POLITICAL DOWNSIZING: THE RE-EMERGENCE OF SELF-DETERMINATION, AND THE MOVEMENT TOWARD SMALLER, ETHNICALLY HOMOGENOUS STATES

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"The more I think about the President’s declaration as to the right of ‘self-determination,’ the more convinced I am of the danger of . . . such ideas . . . .

What effect will it have on the Irish, the Indians, the Egyptians, and the nationalists among the Boers? Will it not breed discontent, disorder, and rebellion? Will not the Mohammedans of Syria and Palestine and possibly Morocco and Tripoli rely on it? How can it be harmonized with Zionism, to which the President is practically committed?

The phrase is simply loaded with dynamite. It will raise hopes which can never be realized. It will, I fear, cost thousands of lives. . . . What a calamity that the phrase was ever uttered! What misery it will cause!"

— Robert Lansing, December 30, 1918

President Wilson’s Secretary of State

I. INTRODUCTION

In the beginning, there was the homogenous family, clan, and then “tribe.” The tribe begot the nation and the nation begot the kingdom. Kingdoms became empires and empires became nation-states. Conquest and subjugation of peoples has been a constant theme throughout human civilization. The counter-force resisting this state expansion process has, this century, been dubbed “self-determination,” although it was long ago the organizing principle behind the Celtic, Pictish, and Jewish resistance of Roman domination, the Scottish revolts against the British Crown, the Arabic stand against the Ottoman Sultanate, and the Native American struggle against the United States.

Significantly, the very creature that has helped transform once large empires into smaller nation-states, “self-determination,” has developed a multi-faceted aspect that alternatively or simultaneously attacks the sovereignty of the nation-state as a viable political entity:

“Self-determination”... can be neither defined nor opposed. It can mean the right of people to choose their own form of government within existing borders, for example by overturning a dictatorship or achieving independence from a colonial power. It can mean the right of an ethnic, linguistic, or religious group to redefine existing national borders in order to achieve separate national sovereignty. It can mean the right of a political unit within a federal system, such as Canada, Czechoslovakia, the former Soviet Union, or the former Yugoslavia, to secede from the federation and become an independent sovereign state. Or it can merely mean the right of an ethnic, linguistic, or religious group within an existing sovereign state to a greater degree of autonomy and linguistic or religious identity, but not to a sovereign state of its own.3

The evolution and post-Cold War re-emergence of this now multi-faceted principle, its employment in the creation of “down-sized,” more ethnically homogenous states, and its application to and varying effects on current nation-states, are the focus of this Article.

The principle of self-determination has become a tool used by sub-groups within nation-states to ensure their continued existence as diverse and uniquely

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different cultures. While the world today contains about 200 nation-states, there are about 3000 different linguistic groups and easily 5000 distinct national minorities. Continued diversity is their goal, and self-determination is the banner under which they march to realize that goal, whether independently from the unified state in which they exist or within it.

After looking back, for a historical perspective, at self-determination and decolonization in Part II, an analytic deconstruction of “sovereignty” is conducted in Part III that examines the various forms this principle takes. This is followed by a survey in Parts IV, V, and VI of the current trends, both peaceful and violent, toward limited or full sovereignty for homogenous “identity groups” around the globe. Finally, in Part VII, an eye is cast toward the future, with an inquiry into the viability of both the nation-state and newly “downsized” states.

Consideration of the various elements in the accession of emergent successor states to existing treaty obligations on a case by case basis is beyond the scope of this study, as is an exhaustive discussion of individual histories for the many secessionist movements throughout the world. Moreover, this Article considers only those movements that are secessionist or autonomous in nature, not political struggles designed to overthrow and replace existing governments or final rationalizations of the decolonization process such as can be seen in New Caledonia.

II. HISTORICAL PERSPECTIVE

The countries that comprise the political units of the international legal system today exist as nation-states, the concept of which is really only a couple of centuries old. Nation-states, on a fundamental level, exist as projections of the human mind, like corporations or political parties. Nonetheless, one would be hard-pressed to dispute the reality or influence of any of these “fictitious legal entities.” But, whence did these nation-states come? It has been a long, interesting, brutal, and enlightening journey.

6. This French colony will hold a plebiscite on independence in 1998.
Due to the innate human tendency to coalesce, groups of people with shared ethnicity, culture, language, or religion generally came together over time to form collective identities. These homogenous tribal "identity groups" evolved into "nations,"10 with definable populations and recognizable borders. In short, they became sovereign, charting their own destinies. Over time, kingdoms and empires consumed these nations and evolved into conglomerates consisting of several component sub-nations. Eventually, these monarchical countries became republican nation-states that, for the most part, continued to collect (by force or negotiation) several "nations" together into single sovereign political entities,11 be it on the centrist or federal union model.

What happened to the smaller nations that were absorbed in this way? Did they lose their identity? They did lose either all or part of their sovereignty to the larger nation-state. Some became "autonomous sub-units" with limited self-governing powers while others were assimilated with repressive force in an effort to extinguish their group identity. However, obliterating an ingrained, homogenous, group self-consciousness is no easy task. As Edmund Burke pointed out: "The love to the whole is not extinguished by this subordinate partiality. . . . To be attached to the subdivision, to love the little platoon we belong to in society, is the first principle (the germ, as it were) of public affections."12 So, in the end, while these groups may have lost their sovereignty, they did not lose their homogenous cultural, religious, or ethnic identity.13 For instance, since the fall of atheistic communism, there has been a rebirth of religion in the former U.S.S.R.14

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8. See Hurst Hannum, Rethinking Self-Determination, 34 VA. J. INT'L L. 1, 35 (1993) ("At a minimum, it is necessary for members of the group concerned to think of themselves as a distinct group. It is also necessary for the group to have certain objectively determinable common characteristics, e.g., ethnicity, language, history, or religion.").


13. See CASSESE, supra note 11, at 317 ("[M]ost members of the international community . . . are multinational or multiracial agglomerates; suffice it to recall that . . . on the African continent only four sovereign States (Swaziland, Lesotho, Botswana, and Somalia), certainly not ranking among the world's most powerful, contain ethnically homogenous populations.").

Much has happened in the twentieth century to recognize homogenous identity groups, from the initial modern self-determination movement\(^\text{15}\) of the 1920s to the decolonization process of the 1940s-70s. Now, in the post-Cold War 1990s, the world is witnessing the third and final push in the “identity group” struggle for limited or full sovereignty based on the principle of self-determination. Recently, the term “devolution,”\(^\text{16}\) has attached itself to the process of gaining internal sovereignty, and the old term of “self-determination”\(^\text{17}\) has come to really mean separatism.

Nonetheless, history presents salient examples of state deconstruction in the furtherance of self-determination for distinct nationalities. During the Great War, both President Woodrow Wilson and Soviet leader Vladimir Lenin began to espouse a principle of “self-determination.”\(^\text{18}\) While the articulated principle was the same, the philosophies of the two leaders were vastly different.\(^\text{19}\) Lenin, who advocated violent secession, pursued the goal as a means to liberate people from exploitative bourgeois governments in pursuit of socialist realization.\(^\text{20}\) Con

\[\]  
15. Although the idea of self-determination is timeless, and it has philosophical antecedents dating back to the 18th century, it was not until after World War I that the principle was sufficiently articulated on the international stage and put into motion as an organizing principle.

16. A working definition of “devolution” is as follows:

\[\text{[T]he transfer to a subordinate elected body on a geographical basis of functions exercised by a country’s legislature or ministers. Devolution is distinguished from federalism in that the powers of the subordinate legislature are conferred by the centre which retains residual constitutional authority, whereas under a federal system the powers of both the centre and the provinces are determined by the constitution. . . .}\]

Devolution has the political purpose of providing some degree of self-government as an alternative to separation . . .


17. A working, evolutionary definition of “self-determination” is as follows:

\[\text{A radical doctrine justifying the autonomy and independence of an individual or group conceived as possessing a distinctive identity and free will. . . . [I]t originated with Kant’s postulate of the good will as free and autonomous . . . . Kant’s German Romantic followers, notably Fichte, applied the idea of individual free will to collectivities, especially cultural communities or ‘nations’ . . . . [N]eglected or oppressed ethnic communities were persuaded by their romantic-nationalist intellectuals that the only way to exercise autonomy and determine their communal destiny was to claim political independence and the right to self-rule.}\]

Id. at 559.

18. CASSESE, supra note 11, at 14-23.


20. \textit{Id.; see also V.I. LENIN, THE SOCIALIST REVOLUTION AND THE RIGHT OF NATIONS TO SELF-DETERMINATION (1916), reprinted in V.I. LENIN, SELECTED WORKS 157 (Lawrence & Wishart eds., 1969) (encouraging the proletariats to become revolutionaries by overthrowing capitalist government and realizing their right to self-determination).}
versely, Wilson’s ideal envisioned peaceful referenda, wherein the consent of the governed to their sovereign was ascertained, thereby enunciating a “domestic” dimension to self-determination.21

Immediately following the victory of allied forces in World War I, empires were forcibly broken up so that new nation-states could emerge22 under President Wilson’s philosophy of self-determination:23 the Ottoman Empire shrunk to the historical limits of Turkey and became a republic, while its formerly subjugated Arab territories24 became Iraq, Syria, Trans-Jordan, Lebanon, Palestine, and the future components of Saudi Arabia;25 the Austro-Hungarian Hapsburg Empire disintegrated into Yugoslavia, Hungary, Czechoslovakia, and Austria; Poland emerged from the ashes of Eastern Germany, the Western portion of Czarist Russia, and the northeastern extremity of Austria-Hungary; and the Baltic Republics, Latvia, Lithuania, Estonia, and Finland, were carved out of the collapsed Czarist Russian Empire.

Although the principle of self-determination had emerged officially on the international stage during the post-war settlement, it was still regarded by the world powers as a mere political principle and undoubtedly inferior to the more institutionalized international principles of state sovereignty and territorial integ-

21. Cassese, supra note 11, at 21-22; see also Theodore S. Woolsey, Self-Determination, 13 Am. J. Int’l L. 302, 303 (1919) (arguing that Wilson’s pronouncement was not consistently being used); Woodrow Wilson, Speech of Feb. 11, 1918, in 1 Woodrow Wilson, War and Peace, Presidential Messages, Addresses and Public Papers, 1917-1924, at 177, 180 (R.S. Baker & W.E. Dodd eds., 1927).


23. While the principle of self-determination was much discussed, the actual map drawing was done with little regard or practical opportunity for the populations to express themselves, as Wilson had envisioned, through uniformly conducted plebiscites. Cassese, supra note 11, at 24; see also Hannum, supra note 8, at 5 (“With a few exceptions . . . no plebiscites or referenda were held to determine the wishes of the people affected by the Versailles map making.”).

24. The 1923 Treaty of Lausanne, superceding the 1920 Treaty of Sèvres, failed to provide for an independent Armenia or an autonomous Kurdistan. Cassese, supra note 11, at 25.

25. These territories labored under a League of Nations mandate system, created after the war to bring them along the road to full self-governance. France and Britain largely divided up these responsibilities.
rity. Indeed, twenty years later, when both President Roosevelt and Prime Minister Churchill included the principle in the Atlantic Charter in August of 1941, Churchill specifically proclaimed it to be applicable only to freeing those "nations of Europe under the Nazi yoke," and not applicable to colonial people in India, Burma, or elsewhere.

Nonetheless, after World War II, as the long, twenty-five-year process of decolonization ensued on the part of the British Empire, France, Belgium, Italy, the Netherlands, Spain, and Portugal, the principle resurfaced. However, under the highly moralistic banner of decolonization, the principle of self-determination evolved beyond Churchill's careful assertion into a "right." Nevertheless, this "right" was only considered as such strictly in the context of decolonization. Outside of that context, self-determination was to remain merely a moral principle on the international stage.

Despite continued claims to a "right" of secession by groups in Asia, Africa, Europe and the former Soviet Union, no such right has yet been recognized by the international community. International law does not prohibit secession, whether voluntary or violent, but it has neither recognized a right to secede nor identified even tentatively the conditions that might give rise to such a right in the future.

On the decolonization point, it was mid-century that the European powers disgorged new nation-states all over the globe. Pursuant to the "right" of self-determination, newly independent countries appeared on the maps of Asia and Africa in quick succession. Some of these new countries emerged as full-blown democracies while others languished under dictatorial rule as local strongmen seized power in the vacuum left by the colonial powers. Still others were compelled, or "otherwise convinced," to attach themselves to the yolk of American

26. CASSESE, supra note 11, at 33.
27. Id. at 37.
28. The Spanish Empire had basically disintegrated during the 19th century when its colonies in the Americas became independent. Of course, the Philippines, Cuba, and Puerto Rico were lost after the Spanish-American War of 1898. Don't Be Ashamed of the Past, THE ECONOMIST, Jan. 3, 1998, at 49. Most of Spain's remaining colonies were released during the decolonization period of the mid-20th century.
30. Hannum, supra note 8, at 12.
31. Simpson, supra note 22, at 271.
32. Hannum, supra note 4, at 13-14.
capitalism or Russian communism during the Cold War in order to receive funding for economic or military development and technology.33

Old colonial boundaries were used as the borders for the new nation-states34 with little regard given to the artificial lines that cut across historic ethnic or cultural homelands and populations.35 This policy effectively produced a host of multi-ethnic states.36 Of course, the rationale for maintenance of the old border system was insurance of international peace and security, a concern that has traditionally trumped all others in the eyes of the international community, and one that is at the very basis of the United Nations Charter.37

Now, in the post-Cold War 1990s, ethnically, linguistically, religiously, or culturally homogenous identity groups have re-emerged with demands for devo- lution or separation in pursuit of either limited or full sovereignty.38 They do so by invoking the principle of self-determination.39 As discussed in the next section, this new incarnation of the principle of self-determination has grown from a single-headed serpent into a multi-headed chimera, attacking multi-ethnic state sovereignty.40 Many movements around the world today invoke some aspect of self-determination in an effort to garner varying degrees of independence and self-governance for their own homogenous identity groups. Modern multi-ethnic

34. Sam Blay, Self-Determination: A Reassessment in the Post-Communist Era, 22 DENY. J. INT'L L. & POL'Y 274, 276 (1994) ("[T]he independent states that emerged after colonialism in Africa were political entities with boundaries coinciding with those of the colonies they used to be, with all the arbitrary demarcations imposed by colonial rule.").
35. A classic example is the division of the Masai people between the former British colony of Kenya and the former German colony of Tanzania. See Michael J. Kelly, Overcoming Obstacles to the Effective Implementation of International Environmental Agreements, 9 GEO. INT'L ENVTL. L. REV. 446, 446 (1997).
36. CONNOR, supra note 2, at 5.
38. Hannum, supra note 4, at 13. While this third phase of self-determination was identified over 30 years ago, see CONNOR, supra note 2, at 3-27, it was not until this decade that the assertion has produced significant tangible results around the globe.
39. Simpson, supra note 22, at 258-59 ("[S]elf-determination is invoked in international law more often than any other collective human right. . . . [I]t is proclaimed by, and on behalf of, non-state populations as diverse as the Kurds, the Quebecois, the Basques, the Scots, the Palestinians, the East Timorese, and the Tamils.").
40. This threat to sovereignty was recognized by W.B. Wise, President Eisenhower’s representative to the United Nations, who noted, ""self-determination carried to a logical but absurd extreme would in fact threaten the very existence of most of the States members of the United Nations."" CASSESE, supra note 11, at 318 n.3 (quoting Watson W. Wise, The Right of Peoples and Nations to Self-Determination, 40 DEP’T. ST. BULL., Feb. 2, 1959, at 173).
nation-states must learn to deal effectively with this reassertion of self-determination, lest it lead to their undoing.\textsuperscript{41}

In an effort to both identify and quantify movements within states that have articulated armed or peaceful movement toward greater autonomy or complete separation, the table below has been created.\textsuperscript{42} Table 1 delineates regions within existing nation-states that are asserting either their inherent right to greater autonomy within the nation-state or complete separation from the nation-state based on their distinct identity, culture, race, religion, ethnicity, or other variable.\textsuperscript{43} This list is not meant to be exhaustive, but rather highlights the diverse movements afoot in the world today.

\begin{table}
\centering
\begin{tabular}{|l|l|l|}
\hline
\textbf{Sovereign Nation-State} & \textbf{Region Seeking Autonomy} & \textbf{Region Seeking Independence} \\
\hline
Spain & Catalonia & Basque Region \\
\hline
Italy & Northern Italy (Padania) & \\
\hline
United Kingdom & Scotland; Wales & Northern Ireland (IRA, to join Ireland) \\
\hline
United States & Puerto Rico (statehood)\textsuperscript{44} & \\
\hline
Canada & Inuit (Eskimos) & Quebec \\
\hline
Russian Federation & Tartarstan;\textsuperscript{45} Bashkortostan & Chechnya; Kaliningrad \\
\hline
\end{tabular}
\end{table}

\textsuperscript{41} Devolution Can Be Salvation, The Economist, Sept. 20, 1997, at 53. The Turks’ refusal to grant any serious autonomy to their large Kurdish minority has helped prolong a guerrilla war that has cost at least six times as many lives, over a much shorter period, as have been lost in the Basque and Irish conflicts put together. If the Kurds had autonomy, their urge to break off completely from Turkey would be scarcely stronger than that of the Basques or Scots wanting to abandon Spain or Britain. If there is a turn-of-the-century message in Europe, it may be “devolve or die.”

