

2000

Indeterminate Claims: New Challenges to Self-Determination Doctrine in Yugoslavia

Timothy W. Waters

Indiana University Maurer School of Law, tiwaters@indiana.edu

Follow this and additional works at: <http://www.repository.law.indiana.edu/facpub>

 Part of the [Comparative and Foreign Law Commons](#), [Human Rights Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Waters, Timothy W., "Indeterminate Claims: New Challenges to Self-Determination Doctrine in Yugoslavia" (2000). *Articles by Maurer Faculty*. Paper 354.

<http://www.repository.law.indiana.edu/facpub/354>

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Repository @ Maurer Law. It has been accepted for inclusion in Articles by Maurer Faculty by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.

Indeterminate Claims: New Challenges to Self- Determination Doctrine in Yugoslavia

Timothy William Waters

Self-Determination's Next Battleground?

Vojvodina, Serbia's ethnically diverse northern province, has received far less attention than other parts of the former Yugoslavia. Yet, although the province has been relatively calm throughout the 1990s, it mirrors the structural problems confronting Serbia and the region in important ways. The West's efforts to achieve a settlement in Kosovo will have a profound impact in areas as seemingly stable as Vojvodina, where calls for autonomy are mounting.

To achieve what they view as a positive outcome in Kosovo, Western policymakers have adopted rhetorical and legal positions that will define and limit their policy options in the future. In Vojvodina, calls for autonomy by local Serbs and ethnic Hungarians will force the international community to defend and refine the postures it has adopted in Kosovo.

What are the terms by which the international community could evaluate autonomy for Vojvodina—or for any other distinct territory or population within a state? Would it be an issue of self-determination? In the classical theory of self-determination as it developed during the period of decolonization, the multi-ethnic

Timothy William Waters is a research officer at the International Criminal Tribunal for the Former Yugoslavia in The Hague. He would like to thank Professor Henry Steiner of Harvard Law School and Rachel Guglielmo of the Office of the OSCE High Commissioner on National Minorities for their valuable comments on drafts of this article. The views expressed herein are those of the author alone and do not necessarily reflect the views of the International Tribunal or the United Nations in general.

nature of a territory, its history, and its level of internal democratic participation¹ did not affect a claim. It is unlikely that Vojvodina could meet the classical standard,² but neither does Kosovo.

These elements have, however, always been implicit in self-determination thinking, challenging the comfortable convention that the right could be reduced to a rule of “salt water and brown skin.” In the fluid post-Cold War environment, the classical conception sounds increasingly hollow.³ Claims for autonomy can be asserted on many interrelated grounds, each of which is fundamentally indeterminate, yielding multiple, contradictory conclusions that can only be resolved through an act of preferential policymaking. When the period of fluidity ends, however, those preferential choices will have defined the standards for a new era in self-determination.

To the degree that the West’s preferred solutions in Kosovo are grounded in international legal principles, consistent application of those principles may compel recognition of similar outcomes in Vojvodina—yet this is a result few parties desire. Apart from some local Serbs, ethnic Hungarians and other minorities in Vojvodina, and the government of Hungary, almost no significant party supports an extensive grant of autonomy or other political reconfiguration in Vojvodina, and several states have clearly expressed their opposition.⁴ Western leaders will have to distinguish these claims; in so doing, they will shape the course of self-determination. Vojvodina may well prove a conceptual battleground, if not a real one.

Actual conflict is not out of the question. Though a complete breakdown remains unlikely, observers speculate about the possibility of civil war. The Federal Republic of Yugoslavia is only 70 percent Serb, and minorities predominate in the north, south, and on both sides of the border between its constituent republics of Serbia and Montenegro. Kosovo has been effectively (though not legally) separated from Serbia, but ethnic clashes continue in the north, and renewed Kosovo Liberation Army (KLA) activity has been reported in ethnically Albanian areas of Serbia outside Kosovo.⁵ Politically, there are divisions as well: Montenegro’s leadership is locked in struggle with the Milosevic regime, and is moving towards independence. Within Serbia, a system consistently biased against minorities encourages their entrenchment in the political opposition. Framing this divisive environment in Vojvodina in particular is the recollection of a period of strong autonomy and a feeling of cultural

separateness from Serbia south of the Danube and Sava rivers. Many outcomes are possible, but claims for autonomy or independence for various parts of Yugoslavia will continue to be made.

This article asks how the West could respond to claims for self-determination in Vojvodina consistently with its policies in Kosovo. As the case of Vojvodina shows, the defining characteristic of self-determination today is its indeterminacy, which allows policymakers to pursue a broader range of policies than was possible in the era of decolonization. Their policies are only limited by the ability of states to define their actions consistently with their past practice or to claim new rhetorical ground in the name of self-determination.

Background Fragments: Peoples, Lands, and States

Settled by colonists from across the Habsburg lands as well as by Serbs moving north as the Ottoman Empire withdrew south of the Danube and Sava rivers, Vojvodina became one of the most multi-ethnic regions of Europe. During the nineteenth century, the area was a center for the Serbian national renaissance. Following the First World War, partly as a consequence of Woodrow Wilson's advocacy of self-determination, Vojvodina and Serbia were joined within the new Kingdom of the Serbs, Croats, and Slovenes, later renamed Yugoslavia.⁶

Dramatic population shifts occurred during and after the Second World War: the large German population fled or was expelled *en masse*, and southern Serbs and Montenegrins were settled in the region. By 1991 Vojvodina was still mixed but predominantly Serb.⁷ With the influx of Serb refugees and the outflow of Croats and Hungarians in the 1990s, Vojvodina may now be as much as 70 percent Serb.

Following the Second World War, both Vojvodina and Kosovo were made autonomous provinces within Serbia. Vojvodina became a showcase of multiethnic governance; the province had five official languages.⁸ At first, autonomy did not translate into meaningful political control in either province, but from the 1970s onwards, Vojvodina and Kosovo were increasingly governed by local and ethnic cadres and attained an independent role in the federal structure.⁹

In 1981, after the death of Yugoslavia's postwar leader Josip Broz Tito, some Albanians began calling for republican status for Kosovo, while some Serbs called for Belgrade to reassert control over

the two provinces.¹⁰ Vojvodina, and even more so Kosovo, became major issues in the ascent of Slobodan Milosevic in the 1980s.¹¹ In October 1988, as part of the “Anti-bureaucratic Revolution,” protests controlled by Milosevic ousted Vojvodina’s (mostly Serb) leadership.¹² Kosovo’s government fell shortly thereafter, and both provinces were subordinated to Belgrade.

The Milosevic government’s centralization of power affected the cultural rights of minorities, as well as their access to education and work; the arrival of Serb refugees from Yugoslavia’s other wars further increased the pressure on minorities in Vojvodina.¹³ Throughout the 1990s, Kosovo was subjected to repressive rule, erupting in a wave of ethnic cleansing this past year. In Vojvodina, where Belgrade’s rule was less harsh but still resented, there is increasingly broad agreement that autonomy should be restored, but what does that agreement mean?

Claims to Autonomy: Unified Goal or Means to Different Ends?

Serbia is experiencing pressures for decentralization from diverse communities and polities. In Vojvodina, this pressure is expressed in a unique way. There, autonomy is favored by members of all classes and ethnic backgrounds. Beyond this common sentiment, however, there is considerable divergence about what autonomy should mean.

Hungarian Claims

Both major ethnic Hungarian parties and four minor ones have made proposals for restoring provincial autonomy and developing novel *personal* and *territorial* autonomy for Hungarians,¹⁴ the most radical proposals in Vojvodina today.

Personal autonomy, though ill defined, would be regulated through an authority elected by the whole Hungarian community in Vojvodina, and would aim to protect the 40 percent of Hungarians living outside the core Hungarian areas. In areas with *sizable* Hungarian minorities outside the core, the second form, *local* autonomy, would guarantee bilingual municipal government and services.¹⁵ The relationship between these municipal governments and the “personal autonomy authority” is poorly developed.

The key demand, however, is for *territorial* autonomy: a Hungarian autonomous area in northern Vojvodina, where Hungarian would be the default language for government and



Vojvodina may prove to be a conceptual battleground, if not a real one.

education. Budgetary control for many functions, including public security, would be vested in an autonomous authority. The area would, in effect, be a Hungarian province within Vojvodina. Serbs' rights would be guaranteed in the same way that Hungarians' rights would be guaranteed elsewhere, that is they would be a minority eligible to form a personal autonomy authority. One observer provides these examples of the kinds of autonomy: posting local council decisions in a minority language (local autonomy), managing cultural funds in areas with a large minority population (territorial autonomy), and participating in elections for minority representatives regardless of residence (personal autonomy).¹⁶ The proposals actually embrace *four* levels of autonomy, because the three forms would be realized within the context of renewed *provincial* autonomy.

These proposals, first made in 1992, were flatly rejected by the Serbian parliament. During the NATO bombing campaign, the Hungarian community in Vojvodina kept a low profile.¹⁷ After its conclusion, however, with the West backing autonomy in Kosovo, Vojvodina's Hungarians renewed their calls. Hungary has come out in support of their claims, and pressed the status of Vojvodina's Hungarians in the conference overseeing the Balkans Stability Pact.

Sympathy extends beyond Hungary: the former NATO commander General Wesley Clark caused a furor when he opined that the Trianon treaty (setting the borders of Austria-Hungary's successor states) was outdated and could not be a shield for oppressing minorities.¹⁸ The United States quickly issued reinterpretations,¹⁹ and no one supposes that the general's isolated comments represent a shift in NATO policy. Amid the spin control, however, hardly anyone criticized Hungary's baseline support for ethnic Hungarian autonomy in a neighbor state.²⁰ Much has changed since the early 1990s when Hungary's then prime minister Jozsef Antall paralyzed regional relations by declaring that he was the "spiritual prime minister" of all Hungarians.²¹

Serb Claims

Two overlapping groupings of Serbs also favor autonomy: "old" Serbs and members of the political opposition. There are serious social cleavages between "old" Serbs, whose ancestors arrived in early

waves of colonization, and “new” Serbs, settled in Vojvodina following the Second World War; many “old” Serbs believe they have been disenfranchised by Belgrade.²² They thus support autonomy as a way of shoring up their position vis-à-vis the “new” Serbs.

