

Legal Doctrines on Self-Determination, Multinational Federations and the Challenges of Peaceful Nation-building: Reference to Moltchanova, A. (National Self-Determination and Justice in Multinational States)

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ABSTRACT

The challenge of self-determination can be traced to precolonial days when nations struggled for independence. Even though, many countries around the world today have achieved political independence, the recent call for secessions by the Indigenous People Of Biafra (IPOB) and the tragic expulsion of people of other nations from South Africa make it necessary to revisit the idea of self-determination. Furthermore, the presentation of the concepts with reference to the protection of the legal/right process of the people by Moltchanova, A. as a precondition for either successful co-habitation or peaceful separation are explored in this article.

Key words: Self-determination, People, Rights, Minority, Domination

Aims Research Journal Reference Format:

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1. INTRODUCTION

Although the principle of self-determination has long been recognised as a political concept, it has only assumed the status of a legal right since 1945. It remains controversial because it is not always easy to clearly identify who possesses the right or what implementation of the right entails. The United Nations Charter refers to the principle of “equal rights and self-determination of peoples” in Article 1(2), but the Universal Declaration on Human Rights (UDHR) makes no specific mention of self-determination although Article 21 provides that:

- “1) everyone has the right to take part in the government of his country, directly or through freely chosen representatives; ...
- 3) the will of the people shall be the basis of the authority of government ...”

Events during the 1950s in colonial territories brought the issue of self-determination to the forefront of discussion, and in 1960 a United Nations General Assembly including a number of newly independent States adopted the Declaration on the Granting of Independence to Colonial Territories and Peoples which states that:

1. the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation;
2. all peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development;”

The provisions of paragraph 2 were contained in the common Article 1 of both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and, since 1966, recognition of the right of peoples to self-determination has been repeated in a number of resolutions and treaties. In the Western Sahara case (1975) the International Court of Justice (ICJ) confirmed that the right was one recognised by international law.

The principle of self-determination certainly now seems to be a part of international law, but the problem remains as to who or what constitutes a people capable of possessing and asserting the right. The legal concept was developed during the period of decolonisation, when it was easier to identify peoples who did not enjoy full rights to determine their own economic, social and cultural development because of the presence of the colonial government. From the 1970s onwards, the right has been asserted by groups wishing to establish a state (for example, IPOB) in part of the territory of an existing state or states, and this has created problems which have yet to be resolved. Article 27 of the ICCPR provides that:

“In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

This article certainly appears to recognise a peoples’ right and echoes some of the minority protection measures that were adopted after the First World War, as Anna Moltchanova (2009:x) rightly argues that:

“One precondition for encouraging a group to cooperate ... 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.”

(The article however, does not provide a full-blown right of self-determination).

The question of the existence of such a right in a non-colonial situation was considered by the Badinter Arbitration Committee, which was established by the European Union in August 1991 to consider various questions of law arising from events in former Yugoslavia. One of the questions presented was whether the Serbs living in Bosnia and Croatia had the right to self-determination. The Arbitration Committee, after making a study of the international law regarding the issue, came to four main conclusions:

1. The right to self-determination must not involve changes to existing frontiers at the time of independence except where the states concerned agree otherwise;
2. Where there are two or more groups within a state constituting one or more ethnic, religious or language communities, they have the right to recognition of their identity under international law;
3. Article 1 of the two 1966 Covenants establishes that the principle of the right of self-determination serves to safeguard human rights. By virtue of that right, every individual may choose to belong to whatever ethnic, religious or language community he or she wishes; (Moltchanova 2009)
4. The Serbian population in Croatia and Bosnia is entitled to the rights accorded minorities and such rights must be protected by the governments of Croatia and Bosnia;

The decision is important, as it is one of the few, if not the only, occasions in which an international tribunal has been called upon to consider whether a particular group has a right of self-determination and the consequence of that right. It would appear that, although all peoples have the right to self-determination, this should not be understood as a right to independent statehood. Where an identifiable group lives in an existing independent state, it is clear that they are entitled to minority rights; but it could be argued that “the right to recognition of their identity” goes beyond this and suggests that such a group is entitled to some measure of autonomy as well.

