National Self-Determination and Justice in Multinational States

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Chapter 6
The Implications of the Modified Right to Self-Determination[1]

In the previous chapter, I defended the modified right to self-determination, which establishes a norm for the just treatment of national groups. Pragmatism indicates, however, that if the modified right is to regulate the relations among state-endowed and stateless national groups, it has to have the capacity to become a legal norm with universal application within the present international legal system. I have already demonstrated that the modified right does not contradict the principle of territorial integrity, which is fundamental to this system. I will now discuss how an approach to self-determination and the corresponding international norms based on the modified right could help define fair terms for autonomy arrangements for substate national groups. I will first define the "nations approach" to self-determination and then discuss the implementation of equal self-determination for all substate national groups in a multinational federation and the corresponding challenges.

Next, I will argue that the employment of my approach, and especially the introduction of the modified right, will have positive consequences for international peace. I maintain that if this approach were accepted in the international legal framework, it would be useful for responding to the moral claims of non-state combatants. The modified right undermines the moral basis for the "just cause" and "last resort" justifications for asymmetrical warfare, provides incentives for non-state groups to participate in negotiations, and eases their transition into becoming responsible members of the international community. These likely positive effects of the nations approach provide a partial, teleological justification for it. But the success of this normative framework in addressing the challenges multinational states face will depend in part on whether the community of states both accepts the norms of the framework and has sufficient resources to enforce them. I demonstrate in the penultimate section of this chapter that since the set of norms I advance respects the privileges of existing states, these norms have a good chance of being accepted, and the status they afford to the members of the international community will facilitate these members' voluntary compliance. In the last section of the chapter I deal with some empirical considerations that apply to implementing the nations approach.

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The Nations Approach

The nations approach is based on my definition of a nation as a collective agent organized around the good of self-determination. This approach includes the modified right to self-determination and the corresponding norm of legitimacy for multinational states and extends the regulation of national groups' behavior to transitional societies, albeit employing a cautious approach to self-determination claims in such societies.

A prima facie claim to self-determination is based on the existence of group agents of the kind I define as nations. It identifies qualifying groups through their possession of a political culture with the shared goal of maintaining or acquiring collective agency related to the meaningful limits of political authority. The modified right to self-determination requires that a national group's claim to self-determination be its claim to equal recognition of nationhood within the boundaries of a multinational state. A just multinational state ought to be based on a partnership of different national groups as equal self-determining communities, and hence as equal members sharing the state's space. The rules regulating relations among national groups in a just state specify conditions of mutual respect and partnership, as well as separation procedures. If a group is not a nation, it does not qualify for the right to self-determination, but even those national groups that in principle qualify for the right may not be allowed to exercise it if they do not comply with the norm of equality prescribed by the nations approach.

The nations approach to self-determination upholds respect for human rights as a basic moral norm of international behavior, but it also requires the recognition of a moral entitlement of all national groups to equal status. The conditions of membership in the international community for stateless national groups ought to be considered an important issue of global justice. 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 substate national groups, including equality of status with respect to self-determination. In Chapter 2 I determined that there is a fundamental difference between self-determination and other group rights. Linguistic and other minority rights that do not directly relate to self-determination define fair conditions of citizenship within political communities, the justifiable boundaries of which are determined by the shared good of self-determination. I accept but do not argue in this book that respect for minority rights other than self-determination is required for the just arrangement of a multinational state. Thus, the provision of fair terms of individual inclusion in political units organized around self-determination is necessary for determining the justice and legitimacy of a state, multinational or otherwise. 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.

Contested secession has received much attention in recent scholarship. Since contested secession is based upon the disagreement of two or more national groups concerning their self-determination within particular boundaries, the nations approach considers secession as merely one aspect of the regulation of relations among national groups in their host multinational states, which ideally has to be done on a continuous basis according to the norms advanced by the nations approach. It prioritizes the terms of organization of multinational states over those of their dissolution, because the latter are implied by the set of principles guiding just arrangements for multinational states. Unilateral secession is not permissible in a state that satisfies the norm of legitimacy: after the will of the people of a national group is expressed (in a referendum, for example), this gives the group's representatives a mandate to either negotiate the group out of the state or renegotiate its position within the state. If a group is offered fair terms and rejects them without good reason, it does not have the right to secede.[2] Does substate self-determination allow group agents to be excessively influenced by political and economic circumstances external to their constitution? 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 minimize 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, as I demonstrate in this chapter. 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 redistribution 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 organization 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 in order 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 categorize 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 organization 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.

It is often acknowledged that the right to self-determination has two dimensions: an external dimension refers to "the international status of a people concentrated on a specific territory and the relations of this entity with the surrounding states," while an internal dimension has to do with the institutional organization and legal regulations of a multinational state designed to accommodate different national groups in the state's territory.[3] If only state-endowed national groups can enjoy the external aspect of self-determination and non-state groups are limited exclusively to the exercise of internal self-determination without freely consenting to be, their differential treatment does not comply with the nations approach, because state-endowed and non-state groups are constituted around the same shared good of self-determination but are being treated unequally. From the point of view of the nations approach, then, the fair inclusion of a substate group into a multinational state involves granting all groups—minorities and the majority—a similar degree of control over their political futures and thus involves the assurance that all groups can share in both external and internal self-determination.

Compare the following two accommodation strategies. A strategy that has an external institutional dimension presupposes that there ought to be at least one tool for the resolution of claims to self-determination, such as a referendum; requires international as well as internal supervision of conflict resolution; and allows minority national groups to enter external relationships with subjects beyond the borders of the host state. Although it is good if this strategy is supplemented by rules for long-term interaction among self-determining substate agents, the tools it proposes comply with the nations approach. The strategy of consociation, on the other hand, allows a national group to participate in the state parliament, but only on the basis of proportional representation, and it permits cultural but not political self-government.[4] The rules put forward by this strategy do not comply with the nations approach, although they can be used if a national group chooses to approve them under the condition of equal participation in discourse, and thus freely. The nations approach, however, would require that the group not be prevented from the exercise of self-determination in the future if it so chooses.

Thus, the principles of federal institutional design should reflect the prima facie equality of the moral entitlement of different national groups. There ought to be a

set of norms, procedures, and institutional structures guaranteeing the possession and exercise of discursive control to each group. In general, the norms of participation for national groups in a federal legislative power, when based on the equal freedom of collective agents, ensure that the agents have the means to protect their interest in self-determination. This is essential to promote their cooperation within a multinational state. Various autonomy settlements defining the shared and exclusive powers between the federal state and each national group, which I discuss in the second part of this chapter, can express the national groups' equal status in decision making at the federal level of legislative power and thus satisfy the general standards regulating the proper status of national groups with respect to one another.

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? 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 substate 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.

I do not want to interpret equality in such stringent terms, however, that I make my theory irrelevant to the current processes of international relations. The scope of the notion of equality allows for a variety of arrangements, from states with the de facto equality of national groups to those that closely enough approach equality not to be considered unjust to those that are not in principle unjust and have demonstrated willingness to embark upon the process of negotiations and reform. It is important that, in each case when a state claims to be in the process of achieving the standard set by the norm of legitimacy, the international body responsible for the enforcement of the modified right establishes an acceptable time limit for a desired change toward equality to take place, after and only after which the state would be considered to have failed to satisfy the norm. If a country is a true democracy

where in principle the equality of nations is possible, it is unlikely that it will be called unjust: in Canada, for example, even if at the present moment the equality of nations is not acknowledged constitutionally, a process exists that allows national groups to express their opinions and be heard. The nations approach's norm of legitimacy indicates, however, that such states should think about initiating the process of change from above.

Since secession is not only destabilizing but also in most cases impracticable, it is a priority of the nations approach to accommodate the self-determination claims of national groups in relation to one another within their host states. The recognition of their basic entitlements as a particular kind of actor allows national groups to share the state on the "right" grounds from their own and others' perspective.

Multinational Federations and the Nations Approach

In this section, I consider how the equal self-determination can be realized within the borders of a federation. The federations I discuss contain national or both national and territorial, but not exclusively territorial, units. Thus, they are either multinational or mixed (asymmetrical) federations. I first consider general organizational principles for such states and then deal with a number of challenges that a theory of multinational federalism needs to answer.

Equality of Self-Determination in Multinational States

One cannot approach a society that houses several national groups without paying attention to allegiances with respect to self-determination, because they denote the limits of political communities meaningful to their members. Given that federations ought to treat their citizens equally as citizens of the larger state and that they must respect human rights, they cannot discriminate on the basis of national origin. The central state can equally belong to all substate 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. Thus, there cannot justifiably be a "title" nationality, either at the state or substate level, that hosts within its territory other national groups that do not directly belong to the federal state (unless they choose mediation by the host republic voluntarily and have the option to change their mind). Thus, there has to be an established procedure (which may require a corresponding institutional structure) that allows all national groups to jointly determine the policies deemed to be within the jurisdiction of the federal power. There also has to be a division of powers between a central government and its national subunits that allocates enough power to national groups to allow them to control their political futures.

The central government can be delegated by subunion groups in a number of ways, but it is advisable to have a chamber in which all of the subunion national

groups are represented equally. The federal constitution can only be amended in consultation with all subunion 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. There could also be a chamber that has proportionate representation if this is required by the type of authority that the joint government wants to exercise.[5] Such a federation is similar to a typical federal state in that the authority that is devolved is not immediately revocable, but the terms of membership are more relaxed than in a typical federal state: a federation that complies with the nations approach ought to have a set of rules that define when a group can exit the union and a set of corresponding procedures. Nevertheless, the federal state in my model will not be quite as relaxed in the rules of its formation as a confederation, in which two or more sovereign countries agree to coordinate economic and military policy and devolve the power to administer these policies to a supranational body composed of delegates of each country. In a confederation, the authority devolved upward is voluntary and revocable, because a state devolving its powers retains the right to unilaterally reclaim them.[6] A national group in a multinational federation, on the other hand, cannot unilaterally secede except in exceptional circumstances.

For an analogy that clarifies power sharing in a multinational federation in compliance with the nations approach, consider the distinction between joint and collective ownership of property drawn by Mathias Risse. 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."[7] 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.

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 substate group agrees to this division under fair conditions of deliberation.

A range of existing accommodation strategies satisfy the norm of equality. In the Russian Federation, for example, some basic norms ensure the minimal level of entitlement in the relationships of all national republics with the center: the status and territory of the republics cannot be changed without their consent, federal authorities coordinate international relations jointly with the republics, and the republics hold

their land and resources as the property of their peoples.[8] Under this general norm of equality, however, models of inclusion are envisioned by different republics on the basis of their constitutions: Tuva's constitution states that the republic is included in the Russian Federation on the basis of the federal treaty and that the republic has a right to self-determination and exit.[9] The republic of Sakha, on the other hand, acknowledges as superior on its territory only those laws of the Russian Federation that concern powers that the republic has voluntarily surrendered to the federation.[10] It delegates its powers through agreements and treaties and has the right to suspend federal laws when they contradict the federal treaty and the laws and constitution of Sakha. To acquire force in the territory of Sakha, federal laws that affect joint affairs need to be ratified by the legislative body of the republic. And Tatarstan's constitution states that Tatarstan is a sovereign state subject to international law; it is associated with the Russian Federation on the basis of the treaty determining the mutual delegation and separation of powers.[11]

Challenges to Multinational Federalism

The Charge of Inconsistency

One common criticism of multinational federalism is that it forbids 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 substate 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 major problem with the dominant group's claiming ownership over the public institutions of a state is that it prohibits other primary political communities from functioning properly within the borders of the state. We need to make sure that this problem is not reproduced at the substate level. My model of federalism certainly prohibits any group from exercising exclusive and unreciprocated control of public institutions at the central level. According to my plan, all national groups hold direct and equal membership in the state at the federal level of authority. In this model the state does not belong to any one group, but to all of them equally. Thus, at the federal level it is not the case that the dominant national group is deprived of its ownership of public institutions and others are empowered to wield the political authority the dominant group no longer enjoys.

