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Intense ethnic conflicts have become landmarks of regions throughout the postwar world. These conflicts have brought about a terrible devastation of lives and places. They are responsible for a high percentage of the systematic violations of individual human rights in the modern world, and their toll threatens to grow.

This ongoing violence has led to debate about the wisdom of developing international law norms on autonomy regimes for ethnic minorities. Such regimes amount to governmental systems or subsystems administered or staffed by a minority or its members. This Article explores the problems posed by autonomy regimes.[1] Since these regimes bear on vital matters addressed in the modern world by the human rights movement, the Article argues that ideals inhering in that movement should inform the ongoing debate. It tests autonomy regimes against these ideals as expressed in two basic human rights instruments: the Universal Declaration of Human Rights[2] and the International Covenant on Civil and Political Rights.[3]

The recurrent conflicts have spurred efforts to draft international instruments dealing with minorities' problems by seeking to avert the circumstances that lead to violence.[4] Those instruments

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1 An earlier version of the Article was presented at a symposium on ethnic conflict at Notre Dame Law School in February 1991. I am grateful for the helpful comments then made on my presentation, and for later comments of my colleagues Randall Kennedy and Martha Minow.

The Article forms part of a more comprehensive project of examining autonomy regimes. Its principal theme of ideals and counter-ideals will figure as a part of my pending article, Steiner, *Minorities and Autonomies*, in ETHNIC CONFLICT AND THE U.N. HUMAN RIGHTS SYSTEM (H. Steiner ed. forthcoming).

2 G.A. Res. 217A, U.N. Doc. A/810, at 71 (1948) [hereinafter the Universal Declaration].

3 *Opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976) [hereinafter Civil-Political Rights Covenant].

4 An open-ended working group of the U.N. Human Rights Commission is preparing a Draft Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities [hereinafter the Draft Declaration]. A recent version of that

elaborate norms in the form of declarations and conventions. The norms in the present drafts bear principally on rights of minority members individually (like rights to equal protection, fair process, free speech, and association). To some extent, they address claims of minorities in their group or collective character. Some of those claims involve autonomy regimes.

This Article argues that autonomy regimes, or some forms thereof, find indirect but significant support in several prominent norms of the human rights movement. Moreover, they can be understood to reinforce some underlying ideals of that movement as a whole. On the other hand, these regimes can undermine other powerful human rights ideals, and to that extent embody a morally problematic counter-ideal. Nonetheless, the Article asserts that this contradiction between autonomy regimes and human rights ideals should not itself resolve the debate whether such regimes should gain some measure of recognition in international law. Often ethnic minorities have understandably viewed those regimes as necessary not simply to assure their cultural survival, but principally to avoid oppression and violence. In such circumstances, autonomy regimes may be justified as "least worst" solutions to almost intractable problems, perhaps frustrating the full realization of important ideals but ending or forestalling unjust rule.

I. THE NATURE OF AUTONOMY REGIMES

The minority groups seeking autonomy regimes (or schemes, arrangements) are typically described as ethnic, religious, linguistic, or national origin in character. This Article uses the term "ethnic" as a shorthand way to describe all such minorities, whatever their distinctive mark.[5] That term then encompasses

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declaration is set forth in 46 U.N. ESCOR at 11. U.N. Doc. E/CN.4/1990/41 (1990).

Several European projects look toward the elaboration of rights of minorities and their members. Within the Helsinki process, see chapter IV of the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe, June 29, 1990, *reprinted in* 11 HUM. RTS. L.J. 232, 242 (1990) [hereinafter Copenhagen Document]. On Feb. 8, 1991, the European Commission for Democracy through Law, a consultative body of the Council of Europe, adopted a Proposal for a European Convention for the Protection of Minorities, *reprinted in* 12 HUM. RTS. L.J. 270 (1991) [hereinafter European Convention Proposal].

5 The Article ignores nonethnic minorities that may also enjoy autonomy rights—for example, a self-governing regional population that constitutes a minority of a state and is polyethnic in character. Moreover, it does not consider the distinctive problems of one important type of minority, indigenous peoples. The Draft Declaration, *supra* note 4, does

groups as diverse, and as relatively cohesive or diffuse, as the Flemish in Belgium, blacks and Jews in the United States, and persons of North African ancestry in France. Often ethnic minorities possess two or more of these defining characteristics—Basques in Spain, Gypsies in Hungry, Tamils in Sri Lanka, Palestinians in Israel, Kurds in Iraq, and the Francophone population in Canada.

Such varied illustrations indicate the range of relationships between these minorities and the balance of a state's population. The differences between the minority and others may be relatively inconsequential. Indeed, the minority may be in the process of assimilation into the dominant culture. On the other hand, the differences may be profound and divisive, reaching to basic world views and individual identity. Policies of the majority or dominant groups in a society may lessen tensions or, by denying minority groups fair shares or opportunities, may exacerbate problems to the point of risking conflict that threatens social order. In these latter circumstances, the claims of ethnic minorities for autonomy schemes will become most insistent.