In addition, Serb opponents of the Milosevic regime favor autonomy for pragmatic or ideological reasons. This grouping includes former provincial functionaries (who see autonomy as weakening Belgrade) and unreformed Yugoslavists (for whom decentralization was a foundation stone of the late communist order). The programs of oppositionists and “old” Serbs overlap considerably: both focus on economic issues, seeking to restore autonomous control over provincial budgets so that Vojvodina’s wealth is not siphoned off to subsidize the poorer Serbian south.

Other Claims

Other minorities favor autonomy as well. The Democratic Alliance of Croats of Vojvodina supports restored autonomy in cultural affairs, the Slovaks have voiced dissatisfaction, and all minorities benefited in the old system.²³ Some non-ethnic parties, such as the Reformists of Vojvodina–Social Democratic Party, and the League of Social Democrats of Vojvodina, also favor regionalization or autonomy.

Disagreement on Ultimate Goals

In May 1996, seventeen parties signed a “Manifesto for Vojvodina Autonomy.” All of them support autonomy, but their political goals, bases of support, and ideological visions differ radically. Pro-autonomy Serbs argue for pan-Vojvodina autonomy, and accuse Hungarians of ethnic particularism.²⁴ Hungarian leaders fear they will be pawns in a struggle between local and Belgrade Serbs if they accept provincial autonomy;²⁵ indeed, one Hungarian noted, “I don’t agree...that ‘we’re all Vojvodinans.’ Serbs only bring that up when they have a problem.”²⁶ Yet even among themselves, Hungarians have not agreed on a unified platform.²⁷

The coalition has been under strain. Expelled Serbian parliamentary members, for instance, charge that it has been co-opted by Milosevic, and recently some of its members have called for extraordinary provincial elections while others oppose them.²⁸ Beyond that, however, its members’ diverging visions of autonomy have also limited its effectiveness. While groups with differing agendas can cooperate to represent a diverse polity, when the issue is not about policy choices but about the very order within which those

choices are made, the level of scrutiny should be high indeed.

In Kosovo, the international community seems increasingly hapless in its search for Albanians who support autonomy instead of independence. It will lose the struggle in the long run, and then it will begin to look for legal and rhetorical cover for its about-face. Its choice of rhetoric will limit its options in the next crisis. In Vojvodina, local groups have generated support for a generally worded claim to autonomy. How would the international community assess that claim, if it had to? Ought it, can it, accord any level of recognition to such a claim? At what stage *must* it?

The Indeterminate Right: Bases for Evaluating Claims to Self-Determination

The evaluation of claims to self-determination in Vojvodina, as in any territory integrated into a sovereign state, must first account for the doctrinal and political parameters of self-determination as they have developed from the modern doctrine's origins, through the phase of decolonization.

It is generally accepted that the modern doctrine finds its origins in Woodrow Wilson's advocacy of self-determination for ethnic groups on the territory of the defeated Central Powers after the First World War.²⁹ Wilson's proposals explicitly favored realignment of territorial control around existing ethnic groups, rather than subordination of those groups to different sovereigns. The core of Wilson's proposals formed the "interlocking elements of the post-war settlement: (1) a scheme whereby identifiable people were to be accorded Statehood; (2) the fate of disputed border areas was to be decided by plebiscite; and (3) those ethnic groups too small or too dispersed to be eligible for either...were to benefit from the protection of special minorities regimes..."³⁰ In accord with these principles, new states were established in Central and Eastern Europe, but Wilson's schema was only imperfectly applied even on the territories of the defeated Central Powers—where large ethnic populations were separated from their kin states and the minority rights regimes which were supposed to protect these groups were not enforced—and it was almost universally ignored in the empires of the victorious Allies.

The rhetorical attraction of the principle was more difficult to ignore. After the Second World War, the principle of self-determination was enshrined as a core right of the international

order; it was soon invoked as a justification for the systematic liberation of colonial territories.³¹ But its application in the colonial context was quite different from its Wilsonian form: in attaining independence,³² colonial peoples exercised their right to self-determination within existing colonial boundaries, without reference to the ethnic, linguistic, or cultural characteristics of the population.³³ Nonetheless, this colonial model became the standard—indeed, self-determination came to be identified as a right pertaining *only* to colonial peoples.³⁴

Even during the height of decolonialization, there were glimmerings of a broader application, including references in the International Covenant on Civil and Political Rights to self-determination as a right of all peoples, and its potential, suggested by the 1970 “Declaration on Friendly Relations,” to promote or even require democratic forms of governance.³⁵ Since the end of the Cold War, mainstream discussion of self-determination has focused on its internal aspects, advocating a deconstruction of the right so that it might be afforded to non-colonial groups, while simultaneously avoiding the disaggregative and potentially destabilizing effects on existing states that a full claim to self-determination could entail.³⁶ A systematic extension of the classical right, as enjoyed by colonial peoples, to all peoples howsoever defined, is seldom advocated.³⁷ As a matter of doctrine, extension of the right to “minorities” is expressly limited by Article 27 of the Covenant on Civil and Political Rights, which accords cultural, religious, and linguistic rights to individual members of minorities, but no right of autonomy to the minority itself.³⁸ In fundamental ways, the orthodoxy of self-determination has long outlived the completion of decolonization itself.

Yet claims are being asserted, in the name of self-determination, by groups far outside the classical conception. The fluidity introduced by the end of the Cold War has simultaneously encouraged the assertion of claims on novel grounds and made canonical dismissal of them sound hollow. How are claims such as those raised in Kosovo and Vojvodina to be measured? The bases the international community chooses will determine the scope of self-determination in the Balkans and beyond, once the doors of doctrine are sealed again, and a new orthodoxy proclaimed.

Democratic Bases: Determining the People, Determining the People's Will

The rhetoric of national liberators often speaks of the “will of the people” in monolithic terms. Reality is far more complicated; often, the “will of the people” is expressed within a narrow, elite range, at the expense of other wills and interests. Yet, for the political actor who wishes to ground his policies in a legal doctrine or rhetoric, an understanding of that will and its components is valuable. Indeed, it is essential to any evaluation of internal or external self-determination.

The concept of a “people” is ill-defined. One important indicator is the 1998 “Quebec Reference,” in which Canada’s Supreme Court addressed possible secession by Quebec.³⁹ The Court accepted, almost in passing, that a “people” can be something other than the population of a state, even suggesting that it need not correspond to any existing political demarcation.⁴⁰ This is far indeed from the concept of a “people” come down to us from decolonization—and compels the conclusion that the new determining standard must account for ethnic characteristics.⁴¹ As the Court suggests, a purely deracinated policy of democratization fails to address the critical question of how one determines the relevant polity within which democracy is exercised. The genius of Wilsonian self-determination is its recognition that a democratic and free society requires not a population, but a polity. There is no ideal polity in which all members’ interests join and which excludes no one who shares in those interests.⁴² Yet it stands to reason—if only because interests are to a large extent defined by identity—that populations that share some objective or subjective characteristics will come closer to that ideal, will find more of their interests in common, than would populations sharing only territorial proximity.⁴³

Only a polity can rightly constitute a people. Classic self-determination, however, accorded that legal status to mere populations, and satisfied itself with delineating those populations, without reference to their composition or interests, to make the stuff of states. Wilsonian self-determination and its modern progeny seen in the heterodox claims of disparate ethnic groups demand instead that the delineation of the state await a determination of (and by) a people.⁴⁴

In Vojvodina, determining “the people” is complicated by the

province's ethnic stratification, which precludes a facile majoritarianism.⁴⁵ Serbs predominate in the south and east, and are present throughout Vojvodina. Hungarians predominate in the north. Smaller minorities form majorities in discrete communities. Yet, one could probably identify a pro-autonomy polity including all minorities *and* a majority of Serbs. Is this sufficient to rest a claim? Perhaps, but it only masks the deeper problem: not who the people are, but what they want.

An analogous problem obtained in the 1992 Bosnian referendum. Although few observers supposed that support for independence meant the same thing to both the Croats and Muslims who participated, the referendum provided the basis for the international community's recognition of Bosnia's independence.⁴⁶ Within little more than a year of the vote in which those two peoples supposedly expressed their will in a way cognizable to the international community, they were at war.

In Vojvodina, too, widespread sentiment for autonomy masks fundamental underlying disagreements. Many Hungarians want ethnic autonomy; many Serbs want provincial economic autonomy. Some Hungarians view autonomy as a step toward reunion with Hungary; no Serbs support that goal. How then does the outside observer assess support for autonomy?

It is possible to say that whatever disparate groups agree upon represents their will, but this has little explanatory, let alone prescriptive, power. Worse, it ignores the reality that some policies are embedded in a politics of process—they exist as movement toward some further goal. It is sometimes prudent to set aside difficult questions, but core questions may still be unaddressed when final status deadlines have come and gone. To ignore ultimate disagreements about the ends groups desire—indeed, to grant the international community's imprimatur while ignoring those disagreements—seems foolish.

The genius of Wilsonian self-determination was recognizing that a democratic society requires not a population, but a polity.

Territorial Bases: The People's Land or the Land's People?

The problem of identifying the people in Vojvodina is in significant part a function of the decision to view the area as a necessary unit of territory, about which one must answer the question: does the population of this territory constitute a people for purposes of self-determination? In its classical version, self-determination was defined in terms of existing territorial entities, which had sovereignty in the name of the people populating them. Only in its earliest, Wilsonian incarnation did self-determination dispense with pre-existing borders in the name of a different organizing principle: ethnicity. During decolonization, ethno-democratic *self*-determination was subordinated to territorial *pre*-determination through the principle of *uti possidetis*.⁴⁷ By identifying colonies as the only entities whose populations constituted peoples in a legally cognizable sense, classical self-determination canonized the territorial imperative to the exclusion of all other factors.

In Vojvodina, territorial bounds have changed radically, thus making any statement about that territory's people problematic. Short-lived nineteenth century incarnations stretched well into today's Hungary and Romania.⁴⁸ Today's Vojvodina did not exist as a political unit until after the Second World War. Vojvodina's demarcation does not correspond to any pre-existing boundaries. The northern and eastern borders are entirely novel; parts of the southern and western borders were international or internal borders before the First World War, but they too were radically revised.⁴⁹ Only a fraction of the boundary corresponds to any prior demarcation. Many former colonies have older borders.