Certainly, many of the peace proposals that have been made with regard to Bosnia have included recommendations that the Serbian population in Bosnia would possess powers in respect of their own government. However, such an interpretation of a limited right of self-determination in a non-colonial situation is not supported by the provisions of the Vienna Declaration of 1993, adopted at the United Nations World Conference on Human Rights. Paragraph 2 re-affirms the right of all peoples to self-determination, but continues by stating that:

“This shall not be construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent states conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a government representing the whole people belonging to the territory without distinction of any kind.”

Puerto Rico, for instance, was a Spanish colony for almost four centuries until it was ceded to the United States following the Spanish-American War (1898). Today, it remains geographically and culturally part of Latin America despite its close ties to the United States. Almost all residents speak Spanish as their primary language. When Puerto Rico became a territorial possession of the United States in 1898, the United States appointed almost all the governing officials on the island. Although the United States extended U.S. citizenship to Puerto Ricans in 1917, Puerto Rico remained a territorial possession. During the first half of the 20th century, many Puerto Ricans were dissatisfied with U.S. rule, and a growing movement for independence or at least for self-government in local matters began. In 1952 Puerto Rico achieved local self-government when it became a commonwealth. Under the provisions of Puerto Rico's constitution, residents elect a governor and legislators who control local matters on the island, and the U.S. government maintains jurisdiction over the island's defence, foreign relations, and trade agreements.

Since 1952 Puerto Ricans have debated whether the island should remain a commonwealth, attempt to become the 51st state of the United States, or become an independent nation. Puerto Rico has held a number of referenda on this issue. The vast majority of voters remain closely split between commonwealth status and statehood. However, attempts in the 80s and 90s within the Committee of 24 to have the General Assembly consider the “colonial” relationship between Puerto Rico and the United States show that there are continuing doubts about associated statehood as a method of decolonisation. The United States government rejects these attempts by the Committee of 24 as interference in its domestic affairs (Puerto Ricans are United States citizens). It points out that the people of Puerto Rico have exercised their right to self-determination in a democratic way and that moreover they are free to re-consider the nature of their relationship with the United States at any time.

Against these assertions it has been argued that in the face of Puerto Rico's political and economic dependence on Washington, self-determination cannot take place.

“Puerto Rico is not in fact free to determine its future relationships with the mainland because it has relatively little power to act on its preferences. Regardless of what Puerto Rico wants, Washington will ultimately decide what Puerto Rico gets. Thus, the central issue facing policy makers regarding Puerto Rico is not self-determination but dependence. Until the United States addresses the unequal nature of the relationship, self-determination cannot take place”.

The author asserts that:

“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. This approach, however, ignores states that respect human rights but harbour 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. Sub-state 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”. (Moltchanova 2009:xvii)

Applying the above excerpt to the Puerto Rican situation most likely iterates an existing right to self-determination; the chances today of acceptance by the General Assembly of Puerto Rico's status of associated statehood would seem to be somewhat doubtful, given the fact that, for example, United States law does not explicitly acknowledge a Puerto Rican right to unilaterally alter its status and that the United States Congress unilaterally extends laws to Puerto Rico without the latter having a vote to influence such decisions. Another example could be afforded by the separatist tendencies within the province of Quebec. In re Reference by the Governor in Council concerning certain questions relating to the secession of Quebec from Canada the Canadian Supreme Court was required to rule on whether any right of self-determination arising in international law gave Quebec the right unilaterally to secede from Canada. In rejecting the existence of any such right the Court ruled:

- (i) That international law recognises a distinction between internal self-determination and external self-determination;
- (ii) That any right of external self-determination arises in strictly limited circumstances;
- (iii) That international law does not specifically grant component parts of sovereign states the legal right to secede unilaterally from the 'parent' state;
- (iv) That international law supports the general principle of territorial integrity of states;
- (v) That any right to external self-determination could only arise:
 - a. in the colonial context;
 - b. where there has been alien subjugation; or
 - c. where the right of internal self-determination is denied.