Three types of schemes figure in this discussion. Each has an impressive range of variations, such that a bare reference to an "autonomy scheme" tells us nothing about its social context or salient details, and hence nothing about its political and moral character.[6]

The first type consists of power-sharing regimes. Such regimes carve up a state's population in ethnic terms to assure one or several ethnic groups of a particular form of participation in governance or economic opportunities. For example, members of a religious or linguistic minority may be constitutionally entitled to elect a stated percentage of members of the national legislature through the use of separate voting rolls that list competing candidates drawn only from the relevant minority. All legislators who are members of a particular minority may be authorized to vote as a bloc with power to veto proposed measures adversely affecting

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not take account of indigenous peoples. The U.N. has followed a different institutional track to elaborate norms for such peoples, including norms involving autonomy schemes. Despite having many issues in common, the categories of ethnic minorities and indigenous peoples raise distinctive problems that recommend separate analyses.

6 The variety of historical (and possible) arrangements of the types of autonomy schemes sketched in the following paragraphs is illustrated in writings like Lijphart, *The Power-Sharing Approach*, in CONFLICT AND PEACEKEEPING IN MULTIETHNIC SOCIETIES 491 (J. Montville ed. 1990); Duchacek, *Federalist Responses to Ethnic Demands: An Overview*, in FEDERALISM AND POLITICAL INTEGRATION (D. Elazar ed. 1979).

the minority, such as a change in official languages or voting schemes. Representatives of a minority may be assured of formal consultation by the government before decisions are taken on issues like development projects. Power-sharing schemes may reserve for minority groups designated cabinet positions or a certain portion of the judiciary. Belgium and Lebanon offer present and historical illustrations of a relative success and a tragic failure in power-sharing arrangements.

A second type of autonomy scheme gives an ethnic minority political control of a certain territory. Either through devolution of powers or through a federal structure assuring the central government and regional components of designated powers, a territorially concentrated ethnic minority can govern its own affairs to a greater or lesser extent: Indian states, Catalonia in Spain. How extensive those powers are—regional elective government, command of local police, control over natural resources, management of regional schools—depends upon the bargain reached between a minority and other political forces in the society.[7]

The third type of autonomy regime provides that members of an ethnic community will be governed by a personal law distinctive to it, usually a law of religious origin. All members of a religious community, whether a majority or minority—Jews, Muslims, and members of different Christian communities in Israel; Muslims and Hindus in India—may be subject to a religion-based family law that is applied by religious courts. Like power sharing, a personal law can provide an important degree of autonomy and cohesion even for minorities that are territorially dispersed.

Autonomy schemes may be rooted in deep customs and not take formal legal expression. But normally they are spelled out in constitutions or statutes identifying the particular ethnic group(s) benefiting from the scheme and the type of participation in governance or economic benefits given such group(s). That is, autonomy arrangements constitute part of a state's system of government.

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7 Many autonomy schemes in contemporary states have only indirect and contingent correlations with ethnic minorities, and hence stand outside the themes of this Article. Thus federalism and devolution of powers have generally led to separately governed regions of a state that have polyethnic populations. *See* Glazer, *Federalism and Ethnicity: The Experience of the United States*, 7 Publius 71 (1977). After centuries of voluntary and coerced migrations, and as a result of urbanization and high personal mobility, only a few countries like Switzerland, India, and the Soviet Union (at least until the recent rash of many republics' assertions of sovereign independence) have boundaries for regional governments that are even roughly congruent with different ethnic minorities.

Those individuals or institutions administering a scheme—religious courts applying a personal law, an ethnic government of a particular region, administrators of a power-sharing arrangement—exercise governmental power and hence appear subject to provisions of human rights instruments giving individuals rights against government.

Autonomy regimes benefiting ethnic minorities can work radically different effects on a society. For example, a personal law distinctive to a group will not directly affect nonmembers or touch major political issues like political participation. On the other hand, governance of a component region of a federal state by an ethnic minority will influence political participation and the distribution of resources. That local control, however, will not itself assure the ethnic minority of a significant voice in a central government that retains many powers affecting the minority's welfare. Power-sharing in the central government may protect a minority against certain prejudicial changes, as by the minority's exercise of a bloc veto power. But it may fail to empower that minority to exert effective pressure for desired changes. Even in a democratic regime, the minority, absent the possibility of coalition politics, may be consistently outvoted and ignored, its interests and claims effectively dismissed.

II. AUTONOMY REGIMES AS GROUP CLAIMS OR RIGHTS

Most rights declared in human rights instruments have an individual character evidenced by their wording ("every person") and content (the right to a fair trial, to travel, to free speech). At the same time, many such rights constitute vital conditions to the formation and functioning of groups, including ethnic minorities. Rights of members of minorities to use their own language, to practice their religion, or to associate, are necessarily exercised jointly by individuals. In this respect, such individual rights have an inherently collective character.

Other human rights norms, such as those assuring individuals of nondiscriminatory treatment, necessarily implicate groups at the outset. They demand that the state (and to some extent nongovernmental actors) refrain from disadvantaging an individual because of a group characteristic or identity. The individual's link to the relevant group constitutes the very occasion for discrimination.