\textsuperscript{42} Id. at 54.

\textsuperscript{43} These tables are a selective extension of the appendices included in Morton H. Halperin et al., Self-Determination in the New World Order (1992), and have been updated and re-compiled from various published sources, including newspapers, law review articles, books, and internet news accounts that have been cited where possible.

\textsuperscript{44} Such other variables may include divergent economic success. This is the basis of prosperous Northern Italy’s secessionist movement to form a new state, called Padania, that is not tied to the economically depressed South. See Celestine Bohlen, North-South Divide in Italy: A Problem for Europe, Too, N.Y. Times, Nov. 15, 1996, at A1.

<table>
<thead>
<tr>
<th>Sovereign Nation-State</th>
<th>Region Seeking Autonomy</th>
<th>Region Seeking Independence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Angola</td>
<td></td>
<td>Cabinda</td>
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<tr>
<td>Sri Lanka</td>
<td></td>
<td>Tamil Eelam</td>
</tr>
<tr>
<td>India</td>
<td>Kashmir</td>
<td>Manipur; Sikhist Punjab;(^\text{47}) Nagaland</td>
</tr>
<tr>
<td>Burma (Myanmar)</td>
<td></td>
<td>Karen, Kachin, Mon, Karenni, &amp; Shan separatists</td>
</tr>
<tr>
<td>Mexico</td>
<td>Chiapas</td>
<td>Kosovo</td>
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<tr>
<td>Serbia</td>
<td>Montenegro</td>
<td>Kulyub Oblast; Leninabad</td>
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<tr>
<td>Tajikistan</td>
<td></td>
<td>Pattani separatists</td>
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<tr>
<td>Thailand</td>
<td></td>
<td>Casamance</td>
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<td>Senegal</td>
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<tr>
<td>Mali</td>
<td>Northern Tauregs</td>
<td></td>
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<tr>
<td>Croatia</td>
<td></td>
<td>Krajina (to join Serbia)</td>
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<tr>
<td>Cameroon</td>
<td>Anglophone Cameroon</td>
<td></td>
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<tr>
<td>Philippines</td>
<td>Mindanao</td>
<td></td>
</tr>
<tr>
<td>Indonesia</td>
<td>Aceh region</td>
<td>East Timor; Irian Jaya</td>
</tr>
<tr>
<td>Turkey, Iraq, Iran</td>
<td>Kurdish nationalists(^\text{48})</td>
<td>Kurdish nationalists</td>
</tr>
<tr>
<td>Moldova</td>
<td></td>
<td>Transdniestrian Russians; Gagauzia Turks</td>
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<tr>
<td>Israel</td>
<td></td>
<td>Palestinian nationalists</td>
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<tr>
<td>Morocco</td>
<td></td>
<td>Western Sahara</td>
</tr>
<tr>
<td>China</td>
<td>Tibet</td>
<td>Xinjiang;(^\text{49}) Inner Mongolia</td>
</tr>
<tr>
<td>Brazil</td>
<td>Amazonia</td>
<td>Bosnian Serb separatists(^\text{50})</td>
</tr>
</tbody>
</table>

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46. The separatist and autonomy movements throughout the Indian federal union are legion, and therefore cannot be fully listed here.


48. The people of “Kurdistan” live at the nexus of the borders between Turkey, Iraq, and Iran, and are distributed in varying degrees amongst them.

49. *See Xinjiang Delegates: Separatists Must Be Crushed* (Aug. 23, 1997) <http://www.muzi.net/cgi/lateline/news.cgi?p=194>. (“Xinjiang is China’s only Muslim-majority region and has witnessed repeated clashes between the ethnic Han Chinese minority and the majority Uyghur Muslims, some of whom are seeking an independent state.”).
III. SOVEREIGNTY AND SELF-DETERMINATION: AN ANALYTIC DECONSTRUCTION

As explained in the introduction, self-determination implies the right of an identity group to self-governance, meaning sovereignty over themselves—limited or complete. However, while the international community generally supports a vague, ill-defined principle of self-determination, it has yet to infuse this term with any significant meaning in the post-colonial decades. Nonetheless, the re-emergence of self-determination in a new, multi-faceted form, cannot be denied:

Self-determination has recently assumed a salience within the international arena: the dissolution of the Soviet Union; the bloody conflict in former Yugoslavia; the attempted secession of Quebec from Canada; the apparent

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50. Although the Bosnian Serbs have signed the Dayton-Paris Peace Accords establishing a federation with Muslim dominated Bosnia, undercurrents of secessionist sentiment continue.
53. Wilson, supra note 9, at 457 (“Self-determination refers to autonomy—the freedom of a group to conduct its political, economic and social life without outside interference.”).
54. Hannum, supra note 4, at 13 (“Ethnic wars of secession highlight the inherent tension between ‘self-determination’ and ‘sovereignty’ or ‘territorial integrity.’ One problem in developing coherent responses to such conflicts has been the vagueness of these terms.”).
55. U.N. CHARTER art. 1, para. 2; see also Hannum, supra note 8, at 2 (considering the United Nations role in transforming self-determination into a rule of law).
settlement between Eritrea and Ethiopia; the partition of Czechoslovakia; and the continued warfare in Sri Lanka have all implicitly or explicitly raised questions of self-determination. In each of these cases, communities have demanded a change in their international identities and greater control over their everyday social, economic, and political lives.57

A. Self-Deterministic Issues and Options

If the twentieth century is divided into thirds,58 the evolution of the principle of self-determination59 can be easily charted through time. During the first third of this century, the principle meant independence for states emerging from fallen empires in the aftermath of World War I.60 During the second third, it meant relative freedom and independence for new states emerging from the decolonization process.61 Now, in the last third of the century, self-determination has come to mean one of three things: independence for new states emerging from the collapse of communism (e.g., Ukraine or Slovenia), independence for homogenous sub-units within nation-states (e.g., Quebec or Eritrea), or greater internal autonomy for smaller identity groups within existing states (e.g., Åaland Islands under Finland62 or Faeroe Islands under Denmark).63

So, the re-emergence of the principle of self-determination has manifested itself in such a manner as to have three situational meanings based upon the context in which it arises. When a nation-state breaks apart, peacefully or violently, self-determination can mean independence for a previously oppressed people. This is sometimes referred to as “external self-determination,”64 and encompasses the first two examples. However, when a homogenous group within a

58. Cassese, supra note 11, at 3-5. Professor Cassese takes his three divisions of the century as the time periods following World War I, World War II, and the Cold War. Id.
59. Hannum, supra note 8, at 66.
60. Hill, supra note 56, at 121.
61. Id. at 122-23.
62. The Åaland Islands, populated mainly by Swedes, became part of Finland upon Finnish independence from Russia after the collapse of the Czarist Empire. Cassese, supra note 11, at 27-29. The principle of self-determination was asserted on behalf of the Ålanders so they could join Sweden, but the Finns resisted and the case was referred to the League of Nations. Id. First a Commission of Jurists, then a Commission of Rapporteurs heard the case, and determined that while secession was out of the question, autonomy must be devolved on the Ålanders by Helsinki. Id. at 29-31.
64. Kolodner, supra note 57, at 159.
democratic nation-state rankles for self-determination, the international preference is for more autonomy through devolution of power within the existing nation-state instead of full independence.\textsuperscript{65} This is sometimes referred to as "internal self-determination"\textsuperscript{66} and encompasses the last example.

Why the bifurcation in the application of this principle? Simply put, the international legal system is based on nation-states' relations with each other—it is the state, as a cohesive entity, that has standing in the international community.\textsuperscript{67} Sub-states or minority groups within nation-states have no standing in international law and, therefore, no forum in which their voices may be heard.\textsuperscript{68} Beyond the decolonization context, the International Court of Justice has refused to recognize a "sub-state" claim for external self-determination.\textsuperscript{69}

The practical basis of "internal self-determination" is an extension of the maxim: self-interest is the prime motivator. The United Nations and other international governmental organizations, generally do not support secession by minority identity groups from a state because to do so would be to invite "attacks on the unity and integrity of their own member states."\textsuperscript{70} Consequently, the threat of secession cannot be tolerated. If it were, then the sovereignty of the nation-state as a viable political unit would be constantly under threat by its smaller constituent units.\textsuperscript{71} As the League of Nations Commission of Rapporteurs stated in the 1921 Åaland Islands case:

\begin{itemize}
\item 65. Simpson, \textit{supra} note 22, at 257-59.
\item Devolutionary self-determination refers to the various institutional arrangements and innovations used by states to advance reconciliation with national or indigenous groupings. These arrangements include the constitutional models attempted by Canada, the judicial forms... in Australia, the system of tribal self-government favored in the United States, and regionalism in Spain. \textit{Id.} at 258.
\item 66. Kolodner, \textit{supra} note 57, at 162.
\item 67. Thürer, \textit{supra} note 5, at 55.
\item 68. \textit{Id.} at 55-56; \textit{see also} Cassese, \textit{supra} note 11, at 328 ("Current international law is blind to the demands of ethnic groups, and national, religious, cultural, or linguistic minorities. Not only does international law refrain from granting any right of internal or external self-determination to these groups, but it also fails to provide any alternative remedy to... them.").
\item 69. Western Sahara Advisory Opinion, 1975 I.C.J. 12 (Oct. 16).
\item 70. Hill, \textit{supra} note 56, at 123 (quoting Alexis Heraclides, \textit{The Self-Determination of Minorities in International Politics} 23 (1991)).
\item 71. For example, China regularly uses "draconian measures" to keep ethnic nationalism in check within its own borders, and has extrapolated this policy to apply to like situations in other countries, like the Kosovo region of Serbia, which it thinks should be regarded as an "internal matter." See Mary Kay Magistad, \textit{Morning Edition: China & Taiwan} (visited Oct. 26, 1998) <http://www.npr.org/programs/morning/archives/1998/980312.me.html> (NPR radio broadcast, Mar. 12, 1998).
\end{itemize}
To concede to minorities . . . the right of withdrawing from the community to which they belong, because it is their wish . . . would be to destroy order and stability within States and to inaugurate anarchy in international life; it would be to uphold a theory incompatible with the very idea of the State as a territorial and political unity.\textsuperscript{72}

So, there is logically more support among nation-states for the internal, devolutionary aspect of this principle.\textsuperscript{73} By granting a degree of autonomy to a sub-state or minority group within a nation-state, a central government may be acting in furtherance of its own continued self-preservation.\textsuperscript{74} But, care must be taken to ensure individual minority rights to avert the risk of devolving repression along with power from central to regional elites, thus leaving minorities no better off than they were before.\textsuperscript{75}

Be that as it may, such movements can exist along a spectrum of possible manifestations. The Italian internationalist, Antonio Cassese, has identified at least five of these manifestations.\textsuperscript{76} These are graphed below in Table 2:

\begin{table}[h]
\begin{center}
\begin{tabular}{|l|l|l|}
\hline
\textbf{Situation Giving Rise to a Self-Determination Claim} & \textbf{Implied Right under the Principle} & \textbf{Example of Invocation} \\
\hline
Transfer of territory between sovereign nation-states & Plebiscite; referendum & Gibraltar; Sudetenland \\
Democratic Self-Government \textit{“Consent of the Governed”} & Election; meaningful participation in the democratic process & Kampuchea; Nicaragua; Burma \\
Decolonization & Independence & India; Algeria; Congo; Fiji \\
\hline
\end{tabular}
\end{center}
\end{table}

\textsuperscript{72} \textbf{Cassese, supra note 11, at 123 (citation omitted).}
\textsuperscript{73} \textbf{The logic of this stance is that “[s]tatehood is not necessary to guarantee the . . . human rights of groups and individuals to protect and promote their culture, language, and traditions. The fulfillment of other goals, such as increased political and economic power, is more legitimately sought through the normal democratic process.” Hannum, supra note 4, at 17.}
\textsuperscript{74} \textbf{“A minority [group] denied a voice in decision making within a particular democratic polity may either criticize the quality of such a democracy . . . or question the founding credentials of the state and seek autonomy or secession.” Sugata Bose, Safeguards for Minorities Versus Sovereignty of Nations, 19 Fletcher F. World Aff., Winter/Spring 1995, at 21, 25.}
\textsuperscript{75} \textbf{Brionwen Manby, South Africa: Minority Conflict and the Legacy of Minority Rule, 19 Fletcher F. World Aff., Winter/Spring 1995, at 27, 51.}
\textsuperscript{76} \textbf{Cassese, supra note 11, at 316.}
<table>
<thead>
<tr>
<th>Situation Giving Rise to a Self-Determination Claim</th>
<th>Implied Right under the Principle</th>
<th>Example of Invocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nationalism; freedom for ethnic, religious or cultural groups within nation-states</td>
<td>Freedom to chose internal or international status (this may include the right to secession)</td>
<td>Basques; Quebeçois; Scots; Palestinians; Kurds</td>
</tr>
<tr>
<td>Foreign Occupation; a prohibition on invasion and occupation by a foreign state</td>
<td>Liberation; independence</td>
<td>Kuwait’s subjugation by Iraq</td>
</tr>
</tbody>
</table>

Significantly, only three of Professor Cassese’s five described manifestations of self-determination are currently in operation: “[S]elf-determination appears firmly entrenched in the corpus of international general rules in only three areas: as an anti-colonialist standard, as a ban on foreign military occupation, and as a standard requiring that racial groups be given full access to government.” The first aspect encompasses the final stages of decolonization, the second aspect encompasses the ouster of foreign military forces, and the third aspect encompasses the three manifestations of self-determination outlined above and explored by this Article.

One possible negative counter-effect to this newly discovered elasticity for the principle of self-determination is the undermining of its legitimacy. The more diverse the situations to which this principle is applied, the further its achieved meaning will be eroded. In other words, at some point, when this metaphorical rubber band can no longer stretch, it will break—becoming dysfunctional and useless.

As to the external/internal dichotomy of the principle, while there are a few instances of peaceful and voluntary secession—like Singapore’s secession from Malaysia or Norway’s secession from Sweden at the turn of the century—it must be remembered that, fundamentally, external, secessionist forms of the principle of self-determination are not favored by nation-states for the very reasons discussed above. However, it must be noted that external self-

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77.  *Id.* at 319.
81.  Cassese, *supra* note 11, at 317. Noting the conflict of interest, Professor Cassese states:

[T]he dogma of State sovereignty has constituted a powerful bulwark against the full acceptance of . . . [self-determination] into the body of international
determination does not in all circumstances implicate secession. Examples of states freely associating with other, larger nation-states, wherein the larger entity controls, in varying degrees depending upon the arrangement, foreign relations and the smaller independent state conducts its own domestic affairs, include the Mariana Islands’ free association with the United States, Liechtenstein and Switzerland, or Monaco and France.

