abstract and based on the a posteriori legal circumstances of the groups' origin within a constitutional regime rather than their concrete behavior. I agree with Hollinger that we need to pay attention to the behavior of groups. However, Hollinger's alternative criterion for the distinction between ethnic and national groups requires clarification. He states that minority communities that are "historically continuous and . . . sharply separate from one another . . . are national minorities," and those that are "temporary and overlapping are other kinds of minorities."[29] Kymlicka's attention to the constitution of national groups with respect to societal cultures remains a superior criterion, because to make his distinctions Hollinger must consider what constitutes continuity and how to characterize the required degree of separation among communities.

The hierarchy of group rights and the very use of the concept of "nation" seem questionable to Iris Marion Young, who argues that African Americans, Indians in diaspora, refugees, guest workers, former colonial subjects, and Jews (prior to the establishment of Israel, at least) all fall, to various extents, outside of Kymlicka's categories.[30] She, like Carens, argues that a continuum model that provides more nuanced and complex arguments about what each cultural minority needs specifically would be superior.[31] Could such a continuum model be principled, however? Young writes, for example, that self-government rights can only be morally grounded as necessary to rectify injustice or promote greater justice. "It is possible," she states, "for a group to have self-government rights with respect to some issues and not others."[32] This approach does not seem problematic so long as we can epistemically reliably determine what issues are worthy of self-government, which requires, among other things, that we will know—and our understanding will reasonably correspond to—the group's own perception of what constitutes injustice with respect to the group or at least to its members. If we determine what constitutes injustice on an ad hoc basis, we leave too much to chance.[33] As Young would recognize, there are many forms of discrimination that only are visible at the group level. A race-neutral policy that has a racially disparate impact, such as geographically drawn school district lines that lead to de facto segregation, would not be defensible from the group perspective. Hence what appears as injustice to some, especially the group members, may appear as just treatment to others.[34]

Grounds for the differential treatment of groups need to include a set of principles specifying how to determine a group's basic entitlements. We also need to be

able to determine if the aspects of a group's well-being that it wishes to promote are justifiable to the society from which the group expects to receive powers, privileges, or exemptions. Young thinks that introducing mutually exclusive categories of national and cultural/ethnic minorities for this purpose would be a misguided move.[35] In this book, I show that distinguishing between national and other types of minorities helps to set up a framework for the just inclusion of individuals in their multinational or multicultural states—the ideal that Young embraces. My approach provides guidelines for the determination of group entitlements based on the constitution of group agents. I give a definition of nationhood that allows us to decide questions like those that Young considers problematic for a "rigid" theory: whether Jews were a nation prior to the founding of the state of Israel or whether a group of African Americans who has lived in rural Alabama for generations is a nation.[36] I define nations as collective agents with a particular type of political culture that does not require the possession of the state but that is based upon the shared end of acquiring or maintaining effective agency in relation to the capacity of the group to control its own political future. Based on this definition, those Jews who shared a political culture based on the desire to acquire their own state were a nation prior to 1948. If African Americans of Alabama adopt this type of political culture, they would also have to be considered a nation, which is not the case at the moment. Thus, it is possible to maintain the distinction that Kymlicka introduces by considering nations as collective agents of a certain type.

A general framework for the determination of group entitlements based on the constitution of group agents is necessary also because we cannot assume that the current boundaries of existing multicultural societies are prima facie justified. The very notion of a multicultural society presupposes a set of defining features that identifies a group of people as a society. If these are lacking, the authoritative reach of the government over all of its territory and all of its citizens may be unjustifiable and the society would be better off, as far as justice is concerned, dividing into a number of independent political units. Defining the grounds for the membership of groups in a multicultural society creates the prospect of agreement on the issue of the larger society's organizing principles. Besides, without considering the entitlements of the groups present in a society, we cannot have a fair picture of how the larger society is constituted.

To determine minority groups' entitlements, we need to pay attention to the shared intentions of the group members regarding their political status in relation to state institutions—and thus to the type of political culture shared by the group. The right to self-government in the case of national minorities grows out of the shared goals and cooperative actions of the group members with respect to what they consider to be the desirable political expression of their group's internal organization (what Denise Réaume calls the "internal constitution" of the group).