Thus, even if the population of Quebec could be characterised as a 'people' it was clear that as the people of Quebec had full rights to participate in civil and political life. One must not overlook, however, the fact that the right of self-determination provides the overall framework for the consideration of the principles relating to democratic governance, both internally and externally. The author rightly asserts that:

"It is difficult for the international community to affect states' behaviour toward national minorities within the current system. With the exception of violations of internationally recognised 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 authorise 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." 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. Since sub-state 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—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-defence when their political community is in danger, though legally self-determining political entities can." (Moltchanova 2009:2)

One need only remember the Biafran situation in Nigeria to ascertain the veracity of the aforementioned fact. I agree entirely with the author that: The lack of international models regulating the status of sub-state national groups with respect to their host multinational states does not aid to resolve internal conflicts within these states and contributes 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 behaviour of national groups, it needs to determine sub-state 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. One theory of the sub-state accommodation of self-determination recognised by the author is offered by Margaret Moore, (2001) 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. This theory, though having strong implications for peace in a multinational state, is criticised on the ground that even a very substantial accommodation built on prevailing values, such as autonomy within the host state evinces disparities 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 reverberate with standing tensions, moreover, they contribute to the instability of multinational states. To this cause however, (the author) Moltchanova (2009) counsels that a theory of federalism that prescribes the norms for a just federal arrangement also needs to ensure an international normative dimension that describes a fair status for all national groups in relation to one another. We can therefore, for instance, provide equality of identity to citizens by ensuring their equal individual participation in politics.

Flowing from the above, the author further argues that the requirement of treating sub-state 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. If a group's preferences are based on a vote of the entire nation, it could easily be outvoted, as could be afforded by a comparison of the northern majority and the Ijaw minority of the Nigerian population. However, if its preferences are based in a region in which it constitutes majority, then its preferences would implicitly be supported. This situation is likely to result eventually in an open expression of the group's claim to self-determination and in its mobilisation to achieve its goals. Such a mobilisation 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 sub-state 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.

Allen Buchanan (1998) argues 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. The author believes, however, that there is an essential connection between nationhood and self-determination. Buchanan (1998) argues that self-determination can be realised 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 (1998), 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 on-going 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. The nations approach to self-determination proposed by (the author) Moltchanova (2009) upholds respect for human rights as a basic moral norm of international behaviour, but it also requires the recognition of a moral entitlement of all national groups to equal status. The nations approach maintains that the norm of legitimacy is not satisfied by political authority in a multinational state if it does not provide fair conditions of membership for its sub-state national groups, including equality of status with respect to self-determination. The nations approach holds, therefore, that respect for the human and minority rights of citizens as well as their national identity is required for the just arrangement of multinational states. If a state does not address claims to self-determination on its territory properly, it cannot be considered minimally just, even if it does not violate human rights.

The nations approach assists with the maintenance of agents' constitutions and aims to shape their interactions in the best way possible to achieve equality of control over their political futures within the state. In extending legal regulation to those self-determination claims that are now beyond the scope of the right to self-determination, the nations approach aims to minimise secessionist attempts in multinational states. It increases the range of possibilities for the satisfaction of self-determination claims by allowing and encouraging the exercise of self-determination within existing state borders, thereby reducing the potential instability of multinational states. One of the goals of the nations approach is thus to ensure the stability of host states by securing their compliance with the ideal of just treatment afforded to all group agents on their territory with verifiable claims to self-determination.

The nations approach both acknowledges that it is important to preserve the territorial integrity of states and draws no necessary conceptual connection between nationhood and statehood. The consequence of the principle of equality of national self-determination for the domestic politics of multinational states is that national groups are not accorded a mere partial re-distribution of power that is still vested in the main nation, but rather are given equality of status with other national groups, which is reflected in the constitutional and institutional organisation of the state. A state entitled to territorial integrity should fairly represent all the national groups on its territory without giving only one group (or only some groups) privileged access to state power.

Three aspects of the legal system of a multinational state ought to comply with the nations approach for a state to satisfy the norm of legitimacy:

1. The general norms of the system, such as the state's constitution, bill of rights, or initial agreements determining the mutual status of the parties;
2. Norms governing autonomy arrangements between the state and each national group; and
3. Norms that categorise the entitlements of various subjects in mixed federations (federations with both national and territorial subjects).