How can the organization of a multinational state that maintains the equality of self-determination prevent a national group from reproducing, at the substate level of power, the patterns of political control previously exhibited by the dominant group within the state at large? This question arises when national groups have a large number of members of another national group residing within the territory they govern or when a new national group emerges within this territory.

The form of political control over a disputed territory populated by members of more than one national group needs to be decided based on negotiations mediated by

the federal-level authority. The territory can be allocated to one group with special rights for members of the other; the corresponding groups may be able to share control over the territory (besides the shared control over the territory they already exercise, together with other groups, concerning the aspects of government relegated to the federal level of authority, which gives them a certain degree of control over the territory). Groups can govern jointly or they can divide spheres of influence, but no national group can exercise power over all or part of a substate territory that contains territorially concentrated members of another national group unless the latter give consent under fair conditions of agreement. An agreement is fair if the group retains equal status with respect to self-determination and its equal membership in the federal level of authority and has transferred some of its powers over its members within the territory of the other group to that group voluntarily. I will deal with the problem of the locus of self-determination for all national groups and the division of territory in more detail when I explain how to deal with the equality of self-determination of groups some members of which form minorities, and not necessarily territorially concentrated, in other substate units.

What should be done when a nation appears in the territory of an already defined national subunit that enjoys self-determination within the state? According to my account, none of the properly formed groups should be disadvantaged or disregarded, and each needs to be given membership in the state at the federal level. If there is a group that qualifies as national on the territory of one of the substate national groups, it is withdrawn from the authority of the "host" group and acquires a status equal to it within the federation. For example, some of the national republics in the Russian Federation contain, along with their title nationalities, national minorities. 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 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 recognized 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.

Treatment of newly formed units in a way that complies with the nations approach and aims to be consistent with the treatment afforded to already existing units in the multinational state certainly prevents substate groups from exercising excessive control over substate political institutions. What needs to be explained in this case is why I propose to keep state boundaries (previously associated, perhaps, with the power of the formerly dominant group) intact when the boundaries of national units within the state may be changed. The problem here concerns substate groups' being too deprived rather than too empowered. It is certainly true that the state does not belong to any particular group, but this may be a good reason

to allow an equal right to secession from the state to all national groups. Whether this kind of solution is pragmatically destabilizing is a separate question that does not directly relate to the question of whether my approach offers a principled basis for multinational states' arrangement. I do not claim that state boundaries cannot be changed, but I do maintain that states should not be pulled apart until the status of their national subunits is established as equal and is regulated. Then national groups can secede by mutual agreement, and the process will be regulated by the legal and institutional framework that maintains their mutual standing.

Provided that national identities are accommodated fairly across the borders of substate units, what remains to consider is whether substate 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 substate 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 substate 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 substate level will not alter the conditions governing national groups' behavior toward minorities. Ultimately, the protection of individual and group rights depends on the organization 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 substate 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.

There are several questions that need to be answered to demonstrate that my approach to federalism does not run into a different set of problems. In brief, they involve the possibility of endless and destabilizing division along national lines within a state, the treatment of groups that are not territorially concentrated, the justification for keeping state boundaries intact while changing the substate units' boundaries, the benefits of the substate type of self-determination, and the issue of the allocation of territory. I will answer these questions in the order in which I have listed them.

The Nations Approach and Dynamic Group Identities

It may seem that my approach to nationhood increases the possibility of minorities mobilizing 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. The destabilizing effects of dynamic identities that the nations approach accommodates can be controlled by the terms of nations approach in at least two respects.

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. A group of two people who decide to become a nation and claim that they have a corresponding political culture would not qualify. A viable political culture, nevertheless, can come in many different forms short of sovereignty. Many indigenous peoples, for example, cannot form their own states. Their political culture is viable, however, if they can fulfill important functions of authority within their territory to safeguard their identity and membership.[12]

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 substate level. But the nations approach also guards against strategic mobilization, thereby controlling what is considered an acceptable mobilization of a group agent. The nations approach, moreover, defines the means that groups which qualify as national can employ to realize their self-determination. It does not allow for unilateral secession from minimally just states: the recognition of the equal status of all national groups ought to happen, first and foremost, at the substate level, supported by appropriate federal institutions. That the approach does not promise complete sovereignty may also reduce the number of strategic mobilizations. The nations approach also requires that a federal constitution be drawn so as to provide procedures for changes in group status and the criteria that groups need to satisfy to qualify for such a change. Thus, if the nations approach were adopted, multinational states would have to accommodate shifting group identities, but they would also be provided with means for the controlled accommodation of changing national identities. Thus, the nations approach increases the probability that multinational federations will stay together.

Groups that Are Not Concentrated in One Territory

When defining the terms of organization for a particular multinational federation, we need to identify all national groups within the proposed territory, determine the terms of their inclusion, and make provisions for the accommodation of newly formed national groups. Determining the status of national groups is easier if national groups are territorially localized. There are two demographic patterns of distribution, however, that complicate the consideration of possible terms of group inclusion in a federation. Some groups that claim to be national may not have acquired adequate institutions for the realization of their self-determination in the past and may have members scattered over a number of territories governed by the political institutions of other national groups. Considering the constitution of the group agent and its shared goals, we can determine how to accommodate such a group. If it does not qualify as a national group, it can be protected by a set of minority rights, but not by the right to self-determination. If the group qualifies as a nation, it needs to be provided with means to realize its substate self-determination.

The group can be given a territory, especially if historically it had one. I discuss this kind of situation at greater length later in the chapter.

Other minority groups may have institutions of government with control over a certain territory within a multinational state but also have a large number of individuals who consider themselves to be members residing within a territory governed by another national group. Such a situation seems to present a challenge in accommodating their national identities. Here is one possible solution in accordance with the nations approach.[13] If national minority A resides within the territory of national republic B, and if A considers itself to be part of a national group that has its own national republic A elsewhere, minority A has its national identity represented in the federal state through its title republic A. The minority members may be entitled to some special cross-border arrangements to relate to their nation, subject to negotiations between the title and the host republics. In some cases, boundaries can be redrawn if it is expedient—for example if the minority populates a compact territory adjacent to the host republic. This accession procedure, however, has to comply with the modified right, which would mean that national subjects have to be given an equal possibility of exercising discursive control and thus equal freedom in having a say about the procedure. A number of factors, such as stability and historic entitlements, need to be taken into consideration. In some cases, minorities, even numerous ones, have appeared in the territory of other national groups as a result of population moves executed by an oppressive regime that disregarded the host group's right to self-determination, as is the case of the Russian population in the Baltic Republics. Overall, the nations approach prevents aggressive mobilization through the norm of equality and utilizes a cautious approach to mobilization in non-democratic states. Finally, if minority group A in the territory of republic B ceases to identify with the political culture of its corresponding national republic A and decides that it is a separate national group, it ought to be approached as one.

For example, in the Russian Federation, which ought to recognize Russian national identity and other national identities equally, Russians are often a minority in other national republics. It may be a good idea for the Russians to have their own parliament alongside the federal parliament. In the republics where they are a minority, the Russians would be able to relate to the Russian national political culture. They could even have a seat in the Russian (not the federal) parliament, which would allow those away from the "main" Russian nation to have a say in the nation's affairs. There are some existing non-territorial arrangements of this kind. A non-territorial group such as the Italian diaspora in Canada, for example, relates to already existing territorial nations—Canada and Italy, in this case. They relate to Canada as citizens and as an ethnic minority, and they relate to Italy as citizens who comprise an extraterritorial voting district.

Although the Russian-speaking minority can relate to its title nationality beyond the boundaries of the host national republic, which can in part determine the terms of its membership in the host republic, within the host territory the Russian minority members are a linguistic/cultural/religious minority and not a national group. If the Russian minority is territorially concentrated, its members could have certain

political powers and a degree of self-government to fulfill their ethnic and other minority interests and enjoy adequate representation as this kind of group in the host national republic's parliament. The Russians would not have the right to annex parts of other national groups' territory, however, even if they felt that the Russian minority was numerous enough to warrant such an action.

Thus, we can institutionalize self-determination through models of multinational federalism that do not reproduce the patterns of exclusion exhibited by nation-states that contain minority nations. The modified right to self-determination and the corresponding organization of multinational states that I suggest withdraw national minorities from under the control of other national minority groups and require that other minorities (linguistic, religious, and cultural) be protected within the territory of each national group.

Benefits of Substate Self-Determination

While substate self-determination is a legitimate form of exercising national groups' power to control their political future, one may ask whether substate self-determination brings tangible benefits to national groups in multinational states. That their self-determination is mediated by their joint membership in the state, which stands between the groups and the rest of the world (because they ought to act in concert and be represented internationally as a "cluster"), seems to diminish the benefits that self-determination brings to substate national units. Traditionally the enjoyment of self-determination has often been tied to privileging the status of one group over others, and since I insist that national groups can enjoy the constitutive good of self-determination only while respecting the rights of others, this may appear to deprive national groups of the benefits of self-determination they aspire to.

In Chapter 2, however, I argued that being recognized as a self-determining group is a significant benefit for national groups because self-determination is their constitutive good. The argument in this book implies that those groups that enjoy the benefits of self-determination unjustly do not exercise their freedom properly, in accordance with their moral right. As I discussed in Chapter 5, moreover, the kinds of limitations that group membership in a federal state of this sort imposes on the self-determination of a national group are not all that different from those imposed by a membership in a regional structure. Ideally, there should be a forum for the international representation of all national groups, like a "United Nations," literally understood.

Finally, granting "reduced" self-determination to substate national groups is a way of equalizing the enjoyment of self-determination, which is presently unequally distributed. Equality within a state is still self-determination. In the next section, I argue that this form of self-determination is better than alternatives in its consequences. One may ask whether in this case self-determination cannot just be reduced to some other forms of membership in the larger state. What does substate self-determination allow groups to do that they otherwise could not in a democratic society that respects individual and minority rights? Talking about the good

of self-determination precisely allows us to determine how to fairly treat individuals from substate national units as members of the larger state. In the previous chapters, I explained how the receipt of even a broad spectrum of linguistic, religious, and cultural rights does not amount to the satisfaction of the shared interest of groups organized around self-determination. Thus, if national minorities are not granted self-determination rights within their host society, the host society is not fully respecting the minority rights of their members. The proper actualization of a substate national group agency helps to maintain the equality of the national minority members' citizenship in the larger liberal state. If minority rights include self-determination rights and self-determination is not sovereignty, a liberal society that respects individual and minority rights will provide for the equality of national groups' substate self-determination. What does the satisfaction of the right to self-determination involve compared to other rights? Minority groups enjoying self-determination can control the parameters of their political futures and negotiate as equals with other similar groups concerning the limits of their powers over their political life and the territory they control. These features of self-determination clearly set it apart from other minority rights. I will now move on to the role of territory in the enjoyment of the substate right to self-determination.

Dividing the Territory of a Multinational State

A non-territorial right to self-determination, though incomprehensible in the present international system, is perhaps not inconceivable in the future and would be compatible with my notion of nationhood.[14] However, as I discussed in Chapters "Collective Agents and Group Moral Rights" and "A Definition of Nationhood", when the condition of equal freedom in controlling a group's political future is fleshed out in terms that pertain to the present international system, the modified right to self-determination requires that a national group enjoying self-determination control a territory.

