

ECMI
ISSUE BRIEF



 EUROPEAN CENTRE
FOR
MINORITY ISSUES

Changing the Angle: Does the Notion of Non-Territorial Autonomy Stand on Solid Ground?

Alexander Osipov

ECMI Brief # 29
July 2013



The European Centre for Minority Issues (ECMI) is a non-partisan institution founded in 1996 by the Governments of the Kingdom of Denmark, the Federal Republic of Germany, and the German State of Schleswig-Holstein. ECMI was established in Flensburg, at the heart of the Danish-German border region, in order to draw from the encouraging example of peaceful coexistence between minorities and majorities achieved here. ECMI's aim is to promote interdisciplinary research on issues related to minorities and majorities in a European perspective and to contribute to the improvement of interethnic relations in those parts of Western and Eastern Europe where ethnopolitical tension and conflict prevail. ECMI Briefs are written either by the staff of ECMI or by outside authors commissioned by the Centre. As ECMI does not propagate opinions of its own, the views expressed in any of its publications are the sole responsibility of the author concerned.

ECMI Issue Brief # 29
European Centre for Minority Issues (ECMI)
Director: Dr. Tove H. Malloy
© ECMI 2013



Changing the Angle: Does the Notion of Non-Territorial Autonomy Stand on Solid Ground?

The ideas of non-territorial autonomy (NTA) for ethnic groups are used increasingly often, but in such a way, that perhaps it would be prudent at this point to take a step back and ask what some may already view as a naïve question; namely, to ask why the notion of NTA is necessary and what added value it brings about. I would argue that the relative popularity of the concept rests not on real achievements in policy-making or research but rather on several taken for granted assumptions. The latter ones require a highly critical examination, and this brings us to a reconsideration of the role the notion may play and the scope of its potential application.

Alexander Osipov, July 2013

ECMI Issue Brief #29

I. INTRODUCTION

Non-territorial autonomy (NTA) is an old and a new issue at the same time. The idea took more or less clear shape by the late 19th century, but the political and scholarly debates at the turn of the 20th century and also of 1920-30s were essentially forgotten for decades. Although the rebirth of NTA in English-speaking academia occurred around 20 years ago¹ and the number of publications is still growing slowly, one can already reflect on the major patterns of how the notion is being mastered and utilized. The idea and the related terminologies are used more and more often, but in such a way that one may already ask a naïve naïve questions as to why the notion of NTA is necessary and what added value it brings about. I would argue that the relative popularity of the concept rests exclusively on several taken for granted assumptions which deserve examination with a highly critical eye.

Yet today, there are relatively few empirical studies on the ways NTA is used as a category of practice in politics, law-making and civil activism.² Within most academic texts NTA is employed as an analytical category and mostly for normative rather than descriptive purposes. In the meantime, there is no uniform definition and no commonly accepted understanding of what NTA may actually mean. The whole range of NTA's applications can be lumped into three basic, partly overlapping clusters that are (1) a general principle under which people can individually or jointly pursue their identity-based interests in a variety of institutional settings;³ (2) certain organizational forms (usually, a centralized public-law corporation based on individual membership);⁴ and (3) certain functions and authorities of an organization (the latter approach often assumes delegation of public competences to non-governmental institutions).⁵ Needless to say, the



related adjectives like ‘cultural’, ‘non-territorial’, ‘national-cultural’, ‘personal’ and so forth also acquire numerous and ever-changing meanings and implications.⁶

Taken for descriptive purposes, the notion either has no identifiable substantive referents or has too many of them; in other words, there is no clarity on what exactly this term applies to. The general principle of welcoming collective activities on ethnic grounds can be attached to a variety of initiatives, setups and social forms including institutions segregated along ethnic or linguistic lines. The idea of creating a public-law corporation which would encompass and structure an entire ethnic group has been more or less well developed since at least the seminal works of Karl Renner and Otto Bauer in late 19th and early 20th century.⁷ However, this institutional design materialized only in several specific cases all of which can hardly be considered a success story (such as the unfortunate bi-communal statehood of Cyprus after 1960).⁸ Lastly, there are only a few examples of public *authorities and jurisdictions* having been granted to non-governmental institutions in the fields pertinent to minority issues, and it is not obvious that such cases constitute a distinct research area and give rise to a meaningful scholarly debate.

Despite the fact that in practice NTA applies only in a few specific situations, the notion remains popular as a normative construct, an ideal model or a prescription for the future. In my view, the popularity of NTA can be explained exclusively by a common silent acceptance of several doubtful assumptions.

