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Nationalism, Self-Determination, and Nationalist Movements: Exploring the Palestinian and Quebec Drives for Independence

INTRODUCTION

Globally, a tide of nationalist movements and re-awakened self-identity by ethnic minorities has surged. The sweep of nationalist movements has created world-wide social instability, precipitated by calls for complete independence. Recent examples include the bloody civil war in Bosnia, a resurgence of Russian nationalism, and religious chauvinism in Poland. Perhaps the two most striking examples of the current wave of nationalist sentiment are the separatist movement in Quebec, and the increasing demand for greater self-rule by Palestinians, who have been granted a current homeland carved out of Israel’s “Occupied Territories.” The Occupied Territories currently include parts of the West Bank and East Jerusalem. East Jerusalem, despite being directly brought under Israeli law is viewed by many in the international community as an occupied territory.

Under international law, the rights of ethnic minorities in “established” states to disband from their pre-existing state is unclear. Further research and analysis are needed to fully understand the implications of these movements for global peace and security.
ther, international scholarship is also inconsistent with respect toward the rights of members of so-called occupied territories. 10 Moreover, the ambiguities of international law regarding the rights of these ethnic minorities to claim, and subsequently establish, independence, is largely uncertain, with political and legal theorists viewing the very definition of these “peoples” with ambiguity. 11

The principle of self-determination 12 itself, the basis for many of these claims by organized ethnic minority “peoples,” 13 has undergone a dramatic reinterpretation under the precepts of international law. 14 The conceptualization on the part of majorities that ethnic minorities were entitled, if they so deemed, to an independent state has been largely abandoned. 15 Accordingly, the collective rights of individuals, particularly in established countries, are largely ignored by other established powers. 16 One theorist views such self-determination as not even a moral right under international law but a right of utility. 17 The modern age has thus witnessed a more restrictive, limited international “acceptance” of the rights of peoples seeking self-determination. 18 While theorists and international law justify the right of former

(1988). Theorists argue that allowing self-determination to go unchecked would allow minorities, globally, to separate, creating massive destabilization. Id.

10 See Roberts, supra note 6, at 50-51.

11 See Nanda, supra note 9, at 336, 339.

12 Efren Rivera-Ramos, Self-Determination and Decolonisation in the Society of the Modern Colonial Welfare State, in Issues of Self-Determination 123 (Michael Twining ed., 1991). Self-determination is defined, in the modern context, as the right of a people to shape its own political destiny and to provide for its economic, social and political destiny. Id.

13 Morton H. Halpern, et al., Self-Determination in the New World Order 47-48 (1992). “People” has been described as a unit which may have a claim to self-determination. Id. Whether or not such a claim of the unit reasonably exists calls for the focus upon the extent to which the group making a claim shares ethnic, religious or cultural bonds, although the absence or weakness of one of these bonds need not invalidate a claim. Id.


15 Malvina Halberstam, Nationalism and the Right to Self-Determination: The Arab-Israeli Conflict, 26 N.Y.U. J. Int’l. L. & Pol. 573, 575 (1995). Several modern-day states have not allowed rights of self-determination for groups within their own territories, including the Soviet Union (regarding the Baltics), the United States (concerning Native Americans), as well as the United Kingdom (regarding Northern Ireland). Id.


17 See id. at 7.

colonized peoples to seek self-determination, political expedience is a major consideration in allowing self-determination movements to secede in non-colonial states. 19

This Note explores recent trends in international law and the study and composition of nationalist movements, specifically analyzing the self-determination drives of Palestinian groups in the Occupied Territories as well as the recently reawakened drives by Quebec for secession from Canada. Part I identifies basic theoretical principles of self-determination, establishing working definitions of relative terms such as state and nationalism. Part II examines legal principles of self-determination under precepts of international law. Part III analyzes the Palestinian drive for independence in the Occupied Territories and what precipitated, and eventually formed, the current tenuous peace. Further, Israeli and Palestinian arguments on behalf of their respective legal justifications, in terms of international law, are analyzed. Part IV analyzes the most recent attempt by Quebec secessionists to separate from Canada, as evidenced by the 1995 referendum. Finally, this Note establishes that federalism, based upon the National Rights model, is the most likely means of quelling the international instability promulgated by self-determination movements, allowing a limited, recognized degree of self-determination among a state’s peoples.