The Roma, for example, claim that they are a non-territorial nation. As I argued in Chapter 3, satisfying the definition of nationhood is a necessary condition to qualify for the right to self-determination. The Roma, in their desire to be determined by the conditions of their internal life, would possess a political culture of self-determination and thus qualify for the corresponding right only if they conceive of self-determination in the forms currently available for being equally free with other group agents organized around self-determination. The members of the Roma residing within territories under the administrative control of other political communities will have to interact with these communities regarding their group interests, and the terms of these interactions they envision as ideal determine what type of group they aspire to be. To be constituted as a collective agent with the right to self-determination, the Roma would have to conceive of their interactions as allowing them to have a say about their political future in a form compatible with existing national units. If there is an area in which some Roma can and would want to form a national unit to exercise self-determination and to which the rest can relate, they will be able to exercise their right to self-determination

based on this home territory. Or, each group of Roma within a particular state can have its own political and territorial arrangement to protect its self-determination. If the Roma prefer to retain their form of organization and remain non-territorial, which would prevent them from relating to other national groups in terms of equal freedom, they cannot be accommodated via an equal right to self-determination, though they can be granted other minority rights to accommodate them within their host states.

My approach to territorial distribution proposes a very general strategy of treating all national agents as equals and evaluating their entitlements and types of claims they can advance based on this criterion. Existing national groups can negotiate their boundaries within the constraints of the modified right and accommodate irredentas and other minorities along the lines suggested in the next section. Determining who controls the territory of Kosovo, for example, cannot be the unilateral task of Serbia: according to the modified right, Serbia cannot claim that Kosovo is a part of the Serbian state without negotiating with the Kosovars as a national group concerning the arrangements of the shared state. National groups certainly differ in their size and power, and the dominant group in a state will have more political, institutional, and even military resources to pressure others. But this is precisely why we need the tools to identify who qualifies as a political unit that is morally equal to them and to assess their interactions from a moral point of view.

When the territorial boundaries of a national group are not disputed, figuring out how to accommodate a group usually requires determining its status within the multinational state. When boundaries are disputed between two or more national groups, the situation seems to be more complicated, but the modified right still provides the general background principle for the settlement of disputes of these types. It establishes that national groups are entitled to equal status within a multinational state and requires that groups maintain discursive control in negotiations. One example of an existing territorial problem of this sort is the disputed territorial boundary between Ingushetia and North Ossetia in the Russian Federation. A number of the Ingush people live within the territory of North Ossetia's Prigorodny District. That district was part of the Chechen-Ingush autonomous Soviet republic until it was dissolved following the deportation of Chechens and Ingush to Central Asia in 1944. At that time, the district became part of the North Ossetian autonomous Soviet republic. Ingush self-determination can presently be advanced within the restored republic of Ingushetia, but not throughout the extent of its pre-1944 borders. The problem, then, is to fairly determine the territories of North Ossetia and Ingushetia.

We cannot simply use the pre-1944 boundaries of these two republics as the standard guiding the resolution of this dispute; neither can we refer to the republics' status within the former Soviet Union as reflecting their national identity. First, the known institutional structures corresponded to vacuous political cultures: the merged Checheno-Ingush territory did not reflect the groups' ideal of membership, as expressed in their potential political cultures. Second, the expulsion of the Chechens and the Ingush from their territory changed the geodemographic landscape of the area and influenced the composition of their potential political cultures.

Finally, although the vacuous nature of official political cultures at the time of displacement should signal the uncertainty concerning the nature of group agents whose members were displaced, the displacement was clearly addressed to the two particular peoples, and regardless of what shape their self-determination is to assume, this historical event created an additional dimension of the present-day problem. In terms of the territory, it can be posed in the following way: even though pre-1944 boundaries do not reliably demarcate the Ingush territory, given the vacuous nature of the official expression of their identity in the past, does the group's past suffering entitle it to compensation via the accession of the territory adjoined to North Ossetia in 1944?

My answer to this problem, based on the nations approach, is that historical facts may be brought up in the context of negotiations between the two groups, but that these facts have to be viewed from the perspective of the constitution of the present-day group agents pursuing self-determination. Thus the status of the district can be only resolved by considering the composition and location of the two—the Ingush and the Ossetian—group agents now and only if the equality of their status at the federal level is assumed. The equality of status applies to the group's entitlement to equal self-determination, but not within a specific set of borders. It should be acknowledged at the federal level that the two peoples have an equal right to self-determination but not an unqualified right to safeguard the territory the groups presently occupy or to secure the territory they aspire to occupy before a settlement concerning the territory is concluded to the satisfaction of both sides. Thus, what cannot be assumed or ruled out prior to negations between them is the following: The possibility that the Ingush people can exercise self-determination within their present borders should not be excluded, but it cannot be concluded that they should confine themselves to this territory. Thus, it should not be excluded that the locus of self-determination for the Ingush people is the present boundaries of their republic, with special arrangements made for the Ingush individuals living in North Ossetia. It should also not be assumed, however, prior to the outcome of fairly conducted negotiations concluded to the two peoples' mutual satisfaction, that the Ingush ought to entirely give up on their claims to a portion of North Ossetia. This is especially so because thousands of the Ingush lived there, and their situation was aggravated in 1992 when they were forced to flee from their homes as the result of fighting in the district. While the Ingush cannot participate in the negotiations fairly if their only demand is that Prigorodny District be returned to them, Ingush refugees should not be forced to entirely give up the prospect of residing in North Ossetia. The fate of the refugees should be subject to negotiations between North Ossetia and Ingushetia, and the refugees can be considered as citizens of Ingushetia protected by that republic. The possibility that the Prigorodny District will be returned to the Ingush people also cannot be excluded. If the majority of the population there is Ingush, the district can qualify as part of their territory based on the composition of the group agent. If the district's ownership was not disputed before 1944, this fact is only a weak contributing factor to Ingushetia's claim to ownership because of the vacuous nature of the prior political culture.

Negotiations can only be concluded when both sides are satisfied, and they will undoubtedly assume a complex form. If it appears that no resolution is possible within the confines of this process, there ought to be a procedure for arbitration that will determine the fate of the territory based on the present constitution of group agents within it and will take into consideration acts of unlawful accession of the territory in the past without unreasonably disadvantaging its present inhabitants, as Gans recommends. The territory can be given to one of the republics. Both groups can be asked to relinquish their claims to the territory and it can be granted a special status in which the citizens of the two republics coexist under the aegis of the federation without being directly governed by any one republic. Or the territory can be divided between the two republics, with a peacekeeping federal force put in place to control the area during the transitional time. In all of three cases, the modified right should govern the process.

How can we provide institutional and territorial accommodation to an emerging unit if an existing unit has already received a territory that should rightfully belong to (or at least be shared with) the emerging unit? If the territory of a national group includes a newly appeared minority that claims to be another national group, and if this identity is verified, according to the modified right, this minority should refocus its membership in the state through a direct relation to the central state, at this stage as an equal to the host national group. The territorial entitlement of the host group would seem to present a problem under these circumstances. To remedy this, the constitution of the federal state can include the provision that the territorial boundaries of its political units remain open to revision under certain circumstances and specify a procedure for this process. This provision should introduce strict criteria to be satisfied by sub-unit groups to qualify for nationhood.

Gans's defense of the sub- and inter-statist conception of self-determination of nationhood offers a number of important suggestions concerning the division of territory by national groups. He argues that each group that qualifies for the right to self-determination has to be given a package of privileges, normally within a state that coincides with its homeland, including self-government rights, special representation rights, and rights to cultural preservation. He also does not see territory as tied to its present occupants. Gans argues that partial ceding of territory is sometimes justified based on the following moral argument: Given territorial scarcity, national groups are to be granted self-government rights in at least one geographical location, and other nationals living outside of their territory will relate to that location.[15] Both first occupancy (the presence of the group in the territory historically prior to other groups who presently live there) and formative territory (a territory of primary importance in forming the historical identity of the group) ought to play a role in determining the location in which a national group can exercise its self-determination.[16] If some other group occupies this territory, it will have to share it with the group whose self-determination is being promoted, because no group qualifies for total sovereignty over a territory, and two or more groups can share one territory to realize their self-determination. Gans argues that if a group is required to cede some territory, "People will only have to pay the price of being

excluded from specific areas." He continues, "These areas would not be any larger that those from which they would in any case be excluded, if the territorial rights accompanying self-determination were justly distributed among national groups."[17]

What happens when two national groups lay a claim to the same territory? Surely they have to share the territory, but how many individuals from each side ought to be located there, and what parts can they settle on? Answering these questions is especially difficult if members of the group who cede the territory view this act as giving up the part of their homeland. Gans maintains that we can determine how to resolve such a case on the basis of how much harm the removal of some individuals would cause to the functioning of the community. I agree with this reasoning but would add that the determination of harm requires us to view the parties involved as equal agents with similar claims. Otherwise the group that occupies the territory is privileged, and thus the formative territory argument does not seem to work. Furthermore, the solution to the problem cannot be imposed by a third party; only the two groups, considered as equal agents, can, through a carefully regulated process of negotiation, determine the conditions for the division of the territory. I have demonstrated that the modified right limits aggressive behaviors by setting limits to the acceptable modes of exercising self-determination. It is possible that under some circumstances, a national group will be so hostile that it will not be able to conceive of a future in which it shares a territory with another group. In this case, the function of the modified right is limited to the determination of the entitlement to self-determination and of acceptable and unacceptable group behaviors (the latter of which will include the hostile behavior of the group in question). The modified right cannot always be enforced peacefully, but it presents a standard of justice that can justify some interventions by the international community which, combined with the recognition of the prima facie equal right to self-determination of the groups in question, creates the possibility of turning the hostile group into a cooperative member of international community.

I will demonstrate that Gans needs to make explicit the constitutive structure of group agents to explain why formative territory is important to the exercise of self-determination. Why should a group have the locus of its self-determination in the region its members perceive as a formative territory? Why can it not be satisfied with territory somewhere else (perhaps with the right to visit the "formative" territory free of charge)? Why was Birobidzhan not a proper site of Jewish self-determination? It had formal structures of self-government, preservation of culture, and representation. Why did its vacuous political culture not turn, with all the means of actualization available after Perestroika, into a real political culture of the Jewish republic? The important fact here is not that the Birobidzhan political culture could not in principle have corresponded to the Jewish national culture because it was not the formative territory, but rather that Jewish community members do not consider Birobidzhan to be their formative territory. If one day they change their minds, the territory will become a "formative" one. It is the group agent's shared set of beliefs and shared intentions that turn a territory into a potential site for self-determination. Considering national groups as collective agents also clarifies why formative interest requires some control over the territory in question—why polyethnic rights (rights

that enable groups of common national origin to express their original culture while integrating with another culture and living at least their political and economic lives within that other culture)[18] with access to land through membership in the state of another nation is an arrangement that does not accommodate the national group properly. I agree that polyethnic rights protect an interest different from that protected by the right to self-determination, but Gans's account requires clarification concerning group entitlements based on their constitution. In this case, he would be able to determine the numbers sufficient to populate the territory to provide the national self-determination of both groups.

