Territory and the Hungarian Status Law: Time for New Assumptions?

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The current norms of the international system dictate that the business of governance rests with territorial states, according to boundaries that are preserved through mutual recognition among the units. The contemporary primacy of states in the world order is preserved through the simple fact that existing states tend to recognise *other states* as legitimate permanent structures of governance, rather than alternative units such as voluntary groups or non-territorial leagues.[1] This legal authority over a particular territory may have little relation to a state's actual power over affairs within its borders. Indeed, the act of exerting power and control over a territory is a bit more complicated.[2]

The sociologist Max Weber's influential writings on the state describe it as 'a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory'.[3] These territorial lines may be granted the state by the international community. But it is left up to that state itself, as the sovereign, to assert its own *de facto* control within its borders, in the form of 'physical force', throughout that territory. According to these norms, 'the state is considered the sole source of the "right" to use violence' for the purpose of control.[4] Where there are deviations from these norms of internationally-recognised state primacy and Weber's ideal type of internal state control, the international community tends to view such arrangements as temporary and unstable. However, a glance at any

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[1] Hendrik Spruyt, *The Sovereign State and Its Competitors: an Analysis of Systems Change* (Princeton, 1994).
[2] Robert Jackson and Carl S. Rosberg, 'Why Africa's Weak States Persist: The Empirical and the Juridical in Statehood', *World Politics* 35 (October 1982), pp. 1–24; Spruyt, *op. cit.*, pp. 183–194.
[3] Max Weber, 'Politics as a Vocation' in H.H. Gerth and C. Wright Mills, *From Max Weber: Essays in Sociology* (New York, 1946), p. 78.
[4] Ibid.

newspaper reveals that these notions are in fact challenged on a daily basis. From Africa and Indonesia to Kosovo and Puerto Rico, we see a number of *ad hoc* and shifting governance arrangements that fall far from these international norms.

This article examines the degree to which non-territorial options may be practically applied as an alternative to international norms and the Weberian notion of territorial state governance. I first briefly outline a dynamic understanding of state strength and present a discussion on the implausibility of neutral states. I then examine three areas of relationship between governance and peoples: 1) the allocation of rights, 2) representation structures, and 3) options for minority control. Finally, I consider the likelihood that non-territorial structures may be generated through the routine process of debate in a procedural democracy.

I. The State as Project

States can be understood as *ongoing projects* that exhibit various degrees of success in achieving control over affairs within their borders.[5] Much is at stake in these projects. The breakdown of state governance, or state failure, can produce widespread chaos and rule by warlords, as we have seen in examples as varied as Bosnia, Afghanistan, and Iraq. At the same time, state governance structures may move too far in the direction of strength, repressing human rights of expression and livelihood in the name of control. Given these high stakes of state control, internal disputes over seemingly trivial policy issues, such as minority language use, may in fact produce sizeable tensions between groups. Titular groups, or groups sharing their name with the state, often tend to push for a strong, centralised state, in an attempt to guarantee success for the state project. However, these desires often collide with those of minority groups, who may wish for more decentralised structures and more flexible policies.

In non-democracies, the government can easily exert force to suppress dissident voices, such as those of minority groups. In democracies, however, debates over state control become part of the

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[5] Patrick Thaddeus Jackson and Daniel H. Nexon, 'Relations Before States: Substance, Process, and the Study of World Politics', *European Journal of International Relations* 5 (1999), pp. 291–332.

ongoing process of politics. Mixed states, or states containing a mix of politically-mobilised ethnic or religious groups, become particularly contentious when they are democratic, because democracies not only allow dissident voices, but also encourage open disagreement among groups. However, minority groups in democracies may still find themselves in a bind. Because democracy operates according to the principle of majority rule, minority groups may find themselves consistently on the losing side, even with regard to the issues they may hold to be the most important, such as language use and education. Theorists of democracy have long warned that such 'permanent minorities' could slowly become disillusioned with democratic government due to their ongoing resentment of majority rule. These divided democracies thus find themselves in a particular dilemma, one that some theorists argue can produce democratic breakdown.[6]

In Central Europe, the ongoing dilemma for minorities has produced a number of non-territorial policy innovations by the Hungarian state, in its goal to support the claims of their co-ethnic 'Hungarians abroad' or Hungarians in the neighbouring states. These internal and external attempts to reduce the minority/majority problem through side-stepping territorial norms have become particularly controversial in light of the territorial norms that are currently endorsed by most states. Internally, in 1993 the Hungarian state created non-territorial minority councils for non-Hungarian ethnic groups within Hungary. Externally, in 2001 the Hungarian parliament passed the Status Law, which allocates benefits to ethnic Hungarians who are residents and citizens of other states. While opponents of these policies argue that they harm the international system by breaching norms of territorial state control and governance, advocates of these policies argue that non-territorial solutions can overcome the inherent and inevitable problems of minorities in the current state system.