II. GROUPISM

The first and the major proposition on this list is a mystification typical for ethnic and minority studies, i.e. ‘the tendency to treat ethnic groups, nations and races as substantial entities to which interests and agency can be attributed’.⁹ If ethnic groups are perceived as collective individuals possessing will, consciousness and ability to act

as such, and internally structured social entities, then it would be in some way logical to interpret all ethnicity-related activities as the internal life of groups *per se* and to seek a more efficient corporate-type internal organization of those groups. In other words, ‘autonomy’ is regarded as an attribute of an intrinsic ethnic group as such or an organization serving as an organizational shell for an entire ethnic category.

This assumption (which Rogers Brubaker labels as ‘*groupism*’)¹⁰ is often manifested explicitly; it is also conducted indirectly at times. The notion of ‘autonomy’ implies the existence of an autonomous social entity, and being taken in regard to ethnicity-based setting, the term may be interpreted as the re-affirmation of the independence and agency of a group. The adjective ‘non-territorial’, on the one hand, equates ethnicity-based organizational forms with political and administrative units known as territorial autonomy; on the other, it implicitly indicates that territorial arrangement can also be ethnicity-based, or in other words, that an ethnic group can exercise political power and public administration over a certain territory.

The origins of *groupism* are a complex issue which lies beyond the scope of this brief, and only a short comment would be appropriate here. In the majority of its manifestations, this worldview turns out to be unreflective and to lack a clear theoretical underpinning. It is not equivalent to essentialism and can be better regarded as a discursive trend rather than a coherent approach.¹¹ Few scholars engaging in ethnic studies deliberately stick to essentialism, but for many their allegiance to constructivism remains merely a hollow declaration. At best, the popular versions of constructivism are confined to irrelevant issues, such as the internal heterogeneity of groups, the existence of multiple group affiliations, shifting boundaries, and changing cultural content. Another version of folk constructivism combines the acknowledgement of social construction as an act of group creature with subsequent attitudes towards groups as substantive entities, social



actors and bearers of some quasi-natural ‘identities’.

At first glance, *groupism* poses as a mental and discursive inertia multiplied with common sense assumptions, and images of a group as a social agent serve as convenient explanatory tools. There must be something else that explains the durability of *groupist* assumption in the perceptions of autonomy. One of those circumstances is the common practice for rationalizing the image of ‘the collective individual’ with the idea of political representation and with the belief in voting mechanisms.

III. RATIONALIZATION THROUGH ELECTIONS

There is a widespread belief that people belonging to an ethnic group can jointly delegate their will to a representative body through a process of inner democracy, ideally, by casting a vote. This well-intentioned belief has been inspired to a large degree by the recent debates in the framework of ‘participation’, which often revolve around the ideas of consociationalism, or, in a broader sense, of combining power-sharing with segmental autonomy.¹² ‘Participation’ is already treated as the third key element of minority protection (after non-discrimination and ‘identity’ preservation) and is currently regarded as a multi-dimensional normative framework encompassing individual involvement in group activities, a group’s inclusion within the broader society and group members entitlement and ability to fully benefit from their citizenship rights.¹³

All of these interpretations as a rule imply the need for the group’s internal organization to function through representative organs and the democratic procedures under which the constituency forms its representative structures. Within both frameworks the term ‘autonomy’ often comes to the forefront. The notion of participation entails such themes as

legitimacy of group ‘representation’ and the accountability of the representatives. In other words, an ethnic group can function as an autonomous polity and participate in public life if it is organized as a quasi-nation with elected, authoritative and accountable systems of governance.¹⁴ The issue at stake is thus the delegation of authority from grass-root group members to the governing bodies with a mandate to represent the community before the outside world and to arrange its internal affairs.

This agenda obviously comes out of the same *groupist* assumption, and rests on the erroneous conflation of a social group based on interests (like a social movement) with that of a group based on categorization.¹⁵ Respectively, categorization is viewed as ontological ‘identity’ which is in turn equated with common values and emotional affiliation, and this leads to a conclusion that an identity-based group must be regarded as an internally cohesive entity bound with internal solidarity. This partly explains why its adherents did not ask and answer two crucial questions. One question has to do with the reasons of transplanting perceptions of statehood and citizenry into a completely different institutional environment such as that of ethnic categorization, and manifestations within society of ethnic affiliations with a completely different social meaning. The other question has to do with the fact that in modern states (with rare exceptions being those countries with deep intra-societal cleavages and/or societies in a state protracted social conflict)¹⁶ the turnout of people directly participating in ethnicity-related activities varies significantly. Quite often just a minor segment of the population who can be deemed minority members join minority organizations and partake in their initiatives.