So, there is a preference on the part of the international community that if self-determination is to be tolerated it must be so on an internal basis, through the development of devolutionary devices that empower the relevant homogenous identity groups, but not to the point of secession from the greater nation-state. Either a federation arrangement or devolution to local and regional enclaves are, therefore, seen as legitimate substitutes for secessionist self-deterministic stirrings.

B. Sovereignty Undermined?

The idea of “sovereignty” means many things to many people. It is a slippery concept at best. Traditionally, it exists when a government attains popular legitimacy, governs a discernable territory and population, and achieves some degree of international recognition. Of course, popular sovereignty is generally the weakest of the three elements, and does not usually exist in authoritarian states that control land and people and are internationally recognized. Popular sovereignty is, however, an underlying aspect of the right to self-determination.

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legal rules. This should not be surprising, given that the transformation of the political principle into a set of international norms presupposed the radical undermining of State sovereignty and a dramatic reshaping of the present framework of the world community.

Id.

82. Kolodner, supra note 57, at 160.
83. Id.
85. Id. at 261-315.
86. Simpson, supra note 22, at 281.
87. Id. at 280-81.
89. Id.
90. The link between the principle of self-determination and “consent of the governed” dates back to the enunciation of the principle by President Wilson. Wilson, supra note 21, at 180.
and Professor Franck has even proclaimed the right to democratic self-government to be an emerging international norm.\textsuperscript{91}

Control over a discernable territory and population, also known as de facto sovereignty,\textsuperscript{92} is generally the strongest element of sovereignty because the existence or non-existence of this element can be readily ascertained by merely observing the situation at hand. The degree of control necessary for sovereignty to exist is another question altogether, and one that has not been adequately answered. Nonetheless, de facto sovereignty can exist independent of the other two elements that lead to de jure sovereignty, as has been demonstrated by the enclave of ethnic Russians in Transdniestria who have taken over all functions of local government on the east bank of the Dniester River in the newly independent state of Moldova, and refer to themselves as the Transnistrian Moldavian Republic despite repeated attempts by the central Moldovan government to forcefully assert its control over the region.\textsuperscript{93}

The third element, international recognition, is neither predictable nor controllable. It is an external variable. Slovenia achieved international recognition almost immediately upon secession from Yugoslavia, while Turkish Cyprus is still only recognized by Turkey after twenty-two years.\textsuperscript{94} Some scholars have gone as far as to link international recognition to guarantees of minority rights by emerging states, and point to a degree of historical precedent for this argument.\textsuperscript{95} Nevertheless, just as most countries recognize the People's Republic of China over Taiwan as the legitimate government for China, regardless of its flagrant human rights abuses, there appears to be no universal formula to predict when and in what context international recognition will occur. Indeed, states such as Taiwan, pursuing international political recognition, have shown that they can purchase some international recognition from developing nation-states in exchange for "generous" financial support.\textsuperscript{96}

\textsuperscript{91} Thomas M. Franck, The Emerging Right to Democratic Governance, 86 Am. J. Int'l L. 46 (1992) (suggesting that this right is emerging through the vehicle of self-determination).

\textsuperscript{92} Robbina, supra note 88, at 20.

\textsuperscript{93} Id. at 21.

\textsuperscript{94} Id. at 22.

\textsuperscript{95} Thürer, supra note 5, at 61. Professor Thürer points to the 1878 Treaty of Berlin among France, Italy, German Empire, Austria-Hungary, Russia, and the Ottoman Empire, conditioning recognition of Rumania and Bulgaria on their guarantee of minority rights to certain religious groups, as well as the requirement for admission to the League of Nations that Albania (1921), Lithuania (1922), Latvia (1923), Estonia (1923), and Iraq (1932) submit statements promising to protect minority rights within their territories, as proof for his assertion. Id.

\textsuperscript{96} Of the 30 nations that recognize Taiwan, most, like Panama, Belize, and Haiti, do so in exchange for foreign aid. Juanita Darling, Panama Is Torn Between Two Tigers, L.A. Times, Oct. 4, 1997, at A2. This, however, does not sway the United Nations, who recently turned down a
Furthermore, beyond the formalistic elements required for its existence, sovereignty on the whole does not necessarily mean what it used to. The nineteenth century idea of sovereignty was one in which nation-states were free to do as they wished, and in fact set out to build or extend imperial and colonial holdings abroad by subjugating millions around the world to their “sovereignty.” The twentieth century has witnessed the steady erosion of this idea through two world wars; the successive formation of two world government bodies, decolonization, increasing economic interdependence; and the growth of the global marketplace. Indeed, state responsibility has become a watchword in the international legal system, and state irresponsibility has become a justification for international intervention, even if there is no uniform application.

While the continuing actions by the international community in Iraq, Haiti, and Bosnia demonstrate just how clearly the idea of sovereignty has changed and the regard for inviolable borders has softened, the wars of self-determination fought by the Biafrans, Bangladeshis, and Eritreans were seen by the international community as internal domestic conflicts within the “jurisdictions of Nigeria, Pakistan, and Ethiopia, respectively,” and no outside collective interference ensued.97 Divergent manifestations in state practice, such as these, make the concept of sovereignty even more elusive than it already is. Nevertheless, it is apparent that the re-emergence of self-determination directly threatens nation-state sovereignty, such as it is, on the whole.98

IV. THE EUROPEAN EXPERIENCE

Europe has been likened to a patchwork quilt of cultures, languages, histories, and traditions that is sometimes referred to as a tapestry of nations.99 Some of these homogenous nations are free and independent while others exist within larger, multi-ethnic nation-states as regional or political sub-units. Naturally, there is bound to be some degree of self-deterministic sentiment on the part of those homogenous nations that have been incorporated into larger nation-states, like the Basques in Spain, the Corsicans in France, or the Scots in Britain. The following discussion surveys those sentiments in the context of the “European experience.”

bid by the Taiwan government to purchase a seat at the United Nations for $1 billion. Jim Galloway, Taiwan’s Status Becomes Central Issue to Chinese, CLEVELAND PLAIN DEALER, Feb. 12, 1997, at 4A.

97. Simpson, supra note 22, at 283-84.
98. Id. at 285-86.
A. Sovereignty Movements Within European Nation-States

Expressions of self-determination traditionally took the form of state independence. While this has transformed itself recently to include movements seeking increased devolution within nation-states of Western Europe, the older tradition of full independence remains strong in Eastern Europe, as evidenced by the gaggle of new states that have appeared on the map this decade. However, no clear pattern of empowerment can be identified to universally describe either the internal or external self-determination processes underway on the European continent:

[A] downward shift of power has occurred from national capitals to intermediate and local government level. Broadly speaking, the northern European democracies have proceeded by the merging and strengthening of existing local governments: in the Napoleonic states of southern Europe, lower levels have been left unreformed and a new level of elected government inserted at the regional tier.100

The following discussion considers those self-deterministic issues arising in Western Europe, and focuses on the varied responses of the United Kingdom, Belgium, Spain, and Italy to those sovereignty challenges.

1. The United Kingdom: Devolution for Scotland and Wales

Although the concept of limited sovereignty for the King first expressed itself under the reign of King John, upon his signing the Magna Carta in 1215 at Runnymede,101 Britain as a nation-state experienced its republican origins in the mid-seventeenth century when the House of Commons declared that all power originates in the people.102 From then on, the monarchy’s power gradually shifted to Parliament. Today, sovereignty, in any real sense, rests with that body, even though the United Kingdom remains a “constitutional monarchy.”

Historically, as the ascendant power in the British Isles, England set out in the Middle Ages to unify and assert its dominance over the three other cultures; namely, the Welsh, Scots, and Irish. Interestingly, the template that they employed was based on the use of legal tools to legitimize the bloody military

102. Id. at 196. The House of Commons in 1649 was largely under the control of Oliver Cromwell at the time this declaration was made. Id.
conquest of their neighboring Celtic cultures. Consequently, the subjugation of Wales, Scotland, and Ireland were followed by acts of Parliament for union with Wales in 1536 and 1543, the Act of Union with Scotland in 1707, and the Act of Union with Ireland in 1801 (even though Henry VIII had been crowned King of Ireland in 1541).

Once unified, power began to accrete to the center, London, and the basis for a unitary state was formed. From Westminster, not only were the British Isles administered, but also the far flung empire Britain had acquired from Africa to the Americas and Oceania to Asia. Arguably, Britain has lost more to the principle of self-determination than any other nation-state. Self-determination was the justification for the independence of the American colonies in 1776 and Ireland in 1922, the loss of the empire during the period of decolonization, and the conversion of the Dominion territories into a Commonwealth of independent nation-states led by Canada, Australia, and New Zealand.

Now, on their own island, Scotland and Wales, two unique cultures that have managed to survive English dominance, rankle for increased autonomy. This, however, is not a new concern. Devolution has been on the collective minds of the British government since the first draft of the Home Rule Bill in 1912 that contained provisions for the creation of local parliaments in Ireland, Scotland, England, and Wales. And from 1921 to 1972, London supported a Northern Ireland Parliament.

Indeed, devolution for Scotland and Wales was proposed by the Scotland and Wales Acts of 1978, but it never came to fruition. Upon his election in 1997, however, Prime Minister Blair outlined a plan to hold referenda on devolution of power to not only Scotland and Wales, but also London municipality and possibly several regions of England. Subsequently, referenda have approved devolution for Scotland and Wales. Scotland will now have its first

103. To understand why this was the case, one would be required to undertake a sociopsychological study of the English predisposition for orderliness or ex post facto legislation; a study which this author declines to make.
108. Id. at 42. The Northern Ireland Parliament was suspended in 1972 due to the intensity of the military conflict between Catholic Irish Separatists and Protestant Irish Unionists. Id.
111. Id.
parliament since the eighteenth century, and Wales will have its own parliament, although less powerful than Scotland’s, for the first time since the fifteenth century.\textsuperscript{112} Moreover, the United Kingdom remains united.

2. \textit{Belgium: Linguistic Antagonism}

Unfortunately located on the crossroads to conquest between the great powers of Europe, Belgium was consistently trampled throughout history by the French, Spanish, Dutch, and Austrians on their way back and forth to fight each other, and variously subjugated by them at different times\textsuperscript{113} until the country was pulled together and recognized as independent by the Congress of Vienna in 1831.\textsuperscript{114} This trend continued into the twentieth century as a unified Germany invaded and occupied Belgium twice during its wars with France.

While the Belgian people are generally ethnically homogenous, there are deep cleavages along the lines of language.\textsuperscript{115} Of the three languages spoken in Belgium (French, Dutch, and German), the French dialect spoken by the Walloons and the Dutch dialect spoken by the Flemish are the two predominant ones, and the country is divided into two provinces on this basis.\textsuperscript{116} These differences carry over into politics, and although the Constitution grants certain linguistic rights to the competing factions,\textsuperscript{117} extremist elements received support in their call “for further devolution of power to the regions” in 1991 elections.\textsuperscript{118}

\begin{itemize}
\item \textsuperscript{112} \textit{Id.}
\item \textsuperscript{114} \textit{1 ENCYCLOPEDIA OF THE FIRST WORLD 105 (George Thomas Kurian ed., 1990).}
\item \textsuperscript{115} \textit{1 id. at 103.}
\item \textsuperscript{116} \textit{1 id.}
\item \textsuperscript{117} \textit{1 id. at 104-09.}
\item \textsuperscript{118} \textit{HALPERIN, supra note 42, at 139.}
\end{itemize}
Therefore, the country has resorted to some degree of legislative creativity in order to ensure continued unity. Although Belgium is considered to formally have three regions, Flanders, Wallonia, and Brussels, the former two are the only ones to have any legislative authority under the 1980 Constitution. Nonetheless, Brussels does serve an important unifying function: "Belgium is torn between Flemings and Walloons, so insistent on language rights that little more than Brussels, a deliberately drawn separate region, holds the country together." So, while a population may be otherwise ethnically homogenous, the case of Belgium demonstrates that self-deterministic issues may still arise.

3. Spain: The Catalans and Basques

Since the death of Generalissimo Franco in 1975 and Spain’s reconstitution as a democratic constitutional monarchy, the government in Madrid has embarked on a policy of devolution to return more power to its seventeen regions, and recognition to the independent-minded Catalan and Basque regions. These devolutionary policies have kept the country together in the face of secessionist movements. Galicia, for instance, has preserved its Celtic heritage by achieving a great degree of statutory autonomy that includes local government from its own parliament and president, as well as the preservation of its historic symbols of state: the Galician flag and coat of arms. However, the Basque country and Catalonia remain two areas of Spain where separatism still runs strong.

The Basque region of Spain, centered around Bilbao and directly south of the Bay of Biscay, is the industrial dynamo of the Spanish economy, and one which Spain could not do without. The Basque people, unique by all accounts, spread between southern France and northern Spain and speak a language that is unlike any other in Europe whose origins are unknown. Repressed under the Franco dictatorship, the Basque culture has come alive since his death. While this has been mostly expressed through the seeking and securing of more

119. 1 ENCYCLOPEDIA OF THE FIRST WORLD, supra note 114, at 110.
120. LEWIS, supra note 99, at 123.
121. Devolution Can Be Salvation, supra note 41, at 53.
122. Id.
124. HALPERIN, supra note 42, at 143.
125. LEWIS, supra note 99, at 124.
126. Id. at 123.
autonomy from Madrid, there are still violent factions that use terrorist techniques in the radical pursuit of secession from Spain.\footnote{127}

Catalonia, likewise has its own language, Catalan, which is partially the basis for the Catalan identity.\footnote{128} In fact, some of the more prideful Catalans claim, that if given the choice, they "would rather speak French than Spanish with visitors who don't speak Catalan."\footnote{129} Yet another basis for distinction is Catalonia's historic culture and comparative economic success.\footnote{130}

But while there are Catalan separatist groups seeking external self-determination in the form of secession for the Catalan region,\footnote{131} the majority are satisfied with autonomy; although they are particular about how this autonomy is styled, "Catalans are not so belligerent about their separateness as are Basques, but they are no less adamant about their historic identity. They reject description of their goal as 'regional autonomy,' insisting on the phrase 'national autonomy' to emphasize that Catalonia remains a cultural nation if not a sovereign state."\footnote{132} Indeed, perhaps if the Madrid government were to relinquish as much autonomy for these two regions as it has for Galicia, the separatist elements may fade from the scene altogether.

4. Italy: The Problematic North-South Divide

Between the fall of the Roman Empire in the fifth century A.D. and 1860, the "Boot of Italy" was nothing more than a collection of squabbling kingdoms, principalities, and papal lands.\footnote{133} Fractionalization was the order of the day, and the time of the Medicis and Borgias was one wherein any sort of temporary alliance or unification was beset with betrayal and court intrigue.\footnote{134} Today, Italy is a unified democratic state, if not a particularly politically stable one. It is not, however, a federal state, as such. Most governmental power resides in Rome with the central government, even though the nation is divided into regional administrative provinces.

\footnote{127} HALPERIN, supra note 42, at 143. There have been "at least 600 deaths in the past 15 years" associated with Basque separatism in northern Spain. \textit{Id.}
\footnote{128} LEWIS, supra note 99, at 125.
\footnote{129} Id.
\footnote{130} John Newhouse, \textit{Europe's Rising Regionalism}, FOREIGN AFF., Jan.–Feb. 1997, at 67, 77. "Catalans feel that by any standard criteria, including economic stability, per capita income, population, cultural attributes, history, and outlook, they are more a northern European nation than a region in the less prosperous, less dynamic, more agrarian . . . mother country." \textit{Id.}
\footnote{131} HALPERIN, supra note 42, at 143.
\footnote{132} LEWIS, supra note 99, at 124.
\footnote{133} Id. at 148.
\footnote{134} Id. at 148-49.
The economic situation that has developed in Italy since its emergence from the ashes of defeat in 1945 after World War II has seen the intense industrialization of the North coupled with the further impoverishment of the South. Decades of wealth redistribution policies in Rome, taking cash from the rich North and handing it over to the poor South, has done nothing to correct the problem, largely due to rampant corruption both in the South and Rome. Although such wealth redistribution policies are being phased out as official policy, the South continues to rely on the North’s robust economic engine for its survival.