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[6] Dankwart Rustow, 'Transitions to Democracy: Toward a Dynamic Model', *Comparative Politics* 2 (April 1970), pp. 337–363; Robert A. Dahl, *Polyarchy: Participation and Opposition* (New Haven, 1971); Alvin Rabushka and Kenneth Shepsle, *Politics in Plural Societies: A Theory of Democratic Instability* (Columbus, 1972); Eric Nordlinger, *Conflict Regulation in Divided Societies* (Cambridge, 1972); Juan Linz and Alfred Stepan, *The Breakdown of Democratic Regimes: Crisis, Breakdown, and Reequilibration* (Baltimore, 1978); Donald Horowitz, *Ethnic Groups in Conflict* (Berkeley, 1985).

II. Governance and Neutrality in State Bureaucracy

In Weber's view, state bureaucracies engage in the rational conduct of policy, according to consistent rules. The individual bureaucrat is chosen for his or her position on the basis of standard qualifications, and closely adheres to rules in carrying out duties. [7] In this view, the state administration is therefore neutral, as similar laws apply to all. A similar view of the neutral state can be found in liberal political theory, which holds that states are neutral if they apply consistent rules and rights to the individuals under their domain.[8] However, a number of critics have argued that neutral states do not and cannot exist, arguing their case on both empirical and normative grounds.

1. The Pluralist, Empirical Critique of a Neutral State

On the empirical side of these critiques, pluralists, who examine the detailed machinations of democracy, find very little that is neutral about the actual workings of the state. In their view, democratic government consists of a continuous struggle between competing groups with various interests. It is ongoing power struggles that produce the policies of government from this process, making those policies that result thus disjointed and incoherent. On the ground, the operations of democracy rarely resemble Weber's notion of coherent and effective policies produced from a rational and highly-organised bureaucratic structure.[9]

The difficulties inherent in governing divided democracies provide strong evidence for this pluralist critique. Individual administrators in the state bureaucracy are not disconnected from the social structure and are likely to belong to one ethnic group or the other. Indeed, they may even be selected for office with their ethnic attributes in mind—whether to ensure minority dominance or to provide representation for minorities within the administration. If relations between groups are particularly tense, these individuals are rarely likely to serve as rational arbiters of neutral rules.

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[7] Max Weber, 'Bureaucracy', in Gerth and Mills, *op. cit.*, pp. 196–198.
[8] Charles Taylor, 'Multiculturalism' in Amy Gutman (ed.), *Multiculturalism: Examining the Politics of Recognition* (Princeton, 1994).
[9] Eva Etzioni-Halevy, *Bureaucracy and Democracy: A Political Dilemma* (Boston, 1983), pp. 23–53.

In democracies governed by strong majority rule, such as those with a first-past-the-post electoral system, representation of minorities may fall well short of their proportion of the population. Such is the case in the U.S. Congress. This imbalance of representation can produce a decisionmaking structure that consistently tramples the interests of minority groups in a non-neutral fashion. Rules to increase minority representation, such as proportional electoral (PR) systems or affirmative action for bureaucracies, can only partially mitigate this problem. With strong representation of all groups in government, they may simply move their bickering to the halls of government itself, a scenario much closer to the pluralist vision of the state than the rational, neutral vision proposed by Weber. Indeed, this pluralist vision of an ongoing, democratic struggle is amplified in ethnically-divided democracies. While the results of PR and affirmative action may be more desirable than the complete domination of majority voices, a pluralist battle between groups within the government does not guarantee that minorities will be satisfied by the results of the power struggle. Although more representation ensures that minorities may at least engage in the struggle, their representatives will remain outnumbered by those in the majority and they will still tend to lose such battles.