I endorse Kymlicka's insight concerning the need for a principled, "rigid" basis for distinguishing among different types of group entitlements. But it is clear that closer attention to the constitution of group agents is warranted if we are to answer the range of criticisms above concerning differential group rights. In Chapter 2,

I argue that we can consider groups to be collective agents and that the entitlements and constitution of group agents are connected. That a group is a particular kind of collective agent enables us to identify it as a nation, and paying attention to the group constitution of both national and other types of minorities allows us to differentiate between types of groups, their entitlements, and changes in group identities.[37]

It is also important to consider how to determine whether a group's demands are truly constitutive of the group, that is, whether they correctly register the freely endorsed beliefs and intentions of group members or whether they are accidental or strategic. Explicitly considering the constitution of group agents allows us to evaluate whether the group's demands are justified.[38] Moreover, though the existence of groups is contingent and their membership and character can change, this does not mean that their constitution is not significant for the regulation of their relations with others, for it is precisely changes in their constitution that warrant a change in norms. Collective agents form intentions and engage in cooperative actions to fulfill these intentions. If a group that advances purely cultural claims later mobilizes as a self-determining group, its demands ought then to be dealt with accordingly. The question may be whether group agents of a particular kind should be allowed to exist, but this is precisely why we need to identify groups' constitution and assess their claims' authenticity and legitimacy to determine the answer to this question. This of course requires verification of whether the collective agent is what it claims to be. For example, strategic claims by political elites that are not endorsed by group members do not represent demands of the group. Or, in an oppressive society an official expression of group identity is not representative of the true make-up of society.

The presence of rules regulating the relations of group agents based on the evaluation of their mutual standing will certainly not prevent them from acting in violation of these rules, but the rules ought to exist to enable the evaluation of group behavior. The relevant questions are who has a particular right (the type of group and whether it is the group as a group or individuals that hold the right) and how it should be justified, as well as, in the case of self-determination, how it relates to territory.

Self-Determination, Territory, and the Continuity of Entitlement

Let us begin with the task of describing the holders of the right to self-determination. Can we say that national minorities represent a particular type of group that has a moral right to self-determination?

Avishai Margalit and Joseph Raz call a group relevant to the determination of the moral entitlement to self-government an "encompassing group."[39] The characteristics of the group that are relevant to a case for self-government and, ulti-

mately, self-determination are quite complex and include the following aspects: The group is a big and anonymous community, with a common character and a common culture that encompass many, varied, and important aspects of life. Individuals grow up in the culture, and while membership in a group is in part a matter of mutual recognition, it is a matter of belonging, not achievement. Membership in the group is important for individual self-identification and is a collective good from which the right to self-determination derives. As such, it is a group right.[40]

Margalit and Raz's notion of encompassing group reflects the complexity of group constitution in relation to group entitlements. It is a complicated task, however, to justify the right to self-determination based on their notion of an encompassing group. They provide an instrumental argument for the right to self-determination that rests on an appreciation of the great importance that membership in and identification with encompassing groups has in the lives of individuals and on the importance of the prosperity and self-respect of such groups to the well-being of their members. That importance makes it reasonable to let the encompassing group that forms a substantial majority in a territory have the right to determine whether that territory should form an independent state in order to protect the culture and self-respect of the group, provided that the new state is likely to respect the fundamental interests of its inhabitants and provided that measures are adopted to prevent its creation from gravely damaging the just interests of other countries.[41] Margalit and Raz also state that the case for self-government applies to groups that are not in the majority anywhere, but that they do not have a right to self-determination.

This approach is sensitive to the realities of international relations and offers a strong alternative to individual-rights based approaches to the justification of group rights. Nevertheless, unless the meaning of self-determination as it applies to encompassing groups is clarified, Margalit and Raz's instrumental justification of the right to self-determination may yield some counterintuitive results. In the view of Margalit and Raz, numbers count in determining a group's entitlement to self-determination, for in the end the right to self-determination is applied to a territory. Thus, a substantial majority within a given territory is needed to ensure that the granting of independence to a group will not generate a problem larger in scale than the one it solves. It is important, however, to specify how we determine who is the relevant majority and what the relevant territory is. While Margalit and Raz relate the entitlement to self-government to the constitution of a particular type of group, it is not clear whether the right to self-determination is simply tied to any territory that the majority group deems suitable for itself. If the majority of 90% wants a given territory to be an independent state but there is a minority of 10% that considers itself a nation within this territory, is it justifiable to say that the minority in this case has no self-determination rights? Also, do present boundaries matter? Could the Russians in the eastern part of Estonia (where they were a majority of between 80 and 90%), for example, have obtained, after the fall of the Soviet Union, the right to self-govern? If Margalit and Raz would say that we ought to consider the whole of Estonia as the relevant territory, not only one part of it, this begs the question of the territory associated with the entitlement to self-determination, because it is not clear why historical borders are taken for granted prior to the