Protecting a person from discriminatory treatment benefits all members of the group, as well as the group collectively.[8]

In the contexts of the rights thus far referred to, a legal system does not identify an individual's particular group identity (religious, racial) as a condition to the assertion of a right by that individual. A statute in the United States need not specify that ethnic minorities like Asian Americans, blacks, or Jews have rights to association or equal protection. These general norms address all minorities and their members. All persons benefit equally.

Constitutional or statutory provisions giving preferential treatment to members of disadvantaged ethnic or gender groups—including affirmative action policies authorized by human rights instruments prohibiting discrimination[9]—have characteristics of both individual and group rights. Individuals belonging to an identified group can assert legal rights based on affirmative action provisions to strengthen their chances of gaining, say, employment. In so doing, they rely on their group identity as set forth in the relevant legal provisions. By advancing their private interests, they serve the underlying purpose of advancing the welfare of the group as a whole.

Consider how these observations bear on autonomy regimes. If we for the moment imagine a "right" to these regimes, it would contrast markedly with the range of rights previously described. Autonomy rights would lie unmistakably on the collective side of the boundary between individual and group rights. If we speak not of "rights to" but of "claims for" autonomy regimes, those claims are made by the relevant minority in its corporate character and again have a collective nature.

The group character of such rights or claims appears in numerous ways. Often autonomy schemes stem from agreements

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8 These rights to equal protection are generally enforced judicially and administratively through proceedings involving individual members of the group suffering discrimination. In some countries, a range of procedural devices and legal concepts may maintain a formal distinction between individual and group actions, but draw the two closer together. In the United States, the use of a class action to challenge gender or racial discrimination gives the lawsuit a systemic, group character. Class actions based on the U.S. Constitution that seek school desegregation may effectively pit a relevant (black) population against a relevant government authority. Class actions alleging employment discrimination and based on statutory standards may have a similar group and systemic character.

9 *See, e.g.*, Convention on the Elimination of All Forms of Discrimination Against Women, art. 4, G.A. Res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 194, U.N. Doc. A/34/830 (1979).

negotiated between an ethnic group and the central government or between different ethnic groups. Those agreements are then ratified in constitutions or statutes. This process of negotiation and bargain generating an agreement emphasizes ethnicity and groups. Moreover, ethnically constituted bodies implement many autonomy schemes: a religious court administering a personal law; a regional government consisting principally of members of the regionally dominant ethnic group; and an ethnic political party functioning within a power-sharing scheme assigning to that ethnicity a given number of legislators. Autonomy schemes bring society a long step closer to communal organization.

Within some autonomy schemes, such as a personal law applied by religious courts, individuals may be able to contest before secular courts the application (or nonapplication) to them of the personal law. But in most schemes, the ethnic group itself, whatever its form of corporate organization or expression, would be the appropriate complainant to remedy a violation of autonomy arrangements. The questions are so fundamental to a state's organization and the distribution of power among ethnic groups, and the potential solutions are so detailed and varied, that planning and implementing such schemes likely requires recourse to political negotiations and processes rather than to judicial remedies.

III. Bases for Autonomy Regimes in Human Rights Instruments

Although autonomy regimes lack a concrete base in the major human rights instruments, their advocates can, nonetheless, find support for their arguments in important norms in those instruments.[10] Three provisions of the Civil-Political Rights Covenant are particularly relevant: articles 1, 25, and 27.

The principle of self-determination in article 1[11] has been applied primarily to claims for sovereign independence, or so-called external self-determination, particularly in the context of

10 My argument, here tersely summarized, is elaborated in my pending article, *supra* note 1.

11 Paragraph 1 of article 1 provides: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Paragraph 3 requires parties to the Covenant to "promote the realization of the right of self-determination," and to "respect that right, in conformity with the provisions of the Charter of the United Nations." Civil-Political Rights Covenant, *supra* note 3, at art. 1.

decolonization as colonized peoples gained the status of sovereign states. Nonetheless, there are reasons for interpreting article 1 to reach also to the internal affairs of states, to so-called internal self-determination, given both its permissive wording and its position as the introductory article of a human rights covenant that speaks primarily to rights exercised within a state.[12] It is true that even under this broad interpretation of article 1, ethnic minorities demanding internal self-determination through an autonomy regime could not easily draw directly on it. Among other obstacles, that article refers to self-determination not by minorities but by "peoples."[13] Despite such impediments, the powerful idea of collective self-determination that article 1 expresses would be helpful to advocates of autonomy schemes for ethnic minorities.

Article 25's declaration of a right of citizens to political participation[14] involves both a concrete right, the vote, and a general right to "take part" in governance. Among other goals, autonomy schemes achieve particular, distinctive forms of political participation for ethnic minorities. Their advocates can draw on article 25 to argue that many ethnic minorities lack effective political voice, often because of authoritarian and repressive government, but also in circumstances where majoritarian democracy so functions as to give the minority no effective electoral power or political leverage. The thrust of that argument would be the claim that only an autonomy regime could give the minority and its members the kind of fair or equitable political participation that article 25 should be interpreted to require.[15]

By conferring the right to enjoy and develop one's own culture—what we can term a "cultural survival" right—article 27

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12 *See generally* Cassese, *Political Self-Determination—Old Concepts and New Developments*, in U.N. LAW: FUNDAMENTAL RIGHTS 137 (A. Cassese ed. 1979).