2. Normative Critiques of a Neutral State

In the normative camp, both difference theorists and the communitarian school of thought have challenged the notion that a neutral state might be either possible or desirable. In her study of the application of American law to minorities and women, Martha Minow notes that individuals tend to be treated equally by law only if they can conform to the norms of the majority. She outlines that rules are far from neutral, but instead simply reflect the domination of one group's unstated norms over another. Difference theory examines how conformance to 'sameness' thus becomes a prerequisite to equality.[10] In this view, minorities in a divided state are subject to *majority* norms in that state's laws and rules. The state's attempt to apply the same rules consistently to each member of the polity mistakenly tries to erase or ignore inherent and often relevant differences. Because these differences cannot be truly erased, the attempt to ignore them may subject minorities to further disadvantages: a pregnant

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[10] Difference is a relational, rather than an intrinsic attribute. Martha Minow, *Making All the Difference: Inclusion, Exclusion, and American Law* (Ithaca, 1990), p. 74.

woman, for example, should be recognised as different and having different traits and needs than a man. Therefore, the state cannot be truly neutral without accommodating such differences, and it must avoid the requirement of sameness for equality.

The communitarian view goes one step further with this argument. It holds that states should not in fact aspire to be neutral, but rather should accept their non-neutral status. States should both embrace their majority cultures and make allowances to protect certain minority groups. In contrast to the liberal focus on individual rights, the communitarians advocate collective rights for minority groups in order to guarantee some cultural protections for them.[11]

Minority groups in divided states have expressed both the difference critique and the communitarian critique against the majority view that their states are neutral—posing collective rights as an alternative. A number of policymakers in the international arena have turned a blind eye to such complaints. The international community continues to prioritise individual rights as more easily enforced and less prone to conflict. However, as some states and groups continue to articulate and enact novel ways to address minority claims, we need to think seriously about their possibilities and limitations.[12] If we wish to acknowledge minority claims, what possible institutional alternatives might we create without endangering the stability of state governance? The next section assesses some of these attempts.

III. State Strength and the Governance of Diverse Groups

If the pluralist and the normative critiques are correct and divided states are unlikely to be truly neutral, what might states do to alleviate concerns of minority groups? In the context of an ongoing state project with

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[11] Shlomo Avineri and Avner de-Shalit (eds.), *Communitarianism and Individualism* (Oxford, 1992); Taylor, op. cit.; Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford, 1995). Both Taylor and Kymlicka make problematic attempts to argue that their views are consistent with liberalism.

[12] See also: Stephen Deets and Sherrill Stroschein, 'Dilemmas of Autonomy and Liberal Pluralism: Examples Involving Hungarians in Central Europe', *Nations and Nationalism* 11:2 (2005), pp. 184–203.

potential for failure or success, how might some minority claims be addressed without making majorities fear for the viability of that project? Advocates of non-territorial solutions propose them as an alternative to territorial autonomy or secession for groups—noting that these possibilities can sidestep significant challenges to state control. Opponents of non-territorial structures argue that even these options weaken states, by draining power from the central administrative structure. To adjudicate this debate, we must first consider the areas in which minority claims against states might be made.

Minority groups often make claims for allowances in three areas: 1) the allocation of rights, 2) representation structures, and 3) options for minority control.[13] Each of these areas denotes a kind of relationship between the state and the minority. The *allocation of rights* encompasses rights that may be granted or withheld by the state, such as eligibility for citizenship, language use, education, or cultural protections. *Representation structures* are the institutional means by which a democratic state might ensure or prevent minorities formal voice in their claims on the state, in terms of electoral systems, parliamentary quotas, or affirmative action. Finally, *options for minority control* denote the possibility for minorities to make enforceable decisions in areas of interest to them, as in the realm of language policy. These areas are discussed in more detail below. While all three categories are related to the allocation of rights,[14] they each constitute a different set of relationships to the state.

1. The Allocation of Rights: Considering the Hungarian Status Law

If states are unlikely to be fully neutral, what relationship should a minority group have with the state? Which states can we describe as moving closer to a neutral ideal? The first question to be settled in divided states is that of who should be eligible for a formal relationship with the state, i.e. the status of citizenship. In making these rules, states lean toward either a territorial (*jus soli*) principle or a blood/lineage (*jus*

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[13] For a good overview of some of these claims, see: Jacob T. Levy, 'Classifying Cultural Rights' in Ian Shapiro and Will Kymlicka (eds.), *Ethnicity and Group Rights* (New York, 1997).

[14] Kymlicka speaks of 'three forms of group-differentiated rights', which are 1) 'self-government rights', 2) 'polyethnic rights', and 3) 'special representation rights'. While he thus sees similar distinct categories, he examines them as simply various types of rights that the state may allocate. Kymlicka, *op. cit.*, pp. 26–33.

sanguinis) principle.[15] A state that attempts to project a relatively more neutral stance toward all groups is likely to lean toward a territorial, *jus soli* principle in allocating citizenship. However, the fact that under both principles the determining factor for citizenship lies beyond individual control makes it a problematic institution for many liberals—as it removes the element of individual choice. As a result, states tend to allow for various degrees of naturalisation, by which individuals may also become citizens on a voluntary basis.[16] States such as Germany, Israel, and Hungary have instituted a 'fast track' for the naturalisation of immigrants with a lineage connected to their states, in the form of 'laws of return'.