The idea of a formative territory may allow groups to lay claim to territories they have no relation to solely for strategic and power-grabbing reasons. If the Russians were to claim that Kiev and the surrounding part of the Ukraine is their "formative territory," should they execute their shared self-determination with the Ukrainians there? Would it matter if the Russians mobilize along these lines and self-identify with the belief that Kiev is their formative territory, or would an elite claim that Kiev is Russia's formative territory suffice? Or, given the per capita argument for the morality of territorial redistribution that Gans advocates, should the Russians give up parts of Siberia to the Chinese in accordance with distributive justice? To deal with these kinds of claims, we need the checks and balances provided by the nations approach, which pays attention to the constitution of group agents and determines their entitlements based on their equality of status safeguarded by the modified right enjoyed by the qualifying agents. Only if the Russians and the Chinese come to an agreement acceptable to both sides can they decide how many citizens from each nation must live in Siberia to fulfill their self-determining functions in the region. Or, if it is established that the Russians are entitled to share self-determination with Ukranians within what presently are the boundaries of Ukraine, they can determine the number of Russians who are allowed to move to satisfy the shared right and the territories on which they will reside for this purpose only by mutual agreement. Such an agreement will be based on the acknowledgment of equal status in the discourse of national group agents and the corresponding prohibition of aggressive behaviors and strategic mobilization, and it will attend to the uncertainly of national identities in transitional and non-democratic environments. My account of the possibilities for change is not as sweeping as Gans's. Groups may end up, following a process of negotiation, sharing a territory. However, this outcome is not guaranteed simply on the basis of a notion of the locus of groups' self-determination prior to the period of negotiation between equal group agents.

Also, given that Gans allows people to move to formative territories, his statement that groups without the potential for self-government should be afforded polyethnic rights needs to be qualified. If he has in mind a group that does not aspire to self-determination, it is not clear why he evaluates such a group in terms of self-government. More importantly, if the group in question is an agent whose interest requires self-determination and no geodemographic conditions to exercise it presently exist but these conditions can be created in principle by the group's relocation, Gans still needs to explain why we should not satisfy the group's claims by moving a group or changing state boundaries. I agree with the general spirit of

his project of advancing sub- and intra-state self-determination, but his discussion of the geographical location of the right to self-determination is not as strong as it could be unless he uses the idea of group agency to distinguish between the types of groups and their entitlements and to help limit the effects of the territorial claims of groups that both infringe upon the interests of others and lack a moral ground. The enjoyment of the modified right to self-determination is territorial, and the conditions of territorial division are determined based on the equal status of qualifying group agents.

Mixed Federations

I will now briefly discuss some general guidelines for the organization of a multinational state with mixed subjects—territorial and national—that conform to the nations approach. Territorial units without separate national identities, such as different oblasts in the Russian Federation, belong to the same national group, even if the group is composed of a large number of such units. A territorial unit can become a national group if it mobilizes accordingly. As the unsuccessful agitation by political elites in the Ural region demonstrates, however, territorial units normally have regional, not national, identity. The people of the Ural region consider Russia (although not the Russian Federation, perhaps) to be their political community.[19] All national groups, on the other hand, given their nature as collective agents of a particular kind, need to be recognized as the same type of subject at the federal level and must have equal status in relation to one another in their ability to control their political futures. This may mean that several territorial units are represented by only one national group, which (as is the case for the Russians in the Russian Federation) can be much larger than other national groups. So long as each national group has a say about its political future in a form satisfactory to it, its agency and self-determination are respected. An oblast or a province cannot be a member of the federation at the same level as a national group, because territorial-administrative units normally perceive their powers (even if they have regional parliaments) to have been delegated by the respective national units in which these powers are ultimately vested. Territorial-administrative units can, however, have equal representation in a separate chamber within their own national group's legislature in addition to proportional representation (there are no national subunits within the territory of the sub-state national group). They would be able thus to have access to the federal legislature both through their national group and through federal-level proportional representation.

A Teleological Justification of the Nations Approach

The nations approach deals with both the equal treatment of individuals within multinational states and global justice with respect to political communities that advance claims to self-determination. In this section, I demonstrate that its implementation would provide for a more peaceful relationship between substate and

state-endowed national groups and that its norms stand a good chance of being upheld by the subjects it would regulate because they serve their interests. This section provides a teleological justification of my approach.

Asymmetrical Warfare

Asymmetrical warfare in all of its forms is a growing concern for the world community. Controlling conflicts of this type is important for world peace. The introduction of the nations approach, and the modified right in particular, would have a mitigating effect on some justifications for asymmetrical warfare and especially for terrorism enacted in the name of self-determination. The implementation of the nations approach and the modified right cannot eliminate all justifications for the actions of non-state combatants, but it renders invalid those that have to do with claims to self-determination and demands for the equality of status of substate and state-endowed groups.

A military action is acceptable, according to just war theory, if it is waged by a legitimate authority, has just cause (such as a response to aggression), and is a last resort (such as a pre-emptive strike in light of an imminent threat to the very existence of a political community). A war should be waged so as to avoid the use of excessive force and to minimize harm to noncombatants, who must not be intentionally targeted. Although in the current international paradigm the right to wage war belongs only to states, stateless national groups that wage asymmetrical wars often justify their goals and their means in terms of just war theory. Many theorists agree that the just cause criterion can apply to non-state groups and that there are cases in which non-state actors have de facto legitimate authority.[20] Asymmetrical warfare can also be viewed, in certain circumstances, as the last resort of stateless groups. A national minority dissatisfied with its subordinate status and denied both means for the improvement of its situation and the right to secede may consider asymmetrical warfare as the only remaining option for obtaining the political status members perceive their community deserves. In the absence of legitimate means to address their claim to self-determination, they can argue that they are waging a war in self-defense, as a last resort to protect their political community.

Many theorists also agree that freedom fighters can attack military targets provided the fighters represent a de facto legitimate authority and have just cause. While few theorists would argue that targeting civilians to advance political goals satisfies the criteria of justice in war, in some cases, terrorists may use the rationale of supreme emergency to justify their tactics. Such a justification for targeting civilians or otherwise breaking the war convention applies, according to Michael Walzer, when either the survival or the freedom of a political community is in question. He considers the survival and freedom of political communities—whose members share a way of life, developed by their ancestors, to be passed on to their children—to be among the highest values of international society. The violation of these values in the absence of other means to protect them is a sufficient reason to adopt a supreme emergency response, Walzer explains, due to the rule of necessity.[21] The good of

the survival of a political community under extreme circumstances, however, does not mitigate the moral wrong of targeting innocent people; it merely overrides it. Walzer argues that Churchill's order to bomb German cities at the early stages of World War II (but not later) was justified.[22] He does not apply his justification to terrorists who advance claims to self-determination on behalf of a non-state group. The supreme emergency justification plausibly applies to their actions as well, however, if there is an imminent danger of the total deterioration, paralysis, and ultimate disintegration of their political community because its way of life and the will of its people to self-govern are severely disrupted, as happened in Chechnya.[23]

Non-state combatants justify their tactics by the need of their political community to survive, by the inequality of the power relations they are involved in, and by the lack of avenues for the realization of their goals. If the nations approach were accepted in the international legal framework, it would be useful for responding to the moral claims of non-state combatants. With respect to non-state combatants' advancing the right to self-determination of their national groups, the nations approach, as I argue below, undercuts just war justifications for asymmetrical warfare, provides incentives for stateless groups to participate and to avoid using pressure tactics in negotiations, and creates additional responsibility on the part of these groups.[24] I demonstrate that the guarantees provided by the modified right create conditions for both state and non-state agents to satisfy their goals, which creates prospects for the modified right's being voluntarily maintained by its subjects.

The granting of equal status with respect to self-determination to all of the sides in a conflict underscores which legal norms ought to define legitimate avenues for the achievement of self-determination, and one of them is participation in a justly arranged multinational state. The nations approach reflects the self-perception and aspirations of non-state groups because it recognizes them as they want to be recognized. A national group may claim that it resorts to asymmetrical warfare as the only means to attain equal status. Its goal of equal freedom with other national communities is the just cause that the group seeks to advance through its belligerent actions. The implementation of the nations approach, however, provides a national group with the means to achieve self-determination peacefully. If such an avenue for the realization of self-determination is open to the national group, its "just cause" justifications for asymmetrical warfare would be negated. If the nations approach is followed by set of international legal norms and corresponding practices that reflect the modified right of all national groups to self-determination, this will provide stateless national groups with a framework in which they can ensure their existence through legitimate and peaceful means. Thus, the survival of their political communities will no longer be threatened, and their "supreme emergency" justifications of terrorism based on the threat to the political community's survival or limitation and destruction of any self-government would not apply. If the nations approach is established as an international practice, a non-state group may have the right to secede if its host state persistently rejects the norms of the nations approach and denies the group the enjoyment of the modified right within its borders. The group would not, however, acquire the right to engage in war.

Where does this leave the international community with respect to its response to asymmetrical warfare, and in particular to terrorism? The moral force of retaliating

against terrorism is diminished if terrorists have some moral justification for their actions. The same reasons that outweigh (but do not eliminate) the moral wrong of the means employed by terrorists in the supreme emergency justification can weigh in as independent reasons in determining the international community's response. This can then result in conflict between a duty to punish and a duty to support the justice of the international order. Other things being equal (including, of course, the means by which it is carried out), the more just the cause, the greater the chance that it will outweigh the moral wrongs of a terrorist act. This fact can partially or completely discredit the international community's response, assuming that terrorism is not defined in some question-begging way that makes it always unjustified a priori.[25] The implementation of the modified right hence eliminates a possible moral conflict for the international community in its responses to terrorist action. If terrorists have no normative justification for their acts, they can unquestionably be held fully responsible for killing civilians and be treated as what they have become—mere international criminals.

The means for the resolution of disagreements among national groups provided by the nations approach limit the kinds of claims that can be legitimately put forward in the settlement of disputes. The threat of unilateral exit would not work as a bargaining tool, for example, partly because unilateral secession is an outlawed action and partly because negotiated exit is permitted if other attempts at negotiation do not work. If there is a reason for a national group to be dissatisfied with the recognition of its self-determination in a just state, the state will be likely to resolve the problem internally or to negotiate a peaceful separation, which would then fall under the category of "separation by mutual agreement."

Basic principles that might bring the warring parties together and basic terms upon which they can negotiate are more effective if they define the status of the parties with respect to one another, not only in the context of negotiations but also in principle. Then, the moral status of non-state groups in international relations is not negotiated but instead is assumed as a starting point. That the nations approach grants the modified right to all national groups provides such a moral status for non-state groups. The recognition that minority groups' entitlement to self-determination is equal to that of state-endowed groups both in and after negotiations secures not only a better negotiating position but also a better chance that the provisions they agree upon will be followed through on after the negotiations are over. In the absence of such recognition, a minority group may fear that even if the negotiations are successful, little can deter the other party from violating agreements afterward. Granting an acknowledged international status to substate national groups assures that they have recourse to the international agencies in such cases of noncompliance. A non-state group's equal entitlement to self-determination designates its international status regardless of the outcome of negotiations and creates additional assurance for the group that the international community will back its legitimate claims if the other party fails to treat it as an equal.

The acknowledgment of the stateless national group's equal international status as a particular type of group agent with corresponding entitlements ensures that the protocol for negotiations will reflect its standing. This will diminish the desire of the group to use pressure tactics in negotiations to counteract what it perceives as

the unfair advantage of state-owning groups.[26] A lack of proper international recognition, on the other hand, is often what the militant actions of national minorities aim to rectify in the first place. If a non-state national group is not recognized as a self-determining political entity or even respected as such in negotiations, it may resort to terrorism and other destructive strategies as a means of leveling the playing field with its state counterparts. The group's members will not be willing to give up what they perceive as their only bargaining tool: being dangerous. Although it is impossible to guarantee equality for a stateless national group in all respects, the recognition of equal status defines the group's basic entitlements and the corresponding obligations of the international community in assisting the group to secure them. Without such recognition, it will appear only prudent to the members of the group to maintain a level of political violence necessary to sustain continuous pressure on its opponents and to push for its demands to be satisfied while its members are armed.