determination of what encompassing communities exist within a territory. Assigning territories within already existing boundaries to their majority encompassing nations ignores the fact that the boundaries themselves are one contested issue that the identification of self-determining communities aims to resolve. Moreover, doing so means that everyone in the territory will be tied to the encompassing majority and that other, smaller encompassing cultures in the territory will be ignored. If Margalit and Raz would not think that the whole of Estonia is the relevant territory, on the other hand, then their theory is indeterminate, because the criterion they use to establish the entitlement to self-determination of a qualifying majority within a territory could lead to the same group's qualifying for the right when the territory is divided in one way and failing to qualify when it is divided differently.

Margalit and Raz's theory may work for defining the right to self-determination in a territory with one national group and possibly some non-national minorities. For more complicated cases where several national groups are mixed in one territory, however, some other means is needed to determine a group's qualification for the enjoyment of self-determination. We need to start with the identification of all political communities, regardless of their size, within the territory of the state. All national groups must be considered in defining a principled entitlement to self-determination if we are to prevent the strategic division of territories by majorities wherein only the majority encompassing group determines whether the territory it considers its own shall form an independent state. Then we need to determine how a state (if a single state is to exist for this territory) might be organized to protect all of the encompassing cultures. This does not necessarily guarantee that all groups will be able to exercise the right to self-determination in the same form, but pragmatic limitations on the enjoyment of the right should not interfere with the issue of moral entitlement.

According to Margalit and Raz, moreover, a group can lose its right to self-determination (even if it is entitled to restitution) after having been expelled from a territory in order to protect the existing inhabitants of the territory.[42] This outcome follows from their focus on territory in the definition of the right. It seems that Margalit and Raz tend to take existing boundaries for granted, regardless of their justice. Their account, however, creates a perfect case for the Russian domination of eastern Estonia after the fall of the USSR—a troubling outcome from a moral perspective.

There are additional problems with an approach like that of Margalit and Raz. It could motivate some communities to engage in wars of accession and then hold on to the conquered territory long enough to create an encompassing community that is loyal to them or to expand their encompassing community into the territory, thus claiming it for themselves. This situation could also cause expelled groups to mobilize aggressively and attempt to use force to reclaim their territory. Finally, their theory countenances a situation in which some individuals in the territory of a state count for more than others: they are protected both as individuals and as encompassing group members. This leads to the valuing of groups over individuals unless all groups within the territory of a state are given equal consideration. It could be that Margalit and Raz allow for the unequal treatment of individuals: so long as the basic minimal set of entitlements is assured for all, the discrepancy between the treat-

ment afforded to the members of the encompassing group and the rest is irrelevant. But then their valuing of some groups over others is unexplained, given the careful attention it pays to the significance of encompassing groups. These difficulties arise because Margalit and Raz do not conceive of the bounds of encompassing groups as primarily defined in the groups' relations to others as political communities with certain goals and aspirations and do not consider the right to self-determination to be a basic right of all groups that are so constituted.

That Margalit and Raz combine the idea of the encompassing group with a restricted understanding of self-determination may be an impediment to extending their theory to difficult cases like that of the Kurds, who are an encompassing group but who are not in the majority in any current state. Margalit and Raz's approach needs to be clarified for cases of this sort. Perhaps Margalit and Raz can argue that Kurds have the right to self-government not as a cross-border group but *within* each state they inhabit. In this case, we need to explain how to apply the idea of encompassing Kurdish culture to each unit of the Kurdish self-government. In Chapter 3, I argue that we do not need an idea as broad as encompassing culture to determine the holders of the right to self-determination. Why is it that Americans and English-speaking Canadians do not share the same encompassing culture? It seems that their adherence to different political cultures is sufficient to differentiate between the two communities. I define nations in Chapter 3 based on the idea of political culture, and in the next chapter I argue that the type of group entitlement can be determined based on how the constitution of the group positions it in relation to non-members. The enjoyment of the right to self-determination does not have to be given up, moreover, if the right is modified so as to sever the connection between the right to self-determination and the right to statehood. Margalit and Raz seem to consider self-determination to mean sovereignty over a territory. What Jeff Noonan calls the "exclusionary logic of rights" applies to the right to self-determination in this territorial understanding: "A right … necessarily … excludes other groups or individuals from interfering with the exercise of the right," Noonan writes. If there is a dispute between two groups over certain property (like resources) wherein one group has control over the property the other lays claim to, using rights "does not address the problem—exclusion—but simply doubles it."[43]

