Chapter 4

Do Human Rights Have Anything to Say about Group Autonomy?

Gaetano Pentassuglia

1 Introduction: Bridging Self-Determination, Autonomy, and Human Rights

As recent secessionist crises rekindle international lawyers’ traditional focus on external group disputes,¹ self-determination as an international human rights category arguably continues its transition from a mechanism used primarily to redistribute sovereign power amongst states to an entitlement driven by concerns for the adequacy of states’ own legal orders.² The Supreme Court of Canada has gone as far as to argue that “[t]he recognized sources of international law establish that the right to self-determination of a people is normally fulfilled through internal self-determination – a people’s pursuit of its political, economic, social and cultural development within the framework of an existing state.”³

A typical way in which expert discourse addresses the issue of group autonomy in the context of ‘internal’ self-determination (as opposed to state-building claims) is through an investigation into whether a right to territorial autonomy

---


for a ‘people’ is (or ought to be) available under international law. More broadly, attempts have been made at various junctures to characterise the right to self-determination as a right which accrues to a ‘nation’, whatever its internal or external implications.

Aside from the pre- and post-World War I political notion of ‘national’ self-determination and its hybrid – largely implicit – legal articulations, this line is not an entirely new one in modern international legal discourse. Writing in the late 1980s, Ian Brownlie, for instance, argued for a comprehensive approach to “the issue of self-determination, the treatment of minorities, and the status of indigenous populations” by noting that there existed a core set of rights and claims in this context that were “in principle the same”, except that in his view, they required different ways of implementing them due the varied nature of the “facts” involved. Sub-state ethno-cultural groups such as national minorities and indigenous communities could thus be seen as ‘peoples’ entitled to some form of autonomy within the boundaries of the state.

---


7 I. Brownlie, ‘The Rights of Peoples in Modern International Law’, in J. Crawford (ed.), The Rights of Peoples (Oxford University Press, Oxford, 1988) p. 1, at pp. 5–6, 16 (noting that the core meaning of self-determination lies in the “right of a community which has a distinct character to have this character reflected in the institutions of government under which it lives”). See also J. Crawford, ‘The Right of Self-Determination in International Law: Its Development and Future’, in P. Alston, Peoples’ Rights (Oxford University Press, Oxford, 2001) p. 6, at pp. 64–65 (arguing that distinctions based on classes or of categories of groups such as minorities and indigenous groups “are imprecise at best”, and that all these groups “can, depending on the circumstances, properly claim to be ‘peoples’” for purposes of internal self-determination, though the effects of the recognition of that claim also depend on the circumstances).