In the Palestine-Israel conflict, for example, demands that the Palestinian side disarm prior to any settlement of the conflict and without any background guarantees of equal standing upon doing so have not seemed to work. Equal standing can be granted to Palestinians either through equal substate self-determination within the Israel-Palestine territory by the Israelis and the Palestinians or through the formation of a Palestinian state. The latter is a more viable option for granting Palestinians equal status with respect to self-determination, given that one of Israel's basic principles is that it is a Jewish state. Perhaps the militants would continue their struggle even if equal international standing was afforded to Palestine. But in this case, they will have no justification for such activities, or at least not the justification that their actions are required for the survival of their political community. The Palestinian state and the international community will be able to employ all means possible to eliminate terrorists without being held back by the supposed justice of the terrorists' cause, because this cause will no longer be just. If the Palestinian state aims at the destruction of the state of Israel and uses state terrorism and other means to employ political force, the international community would have a clear reason to intervene and deal with the situation, as it legitimately can in any case of aggression.

Turning non-state national groups into equal international actors by recognizing their status makes it more incumbent upon them to exhibit appropriate international behavior. If they are equal subjects of international law and parties to the war convention, their responsibility is similar to that of all state-endowed subjects. As recognized international members that are expected to behave in accordance with international norms, which they accept by virtue of their membership, and they can be held responsible if they do not comply with the relevant norms.

Making a national group's behavior a condition of whether it is going to be included in the international community, on the other hand, is unproductive as a way of assuring its compliance with international norms. First, affirming one's equal standing through proper conduct is much more appealing than merely trying to qualify for such equal standing with the same behaviors. This is so because setting special conditions on a group's behavior prior to the recognition of its equal standing goes against the group's deepest moral claim that it is equal to other national groups.

It is unjust to hold national groups responsible as if they are members of the international community while denying them that membership and its privileges. If substate groups are to be held responsible, they have to be given the status of normally responsible members of the international community—members with the capacity for self-determination. Moreover, placing demands upon substate groups equal to those placed upon the members of international community implicitly acknowledges that they are a particular type of group agent—the same type as the members currently enjoying higher status within the international community. If a national group is unconditionally acknowledged and protected as a member of the international community, restricting the group's entitlements as punishment for its violation of international norms will be less threatening to the group, whose primary struggle is to realize its agency by achieving a proper international standing, than would be denying the group membership in the international community while demanding that it behave as a member would behave.

A stateless national group will be reluctant to change its conduct, furthermore, without guarantees that when it stops this conduct aimed at putting pressure on internationally accepted world actors, it will achieve its goals. If the international community refuses to acknowledge that the members of the group are members of a nation, as they claim to be, it suggests to the group that other, legally accepted members of the international community may not be truly committed to settling the group's conflict on terms acceptable to all parties. Moreover, when a national group's cooperation is needed, it is simply unproductive to refuse to address the group based on its self-definition. Finally, if attaining recognition as a self-determining group ceases to be a substate group's primary goal, it can direct its efforts to fulfilling the responsibilities of a normal member of the international society.

For transitional societies, defining the principles that qualify groups as rights holders and providing norms to regulate their behavior once their national composition is finalized should help to guide their transition peacefully. The availability of such a framework for the satisfaction of self-determination claims within a host state renders unnecessary and unjustified the resort to extreme measures to protect the existence of a national community. Moreover, substate groups are assured that if they comply with the rules they will avoid retaliation and be able to gain a significant degree of control over their political futures.

If we consider the actions of some groups to be governed by what Walzer calls "the war convention," with all the corresponding prerogatives of the use of force, the waging of wars, and the protection of their citizens, and if the actions of other groups are not governed in the same way, then this creates two classes of world citizens: those who have a legal right to defend themselves and who can, due to their properly institutionalized group agency, wage military operations and legally trade arms, and those who are denied this privilege. This outcome is wrong not in itself, but as a consequence of the unequal actualization of group agency, which I argue in this book is morally wrong.[27] It may appear that federal substate units, under the modified right, would be in a similar situation of not being able to unilaterally initiate a military offensive and thus being disadvantaged in relation to state-owning

national groups. This is not the case, however, because these groups would have means to actualize their agency and a set of legal guidelines to regulate their military power. Unlike substate nations without an international status, in case of military emergency they would know what actions they are entitled to undertake and what other groups are in charge of the military cooperation. They would also, due to their acknowledged international standing, have an established set of procedures for appealing to international agencies as a group agent whose interests are in need of protection. The institutional structure that conforms to the modified right is superior to a system under which groups can only appeal to international agencies when their members' human rights have been abused.

Equal self-determination may appear difficult to harmonize with another consideration: that national groups that consistently use terrorist tactics or oppress some of their own members, such as women, do not have and should not be accorded equal moral standing with other national groups. This is a valid concern. The nations approach limits the aggressive behaviors of a national group toward others, however, both with respect to other equally self-determining subjects and with respect to the group's own members. It places restrictions on what qualifies as a valid claim to self-determination. Thus, the *exercise* of the modified right is conditional in part upon a group's goals and behavior, although the group retains its *status* as a national group regardless of its behavior. There are situations in international relations that allow a state's sovereignty to be violated. If a state unjustifiably attacks its neighbors and has to be invaded to arrest its advance, for example, its invasion does not compromise the fact that the state is *in principle* an equal international agent. Precisely because of its status as an equal international agent, it is held up to a standard of behavior expected of all such agents. A national group can be deprived of the *enjoyment* of its right to self-determination, however, if its behavior violates the equal right to self-determination of others.

While the nations approach protects national groups from unnecessary interference with decisions pertaining to their political futures, it also justifies restrictions imposed by the members of a multinational state or the international community on one another. As I discussed in Chapter 4, those groups that respect human rights within a multinational state have the right to demand a similar respect from others, lest everyone's international status be jeopardized. And if a national group exercises self-determination through the acquisition of its own state, it is expected to respect the standard of human rights.

Pragmatic Norms and Self-Interest

The modified right can realistically be maintained because both stateless and state-endowed members of the international community are motivated to cooperate to uphold it. The modified right helps them realize their respective goals of achieving self-determination and safeguarding territorial integrity. It maintains a situated standard of justice derived within the framework of practical limitations. As a theoretical illustration of a pragmatic normative approach, I would like briefly to consider Thomas Hobbes's derivation of the norm governing the interactions of free agents

that aims to preserve their rights[28] and Immanuel Kant's explanation of why such a norm can be maintained by agents themselves.

Both philosophers agree that a community of free and self-interested agents can operate peacefully only on the basis of a system of norms that guides the agents' interactions in order to preserve what belongs to the agents naturally: their freedom. They disagree about whether such norms can be maintained by the agents themselves. In Chapter 14 of *Leviathan*, albeit in his discussion of individual and not group agents, Hobbes demonstrates that the "Right of Nature"—the right of each man to preserve his own life—requires for its maintenance a corresponding law that prescribes mutual limitation. The "Second Law of Nature," which is an important example of a pragmatically derived norm, states that "a man be willing, when others are so too, as farre-forth, as for Peace, and defence of himselfe he shall think it necessary, to lay down this right to all things; and be contented with so much liberty against other men, as he would allow other men against himselfe."[29] This law, though derived from the nature of the agents, cannot be maintained by them and requires a strong power to implement it. From a Hobbesian point of view, then, the prospects of the enforcement within the international community of the norms proposed by the nation approach are rather bleak. If we assume that mutual limitation of self-interested, free, and equal agents is the best law to follow, how can the proper operation of the international community based on this law be enforced?

Kant acknowledges that no sovereign could exist who was strong enough to maintain peace in international relations through political violence. Nonetheless, he is optimistic that the law of mutual limitation can be maintained by its subjects through their voluntary compliance, which is based partly on their self-interest. The members' voluntary compliance with the law offers the best prospect for peace. In complying, each member implicitly assumes that others also comply. This requires some limitation—but equal limitation—on the freedom of members. If the rules are not followed, the system breaks down, war ensues, and no one is free. The members' mutual compliance with the rules as a condition of the rules' successful implementation is therefore their best incentive to comply. Hence, if the members are free and self-interested agents, the best coordination game is one that maintains the equality of their status. Kant argues that the political form that can preserve and secure the freedom of each nation is a federation of nations, which does not aim to acquire any power like that of a state but rather aims merely to preserve and secure the freedom of each confederated state. [30]

Both Kant's and Hobbes's views call attention to the importance of the presupposition of equal freedom. For, according to them, individuals are willing to accept limitations upon their powers if their freedom is preserved in some form (or relinquished no less than that of others). Overall, a pragmatically derived norm, although relying on presuppositions about agents' nature, is mainly based on regulation of the agents' interactions in order to preserve the agents' aims. Although the enforcement of such a norm relies upon the agents' willingness to comply, their interests make it likely that they will comply.

Presently, the lack of a coherent rule of membership in the international community contributes to tensions among members and non-members, because in some

cases non-members believe that they are agents of the same kind as members and that they are being denied membership unjustly. This belief in the particular character of their agency sustains them over time as precisely that type of agent, but without the means for proper exercise of their agency. The international community aims at sustaining peaceful relations among its member states. Stateless national groups that are not members of the international community, however, are capable of initiating war within or with member states. Moreover, since membership carries with it certain privileges and protections, non-members are required not to interfere with the freedom of members, while their own freedom is restricted. Attempts to keep in check dissatisfied non-members who have become or are about to become aggressive often increase the volatility of an already tense international situation. The international system will have a better chance at stability when all similar world actors enjoy equal status and when the maintenance and enjoyment of this status in itself serves as an incentive for members to comply with the rules of membership. It is easier to enforce the rules of civil international behavior if it is more profitable for stateless national groups to obey the rules than to break them. Membership in the international community, with its corresponding rights and obligations, is more attractive than being outlawed, creating the motivation for national groups to respect international legal regulations.

Hence, to lay the groundwork for peace, the international community needs to involve non-state national groups in the regulation of relations among its members by recognizing that such groups have a claim to self-determination equal to that of others. Creating a special league of stateless nations would include them into such a regulation, but as second-class groups, not as equal participants. Other solutions short of acknowledging them as self-determining group agents, such as giving them a set of consultation rights or another form of group protection, would be inadequate for the same reason. Self-determination is their constitutive shared good, and it warrants the inclusion of non-state groups in the international community on an equal basis due to their organization. Their inclusion would ensure that they have a chance to actualize their collective agency properly. National groups' claims to self-determination may equitably be satisfied on a case-by-case basis or according to an additional set of international principles, but in any case their satisfaction should be based on acceptance of the basic norms that regulate the other-regarding behavior of substate groups offered by the nations approach.

The right to choose among a set of options and not let some dominate in this choice does not guarantee that disputes about options will not arise. The nations approach helps to resolve disagreements, however, through negotiations between participants. The basic framework for the negotiations safeguards the participants' equal freedom in the discourse. This, in the end, assures that all sides have a chance to acquire control over their political futures based on principles acceptable to everyone involved. Thus, by defining the conditions for membership in the international community for both state-endowed and stateless groups, the nations approach relies in part for the enforcement of its norms, and of the modified right in particular, on members' voluntary compliance with those norms, which is possible because the norm of equality promotes members' chief interests.

In addition to the benefits of following the nations approach for the subjects it regulates, other aspects of the approach improve its chances of being successfully enforced. First, it introduces an ideal norm that does not create tensions between moral and legal principles and utilizes a definition of nationhood clear enough to be applied to a wide range of cases. Second, it defines what constitutes the just treatment of susbstate groups regardless of who enforces it, and it is compatible with a variety of international arrangements.