The right to self-determination does not have to be exclusionary, because self-determination does not need to be associated with statehood or sovereignty over a territory, as Chaim Gans demonstrates. He provides a blueprint for sub- and inter-statist self-determination that can be shared by a number of groups in the same territory. I will discuss his approach to territory in more detail in Chapter 6. Gans also offers a non-instrumental justification of the right. He studies "cultural nationalism." By this, he means that members of a group sharing common history and societal culture have a fundamental, morally significant interest in adhering to their culture and in sustaining it for generations. He does not focus on "statist nationalism," or the interest of states in the homogeneity of their citizens. The groups relevant to self-determination for Gans are similar to Margalit and Raz's encompassing group.[44] Gans argues that a right to self-determination is not a right to a statist and

territorial sovereignty.[45] Rather, a group has to be given a package of privileges, normally within the state that includes its homeland: self-government rights, special representation rights, and rights to cultural preservation. He advocates the possibility of a group's moving to a formative territory, such as a territory of primary importance in forming the historical identity of the group, and sharing self-determination there with groups already in place.[46] This presupposes that groups without current geodemographic conditions for self-determination can obtain it. I consider this a morally consistent outcome.

Gans defends cultural nationalism using two theses—the adherence thesis, which states that people have a basic interest in adhering to their culture, and the historical thesis, which holds that people also have a basic interest in recognizing and protecting the multigenerational dimension of their culture.[47] He also formulates the political thesis, which maintains that the two basic interests should be protected politically. Gans argues that Kymlicka's defense of national self-government based on the idea that an interest in culture is a prerequisite for people's freedom and identity cannot be used to defend the historical thesis, because Kymlicka's argument does not easily translate into the need for the generational continuity of culture.[48] First, the descendants are not "predisposed" to be attached to the culture of their parents and can satisfy their need for freedom within another culture. Likewise, these people's parents' desire to understand their children and share their world can also be fulfilled regardless of what culture the people choose.[49] In addition, an illiberal culture can impair the freedom and welfare of future generations, and the preservation of such a culture cannot be defended by Kymlicka's freedom-based argument. The approach that Gans proposes remedies these problems in the following way: people's ambition to undertake projects that will endure beyond their lifetime can be realized in a national culture. Thus, the endeavors people undertake have significance only within the existing and flourishing national culture, and people's interest in the meaningfulness of their endeavors justifies the historical dimension of nationalism.

The meaning of "endeavor" needs to be clarified, however. Why should children be interested in the endeavors of their ancestors? Gans seems to suggest that it is the interest of the existing members of a culture that counts. But then why do the aspirations of individuals concerning their membership in their group, considered from this angle, acquire more weight than when they are looked at from the point of view of the individual's interest in culture as a prerequisite for their freedom and identity, which Gans criticizes?

A difficult problem for Gans's approach is presented by cases in which the members of a culture want it to survive, but their belief in the persistence of the culture is mistaken because the culture has undergone a change. Consider what happened to Moldova: After the fall of the Soviet Union, the nation-building effort of Moldova, the former Soviet republic organized on Romanian territory annexed by the USSR in 1940, initially aimed at reunification with Romania but later changed focus to building an independent state. The mobilization of a national collective agent in Moldova reflected a shift in the meaning of its members' beliefs about national identity and