Respectively, the assumption that a minority representative body can function as a national parliament, where deputies of different views and party backgrounds adequately voice the concerns of their constituents, engage in thoughtful deliberations and then elaborate balanced decisions also looks ill-informed and ungrounded. Both the candidates who run for



office and the citizens who vote for or against them belong to the same activist environment and share a similar ethnocentric vision; others are excluded, and these are the people who in principle don't feel like playing the game of framing their interests in terms of group claims.

The idea of 'rational representation' based on the conscious and formalized investment of individual wills in 'trustees' - who legitimately represent the whole ontological group and serve as its actual replacement ('practical group' vis-à-vis 'group on paper' in terms of Bourdieu)¹⁷ - must be conceived as nothing more than a fictitious idea like *le contrat social*. This theoretic invention may serve practical purposes and legitimize certain claims, but it is not clear that it can be instrumentalized as a descriptive and analytical tool.

IV. WHAT IS 'GENUINE' REPRESENTATION?

Many authors resort to the category of 'representation' and assert that such a notion as 'substantive representation'¹⁸, i.e. the ability of trustees to adequately express and defend interests of their constituencies, must be applicable to ethnic groups.¹⁹ In the meantime, few if any people question the very validity of such things as 'interests' or, moreover, 'genuine' interests of a group as such. It is also unclear which claims or stances may be identified as 'dominant' and thus legitimate within a certain group (as Erin Jenne suggests)²⁰ and which criteria should be taken into account in the course of measuring public support for certain claims.

Alternatively, we can treat an ethnic minority or ethnic group as an imagined class of people who are subject to a certain imposed categorization, who then find themselves having to adapt to such categorization and who thus opt for a variety of adaptation strategies. The entire range of opportunities cannot be confined to either active participation in the 'community' or to full exit and further assimilation into the

majority; there is a multitude of choices in between, which are also permanently revised, transformed and renegotiated within changing contexts.²¹ Ethnic activism thus appears to be just one type of many strategies available. Someone may find treating it as the norm and all the rest as negligible deviances, but such an approach is obviously in conflict with the basic rationale of human rights and minority protection. People who may be unsatisfied with ethnic activism in principle or who may see no space for themselves within an activist environment deserve at least the same amount of respect and recognition as those who subscribe to such things do.

Respectively, it would hardly be accurate to measure the potential demand for services provided in minority languages, or minority-related schooling, or cultural activities through the scale of ethnic activism. There exists a temptation to confuse the needs and demands of ethnic activists with the entire range of problems and concerns that people identifiable as minority members may face. First and foremost, special participatory mechanisms have been designed to be most user-friendly and utilizable for ethnic spokespersons. However, especially considering that the accommodation of ethnic activism and group claims may very well be the central issue surrounding minority protection, the former cannot be a replacement for the latter.

Within the scholarly literature, one can already find two (fortunately, still embryonic and vaguely formulated) ideas on ways to circumvent the inactivity of would-be minority members in electing representative bodies. The first has to do with bracketing out non-participants in minority activities, asserting that such a non-participating person be treated as one who has made a choice to be viewed by others in the society as having voluntarily relinquished their mandate of representing their group to people elected by others.²² The other idea as mentioned above envisages compulsory membership in ethnicity-based corporate organizations. This idea is justified on the



ground that modern human rights defends the right of association, according to some authors, only with regard to private law institutions and that this right lacks full legal clarity with respect to the right to refrain from participation in associations.²³ The conclusion of this idea is thus that public law associations with mandatory membership do comply with modern human rights law – to the letter, in fact.

There may be no doubt that all recommendations of this kind, such as the keeping of ethnic electoral registers, the institution of public voting for ethnic representative bodies, or the legitimizing of representative bodies through the official recognition of their exclusive and privileged status are feasible in technical terms. Moreover, there is nothing technically impossible in indirectly forcing people to enroll on ethnic registers and to require membership in corporate organizations on ethnic grounds - even in countries conceived as liberal democracies. Such systems can be functional, but, first, there are no reasons to treat this as ‘group autonomy’ or ‘group representation’ from a scholarly perspective; second, from a pragmatic point of view, the consequences are not that clear, and those who offer such solutions would perhaps best be advised to think twice.