Bringing these norms into compliance with the nations approach is necessary to provide acceptable terms for the organisation of the political institutions of a multinational state. The nations approach requires that the conditions of equal discourse in a multinational state be satisfied or sufficiently well approximated. The conditions of equal discourse protect the equal freedom of the parties. Agreements made under the conditions of equal discourse are binding on all parties involved, regardless of the type of arrangements made in each particular case. Moreover, norms accepted in order to promote and maintain these conditions in the future are legitimate. The approval of a federal constitution by only the majority national group, for example, does not satisfy this requirement: federal laws ought to be approved by all affected groups, and no changes ought to be made to the initial agreement without all national groups' consent.

What criteria of assessment are available for the international community to judge whether a state satisfies the norm of legitimacy, or whether it is minimally just? The author posits that such a state should at least satisfy the following necessary conditions: **First**, basic discrimination should not be included in the constitution or institutions of a state, as would be introduced, for example, by a statement that the state represents one nation. Hence, no one group should have preferential access to a set of rights, powers, and institutional accommodations promoting its self-determination. **Second**, it has to be possible for a national group to question the justice of the constitutional layout of the state and to contest any provisions included in the internal arrangement of the state that it deems unjust and considers an imposition on its ability to determine its future political status. This assures that the group has at least minimal conditions for preserving its equal freedom. **Third**, the tools for exercising discursive control have to be available to all groups, including forums for discussion and the possibility of a referendum or some other procedure that allows individual members to make public their shared goal of acquiring and maintaining the effective exercise of their collective agency associated with self-determination.

The presence of such tools allows the international community to discern the existence of a sub-state national group with sufficient accuracy.

Finally, there has to be some legal recourse available for national groups. They have to be able to voice their grievances internationally in, for example, an international court or the UN, and the corresponding international agency must have a normative framework that allows it to pass judgments upon the status of the group. Ideally, there would also be some international institutional devices available for monitoring a group's situation and working to protect minorities' basic claims by various means.

The author presents, as an analogy that clarifies power sharing in a multinational federation in compliance with the nations approach the distinction between joint and collective ownership of property drawn by Mathias Risse (2005):

“Decision making at the federal level concerning federal laws and the corresponding powers of national groups can be likened to the terms of joint ownership of property: such ownership requires that a collective decision-making process be concluded to the satisfaction of each of the “owners.” Decision making at the level of each group, considered from the point of view of their membership in the federal state, is akin to the terms of collective ownership of property: each owner in this case enjoys equal entitlement to use of their part of the property within constraints. This means that each group has power to control its own constitution so long as it satisfies the norms of relating to other state members and conforms with the federal-level norms that regulate its relation to its citizens.” Moltchanova (2009:161)

I. Equal Citizenship:

Under the national approach, the modified right of self-determination presupposes that all citizens of the multinational state must be treated equally regardless of their national or minority origins. This necessitates that the institutional objectives of national co-operation should be based on achieving respect and the efficacy of human rights and non-discrimination. Even if we need to respect citizens equally concerning their national belonging, however, it may be that we can deprive each citizen of some but not all features pertaining to their group membership while still treating them equally.

One question raised in this regard is: why not politically assimilate national minorities by denying them sub-state self-determination but also change the political culture of the majority by making the majority learn minority languages or incorporating some minority cultural practices in the majority culture, for instance? The author responds by asserting that the demand of assimilation not only unjustifiably reduces a minority individual's choices and thus her autonomy, it also treats the individuals from minorities unjustly in relation to majority individuals. Although everyone's national identity is a descriptive fact when it is considered as one among other characteristics of an individual in isolation, national identity acquires a moral dimension when it characterizes relations among persons (both individual and collective).

Even if this assimilation created equal conditions for the minority individual's inclusion in the larger state, it would do so at the price of unjust treatment. In addition, if an individual cannot remain a member of her own national community but instead is forced to assimilate into another, she must also by extension redefine the terms of her membership in the larger state, which would otherwise be mediated by her membership in her own political culture. A minority member would have to undergo a change of membership and forge a new allegiance to another community; members of the majority would not need to do the same. Finally, there is a strong chance that the minority member will not be fully accepted after her change in membership, while she will have lost the protection of her political community. Her incomplete assimilation will prevent the intended equality of citizenship it was introduced to achieve. Thus, a state respects the rights of its citizens only if it creates conditions of equal political membership for all of them.