the locus of political authority—and their corresponding political culture—from pan-Romanian to independent Moldovan. The nation-building strategy organized around independent Moldovan identity won out over the strategy of unification with Romania. The same historical events are now interpreted as belonging to two different national histories—Romanian and Moldovan.[50] Viewed from Gans's perspective, the inhabitants of Romania prior to the annexation of its part by the USSR shared a common history and societal culture and had a fundamental, morally significant interest in adhering to their culture and in sustaining it for generations. The inhabitants of the present Moldova have splintered from this cultural identity, however, due to a political rupture with the past. The Moldovan territory was part of a culture that pre-World War II Romanians endeavored to preserve. If a basic interest in preserving the multigenerational dimension of culture is not affected by the reduction in the scope of the territory a group aspires to control (that is, if we can still consider that the "branched" Romanian culture is preserved separately within present-day Romania and Moldova, with adjustments for the changes in the locus of political authority created by changes in boundaries), this interest is not affected by changes in membership either, and the cultural communities to be preserved acquire "fuzzy" boundaries. The strength of the "endeavor" argument is diminished under these conditions of indeterminacy. It is crucial for the argument to clearly delineate the conditions and boundaries of membership in a culture that is to be preserved if the argument is to fare better than freedom-based arguments in defending the basic interest in the intergenerational preservation of the culture. In other words, the culture associated with the endeavor has to be fairly determinate; it cannot be just *any* culture, for then the endeavor argument faces difficulties similar to those of the freedom-based arguments when they defend the importance of culture to individual interests.

The dynamic aspect of national identity is recognized by Gans when he discusses the case of Jews from India who no longer perceive Israel as their formative territory. He advocates limiting Israel's Law of Return, which presently grants the right to emigrate to Israel to any person of Jewish nationality. His conception of the Jewish nation is different from that of the Law of Return in significant ways, and it needs to be explained, given his culturalist account, how these conceptions can similarly refer to anything as significant as the life endeavors that are characteristic of a nation and who is to judge which of the conceptions of the Jewish nation—the one that includes or the one that excludes Jews from India—constitute it. Something more than his endeavor-based approach is needed to define the type of "community" relevant to the idea of self-determination. To reintroduce some determinacy to the picture, we can notice that it is, perhaps, the intentions of individuals standing in relation to one another as a community that matter, regardless of whether the future they envision for the community is attainable (or whether the past they attribute to it is factual). If we attend to the intentions of groups, we end up with not a historical thesis but an account of collective agency, or group agency.

As I discussed in this chapter, we cannot reduce group rights to individual rights, as doing so immediately requires us to clarify what group of individuals holds a particular right. The theories of group entitlement I considered in this

chapter must identify with more precision why certain groups are eligible to enjoy self-determination if they are to be useful. The clarifications required of various approaches to justify granting self-determination to groups or to differentiate self-determination from other types of entitlement converge upon the idea that groups entitled to self-determination are agents of certain kind. I use the idea of group agency to discuss the meaning of group rights and differentiate between the right to self-determination and other group rights in light of the constitution of group agents in the next chapter.

Notes

1. *Charter of the United Nations* (San Francisco: UN Conference on International Organization, 1945), ch. 1, art. 1–2.
2. *Declaration on the Granting of Independence to Colonial Countries and People* (New York: General Assembly UN, 1960), A/RES/1514 (XV); *International Covenant on Civil and Political Rights* (New York: General Assembly UN, 1966), A/RES/2200A (XXI); *International Covenant on Economic, Social and Cultural Rights* (New York: General Assembly UN, 1966), A/RES/2200A (XXI).
3. *Charter of the United Nations*, ch. 1, art. 2, sec. 7.
4. For more discussion, see Steven R. Ratner, "Does International Law Matter in Preventing Ethnic Conflict?"*International Law and Politics* 32 (2000): 591–642.
5. CSCE, Copenhagen meeting of the Conference on the Human Dimension, June 29, 1990, 29 I.L.M. 1305.
6. The statute of the Court presupposes that "only states may be parties in cases before the Court." See *Statute of the International Court of Justice*, ch. 2, art. 34, sec. 1.
7. Benedict Kingsbury calls this clash a "fundamental conflict between values of justice and the hitherto dominant values of order." See his "Claims by Non-State Groups in International Law," *Cornell International Law Journal* 25 (1992): 481.
8. Margaret Moore, *The Ethics of Nationalism* (Oxford: Oxford University Press, 2001).
9. Kingsbury points out that *ad hoc* responses to claims of non-state groups when "no adequate normative or procedural framework has been established in advance result in a very limited compliance-pull and legitimacy of norms and procedures." See "Claims by Non-State Groups," p. 485.
10. For this account, see Buchanan, "Recognitional Legitimacy and the State System." James A. Graff argues, for example, that individual human rights alone can justify the creation of ethnoculturally based sovereign states or self-governing entities. See "Human Rights, Peoples, and the Right to Self-Determination," in *Group Rigths,* ed. J.Baker (Toronto: University Toronto Press, 1994), p. 213. Michael Hartney maintains that the idea of collective rights is not conducive to clear thinking and that the rights of individual members of communities to the preservation or protection of their communities suffice to defend those communities' interests. See "Some Confusions Concerning Collective Rights," in *The Rights of Minority Cultures*, ed. Will Kymlicka (Oxford: Oxford University Press), p. 221.
11. Allen Buchanan, "What's So Special About Nations?" in *Rethinking Nationalism*, ed. J. Couture, K. Nielsen, and M. Seymour (Calgary, Alberta: University of Calgary Press, 1996), p. 294.
12. Charles Larmore, "Political Liberalism," *Political Theory*, Vol. 18, no. 3 (August 1990), pp. 339–360, p. 351.
13. These obligations exist on the grounds of the "fair play" justification, by which the enjoyment of the benefits of a cooperative scheme is considered to generate an obligation to support the scheme. For a discussion of this argument, see A. John Simmons (1979), pp. 101–141.