13 *See generally* THE RIGHTS OF PEOPLES (J. Crawford ed. 1988). For a brief discussion of collective rights, peoples, and minorities, see Capotorti, *Are Minorities Entitled to Collective International Rights?*, 20 ISRAEL Y.B. ON HUM. RTS. 351 (1990).

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> Every citizen shall have the right . . . (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors . . . .

Civil-Political Rights Covenant, *supra* note 3, at art. 25.

15 Compare the references to notions like fair or equitable participation in art. 3(2) and art. 7 of the Draft Declaration, *supra* note 4, art. 35 of the Copenhagen Document, *supra* note 4, and art. 14 of the European Convention Proposal, *supra* note 4. *See* Steiner, *Political Participation as a Human Right*, 1 HARV. Y.B. HUM. RTS. 77, 105-13 (1988).

blends the individual and collective aspects of a minority culture.[16] Formally it gives rights to individuals, but the thrust of the article is to stress culture as a communal, group phenomenon. Advocates of autonomy schemes could find in article 27 some support for their argument that only such schemes can assure the survival of the distinctive culture of many ethnic minorities.[17]

These are adventuresome arguments. They do not leap ready-made out of the Universal Declaration or the Covenant. Nor do they command significant support among states or even among actors within the human rights community. My point then is not to assert the Covenant's decisive influence on a debate about autonomy regimes. To the contrary, one must argue boldly and inventively to demonstrate that important provisions of human rights law can be interpreted to lend qualified support for some forms of autonomy.[18]

IV. IDEALS AND COUNTER-IDEALS

The question here explored goes beyond the prior discussion's stress on the relevance to autonomy schemes of specific human rights provisions. We now inquire whether those schemes tend to realize vital ideals pervasive to the entire human rights movement, and paradoxically threaten at the same time to subvert those very ideals.

Let us first consider how autonomy schemes reinforce a basic human rights ideal. The Universal Declaration and Civil-Political Rights Covenant accept and, indeed, encourage many forms of

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16 "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language." Civil-Political Rights Covenant, *supra* note 3, at art. 27.

17 *See* F. CAPOTORTI, STUDY ON THE RIGHTS OF PERSONS BELONGING TO ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES, U.N. Doc. E/CN.4/Sub.2/384/Rev. 1, U.N. Sales No. E.78.XIV.1 (1979); C. Tomuschat, *Protection of Minorities under Article 27 of the International Covenant on Civil and Political Rights*, in FESTSCHRIFT FUR HERMANN MOSLER 949 (R. Bernhardt, W. Geck, G. Jaenicke, & H. Steinberger eds. 1983).

18 In this Article, I do not consider another level of justification for autonomy regimes—the argument that from psychological and sociological perspectives individual identity and (ethnic) group identity are often linked, and that autonomy regimes respond to deep needs of people to gain self-respect and security by feeling part of their "own" community. *See* CONFLICT AND PEACEKEEPING IN MULTIETHNIC SOCIETIES (J. Montville ed. 1990); Mack, *Nationalism and the Self*, 2 PSYCHOHISTORY REV. 47 (1983); Berlin, *Nationalism: Past Neglect and Present Power*, 46 PARTISAN REV. 337 (1979). My arguments here are confined to those having some plausible basis in the ideals expressed by human rights law.

diversity. They insist on respect for difference, an insistence expressed only in part through the particular attention given ethnic minorities in article 27. The value placed on the survival (and creation) of diversity in cultural, religious, political, and other terms permeates human rights law, which evidences throughout its hostility to imposed uniformity.

The ideal of protecting and encouraging diversity informs many human rights provisions. No other norm in the human rights corpus plays as vital a role in the struggle to realize that ideal as the principle of equal protection, perhaps the preeminent human rights norm.[19] Its premise of the equal worth of individuals and their right to equal respect necessarily applies to the ethnic groups with which individuals are associated, for discrimination has the same systemic character whether it is directed against a group as a whole or selectively against a member. Article 26 of the Covenant defines broadly the kinds of groups protected against discrimination. It obligates state parties to give "to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status."[20] Many of the designated groups have a natural character; people are born into the groups, rather than choose them.

Other rights declared in basic human rights instruments complement the ideal of equal respect and confirm the value placed on diversity. Everyone has a right to adopt "a religion or belief of his choice" and has freedom "either individually or in community with others and in public or private" to manifest belief or religion in practice and teaching.[21] Rights to "peaceful assembly"[22] and "freedom of association with others,"[23] in each case qualified by typical grounds for limitation like public order or national security, further commit the human rights movement to the protection of people's ongoing capacity to form, develop, and preserve different types of groups.

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19 That principle figures importantly in the United Nations Charter (article 55(c)), the Universal Declaration (article 2) and the Civil-Political Rights Covenant (articles 2 and 26). Entire conventions such as those on gender and racial discrimination are built on it.

20 Civil-Political Rights Covenant, *supra* note 3, at art. 26.

21 *Id.* at art. 18.