What can one conclude from the theory and evidence concerning territory? Although theoretically a democratic right of peoples, classical self-determination rested upon the essential predominance of territory over people in formulating that right. Yet, arguments about the sanctity of *changing* borders are difficult: What is the value of a referendum on territory that has been reshaped, given that borders affect electoral results? Can a state shape its territory to preclude its people's *international* right to self-determination? If so, when did Vojvodina acquire a legally determined—and determining—shape? What is Vojvodina, that it might define a people?

On this question, it seems, the Canadian Supreme Court has gotten it right when it acknowledged that “people” and “population”

are not the same. A “people” possessing the right to self-determination must be analytically different from a group of individuals defined only by their inclusion in a pre-existing territory. Howsoever defined, the legal determination of a “people” must rest on criteria external to the laws and processes of any particular political system.

Constitutional Bases: Domestic Grounds for an International Right?

Although self-determination is an international right, analogous claims can be based on a state’s constitutional order. In the early 1990s, the European Union’s Badinter Commission⁵⁰ relied on Yugoslavia’s constitution to accord state-forming rights to the republics, but not to provinces or the national peoples that made up the population.⁵¹ Yet that was not the only possible decision. Kosovo and Vojvodina first appeared as political entities in 1946: Kosovo as an autonomous region and Vojvodina with a slightly more elevated status as an autonomous province; by 1963, their constitutional status had been harmonized and both were provinces, but they remained powerless.⁵² In 1974, a new constitution expanded the powers of the provinces.⁵³ Both Vojvodina and Kosovo were given broad autonomy, and were made effectively equal to a republic; each province had a seat on the federal presidency and powers within the federal structure as great as Serbia’s. Changes to Serbia’s own constitution similarly expanded the power of the provinces against Serbia, even giving them a veto over Serbian legislation which would affect them. Vojin Dimitrijevic notes that

the autonomous provinces were, for all practical purposes, promoted to the status of full-fledged federal sub-units.... [I]t was at the level of such sub-units that nations and nationalities realized their sovereign rights.... [T]he autonomous provinces were listed, together with the republics, as constituent parts of Yugoslavia. All this led to the widely accepted designation, by the masters of jargon, of the autonomous provinces as “elements of the federation.”⁵⁴

Following Milosevic’s accession to power, Serbian constitutional amendments effectively stripped both provinces of their autonomy;⁵⁵ the new federal constitution of 1992 makes no mention of the

provinces at all.

The status of self-determination, including secession, under the 1974 Constitution had been sharply contested in Yugoslav scholarship and politics.⁵⁶ The republics' and nations' right to self-determination was acknowledged, but some argued it had been perfected—and therefore extinguished—by joining Yugoslavia after the Second World War.⁵⁷ As one scholar writing in the mid-1980s noted:

The general Yugoslav view is that Vojvodina and Kosovo are republics in everything but name.... [They have] no legal claim to the right of secession (a formality to which the [republics] are theoretically entitled but which would only be an embarrassment where the large and unreliable Albanian population in Kosovo is concerned).⁵⁸

That “formality,” of course, later became the lynchpin of the international community's decision to recognize new independent states. The deep political and constitutional uncertainty surrounding these questions within Yugoslavia hardly mattered in 1992, when the Badinter Commission decided that only republics held state-forming authority.⁵⁹ Based on a reading of the constitution, they could have chosen the nations and nationalities, or the provinces.⁶⁰ The choice was arbitrary and preferential. Given the indeterminacy of the constitutional framework, it could hardly have been anything else.

That indeterminacy is magnified when interposed with democratic majoritarian principles. Can a people's rights—whether at the international or at the state level—be in any way delimited by constitutional changes to which it was not party in a meaningful sense? From their creation, Kosovo and Vojvodina were the products of a fundamentally non-democratic process; with their effective extinction, they lost only a paper right to self-determination. Ought one accord any political weight to that anti-democratic decision? On the other hand, ought one support the previous autonomy, *which itself* was not a democratic choice by the people, but only the product of Communist Party desires?

The choice does not easily admit principled distinctions. Instead, one picks an arbitrary baseline and sticks to it, as the Badinter Commission did: “[O]ne cannot escape the impression that the West supported the principle of self-determination in 1991-92, but only on condition that the results of the original, fundamental, non-self-determination be respected.”⁶¹ Any constitutional change

not informed by the democratic ideals underlying self-determination is suspect.

Of course, it might be argued that, although the 1974 Yugoslav constitution fails the democratic test, a genuinely democratically derived constitution could satisfy this concern, and thus could form the basis for a legitimate international determination. Domestic and international observers might readily agree on a group's right to self-determine if plainly defined in a document formulated in an open and democratic fashion. By contrast, disgruntled citizens of a state whose constitution was democratically derived might not legitimately be able to assert a constitutional critique as the basis for exercising self-determination.

Such an argument relies on the democratic currency of a constitutional order. In reality, although there is a convenient legal and philosophical fiction binding each citizen to the general polity by a kind of contract, most constitutions are historical artifacts not necessarily reflective of the current democratic wishes of the population. Constitutions are often hard to change.⁶² Indeed, it is precisely minority groups that will be least well positioned to effect changes.

Certainly, if a constitution affords a particular grouping the right to secede, that grouping may be able to assert its claim, but only as an artifact of municipal law subject to international legal rules. It could not exercise its right to the detriment of a people with a claim to self-determination sounding in international law.⁶³

Moreover, relying on the democratic nature of a constitution's derivation seems to beg the question: can a large, identifiable, internally cohesive portion of a state's population—whether ethnically based or other—that has serious objections to an existing constitutional order simply be ignored on the grounds that the original constitutional construction was democratic?⁶⁴ To suppose so would simply invite the kind of facile conclusion that was reached concerning Yugoslavia itself, namely that, regardless of the facts of its formation, it had effectively dissolved into its republican units.⁶⁵ It seems clear that constitutional analogies are very limited in scope, because any constitutional dispensation, no matter how democratic, is still subject to an independent and overriding analysis of the international right and is silent on the nature of a people.

Indeed, this is an unsurprising result: a domestic constitution cannot, by its own terms, create or modify what is an international right. If some group can make out a claim to be a people in

international law, its rights as a people are inalienable, and cannot be bargained away in an ultimate sense. A constitution cannot define a people, nor its rights.

Historical Bases: Tradition and Political Value

It may be argued that a pre-existing territorial claim is integral to self-determination,⁶⁶ an implicitly historical criterion. Serb arguments on Kosovo, for instance, are historical.⁶⁷ The West has not let their logic trump the Albanians' majoritarian position, yet takes them into account when making its assessments.

In Vojvodina, historical bases are similarly invoked. One reason Yugoslavia adopted a federal order was the privilege accorded to

[the] *traditional*, which means simply that people who have traditionally enjoyed self-rule and who think of themselves as different...may desire autonomy in order to safeguard their distinct culture and interests... [T]he establishment of...Vojvodina was...inspired by the distinct culture and group consciousness of Vojvodina's Serbian population as well as by...the Hungarian minority.⁶⁸

Hungarians, "old" Serbs, and others also assert historical provenance for their claims against Serbian centralism—although Vojvodina has never approached the mythic significance that Kosovo has for Serbs' national iconography, or Transylvania for Hungarians'.

The problem with privileging history in analyzing self-determination is the indeterminacy of historical claims. Whose claim is the stronger, on what grounds? Moreover, any historical basis becomes (hopelessly) intertwined with democratic and constitutional bases, because subsequent events, even if initially illegitimate, can vitiate an historical claim.

Historical bases suffer the same defects as territorial and constitutional bases: asserted as rationales in their own right, they make an ill fit with the dominant democratic imperative underlying self-determination.⁶⁹ Democratic analysis cannot give credence to historical claims that disenfranchise contemporary citizens, as they would have in Kosovo, and would in Vojvodina—and would in most places where such claims are raised.

Justice Bases: Alleviating Suffering or Vindicating Inalienable Rights?

Perhaps the only viable ground for a claim that does not require a democratic underpinning is a justice-based argument: extreme violations of human rights can give grounds for exercising self-determination.⁷⁰ It is on these grounds that the greatest distance between Kosovo and Vojvodina appears: Belgrade's policies in Kosovo have always been much more oppressive—leading, last year, to the wholesale expulsion of Albanians from the province—while Vojvodina remains peaceful.

If self-determination is a right, however, it is difficult to see how it is limited to instances of extreme oppression. The Quebec reference suggests that the rationale for self-determination has always been *political participation*.⁷¹ Colonial emancipation was rationalized by a desire to alleviate human suffering, but it is impossible to understand the *universal* scope of decolonization by reference to empirical instances of suffering. Some former colonial populations are worse off today in almost every way than they were before independence; what these polities *have* gained is the right to rule themselves, within existing boundaries, without exception and without reference to the nature of the alien rule.

Invoking a right to secede in the face of genocide, on the other hand, is not an exercise of self-determination in its own right. It is the use of self-determination as an *instrument* to prevent genocide. Rights are not means. Political claims based on a need to alleviate suffering are powerful, and can separate situations like Kosovo from Vojvodina, but they do not have anything to do with the rationale underlying self-determination itself. Self-determination cannot consistently be detached from democracy.

Upon what then can one base a claim to self-determination? Only justice claims have an independent basis, but they are instrumental and not an exercise of right in itself. All the other bases are interrelated: territory is an historical artifact, historical and constitutional claims are confounded by democratic analysis, and

For now the West will not contemplate even Kosovo's independence, but events there and in Monten-egro will change that.

democratic claims depend on territorial dispensations. They cannot be analyzed separately, yet their motivation cannot be described synthetically. Like the Heisenberg principle, measuring self-determination is an indeterminate act. In an environment of such conceptual indeterminacy, the choice of a legal standard itself becomes arbitrary and preferential; this creates room, and risks, for policymakers seeking to justify their decisions. Vojvodina may soon confront policymakers with an opportunity to make their policies fit the rationales underlying self-determination.