I. INTERNATIONAL SCHOLARSHIP & LAW: DEFINITIONS OF STATE AND NATIONALISM

Legal scholars have disputed what qualifications, if any, a certain group or people need to maintain in order to be afforded any existing international protections granted by self-determination. 20 For example, under a professed “subjective” standard, a group must popularly desire to form a political entity, which accordingly may be satisfied by a plebiscite, 21 in order to be allowed legitimate self-determination. 22 Conversely, an “objective” standard also exists, which allows groups 23 with

19 See Rivera-Ramos, supra note 12, at 123.
21 See id. A plebiscite can be defined as “[a] vote by which the people of an entire country or district express an opinion for or against a proposal esp[ecially] on a choice of government or ruler.” WEBSTER’S NEW COLLEGIATE DICTIONARY 875 (1981).
22 See Iglar, supra note 14, at 225.
23 Id. One commentator has noted, extensively, the use of the term “minority” under terms of
common characteristics such as history, geography, ethnicity, religion, or race to associate freely through the hope of group cohesion. Applying either of the aforementioned standards must necessarily accept the proposition that a nationalist movement does, in fact, exist, as numerous theorists have attempted to create a working definition of nationalism.

A. Nationalist Theory: Exploring the Nature of Nationalism and its Theoretical Forms

Nationalism is often characterized as an independent, often divisive force, offering fragmented responses and expressing alternate solutions within the traditional society. Nationalist sentiments may seek to establish a sort of familial bond between the citizen and the state or group seeking secession. Such bonds or ties create a consciousness through a coherent leadership ruling above a family of those sharing common values and sentiments. While nationalism may thus rally a specific people through a united, almost familial relationship, nationalism may specifically hearken back to past glories or moments of grandeur and unification, thus seeking to unite a present group to rectify any present inequitable political and/or territorial arrangements. A compartmentalized offshoot of nationalism known as civic nationalism joins all peoples in a "community of equal, rights-bearing citizens, united in a patriotic attachment to a shared set of political practices and values." Leaders of nationalist movements in exile may, accordingly, seek to utilize any destabilizing effects of nationalism in international law. See Olivia Q. Goldman, The Need for an Independent International Mechanism to Protect Group Rights: A Case Study of the Kurds, 2 Tulsa J. Comp. & Int'l L. 45, 48 (1994). A minority group is thus defined as a non-dominant group within a state, with different ethnic, religious, and/or linguistic characteristics differing from the rest of the population and having a sense of solidarity. Id. Thus, the author refutes whether a "minority" or a "people" are in essence the same group, stating that a "people" refers explicitly to a political situation. Id. This Note will not share that author's strict interpretation.

26 T.V. SATHYAMURTHY, NATIONALISM IN THE CONTEMPORARY WORLD 36 (1983).
28 See id.
29 See id.
30 See Walker, supra note 4, at F8.
the state to which members of these ethnic nationalist\textsuperscript{31} groups seek secession.\textsuperscript{32}

If nationalism succeeds in rallying the hearts and minds of a people, such an outcome can call for the end of the current political condition of a country.\textsuperscript{33} Conversely, nationalism can also be utilized to rally a people to the call of the state.\textsuperscript{34} Nationalism, while potentially destabilizing a state through divisiveness, can thus offer both a united vision\textsuperscript{35} and solidarity\textsuperscript{36} to certain peoples seeking secession.\textsuperscript{37} The concept of so-called “good nationalism” may, in fact, be a healthy composite of a state as it does not absolutely privilege members of one state over that state’s non-members.\textsuperscript{38} Good nationalism is interpreted as being communitarian in nature, a nationalism which is not uncontrollable, while viewing individuals as free peoples who are the authors of their own destinies.\textsuperscript{39} If rampant nationalism, in turn, remains unchecked or at the very least ignored by a state, internal aggression may result.\textsuperscript{40} Outlets of such aggression include class struggle, civil war, and revolution.\textsuperscript{41} Thus, disruptive “bad nationalism” can be destructive to the stability of a state.\textsuperscript{42} Bad nationalism worships its own vision as the ultimate truth, excluding non-members from sharing in the virtues and

\textsuperscript{31} See Smith, supra note 27, at 27. Economic nationalism may also exist, under the so-called “discriminatory redistribution” where some groups seek to secede from a state in order to avoid the continual subsidization of fellow countrymen in that parent state who are economically worse off than the groups contemplating secession. Allen Buchanan, Federalism, Secession, and the Morality of Inclusion, 37 Ariz. L. Rev. 53, 59 (1995). Examples of this include the secession of Biafara (from Nigeria) and Slovenia (from Yugoslavia). Id. at 59–60.

\textsuperscript{32} See Smith, supra note 27, at 27.

\textsuperscript{33} See Morgenthau, supra note 25, at 123.

\textsuperscript{34} See id.

\textsuperscript{35} See id. at 4.

\textsuperscript{36} See Buchanan, supra note 31, at 54. For example, the Palestinian National Covenant refers to the liberation of Palestine as both a national “duty,” “aim,” “struggle” and a “necessity.” Palestinian National Covenant, arts. 10–15 (1968), reprinted in Yehuda Lukacs, The Israeli-Palestinian Conflict: A Documentary Record 292–93 (1992) [hereinafter Palestinian Nat’l Covenant].

\textsuperscript{37} See Buchanan, supra note 31, at 54. One commentator has suggested that secession be defined as the multiplication of states, rather than viewed as a challenge to the nature of a state’s authority. See id.