14. Christopher H. Wellman, "A Defense of Secession and Political Self-Determination," *Philosophy and Public Affairs* 24, no. 2 (Spring 1995): pp. 142–171.
15. He argues that legitimate states should be owed respect, but so should, under certain circumstances, secessionist groups: "any group has a moral right to secede as long as its political divorce will leave it and the remainder state in a position to perform the requisite political functions." Christopher Wellman, *A Theory of Secession: The Case for Political Self-Determination* (Cambridge, New York: Cambridge University Press, 2005), p. 1.
16. Ibid., pp. 32 and 37.
17. Ibid., p. 19.
18. Ibid., p. 27.
19. Larmore, p. 352.
20. John Rawls, *The Law of Peoples* (Cambridge, MA Harvard University Press, 1999), pp. 23–27.
21. Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995), p. 75.
22. This may not always be true: they may integrate out of economical necessity while wishing to maintain a national minority status.
23. Kymlicka, *Multicultural Citizenship*, p. 76. This culture, according to Ernest Gellner's description, is the one of mobile, educated, anonymous society, where individuals are subject to "random-seeming, entropic mobility and distribution." Gellner, *Nations and Nationalism* (Oxford: Basil Blackwell Publisher Limited, 1983), p. 64. "The members of such community are and must be mobile, and ready to shift from one activity to another, and must possess that generic training which enables them to follow the manuals or instructions of a new activity or occupation. In the course of their work they must constantly communicate with a large number of other men, with whom they frequently have no previous association, and with whom communication must consequently be explicit, rather than relying on context. They must also be able to communicate by means of written, impersonal, context-free, to-whom-it-may-concern type messages. Hence, these communications must be in the same shared and standardized linguistic medium and script" (Gellner, p. 35).
24. David Miller, "Secession and the Principle of Nationality," in *Rethinking Nationalism,* ed. J. Couture, K. Nielsen, and M. Seymour (Calgary, Alberta: University of Calgary Press, 1996), p. 266.
25. David Miller, *On Nationality*, p. 113.
26. Joseph H. Carens, "Liberalism and Culture," *Constellations* 4, no. 1 (April 1997): pp. 35–47.
27. Chaim Gans, *The Limits of Nationalism* (Cambridge: Cambridge University Press, 2003), p. 47.
28. This also answers Gerald Doppelt's challenge to the referral to historical reasoning in assigning entitlements to groups. According to Doppelt, if existing cultural identity and membership are what count for Kymlicka, it is hard to accept Kymlicka's history-based reasons for barring ethnic minorities from ever gaining the status and group rights appropriate to national minorities. Gerald Doppelt, "Is There a Multicultural Liberalism?" *Inquiry* 41, no. 2 (June 1998), pp. 223–248.
29. David A. Hollinger, "Not Universalists, Not Pluralists: The New Cosmopolitans Find Their Own Way," *Constellations* 8, no. 2 (2001): p. 244.
30. Iris Marion Young, "A Multicultural Continuum: A Critique of Will Kymlicka's Ethnic-Nation Dichotomy," *Constellations* 4, no. 1 (1997): pp. 48–53. Young writes: "According to Kymlicka, justice for national minorities requires self-government rights, the rights of the national minority to govern their own affairs within their own territory. . . . Polyethnic rights, on the other hand, give special recognition to cultural minorities in order to compensate for the disadvantages they would otherwise have in political participation and economic opportunity in the larger society." See pp. 49–50.
31. Ibid., pp. 50–51.
32. Ibid., p. 53.