As a formal relationship between an individual and the state, citizenship allows for the transfer of particular benefits from the state to its citizens. Citizenship is both inclusive *and* exclusive, as a lack of citizenship is often related to the denial of benefits.[17] The Hungarian Status Law differs from both citizenship and laws of return, falling instead into a new category of 'kin-state legislation'.[18] It allocates only some benefits to individuals, thus falling short of full citizenship or dual citizenship—instead, it is a kind of 'fuzzy citizenship'.[19] Nor is it a law of return, as the benefits apply to individuals who not only remain citizens of

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[15] Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge, MA, 1992).

[16] See Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York, 1983), Chapter 2.

[17] Charles Tilly, 'Social Boundary Mechanisms', *Philosophy of the Social Sciences* (June 2004), pp. 211–236; 'Boundaries, Citizenship, and Exclusion' in Charles Tilly, *Identities, Boundaries, and Social Ties* (Boulder, 2005).

[18] This is a term employed by the Venice Commission, which issued an evaluative report on such laws in 2001 <http://www.venice.coe.int/docs/2001/CDL(2001)095-e.asp>, accessed 14 December 2004.

[19] Brigid Fowler, 'Fuzzing Citizenship, Nationalising Political Space: A Framework for Interpreting the Hungarian "Status Law" as a New Form of Kin-state Policy in Central and Eastern Europe' in Zoltán Kántor et al. (eds.), *The Hungarian Status Law: Nation Building and/or Minority Protection* (Slavic Eurasian Studies no. 4; Sapporo, 2004). Dual citizenship for the 'Hungarians abroad' was proposed in a December 2004 referendum in Hungary. The referendum was declared invalid, as it only drew 37 percent participation among registered voters, rather than the requisite 50 percent. Among those voting, 52 percent voted for dual citizenship, and 48 percent voted against it; Károly Lencsés, 'Eredménytelen kettős igen', *Népszabadság Online* (6 December 2004); 'Mindkét kérdésben eredménytelen a referendum', *Népszabadság Online* (6 December 2004); 'Hungary PR Prevails as Citizenship Vote Fails', *Reuters* (5 December 2004).

other states, but who *continue to reside in those states*—thus its controversial extra-territorial component.

Supporters of the Status Law argue that the allocation of such benefits does not subtract rights from anyone, but simply 'adds on' additional rights to some citizens of other states who fit Hungarian criteria. Indeed, some of the states containing Hungarian minorities that have criticized the Status Law have themselves enacted similar legislation for their own co-ethnics living in other states, such as Romania, Slovakia, and Croatia. Opponents of the Law argue that it discriminates on the basis of ethnic criteria, applying the principle of lineage to entitle some to benefits and exclude others—although both may be citizens of otherwise equal status.

Although opponents may recognise that other countries have instituted similar laws, they argue that the greater number of Hungarian minorities in the region (between 3 and 4 million) changes the scale of the issue, presenting a greater problem for state control than other states' similar laws applying to smaller minority groups.[20]

Do states indeed 'lose' control of citizens that may receive benefits from other states? Different answers to this question provide one source of strong disagreement over the Law. We can consider this question critically if we consider the Status Law as a set of collective rights that are granted by a body outside of the state. Most of its benefits apply to individuals once they step into Hungarian territory; for example, reduced fares on train travel and access rights to Hungarian cultural institutions, such as libraries and museums. Other benefits have an extra-territorial application, such as funds for parents of children attending Hungarian schools in their home state.[21]

In the ongoing project of state control, the collective rights granted by the Status Law are in fact less controversial than is the *source* of those rights—the Hungarian state. States may make internal decisions to grant collective rights to minority groups living within their territory. Native

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[20] A number of these provisions were watered-down in later versions of the law, but the basic foundation remains. Sherrill Stroschein and Stephen Deets, 'Minorities, Kin States, and the 2001 Hungarian Status Law', *Analysis of Current Events (ACE) of the Association for the Study of Nationalities*, 14 (2002); Deets and Stroschein, op. cit. 'Dilemmas of Autonomy'.

[21] Some of these provisions were altered by Hungary in response to complaints by Romania and Slovakia.