There is no need to explain that if such arrangements and measures are implemented, ultimately private life and the freedom of association would certainly be in jeopardy – such an outcome is clear. If the right to choose one’s own ethnic and cultural affiliations, as well as the right to join or not to join certain organizations are questioned and restricted, even if on indirect grounds, in this very context, there would be no obstacles to the imposition of other restrictions for the sake of ‘participatory rights’, ‘minority integrity’ or something else of this nature.

V. WHO IS TO PAY?

It is already commonplace for most scholars who write about NTA to express the opinion that the funding of ‘autonomies’ through the taxation of registered members of the respective ethnic groups (i.e., the idea advocated by Renner and Bauer) is barely feasible in the modern world - or at least generates insurmountable problems.²⁴ This implies that autonomous entities must be funded through the redistribution of public funds, or, in other words, that the welfare states will pay the bills. This silent assumption also raises questions and concerns about NTA’s feasibility and the potential outcomes. First, modern capitalism experiences turbulence, and one can hardly expect that the public funding of minority institutions would be a universally applicable model while segmental autonomy remaining without a stable financing cannot be deemed viable, especially when private funding is never guaranteed.

Second, the issues of entitlement to membership and voting, of collection and redistribution of public funds, and of individual access to services and benefits will inevitably be raised and most likely be followed by suggestions of restrictive and discriminatory measures. It should come as no surprise that scholarly and political debates surrounding autonomy and representation quite often lead to the issue of ‘ethno-business’, i.e. the usage of ethnicity-based organizations and ethnic mobilization for the purposes of gaining certain political or economic benefits.²⁵ The implication that ‘disguised’ ethno-businesses (resting on incentives) can be separated from ‘true’ representation (based on wishful thinking) also invites state intrusion. Generous declarations on the right to freely choose individual ethnic affiliation and cultural preferences are obviously an important achievement of modern human rights law. Nevertheless, the entire situation generates strong incentives for the state and activist machinery to limit people’s ability to choose, and there are numerous lawful devices for either direct or indirect coercion.



In practice, all this may entail qualifications, restrictions, bans and obligations for individuals. Eventually, the result may end up mirroring a situation where state bureaucracy hand in hand with ethnic activists decides who is entitled to what. The current enthusiasm of the normative scholarship on the promotion of NTA as a universally applicable model may lead to negligence of the harm this model can cause to real people.

Third, there is an issue of public positive obligations towards the support of minority educational and cultural institutions still being only vaguely conceptualized in international instruments and theoretical debates. The idea that the funding of NTA is to be held as the unquestionable duty of public authorities would likely artificially multiply the number of people who consider themselves victims of human rights violations (i.e. underfunding in this context.)

VI. BACKGROUND ISSUES

Two issues not directly related to the origins of NTA in fact have had a strong impact on the moral atmosphere surrounding the autonomy debates. These magical idioms of ‘self-determination’ and ‘preservation’ or ‘survival’ of ‘cultures’ or ‘identities’ are not necessary components in the rationalizations and justifications of NTA,²⁶ but there is much evidence that they weigh heavily in the back of many scholars’ minds.

The concept of ‘self-determination’ has been borrowed by several social disciplines from the legal domain. It has a high moral status and definitely reasserts the *groupist* attitudes to social reality, but beyond this it is not clear what added value it brings about into the scholarly debates.

In the legal domain, ‘self-determination’ with regard to ‘nations’ and ‘peoples’ initially concerned nation- and state-building on the basis of territorially defined collectives and thus dealt with the external configuration of statehood. The

UN Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, approved by the United Nations General Assembly in its Resolution 2625 (XXV) of 24 October 1970 gave birth to the doctrine of ‘internal self-determination’, which initially merely envisaged democratic participation of the populace in governance on the grounds of equality.²⁷ Gradually, the subsequent professional debates among legal scholars and political theorists have given rise to a broader interpretation within which the self-organization of groups and the acquisition of certain sub-national statuses of groups began to be interpreted as a subset of the self-determination concept.²⁸ Numerous scholars have put forward and have justified further recognition of this right with respect to national and ethnic groups being able to set up and assert their autonomy at a sub-national level.²⁹

As a result, the arguments of many authors rest their foundation on the belief that NTA is backed with some legal and moral imperative relating to the notion that each and every ethnic group is ultimately entitled to some type of group sovereignty and ability to claim and freely exercise the principle of self-determination, even if only in collective non-territorial forms. However, the idea of self-determination is far from being clear, and even legal professionals are a ways away from reaching consensus on even the basics of the concept. One may legitimately ask whether it makes sense to exclude issues such as sovereignty and self-determination from discussions on how the notion of NTA can be utilized.