\textsuperscript{38} Ian S. Lustick, Liberalism and Nationalism: Can They be Joined?, 27 N.Y.U. J. Int’l L. & Pol. 265, 267 (reviewing Yael Tamir, Liberalism and Nationalism: Can They be Joined? (1994)).

\textsuperscript{39} See id.

\textsuperscript{40} See Morgenthau, supra note 25, at 123.

\textsuperscript{41} See id.

\textsuperscript{42} See Lustick, supra note 38, at 267.
rewards of community life. Ethnic nationalism, a form of bad nationalism by definition, can also be chauvinistic, because such nationalism contends that an individual's deepest attachments are inherited, not chosen.


The right of a people to secede from a nation is not a guaranteed right under international law. For example, United Nations Resolution 2625, establishing many of the guidelines for the interpretation of self-determination, allows the expression of self-determination through independence, free association, or integration within an independent state. Resolution 2625 does not, however, explicitly allow for separation from the parent state. Further, Resolution 2625 specifically states that self-determination must not be interpreted as the authorization, or even encouragement, of any action which would either partially or totally disrupt the political or territorial unity of sovereign and independent states.

The ability of a nation to secede at will would necessarily violate principles of customary international law because states have been historically accepted as entirely sovereign. Moreover, international law implies that the right to secede is based solely upon the relationship between colonial powers and colonized states. If such a limitation exists, future secession from non-colonial powers would thus be even harder to justify under precepts of international law. Some theorists

43 See id.
44 See Walker, supra note 4, at F8.
45 See Marchildon & Maxwell, supra note 20, at 604.
47 Id.
48 Id.
49 For purposes of this Note, the definition of state will be utilized based on the 1987 Restatement which defines a state as "[a]n entity which has a defined territory and permanent population, under the control of its own government, and which engages in, or has the capacity to engage in, formal relations with other such entities." COVEY T. OLIVER ET AL., CASES AND MATERIAL ON THE INTERNATIONAL LEGAL SYSTEM 83 (4th ed. 1995).
50 Id. at 82–83.
52 See Marchildon & Maxwell, supra note 20, at 612–13.
have suggested that the key factors which necessitate a recognition of a legitimate self-determination movement is dependent upon group affiliation, territorial boundaries and time.\textsuperscript{53}

Legal scholars have attempted to categorize a set of common criteria in order to determine which self-determinist movements are indeed "legitimate" in terms of international law.\textsuperscript{54} The criteria includes the necessary identification of the group that is claiming the right of self-determination, the nature and scope of the group’s claim, the underlying reasons for the claim, and the degree of deprivation of basic human rights.\textsuperscript{55} The modern trend in legal scholarship, following the Nuremberg Trials,\textsuperscript{56} has been a concerted emphasis on abiding by tenets of natural law, subordinating the obligations of the state to individual citizens rather than to its individual self as represented by its leaders.\textsuperscript{57}

II. SELF-DETERMINATION UNDER INTERNATIONAL LAW

A. Understanding Self-Determination: Exploring the History and Evolution of Nationalist Movements Through Precepts of International Law

The modern interpretation of self-determination\textsuperscript{58} took root with the emergence of eighteenth century Western democracies.\textsuperscript{59} These Western political systems, having disposed of monarchies, focused on government control by their citizens.\textsuperscript{60} This was the antithesis of the ideals of nineteenth century political philosophers such as Kant, Marx and

\textsuperscript{53} See id. at 603.
\textsuperscript{55} See id.
\textsuperscript{56} David Luban et al., Moral Responsibility in the Age of Bureaucracy, 90 Mich. L. Rev. 2348, 2350–53 (1993), cited in Oliver, supra note 49, at 858–60. The post-World War II Nuremberg Trials involved the actions of an international tribunal which prosecuted several individuals for their involvement with the Nazi government in Germany. Id. The Nuremberg Trials are often described as a watershed of international law, involving for the first time trials dealing with crimes against humanity. See id.
\textsuperscript{57} See id.
\textsuperscript{58} Self-determination has been defined as the right of a people to secede from their present government. Buchanan, supra note 31, at 54. One commentator has stated that self-determination rights are political rather than legal in nature, such as the right to utilize land or develop natural resources. Id.
\textsuperscript{59} See Marchildon & Maxwell, supra note 20, at 599.
\textsuperscript{60} See id.
Hegel, who focused on the historical capacity of individuals to act in a free, purposeful and autonomous manner. This individual-based self-determination was given a more group-centered understanding in the writings of socialists such as Lenin at the onset of the twentieth century.