The Unavoidable Analogy: Kosovo and Vojvodina, Policy and Legal Rationales

Today Vojvodina is stable. The situation could change rapidly, however, and depends on developments in Kosovo that will invite parallel claims in Vojvodina.⁷² The West is deeply involved in the Balkans. How will it respond to the inevitable challenge to apply its policies consistently? Following is a list of outcomes for Kosovo and Vojvodina, arranged on a spectrum from greatest intrusion on Serbian sovereignty to least—not in order of likelihood. What legal arguments could policymakers invoke to justify each outcome? How will their choices in Kosovo constrain their choices in Vojvodina and beyond?

Independence or Partition

For now the West will not openly contemplate even Kosovo's independence, but events there and in Montenegro will change that.⁷³ When independence comes, it will make parallel moves in Vojvodina—though unlikely—more difficult to oppose. Eventually, the West might have to seek the proper legal register in which to voice its acquiescence to new state formations on the territory of the Federal Republic of Yugoslavia.

The most likely response would be to adopt rhetoric like that used in 1991 to justify recognition of Slovenia and Croatia, when support for territorial integrity gave way to a legal finding that Yugoslavia had dissolved. As then, the fact of dissolution would open the Federal Republic of Yugoslavia to new claims by its constituent elements which could form new states. A *de facto* independent Vojvodina could petition for recognition on the theory that it legitimately possessed state-forming power.

The additional step required here would be recognition of a

successor right in the *provinces* as well as the republics. According to the Badinter Commission, only republics acquired that right when Yugoslavia collapsed, but because the republics' right to secede was anything but incontestable, it seems a small step to say that other entities would have similar rights in a second dissolution.⁷⁴

At present it would be difficult to claim that Serbia is in dissolution, but if civil strife increased, it would be equally difficult to explain why a claim could *not* be made. The West could then choose: invoke dissolution to legitimate Vojvodina's secession (as in Slovenia, Croatia, and Bosnia), or *fail* to invoke it so as to withhold recognition from an undesirable claimant (as in northern Cyprus), even if events seemed to compel recognition.

If only Hungarian areas sought independence, a different justification would be needed, combining dissolution with constitutional bases: dissolution could legitimate *ethnic* secession if state-constituting power were identified in the *nation* instead of the province, a finding the Yugoslav constitution supports with the same certitude—or lack of it—that the Badinter Commission relied upon.

The 1974 constitution identifies several sources of sovereignty: working people, nations, and nationalities.⁷⁵ As nationalities with sovereignty similar to the nations,⁷⁶ Albanians and Hungarians could be claimants in a dissolution. If the West had to accede to partition in Kosovo, it could rediscover enthusiasm for Wilsonianism—a distinctively American product—to justify a dispensation on national lines. Once it did, it might find it difficult not to do the same in Vojvodina. The implications for expanding the definition of self-determination, if such a precedent were followed, are obvious. Indeed, the United States might stop apologizing for Wesley Clark's comments, and start praising them.

Territorial Autonomy

Only Hungarians advocate autonomy *within* Vojvodina. The analysis underlying their proposal is difficult to square with Western practice, but the Dayton Accords' internal division of Bosnia on ethno-territorial lines yields a precedent.

Rhetorical support for territorial autonomy would emphasize Wilsonian values, drawing additional support from justice-based arguments that autonomy will prevent oppression. There are no existing borders to delimit an ethnic claim. But, if Kosovo is *internally* partitioned between Serbs and Albanians—or rather, if the current

effective partition were cemented in law—a similar division in Vojvodina would seem more possible, because precedents of ethnic partition in Bosnia and Kosovo would be available, and undeniable. If accomplished through means of a plebiscite, perhaps in the guise of municipal elections, it could support the trend in advocacy supporting internal self-determination, though with an obvious ethnic underlay not normally appreciated by advocates of democratization.

Restored Autonomy

The preferred Western policy in Kosovo is “restoration” of autonomy, with protections for Serbs, an international presence, and an undefined final status. Any such solution will generate swift calls for a similar dispensation in Vojvodina.

Rhetorical support for autonomy, in Kosovo or Vojvodina, would center on two bases: that autonomy prevents injustice, and that the pre-1990 regime legitimates “restored” autonomy. Since the West supports autonomy *but not* independence, policymakers would stress selective elements of the old order: “clear” pre-1990 constitutional proscriptions against *self-determination* would be extolled, while equally “clear” constitutional restrictions on *autonomy* imposed in 1990 would be excoriated for infringing provincial sovereignty. (It would be difficult to advocate restoration on democratic grounds, since the original autonomy itself was not democratically derived; self-determination’s democratic aims hardly justify re-instituting a *non-democratic* dispensation.)

These arguments, if applied in Kosovo, could also support Vojvodina’s autonomy. (A variant, republican status, is currently rejected by Albanians as too little, and by Serbs as a violation of Serbia’s integrity, but if Kosovo were granted republican status, the pressure for a parallel option in Vojvodina would be considerable.) Indeed, the West would find it difficult to explain in what respect the two provinces were different, and would have to rely on justice arguments to suggest, in effect, that Vojvodina had not suffered enough to overturn a constitutional order that had already been declared illegitimate in Kosovo. Either course would bolster the prominence of domestic constitutional analysis in future evaluations of self-determination, much as the Quebec Reference has done. Likewise, reliance on either constitutional or justice-based arguments would accentuate the role of ethnicity, which underlay the original constitutional dispensation and the differential treatment of the two provinces.

Status Quo

How would the West justify a new dispensation in Kosovo without any change in Vojvodina? As it did with Chechnya, the West might simply assert that a state's internal structures are its own business. However, in light of its intense involvement in Serbia's internal structures during the Kosovo conflict, such a response would seem too hypocritical to stand alone.

The differentiation would therefore be made on the basis of just treatment. In Kosovo, autonomy has been presented as a solution to a human rights problem, not an exercise of self-determination. Policymakers could de-emphasize the democratic bases for arrangements in Kosovo, stressing instead that measures were taken to alleviate suffering—the *instrumentalities* of self-determination used for other ends. Vojvodina, they would say, does not justify intervening—thus avoiding the need to intervene, but also refining the standard for evaluating future claims.

Repressive Measures by Serbia

If the Serbian leadership duplicated its brutality in Vojvodina, however, Western policymakers would confront a choice concerning both their policy and their legal posture. Most likely they would say enough is enough, and declare that if we had a moral obligation to the Kosovars, we have the same obligation to the peoples of Vojvodina.

If they acquiesced, however, they would have to justify inaction. They might protest their inability to act, but their prior engagement would make such a defense look unprincipled. Instead, there would be incentives to define the problem as not rising to international cognizance, the way the Clinton administration sought desperately to avoid saying Rwanda was suffering a genocide.

Constitutional, historical, and territorial rationales would ill serve to distinguish the cases, but policymakers could adopt a dual argument to downplay the parallels. First, they might invoke justice arguments, suggesting that conditions were not as bad in Vojvodina as in Kosovo. Second, they could distinguish the ethnic dynamic, noting that Kosovo involved oppression of one ethnic group by another, while oppression in Vojvodina would affect the Serb majority too.⁷⁷ This could limit the precedential effect of Kosovo for Vojvodina, but it would inevitably re-cast the conflict—and its resolution—in explicitly ethnic terms.

The Post-Colonial Moment of Law's (In)Determination

What, then, can we say about the prospects for novel self-determination claims in Vojvodina and more broadly? The issue is international, not domestic, because self-determination is interpreted in the international arena.⁷⁸ The international community has many legal and rhetorical approaches at its disposal. To understand which interpretation it is likely to choose, we must consider how it has responded to previous calls for self-determination, and how that response is changing.

Reinterpreting Self-Determination

Self-determination had been successfully asserted many times in the last half century, but only in the colonial context. In that period, the doctrine seemed a relatively straightforward calculation, because it was cabined into a narrow, formalistic set of rules applied only to colonies. In practice, while declaring it a radical majoritarian-democratic principle, the international community reserved the name *self-determination* for a narrow set of power transfers within existing territorial boundaries. Ethnically based expressions—different majorities—were not favored.

The justifications—and the justice of the cause—seemed self-evident. But in the cool post-colonial evening of the post-Cold War world, the certainties of that time look uncomfortably like convenience. Reduced to a rule, self-determination was easy to calculate, but hard to motivate. If the polestar was opposition to oppression, then why only in colonies? If democratic participation, then why not in former colonies too? If self-determination was a universal right, why was it only absolute in colonies, and subject to deconstruction or tests of genocidal oppression everywhere else?

These questions only arise because the reasoning that should underlie the rousing cry of self-determination—Wilson's reasoning—was stripped from the doctrine. Wilson's troubled but principled assertion that peoples were what mattered remains the motive and rhetorical force for the doctrine. Classical colonial self-determination reversed Wilson's concept, letting the territory determine the people. This reversal could be ignored, because everyone agreed that local governance was preferable to metropolitan dominion. In the process, however, the doctrine became rigidly restricted to a rule that no longer responded to its original rationale.⁷⁹

Yet, *de facto* assertions of self-determination have occurred

under other names. The legal use of the term *secession* has been avoided by asserting the “consensual” nature of the division (as in Bangladesh, Eritrea, and the Soviet Union) or by using the motif of dissolution. Proofs, even intimations, of a domestic right to secede have been favored to legitimate division of states. Soviet and Yugoslav republics were said to have a right to leave their unions based on “clear” domestic constitutional provisions. Yet, these instances could also be understood as invoking an *international* right, a halting return to the original premise of self-determination. The likely independence of Kosovo, although it will come under the cover of a referendum or a round-table negotiation, will further strain the convention that self-determination finds expression only in the colonial context or within the confines of existing states.

There is evidence of a formal conceptual expansion as well. The Quebec Reference allows a “people” to be defined other than by a pre-determined territory. In effect, it returns Wilsonian self-determination to the legitimate center of the interpretive debate. Impolitic as Wesley Clark’s statements were at the time, they may prove prescient.