22 *Id.* at art. 21.

23 *Id.* at art. 22.

We have noted that such provisions of the Universal Declaration and Civil-Political Rights Covenant are expressed in terms of individuals' freedom and choice of action, but that their individual and collective characters are nonetheless inextricably linked. This must be so. Groups and communities, not isolated individuals, transmit culture from one generation to the next. They embody and give significance to cultural and social differences in a society. Hence we see the link between autonomy regimes and an ideal of maintaining diversity. Since those regimes protect, indeed entrench, diversity in group terms, they must constitute an effective means to realize this fundamental human rights ideal.

These observations about the unmistakable significance of groups in the human rights movement for purposes including the preservation of differences might strike particular critics of the human rights movement as concealing more than they reveal. Some critics argue that the movement imposes on cultures throughout the world the concepts and norms expressing the extreme individualism of the developed West. That individualism, rooted in liberal ideology, is said to contrast markedly with the distinctive communal character or cosmologies of many Third World states.[24] Detached from collective or communal moorings to history, culture, and belief, individualism leads to assimilation of all persons into an undifferentiated mass culture reinforced by industrialization, urbanization, and pervasive as well as invasive media. The West has been successful in exporting such material and cultural attributes of its modern life to many traditional societies, thereby subverting their communal organization and encouraging a global homogenization.

This distinction between the developed West or liberal theory and many Third World societies tells an important truth, but is too starkly drawn with respect to its contrast between an individual and communal organization of social life. However guarded (if not hostile) the references in much liberal political theory may be to groups and group rights,[25] civil society in the "liberal" world is significantly composed by groups, including not only groups of

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24 *See* J. DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE (1989) (particularly chs. 3, 6, and 8); Pannikkar, *Is the Notion of Human Rights a Western Concept?*, 120 DIOGENES 75 (1982); POLLIS & SCHWAB, *Human Rights: A Western Construct with Limited Application*, in HUMAN RIGHTS 1 (A. Pollis & P. Schwab eds. 1979).

25 *See* J. SIGLER, MINORITY RIGHTS: A COMPARATIVE ANALYSIS (1983); V. VAN DYKE, HUMAN RIGHTS, ETHNICITY AND DISCRIMINATION (1985).

choice like economic and political interest groups or social clubs, but also natural groups like ethnic minorities acting through associations. The vast majority of people have substantial and vital relationships with communities whose distinguishing characteristic (religion, ethnicity, language, national origin) they share. Ethnic identity, communities, and blocs are not exclusive properties or problems of the Third World, even if the claims of community in that world are often deeper and more preclusive of other individual associations in social life.

In any event, my concern is not with the West or with liberal theory, but with the relation between autonomy regimes and the human rights movement. That movement did not incorporate the ideology or myth or stereotype of atomistic individualism as a governing premise or a social ideal.[26] Such a premise or ideal would have been fatally distanced from social reality in many states that participated in drafting the Civil-Political Rights Covenant or that later became parties to it. It would have starkly contradicted too vital and visible a feature of social existence. The basic human rights instruments necessarily assume that groups and communities constitute major components of social life.

By valuing diverse cultural traditions, and by its related protection of groups, human rights law evidences what must be a basic assumption—namely that differences enrich more than endanger the world. They contribute to a fund of human experience on which all individuals and groups can draw in the ongoing processes of change and growth. Ethnic groups nourish that fund. The diversity that they supply endows a society with different histories, experiences, beliefs, ideals, arts, and cultures. The survival of distinctive characteristics of ethnic minorities guards against the trend toward homogenization that has accompanied Western development, technology, and material prosperity, and Western influence on the rest of the world. Autonomy regimes of ethnic minorities defend cultural survival rights in counteracting this trend. In given

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26 This assertion becomes the more forceful as we consider not only the Universal Declaration and the Civil-Political Rights Covenant, but also the companion covenant that, together with the prior two instruments, forms the so-called International Bill of Rights. The International Covenant on Economic, Social and Cultural Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171 (*entered into force, Mar. 23, 1976*), expresses a sense of shared responsibility through duties of the state (and, thus, of its citizenry), to be progressively fulfilled, to maintain some minimum level of welfare consistent with resource and other constraints. *Id.* at art. 2. That Covenant too is at odds with an effort to characterize the human rights movement as expressing a vision of detached egotistic individuals proceeding in isolation toward their respective destinies.

contexts, they may be useful or essential to the preservation of a culture.

Given this intimate relationship between the survival of differences and autonomy regimes, one could imagine a system of international norms that protected difference by requiring the state to facilitate strict autonomy regimes. Rights given ethnic minorities by human rights law to internal self-determination through autonomy regimes could amount to authorization for them to exclude "others," in the manner of states exercising their sovereign power to control crossings of their frontiers within a territorially fragmented world. Ethnic groups could be empowered to erect and enforce cultural, political, ideological, and (if they were geographically concentrated) physical boundaries. Consistent with these imagined norms of international law, they could participate in the hermetic sealing of ethnic communities into their own enclaves. Each community could not only deny entry to alien persons or ideas, but perhaps deny exit to its own members.[27]

Such a normative arrangement raises obvious, serious issues. The ideal in the human rights movement of preserving difference cannot so readily be bent to support the creation of autonomy regimes. To the contrary, a further elaboration of that ideal prompts a deep criticism of such regimes and their fragmenting effects.