Now, however, with membership in the European Monetary Union Program (EMU) looming and questions as to whether Italy can qualify in the first round, the Northern regions have determined that enough is enough. A separatist movement led by Umberto Bossi, called the Northern League, has come to embody the North’s frustration with the South and the central government. His group advocates the secession of “Padania,” as it is called, from the rest of the nation-state. Indeed, as a separate entity, Padania would comfortably qualify for membership in the EMU, leaving the rest of Italy to join later when it finally got its act together. Of course, this logic presupposes that Padania would be a member of the European Union (EU) automatically, and not have to apply for separate membership.

While Rome has correctly seen through this veil of separatism to surmise that most northerners would be happy with devolution and local empowerment without resorting to secession, the central government has not done what it needs to do in order to mollify the separatists; namely, devolve more power on a federal model, or perhaps on the European principle of subsidiarity:

A better approach would be to apply the principle of subsidiarity: that power should be exercised at the lowest level that produces efficient results. If this were taken seriously, it would mean giving a lot more power to municipalities, building on the centuries-old tradition of city states. That

137. Id.
139. Newhouse, supra note 130, at 81-83.
140. Id.
would probably command a lot more public support than beefing up the regional governments, which date only from 1970.143

Without some meaningful devolution, the secessionist sentiment in the North is bound to grow.144

5. France: Corsican Independence and Reassertion of Breton Identity

France is beset by self-deterministic aspirations, in varying degrees, by Basques, Bretons, and Corsicans.145 While the Basques, like their brethren to the south in Spain, seek secession, the Bretons seek greater autonomy based on their distinct Celtic language and culture, and the Corsicans seek more autonomy generally, although there are violent separatist elements on the island.146 The rise of the old regions may have something to do with this renewed self-deterministic activity:

France, ... so totally centralized after the [1789] revolution, has felt a need to loosen the reins. Inevitably, though the old provinces were formally abolished and replaced with a multitude of departments almost two centuries ago, it is the old provinces which have reemerged as regions. Insular Corsica is the most adamant. Brittany, with its near dormant Celtic tongue, is clearly conscious of its identity, Languedoc, in the southwest, still remembers the virulence of the early thirteenth-century Albigensian crusades when the northerners came to massacre the southerners.147

Recently, the Corsicans have reasserted themselves through violence and bloodshed. In February of 1998, the Prefect for Corsica, France’s highest ranking representative on the island, was assassinated by separatist militants.148 This radical stratagem by a breakaway paramilitary cell may be the result of the splintering of the once unified National Liberation Front into smaller groups with divergent ideas about how to achieve “control over Corsican affairs.”149 Nonetheless, the negative reaction of the general population and protests against

143. *Northern Exposure, supra* note 135, at 17.
146. *Id.*
149. *Id.*
such random continued violence demonstrates that such violent solutions are ultimately self-defeating.

One area in which the central government in Paris has back-tracked is language. A vital element in the cultural self-identification of any homogenous ethnic group, language differentiation is an important aspect in a community’s own sense of self-determination. Since the sixteenth century, regional languages have been brutally repressed and French touted as the only official language. Now France is encouraging the “re-learning” of regional linguistic traditions.\(^1\) \(^2\) \[^{151}\] “[W]ith English galloping across the Continent and a unifying Europe trying to brush away boundaries, the Government has concluded that France’s regional languages enrich the national heritage rather than pose a threat to the country’s identity. Now it wants to insure that they survive.”\(^3\) Consequently, Breton can now be heard in Brittany, Provencal in Provence, Basque in the Pyrrennes, and Corsican on Corsica.

B. Weakening the Nation-State Within the European Union

Europe has been the situs for much of the conflagration this century has witnessed. The source of fighting has usually centered on competing national ambitions among the fractious nation-states that inhabit the peninsula. Only twice in recorded history has the continent been significantly unified: under the domination of the Roman Empire and under the unification of Charlemagne.\(^4\) When Winston Churchill suggested in 1946 that a “United States of Europe” be created, his vision was that a Europe united would not again descend into internecine warfare.\(^5\)

Eventually, at the signing of the Treaty of Rome in 1956,\(^6\) the foundations were laid for the future political and economic integration of the many countries located on the western portion of the European land mass. Much has

\(^{150}\) Id.


\(^{152}\) Id. at A8.

\(^{153}\) Id. at A1.


\(^{156}\) Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11. The original parties to this treaty were France, Germany, Belgium, Italy, Holland, and Luxembourg. Id.
transpired to bring these nation-states along the road to an "ever closer union." 157 Through the empowerment of its institutions, the EU has evolved into a supranational governing body whose legislation and judicial determinations are enforceable throughout the purview of its jurisdiction.

157. The Treaty of Rome was followed by more treaties and agreements which brought the member nation-states closer together without fully devolving all sovereignty to the EU. Today, there are no internal borders among the continental EU states and citizens of any member state are considered equally to be citizens of the EU. The Treaty of Rome was amended in 1986 by the Single European Act, Feb. 28, 1986, 25 I.L.M. 503 and in 1992 by the Treaty on European Union, Feb. 7, 1992, 31 I.L.M. 247.
1. Simultaneous Devolvement

There are currently fifteen members of the European Union. This is not, however, a static body—it is constantly growing and expanding, both in membership and supranational prerogative. While the process of integration proceeds apace, despite the outcries of underdemocratic processes by some “euro-skeptics,” many of the EU member states are experiencing “devolution demands” from their constituent regions and provinces. Indeed, the simultaneous strain on European nation-states of upward and downward devolution has been cited as a real concern:

In recent years, there has been a trend toward redistribution of state functions away from the classical nation-state: upward towards supranational institutions, and downward towards local and regional bodies.

The European Union (EU) epitomizes the upward movement.

... However, ... this centralizing movement towards a larger regional polity has been accompanied by a simultaneous decentralization of many governmental functions in a significant number of European Union member states.

Consequently, the traditional power of the nation-state members of the EU is eroding under this dual devolution. The main break on this erosion at the European level is the representation of the nation-state governments on the all powerful Council of Ministers. At the state level, however, it is ultimately up to the individual member states to decide, after a political cost-benefit analysis, just how much power to devolve to their regions.

2. Regional Empowerment in the European Union

In response, the EU is “moving toward a model of ‘multilevel governance.’” The regions of Europe are increasingly finding their voices on the supranational plane. The impetus for this is that just when the process of devo-
olution and decentralization was empowering regional governments within member nation-states by handing them control over policy areas such as land use, education, industrial development, and others, the EU began asserting control over those very policy areas.¹⁶²

It was impossible to formally protect their newly granted competence in these areas, because the regions had no voice at the EU level, only the member states did.¹⁶³ Therefore, they began to open their own "regional interest" offices in Brussels, the seat of the EU bureaucratic structure.¹⁶⁴ Doing this, however, is not without its risks. For instance, when the Basques opened their regional office, it was styled as a "Representation of the Basque Government."¹⁶⁵ This was strenuously objected to by the Madrid national government, which filed suit in the Spanish Constitutional Court alleging that "foreign affairs" were the exclusive province of the central government. The Court, however, found that since EU law affected policy areas that the Spanish government had constitutionally devolved to the Basque region as an Autonomous Community, there was a "right to independent representation and participation in European affairs" on these issues.¹⁶⁶

Institutionally, the EU and its Member States agreed to create a Committee on the Regions (COR) to provide advisory opinions to the EU in the areas of their competence: culture, education, public health, transportation, telecommunications, energy, and socio-economic cohesion.¹⁶⁷ In 1995, the COR began preparing and issuing opinions, half of them on its own initiative.¹⁶⁸ Consequently, some degree of meaningful input on the supranational plane of governance has been achieved by regions independent from their respective nation-states. In this way, perhaps it can be said that the downward devolution to the regions from the nation-state slips out the back door and rises with the upward devolution to the EU and vice-versa. In either case, the result is that the sovereignty of the nation-state is circumvented in those areas.

¹⁶².  Id. at 421-22. "For example, procurement rules and technical standards for infrastructure projects, environmental assessments, vocational training, and a host of other regional and local functions became subject to European rules." Id. at 422.

¹⁶³.  Id. at 423.

¹⁶⁴.  Id. at 432. There are now about seventy such "chambers of commerce" in Brussels.

¹⁶⁵.  Id. at 433 (quoting Francesc Morata, Spanish Regions in the European Community, in The European Union and the Regions 115, 125 (Barry Jones & Michael Keating eds., 1995).

¹⁶⁶.  Id. (citation omitted).

¹⁶⁷.  Id. at 445-49. "The COR is composed of 222 delegates and their alternates," distributed amongst the EU member states. Id. at 449.

¹⁶⁸.  Id. at 450.
It is important to note that regional empowerment within EU countries has not been limited to the political realm. Homogenous regions have asserted themselves linguistically and economically as well.¹⁶⁹

Not only have the regions of France begun to rediscover their previously repressed languages like Basque, Provencal, Breton, and Corsican,¹⁷⁰ but the Welsh and others are once again speaking their own tongues.¹⁷¹

In the economic sphere, these regions have set out to find and exploit their own niches in the ever-expanding global marketplace. One successful example is Alsace’s marketing of its unique geographical location at the crux of France, Switzerland, and Germany to lure massive Japanese corporate investment. This move has greatly buoyed the previously sagging Alsatian economy: “Just as many American states have set up trade offices overseas, European regions are developing their own foreign commercial policies. . . . [However,] conflicts are being created that some analysts believe will cause capitals to lose control of their foreign policy—and ultimately contribute to the fracturing of some nation-states.”¹⁷² Significantly, the experience of Alsace appears to be but a single instance of a more widespread trend within the EU:

The brazen approach adopted by Alsace in establishing a special relationship with Japan reflects an accelerating trend by regions throughout France, and indeed the rest of Europe, to circumvent national governments and shape their own economic destinies through the active recruitment of foreign investors. . . . Germany’s 16 states already enjoy considerable autonomy and compete vigorously with one another in attracting investments. Spain is devolving ever greater authority from Madrid to the regional capitals, with the result that Catalonia and the Basque region now look more to the north for commercial partners while Andalusia has turned toward Morocco and points south. . . . [E]conomic competition is growing more hostile as the mentality of a single European market starts to dissipate [nation-state] allegiances.¹⁷³

Consequently, this difficult and complex dual challenge of simultaneous devolution (upward toward the supranational bureaucracy of the EU and down-

¹⁶⁹. Newhouse, supra note 130, at 67. “With European governments losing or ceding control of [their] national economies, . . . instead of working through national capitals, European regions are linking themselves directly to the global economy.” Id.
¹⁷¹. Id.
¹⁷³. Id. “Beyond ethnic rivalry, the divergence of economic interests has become one of the strongest forces pushing European countries apart.” Id.
ward toward the smaller regional sub-units of the EU member states) has been cast by some European publicists as an opportunity for alliance between Europe and the regions against the arbitrary sovereignty of the old nation-states:

Europe and the regions are natural political allies against the feudal power of the sovereign nation-states . . . . The nation-state, which is too small to carry out certain jobs in modern industrial societies and too large to carry out others, is nowadays challenged on both fronts . . . . It has been incapable of tackling the major objectives of our time . . . .

Nonetheless, the EU nation-states retain much power, and while it is true that, for many, nationalism has been reduced largely to loyalty for their national soccer team, it would be premature at best to write off the nation-state in Europe as both a driving and controlling political, economic, and social force in the years to come.

V. FEDERATIONS: RIPE FOR FRAGMENTATION?

The idea of unitary sovereignty is a distinctly European one; indeed, recent research has shown that during the colonial period, it was imposed on cultures that had historically operated on systems, albeit undemocratic, of delineated degrees of sovereignty. Be that as it may, federations of theoretically sovereign states did not become popular structures of government until the United States established that it could be done, and even that was challenged after the first eighty years of operation by a failed war of secession from 1860-1864. Although there are several types of federalist systems available to nation-states, the essential characteristics of federalism are: "(1) constitutional division of powers between the central and regional levels of government, and (2) en-

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174. Hebert, supra note 100, at 177 (citation omitted).
177. A working definition of "federalism" is as follows:
A form of territorial political organization in which unity and regional diversity are accommodated within a single political system by distributing power among general and regional governments in a manner constitutionally safeguarding the existence and authority of each. Distinctive features are the distribution of authority between at least two levels of government and the coexistence of unity and regional diversity.
trenched regional representation in the central government.\textsuperscript{179} Arguably, federal unions became the preferred form of governmental system for multi-ethnic societies during this century under both democratic and undemocratic regimes.\textsuperscript{180}

However, as political sovereign entities, federations are inherently susceptible to fragmentation. Indeed, the fault lines along which a potential break can occur are usually already in place—fixed politically, historically, or both. This flows partially from the inherent internal inequality of their collective constituent parts. In the international legal system, individual nation-states are formally accorded equal legal status vis-à-vis each other.\textsuperscript{181} The reality, however, is that nation-states are clearly unequal in both power and ability. Likewise, federations generally accord equal legal status among their constituent parts, be they states, provinces, regions, or oblasts. And just as in the international system, the reality is that those constituent parts are often unequal in terms of development, population, and economic power.

For example, just as France and Fiji\textsuperscript{182} share equal legal status on the international plane but are vastly unequal in reality, California and Rhode Island\textsuperscript{183} enjoy equal legal status under the United States Constitution, but are

\textsuperscript{179} Id. at 5. This second element usually is expressed by way of a bicameral legislature at the federal level. Id. at 6.

\textsuperscript{180} It must be remembered that during the Cold War, the bi-polar geopolitical balance was held in sway between the United States and the Union of Soviet Socialist Republics: two federal unions. The concept of the federal system of government has been adopted in several diverse contexts: India, Australia, Mexico, South Africa, Germany, Canada, and the Russian Federation.

\textsuperscript{181} Thürl, supra note 5, at 55.

The principle of sovereignty and equality of states is the basis of [the international legal] system, and independence, political unity, and the territorial integrity of states are its cornerstones. These cornerstones are, in turn, protected by the prohibition on the use of force in international relations and the prohibition on state intervention in the domestic affairs of other states.

\textit{Id.}

\textsuperscript{182} France, with a population of 58.6 million people, occupies a land mass of 176,460 square miles, has an annual Gross Domestic Product (GDP) of $1.2 trillion, is a nuclear power, and has a permanent seat on the United Nations Security Council. \textit{New York Times 1998 Almanac} 569 (John W. Wright ed., 1997). Fiji, an island nation with a population of 792,441 people (roughly the size of Indianapolis), a land mass of 7054 square miles, and an annual GDP of $4.7 billion, could only feebly protest France’s 1995 decision to conduct underwater nuclear tests in its backyard, the South Pacific. \textit{Id.} at 568.

\textsuperscript{183} California, with a population of 31.8 million people, occupies a land mass of 158,706 square miles, has an annual Gross State Product (GSP) of $875.7 billion, sends fifty-two congressmen to the House of Representatives each year, has contributed two presidents to the United States federal government in this century, and has the ninth largest economy in the world if categorized separately from the United States. \textit{Id.} at 170. Rhode Island, although one of the original thirteen British colonies, has a population of 990,225 people, a land mass of 1212 square miles,
unequal in reality. The same comparisons can be made between many internal regions of almost any federation: Nizhniy-Novgorod and Yakutia in Russia, Uttar Pradesh and Manipur in India, Amazonia and Rio in Brazil, or Ontario and Prince Edward Island in Canada. Consequently, inequality is a fundamental feature in almost any federation, whether or not it breeds secessionist ideas on its own.