The Challenge for Policy

In this context, modes of legal analysis are multiple, selection among them preferential, and outcomes indeterminate. States have considerable latitude to reach legal conclusions that comport with their policy preferences. Yet, law is not merely the instrument and policy the master. Acts of legal definition do matter at the margin. It would have been less acceptable to impose an embargo on Yugoslavia if the conflicts in Bosnia and Croatia had been characterized as civil war, for example. The characterization of the conflict as international was a preferential legal posture, not simply a consequence of one’s political or moral view, since “the definition of [those] wars as civil could not and would not conceptually [have] prevent[ed] anyone from denouncing the warring sides and their allies.”⁸⁰

Law may indeed have an independent effect within such calculations, making certain options more presentable and more possible. States do not wish to be seen as inconsistent, and may prefer certain arguments—even certain policies—to avoid being caught out. They are constrained by legal argument because they are not pursuing a single outcome on a single occasion; policy has a temporal dimension which limits the range of positions an actor is able to hold

legitimately.⁸¹

Indeed, it is only because the classical conception of self-determination has weakened that groups can again assert claims in places like Yugoslavia. As long as the classical doctrine held, self-determination was only for colonial peoples' territories. Only in a moment of significant doctrinal indeterminacy does the range of

rhetorical postures broaden, giving states leeway to make new law comporting with their preferences, law which in turn defines future possibilities.

Because those possibilities are still very much in the making, our choices will matter. The international community is not wrong to advocate internal self-determination, but it is unduly sanguine about democracy's present attractions, because it assumes that external self-determination has run its course.

Like the Heisenberg principle, measuring self-determination is an indeterminate act.

Sidetracked as it was early on, and replaced with a totemic invocation subverted by the decolonizing project, external self-determination has not nearly fulfilled its original potential, nor satisfied its claimants long denied. Critics who see a principled response to those claims as threatening to liberal democratic values⁸² are misguided. For until external self-determination does run its course, the prospects for that other goal of self-determination, the fuller flowering of democracy, will be limited indeed.⁸³

It has been an implicit purpose of this paper to explore the transformative interaction of a seemingly settled doctrine and discrete acts of policymaking. On its own, our present case in no way can create a new Wilsonian orthodoxy—with its vision of external and internal self-determination for peoples. But because it brings to the fore an essential criterion of self-determination, which law has long denied and policy ignored, we may see in it something of the way forward: policymakers seeking to limit the precedential effects of Kosovo for Vojvodina will need to stress the uniqueness of each case. Inevitably, however, efforts to distinguish Kosovo from Vojvodina will have to address the different ethnic makeup of the provinces which underlies their different treatment. A too strenuous effort to isolate Kosovo's dispensation from other claims for self-determination, in Yugoslavia or elsewhere, will compel policymakers to acknowledge that an ethnic criterion has definitively re-entered the

legal analysis. As, indeed, it has.

Notes:

¹ *External* democratic participation—integration into the metropolis—*was* relevant. The UN Declaration on Friendly Relations implicitly identifies failure to afford the entire population of a territory representation in the government as a grounds for a claim of self-determination even to the level of secession. “Declaration on Friendly Relations,” G.A. Res. 2625, Annex, 25 UN GAOR, Supp. (No. 28), UN Doc A/5217 (1970).

² Meaning that Vojvodina is not under colonial, “alien” or “racist” rule, but is contiguous with and integrated into the ruling state—that is, not a classic colony. The only “exceptions” ever recognized have been apartheid Rhodesia and South Africa (as “racist” rule) and Israel’s occupation of the Palestinian territories (as “alien” rule or foreign occupation). See Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1996) pp. 125-26 and 240.

³ Thomas M. Franck, *Fairness in International Law and Institutions* (Oxford: Clarendon Press, 1997) p. 147, noting that after the fall of communism, the “synthesis” of elements forming the “doctrine of decolonization...has become unstable and new norms are required....”

⁴ Michael Shafir, “Has Hungary Overstated its Vojvodina Case,” RFE/RL Newline, 20 July 1999, noting that Hungary’s support for Vojvodinan autonomy is yielding “diminishing returns” among NATO and EU states, and noting further U.S. Defense Secretary William Cohen’s “obvious reluctance to back ethnic Hungarians in Vojvodina.”

⁵ Llazar Semini, “Albanian Fighters on the March Again,” IWPR Balkan Crisis Report No. 121, 3 March 2000, noting appearance of a “new Kosovo-based guerilla force...aiming to unite Albanian-populated areas of southern Serbia with the province.” The tensions involving Albanians threaten the stability of neighboring Macedonia as well. Zeljko Bajic, “Macedonia Awash with Fears,” IWPR Balkan Crisis Report No. 124, 15 March 2000.

⁶ James Gow, *Triumph of the Lack of Will: International Diplomacy and the Yugoslav War* (London: Hurst and Company, 1997) pp. 14-15. Not only Serbs, but also Croats, Slovenes, Macedonians, Albanians, Bosnian Muslims, Montenegrins, and Hungarians, among others, were joined in the new state. Each of these groups had lived in the region for centuries, though never under a single sovereign. Some areas that came to form Yugoslavia were relatively homogenous, while others—like Vojvodina and Bosnia—were very heterogeneous. These categories of ethnic affiliation are historically complex, and the relatively sharp contemporary differentiation of Serbs, Croats, and Muslims along religious and ethnic lines—and their differentiation along religious, ethnic and linguistic lines from mostly Catholic Slovenes, mostly Catholic or Protestant Hungarians and mostly Muslim Albanians—emerged over time. Certainly, well-developed national identities and political programs for the major groups predate the formation of the first Yugoslavia. Further complicating the ethnographic picture was the promotion after the Second World War of a Yugoslav identity, to which a not inconsiderable fraction of the population adhered until the 1990s. For a detailed survey of the ethnic and political development of the area’s peoples, see Ivo Banac, *The National Question in Yugoslavia: Origins, History, Politics* (London: Cornell University Press, 1984) pp. 31-115.

⁷ 57.3 percent Serb, 16.6 percent Hungarian, 3.7 percent Croat, 3.2 percent Slovak, 1.5 percent Romanian, 1.2 percent Roma, 1.1 percent Bulgarian, 0.9 percent

Ruthenian, and 0.4 percent Ukrainian, according to “Situation of human rights in the territory of the former Yugoslavia: Report submitted by Ms. Elisabeth Rehn, Special Rapporteur of the Commission on Human Rights, pursuant to Commission resolution 1995/89,” Commission on Human Rights, 52nd Session, E/CN.4/1996/63, 14 March 1996, para. 150. At least some of the remaining 13 percent is accounted for by those identifying themselves as “Yugoslavs.”

⁸ Serbo-Croatian, Hungarian, Slovak, Romanian, and Ruthenian.

⁹ Paul Robert Magocsi, *Historical Atlas of East Central Europe* (Seattle and London: University of Washington Press, 1998) pp. 173-175.

¹⁰ “Indictment of Slobodan Milosevic, Milan Milutinovic, Nikola Rainovic, Dragoljub Ojdanic, and Vljako Stojiljkovic,” IT-99-37-I, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, 24 May 1999: para. 5.

¹¹ James Gow, *Triumph of the Lack of Will: International Diplomacy and the Yugoslav War* (London: Hurst and Company, 1997) p. 17.

¹² Viktor Meier, *Yugoslavia: A History of Its Demise* (London: Routledge, 1999) pp. 74-78. Montenegro’s government was also subordinated to Milosevic at this time.

¹³ “Both the centralizing tendency of the government and the desire for autonomy in Vojvodina are very strong—this is the fundamental conflict, and refugees might shift the balance....Refugees are ‘skillfully placed’ within the ethnic communities of Vojvodina, especially along the border.” Author interview with Sonja Biserko, Helsinki Committee for Human Rights in Serbia, Belgrade, 11 June 1996. See also Tamas Korhecz, “Vojvodina—The Next Stage of the Dismantling Process?” *Cambridge Review of International Affairs* 12, (Spring-Summer 1999): pp. 161-2. In addition, simple demographics play a role: refugees, if they stay, increase the proportion of Serbs in the province—although, as discussed *infra*, the newly arriving Serbs do not necessarily find common cause with the older Serb population.

¹⁴ “Proposal for an Agreement on the Self-Organization of Hungarians in the Vojvodina: The Concept of the Alliance of Hungarians in the Vojvodina,” Council of the Alliance of Hungarians in the Vojvodina, 18 January 1996; “Proposal for Establishing Personal Autonomy for the Hungarians Living in the Republic of Serbia,” Democratic Community of the Hungarians in Vojvodina (Subotica, 11 March 1995).

¹⁵ “Hungarian Politician Advocates ‘Triple Autonomy’ for Vojvodina Hungarians,” Duna TV, Budapest, 1930 gmt, 12 May 2000; “Hungarian Official Presents Vojvodina Autonomy Plan,” RFE/RL Newline, 13 August 1999.

¹⁶ Michael Shafir, “Hungarian ‘Bundism’: Can It Work?” RFE/RL Newline, 1 September 1999.

¹⁷ “Worried,” *Economist*, 26 June 1999, p. 39; Zuzana Serences, “Autonomy on the Agenda,” IWPR Balkan Crisis Report, No. 53, 8 July 1999, noting that the Democratic Party of Vojvodina Hungarians suspended its political activities during the first days of the bombing campaign.

¹⁸ “Romanian Opposition Parties Attack NATO Commander’s Statement,” RFE/RL Newline, 28 June 1999.

¹⁹ “Romanian Officials Reassured on Trianon Treaty,” RFE/RL Newline, 2 July 1999; Michael Shafir, “Has Hungary Overstated its Vojvodina Case,” RFE/RL Newline, July 1999, noting that Clark himself reassured the Romanians “that he had not suggested that borders would in any way be questioned after Kosova”.

²⁰ See “Hungarian Premier Says Magyars Everywhere are ‘One Nation,’” RFE/RL Newline, 20 August 1999.

²¹ Antall made the comment in 1991. See Michael Shafir, “Hungarian ‘Bundism’: Can It Work?” RFE/RL Newline, 1 September 1999.

²² Robert Thomas, *Serbia Under Milosevic: Politics in the 1990s* (London: Hurst and Company, 1999) p. 16, noting the “sense of difference” between *Srbijanci*—those Serbs living in Serbia proper, and *precani*—Serbs from the former Habsburg lands,

especially Vojvodina; and p. 70, noting that underlying discontent with the pro-Milosevic regime in the early 1990s were the divisions between older and newer groups of inhabitants, and that established elements of the population used the label “*Kuferasi*”—carpetbaggers—to refer to Milosevic’s appointees in the provincial government; see also Meier, p. 49, contrasting the differential support for autonomy under the 1974 constitution expressed by old and new Serbs, and p. 74, noting that the leadership prior to Milosevic’s purge “was dominated by so-called old settler Serbs.”