Following the First World War, which saw the dissolution of several multi-nationalist states, including the Ottoman and Austro-Hungarian Empires, states recognized that nationalist aspirations of ethnic minorities needed to be addressed. If nationalist sentiments were left unchecked and never truly addressed, states recognized that precipitous results could follow, as evidenced by the dissolution of several states and the emergence of new states based on ethnicity. A multitude of treaties, overseen by the League of Nations following World War I, granted to the peoples of newly-created states the right to citizenship, equality of treatment, non-discrimination, and the right to use one’s own language. Woodrow Wilson, a proponent of self-determination, felt that the realization of such aspirations by treating such peoples as credible, rather than merely considering them “property,” and achieved through a restructuring of Europe would create a lasting peace. Wilson’s principles were based upon basic adherence to democratic principles which, in turn, would foster a global peace through reflections of general human goodness.

While the victorious Allies utilized language as a basis for defining a given “people,” the result promulgated the birth of new states. In turn, the creation of a plenitude of new ethnic minorities was realized.
During the period of decolonization, which emerged in the 1960s and continued through the 1970s, territorial states were created by grants of independence from their colonizing parental nations.

Modern international legal interpretation of self-determination has largely adopted the objective standard when evaluating the legal validity of self-determination. Many commentators, noting the uncertainty of actually identifying the legal justifications for secession under international law, simply apply a political analysis when determining whether a group should be allowed to secede. Another aspect of any discussion regarding the state from which an ethnic minority seeks to separate is whether that state is a monist, or dualist, state. Monist states, such as France, adhere to international law as supreme to their own. Conversely, dualist states, such as Israel, the United States and Canada, assume that domestic law applies over international law.

1. The United Nations

Several United Nations (U.N.) Resolutions, as well as the United Nations Charter (Charter) itself, recognize principles of self-determi-
nation. The U.N., revealing the importance of self-determination, characterizes such a right as a fundamental human right, consistent with the Charter. Accordingly, the U.N. has found that all “people” have the right to “freely determine” their political status, and have their own choice as to how to pursue their own economic, political, and social development. Protection of the international right of self-determination is thus one of the founding hallmarks of the United Nations.

Moreover, the goal of promoting the self-determination of peoples is expressly stated, and recognized, in the creation of the U.N.’s institutional framework. The U.N. has specifically entrusted trustee states of trust countries to promote, if not encourage, self-determination within those territories. Irrespective of the UN-supported documents regarding the “right” of self-determination, legal scholars disagree as to whether self-determination should be afforded the binding characterization of customary international law.

The U.N. recognizes that the use of force in achieving self-determination is permissible. Such force cannot include terrorism, and must be used in furtherance of a legitimate political goal. States are, accordingly, allowed under international law to use force to repel an attack by a self-determination movement. The force must be in response to an imminent attack or employed under circumstances in which there could be no other means of repelling an imminent attack. Finally, the use of force must be proportional to the attack that occasioned it.

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79 See U.N. Charter arts. 1, ¶ 2, 55.
80 Resolution 2625, supra note 46.
81 Id.
83 See id. art. 55.
84 U.N. Charter Article 73 states that such trustee states “[r]ecognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost. . . .the well-being of the inhabitants of these territories and. . . .to develop self-government, to take account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions. . . .” Id. art. 73.
85 See Marchildon & Maxwell, supra note 20, at 603.
86 Oliver, supra note 49, at 1364–65.
87 Id.
88 Quaye, supra note 71, at 273.
89 Id.
90 Id.
While terrorism\(^{91}\) is unacceptable under international law,\(^{92}\) innumerable General Assembly resolutions reaffirm the right of a people’s self-determination.\(^{93}\) Article 27 of the Political Rights Covenant\(^{94}\) guarantees that in states with ethnic, religious, or linguistic minority groups, members of those groups cannot be denied the right to enjoy their own culture, practice their own religion, or utilize their individual language.\(^{95}\) Subsequent U.N. Conventions have supported various measures, including the disbanding of all forms of discrimination in education, as well as race discrimination.\(^{96}\)

2. The Council on Security and Cooperation in Europe (CSCE)

International agreements beyond the auspices of the U.N. have reaffirmed an international recognition of the right to self-determination.\(^{97}\) For example, the Helsinki Accord of 1975, agreed to by thirty-three European states, as well as both Canada and the United States, recognizes self-determination principles.\(^{98}\) Principle VIII of the Helsinki Accord specifically addresses self-determination.\(^{99}\) While none of the signatories of the Helsinki Accord are current colonial states, the broadening to accept non-colonial self-determination movements as legally recognizable secessionist movements has thus gained momentum since 1975.\(^{100}\)

The follow-up meeting of the CSCE, held between 1986 and 1989, specifically addressed minority issues, as participating states must refrain from discrimination against persons belonging to minorities.\(^{101}\) States must also contribute to the realization of the legitimate interests

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\(^{92}\) Id.


\(^{95}\) Id.


\(^{98}\) Id.

\(^{99}\) Id. Principle VIII states that “[a]ll peoples always have the right, in full freedom, to determine, when and as they wish, their internal and external political status, without external interference.” Id.