Just as devolution has been seized upon by nation-states, federal or otherwise, as a way to address the self-deterministic aspirations of communities within their borders, so too has federalism been attempted by non-federal nation-states as a self-preservationist move toward the middle ground between separatists and advocates of stronger centralized government.184 The examples, however, of Mali, Uganda, Ethiopia, Zaire (now Congo), Nigeria, Kenya, and the Cameroons bear out the conclusion that these efforts, at least in post-colonial Africa, have generally failed,185 except for the notable recent example of South Africa under its new constitution. Consequently, while federated systems of government can work in multi-ethnic states, with the appropriate degree of top-down devolution of administration and self-government, it seems that they cannot be universally extrapolated to work in every instance.

A. Recent Federated Break-ups

Nonetheless, when inherent inequality is added to other, seemingly dormant, fragmentary ingredients such as historical, ethnic, religious, customary, or linguistic differences, a divisive stew can come to brew in which one of the potatoes may try to jump out of the pot. Indeed, the recent federated crack-ups of the U.S.S.R., Yugoslavia, and Czechoslovakia demonstrate that the pot itself may burst, allowing all of the elements previously held together to spill forth and go their separate ways. While this Article does not address the political, theoretical, economic, or social failures of the communist philosophy that was applied to the countries of Eastern Europe and the Soviet Union, it does take note of the fact that these were all federal systems, at least on paper, that spun apart into separate, smaller, more ethnically homogenous nation-states after the fall of communism in Europe. Table 3 delineates some previously federated nation-states that have broken down into smaller successor states during this decade.
Table 3

<table>
<thead>
<tr>
<th>Former Sovereign Nation</th>
<th>Date of Dissolution</th>
<th>Emergent Successor States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Czechoslovakia</td>
<td>1993</td>
<td>Czech Republic; Slovakia</td>
</tr>
<tr>
<td>Yugoslavia</td>
<td>1991</td>
<td>Yugoslav Federation of Serbia &amp; Montenegro; Croatia; Macedonia; Slovenia; Bosnia-Herzegovina</td>
</tr>
<tr>
<td>Ethiopia(^{186})</td>
<td>1993</td>
<td>Ethiopia; Eritrea</td>
</tr>
<tr>
<td>Soviet Union</td>
<td>1991</td>
<td>Russian Federation; Lithuania; Latvia; Estonia; Kazakhstan; Uzbekistan; Georgia; Turkmenistan; Azerbaijan; Armenia; Ukraine; Kirghizia; Moldova; Tajikistan; Belarus</td>
</tr>
</tbody>
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The collapsed Russian Empire that the Bolsheviks inherited after the 1917 revolution had been a vast conglomerate of many nationalities,\(^{187}\) including Tatars, Ukrainians, Siberians, several ethnicities in the Transcaucases, and countless others.\(^{188}\) Having enjoyed little autonomy under the Romanov dynasty, these nationalities, emerging from a disastrous war effort, were anxious that they not be subjected to another form of dictatorial rule. Lenin answered these concerns by assuring the various nationalities within the old empire that they would not be subjected to “Russian domination;” indeed, he promised them full autonomy and even the right to secede should they so choose.\(^{189}\)

Even though communist doctrine did not recognize nationalities or commitments to ethnic diversity, and even though Lenin gave credence to this idea by stating that “the workers know no fatherland,”\(^{190}\) he nevertheless used the rhetoric of self-determination in furtherance of his political ambitions—the maintenance of the empire’s territorial integrity under the newly-founded

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\(^{186}\) For purposes of this chart, Ethiopia and Eritrea are considered as having been a federation, which they were between 1952 and 1962 when the Eritrean Assembly was coerced into voting for incorporation into Ethiopia; the incorporation was contested from the beginning by Eritrean nationalists until the official secession in 1993. *Cassese,* *supra* note 11, at 220-21.

\(^{187}\) Blay, *supra* note 34, at 284.

\(^{188}\) *Id.* at 284-89.

\(^{189}\) *Id.* at 284.

\(^{190}\) *Id.* at 285 n.22.
U.S.S.R. To back up his words, a federal structure was erected, wherein “independent statehood” was granted to larger nationalities, and autonomy to smaller ones within the context of the U.S.S.R.

The nationalities bought into this system and the U.S.S.R. was created. Only later did they realize that these promises would turn out to ring hollow. Although it is hard to believe, there is evidence that Lenin used self-determination theory in good faith under communist theory, it was permissible to make promises such as his because “nationalism was doomed to oblivion... once communism was achieved.”

The Soviet Union ended up being run as a collective dictatorship under the aegis of a self-protective oligarchy, and communism—Marx’s theoretical version of it—was never achieved. Seventy-four years after its founding, the U.S.S.R. collapsed under its own weight. The disintegration began in 1986 with the Kazakh riots and continued in 1987 with nationalistic ethnic rioting “by the Crimean Tatars, the Baltic peoples and the Ukrainians.” This was followed by ethnic infighting in 1988 between the Armenians and Azerbaijanis in the Caucasus, and the Georgians and Abkhazians in Georgia.

Gorbachev’s energies during these nationalistic convulsions were directed at “keeping the lid on” Soviet nationality problems and at keeping the union together. To that end, he promulgated policies such as glasnost and perestroika, but these neither saved him nor the Soviet Union. Between 1990 and 1991, the Baltic republics of Latvia, Lithuania, and Estonia left the U.S.S.R. In December of 1991 the other twelve republics followed suit, and Gorbachev resigned after the Soviet Parliament voted to dissolve itself. The end of an era had truly come.

191. Id.
192. Id. at 285. This led to the creation of “15 union republics, 20 autonomous republics, 8 autonomous oblasts, and 10 national oblasts.” Id.
193. Id.
194. Id. at 285 n.22.
195. Id. at 289.
196. Id. at 287-88.
197. Id.
198. Id. at 287.
199. Id.
200. Id. at 288-89.
201. Id.
The validity of the fifteen emergent states that stepped forth from the fallen U.S.S.R., and their assertion of full external self-determination, has never been questioned. Excluding the Baltic Republics, these new states voluntarily formed a group known as the Commonwealth of Independent States (CIS) to mutually protect their shared economic interests. Because the Soviets redrew many boundaries to intentionally create culturally divided republics within the old U.S.S.R., many of the successor states themselves are now multiethnic in composition and therefore must deal with rising self-determination sentiments within their own, newly independent borders. The resistant ethnic minority in Moldova has already been mentioned, but similar ones exist in Azerbaijan, Georgia, Kyrgyzstan, Tajikistan, Ukraine, and Russia itself. With the fighting

202. Id. at 289. All former Soviet republics are now members of the United Nations. Id.
203. The effectiveness of the CIS has been called into question: “The CIS, for its part, does little beyond bringing leaders from 12 of the former republics to talk. Of the more than 700 agreements reached within the CIS framework, none seems to work.” Valery V. Tsepkalo, The Remaking of Eurasia, FOREIGN AFF. Mar.-Apr. 1997, at 107, 110.
204. HUNTINGTON, supra note 12, at 138.
205. HALPERIN, supra note 42, at 148-57.
206. Id.
between Azerbaijan and Armenia over the Nagorno-Karabagh largely resolved,\footnote{For an interesting discussion of this region's claim to self-determination, see Armen Tamanzarian, Note, Nagorno-Karabagh's Right to Political Independence Under International Law: An Application of the Principle of Self-Determination, 24 Sw. U. L. Rev. 183 (1994).} the most vexing self-determination issue, besides the Chechnyan problem in Russia, which is discussed later, is found in Georgia, where Abkhazians and Ossetians declared themselves independent from Georgia.\footnote{Robbins, supra note 88, at 19.} After armed confrontation and the request of both groups to join the Russian Federation,\footnote{Id.} there is now an unsteady peace as international troops have arrived with United Nations observers to maintain the cease-fire.\footnote{Raymond Bonner, In Caucasus, Separatist Struggle Is Pursued as a Pogrom, N.Y. Times, Feb. 5, 1995, at A3.} The future of the standoff remains, as with many self-determination issues, unresolved and in stasis.

2. **Yugoslavia: The Pursuit of Ethnic Homogeneity**

From its inception in 1918,\footnote{For a good, short history of the diverging trends of unity and dissolution since the inception of Yugoslavia as a nation-state, see David Binder, National Rivalries Cloud Dream of Yugoslav Unity, N.Y. Times, July 6, 1991, at A4.} Yugoslavia was a “contradictory” and artificial state.\footnote{Svetozar Stojanovic, The Destruction of Yugoslavia, 19 Fordham Int'l L.J. 337, 340 (1995).} It was a nation-state cobbled together to include Bosnia-Herzegovina, Serbia, Montenegro, Macedonia, Croatia, and Slovenia.\footnote{Blay, supra note 34, at 308.} Moreover, it was a unitary state, not a federation.\footnote{Stojanovic, supra note 212, at 337.} From the beginning, there was strain due largely to regional aspirations toward independence.\footnote{Id. at 337-39.} In 1929, King Aleksandar I suspended the Yugoslav parliament, instituting dictatorial rule to prevent Yugoslavia’s break-up.\footnote{Id. at 338.} During World War II, and the imminent Nazi invasion, Croatia saw its opportunity and declared independence; subsequently joining the fight on the side of the Axis Powers.\footnote{Blay, supra note 34, at 308.} The artificiality of the entire arrangement was apparent:
Yugoslavia was created with the decisive support of France, the United States, and Great Britain, the three western allies of Serbia and Montenegro in the First World War, and it was occupied and dismembered in 1941 by Germany (and Austria, which had been annexed to it), Italy, Hungary, and Bulgaria. Yugoslavia was renewed in 1945 with the support of the Soviet Union and the same three western allies. Throughout Yugoslavia’s entire history much has depended on whether the decisive foreign countries contradicted or promoted its cohesion.219

Interestingly enough, when Yugoslavia began to fall apart in 1991, the fact that the political borders of the federation’s constituent units were not coterminous with the ethnic and cultural borders was thrown into stark relief. Aside from the fairly homogenous state of Slovenia, the bloody fault lines and flashpoints were not centered along the “borders” between the emergent states, but within them along ethnic and cultural lines,220 especially within Bosnia.221 When the break-up did come, it came quickly and, to a large extent, took the international community by surprise.222

The predictable initial response by the international community was to support Yugoslav unity. However, as it became clear that continued federation could not be achieved without much bloodshed, positions began to change.223 In response to agitation on the part of Germany, the EU formulated a “common position on the process of recognition” for emergent states in eastern Europe,224 attempting to use international recognition as a tool to prod the emerging states

220. Id. at 361. “The principal Yugoslav fissures did not follow the ‘boundaries’ between the Republics that the ‘international community’ sought to impose as borders. They followed the lines that divide nationalities, religions, cultures, histories, and civilizations.” Id.
221. The population of Bosnia in 1992 included 31.3% Serbs, 43.7% Slavic Muslims, and 17.3% Croats. Hannum, supra note 8, at 36.
222. Stoianovic, supra note 212, at 355.
223. Hannum, supra note 8, at 51.
224. Id. at 51-52.
toward a peaceful resolution of their differences. This amounted to "conditional recognition" in that, upon meeting the following five criteria, recognition would ensue.

The new states must demonstrate:

[1] respect for the provisions of the Charter of the United Nations and the commitments subscribed to in the Final Act of Helsinki and in the Charter of Paris, especially with regard to the rule of law, democracy and human rights;

[2] guarantees for the rights of the ethnic and national groups and minorities in accordance with the commitments subscribed to in the . . . CSCE, [Conference on Security and Cooperation in Europe];

[3] respect for the inviolability of all frontiers which can only be changed by peaceful means and by common agreement;

[4] acceptance of all relevant commitments with regard to disarmament and nuclear non-proliferation as well as to security and regional stability;

[5] commitment to settle by agreement, including . . . by recourse to arbitration, all questions concerning State succession and regional disputes.

In 1992, Slovenia, Croatia, and Bosnia-Herzegovina were recognized and admitted to the United Nations. The recognition of Bosnia precipitated the bloody civil war amongst the ethnically mixed population of the new state. Although there were significant numbers of Serbs in Croatia and Albanians in the Kosovo region of the Yugoslav rump state, it was in Bosnia that most of the fighting occurred because Bosnia was the most heterogeneous state. Indeed, it was the extensive heterogeneity that operated there to tear the region asunder, and led to such atrocities as "ethnic cleansing." A shadow of Hitler's sinister "Final Solution." Fighting persisted along ethnic and religious lines among the Croats, Serbs, and Muslims of Bosnia.

Political pursuit of homogeneity is not without historical precedent: "British India, Rwanda-Urundi, Ethiopia, and the Trust Territory of the Pacific

226. Hannum, supra note 8, at 52.
227. Blay, supra note 34, at 311.
228. Hannum, supra note 8, at 52-53.
229. Id. at 54.
Islands were divided at least in part to achieve ethnically or religiously more homogenous states. That objective remains the justification for the de facto division of Cyprus.\textsuperscript{230} When the question of whether the Serb populations located in Bosnia and Croatia were entitled to external self-determination was put to the international community, sitting as an arbitration commission,\textsuperscript{231} the response was a resounding, and not surprising, no!\textsuperscript{232} Essentially, the international community stuck to its guns on the secession issue. Even so, it was recognized that those Serb populations in Bosnia and Croatia did have a right to “recognition of their identity,” and were, therefore, entitled to all rights, privileges, and freedoms accorded to them under international law as minorities.\textsuperscript{233}

After failed attempts at peace-keeping, the United States stepped in to sponsor the Dayton-Paris Peace Accords, under which Bosnia was reconstituted as an ethnically diverse federation.\textsuperscript{234} The plan, adopted by Croatia, Serbia, and Bosnia, provided for a comprehensive cease-fire and allowed monitored elections to go forward\textsuperscript{235} while an international peace-keeping force led by the United States remained in Bosnia. At this writing, there is peace in Bosnia, but there are also over 30,000 international troops on the ground.\textsuperscript{236} So, has self-determination been achieved? For Slovenia, Croatia, and Macedonia, the answer is yes. For Bosnia, the answer depends on to whom that question is put.

Within the remnants of the former Yugoslavia, there is growing dissent as well. Montenegro, the junior partner in the Serbian-Montenegrin federation has a new leader who has hinted at the pursuit of policies leading to either more

\textsuperscript{230} Id. at 57.
\textsuperscript{231} “The Badinter Commission, formally known as the Arbitration Commission of the Conference for Peace in Yugoslavia, was established in an effort to provide legal guidance to Conference participants in their efforts to negotiate a settlement to the issues arising from the dissolution of the former Yugoslavia.” Wippman, supra note 225, at 592.
\textsuperscript{232} Id.
\textsuperscript{233} Id. at 592-93.
autonomy from Belgrade or even independence. And Kosovo, a region of Serbia historically Serbian, but now primarily populated by ethnic Albanians, which was stripped of its autonomy in 1989, has openly rebelled against Serbian dominance, fired by a separatist movement seeking independence. The basis of the Kosovars’ claim is that the region of Kosovo was one of the original “constituent units” of Yugoslavia, and as such it should enjoy full independence like the other constituent units (Macedonia, Bosnia, Croatia, and Slovenia) or be offered the choice to remain with Serbia, like Montenegro.

The Serbs, however, responding with force to put down an armed uprising by rebels in pursuit of independence for Kosovo, have drawn the ire of the West, and have themselves been threatened with force by NATO if they continued their brutal repression of the Kosovars. Under such a threat from overwhelming military firepower, the Serbs elected to back down pursuant to an agreement brokered by the United States that removes Serb forces from Kosovo, reestablishes some limited autonomy in that region of Yugoslavia, and calls for a group of 2,000 international, unarmed inspectors to monitor the peace. Nonetheless, this stop-gap measure has been criticized as faulty, and likened to essentially throwing a blanket over a simmering fire.