²³ Zorana Bajt, “Vojvodina Croat Leader Predicts ‘Hot Summer,’” *Rijeka Novi List*, 21 May 2000, p. 12; author interviews with Emil Sezjulaki, official of the League of Social Democrats of Vojvodina, Novi Sad and Backi Petrovac, June 1996, commenting on Slovak dissatisfaction regarding educational issues; but see also Jan Briza, *Minority Rights in Yugoslavia* (United Kingdom: Minority Rights Group International, February 2000) p. 18, noting Slovak-language educational and cultural facilities. See Branka Magas, *The Destruction of Yugoslavia: Tracking the Break-Up, 1980-92* (London: Verso, 1993) p. 259, noting the “severe reduction of minorities’ cultural rights and their elimination from the provincial parliament and government” following 1988. The Romanians’ community was founded in November 1990, and the Yugoslav Alliance of Ruthenians and Ukrainians in May 1990, but both disclaimed any political agenda. Hugh Poulton, *The Balkans: Minorities and States in Conflict* (London: Minority Rights Publications, 1993) p. 95.

²⁴ “Serbian Opposition Leader Opposed to Hungarian Autonomy in Vojvodina,” RFE/RL Newsline, 16 August 1999, reporting on League of Social Democrats of Vojvodina leader Nenad Canak’s comments arguing that Hungarian autonomy “would only facilitate the spread of Serbian nationalism and lead to new disputes,” and opposing the concept of personal autonomy in part because it would involve a “redistribution of budget funds” to the detriment of other ethnic groups.

²⁵ “Serbian Opposition Leader Opposed to Hungarian Autonomy in Vojvodina,” RFE/RL Newsline, 16 August 1999, noting Alliance of Vojvodina Hungarians chairman Jozsef Kassza’s comment that “as long as the Yugoslav authorities ‘struggle for their own survival,’ they will have ‘neither the strength nor the means to deal with minority issues’”; see also Ferenc Palinkas, “Conflict in Vojvodina,” *Magyar Nemzet* (Budapest) 9 May 2000.

²⁶ Author interview with Janos Vekas, official of the Democratic Community of Vojvodina Hungarians, Novi Sad, June 1996.

²⁷ Ferenc Palinkas, “Conflict in Vojvodina,” *Magyar Nemzet* (Budapest) 9 May 2000; “Vojvodina’s Ethnic Hungarians Set up Provisional National Council,” RFE/RL Newsline, 23 August 1999; see also Tamas Korhecz, “Vojvodina—The Next Stage of the Dismantling Process?,” *Cambridge Review of International Affairs* 12, no. 2 (Spring-Summer 1999): pp 157-8.

²⁸ “Mixed Reviews from Ethnic Minorities,” *Serbia Watch* no. 113, Open Society Institute, 15 January 2000 (citing V.I.P. Daily News Reports, 11 January and 12 January 2000).

²⁹ Sir Robert Jennings and Sir Arthur Watts, eds., *Oppenheim’s International Law*, 9th ed., vol. 1 (New York: Longman, 1996) p. 712; Thomas M. Franck, *Fairness in International Law and Institutions* (Oxford: Clarendon Press, 1997) pp. 92-94; but see also Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1996) pp. 11-19, noting the origins of self-determination in the American and French revolutions, and Lenin’s contributions to its developments.

³⁰ Anthony Whelan, “Wilsonian Self-Determination and the Versailles Settlement,” *International and Comparative Law Quarterly* 43 (1994): pp. 100-101. Self-determination as such was not mentioned in the Versailles peace settlement, Lee C. Buchheit, *Secession: The Legitimacy of Self-Determination* (New Haven and London: Yale University

Press, 1978) p. 71, nor in Wilson's speech on the Fourteen Points. Hurst Hannum, "Rethinking Self-Determination," *Virginia Journal of International Law* 34, no. 1 (1993): p.3 in Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals* (Oxford: Clarendon Press, 1996) p. 972.

³¹ Thomas M. Franck, *Fairness in International Law and Institutions* (Oxford: Clarendon Press, 1997) p. 151; Ian Brownlie, *Principles of Public International Law* (Oxford: Clarendon Press, 1998) pp. 599-600; Patrick Thornberry, "The Democratic or Internal Aspects of Self-Determination with Some Remarks on Federalism," in Christian Tomuschat, ed., *Modern Law of Self-Determination* (Boston: Martinus Nijhoff Publishers, 1993) pp. 109-11.

³² Of course, self-determination could be expressed in other ways, but in practice almost all colonies chose independence—and in any event, the choice was theirs to make.

³³ Diane F. Orentlicher, "Separation Anxiety: International Responses to Ethno-Separatist Claims," *Yale Journal of International Law* 23, no. 1 (1998): p. 42. Some of the earliest instances of post-war decolonization, such as the Indian partition, did take these factors into account, though crudely and with horrific results.

³⁴ Sir Robert Jennings and Sir Arthur Watts, eds., *Oppenheim's International Law* (9th), vol. 1 (New York: Longman, 1996) p. 712, noting that self-determination "was bound to take on significance during the 'decolonization' period after the end of the Second World War; and indeed the principle has often appeared in practice to be an adjunct of the decolonialisation (*sic*) process rather than an autonomous principle...."

³⁵ G.A. Res. 2625, Annex, U.N. GAOR, 25th Sess., Supp. No. 28, at 121, 124, UN Doc. A/8028 (excluding interpretations of the resolution which would impair territorial integrity of states "possessed of a government representing the whole people..."). Concerning the ICCPR, see Steven R. Ratner, "Ethnic Conflict and Territorial Claims: Where Do We Draw a Line?" in David Wippman, ed., *International Law and Ethnic Conflict* (London: Cornell University Press, 1998) p. 121.

³⁶ David Wippman, ed., *International Law and Ethnic Conflict* (London: Cornell University Press, 1998) pp. 10-12; Thomas M. Franck, *Fairness in International Law and Institutions* (Oxford: Clarendon Press, 1997) pp. 144-46; Christian Tomuschat, ed., *Modern Law of Self-Determination* (Boston: Martinus Nijhoff Publishers, 1993) pp. 16-17.

³⁷ The overwhelming weight of interpretation and practice still identified "peoples" as colonial, and rejected—often explicitly—arguments for including any other grouping. As for its democratic aspects, they lay dormant. Until the end of the Cold War, self-determination retained these essential pillars: peoples are colonial, self-determination is realized in decolonization, and self-determination allowed each people to govern themselves as they saw fit. David J. Scheffer, "U.N. Engagement in Ethnic Conflicts," in David Wippman, ed., *International Law and Ethnic Conflict* (London: Cornell University Press, 1998) pp. 150-51, discussing the General Assembly's continued focus on a colonial context for self-determination. See also David Wippman, *ibid.*, pp. 11-12, outlining the two principal strategies suggested for applying self-determination without encouraging secession; Gregory Fox, "Self-determination in the Post-World Era: A New Internal Focus?," *Michigan Journal of International Law* 16, no. 733 (1995): p. 743 in Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals* (Oxford: Clarendon Press, 1996) p. 983, noting that state practice has discouraged secession.

³⁸ Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1996) p. 61; Rosalyn Higgins, "Comments," in Catherine Brölmann, R. Lefebvre, and M. Zieck, eds., *People and Minorities in International Law* 29 (1993): p. 30, in Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals* (Oxford: Clarendon Press, 1996) pp. 989-

90 (denying that minorities can be peoples for purposes of self-determination); Thomas M. Franck, *Fairness in International Law and Institutions* (Oxford: Clarendon Press, 1997) p. 162, noting that the term “self-determination” is not used in the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities [GA Res. 47/135 Dec. 18, 1992].

³⁹ See Reference *re* Secession of Quebec. Supreme Court of Canada, 1998, available in 1998 Can. Sup. Ct. Lexis 39. See also Diane F. Orentlicher, “Reconcile Separatism and Statehood,” *Washington Post*, 3 January 1999, Outlook Section, noting *inter alia* the Court’s “bold concession that a region’s democratically expressed will to secede obliges its national partner to take the claim seriously.”

⁴⁰ “It is clear that ‘a people’ may include only a portion of the population of an existing state.... [...] While much of the Quebec population certainly shares many of the characteristics (such as a common language and culture) that would be considered in determining whether a specific group is a ‘people’...it is not necessary to explore this legal characterization to resolve [the question of secession].... Similarly, it is not necessary for the Court to determine whether, should a Quebec people exist within the definition of public international law, such a people encompasses the entirety of the provincial population or just a portion thereof....” Reference *re* Secession of Quebec. Supreme Court of Canada, 1998, available 1998 Can. Sup. Ct. Lexis 39.

⁴¹ The Court did not address the question, because it resolved the matter entirely with reference to domestic legal considerations. *Ibid.* Still, it is fair to ask: if a people were not identical with a given territory’s population, how would it be measured? The Court itself hints at the obvious conclusion, by noting the determining “characteristics (such as common language and culture),” *ibid.*; these are the hallmarks of ethnicity.

⁴² Obviously, this usage of the term differs from that adopted by Anne-Marie Slaughter, “Pushing the Limits of the Liberal Peace: Ethnic Conflict and the ‘Ideal Polity,’” in David Wippman, ed., *International Law and Ethnic Conflict* (London: Cornell University Press, 1998) p. 129, using the term to describe a “stylized liberal state.” Nor does it suggest a “natural unit” for democracy. Michael Walzer, “The New Tribalism: Notes on a Difficult Problem,” *Dissent* (Spring 1992): p. 165, cited in Diane F. Orentlicher, “Separation Anxiety: International Responses to Ethno-Separatist Claims,” *Yale Journal of International Law* 23, no. 1 (1998): p. 46.