\(^{100}\) See Marchildon & Maxwell, *supra* note 20, at 601–02.

of the minority in the human rights arena. For example, Paragraph 19 of the Helsinki Act obliges the participating states to ensure conditions for the promotion of the ethnic, cultural, linguistic, and religious identity of national minorities in their territories, and to ensure their full equality.

In the CSCE’s Conference on the Human Dimension, held in June, 1990 in Copenhagen, the resulting Copenhagen Document included an entire section on ethnic minorities, and strongly affirmed the linguistic freedom for minorities. The Copenhagen Document thus allows national minorities to establish and maintain their own educational institutions, and it suggests that in order to protect the territorial integrity of a state, it may be necessary to devolve onto a minority group whole political functions and powers. The Report of the Geneva CSCE Meeting of Experts on National Minorities applies an even more ringing endorsement of the global acknowledgment of a people’s rights of self-determination, stating that issues regarding national minorities are “[m]atters of legitimate international concern and do not constitute exclusively an internal affair of the respective state.”

B. The Rights of Self-Determination of Peoples in Legally-Created “Occupied Territories”

International law regarding occupied territories allows the occupant, or occupying state, to wield certain powers while limiting other powers, in order to ensure that the occupied peoples are treated with humanity throughout the occupation. Thus, international law seeks to protect the sovereign rights of the legitimate government of the occupied territory, while protecting the inhabitants from being exploited. Citizens in occupied territories receive the humanitarian protections of the Fourth Geneva Convention. Prolonged occupations, lasting greater than five years, have drawn the attention of international re-

\[102 Id.\]
\[103 Id. at 54–56.\]
\[104 HALPERN, supra note 13, at 57–58.\]
\[105 Id.\]
\[106 Id. at 59.\]
\[107 Roberts, supra note 6, at 46.\]
\[108 Id. at 48.\]
During such prolonged occupations the international law of human rights is granted further importance.111

III. PALESTINIAN NATIONALISM

A. The Roots of Palestinian Nationalism: From the Birth of the State of Israel to the Inception of the Occupied Territories

Palestine, before the First World War, was a state administered by the Ottoman Empire and consisted of a mostly Arabic, heterogeneous and otherwise divided people.112 The Palestinian people varied from villagers who supported themselves through farming to the southern, mostly nomadic Bedouins.113 The diverse range of those living in Palestine, including Sunni Muslims, Shiites, and Druze, as well as Greek Orthodox, were frequently at odds with one another.114 At the onset of the twentieth century, an increasing number of Jews115 began to settle in Palestine.116 Those Jews that were native Palestinians, like Christians, were dhimmis, a designation under the Ottoman Empire signifying second-class citizenship.117 Early Jewish settlers did not seek Ottoman citizenship, but carried an idea of national unity and identity.118 Existing Palestinian-Arabs resented the large migration of Jewish settlers,119 while Palestinians often sold their land to Zionist120 landowners.121 Following the dictates of the Sykes-Picot Agree-

110 Roberts, supra note 6, at 48, 50-51. The author lists occupations which have drawn the concern of the international community due to their time frame: South Africa in Namibia (five years), Turkish forces in Cyprus (four years), and the presence of Moroccan forces in the Western Sahara (four years). Id.
111 Id. at 52.
113 Id.
114 Id. at 18.
115 By 1914, the Jewish population of Palestine was estimated at 13 percent, with 5,000 Arabs working Jewish lands. Id. at 22.
117 BICKERTON & CLAUSNER, supra note 112, at 18.
118 Id. at 27.
119 See Bisharat, supra note 116, at 496-502.
120 DEBORAH GERNER, ONE LAND, TWO PEOPLES 201 (1991). “Zionism” has been defined as nineteenth and twentieth century Jewish nationalism, generally, but not exclusively, taking the form of support for Israel as a Jewish state. Id.
121 See Bisharat, supra note 116, at 496-502.
ment,\(^\text{122}\) and the defeat of the Ottoman Empire\(^\text{123}\) at the close of World War I, Palestine became a mandate\(^\text{124}\) of Great Britain in July of 1922.\(^\text{125}\) Throughout the ensuing years, Palestine remained centered around uncertainty: the Hussein-McMahon correspondence at the end of World War I suggested that, in return for Arab support, Arabs would attain control of Palestine at the close of the war.\(^\text{126}\) Contravening this promise was the Balfour Declaration of 1917, which appeared to recognize the need for the establishment of a Jewish homeland in Palestine.\(^\text{127}\) Moreover, the MacDonald White Paper of 1939 advocated that both Palestinians and Jews be merged into one binational state.\(^\text{128}\)