The Former USSR Republics as a Real-World Example

It may be objected that my conclusions about the impact of the equality principle on the stability of multinational states and the behavior of both state-endowed and stateless groups are merely speculative. Since there are currently no rules regarding relations among these groups, however, it would be unconvincing to claim that regulating relations that are not presently regulated will make them worse. This is especially true if the proposed regulation is specifically designed to address the issues that cause or exacerbate tensions in international relations. Indeed, there is some evidence in the case of the former Soviet republics that the norm of equality, when implemented and maintained, even only formally, frames collective agents' actions and mutual perceptions in such a way that they are more likely to attempt a peaceful resolution to their conflict. The former Soviet republics nominally retained their sovereignty in the union through the constitutional right of exit.

The former USSR was dissolved relatively peacefully at the level of the union republics, using a process based on the constitutionally recognized equality of the separating units. The question of how to deal with national groups, however, is still looming within former republics' territories. The norms regarding the agents' status present in the constitution of the former USSR shaped the collective agents' self- and mutual understandings in very important ways. In the Georgia–Abkhazia conflict, for example, Abkhazia, a former autonomous republic, was, under the Soviet regime, unequal in status to its host, Georgia, a former union-level republic. The national groups in the Chechen-Russian conflict also belonged to two different levels in the former Soviet hierarchy of nationalities, with the complication that Chechens used to share an autonomous republic with the Ingush people (Checheno-Ingushetia). The constitutionally recognized inequality of status of different national groups within the republics certainly contributed to instability. The ranking of groups disregarded the moral entitlements of the groups, and the whole idea of the hierarchy was clearly arbitrary. The ranking shaped republican and subrepublican groups' mutual thinking in such a way that their relationships, after the fall of the Soviet Union, often ended up as a standoff between minority groups, which were trying to gain what they felt they morally deserved, and the majority, which was protecting what it had. When the status of two national groups is unequal, it reassures the higher-ranked national group that it, and not the minority, has a special connection to the state. While there is nothing inherently problematic about legitimizing the majority's desire to safeguard its boundaries, sanctioning its

disregard for claims to self-determination on its territory does not contribute to stability, because it defends the territorial integrity of the state for the wrong reasons. Had the relations among national groups been regulated on the basis of equal status with respect to self-determination, the various national groups would have perceived their relations differently. And shared beliefs of group members about desired political status and its relation to the existing norms are crucial in the formation of group strategies for action. Thus, once recognized as valid and entrenched in the constitutional and institutional design of multinational states, the norm of equality is likely to guide group members' collective decision making and actions, because the agents' goals in the realization of their agency would be formulated with this norm in mind.

It may be objected that the Abkhazian and many other minority nationalisms are kept alive by external factors (such as Russia's alleged assistance with weapons). But it would be hard to imagine that the Russians created Abkhazian national identity and claims to self-determination where there were previously none. The often-voiced perception and criticism of the nationalist ideal as an effective ideological tool that leads to strategic mobilization points to an important feature of this ideal: since other methods seem to be less effective in mobilizing the populations of transitional societies than the nationalist slogans purportedly used by elites to preserve their power, it may be that nationhood and national identity correctly reflect an important aspect of the popular will and represent groups' desired relation to political power. Trying to forge "St. Petersburg" or "Ural" national identity where no corresponding political culture existed has not proven to be effective. The claim that the Abkhazians have less of a right to preserve their control over their political future than the Georgians do is unsubstantiated at least because it runs contrary to the moral entitlement of the corresponding collective agents. There is nothing mysterious and primordial about claims to self-determination and national identity: a collective agent's political culture can be created, manipulated, and changed over time. But precisely because it can be engineered, we should be concerned about how to guarantee it actualizes while it is not under duress of any kind, and we should also try to ensure that the widest possible public sphere is available to its participants for the development and expression of their national culture. The equality principle, if implemented, either results in the improved stability of multinational states—when national groups learn to live together and appreciate a joint possession of their host state—or provides good background conditions for peaceful separation.

The Implementation of the Nations Approach

The Enforcement of the Nations Approach

Some of the already existing mechanisms used to enforce international norms could support the implementation of the nations approach. The same types of international sanctions that exist now could be employed to secure the compliance of states that

do not satisfy the norm of legitimacy with the principle of equality and the modified right to self-determination. Their compliance could be monitored through the international court, for those groups that were able to apply to the court, and through international observers for groups in oppressive countries.

Overall, what outsiders can do to help a people is often limited by what they can do to help build the people's institutions, as Risse points out in the context of global economic justice.[31] I think this applies to justice with respect to self-determining group agents overall. If the international community helps to safeguard the peace within and territorial integrity of an inherently unstable state without changing the state's internal organization, the effort is often wasted because it does not address the source of the problem. Extra resources are spent on bolstering a government that is not fully in control because it overrides the will of the member collective national agents while constantly meeting their resistance. A lesser or similar amount of resources can yield better results by bringing member groups' own authorities to properly govern their territories. This is achieved if the division into self-governing units reflects the beliefs of the population concerning the meaningful limits of political authority over them. When national groups are in control of their political futures, the likelihood that they will govern themselves more efficiently increases. David Miller argues, for example, that promoting the self-determination of national groups is a way to help the needy in their corresponding countries and thus to improve international distributive justice. This is so because proper authority helps in distributing aid efficiently and allows the population to take care of itself better than it otherwise would. Miller argues that international justice comes into play when we encounter people whose lives are less than decent (in the sense that they cannot engage in the range of human activities that are common across culturally varied societies and are therefore central to human life).[32]

I have argued that being a member of a national community is a good that is basic to the proper political inclusion of individuals into their societies and, moreover, that respect for human rights and the maintenance of basic freedoms are necessary to national groups' proper actualization and exercise of their group agency. It is always possible, nevertheless, that self-determining national groups will disrespect the standard of human rights within the territory they govern. Some groups, for example, oppress women. The existence of such groups is a problem, but it can be better approached if the group agent has a government that conforms generally to group members' expectations concerning the bounds of their political community. Such an agent has political institutions with discernible decision-making procedures, which facilitates communication with the group and increases the number of ways in which group practices can be influenced by the international community. A national unit's possession of an identified and internationally accepted government ensures that the group can be held responsible for violating the standard of human rights. International engagement with national groups may take any of several acceptable forms, and it should be considered a prerogative of international bodies to monitor violations of human rights and issue a verdict concerning national groups' standing. International support for the group or protection of the group's interests in the international arena or within its federal state, for example, ought to be conditional on the

group's respect for human rights. National groups that form federal units can belong to the international society either directly or via their joint membership in a federal state. They are not out of reach of international institutions. If substate groups are not assisted in actualizing their agency and thereby remain without an institutionalized set of rules for self-government and political decision-making, they will be much harder to influence.[33]

This raises the question of what type of membership in the international community national groups should have to make it easier to protect the human rights of their members. Perhaps, as I suggested, a "Modified UN" or some other international body could serve as a forum for national groups. National groups have to be able to air their grievances and receive support for their rights internationally.

The Acceptance of the Nations Approach

Even potentially effective norms need to be first accepted by the world community, which is made up of existing states, in order to be useful. Is it plausible that the set of norms I propose could be adopted in the near future? Any proposal to reform the international legal system faces the following difficulty: A principle needs to be proposed for a vote in such a form that the number of states sufficient for its acceptance will vote in its favor. If the norm of legitimacy turns too many world actors into outlaws, it is not likely to be accepted. Buchanan, for example, opts for a notion of minimal justice based on human rights in the hope that it will be accepted because it does not run against the interests of existing states.

The claim that states will not decide in favor of a rule that is against their interests, such as their interest in territorial integrity, however, represents an oversimplified version of how the voting process takes place. Strategic voting to support alliances or influence adversaries must also be taken into account. States may also be inclined to accept a morally progressive principle in order to continue being members of international community in good standing, which would entitle them to receive some sort of reward (such as loans from international financial organizations) or help them avoid sanctions. Moreover, the pragmatic hurdles to enforcing a principle in international society may mitigate the consequences of accepting it for those states that do not wish to comply with it. Therefore, although the acceptance of international norms by states is interest-based, the complexity of the voting process and the influence that some well-entrenched international norms and practices have on the behavior of member states loosens the seemingly straightforward connection between the acceptance of a proposal put for a vote and the voters' immediate interests involved with respect to the proposal. The Universal Declaration of Human Rights was accepted at a time when many countries violated human rights to some extent. Countries like the former USSR signed it not from a desire to safeguard the intrinsic goodness of human rights but rather to satisfy some other, more remote interests connected to their membership in the world community, and in doing so they condemned on paper practices that they accepted in reality. As I discussed in

the previous chapter, in pragmatic terms, the rejection of the modified right is more costly for a multinational state than its acceptance even if the cost is calculated from the state's internal political perspective, regardless of the implications for its international standing. The rejection of the modified right has the destabilizing effect of mobilizing minorities in the state's territory, and its acceptance provides a framework for negotiations that benefits all parties.

One may object that even states not directly affected by the modified right may hesitate to accept it out of a concern for the protection of citizens of legally unstable transitional multinational states. They may agree that the modified right expresses more legitimate and just conditions of inclusion for minorities than the status quo, but conclude that, in practice, the modified right cannot be enforced peacefully and efficiently. They may believe that to be the case because, in transitional states, neither the minority nor the majority can rely on effective legal institutions and an impartial police to ensure the protection of human rights.[34] In response to these skeptics, I would say that political stability and the rule of law are more likely to emerge if it is stipulated in the rules of transition that the state institutions cannot belong to one group, majority or minority; this discourages various groups in the territory of the state from mobilizing so as to monopolize the state institutions. The modified right prohibits the association of the state power with one single group and shapes the transitional state's institutions so as to reduce the amount of power a group can exert over non-members. This decreases the chances of discrimination against non-members and, consequently, makes it less likely that the group would violate the human rights of non-members. The modified right also stipulates the equality of all nations within a state, which allows groups to monitor the treatment that other groups afford to their members. This reduces the chances of discrimination against a group's own members and, consequently, makes it less likely that the group would violate the human rights of its members. The concern that the modified right will lessen individual security in transitional states is not justified.

It is true that claims by minorities can emerge before a state's institutions are fully functional, but this is precisely why the modified right needs to guide the transition to such institutions and provide the norms for their formation: we need to avoid the crystallization of the typical "well-functioning" state institutions that associate one national group with the state and become the source of governmental bias leading to political tensions.

Kymlicka discusses the worry that, if the international community endorses a right to culture or a right to self-determination, this prejudges internal debates within a group that is not decided on how to mobilize; thus it treats one notion of the group as essential. Hence the endorsement of the modified right may be perceived as a form of interference.[35] In response to this worry I would say that the acceptance of the modified right is needed to counter an already existing form of interference with group identity that the present legal rules create: as far as self-determination is concerned, international law promotes ethnic groups with states while leaving all other groups in a legal limbo: no matter how they are going to mobilize, the process is not regulated by international rules except for the prohibition of self-determination in the majority of cases. Hence, ethnic majorities are "essentialized"

by the international legal rules as entitled to a state. This prejudges the majority's political status and pushes it to a very specific type of mobilization. The modified right deals with entitlements of a certain type of group agent but it doesn't prescribe which groups should be included under its regulation prior to their mobilization, and thus it doesn't predetermine their future. The terms the right offers for the regulation of relations among groups within a territory are provisional and general for any transitional state. This hardly incites one definite type of mobilization; but the modified right can control certain types of group agents' mobilization within a territory by offering the parameters that the corresponding multinational state's political institutions ought to meet for the state to be legitimate and just. Hence, members of an international forum have good reasons to accept the modified right; this is especially true if the forum is specifically designed to deliberate about international norms. The pressure to explain why some groups are entitled to the right to self-determination while others, similarly constituted, are denied the right, in the absence of clear pragmatic counterindications, makes it more likely that the members of the forum will be inclined to strive for the coherence of its approach to establishing international norms.