Americans in the United States, for example, are allowed to use the peyote drug for religious ceremonies, unlike other American citizens. In this case, they hold recognised exemptions from laws that would impede their cultural practices. In Romania, the state government supports and assists public Hungarian-language schools as part of the general educational system. Such exemptions and assistance are just some of the collective rights forms commonly applied to minorities by states.[22]

Within democracies, internal debates often rage over the establishment of these rights and whether they pose undue advantages for particular groups, or whether they might produce a loss of control over minorities by the central state. In the case of the Status Law, however, the allocation of benefits comes from an external source and is *not subject to an internal process of debate*, as is standard policy procedure in democracies. As legislation debated in the parliament of another state and enacted by another state's government, it evokes fears of a loss of state control and a weakening of the state project among the titular majorities in Hungary's neighbouring states. Advocates of the Law, however, have been surprised that it should provoke such resistance, as they focus instead on the content of the benefits rather than their extra-territorial source.

2. Institutions for Minority Representation

In *majoritarian* electoral systems, candidates compete against each other in single-member districts in 'winner-take-all'[23] races. As outlined above, such systems have the disadvantage that smaller ethnic groups may be denied representation in particular districts or in the state as a whole. This ongoing lack of power may make them disgruntled with the system.[24] Proportional representation (PR) electoral systems attempt to mitigate this problem by translating votes into seats in a way that more closely mirrors primary cleavages within the population. In PR systems, voters cast votes in 'multi-member districts', often for parties or party lists rather than for individual candidates.[25]

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[22] Levy, op. cit., p. 25.

[23] This is also known as a 'first-past-the-post' system. Giovanni Sartori, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes* (New York, 1994), p. 4.

[24] Admittedly, this effect may be reduced at the local level for concentrated groups.

[25] Giovanni Sartori, *op. cit.*; Arend Lijphart, 'Constitutional Choices for New Democracies'

Even proportional democracies, however, cannot guarantee representation for all minorities. Because electoral thresholds for party participation in parliament may exclude smaller minority groups, many countries maintain quotas to promote minority representation in parliament or guarantee a seat in parliament to particular groups. In addition to parliamentary representation, consociational structures might guarantee minorities access to a particular office, such as the Bosnian state's rotating, three-member presidency. These arrangements are most stable when they take the form of formal institutions, but may take on an informal, or 'traditional' nature.[26] Minorities might also be granted some voice through consultative councils that hold an advisory capacity with the government. Such councils may be formalised as a part of the government itself and hold actual decisionmaking powers, such as the Belgian state's linguistic communities that are discussed in more detail below. In other cases, the councils hold few actual powers and an ambiguous relation to state government, as with the minority self-governments in Hungary.[27]

Can more representation for minorities weaken the state project? Theorists remain divided on this point, as democracy contains an inherent tradeoff between governability and representativeness. [28] Those that prioritise the *representative* aspects of democracy argue that increased guarantees of representation for minorities can only strengthen a democratic state. In this view, increased representation will enhance minority willingness to participate in the system, and will therefore improve its overall legitimacy. On the other hand, theorists that prioritise *governability* focus on the centrifugal pressures and fragmentation that strong representation can produce within a democratic system, citing examples as varied as Weimar Germany and Yugoslavia. In ethnically divided states, institutions to foster representation can also encourage the emergence of ethnic parties, which some see as inherently destabilising to

in Larry Diamond and Marc F. Plattner (eds.), *The Global Resurgence of Democracy* (Baltimore, 1993), pp. 146–158.

[26] See: Levy, op. cit., pp. 43–46; Arend Lijphart (ed.), *Conflict and Coexistence in Belgium: The Dynamics of a Culturally Divided Society* (Berkeley, 1981).

[27] Stephen Deets, 'Reconsidering East European Minority Policy: Liberal Theory and European Norms', *East European Politics and Societies* 16 (2002), pp. 30–53.

[28] Larry Diamond, 'Three Paradoxes of Democracy' in Diamond and Plattner (eds.), *op. cit.*, pp. 111–123.

democracies.[29] This fear that democratic fragmentation might weaken effective state administration, and therefore the state project itself, can make majorities reluctant to allow increased representation for minorities.