240. Celestine Bohlen, *Russia Vows to Block the U.N. from Backing Attack on Serbs*, N.Y. TIMES, Oct. 7, 1998, at A8. Russia has promised to veto any resolution before the United Nations Security Council that authorizes the use of force by NATO against Serbia for its military actions in Kosovo. *Id.* Consequently, any action on the part of NATO would have to be without United Nations approval, unlike in the instances of Western military intervention in Bosnia or Iraq. This, in itself, is not surprising, since military action against Serbia for its repression of the Kosovars would be a precedent-setting move; one certainly that did not exist when the same situation was faced by two permanent members of the Security Council: Russia putting down the secessionist uprising in Chechnya or China subduing Tibet.


242. *Id.*

There is near-unanimous agreement among Kosovo’s Albanians that full independence is the only acceptable outcome . . . . Albanians might be amenable to delaying a final decision on Kosovo’s status for three years if they receive significant autonomy in the meantime, as the Clinton Administration proposes. But when the time is up they will insist on independence and fight to achieve it.
Consequently, the ethnically or religiously homogenous sub-units of the states emerging from the former Yugoslavia are pursuing mostly external self-determination based on nothing else but their very internal homogeneity. And, as is evident from the continued secessionist rhetoric in both Montenegro and Kosovo, although Bosnia may currently be a quiet frontier, the self-determination process is not over yet for the Balkans.

3. **Czechoslovakia: The Peaceful Divorce**

When it was created from the northern ruins of the collapsed Austro-Hungarian Empire, the nation-state of Czechoslovakia was truly an ethnically mixed bag. Upon its constitution after World War I, Czechoslovakia consisted of Czechs in Bohemia, Slovaks in Slovakia, Germans in the Sudetenland, Poles in Teschen, and Ukrainians in sub-Carpathian Ruthenia, with Hungarians spread throughout.\(^{243}\) After World War II, almost all the Germans were expelled, and the Ukrainians were absorbed into the U.S.S.R. when the Soviets annexed Ruthenia.\(^{244}\) This, however, still left a very ethnically diverse nation-state.

Like other states in Eastern Europe during the post-war era, the iron fist of Soviet-style communism, brutally exercised by Soviet General-Secretary Brezhnev during the 1968 Prague uprising, kept the federation of Czechoslovakia together. But when the communist regime fell in 1991, external national self-determination arose in the minds of many throughout the country. Although the democratic president, Vaclav Havel, valiantly tried to keep the nation-state together, he eventually gave up and turned in his resignation when it became clear that a “velvet divorce” was inevitable.\(^{245}\)

Because international law does not prohibit the voluntary disintegration of states, only involuntary dismemberment which usually results from violent secession, the peaceful, negotiated dissolution of Czechoslovakia in January of 1993,\(^{246}\) and the subsequent emergence of the Czech Republic and Slovakia as distinct nation-states, was consistent with both the principle of self-determination and international law.\(^{247}\)

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*Id; see also Mike O’Connor, Kosovo’s Albanians Give Truce Pact Poor Reviews, N.Y. TIMES, Oct. 15, 1998, at A6. A Kosovar guerrilla is quoted as saying, “[T]he deal won’t work because it doesn’t lead to what we are fighting for, independence.” Id.


244. Id. at 428.


The friendly dissolution of the Czechoslovakian federation was seen as a model and, to their honor, the Czech and Slovak separation has been considered a template to be used by others for purposes of peaceful dissolution:

[T]he former Prime Minister of the Czech Republic, Petr Pithart, [was] invited to Brussels and to Quebec to consult with local separatists, and Umberto Bossi of the Italian Northern League invoke[d] the peaceful dissolution of Czechoslovakia as a model of his ‘Padania.’ Are we facing a new trend toward further fragmentation of the international system, this time through a non-violent process?  

B. Fraying Federations

There are several federations around the world that continue to hobble along in their present form but show signs of strain, and are subjected to demands from internal groups both for more autonomy and, in some cases, outright secession and independence. India, Russia, Canada, and Mexico are representative of such instances.

1. India: The Kashmir Dilemma

Despite the many ethnic and religious separatist movements from all over the country that threaten the central government in India, the most vexing problem, and the one that has drawn the most international attention, has been with that region in the north known as Kashmir. The formerly independent state of Kashmir has been the object of a political and military tug-of-war between the nation-states of India and Pakistan since the independence of these two large states from Britain in 1947. The “Princely State of Jammu and Kashmir” was constituted under the Treaty of Amritsar in 1846 and was one of 565 “princely states” that were considered nominally independent when India and Pakistan were both part of the single British colony on the Asian sub-continent known collectively as “India,” but who, upon the British exodus from the region, were given the free choice to accede to either of the two successor dominions: Pakistan or India.

251. Id.
252. Id. at 174.
Kashmir’s Hindu ruler chose India, even though the majority of Kashmiris were Muslim, in exchange for troops to repel tribal raiders. Lord Mountbatten, Governor-General of India, provisionally accepted the accession but noted that the final question would be settled by a plebiscite.\textsuperscript{253} That plebiscite has never been held.\textsuperscript{254} As history has shown, this was a tactical, political mistake, the repercussions of which carry over to the present: “The refusal to recognize self-determination movements can also produce severe international ramifications. The current conflict in Kashmir demonstrates how a previous denial of a people’s right to self-determination can foment the conflicts of the present and ensure the uncertainty of the future.”\textsuperscript{255} Moreover, the international community has never recognized India’s claim to Kashmir.\textsuperscript{256}

Kashmir is now occupied by three sovereign nation-states: India, which controls the lion’s share; Pakistan, which occupies a small western portion; and China, which controls Ladakh.\textsuperscript{257} Various mediations of the situation have been attempted (the United Nations from 1948-58, the U.S.S.R. from 1965-66, and the United States in 1990), but to no avail.\textsuperscript{258} Predictably, the situation in Kashmir has degenerated. There are both secessionist groups and unionist groups taking militant action against each other and the Indian army that has occupied the state to enforce military rule for most of the 1990s.\textsuperscript{259}

Violence has become the daily norm for this region. In 1990 alone, there were 3000 deaths related to the unrest in

\textsuperscript{253} Id. at 174-75.
\textsuperscript{254} Id. “Kashmir . . . has never achieved self-determination for its indigenous residents.” Id. at 174.
\textsuperscript{255} Kolodner, supra note 57, at 158.
\textsuperscript{257} St. John, supra note 250, at 174-75.
\textsuperscript{258} Id. It should be noted that these failed mediations did serve the function of “keeping the lid” on military conflict in Kashmir while they were underway.
\textsuperscript{259} Id. at 176; see also Daily News Internet Edition: Over 100 Detained in Kashmir Security Clampdown (visited Jan. 25, 1997). <http: //www.lanka.net/lahehous/1997/01/25/ for02.html> (reporting the detention of Kashmiri separatist guerillas by Indian paramilitary troops after intelligence reports predicted that the Kashmiris would stage attacks during Indian holiday celebrations).
Kashmir. Complicating matters, and of concern to the world community and the United Nations, is the recent development of nuclear capabilities on the part of both India and Pakistan. Indeed, as the realistic and potential flashpoint amongst the three occupying nuclear powers, Kashmir has been referred to as a “nuclear tinderbox” waiting to be ignited.

One formula recently put forward, and significantly based on principles of self-determination, calls for the creation of a “Kashmiri Autonomous Region” under nominal Indian control that would exist until a referendum can be held, at which point the various parts of Kashmir can freely choose with which sovereign they wish to associate without the entire region going as a single entity. This appears to be a rational suggestion. But until the United States can weigh in to pressure the concerned parties into a joint settlement, it is likely to go unrealized. Thus, self-deterministic issues continue to fester and foment further violence while simultaneously offering an elusive solution to the problem.

2. Russia: Breakaway Chechnya

With the notable exception of Chechnya, Russia has managed to hold itself together in a cohesive federation through a combination of offering a significant degree of autonomy to its constituent parts and the gradual empowerment of its regional governments. There are twenty-one ethnically homogenous republics under the new federal constitution, and these are more worrisome for Russia’s central government in Moscow than the provinces, autonomous provinces, districts, autonomous districts, or territories. Chechnya is one of these twenty-one republics.

After the break-up of the Soviet Union, in a secessionist external self-determination bid during 1991, the republic of Chechnya declared its full

260. Kolodner, supra note 57, at 159.
261. St. John, supra note 250, at 177.
262. Id.
263. Id. at 191.
264. Id.
265. Devolution Can Be Salvation, supra note 41, at 53. The Ukraine has followed this model by granting the large Russian ethnic majority in the Crimea region plenty of autonomy. Id.
independence from post-communist Russia. But this was met with a full-scale military assault from Moscow in an attempt to bring the secessionist republic to heel.\(^{268}\) Incorporated into the Russian empire by force in 1864, the Chechens tried to leave once before in 1918 after the founding of the U.S.S.R. But the Soviets fought to crush the secession, only succeeding after six years of bloodshed.\(^{269}\)

Because the Chechnya issue was deemed an internal matter of the Russian Federation, the international community remained true to form offering no support for the break-away republic in its efforts to secede from the Russian Federation.\(^{270}\) On the contrary, most states either implicitly or explicitly recognized Russia’s resort to the use of brutal suppression tactics to restore its de facto sovereignty over the region.\(^{271}\)

Now, after six years of warfare, the Chechens are as stubborn as ever and still maintain de facto sovereignty over their territory,\(^{272}\) even if international recognition is not forthcoming. One suggestion to end the fighting is that Chechnya follow the model of Tatarstan.\(^{273}\) After much sabre-rattling over the possibility of secession, Boris Yeltsin came to the region with assurances of autonomy: “I reckon the Tatar people are entitled to decide for themselves what kind of autonomy they need.”\(^{274}\) The Tatars are now sovereign over Tatarstan, but within the nation-state of the Russian Federation.\(^{275}\) The Chechens have yet to buy into such a compromise.\(^{276}\) It remains to be seen how this situation will ultimately resolve itself. Suffice to say that self-determination issues such as this can go either way, the violent way of Chechnya or the peaceful, yet compromised way of Tatarstan.

3. **Canada: Quebec and Native Tribes**

Canada, like America and Australia, faces the dilemma of self-determination for its native indigenous populations. But Canada is also faced with the problem of Quebec, a province in which the Francophone majority of inhabi-

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\(^{269}\) *Id.* at 273-74.

\(^{270}\) Wippman, *supra* note 225, at 598.

\(^{271}\) *Id.*

\(^{272}\) Robbins, *supra* note 88, at 29.

\(^{273}\) *Id.* at 31.

\(^{274}\) *How Many Other Chechnyas?*, *supra* note 267, at 43.

\(^{275}\) *Id.* at 43-44.

\(^{276}\) *Id.* at 44-45.
After the split, the remaining western portion of the province will keep its capital in Yellowknife and its name “Northwest Territories.” Like the peaceful divorce between the Czech Republic and Slovakia, the dissolution of the Northwest Territories into these two self-governing regions within the Canadian nation-state has been marked with minimal rancor or disagreement. Thus, Canada, on the whole, provides good examples of how self-deterministic claims can arise and what solutions may or may not work to resolve them.

4. Mexico: The Rebellious Chiapas Region

Colonized by Spain in the sixteenth century, Mexico achieved independence as a nation-state in 1821 and, after a revolution in 1910, was established as a federal democracy under its 1917 constitution. Mexico’s federal system allocates broad powers to the central government, but also empowers the states to enact their own basic codes. Even so, Mexico remains a very centralized “federal” nation-state, with most real power residing in Mexico City and the presidency.

The issues of self-determination that have arisen in Mexico concern indigenous peoples, but, in the case of Chiapas, where seventy percent of the state’s population are Indians and mestizo peasants, the concern coincides with the question of adequate devolution of power to the states within the federal system. The largely Mayan rebellion in Chiapas that occurred in 1992 was sparked when the conservative federal president unwisely repealed agrarian reform-based legislation that provided for land distribution. This “breaking of faith” with the promises made in the Mexican constitution, together with protections that were enunciated for Indian rights but never realized, caused the

294. Id. “The western region, [will have] 41,000 people occupying 589,559 square miles.” Id.
295. Id.
296. Rosem, supra note 178, at 16.
297. Id.
298. Id. at 45-46.
300. Id. at 73.
Mayans to begin a violent uprising in an effort to "recover traditional Indian sovereignty over their culture and their lives."\textsuperscript{301}

Significantly, the decision to revolt was taken pursuant to a democratic vote held in the villages throughout Chiapas.\textsuperscript{302} Consequently, popular legitimacy was secured for the stand against the federal government in pursuit of greater autonomy. Because North American Free Trade Agreement (NAFTA) negotiations were underway, the Mexican central government did not initially meet the armed insurrection with force. Instead, it spoke words of conciliation\textsuperscript{303} which later turned out to be empty ones leading to years of peace negotiation but little reform. Nonetheless, the short-lived, armed struggle has carried over into a broader, grass-roots based political campaign.\textsuperscript{304} With the opposition government of President Zedillo now in power, reform may indeed be on the horizon.

Fundamentally, Mexico must infuse its over-centralized federal system with real devolved power if crises such as these are to be averted in the future. The demand for decentralized, autonomous political authority, articulated by Zapata eighty years ago, led to the Mexican revolution.\textsuperscript{305} Consequently, there is no reason to believe that the same sentiment will not lead to further unrest. Chiapas may well come to represent an opportunity missed by the Mexican government if it does not act to put devolution into meaningful practice.

C. Coterminous Federations

Despite the perils inherent in a nation-state’s continued existence as a federation, some of these polities have managed to maintain a predictable degree of stability. This has been achieved variously through internal power-brokering with constituent parts, economic and political mollification, and a bit of constitutional re-structuring. Switzerland, the United States, South Africa, and Germany offer various models of systems that can work.

1. Switzerland: Strong Cantonal Government

Switzerland established itself as a federal state in 1848, and although it is an ethnically, religiously, and linguistically diverse country,\textsuperscript{306} the internal peace

\textsuperscript{301} Id. at 72-73.
\textsuperscript{302} Id. at 85-86.
\textsuperscript{303} Id. at 87-91.
\textsuperscript{304} Julia Preston, Indian Rebels Draw Tens of Thousands to a Rally in Mexico City, N.Y. Times, Sept. 14, 1997, § 1, at 11.
\textsuperscript{305} Carrigan, \textit{supra} note 299, at 97.
\textsuperscript{306} Thürrer, \textit{supra} note 5, at 62. "Among Swiss nationals, 73.4% speak German, 20.5% speak French, 4.1% speak Italian, and 0.7% speak Romansh." Id. at 62 n.39.
and stability of the nation-state have never been truly threatened from within. Indeed, there is a noticeable absence of minority protection mechanisms in the Swiss legal system. This is basically because they are not needed. Switzerland’s twenty-six states, known as “cantons,” are largely homogenous in and of themselves. It has been noted that “[t]he Swiss are not a homogenous people. Rather than a melting pot, Switzerland is a ethnic salad bowl where each of the four ethnic groups that make up the population—German, French, Italian, and Romansh—have retained their individualities.” This is largely due to the strong historic, “fundamental” cultural identities maintained on both the cantonal and local levels.

Switzerland, officially named the Helvetic Confederation, is a federation with, perhaps, the strongest confederal elements of all federations. While Switzerland was once briefly a centralized state under Napoleon’s rule, it reverted to a confederation in 1815—after the Congress of Vienna—only to become a federation again in 1848. Thus, Switzerland’s evolution began with the local communities being of fundamental importance. Even today, only tasks and obligations that the local community cannot assume revert to the next level, the cantons, which represent the original sovereign republics. Tasks and obligations beyond the scope of the twenty-six cantons are within the competence of the federal government. Such tasks today include the conduct of foreign policy. Thus, it is the historic traditions of the people that provide safeguards against overcentralization.