33. A policy dominated by an approach like Chandran Kukathas's, for instance, may not register group grievances correctly. He argues against group rights by saying that even among "generally" disadvantaged groups it is impossible to say that any particular member of a group is disadvantaged vis-à-vis the "dominant" group. Chandran Kukathas, "Cultural Rights Again: A Rejoinder to Kymlicka," *Political Theory* 20 (1992): pp. 674–80. Kukathas argues that "groups are not made up of equal persons and not all members of a group are unequal (in the relevant respects) to all those outside it." Thus: "To treat the group as a whole as 'less equal' to those outside with respect to, say, resources, would violate liberal equality to the extent that some group members are, in fact, better endowed with resources than some outsiders. It is because of the nature of 'groups' as associations of differently endowed individuals, whose memberships are not constant but in a state of flux, that liberal egalitarianism has... generally upheld individual rather than group equality—and individual rather than group rights." See pp. 674–75.
34. Another perspective that can interfere with Young's project and prevent it from correctly meting out justice with respect to groups is presented by James Nickel in a criticism of Kymlicka. Nickel makes a case for the indifference of the cultural context in protecting the freedom of individuals: "An adult does not need to continue to belong to her native culture, or even to any particular culture, in order to have options for choice or in order to retain and develop her capacity to form and revise beliefs about value." James W. Nickel, "The Value of Cultural Belonging: Expanding Kymlicka's Theory," *Dialogue* 33 (1994): 637. When actively pursued in the public political domain, this kind of approach, whether it is Nickel's indifference to the particularity of cultures or the individualistic anti-group perspective advanced by Kukathas, will allow Young to guarantee the defense of group membership only if there is a consistent and principled ground for the treatment of groups that counters it.
35. Young, "A Multicultural Continuum. . ." p. 51.
36. Ibid., p. 50.
37. Paying attention to group constitution for both national and other types of minorities also solves the problem Sujit Choudhry claims to exist for Kymlicka's account. He argues that Kymlicka's warrants for the distinction between immigrant and national minorities are based solely on what these groups actually demand. Sujit Choudhry, "National Minorities and Ethnic Immigrants: Liberalism's Political Sociology," *Journal of Political Philosophy* 10 (2002): 68.
38. Choudhry might object that then we assign normative significance to facts of political sociology. He argues that this would be akin to a naturalistic fallacy, wherein the fact that a given sociological condition exists proves any implied normative implications. Ibid., pp. 67–69. Choudhry does not distinguish the constitution of group agents from the institution of norms related to this constitution. Merely saying that agents can be defined by what they claim is not naturalistic fallacy, nor is saying that satisfying a definition of this type is a necessary condition for a certain type of entitlement. We ought to distinguish the constitution of agents and the evaluation of their entitlement based on what they are. It may be that Choudry is objecting to the institution of a set of norms that would systematically establish the entitlement of groups by type. I have already explained, however, why the ad hoc regulation of group relations is not satisfactory from a normative standpoint.
39. Avishai Margalit and Joseph Raz, "National Self-Determination," *Journal of Philosophy* 87, no. 9 (September 1990): p. 455.
40. Ibid., pp. 256–257.
41. Ibid., p. 457.
42. Ibid., p. 459.
43. Jeff Noonan, "Need Satisfaction and Group Conflict: Beyond a Rights-Based Approach," *Social Theory and Practice* 30 (2004): p. 182.
44. Gans, *Limits of Nationalism*, p. 1.
45. Ibid., p. 119.
46. Ibid., p. 108.

47. Ibid., p. 2.
48. Ibid., p. 39.
49. Ibid., p. 51.
50. For some good accounts of developments in Moldova after the fall of the Soviet Union, see Charles King, *The Moldovans: Romania, Russia, and the Politics of Culture* (Stanford: Hoover Institution Press, Stanford University, 2000); Charles King, *Post-Soviet Moldova: A Borderland in Transition*. (Iasi: Center for Romanian Studies, The Foundation for Romanian Culture and Studies, 1997); and Andrei Stoiciu, *Fiction et Réalité Identitaire: Le cas de la Bessarabie* (Montreal: Humanitas, 1995).