3. Options for Minority Control

Along similar lines, are centralised states more effective in achieving a successful state project than decentralised states, or is the reverse the case? Advocates of state *centralisation* argue that centralised states are more efficient and effective than decentralised states because governing powers are retained within a unitary structure. Advocates of *decentralisation* argue that the devolution of powers to local levels will increase state legitimacy through increased interactions between administrative structures and societies.[30] In divided states, minority groups are often likely to request increased decentralisation of government, because such devolution can grant them more powers over affairs in the enclave communities where they form local majorities. Titular majorities, particularly those factions that are most concerned about the success of the state project (such as titular nationalist parties) tend to favour unitary state structures. Similar debates have been common in the mixed states of Central Europe.

In decentralised states, federalism may tend toward *symmetry*, in which units exhibit similar powers and an equal relationship to the centre, or toward *asymmetry*, in which units may possess dissimilar structures or powers. States with asymmetric autonomy may endorse special autonomy for minority groups, such as an autonomous republic.[31] In some cases, autonomous territorial units can be seen as a means to avoid secession of a territorially-concentrated minority.[32] But because potential autonomous units constitute a seat of power that is removed from the centre, and

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[29] Horowitz, *op. cit.*, p. 598.

[30] Peter Evans, 'The State as Problem and Solution: Predation, Embedded Autonomy, and Structural Change' in Stephan Haggard and Robert R. Kaufman (eds.), *The Politics of Economic Adjustment: International Constraints, Distributive Conflicts, and the State* (Princeton, 1992), pp. 139–181.

[31] Yash Ghai, 'Ethnicity and Autonomy: A Framework for Analysis' in Yash Ghai (ed.), *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States* (New York, 2000), pp. 8–9.

[32] Hans-Joachim Heintze, 'On the Legal Understanding of Autonomy' in Markku Suksi (ed.), *Autonomy: Applications and Implications* (The Hague, 1998), p. 7.

because the ethnic demography of these territories is rarely homogeneous, advocates of unitary states argue that territorial autonomies can weaken central control over citizens and endanger the state project. It is for this reason that *non-territorial* forms of autonomy have been proposed as a less destabilising option, though both remain subject to controversy. While de-linking administration from territory may seem to be an odd exercise, a number of examples of non-territorial autonomy exist in practice.[33] The Hungarian state established non-territorial 'minority self-governments' for minority ethnic groups within its borders in 1993. These loose bodies consist of representatives chosen by their ethnic constituents in non-territorial elections.[34] Another example appears in the Belgian state.

The Belgian federal system is a unique structure that consists of both territorial and non-territorial administrative units. This arrangement was produced through a series of compromises beginning in 1970, between a Francophone vision of a more centralised state and a Flemish vision of a highly decentralised state. Under this configuration, the central government's minimal powers are generally limited to the areas of budgeting, defence, and foreign policy—though the units also have some powers to conduct foreign affairs, as will be discussed below. Most of the daily workings of politics are instead carried out by the constituent units. Belgium has three *regions*, designated on a territorial basis: Flanders, Wallonia, and Brussels capital. These regions primarily make decisions regarding affairs within their territory, such as on transportation and economic policy. Another set of units involves the three linguistic *communities*: the Francophones, the Flemings, and the Germans. These units are non-territorial and control educational and linguistic matters.[35]

Both the Flemish and the Francophone non-territorial communities have jurisdiction over educational and linguistic matters within the

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[33] John Ruggie, 'Teritoriality and Beyond: Problematizing Modernity in International Relations', *International Organization* 47 (Winter 1993), pp. 139–174.

[34] Deets, op. cit. 'Reconsidering East European Minority Policy'; Deets and Stroschein, op. cit. 'Dilemmas of Autonomy'. The notion of cultural autonomy has been present in Hungarian thought since the mid-1850s. Asbjørn Eide with Vibeke Greni and Maria Lundberg, 'Cultural Autonomy: Concept, Content, History and Role in the World Order', in Suksi, *op. cit.*, pp. 251–276.

[35] For a more complete discussion, see: Sherrill Stroschein, 'What Belgium Can Teach Bosnia: The Uses of Autonomy in "Divided House" States', *Journal on Ethnopolitics and Minority Issues in Europe* (JEMIE) 3 (2003), available at <http://www.ecmi.de/jemie/>, accessed 1 February 2006.

Brussels region.[36] Because the Francophone and Flemish non-territorial communities are founded on a personal, rather than a geographic, principle, they can administer linguistic and educational matters for their respective populations within the Brussels region without dividing up its territory. Instead, community jurisdiction is determined on the basis of the language chosen for a child's education or cultural activities.[37] The structure of the state is highly asymmetric. The non-territorial Flemish community shares a governing body with the territorial Flemish region. However, the non-territorial Francophone community and the Francophone territorial region remain separate entities with their own councils.[38] In addition, the Germans maintain only a community, and Brussels only a region.