Furthermore, the nations approach conforms to recent developments in international practice. Examples of developments that dissociate state and nationhood and aim at the recognition of the equality of national groups within multinational states include the establishment of the Scottish Parliament; the introduction of the European Framework Convention for the Protection of National Minorities, which presupposes that states should adhere to a system of protection of national groups on their territory; and the organization of a multinational state with equality of founding national groups in Bosnia-Herzegovina as a means to resolving the conflict there peacefully.

As we have seen, the nations approach safeguards the territorial integrity of multinational states by offering a solution for stability: by conforming to the norm of legitimacy, states can keep national groups within their boundaries and minimize potential and existing conflicts. The interest of states in stability—and the prospect of being protected by the territorial integrity principle—would give them a good reason to accept the condition of minimal justice. In addition, states known in the past for breaking the rules of international law may be guided by self-interest to maintain their status with respect to the world community, while international law—abiding states are likely to accept the "enhanced" condition because it both conforms to the normative presuppositions of international law and is consistent with recent developments in international practice.

If a norm is insincerely accepted but is not followed by a number of states, does any benefit derive from its acceptance? Its insincere acceptance indicates that the perpetrator states want to appear to be playing by the rules and thus indirectly acknowledge the validity of the rules. Their acceptance of the norm thus helps with the norm's reinforcement, because they can be held accountable to norms they have agreed to in writing or by voting. The fact of their acceptance thereby reinforces the moral judgment of other parties to the agreement concerning the rule-breakers' behavior and creates the possibility of a legal judgment binding on the party to the

agreement that breaches the norm. Moreover, is a norm is accepted, it becomes part of international practice and discourse and even those who did not vote for it or sign an agreement concerning it guide their actions and phrase their justifications of actions with the norm's validity in mind.

Judgments by International Agencies Concerning Transitional Societies

Passing judgments on claims to self-determination requires a delicate balancing act. National groups have to express their claims to self-determination; the international community should not pass judgments and impose sanctions upon a state that is not considered minimally just to its national minorities if those minorities do not want national self-determination and are satisfied with their cultural minority status. A claim to self-determination needs to be verified as genuinely representing a collective agent's shared aspirations in order to eliminate strategic claims and those associated with vacuous political cultures. The nations approach requires that a claimant possess the right kind of political culture to qualify for the consideration of its claim. A national group may not be able to make a self-determination claim, however, if it is severely oppressed. This is why I suggested the cautious approach to nationhood in oppressive states. Approaching transitional and oppressive societies with caution does not mean that international regulations should not apply to such states or that the relations of national groups—even formally acknowledged national groups—should not be regulated. The cautious approach simply warns the international community to be alert to the emergence or revelation of new national identities and to not take the claims of vacuous political cultures regarding nationhood at face value. It also implies that the international community should pressure oppressive and transitional states to improve human rights and allow freedom of expression.

The use of the cautious approach permits employing the modified right in cases of the emergence of new nations. Used together with the cautious approach, the modified right requires that, while equality of status with respect to self-determination for those groups that can nominally be considered nations should be affirmed for the time being, a provision should also be made to include other nations that may appear in the territory of the state under the principle. The provisional inclusion of newly formed nations should also be guaranteed by the existence of international agencies that monitor the process and pass judgments about the claims to nationhood advanced by national groups. This assures that when and if new national groups appear they will be included under the regulation. In addition, the equality principle defines the terms of negotiations national groups ought to follow.

A national group can be mistaken about the stability of its identity. As long as this identity is minimally expressed, however, and the group members are convinced that this expression reflects their preferences, the group can be considered a national group. Non-democratic societies provide a good reason to establish and maintain

an international legal standard for dealing with changing and emerging national identities based on the norm of equality of national groups. Promoting the equality of status of all national groups—those which are emerging as well as those already established in the territory of a transitional state—may help to make periods of transition less tumultuous.

The Liechtenstein Draft Convention on Self-Determination through Self-Administration,[36] which speaks of the self-determination of non-state groups in its external meaning, is a significant achievement in the direction of formulating a framework for the protection of national minorities. One of the goals of the draft convention is to properly transfer self-determination from the international realm into the realm of internal state politics, where it can be mediated by the rules and organizations of the international legal system. This is especially important given that borders are changing, in Europe in particular, from the nation-state to a more "soft, porous" reality.[37] The basic notion that the draft convention uses to identify self-determining units is "communities." It could profit, however, from identifying basic features of nationhood, which is the leading notion now associated with self-determination. Engaging the idea of nationhood in the context of self-determination would help to specify to whom a state belongs, which kinds of groups are associated with states, and how to divide powers when self-determination claims conflict.

Empirical Considerations

One may argue that whether my account to self-determination will bring about more peace is an empirical question. If it is an empirical question, the approach needs to be tested, because it has never been applied. Yet, as an earlier section in this chapter showed, there is some evidence that equal status with respect to self-determination makes relationships among national groups more peaceful: the former USSR fell apart along union republic lines peacefully, but the hierarchical status of national groups within each union republic has contributed to a number of armed conflicts. The conflict in the former Yugoslavia was also in part prompted by the breach of the constitutionally entrenched equality of the constitutive republics.

Michael Hechter agrees that a particular federalizing strategy will work in containing nationalism. He argues that nationalist conflict can be contained by institutions providing decentralized decision-making within multinational states.[38] He arrives at this conclusion by considering three types of conditions that can decrease such conflict. First, we can increase the costs of collective action. This strategy is not specific to nationalist conflict and is not readily available, according to Hechter. I would add that this strategy can work, but it is unjust according to my approach. Second, we can reduce the salience of national identity. Hechter thinks that national identity is not likely to wane. I agree with this assessment, given my account of the constitution of group agents organized around nationhood. Finally, we can decrease demands for national sovereignty.[39] This is the strategy that can work, according to Hechter. I agree with his approach. He suggests that institutions that increase

the central state's accountability to national minorities should reduce the demand for sovereignty and hence the potential for nationalist conflict.[40] While federal decentralization can mobilize minorities by providing them with greater resources to engage in collective action, such as protesting the federal state's policies, such decentralization erodes the demand for sovereignty, according to Hechter, while too much centralization engenders fragmentation.[41]

Ted Robert Gurr does not see any discernible patterns of connection between equalizing the enjoyment of self-determination by various national groups and reducing ethnopolitical conflict. He studies groups that experience political or economic discrimination and have taken political action in support of collective interests and notes the difference between national and other types of minorities: national peoples seek separation or autonomy from the states that rule them; minority peoples seek greater access or control.[42] He acknowledges that demands for secession or autonomy are driven by the desire to protect group identity.[43] But he does not observe either more or less stability associated with multinational federalism. Jack Snyder disagrees that more stability would result from equalizing the enjoyment of self-determination. He thinks that supplanting an archaic empire by nation-states with a new world order is bound to be a bloody process, especially when the preconditions of any statehood, let alone democratic statehood, are shaky.[44] I disagree with this assessment, given the experiences of the former USSR. If anything, the conflicts that emerged on its territory suggest that the set of norms I advocate is absolutely necessary to regulate substate groups' relations, including those of transitional societies. What is more, self-determination does not need to be exercised as state sovereignty, and if this becomes an international norm, it will lead to more stability. The lack of norms for the regulation the relations among potential national group agents is harmful. What the conflict on the territory of the former USSR demonstrates is that when a people is not allowed the proper institutionalization of its group agency, its modes of actualization will deteriorate and become detrimental to its own members and other peoples around them. Moreover, the denial of the possibility of self-determination as one mode of group actualization may turn national identity from a contingent and merely possible form of group organization into a highly desired formative goal around which a group whose identity is suppressed will choose to mobilize.

The lack of evidence that proposals like mine will lead to instability disarms arguments against giving substate groups the right to self-determination, which often hinge upon the claim that preserving the status quo is less damaging than introducing changes in the norms regulating self-determination. Such "realist" arguments commonly state that moral considerations, though important, are not relevant to the formulation of international norms, simply because the cost of implementing norms based on moral precepts is too high. I have argued that an approach to self-determination that aims to change norms so as to introduce fairness into the treatment of substate groups and preserve the territorial integrity of multinational states can be accepted by the community of states and has a good chance of being enforced. Moreover, moral justifications of the rights of state-endowed national groups, such as the rights to territorial integrity, sovereignty, and self-

defense, are routinely advanced by and on behalf of states in the realist scheme, at least to enhance the pragmatic considerations of preserving the status quo. Such moral rights need at least to be weighed carefully when it comes to the rights of stateless groups.

An important consideration in pragmatic arguments is world peace. World peace, however, is created not only by peace in relations among states but also by peace within states. A pragmatic limitation on the universal ideal of self-determination may be imposed to preserve world peace, and such a limitation may require that some peoples give up their self-determination claims. Nevertheless, the commonly recognized prerogatives of self-defense and the preservation of territorial integrity for state-endowed nations often allow them to wage war. Thus, to advance or protect their self-determination, state-endowed groups are allowed to use political violence, while stateless groups are denied self-determination for fear of political violence. If existing states have the right to preserve their territorial integrity by keeping stateless nations at bay, often by use of force, then world peace is threatened by wars within state boundaries. It may be as reasonable to require, for the sake of universal peace, that host states let their minorities secede. In addition, the costs associated with breaking up existing states can be outweighed on the "peace scale" by the consideration that it is easier to ensure the compliance with international legal norms of smaller state units with respect to both these states' international and their domestic policies. Now, this is not the approach I advance in this book, but this thought experiment concerning hypothetical changes to state boundaries reveals an important deficiency in the status quo, which denies equal respect to stateless groups that are not different in principle from the state-endowed groups favored by present arrangements. Continuing with this line of reasoning, considerations of principle require that stateless groups be at least entitled to be compensated for giving up the exercise of their self-determination, especially since it is hard to justify the denial of their right to self-determination as a measure to preserve peace. Taken to its logical conclusion, such a line of reasoning would require some redistribution of power within the host multinational states, and it seems that the implementation of the scheme of equality of self-determination within such states would provide the most stable and morally appealing arrangement due to its inclusiveness and fairness.

Notes

1. An earlier version of the discussion of the consequences of the introduction of the modified right (now presented in parts of this chapter and of Chapter 5) was published in Anna Moltchanova, "Stateless national groups, international justice, and asymmetrical warfare," *The Journal of Political Philosophy,* 13(2), June 2005, 194–215, publisher: Wiley and Sons Ltd.
2. On the other hand, if a systematic genocide was organized in the past by the members of one national group against another, it provides a good reason for secession, even if the harmed national group is offered fair terms to remain within the multinational state.
3. Henrard, K. *Devising an Adequate System of Minority Protection: Individual Human Rights, Minority Rights and the Right to Self-Determination* (The Hague: Kluwer Law International, 2000), p. 281.