Also, from a legal perspective, there are no clear reasons to treat ‘self-determination’ as something other than a fictive norm. In other words, this formula, which is present within many international instruments, may look like a legal norm, but it lacks clarity in regard to its content, right holders, obligation bearers and the very opportunity of its *normative*, i.e. uniform repetitive application. If one discards the very



utilization of this notion, everything falls into place. As for the political science perspective, the notion of self-determination in international instruments and activities of international organizations can be easily interpreted as a typical 'lock-in' – an inefficient but persistent institutional setting.

The notion of cultural preservation looks similarly dubious. First of all, the whole interpretation of ethnic cultures as being attributes of individual groups, on its face, seems to be highly questionable. Second, the theoretical debates in political theory and moral philosophy of recent decades fall short from providing a well-grounded argument in favour of treating ethnic cultures as a common and universal value *per se*. Third, there is no international legal standard prescribing preservation by all means necessary of what can be regarded as group cultures. However, if one regards the preservation of certain cultural traits not as a universal, but as a particularistic value, which legitimately deserves negotiation and accommodation – everything falls into place again.

Of course, there is a move in this direction within some soft law instruments and in professional debates. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, in its Article 1 (1), stipulates that 'States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.' General Comment 23 of the UN Human Rights Committee's General Recommendation states in paragraph 6.2 that 'positive measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group.' However, these two most radical provisions belong to the domain of soft law and are not binding in the strict sense. The other relevant instruments

referring to cultural rights and the values of cultural diversity are even further from being rigidly interpreted.³⁰

VII. WHAT ABOUT THE ADDED VALUE OF NTA?

If the notion of NTA were imagined as a large container, it would be absolutely over-flowing with the all-too-many kinds of human activities which would claim the right to be stored within. Again, this may press one to back up and question the value of NTA in the first place. Placing the tag of 'autonomy' on social networking, all kinds of segregation patterns, claim-making and mobilization, social activism and clienteles can tell nothing about the nature and origins of these phenomena. There is little help in labeling as 'autonomous' those public institutions, which function in the areas of culture and education, for the reasons that they are being separated along ethnic or linguistic lines. The same is equally true for voluntary non-governmental organizations established on ethnic grounds. Those scholars who study conflict resolution, power-sharing arrangements, the integration of immigrants or debates about the meaning of multiculturalism can do without resorting to such a notion as NTA, and can not only cope but could even more clearly express themselves and defend their arguments with alternative terminology and research tools which are already in place.

Likewise, the validity of normative models such as minority representative councils with public competences, based on doubtful assumptions and containing unclear perspectives regarding practical utilization (as outlined above), must be also put under question mark as normative models even though they might be workable solutions in individual situations. If one rejects the major *groupist* assumption and its derivatives, which are the basic building blocks of the ideas that form the foundation of NTA, then the entire construction falls like a house of cards. In the light of all this, is there any room



for the usage of NTA as an analytical category free from considering ethnicities as ontological groups and cohesive social entities?

The suggested answer is that there are only two thematic areas where there is a room for NTA's application without having to accept *groupist* implications. One may, first, single out the type of policies which have been designed for the accommodation and facilitation of collective activities and pursued on behalf of identity-based groups, and which imply special treatment and encouragement of such activities and organizations, while at the same time denoting for its use a generic-sounding term such as 'policies of non-territorial autonomy'. One may conditionally refer in this manner to those top-down strategies and arrangements (including rhetorical exercises) which purport the need to create conditions for the self-organization and activity of ethnic groups as such. In other words, within the framework of 'NTA policies', public authorities behave as if there were ethnic groups *per se* in need of self-organization and empowerment; it is the government - but not scholars or other external observers - who reify ethnicities and attribute agency thereto. Of course, these types of policies may also include attempts to organize an ethnic group into a corporate entity based on personal membership and then granted the competences to carry out certain public functions. Therefore, one can single out a more or less distinguishable class of top-down discourse and institutional settings; needless to say that applying this approach to ethnic politics in general would make the whole category too broad and meaningless because most ethnicity-based claims rest on the ideas of group agency.