Do these arrangements serve to mitigate minority demands without breaking the state into autonomous units? Indeed, Belgium's creative application of non-territorial autonomy in the realm of linguistic matters has proven a useful means to mitigate Flemish concerns over the plight of minority Dutch-speakers in the Brussels region, and, since 2001, to mitigate French concerns over the status of Francophones in Flanders. It has also brokered a compromise in a tense debate between the Francophones, who prefer a more centralised state, and the Flemish population, who would prefer even more decentralisation. Advocates of non-territorial autonomy point to Belgium as an example of how non-territorial autonomy structures can preserve a state even under strongly divided conditions. However, supporters of more centralised structures argue that the Belgian state is too decentralised to operate effectively and that its federal structure is too complicated to produce cohesive government or administration. In their view, decentralisation is resulting in a slow demise of the state project. The next section examines some of these issues more fully.

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[36] Some powers were also extended to Francophones in the Flemish region in 2001. *Agence France Presse* (29 June 2001).

[37] Rolf Falter, 'Belgium's Peculiar Way to Federalism' in Kas Deprez and Louis Vos (eds.), *Nationalism in Belgium: Shifting Identities, 1780–1995* (New York, 1998), p. 182; Michael O'Neill, 'Re-imagining Belgium: New Federalism and the Political Management of Cultural Diversity', *Parliamentary Affairs* 51 (April 1998), p. 253.

[38] Jacques Brassine de la Bussière, 'Le niveau de pouvoir fédéral' in André Leton (ed.), *La Belgique: Un État fédéral en Évolution* (Brussels, 2001), p. 76.

IV. Territory and State Governance

In Max Weber's view, the modern state must control all means of political organisation 'under a single head'.[39] His notion of state structure is consistent with the rational and hierarchical structure that he envisions for the state bureaucracy. The structure of the Belgian state, however, contravenes Weber's strictly hierarchical structure for administration. Similarly, the minority governments in Hungary and the Hungarian Status Law present alternative non-territorial forms of organisation similar to corporatist arrangements. As more power is allocated to such units, they may begin to blur the distinction between public and private, as discussed below.

1. Hierarchy

Current international norms allocate the business of treaties and relations with other states to the central state government. To Weber, it is the principle of hierarchy that organises a state bureaucracy, as a 'firmly ordered system of super- and subordination in which there is a supervision of the lower offices by the higher ones'.[40] This premise tends to be widely accepted in a number of theoretical works on politics. While domestic systems are ordered along the principle of hierarchy, international systems are often understood as lacking a formal hierarchy; thus 'anarchy' remains their only ordering principle.[41]

In highly decentralised states, however, the ability to conduct foreign policy might be highly diffused away from the centre, contravening a hierarchical structure. In Belgium, treaties with other countries must be approved by the federal unit that controls that issue area.[42] A treaty on education, for example, requires the approval of all three linguistic communities. Additionally, once a treaty has been approved, it is the federal unit, not the centre, that maintains its provisions in cooperation with the other signatory state.[43] The units thus control external relations

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[39] Weber, op. cit. 'Politics as a Vocation', p. 82.
[40] Weber, op. cit. 'Bureaucracy', p. 197.
[41] Kenneth N. Waltz, *Theory of International Politics* (New York, 1979), esp. pp. 81–82.
[42] Falter, op. cit., pp. 183, 190.
[43] Johanne Poirier, 'Formal Mechanisms of Intergovernmental Relations in Belgium', *Regional and Federal Studies* 12 (Autumn 2002), p. 40.

that are commonly attributed to a central state. Moreover, the fact that even non-territorial units may hold such important powers takes this jurisdiction even further away from the Weberian ideal of a hierarchical, territorial state structure with control over matters within its borders. One complication of this decentralised structure is that the lines of jurisdiction between units are rarely clear. Will these deviations from the Weberian model endanger the Belgian state project? The answer remains to be seen.

2. Corporatist structures

The notion that minorities might have their own non-territorial governing structures within a state is not new. Non-Muslims were granted a degree of governing powers over their civil affairs by the Ottoman Empire's *millet* system, an early form of non-territorial autonomy. The Austro-Hungarian Empire briefly considered implementing a complex scheme of territorial and non-territorial autonomy outlined by Karl Renner and Otto Bauer.[44] In addition, corporatist structures are another way to grant some powers and representation to non-territorial groups.