Consider at the outset the relation of autonomy schemes to the norm of equal protection. We noted earlier that these schemes in some ways complement one purpose of a nondiscrimination norm of preserving differences. Institutionalized separateness, however, also violates the spirit and perhaps the letter of that norm.

A state must give all its citizens equal protection. Power-sharing schemes proceed on a contradictory premise. They are cast in ethnic terms (group X is assured of x% of the legislature or cabinet or judiciary or military, group Y of y%) and thus explicitly discriminate among groups on grounds like religion, language, race, or national origin. Separate voting rolls or application forms

27 For the moment, I assume that such a sealing would be possible in a modern world of international capital flows, mobile populations, invasive media, and other forms of deep cultural interpenetration. Moreover, I assume that boundaries would separate starkly independent and distinctive communities. In fact, many differences among cultures of ethnic groups that were dramatic and profound several centuries ago have sharply eroded, from the onset of colonialism through the political, economic, and technological phenomena of the modern age.

for civil service positions drive home the lesson that socioeconomic life and career turn on ethnic bonds. Separate personal laws for each religious community, particularly if enforced within a mandatory assignment system permitting no escape by community members to a nationwide secular law, dramatize citizens' particular rather than shared characteristics.[28]

Consider further the effects of autonomy regimes on cultural change. Human rights law, we have argued, rests on the belief that people learn from and grow through experiencing the challenges of diverse groups. It is largely for such reasons that differences among peoples and cultures have the capacity to enrich human experience and expand human potential. But autonomy arrangements may institute a counter-ideal of not simply preserving but also locking into place the historical differences among groups.

To a lesser or greater degree, autonomy schemes frustrate a major objective of the human rights movement of assuring that societies remain open to challenge and change. That movement institutionalizes no one ideal of social order. To the contrary, it explicitly allows for many faiths and ideologies while denying to any one among them the right or power to impose itself by force. It expresses a humanistic commitment to ongoing inquiry and diversity, as well as a deep skepticism about any final truth. It denies governments the right to close avenues of reflection, criticism, advocacy, and innovation in order to impose any orthodoxy. To the extent that autonomy regimes protect historical differences but inhibit the creation, as it were, of fresh differences, they would convert the human rights movement's framework of protection of open inquiry and advocacy into the protection of static traditions. A state composed of segregated autonomy regimes would resemble

28 A contrast can be drawn with school racial segregation in the United States. That system compulsorily separated blacks from whites, and amounted to a form of autonomy regime instituted and enforced by the state (by component states within the American federal system). Black citizens were given no choice, and the compulsory character of school segregation was important to the decisions of the Supreme Court finding it unconstitutional. Autonomy regimes considered in this Article differ. They generally stem from negotiations between the central government and minority groups, or negotiations directly between such groups. The resulting accommodations are then ratified in law. Nonetheless, even assuming that a rigorous standard of free and voluntary choice were met by the processes leading to agreement over a scheme, the fact remains that differences among ethnic groups expressed in autonomy regimes are institutionalized and enforced both by central government and by ethnic communities. The concept of equal protection/nondiscrimination must at least be qualified to justify such regimes. Quite clearly, all are not treated the same, different treatment stemming from ethnic identity.

more a museum of social and cultural antiquities than any human rights ideal.

Provisions of the Civil-Political Rights Covenant point to this understanding of the human rights movement as a whole. The freedom of expression declared in article 19, for example, includes "freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers."[29] But the understanding rests on broader notions than specific norms can yield.

Two deep characteristics of human rights law are here relevant. The first characteristic involves the relation between groups and individuals. Communities have a right to guard their own integrity, but only within the constraints imposed by human rights norms on governments' treatment of individuals, including the equal respect due to all members of a society. The central government of a state must respect individual conscience and choice. So then must ethnic communities within a state when they exercise (constitutionally based or statutorily delegated) governmental power over their members by applying a personal law or exercising a territorial authority or administering a power-sharing scheme in the central government.

In wielding governmental power, ethnic minorities may violate human rights norms in numerous ways—for example, by discriminating among their members on grounds forbidden by those norms, except to the extent that disadvantaged members can be understood to "accept" the discriminatory treatment as part of their cultural tradition.[30] Within practical and cultural constraints, which may indeed be so deep and powerful as to block individuals from exercising any choice, all persons should be seen as empowered by human rights norms to decide whether to remain on one

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29 Civil-Political Rights Covenant, *supra* note 3, at art. 19.