II. Minority Rights Protection:

At present, the most important source on the protection of the right of minorities is contained in Article 27 of the International Covenant on Civil and Political Rights (1966) which reads:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

In the interests of further protection of minority rights the United Nations General Assembly adopted a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities in December 1992. The document builds upon the aforementioned Article 27 of the International Covenant on Civil and Political Rights and is premised on the principle that “the promotion and protection of the rights of persons belonging to national, ethnic, religious and linguistic minorities contribute to the political and social stability of the States in which they live”. Article 1 of the instrument provides that ‘states shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity’. However, the Declaration does not refer to the right of self-determination or any right of secession; indeed Article 8(4) reads:

“Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.”

The question of the rights of minorities has acquired an added importance in the last decade with the dissolution of the Soviet Union and Yugoslavia; manifestly, there cannot be self-determination for every minority but there has been an attempt to recognise that the stability of a state often depends on ensuring that a particular minority has been accorded a minimum degree of civil liberty in accordance with the author’s modified right of self-determination. The nations approach further aims to protect the rights of minorities by according them equal playing field with other national groups in the multinational state. By proposing equality, the approach ensures that minorities have a say in the making, executing and implementation of policies as it would affect them. The approach further ensures that the principle of internal self-determination is adhered to strictly.

III. Enforcement of the Nations Approach:

In implementing and enforcing the nations approach, the author proffers the use of existing methods for implementing and enforcing international norms; as well as employing the same types of sanctions to ensure compliance with such conditions of legality as presented by the approach – the principle of equality and the modified right of self-determination. However, the assertion that their compliance would be monitored by the International Court of Justice sounds a little far-reaching as Article 34(1) of the Statute of the International Court of Justice declares that: “Only States may be parties in cases before the Court”. The International Court of Justice is the principal judicial organ of the United Nations and only states recognised in the eyes of international law are members of the UN.

Hence, to assert that a national group within a state may exercise the right to appear as a party before the ICJ would be to contravene international law itself; Article 2 of the Montevideo Convention on the Rights and Duties of States (1939) declares that a federal state shall be held as one in the eyes of international law and that national units within such a state can have no locus standi under the jus inter gentium. Unless a Special Commission is established, probably under the auspices of the United Nations to monitor and ensure compliance with such norms, then it would seem far-fetched to me, the event where a national unit in a federal state files a suit before the ICJ, even with respect to a breach of its right to self-determination.

The author further acknowledges the possibility of a self-determining within a multinational state which violates fundamental human rights, such as a group which out-rightly discriminates against women. As a solution, the author proffers the existence of a government which would meet all the expectations of the people within its territory.

IV. National Groups' Entitlement to Self-Determination:

The right to self-determination is a group right, in that it is derived from the group and to be enjoyed by the group. To remove a group's right to self-determination would be to harm them and subject them to injustice. The author goes a step further to place the ideal of self-determination in the context of citizenship in multinational states and tries to justify the right of national groups to self-determination by approaching self-determination from as a good from the perspective of a group member who is also a citizen of a larger multinational state. Equal citizenship presupposes that all persons ought to have the same fundamental status as equal participants in the most important political decisions made in their societies—what Allen Buchanan (1998) calls "a right to democracy."

Minority rights to culture, religion, and language are considered fundamental, because it is recognised that existing alongside a majority community puts pressure on smaller groups and dominates the minority individual's choices. To ensure the freedom of choice for all citizens, the minority must viably be able to choose to exist in their own language and culture. Provided this is accomplished, should a minority citizen decide to switch to the majority language or culture, her choice would not be forced. The ease with which an individual can immerse herself in a different milieu and the convenience of this transfer does not truly determine the value of the individual identity the milieu can provide. If the self-determining status of a national group is not recognised, all group members will be pressured to pursue assimilation into the larger state's political community, a forced choice that violates their members' autonomy. In this case, even though a minority member may be capable of joining the majority's political culture or immigrating, what is important is that she would not perceive either of these outcomes to have been the result of her free choice, since the choice she wished to make was interfered with.