Corporatism is an institutional system in which policy is made through a formal process of interaction between state leaders and the leaders of specific organisations. In such a system, corporate groups are granted some voice on policymaking in specific issue-areas in exchange for agreeing to certain conditions set by the state.[45] The most common discussion of corporate arrangements has focused on economically-based groups, such as industrial organisations and labour unions, but one could also envision similar structures along ethnic lines. In a divided state, corporate structures could guarantee ethnic groups some voice over issues of concern to them, such as minority-language education or cultural issues, in exchange for specific concessions to the state.

The minority governments in Hungary appear to function along these lines through formal institutions. We also see more informal examples in Central European states that contain their own minority groups. In a state as divided as Romania, for example, most Hungarians tend to vote for the largest ethnic Hungarian party, rather than for Romanian or non-ethnic

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[44] Eide et al., op. cit., pp. 261–268; Uri Ra'anan, 'The Nation-State Fallacy' in Joseph V. Montville (ed.), *Conflict and Peacemaking in Multiethnic Societies* (New York, 1991), pp. 12–15.
[45] Etzioni-Halevy, *op. cit.*, p. 63.

parties. One informal norm that emerged during the democratic transition of the 1990s has been the increased inclusion of such ethnic minority parties in coalition governments in Romania, Slovakia, and Macedonia. These informal arrangements with the government can take place even when the ethnic minority party may hold only a weak ideological affinity with the governing party, as has been the case in contemporary Romania. Such examples also illustrate a negative aspect of corporatist arrangements: they are heavily elite-focused, and in this sense they may contravene the preferences of the masses and thus democratic principles.[46] While some ethnic Hungarians disagree with their party's cooperation (some say co-optation) with the Romanian government, the elite-focused nature of these informal arrangements leaves them with little say in the matter.

The use of corporatist-like structures to grant increased voice to minorities on a non-territorial basis raises some questions about the distinction between public and private groups in politics and the reach of the state. Weber notes that the bureaucracies of commercial corporations resemble state bureaucratic structures in their shared principle of hierarchical ordering. In his view, administration takes on the same form, whether it is public or private.[47] While the minority governments in Hungary may display an internal hierarchy, this hierarchy alone does not a government make. Instead, the distinction between these institutions and an ethnic 'club' remain rather unclear—they are allocated only few actual governing powers, and thus appear quite similar to private organisations. The allocation of additional governing powers to these units might weaken the control of the central apparatus by transferring powers outside of the realm of the state government entirely. We can see how this shift might happen through the following example.

I may work for a commercial corporation, a body that maintains an official, contractual relationship over persons on a non-territorial basis. If I receive my paycheck from the corporation but fail to produce the required work for which I was paid, according to usual legal norms the corporation might ask the state to intervene and punish me for violating my contract with the corporation. But imagine that we increase the powers allocated to this corporation to *regulate affairs over individuals deemed to*

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[46] Ibid. pp. 64–65.
[47] Weber, op. cit. 'Bureaucracy', pp. 221–223.

fall under its purview, rather than deferring to the state. With its new powers, imagine that the corporation now has increased jurisdiction over my activities such that it may punish me directly for my breach of contract, without asking the state to intervene. In this way, it becomes more than a private economic unit, but rather a governing unit in its own right, much like the mafia in pockets of state weakness.

The debate over the Hungarian Status Law is tied to this difference between public and private. Advocates of the Law argue that it simply provides certain benefits to individuals of Hungarian origin, and in this way simply serves the function of a sort of private Hungarian 'club'. However, opponents of the Law view it as an extension of state power across borders, because the unit granting these benefits is another state with significant powers, rather than simply a private entity. An awareness of these differences among both camps could help each side understand some of the stubbornness on the part of the other in debates over the Law.

Conclusion

This paper has outlined how the high stakes involved in the success of state projects can turn seemingly minor debates over minority rights into issues of great controversy. Given these tensions, can the democratic process in divided states ever internally generate innovations in minority rights, such as non-territorial units? The Belgian state has produced such structures through a decades-long process of compromise, and the Hungarian state has established its own minority governments on a non-territorial basis, though they are admittedly less powerful than those in Belgium. The central question remains whether a democratic process can radically reform the state structure itself. As Weber has argued, democracy exists in a permanent state of tension with bureaucracy,[48] an aversion that is shared among the different groups in a divided state. This tension between democracy and bureaucracy may therefore become a mechanism for change. As peoples tire of old structures, they may begin to push for new arrangements—even if the new options challenge old assumptions.

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[48] Ibid. p. 226.