The second possible approach belongs to the domain of public administration and refers to the combination of self-government with regular allocation of public resources. While in philosophy 'autonomy' is specified as the independence and free will of the 'self'; in law and political science the same term would, on the other hand, indicate the relative and partial independence of the 'part' with respect to the

'whole entity'. One can assume that 'autonomy' becomes an appropriate term here when certain institutional arrangements based on independent decision-making processes exist as either integral parts of national diversity policies or as national cultural and educational policies. In other words, the word 'autonomy' should apply not to groups or imaginary all-embracing public law corporations, but to autonomous sub-systems of the decision-making and the provision of services in education and culture, which exist beyond - and in addition to - regular political processes and administration.

This approach would delineate a certain sphere of policies and administration where public authorities could collaborate or engage in partnerships with civil society. In practical terms, NTA as a set of principles may cover a broad range of diverse arrangements such as public-private partnerships or non-governmental organizations, which are granted public regulatory competences or functions in, for example, areas such as service deliveries or standard-setting in training and education. The range of possible organizational forms may stretch from corporate entities which are integrated into state machinery (as suggested by Karl Renner) through 'administrative democracy'³¹ - i.e. the incorporation of elected or expert bodies into regular public decision-making processes, all the way to NGOs which are subsidized on a regular basis from public budgets. In essence, the meaning of NTA may be what is known in different national contexts as 'new public management'³² or 'indirect administration'³³ in the domain of cultural and educational policies, i.e. the delegation of public functions and competences to non-public-sector agents.

In this context, the adjective of 'non-territorial', like most other potential adjectives ('cultural' or 'personal'), are to a certain degree problematic. 'Functional autonomy' turns out to be more appropriate; however, 'non-territorial' may also serve as a generic term if we are to give respect to the recently established tradition of naming ethnicity-based arrangements.



These two ways of using the notion of NTA as an analytical category apply within a narrow framework and are interchangeable with other more traditional descriptive approaches such as ‘rights of persons belonging to minorities’ or ‘special measures targeting minorities’ or ‘participation of minorities in public life’. With all of this taken into consideration, it is at the same time needless to say that the overall study of NTA a category of practice and its usage in real life with all its meanings and implications remains an important and promising area of empirical research.³⁴



Footnotes

¹ Suksi, M. (ed.) (1998) *Autonomy: Applications and Implications* (The Hague and Boston: Kluwer Law International); Coakley, J. (1994) “Approaches to the Resolution of Ethnic Conflict: The Strategy of Non-territorial Autonomy”, 15(3) *International Political Science Review*, pp.297-314; Lapidoth, R. (1997) *Autonomy: Flexible Solutions to Ethnic Conflicts* (Washington, D.C.: United States Institute of Peace Press). There were also earlier references to the ideas of NTA (see Dinstein, Y. (ed.) (1981) *Models of Autonomy* (New Brunswick, N.J.: Transaction Books)), but the real increase in scholarly interest to the issues dates back to 1990s.

² See, for example, Dobos, B. (2007) “The Development and Functioning of Cultural Autonomy in Hungary”, 6(3) *Ethnopolitics*, pp.451–69; Aidarov, A. and W. Drechsler (2011) “The Law & Economics of the Estonian Law on Cultural Autonomy for National Minorities and of Russian National Cultural Autonomy in Estonia”, 12(1) *Halduskultuur – Administrative Culture*, pp.43-61.

³ O’Leary, B. (2008) “The Logics of Power-sharing, Consociation and Pluralist Federations”, in B.Metzger, M. Weller and N.Johnson (eds.) *Settling Self-determination Disputes: Complex Power-Sharing in Theory and Practice* (Leiden: Martinus Nijhoff Publishers), pp. 47-58, at 47, 54-55; Heintze, H.-J. (1998) “On the Legal Understanding of Autonomy”, in M.Suksi (ed.) *Autonomy: Applications and Implications* (The Hague and Boston: Kluwer Law International), pp.7-32, at 15-16.

⁴ Decker, C. (2008) “Contemporary forms of cultural autonomy in Eastern Europe: recurrent problems and prospects for Improving the functioning of elected bodies of cultural autonomy”, in *The Participation of Minorities in Public Life* (Strasbourg: Council of Europe Publishing), pp.89-99, at 89-90; Ghai, Y. (2000) “Ethnicity and Autonomy: A Framework for Analysis”, in *id.* (ed.) *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States* (Cambridge and New York: Cambridge University Press), pp.1-28, at 8; Benedikter, T. (2009) *The World’s Modern Autonomy Systems. Concepts and Experiences of Regional Territorial Autonomy* (Bozen/Bolzano: European Academy of Bozen/Bolzano), pp.39-40.