Moreover, the cantons are empowered to such a degree that none interferes with the sovereignty of another. This long and respected tradition of federalism, together with recognition by the central government of all four homogenous cultures, keeps the nation-state together in a confederation that is in some ways looser than others, but, nevertheless, successful. The demands of internal self-determination have been met.

2. The United States: A Federalist Ideal?

The American experience is unlike that of the Swiss in that the ethnically or linguistically diverse populations within the United States are not tied to specifically territorial sub-states of the federation. None of the states of the Union are in and of themselves an ethnically homogenous minority. If geographical

307. Id. at 62.
autonomy were tied to linguistic diversity on the Swiss model, it would have to 
be on a small scale. For instance, the several parishes of the city of New Orleans 
would exercise autonomy based on whether the primary language was French, 
Cajun, Creole, or English.

Other than the attempted, and unsuccessful, secession of the southern states 
that briefly formed the “Confederacy” in the mid-nineteenth century, there has 
not been a serious threat of secession once a state has joined the Union. The two 
examples of minor rumblings for secession have come from the only two states 
that ever existed as independent nations prior to their incorporation into the 
United States: Hawaii and Texas,310 and those have been at the instigation of 
fringe political groups that do not enjoy any degree of popular backing among 
the general populations of those states.

Recently, however, a realistic and viable question of either internal or 
external self-determination has gained currency in the context of Puerto Rico. 
This island in the Caribbean Sea has been a Territory of the United States since 
the end of the Spanish-American War in 1898. It was ceded to the United States 
by Spain, along with Cuba and the Philippines, both of which are now 
independent nation-states.311 While there have been several referenda about 
whether the island should become a State, remain a Territory, or become 
independent, nothing has been resolved.312 This year, however, federal legislation 
has emerged to put the question to the people of Puerto Rico once and for all.313

On the macro level, the phenomenon of “neo-federalism” begun by the 
Reagan and Bush administrations, wherein more administrative power is returned 

to the states from the federal government, is really a policy of devolution—one 
that shows signs of continuing under the current federal leadership.314 Nonethe-

310. See Jon M. Van Dyke et al., Self-Determination for Nonself-Governing Peoples and 
(asserting a right to self-determination for native Hawaiians); Ralph H. Brock, “The Republic of 
Texas Is No More”: An Answer to the Claim that Texas Was Unconstitutionally Annexed to the 
United States, 28 TEX. TECH L. REV. 679, 742-45 (1997) (refuting the claims by the “Republic of 
Texas” separatist group that Texas was illegally annexed by the United States).

311. Ediberto Roman, Empire Forgotten: The United States’s Colonization of Puerto 

312. Id. at 1160-70.


314. Rosenblum, supra note 178, at 9-10. In fact, this trend has begun to spiral downwards 
even further than state level, empowering local and city governments. See More Neighborly Gov-
ernment, THE ECONOMIST, Jan. 3, 1998, at 25 (“Devolution has a tendency to keep on devolving; 
and, just as Washington is eager to off-load problem-solving to the states, so the states themselves 
are busy dumping responsibilities on to the next [lower] level of government.”). But cf. JOHN D. 
DONAHUE, DISUNITED STATES 159-61 (1997) (arguing that, although devolution of power from
less, some might say that the United States has gone overboard on the idea of federalism, with over 83,000 governments within the nation-state on the federal, state, territorial, and local levels.315

Even so, a more serious question centers on self-determination of the over 300 Native American tribes in the country today.316 Like Canada, the United States occupies a vast land that once belonged to indigenous tribes that lived on this continent before the arrival of the Europeans. The story of these two nations is one of conquest for the United States and Canada and one of defeat for the Native Americans. These indigenous populations, ethnically, religiously, linguistically, and culturally diverse from the general populations of the countries in which they are now located, had no choice but to live within the confines of the nation-states that consumed them.

While tribes regularly raise the self-determination card, the international community has consistently considered treatment of indigenous populations to be a matter of domestic concern.317 Consequently, not strong enough to break away, devolution is their only real option. In response, the United States government set up a system of reservations wherein self-determination is implemented through tribal self-government. The practical result of this policy, however, is “ghetto-ization” of tribal communities within pockets of abject poverty around the country that state governments are not obliged to support. So, while a strong tradition of federalism serves the country well on issues of self-determination generally, it is clear that meaningful federalism, in the devolutionary sense, must be extrapolated, not only politically, but economically as well to truly serve tribal communities.


South Africa is a nation-state of minorities, where the people speak twenty languages.318 While ethnicity has been de-coupled from citizenship rights by the post-Apartheid regime, it is clear that continued recognition of diversity and the meaningful devolution of power within a federal state is essential to South Africa’s successful reconstruction.319 During the negotiations over a new South African constitution, two groups invoked self-deterministic principles based on their distinctive identities: white Afrikaners demanded the right to establish their

Washington is the current trend, it is not the ultimate answer, and this trend is merely indicative of the process of America’s reformation and renewal of its federal government).

315. Rosem, supra note 178, at 8.
316. HALPERIN, supra note 42, at 76.
317. Id.
318. Manby, supra note 75, at 27.
319. Id. at 28.
own state and the Zulus, represented by the Inkatha Freedom Party, demanded a loose federation, without unitary control, thereby ensuring that ethnically diverse regions such as theirs would enjoy virtual independence within the federal state.\textsuperscript{320}

The African National Congress (ANC), led by Nelson Mandela, won control of the South African government in 1994 and drove the constitutional negotiations culminating in the 1996 draft that was eventually ratified.\textsuperscript{321} But the negotiations leading up to its adoption were fraught with bickering based on self-determination claims that the ANC had to soothe.\textsuperscript{322} Moreover, the new constitution stumbled on the way to final approval when the Constitutional Court rejected it on technical grounds, only later to endorse it.\textsuperscript{323} Now, however, it has come into play and the ensuing federation is a functioning one, not abortive as some had cynically predicted.\textsuperscript{324}

The new federal structure establishes nine co-equal provinces with significant degrees of power, but a very strong presidency and bicameral legislature at the national level with a four hundred-member Assembly as the lower chamber and a sixty-member Council of Provinces as the upper chamber.\textsuperscript{325} Moreover, the new constitution specifically breaks out separate

\textsuperscript{320} Id. at 33-34.
\textsuperscript{321} Id. at 45-46. The ANC won a landslide victory, with 62.6% of the national vote. Id. at 45.
\textsuperscript{322} Wilson, supra note 9, at 452. In a show of brinksmanship, the Zulus withdrew from constitutional negotiations in 1995 and announced their intention to draft their own provincial constitution establishing the “Kingdom of KwaZulu/Natal.” Id. at 451. The ANC responded that this was secessionist and proposed reduced provincial powers. Id. at 452. Eventually, the ANC was able to co-opt Zulu nationalism by convincing the Zulu King to oust the radical elements of the Inkatha Freedom Party, and the Zulu nation was brought back into the constitutional negotiations. Id. at 453-55.
\textsuperscript{324} The Centre Rules, THE ECONOMIST, Dec. 7, 1996, at 41.
\textsuperscript{325} Daley, supra note 323, at A11; see also S. AFRICAN CONST. chs. III-VI. (Chapter III dictates that the government will be “cooperative” in nature, then articulates in broad terms the
sections on "Functional Areas of Concurrent National and Provincial Legislative Competence" (wherein if there is a conflict, federal law is supreme) and "Functional Areas of Exclusive Provincial Legislative Competence" (wherein provincial law is operative).326 Clearly, provisions such as these, enshrining devolution in the constitution, go a long way toward allaying fears of encroachment from the center and satisfy, to a significant extent, many of the diverse self-determination demands.

4. Germany: Fluctuating Sovereignty and the Länder System

Prior to its consolidation in 1870, Germany was not much more than a collection of individual, yet ethnically "Germanic," principalities and baronies. Continental powers like France could roll over it with ease on the way to fight Austria or Russia. However, once the German unified state came into being as an expansionist empire under Otto von Bismark, it became a power to be reckoned with. The Kaiser, as head of state, wielded great influence through this unified monarchy until the end of World War I, when Germany became a democratic republic.

While the peace imposed by the Treaty of Versailles was infamous for the degree to which it impinged German sovereignty, it gave birth to the Weimar Republic and true democratic principles. This experiment in democracy, however, failed. Indeed, much has been written to support the theory that it was this "victor's justice," together with severe economic depression, that led to the fall of the democratic republic and the rise of Hitler's totalitarian regime in the 1930s.327

The post-World War II era saw not only the founding of a German federal state,328 but also the division of Germany into two halves and the formal occupation of all of Germany for forty-five years by the Allied powers. It was not until 1990 that a treaty was signed terminating the occupation and granting Germany "full sovereignty over its external and internal affairs."329

attributes of such a structure; Chapter IV outlines the structure, powers, and duties of Parliament, its membership, as well as the legislative process generally; Chapter V outlines the structure, powers, and duties of the executive branch; Chapter VI names and outlines the governmental structure of the Provinces comprising the Republic.)

326. S. AFRICAN CONST. chs. IV-V.
328. Newhouse, supra note 130, at 74.
Consequently, given the widely oscillating degree of sovereignty that Germany has been able to exercise during the past century, it is no wonder that they have been unsure of how best to employ it. Even now, laboring under the supranational sovereignty of the European Union, the German state does not really have the full degree of sovereignty that Britain or France historically enjoyed until they voluntarily joined organizations like the United Nations and the European Union.

As a modern democracy, united Germany operates on a federal system: sixteen Länder function as strong regional sub-units, much like the states of the United States.\(^{330}\) These self-governing Länder enjoy a considerable degree of power through representation in the Bundesrat (upper house) of parliament.\(^ {331}\) In fact, economically robust Länder, such as Bavaria and Hesse, behave more as nation-states than as regions in the area of finance.\(^ {332}\)

\(^{330}\) Devolution Can Be Salvation, supra note 41, at 53. The Länder are based on the traditional regions that were once independent states. LEWIS, supra note 99, at 325.

\(^{331}\) Newhouse, supra note 130, at 75. "[T]he chief source of the Länder’s power . . . lies . . . in their control of the Bundesrat." Id.

\(^{332}\) The Shifting Heart of a Nation, THE ECONOMIST, May 24, 1997, at 51; see also Newhouse, supra note 130, at 75 ("Evidence of the decline of the German state is reflected in the
It was Article 23 of the West German constitution that allowed the Länder of East Germany to freely join the federation. This is the mechanism under which the two Germanies were re-joined in 1990. The unification of the Germanies was considered by the international community to be an act of self-determination, consistent with international law.

Ethnically, Germany has always regarded itself as a rather homogenous nation-state, with only minor regional differences in the population as a whole. Indeed, this was certainly the case during the 1930s and 1940s. The Germany of the European Union has changed in ethnic composition, however, due to its attractively strong economy and the free movement of people within and among the EU Member States. Immigration has risen on a yearly basis, mostly from southern Europe and the Middle East, especially Turkey. This has led in some cases to violent clashes between Germans and the diverse ethnic immigrants, many of whom are now German citizens.

Consequently, while the federal system in Germany works well as an effective tool for diffusion of power from Berlin to the various Länder, and there are no serious internal or external self-determination claims facing the nation-state, other than perhaps those that face all members of the EU regarding simultaneous devolution, the main problem that Germany must overcome is one of tolerance for other cultures living on German soil.

VI. SOME OTHER SELF-DETERMINISTIC MOVEMENTS

Beyond the European and federation experiences, there are a number of self-deterministic manifestations faced by nation-states on every inhabited continent. The following examples, Indonesia and East Timor, Israel and Palestine,
China and Tibet, and the Kurdish problem, are merely representative and do not constitute a comprehensive documentation of all the movements.

A. Indonesia's Occupation of East Timor

After a long, four hundred-year subjugation of East Timor as a dependent colony, Portugal evacuated the island in 1975 during the decolonization process.338 Nearby Indonesia seized this opportunity to expand its own territory and invaded East Timor shortly thereafter, installing a puppet parliament that voted for complete integration with Indonesia in 1976.339 This unilateral military action on the part of Indonesia is not without precedent. When the Dutch left Irian Jaya, the western portion of the island of New Guinea, in 1963, Indonesia moved in to quickly occupy and annex that territory as well.340

Portugal has consistently objected to Indonesia's annexation of East Timor and has raised the self-determination issue on East Timor's behalf.341 Despite a claim in the International Court of Justice that has some bearing on the question of East Timorese self-determination,342 the international community as a whole has been, not surprisingly, conspicuously absent on this issue.343

Nonetheless, when the Nobel Prize committee in Oslo awarded the 1996 Peace Prize to co-laureates Carlos Ximenes Belo, a Roman Catholic Bishop and opponent of Indonesian rule on the island, and Jose Ramos-Horta, an "exiled separatist leader," the world was forced to take note of East Timor's plight.344 Subsequently, talks have ensued under the sponsorship of the Secretary General of the United Nations, Kofi Anan,
between Indonesia and Portugal in an effort to resolve the matter. Beyond international talks, however, the point has been made that a plebiscite must be held to legitimize the process and ascertain the wishes of the affected people:

[I]t is the views of the people of East Timor that are of paramount importance. The only way to determine these views is through a referendum under international supervision. Bishop Belo made these points in a 1989 letter to the United Nations and again soon after he won the Peace Prize.

B. Israel and the Palestinian Question

Since Ottoman times, the diverse groups living in Palestine (Jews, Sunni Muslims, Druze, and Greek Orthodox) were frequently at odds with one another. Early in this century, as increasing numbers of Jews and Christians were added to the mix, tensions rose even higher. During the closing years of World War I, and during the inter-war period, promises to both Arabs and Jews were made that Palestine would eventually become their sovereign homeland.

When independence came for the Palestinian mandate in 1947, the United Nations called for resolution of the competing interests through the creation of separate Jewish and Palestinian homelands within a “partitioned Palestine.” This formula proved unworkable for both sides and war soon followed. Israeli forces occupied most of Palestine on behalf of the Jewish brethren, occupied the Gaza Strip. This war was followed by another in 1967.

347. Canuel, supra note 277, at 97.
348. Id. at 97-98.
349. Id. at 98. Great Britain was largely responsible for this confused and ultimately vexing foreign policy fiasco. See Casse, supra note 11, at 232.
350. Canuel, supra note 277, at 98.
wherein Israel gained even more territory. At this point, the Palestinian people were truly a people without a homeland in search of self-determination.

Subsequently, the Palestine Liberation Organization (PLO) that set itself up in 1964 as a government-in-exile used terrorist, political, and any other tactics that it could in order to secure the Palestinian homeland for its people. These efforts proved fruitless. In 1993, however, after several years of arduous negotiation and compromise sponsored by a myriad of international organizations and interested nation-states, the government of Israel agreed to devolve both the West Bank and Gaza Strip to PLO hands, and the Palestinian National Authority was established for self-rule within Israel. Although it is too early to form an opinion as to whether this arrangement will prove workable, it is nonetheless encouraging that the self-determination demands of the Palestinian people, so long unmet, have finally been somewhat resolved.

C. The Future of Tibet and Other Chinese Difficulties

Despite years of attempts during the 1940s-60s by communist leader Mao Tse-tung to convince the various peoples of China that they were all a “common nation,” ethnic self-consciousness continues to run deep today throughout the state. Nowhere is this more potently displayed than in Tibet. Shortly after the forces of Chaing Kai-chek fled to the island of Formosa and the victorious communists, under Mao, solidified their grip on power over mainland China in 1949, the communist Chinese turned their sites southward, toward the Himalayas, and Tibet.

351. Id. at 99.
354. Connor, supra note 2, at 199. An address delivered by Mao stresses this commonality through the unifying forces of ideology and ethnicity: Beloved Compatriots! The CC [Central Committee] of the CCP [Chinese Communist Party] . . . issues the following manifesto to all fathers, brothers, aunts, and sisters throughout the country:

. . . [W]e know that in order to transform this glorious future into a new China, independent, free, and happy, all our fellow countrymen, every single zealous descendent of Huang-ti [the legendary first emperor of China] must determinedly and relentlessly participate in the concerted struggle.