The author posits that Self-government allows a group to make laws for itself only within the parameters of a given political status. Rights to self-government, then, do not allow group members to determine their relations within the larger society to the extent necessary to protect their equal say in the most important political decisions in the state. If, to begin with, the members of a group do not have a say about their membership in the state, they are governed, on the balance, by the members of the larger community. To maintain their group membership and to have effective agency over time, they need to control the parameters of their inclusion in the multinational state and be granted input regarding the boundaries of their community and its relation to others. Thus, to have control over its membership in a multinational state, a national group needs to have a say in whether and on what terms to belong to the state and in who can belong to the community. For example, Quebec has control over immigration into the province, for example, but not over the terms of its membership in Canada as a national group rather than a province. Quebec's citizens do not have a say in whether they should belong to Canada, for there are no legal norms to regulate the political outcome of a referendum on belonging that could ensure that a negative outcome would be complied with.

Chechnya, whose future is determined by the Russian Federation as a part of Russia's political future, would become self-determining within the federation's territory if the following conditions for the inclusion of its political community obtained:

- (1) It is in Russia voluntarily (that is, it can be determined by reasonable means that the people of Chechnya prefer to remain part of Russia, even if this preference is contingent upon the fulfilment of some claims put forward by them to the federal state), and
- (2) There is a guarantee that Chechnya's people will have a say in issues vital to the existence of their political community.

Thus, it is important for the members of a national group to see that the political institutions connected to the determination of their future political status express the group's perception of its collective agency as a type of political community endowed with the power to control its membership in the state. The author meaningfully asserts that: "The central state can equally belong to all sub-state national groups in a number of ways, but it cannot justifiably create a hierarchy of national groups with a constitutionally entrenched difference in access to political power".

Flowing from this, it is recommended that procedures which **jointly** allow all the groups within the multinational state to determine the policies deemed within the jurisdiction of the federal power, should be put in place. Furthermore, as it is to be in every true federation, there must be clear division of powers between the central government and the national groups that would enable them to better control and determine their political futures. Equality in citizenship would also presuppose that the federal constitution can only be amended in consultation with all sub-union national groups and needs to be passed by this level of the legislature. Each subunit can have its own legislature and can, within the limits of compliance with the federal constitution, unilaterally amend its own constitution. More so, a federation that complies with the national approach ought to set rules as to the right of a union to exit the federation and a set of procedures to correspond.

The constitutionally entrenched division of powers between each nation and the state need not be uniform; every national group can have its own arrangement with the state. Every national group is likely to have a different list of issues it considers important to its control over its political future. Its needs must be reflected in the norms of political power sharing with the state and the legal rules governing the group's territorial autonomy. The rules defining shared and exclusive areas of competence cannot give the majority group or the federal government fundamental priority unless the sub-state group agrees to this division under fair conditions of deliberation. The argument based on Rawls's original position is meant to demonstrate that if the minority national group's self-determination is not respected, the terms of membership in the larger state for the members of the minority are not just. The author does not, however, argue that respect for individual rights implies respect for group rights. One pragmatic consideration is that a prohibition on the exercise of self-determination—provided the prohibited group has a corresponding political culture—frequently leads to the group's adoption of militant mobilisation strategies in order to attain self-determination, which are detrimental to the group's and others' existence. In the face of unfulfilled hopes of national self-determination, it is not productive to insist that these hopes should be abandoned or changed for the sake of universal peace: the group agent's constitution simply cannot be changed without the group's participation.

One major criticism of multinational federalism recognised by the author is that it prohibits dominant national groups from claiming ownership and control over public institutions at the central level but allows smaller national groups to make such claims at the sub-state level. The control of public institutions should be considered with respect to other national groups as well as to non-self-determining minorities and nationals of other groups as private citizens.

The author asserts that:

“Provided that national identities are accommodated fairly across the borders of sub-state units, what remains to consider is whether sub-state groups will exercise control prohibited to the formerly dominating national group over those minority groups—linguistic, religious, or cultural—that do not fall under the arrangement concerning sub-state national identities. All citizens in the federation are also citizens of the larger state and deserve the basic protection of their rights that is ideally guaranteed to all the residents of the federation's territory by the federal level of authority. The terms of sub-state groups' membership in a federation therefore ought to include compliance with basic federal guidelines for the protection of individual and group rights within their territory. Thus, the transfer of power to the sub-state level will not alter the conditions governing national groups' behaviour toward minorities. Ultimately, the protection of individual and group rights depends on the organisation of the federation, and the nations approach includes respect for minorities, as is required for the legitimacy of states.