⁵ Malloy, T. (2009) “The Lund Recommendations and Non-Territorial Arrangements: Progressive De-territorialization of Minority Politics”, 16(4) *International Journal on Minority and Group Rights*, pp. 665-79, at 665, 667-68, 673-675; Suksi, M. (2008) “Personal Autonomy as Institutional Form – Focus on Europe Against the Background of Article 27 of the ICCPR”, 15(2-3) *International Journal on Minority and Group Rights*, pp.157–78.

⁶ Heintze, *op.cit.* note 3; Lapidoth, *op.cit.* note 1; Safran, W. (2000) “Spatial and Functional Dimensions of Autonomy: Cross-National and Theoretical Perspectives”, in W. Safran and R. Maiz (eds.) *Identity and Territorial Autonomy in Plural Societies* (London, Portland: Frank Cass), pp.11-34.

⁷ Bauer, O. (2000) *The Question of Nationalities and Social Democracy* (Minneapolis: Univ. of Minnesota Press); Renner, K. (2005) “State and Nation”, in E.Nimni (ed.) *National-Cultural Autonomy and its Contemporary Critics* (London and New York: Routledge), pp. 13-40.

⁸ Coughlan, R. (2000) “Cyprus: from Corporate Autonomy to the Search for Territorial Federalism”, in Y.Ghai (ed.) *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States* (Cambridge and New York: Cambridge University Press), pp.219-41.

⁹ Brubaker, R. (2002) “Ethnicity without groups”, XLIII(2) *Archive Européenne de Sociologie*, pp. 163-89, at 164.

¹⁰ *Ibid.* p.164.

¹¹ Brubaker R. and F. Cooper (2000) “Beyond Identity”, 29(1) *Theory and Society*, pp.1-47

¹² Gal, K. (2002) “Minority Governance on the Threshold of the Twenty-First Century”, in *Id.* (ed.) *Minority Governance in Europe* (Budapest: LGI), pp.1-8.

¹³ Henrard, K. (2005) “‘Participation’, ‘Representation’ and ‘Autonomy’ in the Lund Recommendations and their Reflections in the Supervision of the FCNM and Several Human Rights Conventions”, 12(2-3) *International Journal on Minority and Group Rights*, pp.133–168; Ghai, Y. (2005) “Autonomy as a Participatory Right in the Modern Democratic State. Public Participation, Autonomy and Minorities”, in Z.Skurbaty (ed.) *Beyond a One-Dimensional State: an Emerging Right to Autonomy?* (Leiden and Boston: Martinus Nijhoff Publishers), pp. 3-45.

¹⁴ Weyss, B. and A.Lubich (2004) “Minority Protection and Anti-discrimination Policies: Synergies and Challenges at the EU Level”, *European Yearbook of Minority Issues*, Vol.4, pp.297-320, at 315.

¹⁵ For illustrations see: Sandel, M. (1982) *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press); Ostrom, E. (1990) *Governing the Commons. The Evolution for the Institutions for Collective Action*.



(Cambridge: Cambridge University Press); Gallenkamp, M. (1998) *Individualism versus Collectivism. The Concept of Collective Rights* (Rotterdam: Erasmus Universiteit Rotterdam).

¹⁶ Term coined by Edward E. Azar, see Azar, E. (1990) *The Management of Protracted Social Conflict: Theory & Cases* (Dartmouth: Aldershot).

¹⁷ Bourdieu, P. (1985) "The Social Space and the Genesis of Groups", 14(6) *Theory and Society*, pp. 723-44.

¹⁸ Pitkin H. (1967) *The Concept of Representation* (Berkeley, Los Angeles, London: University of California Press, 1967).

¹⁹ Decker, C. *op.cit.* note 4, p.92.

²⁰ Jenne, E.K. (2007) *Ethnic Bargaining: The Paradox of Minority Empowerment* (Ithaca, New York, USA: Cornell University Press), pp.17-18.

²¹ Waldron, J. (1995). "Minority Cultures and the Cosmopolitan Alternative", in W.Kymlicka (ed.) *The Rights of Minority Cultures* (Oxford: Oxford University Press), pp.93-119, at100-105; Brubaker, R.; M. Loveman and P. Stamatov (2004) "Ethnicity as cognition", 33(1) *Theory and Society*, pp.31-64.