In 1950, Chinese troops invaded the de facto independent province and forced an agreement on the Tibetans establishing Chinese rule in the region. After the agreement was violated in 1959 with the institution of communist-style reforms and the repression of religious freedoms, the Tibetans revolted and were crushed, with over 1.2 million killed during the Chinese military action and its wake.

Since the late 1980s, sporadic protests in the region for independence have been ruthlessly suppressed, causing Tibet's exiled spiritual leader, the Dalai Lama, to scale down the demands for complete independence to regional autonomy. The communist Chinese, however, have not devolved much autonomy; instead they have systematically denied the Tibetans any internal self-determination by preventing them from exercising control over their economic, social, or cultural lives. The Chinese government has attempted to weaken Tibetan resistance by diluting the population with the movement of ethnic Han Chinese into the province. Population displacement and forced migration are time-honored techniques of repressive regimes to quash self-determination movements.

Despite calls for a United Nations sponsored referendum on the future of Tibet, based on a 1997 report by the International Commission of Jurists which held that "Tibetans had demonstrated from 1913 to 1950 the conditions of

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355. HALPERIN, supra note 42, at 133.
356. Id.; see also W. Gary Vause, Tibet to Tienanmen: Chinese Human Rights and United States Foreign Policy, 42 VAND. L. REV. 1575, 1577-78 (1989) (discussing Tibetan revolt and the Chinese response during this era).
357. HALPERIN, supra note 42, at 134.
359. HALPERIN, supra note 42, at 134.
statehood as generally accepted under international law and are entitled to decide their own future," the Chinese government has consistently ignored such criticism, and continues to regard the Tibet question as a strictly internal matter with which no outside influence is either welcome or allowed. Consequently, while many diverse and noisy international organizations may be active on the Tibet issue, there is no real support from nation-states for re-opening the question.

Beyond the thorny debate over Tibet, the other self-determination items on China’s plate include Hong Kong, Xinjiang Province, and Taiwan. The former colony of Hong Kong was returned to China from Britain in July of 1997, pursuant to international agreement, thus resolving that issue. As for Xinjiang, separatist Muslim rebels in this autonomous province seek that region’s independence from China, but the Beijing government has continued to pursue a “no-negotiation” policy that implements a stringent military crack-down. The presence of 200,000 communist troops, together with the mass sterilization of Uighur women, the infusion of ethnic Han Chinese to “water down the population,” and their appointment to upper level government posts in Xinjiang instead of native Uighurs, has helped to ensure that China continues to hold the iron grip on this region that it has since Mao’s forces overran the short-lived Republic of East Turkestan in 1949. The situation with Taiwan is another matter altogether.

China considers Taiwan to be a “renegade province” that must be returned to the fold on the mainland. And, while the Taiwan government admits that there should be a unified China, it emphasizes that the republicans in Taipei are the rightful heirs to government—not the communists in Beijing. Although the country of Taiwan continues to exist as a de facto sovereign state on the island of Formosa, there are independence-minded elements, autonomist

362. Id. Responding to criticism on Tibet, the Chinese government has said, “Tibet has since ancient times been an inalienable part of Chinese territory . . . . Tibet belongs to China’s internal affairs and no organization has the right to interfere.” Id.
363. Id.
365. HALPERIN, supra note 42, at 134.
369. Id.
elements, and unionist elements within Taiwan. Resolution of the Taiwan issue cannot be achieved by China's usual military means because China has no viable navy to deliver such an occupying force. Consequently, without some meaningful international negotiation, the stalemate concerning Taiwan seems likely to continue.

D. Turkey, Iraq, and Iran: Pressure for a Kurdistan Republic

As an ethnically homogenous people, the Kurds are considered a "trans-state," spread over Iraq, Iran, and Turkey. The Kurds, like the Palestinians, are a people without a state. Few groups, however, can make a stronger case for invoking the principle of self-determination than the Kurdish people. Indeed, one Kurdish leader has noted, "We are a people who faced genocide and managed to survive." Although nomadic in nature and tribal in practice, the Kurds have occupied the same traditional territory, known as Kurdistan, for over four thousand years. The Kurdish population, estimated at between twenty and twenty-five million, is spread along the nexus where the borders of Turkey, Iraq, and Iran meet, and qualifies them as one of the largest nations in the world without a state.

Kurdistan is an idea more than a reality. Although it came close to existence in 1920 after the Ottoman Empire was carved to pieces, the treaty that

370. See id.
371. See id.
372. HALPERIN, supra note 42, at 145-47.
375. Id. at 375.
376. Id. at 397.
377. Goldman, supra note 373, at 66 (citing DAVID MCDOWALL, THE KURDS: A NATION DENIED 9 (Minority Rights Group ed., 1992)). Approximately 10 to 11 million Kurds live in eastern Turkey, 5 to 6 million in northwestern Iran, 4 to 4.5 million in northern Iraq, 1 million in northeastern Syria, and 70,000 to 80,000 in Armenia and Azerbaijan. Id. (citing Robert Olson, The Kurdish Question in the Aftermath of the Gulf War: Geopolitical and Geostrategic Changes in the Middle East, 13 THIRD WORLD Q. 475 (1992)); MCDOWALL, supra, at 12.
would have created Kurdistan was superseded and did not come into effect. Subsequently, “[i]n 1946, the Iranian Kurds established an independent republic in Mahabad, but it lasted less than one year.” Kurds, a distinct culture with their own language and customs, are patent not Persians, Arabs, or Turks (the other primary inhabitants of this portion of the Middle East). Yet, those other populations have their own nation-states. The Kurds do not.

What is surprising is the startling lack of coordination amongst the three Kurdish populations in their individual pursuits of self-determination. The Iranian Kurds have been fighting for an independent Kurdistan since 1945 and the Turkish Kurds have been doing the same thing since 1984, but the Iraqi Kurds have been content to accept very limited autonomy rather than independence. All three nation-states faced with Kurdish self-determination claims have been able to use this divergence amongst the Kurdish factions to co-opt those claims and deny self-determination to the Kurds overall.

To draw an analogy, Benjamin Franklin’s remark to John Hancock at the signing of the Declaration of Independence in 1776 expressing his anxiety over secession of the American colonies from Britain—“We must indeed all hang together, or, most assuredly, we shall all hang separately”—applies to the unfortunate situation of the Kurds trapped between and within three powerful nation-states. While unity seems to bring both legitimacy and force to a self-determination claim, that unity is lacking in the Kurdish dilemma.

VII. THE VIABILITY OF “DOWN-SIZED STATES” AND THE FUTURE OF THE NATION-STATE

While the trends outlined and analyzed in this Article, together with the proliferation of separatist movements around the globe, generally point to the continuing subdivision of our world, the question remains: can “down-sized,” more ethnically homogenous states viably function in the coming decades? Probably not, if the down-sizing is carried to an absurd extreme. That extreme would be to rigidly pursue the “impossible equation of one nation to one state”:

[I]t is important to reject the notions that every ethnically or culturally distinct people, nation, or group has an automatic right to its own state or that ethnically homogenous states are inherently desirable . . . . [A] global system of states based primarily on ethnicity or historical claims is clearly

378. CASSESE, supra note 11, at 25 (noting that the Treaty of Sèvres was superseded in 1923 by the Treaty of Lausanne).
379. EWALD, supra note 374, at 398.
380. HALPERIN, supra note 42, at 145-47.
381. OXFORD DICTIONARY OF QUOTATIONS 218 (3d ed. 1980).
unachievable. Except in the smallest or most isolated environments, there will always be “trapped” minorities, no matter how carefully boundaries are drawn. Ethnically based ["down-sized"] states almost inevitably lead to claims of ethnic superiority on the part of the new majority and to a cultural rigidity that creates problems for new minorities. At their worst, newly created ethnic states may tolerate or encourage the killings and ethnic cleansing that scarred the dissolution of the former Yugoslavia.382

Political viability must go hand in hand with economic viability. A state without a basis for a sustainable economy cannot long exist. Viability in terms of meaningful participation in the new global marketplace by economic niche identification and exploitation, may lead to political viability, but the reverse is not necessarily true. Indeed, mini-states such as Singapore, Monaco, and San Marino can fare well economically if there is an exploitable niche that they can fill.383 Consequently, the basis of statehood must be more than just shared ethnicity, for this criteria alone is not sufficient to produce a politically and economically viable state.384

A recent case study of the un-recognized but self-styled independent Republic of Nagorno-Karabakh has been made on this point.385 There, without any viable economy, the only thing holding the Armenian people together for the past couple of years in this 1700 square mile enclave, wholly surrounded by the nation-state of Azerbaijan in the central Caucasus, is their shared ethnicity. And this war-torn would-be state is failing fast.386 Although the Karabakhi liken themselves to the successful ethnically homogenous state of Israel, the analogy is inaccurate because the Jewish people built the State of Israel with clear emphasis on economic and democratic ideas, not just ethnicity.387

However, beyond the question of viability for smaller, ethnically homogenous states, the question of larger, nation-state viability arises in the context of its continued survival as a political organizing structure. Indeed, cartography companies have been made to revise and issue new maps388 to include new states

382. Hannum, supra note 4, at 16.
383. See Duursma, supra note 84, at 429-33; Doran, supra note 288, at 107-09.
385. Id.
386. Id. at 130-32.
387. Id. at 131.
388. Eric Nash, Sampling the Cartographer’s Art; At National Geographic, Tuned to News, N.Y. TIMES, Nov. 15, 1992, at E16. For example:
    John F. Shup, chief cartographer [at National Geographic], says 1992 has been the busiest year for making new maps that he can recall in his 26-year career.
    “With the breakup of the Soviet Union and Yugoslavia, and the new countries
several times in this decade. Short of nation-state break-up into independent units, causes for the undeniable erosion of state sovereignty are many, and accusing fingers can be pointed in several directions at once. From increasing economic interdependence, to the rise of regional trading regimes with supranational decision-making capabilities, to the expanding "globalization of the marketplace," to the need to address ominous global environmental problems from a global perspective, the pressures driving "upward devolution" of state power to supra-national bodies are gaining impetus. Simultaneously, pressures driving "downward devolution" of state power to sub-state entities, such as provinces, regions, states, or minority groups, cause these units to continue to assert their self-deterministic agendas and make further demands on state sovereignty. These two trends are taking their toll on the power of the nation-state:

While states remain the primary actors in world affairs, they also are suffering losses in sovereignty, functions, and power. International institutions now assert the right to judge and to constrain what states do in their own territory. In some cases, most notably in Europe, international institutions have assumed important functions previously performed by states, and powerful international bureaucracies have been created which operate directly on individual citizens. Globally there has been a trend for state governments to lose power also through devolution to sub-state, regional, provincial, and local political entities. In many states, ... regional movements exist promoting substantial autonomy or secession .... All these developments have led many to see the end of the hard, "billiard ball" [nation-state, ... and the emergence of a varied, complex, multi-layered international order more closely resembling that of medieval times.

Ironically, devolution, and other internal self-deterministic moves like increased federalism, could be the salvation of the nation-state. Acquiescing to

in Africa, we had 20 new pieces of geography to add to the map in about a year." Mr. Shupe expects the remainder of the decade to be equally fluid. The division's staff of 70 will be following the news, and networking with embassies and the [United Nations] to keep up with talk of the breakup of Czechoslovakia early next year, the formation of Nunavut, an Inuit province in Canada, in the mid-90's, and possibly a reunified Korea.

Id. (emphasis added).


392. Huntington, supra note 12, at 35.
internal self-determination provides the recognition, sovereignty, and identity that homogenous groups crave without breaking apart the country so those groups can achieve independence in what might prove to be unviable nation-states of their own. “All over the developed world, devolution is a fact of life. In the dictum of Daniel Bell, an American sociologist, ‘the nation-state has now become too small for the big problems of life and too big for the small problems.’”393 So, utilizing internal self-determination to avoid external self-determination is a path to continued viability for the multi-ethnic nation-state today.

Consequently, it is premature to announce the demise of the nation-state as the pre-eminent creature in the international arena. Indeed, while seeking to redefine and defend the continued relevancy of the nation-state, publicists noting that “there are indications that could suggest that the nation-state, the universally realized form of political organization of societies (people), may become obsolete”394 conclude that it is still the nation-state that is both the primary actor on the international plane and the organizing principle around which civilizations are built.395

VIII. CONCLUSION

In the final analysis, the basic axiom is this: the principle of self-determination undermines the sovereignty of the nation-state in which the principle is invoked. Moreover, when some groups are seen to have asserted the principle and successfully achieved internal or external self-determination, other groups, perhaps with less of a claim to it, will assert the principle themselves. Consequently, the old common-law policy argument against “opening the floodgates” is applicable here. However, it may be too late. The world has witnessed such a cascade effect in this decade. Moreover, the principle has re-emerged in a multifaceted form, making it plausibly applicable to many diverse situations. But widening the definitional umbrella of self-determination like this presents its own dangers: namely, the diminution in value of a workable paradigm and an accompanying decrease in its legitimacy.

394. Delbruck, supra note 7, at 45.
395. See generally HUNTINGTON, supra note 12.
Some overly-eloquent political commentators, such as William Safire, have even endorsed the evolution of a new form of self-determination for ethnically repressed peoples:

After World War I, . . . Wilson had an idealistic notion called “the self-determination of nations”: national boundaries should be drawn around peoples who have a common language and cultural heritage. A generation later, . . . Churchill and Roosevelt made “self-determination” a part of the Atlantic Charter.

Sounds great, but it runs counter to every nation’s natural impulse to hold itself together. . . .

Serbia today wants to hold on to a historic part of its territory called Kosovo. . . . [The Kosovars] want to break away from Serbia’s oppressive rule . . . .

Not surprisingly, Serbia says no. . . .

. . .

Here is where the age-old power of a nation to put down a rebellion comes up against this generation’s power of unacceptable suffering.

The Clinton Administration, facing the prospect of television coverage of tens of thousands of freezing [Kosovar] refugees, will ultimately [act militarily]. . . .

That’s what happened after our “victory” over Saddam Hussein. Only when we saw the televised human tragedy of the Kurdish people, . . . did we create a sanctuary for them in northern Iraq . . ., limiting Iraq’s sovereignty in that “no-flight zone.”

Thus, . . . a new policy is being backed into by the Western world: if enough civilian lives are in danger of starvation or massacre, and if intervention by airpower can make a difference—and if the U.S. takes the lead—then an alliance of nations will reluctantly act to impose a temporary, de facto self-determination.

. . .

Needed now is a new policy of evolutionary self-determination that time can advance or modify. Some leader must formulate and sell a new form of shared sovereignty, a tertium quid to accommodate insurrections and defuse ethnic conflict not just in Kosovo, but in other lands where there can be no clear winner—from Iraq to East Timor and the West Bank.

History awaits that newly practical and more sophisticated Wilson . . .

Nonetheless, self-determination, whatever its form, continues to threaten nation-state sovereignty, though perhaps not to the extent that the nation-state will cease to exist on the international stage as the primary mover and shaker.

There is too much self-interest yet for that to occur; and like all things when their survival is threatened, the nation-state will react to insure its continued relevance. By not denying the right to self-determination, but instead emphasizing internal self-determination, through aspects of federalism and devolution, over external secessionist self-determination, nation-states would be wise to take such action. Perhaps it will work. Nevertheless, the challenge shows no sign of dissipating on its own accord.

In the aftermath of the Cold War, is the system of world politics evolving toward larger and more stable polities? Or is the system devolving toward smaller, more fragmented states, cast adrift by the loss of ideology at the top of the system and rising nationalism at the bottom? At the turn of the 21st century, the real tension is caused by the struggle, on the one hand, by the huge multicultural state to survive, and on the other, by the thousands of populist, ethnic, and linguistic regional culture center to carve out their own identities. Not limited to the poor Third World states, this new challenge to institutional authority is common to all multicultural states, regardless of political makeup or wealth.\footnote{Doran, \textit{supra} note 288, at 108.}