Their mutual and reciprocal control over the federal level of government safeguards all groups' basic interest in self-determination but leaves certain areas up to them so long as they do not control or influence others in illegal ways. This prevents national groups from controlling public institutions at the sub-state level in a way that would be offensive to members of other national groups or that would violate their rights or the rights of other types of minorities.” Moltchanova (2009:164)

Indeed, treatment of newly formed units in a way that complies with the nations approach, as proposed by the author, and aims to be consistent with the treatment afforded to already existing units in the multinational state certainly prevents sub-state groups from exercising excessive control over sub-state political institutions. Since every national group deserves similar treatment within the federation, the participation in the federation of these national minorities cannot be mediated by their current host republics; the minorities ought to be considered immediate and equal federal subjects. According to the modified right, the basic equality of status of each group with respect to self-determination has to be the guiding principle for regulating their relations. They have to be included in the federation equally with other national groups and not be treated as “minorities within” the recognised national republics precisely so as to not reproduce the hierarchical patterns of access to self-determination, in which one group controls another or is privileged over another. The larger group does not in any case have legitimate reach over a political community of self-determination that has located the source of authority within its own community without the consent of this community.

Another challenge posed by multinational federalism is that it increases the possibility of minorities mobilising along national lines and aspiring to acquire a status at the level of the federal state equal to that of already existing national groups, which presents a problem for the stability of multinational states. However, the author proposes two methods of dealing with such destabilising effects thus:

- First, division into national units—at least into those recognized as such by the nations approach—will be limited by the size of a viable national unit. The nations approach requires that only a group capable of creating and maintaining effective agency, and thus a group that is viable in terms of its relations with other groups, can be considered a nation.
- Second, the nations approach does maintain that if a group is formed in the right way, it is a national group and is entitled to be treated as such, with equality of self-determination provided at the sub-state level.

Thirdly, some groups within the federal state may not have had institutions as regards to their self-determination in the past and may have members of their group scattered in a number of territories of other national groups, and, as a result of this, they may not be able to be properly integrated into the federation as an equal group under the nations approach. Under the nations approach, if the group does not qualify, it could be protected under certain minority rights but not self-determination. The implications and applications to peace in a nation-state of the nations approach are theoretically numerous; however, as no empirical test has been instituted, one can only but make inferences. I would summarise its implications and applications to peace as follows:

- First, the nations approach to self-determination proposed by the author upholds respect for human rights as a basic moral norm of international and internal behaviour, but it also requires the recognition of a moral entitlement of all national groups to equal status;
- Secondly, the nations approach upholds the norm of legitimacy and is not satisfied with political authority in a multinational state if it does not provide fair conditions of membership for its sub-state national groups, including equality of status with respect to self-determination. The nations approach holds, therefore, that respect for the human and minority rights of citizens as well as their national identity is required for the just arrangement of multinational states. If a state does not address claims to self-determination on its territory properly, it cannot be considered minimally just, even if it does not violate human rights;
- Thirdly, the nations approach assists with the maintenance of agents’ constitutions and aims to shape their interactions in the best way possible to achieve equality of control over their political futures within the state. In extending legal regulation to those self-determination claims that are now beyond the scope of the right to self-determination, the nations approach aims to minimise secessionist attempts in multinational states. It increases the range of possibilities for the satisfaction of self-determination claims by allowing and encouraging the exercise of self-determination within existing state borders, thereby reducing the potential instability of multinational states. One of the goals of the nations approach is thus to ensure the stability of host states by

securing their compliance with the ideal of just treatment afforded to all group agents on their territory with verifiable claims to self-determination; and

- Fourthly, the author's approach calls for the determination of the entitlements of different types of minorities and the requirement that they be accommodated depending on the type of their agency; this implies that if the type of a group's agency changes, its accommodation has to change as well. The principles regulating relations of self-determination can be introduced while nations are still being formed in transitional or formerly oppressive societies, thus permitting, in time, a more equitable distribution of power in a given territory.

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