30 I make this point boldly to set forth the argument clearly, but recognize that it raises many complex questions and, while vital, must be qualified. A group's treatment of its own members within an autonomy regime poses issues about cultural relativism and universalism in human rights norms, *see* texts, *supra* note 24, and about the degree to which cultural survival for many communities may be understood to require practices violating human rights instruments—practices like gender discrimination or government by a nonelected leadership. The notion of members' "acceptance" of practices like discrimination or severe forms of punishment is itself problematic: what kind of acceptance, in what, if any, context of choice or even knowledge of alternative social arrangements? The notion of "disadvantaged" members may itself be problematic, as a concept drawn from an alien political and moral framework. See the discussion of some of these issues in Minow, *Putting Up and Putting Down: Tolerance Reconsidered*, in COMPARATIVE CONSTITUTIONAL FEDERALISM: EUROPE AND AMERICA 77, 88-94 (M. Tushnet ed. 1990).

side of a cultural boundary, to shift to another side, or to seek a life not committed to one or the other community.[31]

A second characteristic of human rights law pointing toward open boundaries within a state concentrates on the polity as a whole rather than on individuals. Strong ethnic consciousness and concentration may stamp out the desire or even capacity for broader political or cultural associations. Formal legal barriers reinforce the natural tendencies of a group's members to look inward and assume only a particular identity, rather than to experience the tension between the particular and a more diffuse or broader identity as a citizen or human being.

As the sense of a common humanity weakens, alliances among people that shatter ethnic boundaries become more unlikely. Polyethnic political formations resting on generic interests like economic class or political ideology will confront decisive obstacles. Demonization of "the other" may become part of an ethnic group's credo and stamp out the possibility of developing empathy for others. Such extreme manifestations of ethnic bonds will become the cardinal obstacle to a human rights consciousness, at least with respect to attitudes of members of the ethnic group toward "the other." Enforced ethnic separation both inhibits intercourse among groups, and creative development within the isolated communities themselves. It impoverishes cultures and peoples.

The distinctions between the ideals or pictures of social life that inhere in the human rights movement as a whole and those that point toward autonomy regimes can be stated with different degrees of contrast. Much turns on the strength and exclusivity of the autonomy regimes. For example, advocates of these regimes may argue that the inclusive ideals of the human rights movement are ultimately desirable for a state, but that autonomy is necessary for a transitional period. Such an argument may be based on circumstances of necessity, such as the incidence of violence described below, or on the view that some degree of autonomy is essential for maintenance of the group's culture against the onslaught of the modern state. On the other hand, those advocates

31 Although human rights norms encourage intercourse among individuals and groups of different ethnic character by offering every protection for it, they surely do not so require. Within the spirit of human rights law, choice about exclusive or inclusive lives, about insulation from or involvement with others, remains with individuals. Autonomy arrangements may curb this choice by making "exit" from a minority more difficult, if not impossible.

may decisively reject human rights ideals as alien and evil since they risk the subversion from within or without of a religious or other tradition that binds a community together.

Autonomy regimes differ in other salient ways. The regime may involve relatively slight group differentiation and barely affect outsiders (a personal, religious law of marriage and divorce), or it may separate groups with respect to political matters of vital significance for all members of the polity (separate voting rolls, quotas, and so on). Within a federal state, an autonomy scheme for a geographically concentrated ethnic minority may grant that minority modest self-government and retain vital powers for the central government, or grant it extensive powers that border on self-rule. Those administering an autonomy regime may invite popular participation or may subject a population to decision-making powers of, say, religious officials.

For purposes of clarity and emphasis, the following list of ideals or pictures of social life bypasses these important distinctions, assumes strong and exclusive autonomy regimes, and hence states the differences in terms of stark contradictions.

Human Rights Ideals and Pictures of Social Life	*Strong Autonomy Regime Ideals and Pictures of Social Life*
Self and others, intercourse with strangers	Self vs. others, avoid strangers
Ethnic identity in tension with human identity and potential	Ethnic identity as total identity
Relevance of both particular and universal identity	Stress on the particular, what is exclusive rather than shared
Open, pluralism of spirit	Closed, separate lives within boundaries
Learn from own tradition and from others	Learning only within own tradition
Forward looking, potential for change in cultural tradition	History (myth) looking, stability-oriented
Attention to individual choice in affiliation with ethnic group	Affiliation as identity, a given that is not subject to individual choice

V. THE NEED FOR AUTONOMY REGIMES

One way of testing the preceding observations is to inquire whether justifications as deep as those supporting, for example, rights to personal security or freedoms of conscience or expression, also support autonomy schemes for ethnic minorities. Can the same broad consensus among many political traditions and religions be identified with respect to "rights" to separate regimes for different ethnic groups within the modern state? Or, on the other hand, are autonomy arrangements better understood as contingent, perhaps contextually necessary, ways to achieve desired ends such as peaceful coexistence rather than as ends that are valued in and of themselves?

The question raised is whether autonomy regimes express respect for difference or express despair over the possibility that diverse peoples can live with difference. Their widespread use in diverse countries and their potential effectiveness in realizing important goals indicate that these arrangements, if not ideal, are not anathema. They may rest on genuine acceptance by all affected communities. They may grow out of concrete and agonizing histories, frequently involving authoritarian and abusive rule over a minority that has been denied a fair share of power, resources, and opportunities. Often the product of negotiations between hostile communities seeking to contain discord that may have led to violence, they appear to be justified in such circumstances as the best available solution to otherwise unyielding problems.