With the rise in power of anti-Semitic governments in Europe, a massive influx of Jews migrated into Palestine.\(^\text{129}\) Absentee Palestinian landlords and wealthy city merchants began to sell their lands at inflated prices to the new Jewish settlers.\(^\text{130}\) As the Jewish presence increased, Palestinians instituted a revolt between 1936 and 1939, which initially was characterized by strikes, non-payment of taxes, and various other forms of general civil disobedience, yet devolved to open violence resulting in numerous casualties for both Jews and Palestinians.\(^\text{131}\)

In worldwide reaction to the Nazi atrocities of World War II, the U.N. General Assembly voted on November 29, 1947 in favor of U.N. Resolution 181, which called for the creation of separate Arab and Jewish states within a partitioned Palestine.\(^\text{132}\) That vote, thirty-three to thir-

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\(^{122}\) See Gerner, *supra* note 120, at 29–32. The 1916 agreement, conducted between a British and a French diplomat, respectively, sought to divide the Ottoman Empire at the close of World War I into zones where both countries could exercise either direct, or indirect, influence. *Id.*

\(^{123}\) See Nanda, *supra* note 9, at 339. It has been suggested that Palestine, before the disintegration of the Ottoman Empire, was a compendium of provinces within that Empire, and thus its citizens never had the territorial bond or common heritage which, as previously mentioned, theorists view as a critical element of establishing a viable state. *Id.*

\(^{124}\) Gerner, *supra* note 120, at 28. “Mandate” is defined as Britain and France’s respective commission to administer the political affairs of the Ottoman Empire’s former subject states and to prepare them for independence, as confirmed by the League of Nations. *Id.* The Mandate Territories were Syria and Lebanon, awarded to France, and Iraq and Palestine, awarded to Britain. Bickerton & Clausner, *supra* note 112, at 43.

\(^{125}\) Gerner, *supra* note 120, at 28.

\(^{126}\) See *id.* at 29–31.

\(^{127}\) *Id.* at 31.

\(^{128}\) See Nanda, *supra* note 9, at 336.

\(^{129}\) Bickerton & Clausner, *supra* note 112, at 52.

\(^{130}\) *Id.* at 49.

\(^{131}\) Gerner, *supra* note 120, at 27.

\(^{132}\) Bickerton & Clausner, *supra* note 112, at 91. The Muslim countries (together with India, Yugoslavia and Greece) voted against partition. *Id.* The United States and the Soviet bloc, together with several other nations including France and Australia, supported the partition. *Id.*
teen, with ten abstentions, also included the U.N.'s administration of Jerusalem as an international city. On May 15, 1948, the British mandate ended and the state of Israel was proclaimed. On that same date Arab armies entered Israel: the Arab Legion (consisting mainly of Arab irregulars from Iraq, Syria and Lebanon) went into Judea and Samaria, now known as the West Bank; the Egyptian army moved through Gaza and the Negev; the Lebanese went into Galilee; the Iraqis moved alongside the Arab Legion; and the Syrians remained at their border. By 1949 the war was over, with the Israelis occupying part of Palestine, the newly-established Jordan occupying the West Bank, as well as the remainder of Palestine east of the Jordan River, and Egypt occupying the Gaza Strip.

In 1964, the Palestine Liberation Organization (PLO) was established to represent these Palestinians. The June, 1967 War between Israel and the Arab states of Egypt, Syria and Jordan led to a further displacement of Palestinians, as Israel gained control of the so-called Occupied Territories. The Occupied Territories containing Palestinians included the West Bank, the Gaza Strip and East Jerusalem. U.N. Security Council Resolution 242, issued on November 22, 1967, while a bilateral obligation, called for the "[w]ithdrawal of Israeli armed forces from territories occupied in the recent conflict." The new territories held by Israel added an additional 1.5 million Palestinians, further exacerbating tensions.

In 1970, Jordan's King Hussein, disturbed with rising Palestinian nationalism in his own country, and rising criticism by the Palestinian nationalists, expelled the PLO. The PLO in Jordan had become a serious threat to Jordan's potential stability with Israel, inviting Israel's

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133 See id.
134 Gerner, supra note 120, at 44-45.
135 Bickerton & Clausner, supra note 112, at 95-96.
136 Gerner, supra note 120, at 50. The War, known to Arabs as al-Nagbah (The Disaster), precipitated the mass evacuation of Palestinians, with only 120,000–150,000 of a pre-war total of 900,000 Palestinians remaining in what was then the official state of Israel. Id. The vast majority of the displaced Palestinians were the fellahin, unskilled workers and dispossessed peasants who went to refugee camps. Bickerton & Clausner, supra note 112, at 107.
137 Augustus R. Norton, in The International Relations of the Palestine Liberation Organization 1, 2–3 (Augustus R. Norton & Martin H. Greenberg eds., 1989).
138 Bisharat, supra note 116, at 524.
139 Roberts, supra note 6, at 62.
141 Gerner, supra note 120, at 74.
142 Id. at 127.
retaliation upon Jordan for the PLO's terrorist activities.143 On November 28, 1971, a PLO-sponsored terrorist group killed the Jordanian Prime Minister.144 Following the 1973 Yom Kippur War, and the subsequent rapprochement with Egypt in the 1978 Camp David Accords, Palestinian nationalists' frustration grew, culminating in the Israeli invasion of Lebanon in 1982, forcing Yasir Arafat, the PLO Chairman, to regroup his headquarters in Tunis.145