4. See John McGarry, "Introduction: The Comparable Northern Ireland," *in Northern Ireland and Divided World: Post-Agreement Northern Ireland in Comparative Perspective,* ed. J. McGarry (Oxford: Oxford University Press, 2001), pp. 15–16, and Brendan O'Leary, "Comparative Political Science and the British-Irish Agreement," in ibid., p. 57.
5. For an exhaustive discussion of federalism and confederalism see: Will Kymlicka and Jean-Robert Raviot, "Living Together: International Aspects of Federal Systems," *Canadian Foreign Policy*, Volume 5, No. 1 (Fall 1997): 1–50. Federalism and confederalism are both different from administrative decentralization, where a central government establishes basic policy in all areas, but then devolves the power to administer these policies to lower levels of government, typically regional or municipal governments. Ibid., pp. 8–9.
6. Ibid., pp. 8–9.
7. Mathias Risse, "How Does the Global Order Harm the Poor?" *Philosophy and Public Affairs 33*, no. 4 (Fall 2005): 349–376, pp. 359–360.
8. There is a disagreement over what determines the legal status of the national republics in the Russian Federation—the federal treaty or the constitution. Here, I discuss only the norms put forward by the documents, not the status of the documents in relation to one another.
9. 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.
10. Ibid., p. 171.
11. "Sovereign" here has a less drastic meaning in comparison with international law. It does not appear contradictory to state, in the Russian context, that a republic is "sovereign" within the federation's territory.
12. The same question in a historical perspective would be something like the following: The nation of Beothuk of Newfoundland was extinct by 1829. Under my scheme, could the last known Beothuk, Nancy Shanawhdit, have claimed that she had the right to self-determination equal to that of the British settlers? She was a representative of a political culture that had vanished. Had she still wanted to be considered a nation, there should have been a proper arrangement made for a symbolic recognition of her nation's past existence, but since it was not a viable agent in relation to others any longer, its political culture could not have been given institutional arrangements similar to those of the settlers.
13. A similar solution is suggested by Gans's approach to substate self-determination.
14. Perhaps in the future there can be a non-territorial nation communicating via the Internet, for example.
15. Gans, p. 167
16. Ibid., pp. 101, 107, 115.
17. Ibid., p. 108.
18. Ibid., p. 40.
19. V. A. Mikhailov, *Natsional'naja Politika Rossii: istoria I sovremennost* (Moscow: Pusskii mir, 1997), p. 408.
20. See Haig Khatchadourian, "The Morality of Terrorism," in *Contemporary Moral Problems: War and Terrorism,* ed. J. E. White (Belmont, CA: Wadsworth Thomson Learning, 2003), p. 39; Laurie Calhoun, "The Terrorist's Tacit Message," Ibid., pp. 46–53; and Andrew Valls, "Can Terrorism be Justified?" in *Ethics in International Affairs,* ed. A. Valls (New York: Rowman and Littlefield, 2000), pp. 65–80.
21. Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3rd edition (New York: Basic Books, 2000), p. 254.
22. Ibid., pp. 255–261.
23. As the 2003 elections orchestrated by the Russian government demonstrated, the political community of Chechnya is kept alive rather artificially, and its foundation is deeply shaken. Walzer says that self-determination "is the right of a people 'to become free by their own efforts' if they can." Ibid., p. 88. Since the deterioration of self-determining communities can bring them past the point when they are capable of being self-determining, they may want to try any means to safeguard their potential for being a political community before any prospect

of success is gone and their militant action serves no purpose except the expression of their desperation.

24. I bracket the question of whether the recognition of the modified right as a *legal right* as opposed to a widely shared understanding of the meaning of self-determination and its universal status, is required to achieve the effects I discuss below. The modified right has the potential of being realized as a legal right, and this is what is important for my argument here.
25. Compare J. Angelo Corlett, *Terrorism: A Philosophical Analysis* (Dordrecht: Kluwer Academic Publishers, 2004).
26. On the underdog's use of unconventional tactics to counteract the unfair advantage of its opponent, see Shannon E. French, "Murderers, not Warriors: The Moral Distinction between Terrorists and Legitimate Fighters in Asymmetric Conflicts," in *Terrorism and International Justice*, ed. J. P. Sterba (Oxford: Oxford University Press, 2003), p. 34.
27. This outcome is similar to the one that Gans notices exists if we consider self-determination in statist terms. Gans provides four arguments against the statist conception of self-determination as creating injustice. First, statist self-determination creates two classes of citizens within each state (those to whom the state belongs as the members of the state-owing group and the rest). Second, it creates two classes of national groups—those with and those without their own states. This argument of course rests on the premise that there is a prima facie case for moral equality of certain groups we call national, which I defend in this book. Third, his type of self-determination advantages nation-state group members over citizens in diasporas. Finally, the statist conception that advocates a one-to-one correspondence of nations and states is not compatible with the freedom of migration and pluralism. Gans, pp. 69–70.
28. One caution regarding the use of Hobbes's norm is that it applies to subjects that are roughly equal physically, and national groups possess different resources and influence. Hobbes argues, however, that agents are equal, because the weak can always kill the strong by forming factions or using weapons. In the age of powerful weapons, the weak—including substate national groups and terrorists operating on their behalf—can cause significant damage, and thus they are somewhat "equal" with those who are stronger.
29. Thomas Hobbes, "Of the First and Second Naturall Lawes, and of Contracts," in *Leviathan* (New York: Penguin Books, 1986), pp. 189–190.
30. Immanuel Kant, "Perpetual Peace: A Philosophical Sketch," in *Political Writings* (Cambridge: Cambridge University Press, 1991), p. 105.
31. Risse, p. 376.
32. David Miller, "National Responsiblity and International Justice," in *The Ethics of Assistance: Morality and the Distant Needy*, ed. Deen K. Chatterjee (Cambridge: Cambridge University Press, 2004), pp. 130–131.
33. Miller argues for communal values and ties as having special importance and thus for modifying the form in which the standard of international justice is expressed. Miller's bundle of goods universally necessary for decent life does not include the right to political participation, for example. However, we need some sort of democratic environment for the proper actualization of groups and for making sure that they are receiving help on a principled basis. (For example, it is not the case that the international community should actively lobby for self-determination rights for a linguistic group if it lacks information concerning the group's constitution.)

    Miller poses an interesting question concerning the difference in how cultures attach importance to shared goods, such as religious participation. Do liberal members of the international community have an obligation of justice toward members of a community if they are deprived in relation to cultural values that the liberal countries do not share? Miller concludes that when we deal with a society in which even the oppressed seem to be content, we need a more objective approach to determining whether the society satisfies the standard of minimal decency. But then he falls back on the minimal standard of democratic values and support for individual autonomy. Ibid., pp. 127–129.
34. This concern is discussed by kymlicka in Multicultural Odysseys, p. 183.

35. Ibid., p. 240.
36. See *The Self-Determination of Peoples: Community, Nation, and State in an Interdependent World*, ed. Wolfgang Danspeckgruber (London: Lynne Rienner, 2002), pp. 382–92.
37. Wolfgang Danspeckgruber, "Self-Determination and Regionalization in Contemporary Europe," in *The Self-Determination of Peoples: Community, Nation, and State in an Interdependent World*, ed. Wolfgang Danspeckgruber (London: Lynne Rienner, 2002), p. 196.
38. Michael Hechter, *Containing Nationalism* (Oxford: Oxford University Press, 2000), p. 33.
39. Ibid., p. 134.
40. Ibid., p. 136.
41. Ibid., p. 146, 152.
42. Ted Robert Gurr, *Minorities at Risk: A Global View of Ethnopolitical Conflicts* (Washington, D.C.: United States Institute of Peace Press, 1993), p. 6, 15.
43. Ibid., p. 316.
44. Jack Snyder, "Introduction: reconstructing politics amidst the wreckage of empire," *Post-Soviet Political Order: Conflict and State-Building*, eds. Barnett R. Rubin and Jack Snyder (London and New York: Routledge, 1998), pp. 2–3.

Conclusion

The current state of affairs with respect to substate groups' self-determination and the corresponding international legal norms contradict the moral norm of equal self-determination for national groups stated in the UN Charter. I propose a treatment of minority nationalism that preserves the stability of multinational states while granting the moral claims to self-determination that substate groups advance. My approach maintains that careful attention to the definition of concepts and categories, and to the formulation and justification of normative principles that apply to group agents is very important pragmatically. Moral justifications need not be in conflict with pragmatic limitations nor sacrificed to satisfy these limitations. Most skeptics who argue against a normative theory like mine warn of the possible consequences of accepting an approach that grants self-determination to all national groups. They point out the negative effects that the expansion of self-determination may have on the state as the main forum of justice and democracy, or on the existing statist world system, which is perceived as necessary to peace and stability. This reasoning, nevertheless, rests on the acceptance of a particular philosophical account of the nation and of the existing set of norms as valid. This choice of what norms to privilege is not without consequence to the very political stability and justice a consequentialist account aims to protect.

Mainstream acknowledgements of a stateless group's entitlements are rarely, if ever, construed in a manner that satisfactorily captures that group's organization and intentions. It is undeniable that international norms influence how groups mobilize and act, and the defense of the privilege of state-endowed groups proves, in the end, to be destabilizing. What happens when international norms distort the moral status and entitlements of group agents? If these group agents are constructed around beliefs of membership that conform to these international norms, they would interact with other groups in a framework that maintains unjust inequality. This is detrimental to peace among nations, and the more the distortive ideology defines a group, the lower on the downward spiral of worsening relations with its neighbors it is likely to find itself. Since norms are something in relation to which or in opposition to which groups define themselves, international norms that do not promote coherent assignment of international status to group agents are politically explosive. This is why clear and philosophically coherent articulation of ideas on minority nationalism is important. The norms of interaction for national groups should equitably take

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into consideration the reasons for which and the manner in which the groups are constituted. If norms like these accompany the groups' mobilization in transitional environments from the start, it will be more likely that all groups will act within the limits acceptable to all participants.

Some national groups have gained the dramatic advantages that come from being in possession of independent states. Claims to self-determination by substate groups within the territory that a state-endowed group controls are treated by the international community as undermining the sovereignty of the host state. But this sovereignty advances the self-determination only of the state-endowed nation and runs contrary to the fact that substate groups are morally entitled to self-determination based on their constitution as group agents. While substate national groups are not afforded the same entitlements as state-endowed groups by international law, they are asked to behave in accordance with the norms that privilege state-endowed groups. A remedy to tensions caused by substate nationalism is offered by the modified right to self-determination extended fully to all national groups and exercised primarily within the territory of existing states. The central contention of the nations approach is that a theory of federalism based on the modified right can eliminate the fundamental inequality between stateless and state-endowed nations proposing an effective solution to rival claims to self-determination. I support the preservation of the existing state boundaries for a large number of cases of self-determination: justice requires separation of state and nation and it is an issue of injustice to redraw boundaries unnecessarily.

My goal in the book was to develop an internally coherent philosophical approach to the issue of national self-determination. My approach maintains, along the traditional line of liberal nationalism, that states are not tied to nations, that states should treat nations with equal respect based on the acknowledgment that national groups hold the right to self-determination, and that how nations are treated is an issue of justice (and therefore of injustice if a state adopts coercively integrated nation-building policies). My approach goes beyond traditional liberal nationalism in that I do not maintain that the world is largely constituted by existing stable nations. I consider nationhood as a function of group agency; this makes the notion of the nation attentive to the dynamic nature of national identity, especially in transitional societies. The nations approach can accommodate the fact that national identities may change; it doesn't give up, in the absence of stable group agents in a given political environment, either the notion of group entitlements or the norms for group agents' interactions. Thus, it can deal with unstable national identities in transitional societies. The nations approach includes a set of guidelines for approaching claims to self-determination in such societies to facilitate peaceful changes in their political landscape. It considers states legitimate only if they protect individual and group rights of their members, including the right to national self-determination within their borders. The idea of political legitimacy it promotes if realized would ensure that, in the world in which both "globalization" and "nationalism" are important, individuals can be governed by political authority they consider their own and allow this right to others.

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