²² Brunner, G. and H. Küpper (2002) "European Options of Autonomy: A Typology of Autonomy Models of Minority Self-Governance", in K.Gal (ed.) *Minority Governance in Europe* (Budapest: LGI), pp.13-36, at 29-30.

²³ *Ibid.*, p.29; Suksi, M. *op.cit.* note 5, p.176; Machnyikova, Z. (2005) "Article 7", in M. Weller (ed.) *The Rights of Minorities: A Commentary on the European Framework Convention for the Protection of National Minorities* (Oxford: Oxford University Press), pp.193-224, at 212.

²⁴ Brunner, G. and H.Küpper, *op.cit.* note 22, p.31.

²⁵ Decker, C. *op.cit.* note 4, p.91; Bauböck, R. (2001) *Multinational Federalism: Territorial or Cultural Autonomy?* Willy Brandt Series of Working Papers in International Migration and Ethnic Relations 2/01. IMER. International Migration, p.34, at <<http://dspace.mah.se/bitstream/handle/2043/690/Workingpaper201.pdf;jsessionid=4B5BD3E304AE51B5CEDAB02106BF66CC?sequence=1>>.

²⁶ Jabareen, Y T. (2008) "Toward participatory equality: protecting minority rights under international law", 41(3) *The Israel Law Review*, pp.635-76.

²⁷ Cassese, A. (1995) *Self-determination of People: A Legal Reappraisal* (Cambridge: Cambridge University Press), pp.311, 347; Rosas, A. (1993) "Internal Aspects of the Right to Self-Determination: towards a Democratic Legitimacy Principle?", in C. Tomuschat (ed.) *Modern Law of Self-Determination* (Dordrecht: Martinus Nijhoff Publishers) pp.225-251; Castellino, J. (2000) *International Law and Self-Determination. The Interplay of the Politics of Territorial Possession with Formulations of Post-Colonial 'National' Identity* (The Hague: Martinus Nijhoff Publishers), pp. 32-41.

²⁸ Hannikainen, L. (1998) "Self-Determination and Autonomy in International Law", in M.Suksi (ed.) *Autonomy: Applications and Implications* (The Hague and Boston: Kluwer Law International), pp.79-95, at 85-91; Knop, K. (2002) *Diversity and Self-Determination in International Law* (Cambridge: Cambridge University Press) pp.79-85; Loukacheva, N. (ed.) (2010) *Polar Law Textbook* (Copenhagen: Nordic Council of Ministers) pp.133-34, 137.

²⁹ McCorquodale, R. (1994) "Self-Determination: A Human Rights Approach", 43(4) *International and Comparative Law Quarterly*, pp. 857-85, at 864-65; Neuberger, B. (2001) "National Self-determination: theoretical discussion", 29 (3) *Nationalities Papers*, pp. 391-418; Nootens, G. (2006) "Liberal nationalism and the territorial idea", 12(1) *Nations and Nationalism*, pp. 35-50.

³⁰ For an overview see Xanthaki, A. (2010) "Multiculturalism and International Law: Discussing Universal Standards", 32(1) *Human Rights Quarterly*, pp. 21-48.

³¹ Fletcher, C. (1997) "Federalism and Indigenous Peoples in Australia", in M.Brown and S. Ganguly (eds.) *Government Policies and Ethnic Relations in Asia and the Pacific* (Cambridge, Mass.: MIT Press), pp.395-420.

³² McLaughlin, K., S.P. Osborne and E. Ferlie (eds.) (2002) *New Public Management. Current trends and future prospects* (London and New York: Routledge); Pollitt, C., S. van Thiel and V. Homburg (2007) *New Public Management in Europe. Adaptation and Alternatives* (Houndmills, Basingstoke: Palgrave Macmillan).

³³ Modeen, T. and A. Rosas (1990) *Indirect Public Administration in the Fields of Education and Pensions* (Åbo: Åbo Academy Press).



ABOUT THE AUTHOR

Alexander Osipov

Senior Research Associate, heading the Justice & Governance Cluster at ECMI

Contact: osipov@ecmi.de

FOR FURTHER INFORMATION SEE

EUROPEAN CENTRE FOR MINORITY ISSUES (ECMI)

Schiffbruecke 12 (Kompagnietor) D-24939 Flensburg

☎ +49-(0)461-14 14 9-0 * fax +49-(0)461-14 14 9-19

* E-Mail: info@ecmi.de

* Internet: www.ecmi.de