1. Self-Perception through Struggle: The Intifadah

In determining whether or not the Palestinians are, in fact, a specific “people” for purposes of international law, the structure of the group, as well as its actions in hopes of self-determination, must be carefully scrutinized.146 Palestinians, in an attempt to regain their self-determination, waged a structured war against the Israeli occupation.147 This war, known as the Intifadah,148 began on December 8, 1987, when an Israeli truck struck two Arab vans at a Gaza Strip checkpoint, killing four Arabs.149 The incident touched off a wave of protests as Palestinians began blocking streets, setting fires, throwing stones, and making Molotov cocktails, all viewed as a means of establishing an independent state under the PLO.150

The Intifadah was the result of a culmination of Palestinian frustrations.151 The Palestinians lived in occupied lands with curtailed civil rights, had little faith in the Arab governments for support, and were disillusioned with the inefficiency of the PLO.152 The Israeli reply to the Intifadah was swift: by November of 1988, 150 Palestinians were killed, their leaders had been deported, over 11,500 casualties occurred (nearly two-thirds of the casualties were children under fifteen years old).

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143 Bickerton & Clausner, supra note 112, at 168.
144 Id. at 169.
145 Gerner, supra note 120, at 204. The Israelis struck Lebanon because the PLO had carved out a mini-state in Lebanon from which to launch military operations against Israel. See id.
146 Goldman, supra note 23, at 46–47. Some theorists have argued that the “self-perception” of a group must be analyzed in determining whether the group warrants a protected status. Id. For example, the group’s history, geography and language are considered. Id.
147 Bickerton & Clausner, supra note 112, at 255.
148 Intifadah translates as “shaking off.” Id.
149 George D. Moffett III, After 2 Years, Palestinians Dig in for War of Attrition, CHRISTIAN SCI. MONITOR, Dec. 8, 1989, at 1.
150 See id.
151 See id.
152 Bickerton & Clausner, supra note 112, at 255.
years old) and several homes were demolished.\textsuperscript{153} By mid-1990, the human casualties increased in skirmishes with Israeli troops, with over 800 Palestinians killed in encounters with the Israeli Defense Force troops.\textsuperscript{154} Some 200 of those casualties were under sixteen years old.\textsuperscript{155} Finally, the Intifadah cost the Israeli Defense Forces a staggering $500 million by 1990, beyond the high cost of their own casualties.\textsuperscript{156}

Palestinian nationalism varies widely in both composition\textsuperscript{157} as well as technique, as illustrated by the several vastly different representative organizations.\textsuperscript{158} The PLO, composed of four political factions, is largely dominated by Fateh,\textsuperscript{159} created by Yassir Arafat.\textsuperscript{160} Fateh, while outwardly moderate\textsuperscript{161} as compared to other rival Palestinian groups, created the Jihad Squads in the Occupied Territories, a challenge to the extremist group Hamas, while their official propaganda has become at times increasingly religious.\textsuperscript{162} To be sure, the original platform of the PLO calls for the destruction of Israel,\textsuperscript{163} and terrorist acts such as the 1972 Munich Olympic Games massacre, conducted by a Fateh-offshoot group entitled Black September, were fundamental characteristics of Fateh and the PLO itself.\textsuperscript{164} With waning global support in the 1980s, the Intifadah promoted massive exposure, as it purposely pitted hopelessly under-armed, and comparatively defenseless, opponents against the Israeli occupying forces.\textsuperscript{165} In a further overture to

\begin{footnotes}
\footnotetext{153}{Id.}\footnotetext{154}{Id.}\footnotetext{155}{Id.}\footnotetext{156}{Id.}\footnotetext{157}{Matti Steinberg, *The PLO and Palestinian Islamic Fundamentalism*, 52 Jerusalem Q. 24, 39 (1989). Religious bonds, irrespective of the various factional Palestinian representative groups, do exist: 95 percent of the Palestinians in the West Bank are Sunni Muslims, while the figure for the Gaza Strip is 98 percent. Id.}\footnotetext{158}{See Rashid Khalidi, in *The International Relations of the Palestinian Liberation Organization*, supra note 137, at 59, 60–62.}\footnotetext{159}{Detlev Vagts & Malvina Halbertstam, 86 Am. J. Int’l L. 424, 425 (1988) (reviewing Harris O. Schoenberg, *A Mandate for Terror: The United Nations and the PLO* (1988). “Fateh” or “fatah” is the Arab word for “conquest.” Id.}\footnotetext{160}{See Gerner, supra note 120, at 118–21.}\footnotetext{161}{Khalidi, supra note 158, at 60–61.}\footnotetext{162}{Steinberg, supra note 157, at 40, 43.}\footnotetext{163}{Palestinian Nat’l Covenant, supra note 36, art. 15., at 293.}\footnotetext{164}{Gerner, supra note 120, at 122.}\footnotetext{165}{See Yasir Arafat, Address to the European Parliament, Strasbourg (Sept. 13, 1988), in Lukacs, supra note 36, at 403–11. Arafat states that the PLO “[h]oped that the sight of children wielding stones to confront armored vehicles, gunfire, and suffocating gas would be sufficient to arouse the consciousness of Israeli occupiers. . . .” Id. at 405.}
\end{footnotes}
garner popular support, Chairman Arafat condoned Israel’s right to exist, supporting U.N. Resolution 181.\textsuperscript{166}