⁴³ Diane F. Orentlicher, “Separation Anxiety: International Responses to Ethno-Separatist Claims,” *Yale Journal of International Law* 23, no. 1 (1998): pp. 53-55, noting utilitarian and republican arguments for limiting diversity in the polity. Even proximity is often fictional, since those living near a border are often physically much closer to individuals in another state than they are to others in their own state.

⁴⁴ Compare Laurence S. Hanauer, “The Irrelevance of Self-Determination Law to Ethno-National Conflict: A New Look at the Western Sahara Case,” *Emory International Law Review* 9 (Spring 1995): pp. 133-134, on this point: “Self-determination, as it exists in international law, applies only to peoples living within the territorial boundaries of former European colonies.... The result of this legal development is curious: nations that are very well-defined and that have possessed a collective national consciousness for generations receive no legal rights to greater self-governance, even when they are threatened by genocide by hostile neighbors. Yet, nations that hardly exist as a collective group—such as the Saharawis of the Western Sahara—can justifiably claim the legal right to determine their own political status.”

⁴⁵ Compare Sir Henry Maine, *Popular Government* (1897) p. 28, cited in Vernon Bogdanor, “Overcoming the Twentieth Century: Democracy and Nationalism in Central and Eastern Europe,” in Istvan Pogany, *Human Rights in Eastern Europe* (Hants, England: Eward Elgar, 1995) p. 5, on this point: “Democracies are quite

paralyzed by the plea of Nationality. There is no more effective way of attacking them than by admitting the right of the majority to govern, but denying that the majority so entitled is the particular majority which claims the right." Of course, during decolonial self-determination, "facile majoritarianism" of the kind described here *was* the rule; a population like Vojvodina's, if it were otherwise found to meet the criteria of classical self-determination, only appears a complicated case because, intuitively, a multi-ethnic population seems less like a "people" than does an ethnically uniform population.

⁴⁶ Ante Cuvalo, *Historical Dictionary of Bosnia and Herzegovina* (Lanham, MD and London: The Scarecrow Press, Inc., 1997) pp. 43-44, noting different political and military goals of the Croats and Muslims and referring to them as "reluctant allies." Bosnia's Serbs mostly boycotted the referendum. *Ibid.*, pp. xxix and 41; "Badinter Commission," *Ibid.*, pp. 60-61; *Ibid.*, p. 41.

⁴⁷ *Uti possidetis juris* was invoked as an organizing principle to settle the boundaries of the states that emerged from the Spanish Empire in Latin America. During African decolonization, *uti possidetis* was seen as a way to avoid dangerous territorial wars; the Organization of African Unity declared in 1963 and 1964 that *uti possidetis* should apply to ensure the inviolability of colonial boundaries after independence. Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1996) pp. 190-92; Steven R. Ratner, "Ethnic Conflict and Territorial Claims: Where Do We Draw a Line?" in David Wippman, ed., *International Law and Ethnic Conflict* (London: Cornell University Press, 1998) pp. 114-16.

⁴⁸ In the reorganization of Habsburg lands that followed the Revolution of 1848-49, parts of present-day northern Vojvodina and western Romania were given autonomy between 1849 and 1860, when it was reincorporated into the Hungarian crown lands. See Paul Robert Magocsi, *Historical Atlas of East Central Europe* (Seattle and London: University of Washington Press, 1998) p. 80.

⁴⁹ Revisions were made by royal Yugoslavia and Tito's communist Yugoslavia, but also by the wartime fascist powers, whose radical revision of the international and internal boundaries—including ethnically-derived changes—has neither survived nor retained much credibility. *Ibid.*, pp. 45, 140-41, 149-51.

⁵⁰ In December 1991, the European Community created an Arbitration Commission—commonly known as the Badinter Commission—charged with monitoring guidelines for recognizing new states on the territory of the former Yugoslavia. Laura Silber and Allan Little, *Yugoslavia: Death of a Nation* (1996) p. 200; Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1996) pp. 270-72; Thomas M. Franck, *Fairness in International Law and Institutions* (Oxford: Clarendon Press, 1997) p. 166, note 65.

⁵¹ On 11 January 1992, in its Opinion 1, the Commission declared that Yugoslavia had entered into dissolution because it had ceased to operate as an effective government. Paul C. Szasz, "The Fragmentation of Yugoslavia," in *The American Society of International Law: Proceedings of the 88th Annual Meeting* (6-9 April 1994) p. 35. In Opinion 3, the Commission declared the republican borders to have the status of international borders, specifically invoking Article 2(4) of the UN Charter. *Ibid.* The Commission also found, in Opinion 2, that the Serbian population of Bosnia had no right to secession. Hurst Hannum, "Self-Determination, Yugoslavia, and Europe: Old Wine in New Bottles?" *Transnational Law and Contemporary Problems* 65, no. 3 (1993). Hannum considers that the Opinion "can be charitably described as unclear." *Ibid.*

⁵² Peter Radan, "Constitutional Law and the Multinational State: The Failure of Yugoslav Federalism," *The University of New South Wales Law Journal* 21, no. 1 (1998): p. 188. The provinces were created in *The Constitution of Yugoslavia of 1946*, Art. 2. The 1946 Constitution located sovereignty in both the republics and the peoples, but not

the provinces. *Const. Yugo. of 1946*, Art. 9, 10.

⁵³ Some constitutional expansion of the provinces' powers began in the 1960s, when the provinces received their own constitutions and control over revisions to their borders. *Constitution of Yugoslavia of 1963*, Art. 16, (*am.* 1968), in Pedro Ramet, *Nationalism and Federalism in Yugoslavia, 1963-1983* (Bloomington: Indiana University Press, 1984) p. 81. Noel Malcolm calls 1963 the "nadir of Albanian interests in Kosovo," and 1974 their "zenith." Noel Malcolm, *Kosovo: A Short History* (New York: New York University Press, 1998) p. 327.

⁵⁴ Vojin Dimitrijevic, "The 1974 Constitution and Constitutional Process as a Factor in the Collapse of Yugoslavia," in Payam Akhavan and Robert Howse, eds., *Yugoslavia, the Former and Future: Reflections by Scholars from the Region* (Washington and Geneva: The Brookings Institution and the United Nations Research Institute for Social Development, 1995) p. 59.

⁵⁵ Unlike Kosovo, Vojvodina has retained a parliament, but it is entirely subordinated to Belgrade. "Hungarian MTI News Agency Renews Service for Vojvodina Daily *Magyar Szo*," BETA, Belgrade, 1411 gmt, 24 May 2000.

⁵⁶ See Vojin Dimitrijevic, "The 1974 Constitution and Constitutional Process as a Factor in the Collapse of Yugoslavia," in Payam Akhavan and Robert Howse, eds., *Yugoslavia, the Former and Future: Reflections by Scholars from the Region* (Washington and Geneva: The Brookings Institution and the United Nations Research Institute for Social Development, 1995) pp. 53-54 and 58-59.

⁵⁷ See Ben Bagwell, "Yugoslavian Constitutional Questions: Self-Determination and Secession of Member Republics," *Georgia Journal of International and Comparative Law* 21 (1991): pp. 504, 516-17; Hugh Poulton, *The Balkans: Minorities and States in Conflict* (London: Minority Rights Publications, 1993) p. 6. See also *Yugo. Const. of 1974*, Basic Principles 1, para 1, noting in particular the right to secession—but not extending this to nationalities such as the Albanians or Hungarians.

⁵⁸ Pedro Ramet, *Nationalism and Federalism in Yugoslavia, 1963-1983* (Bloomington: Indiana University Press, 1984) p. 82

⁵⁹ Badinter Commission Opinion no. 3 (11 January 1992), in B.G. Ramcharan, ed., *The International Conference on the Former Yugoslavia: Official Papers*, vol. 2 (Boston: Kluwer Law International, 1997) p. 1265.

⁶⁰ For example, the Commission relied strongly on findings that the republics had sovereign control over their borders in deciding that the international legal doctrine of *uti possidetis* should be applied to them alone. Badinter Commission Opinion no. 3 (11 January 1992), in B.G. Ramcharan, *Ibid.* However, the same control is vested in the provinces, a fact the Commission simply ignored. For a critique arguing that *uti possidetis* is a "profoundly illogical way of determining the borders of new states," see Steven R. Ratner, "Ethnic Conflict and Territorial Claims: Where Do We Draw a Line?" in David Wippman, ed., *International Law and Ethnic Conflict* (London: Cornell University Press, 1998) pp. 116-19.

⁶¹ Svetozar Stojanovic, "The Destruction of Yugoslavia" *Fordham International Law Journal* 19 (December 1995): p. 359.

⁶² Some, admittedly are not, and require only a majority vote of the parliament. Such systems, obviously, make the democratic impulse more immediate, but are hardly conducive to allaying the concerns of minorities.

⁶³ For example, a territorial unit granted the right to secede could not do so if a legally cognizable people's right to self-determination were compromised in the process. Indeed, this is the very logic used to foreclose the possibility of secession from former colonies after independence—though this is only logical if the question of who constitutes a people is also foreclosed.

⁶⁴ See Diane F. Orentlicher, "Separation Anxiety: International Responses to Ethno-Separatist Claims," *Yale Journal of International Law* 23, no. 1 (1998): p. 48; but see Brilmayer, pp. 184-87, and, generally, Allan Buchanan, *Secession: The Morality of*

Political Divorce From Fort Sumter to Lithuania and Quebec (Bolder: Westview Press, 1991), rejecting consent theory as a basis for secession.

⁶⁵ Orentlicher, *Ibid.* and p. 56, but also pp. 52-53, noting the possible limits to such a group's right to withdraw from a state if it were territorially dispersed or contained unwilling minorities in its midst.

⁶⁶ Lea Brilmayer, "Secession and Self-Determination," *Yale Journal of International Law* 16, (1991) p. 177. Brilmayer is speaking about secession; she allows that lesser claims might not need a territorial justification. *Ibid.* section VI.

⁶⁷ Serb claims even explicitly counterpoise historical claims against democratic ones. See, e.g., Robert Thomas, *Serbia under Milosevic: Politics in the 1990s* (London: Hurst and Company, 1999) p. 49, citing the comments in *Politika* of Milosevic supporter Matija Beckovic at a 1989 rally marking the 600th anniversary of the battle of Kosovo Polje: "Kosovo is Serbian and that fact depends neither on Albanian natality nor Serbian mortality. There is so much Serbian blood and holy relics there that it will be Serbian even when not one Serb remains there."