Separation of ethnic communities through power-sharing arrangements, regional governments, and personal laws may then constitute a practical necessity, a "least worst" solution that is surely preferable to ongoing violence and systemic oppression. The solutions that they bring to ethnic conflict may improve chances for pacific co-existence and provide the only realistic alternative not only to continuing oppression, but to a split of the contending ethnic groups into two states. Internal self-determination through autonomy schemes may blunt a minority's demands for external self-determination.

The distinction that I have drawn is a vital one: recognizing that autonomy regimes in given contexts may be preferable to other arrangements, or alternately characterizing autonomy regimes as a "right" to be declared in international norms. The

rhetoric of rights legitimates claims and mobilizes support for groups demanding autonomy. That rhetoric empowers and encourages. It goes beyond the welfare maximizing, contextual justification for autonomy regimes as "least worst" solutions to pressing situations.

An effort to develop minorities' autonomy rights would confront serious problems. At the outset lie those of practical politics. States, whose representatives sit on the intergovernmental bodies that will consider draft declarations or conventions affecting minorities, resist the elaboration of such rights. The realization of autonomy rights necessarily diffuses power among groups so as to weaken political control at the state's center. Correctly or incorrectly, the central government may see that shift as entrance on a dangerous path leading toward the state's dismemberment through external self-determination.

Even if states' attitudes were less suspicious or hostile, autonomy rights involve the conflicting ideals that I have underscored. Many advocates of human rights will therefore be ambivalent about, or hostile toward, their elaboration. If autonomy regimes are principally justified by their potential for ending oppressive rule, an elaboration of norms about those regimes must be attentive to the justifying circumstances and context. A "right" to regimes so varied in character and so dependent on circumstances almost defies elaboration.

Despite these problems, the argument for recognizing in certain circumstances the justice or legitimacy of minority claims for some form of autonomy regime deserves support. The high incidence of ethnic conflicts and the particular dangers that they pose for the ethnic minorities require that the United Nations and regional institutions examine the possibility of international regulation. International attention to the systemic, structural aspects of ethnic conflict must be given a chance to show what it is capable of achieving, including achievement through the development of international law in this field. Given the reluctance of a government to support the development of international law principles favorable to autonomy schemes that may be relied on by dissident ethnic groups in its own state, or its reluctance to intervene in ethnic conflicts in foreign states and thereby risk others' intervention in its own internal disputes, the effort to achieve progress at

the start through a United Nations declaration confronts dramatic obstacles.[32] But the effort must be made.

The development of international norms on minority regimes (this Article bypasses the political complexities of effective enforcement of those norms) would institutionalize discussion about mistreatment of minorities as groups, and hence about political structures unjust to minorities. International attention to such issues would correct the human rights movement's tendency to consider ethnic conflicts almost exclusively from the perspective of violations of rights of individuals.[33] It may inhibit destructive practices of states toward minorities, and enable threatened minorities as such to have recourse to intergovernmental bodies.

The form that recognition of claims to an autonomy regime might take (how firm or flexible a norm, how detailed or general); the circumstances that would justify a minority in making such a claim; the conditions (about, say, rights of a minority's members) to which the administration of an autonomy scheme by an ethnic group would be subject; whether such a scheme should be supported only as a necessary transitory arrangement en route to an open society—all these are questions to be rigorously explored. The rhetoric of rights may here be inappropriate, even misleading. Elaboration of principles indicating the circumstances that justify minority claims may be preferable.[34] My argument here is simply

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32 It should be borne in mind that international regulation of ethnic minority claims for some form of autonomy would represent an important, but not a dramatically different, kind of "intervention" into a state's affairs. The entire human rights movement amounts to such an "intervention," as demonstrated by the broad recognition of how deeply that movement has eroded the concept of domestic jurisdiction. All human rights influence the distribution and exercise of power in a country, from the prohibition of torture (limiting the means that a government can use to suppress opposition) to the vote (which, if freely exercised by all, would radically transform government and economy in many states). *See* Steiner, *The Youth of Rights* (Book Review), 104 HARV. L. REV. 917, 928-32 (1991).

33 It has been consistently difficult to bring minority issues before the U.N., at least without some significant degree of internationalization of ethnic conflict or without the support of a major power. See Koshy, *Ethnic Conflict in Sri Lanka and the U.N. Human Rights System*, in ETHNIC CONFLICT AND THE U.N. HUMAN RIGHTS SYSTEM (H. Steiner ed. forthcoming) for a description of proceedings involving the Sri Lankan ethnic conflict before the Human Rights Commission and the Sub-Commission, proceedings in which almost exclusive attention was given to violations of core individual rights rather than to the ethnic and political structures giving rise to the conflict as such or to the related claims of some Tamil groups for an autonomy scheme.

34 In the article, *Minorities and Autonomies*, *supra* note 1, I suggest some ways in which norms about autonomy regimes might be developed, particularly through so-called directive principles that could be combined with process-oriented requirements imposed

that this exploration must be undertaken. The problems in ignoring minorities' demands for some form of autonomy scheme may prove to be more serious than the problems in working out norms about such schemes.

on a government and a dissident ethnic minority.