⁶⁸ Pedro Ramet, *Nationalism and Federalism in Yugoslavia, 1963-1983* (Bloomington: Indiana University Press, 1984) p. 68. (emphasis original). Serbs' historical claims to special status in Vojvodina date at least back to the late seventeenth century, when the Habsburg Emperor Leopold I promised Serb settlers that they could elect their own ruler—in Serbian, a *vojvoda*, from which derives the name of Vojvodina. In 1690, large numbers of Serbs crossed into what is now Vojvodina from Ottoman territory—an event known to Serbs as the Great Exodus. The Habsburgs never allowed the election.

⁶⁹ See, e.g., Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 81, in Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996) p. 37 ("[A]scertaining the freely expressed will of the people [is] the very *sine qua non* of all decolonization").

⁷⁰ Fernando R. Teson, "Ethnicity, Human Rights, and Self-Determination," in David Wippman, ed., *International Law and Ethnic Conflict* (London: Cornell University Press, 1998) pp. 86 ff; Frederic Kirgis, Jr., "The Degrees of Self-Determination in the United Nations Era," *American Journal of International Law* 88, no. 304 (1994) p. 306, in Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals* (Oxford: Clarendon Press, 1996) pp. 985-86; Dietrich Murswiek, "The Issue of a Right of Secession—Reconsidered," in Christian Tomuschat, ed., *Modern Law of Self-Determination* (Boston: Martinus Nijhoff Publishers, 1993) pp. 25-27.

⁷¹ See Reference *re* Secession of Quebec. Supreme Court of Canada, 1998, available in 1998 Can. Sup. Ct. Lexis 39.

⁷² Indeed, even Albanian leaders themselves seem responsive to the parallels: Albanian President Rexhep Meidani and Prime Minister Pandeli Majko told Hungarian Prime Minister Viktor Orban that Vojvodina ought to have a "new status," and that Vojvodina's Hungarians should "think more about themselves." "Albanian Leaders Urge Vojvodina Hungarians to Be More Assertive," RFE/RL Newswire, 31 August 1999.

⁷³ R. Jeffrey Smith, "Free Kosovo? U.S. Tilt in the Works," *International Herald Tribune*, 25-26 September 1999, p. 1, noting that U.S. officials have privately dropped their opposition to Kosovo's independence, viewing it as inevitable, but noting also that European governments remain leery of moves towards independence; Gordana Igric, "Storm-Clouds Gather over Montenegro," IWPR Balkan Crisis Repot No. 120, 29 February 2000, noting the connection between Montenegro's and Kosovo's status.

⁷⁴ Compare Miranda Vickers, *Between Serb and Albanian: A History of Kosovo* (New York: Columbia University Press, 1998) p. 232, suggesting that prior to the constitutional changes begun in 1989, Vojvodina and Kosovo might even have had a right to secede—though this is a minority view. See also Steven R. Ratner, "Ethnic Conflict and Territorial Claims: Where Do We Draw a Line?" in David Wippman, ed.,

International Law and Ethnic Conflict (London: Cornell University Press, 1998) p. 119, arguing that because of the differing purposes of international and internal borders, when a state disintegrates the “parties’ original bargain” concerning the location of internal borders can be called into question. Once the right to secede is acknowledged, the formal and procedural steps towards recognition of statehood, and the legitimating cover for supporting those steps, could be easily found. See Marc Weller, “The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia,” *The American Journal of International Law* 86 (July 1992): pp. 606-7.

⁷⁵ *Const. Soc. Fed. Rep. Yugo.*, Introductory Part, Basic Principles, I (2).

⁷⁶ See, e.g., *Const. Soc. Fed. Rep. Yugo. of 1974*, Art. 245, establishing that nations and nationalities shall have equal rights; *Const. of Soc. Rep. Serbia*, Art. 145, establishing the equality of nations and nationalities; Malcolm, pp. 327-28, noting that the principal theoretical objection to republican status for the provinces in Titoist Yugoslavia—the status of Albanians and Hungarians as nationalities (*narodnosti*) instead of nations (*narodi*)—“withered away” with the 1974 constitution, which announced a “new principle” of equality for nations and nationalities.

⁷⁷ Vuk Draskovic’s Serbian Renewal Movement issued a “Declaration on the Position of Vojvodina in Serbia,” which, while criticizing the centralizing policies of the Milosevic regime and calling for increased self-government, also noted that “the territorial and political autonomy of Vojvodina cannot be of the same degree as the autonomy of Kosovo simply because Serbs are the majority population in Vojvodina.” *Blic*, cited in “SPO Drafts Declaration on Vojvodina,” V.I.P. Daily News Report, Belgrade, No. 1593, Thursday, 9 September 1999. Compare Miranda Vickers, *Between Serb and Albanian: A History of Kosovo* (New York: Columbia University Press, 1998) p. 179, noting that “Vojvodina, with a majority Serb population, was given autonomy on the basis of cultural and historical identity, whereas Kosovo’s autonomy, with a majority Albanian population, was based on ethnic principles.” Similarly, an unnamed EU Foreign Ministry official “rejected the Kosovo-Vojvodina link, noting that the two provinces are not comparable, since one’s population is 90 percent Albanian and the other’s 17 percent Hungarian.” Michael Shafir, “Has Hungary Overstated its Vojvodina Case?,” RFE/RL Newline, July 1999.

⁷⁸ Compare Svetozar Stojanovic, “The Destruction of Yugoslavia,” *Fordham International Law Journal* 19 (December 1995): pp. 356-57 (*emphasis original*). “In an imaginary world of equal rights, the official Western characterization of the break up [*sic*] of Yugoslavia would have been construed as only one among several competing persuasive definitions, and would not have been taken as a *sui generis* factual statement, much less a ‘divine utterance’ creating facts. But in the world such as it is, the Western *fiat* was sufficient for Slovenia’s and Croatia’s, and, then, for Bosnia-Herzegovina’s, unilateral secessions to be proclaimed the ‘democratic outcome of the disintegration of the Socialist Federal Republic of Yugoslavia.’ The West *recognized* the breakaway Republics as sovereign states, while it *defined* the anti-secessionist intervention on the part of the remnants of the Yugoslav Government...as ‘aggressors.’” Whether or not one agrees with Stojanovic’s implicitly pro-Serb defense of those branded as aggressors, the critique of the West’s fundamentally arbitrary effort to attach a definitional and legal patina to its moral and political preference is compelling.

⁷⁹ See Thomas M. Franck, *Fairness in International Law and Institutions* (Oxford: Clarendon Press, 1997) p. 153. “In effect, after taking full advantage of the Wilsonian right to secession from empire sanctioned by the doctrine of self-determination, African heads of state rejected its concomitant: that Wilsonian self-determination also empowers minorities to alter existing boundaries....” Franck comments on the danger of an “‘idiot rule’ which produces absurd results in the name of principled uniformity.” Franck, *Ibid.*, p. 144. His referent is expansive

claims for self-determination by ethnic minorities, yet it seems that, while Franck has aptly identified the generic problem, he misidentifies its locus: the most egregious instance of an idiot rule is the very insistence on territorial integrity of existing states in the face of any ethnic claims, not the reverse. Compare Hurst Hannum, "Self-Determination, Yugoslavia, and Europe: Old Wine in New Bottles?," *Transnational Law and Contemporary Problems* 3, no. 1 (1993): p. 68, on this point: "The principle that borders should not be altered except by mutual agreement has been elevated to a hypocritical immutability that is contradicted by the very act of recognizing secessionist states....New minorities are trapped in new ethnically based states not because of any international legal principle which such minorities can comprehend, but by the historical accident of finding themselves within administrative borders drawn decades ago for domestic purposes by an undemocratic government."

⁸⁰ Svetozar Stojanovic, "The Destruction of Yugoslavia," *Fordham International Law Journal* 19 (December 1995): p. 357.

⁸¹ The very reason neighboring states have discouraged the application of an autonomy model in Vojvodina is that they fear the "importation" of that model to their own territories, some of which have sizable Hungarian minorities of their own. Michael Shafir, "Has Hungary Overstated its Vojvodina Case," RFE/RL Newline, July 1999.

⁸² See, e.g., Rosalyn Higgins, "Comments," in Catherine Brölmann, R. Lefeber, and M. Zieck, eds., *People and Minorities in International Law* 29 (1993): p. 30, in Henry J. Steiner and Philip Alston, *International Human Rights in Context: Law, Politics, Morals* (Oxford: Clarendon Press, 1996) pp. 989-90. The "move to uninational and unicultural states that constitutes postmodern tribalism is profoundly illiberal. The attempt to legitimate these tendencies by the misapplication of legal terms [*i.e.* application of self-determination to minorities and national groups] runs the risk of harming the very values that international law is meant to promote"; Thomas M. Franck, *Fairness in International Law and Institutions* (Oxford: Clarendon Press, 1997) pp. 141-46, expounding a theory of "postmodern neo-tribalism" to describe the ethos of "politically assertive" ethnic claimants with a "neo-apartheid agenda" vis-à-vis "existing multinational or multicultural states."; Diane F. Orentlicher, "Separation Anxiety: International Responses to Ethno-Separatist Claims," *Yale Journal of International Law* 23, no. 1 (1998): p. 3, noting that "international law has long been ambivalent in its treatment of national identity as a basis for statehood...Liberal internationalists have largely disdained ethnic particularity as an organizing principle of political legitimacy....".

⁸³ Cf. Steven R. Ratner, "Ethnic Conflict and Territorial Claims: Where Do We Draw a Line?," in David Wippman, ed., *International Law and Ethnic Conflict* (London: Cornell University Press, 1998) pp. 122-23, arguing that frontier adjustments are sometimes necessary for democracy building; Diane F. Orentlicher, "Separation Anxiety: International Responses to Ethno-Separatist Claims," *Yale Journal of International Law* 23, no. 1 (1998): p. 62, noting the danger of democratization in regions marked by ethnic tensions. But see Ted Robert Gurr, "Ethnic Warfare on the Wane," *Foreign Affairs* 79, no. 3 (May/June 2000): pp. 55-59, arguing that ethnically based claims may be diminishing.