2. Hamas

While the PLO has maintained a more moderate approach, on through the signing of the peace accord on September 13, 1995,\textsuperscript{167} other nationalist groups, such as Hamas (an acronym for zeal),\textsuperscript{168} have become much more vocal.\textsuperscript{169} Hamas, also known as the Islamic Resistance Movement, currently calls for a Jihad (holy war) as the only solution for the Palestinian problem.\textsuperscript{170} While initially supported by Israel as a counterweight to the PLO, it became militant and its founder, Sheikh Ahmed Yassin, was imprisoned by the Israeli government.\textsuperscript{171} Hamas, as evidenced through its increasing membership as well as significant influence, effectively combines Palestinian nationalism with Islamic zeal in a culture of struggle that honors a glorious death and rejects as sinful the compromises necessary for a peaceful resolution of the Israeli-Palestinian conflict.\textsuperscript{172} The Hamas Covenant itself views international conferences and peace proposals as merely “vain endeavors,” declaring the Palestinian goal for self-determinism a religious problem.\textsuperscript{173} In short, Hamas, at least through its military wing, seeks the destruction of Israel and the creation of an Islamic state.\textsuperscript{174} The military wing of Hamas, the Iziddin al-Quassam (Quassam Brigades), has committed various acts of aggression, with accompanying statements reaffirming its position that the group loves death more than life.\textsuperscript{175}

In early March of 1996, Hamas conducted four suicide bomb attacks on Israel in a one-week span.\textsuperscript{176} While the military wing of Hamas has acknowledged the will of its political leader, Mahmoud Zahar, to stop

\textsuperscript{167} See Hamas Issues Treat to Israel, \textit{St. Louis Post-Dispatch}, Apr. 3, 1996, at 6A.
\textsuperscript{170} See Excerpts from the Covenant of Hamas (Aug. 18, 1988), \textit{in Lukacs, supra} note 36, at 401–03 [hereinafter Covenant of Hamas].
\textsuperscript{172} Parks, \textit{supra} note 168, at 1.
\textsuperscript{173} See Covenant of Hamas, \textit{supra} note 170, at 401–03.
\textsuperscript{174} See \textit{id.}; Parks, \textit{supra} note 168, at 1.
\textsuperscript{175} Parks, \textit{supra} note 168, at 1.
the attacks and give the Palestinian Authority a chance to negotiate with Israel, a breakaway cell within Hamas has ignored the request.\textsuperscript{177} The refusal to obey the Hamas leadership reveals that the group itself is fractious.\textsuperscript{178} Palestinian opinion polls have shown that support for Hamas, once running near forty percent, has dropped to about fifteen percent.\textsuperscript{179} Accordingly, Chairman Arafat is in a tenuous position, neither wishing to disassociate himself from Israel, nor antagonize the Hamas faction.\textsuperscript{180} With the notable exception of Iran, the Arab world has officially voiced their frustration with Hamas’ terrorist tactics through diplomatic means.\textsuperscript{181}

B. Secession and the Occupied Territories

The Israeli government has consistently referred to the Occupied Territories as administrative territories, thus disputing whether their legal status warrants the legal protections offered by the Fourth Geneva Convention.\textsuperscript{182} Accordingly, some Israeli court decisions have accepted that the Geneva Convention applies, while other decisions have not.\textsuperscript{183} Moreover, Israel, while stating that it shall abide by the humanitarian provisions of the Fourth Geneva Convention, has not revealed what provisions of the Convention it regards as humanitarian conditions.\textsuperscript{184}

Certainly, irrespective of whether or not humanitarian concerns are thus admitted, the question does persist whether a "prolonged occupation," in the context of international law, allows self-determination movements to even exist.\textsuperscript{185} Moreover, international treaties explicitly allow peoples the right to self-determination, and, if necessary, the

\textsuperscript{177} Id.
\textsuperscript{179} Marcus, \textit{supra} note 176, at A13.
\textsuperscript{180} Id.
\textsuperscript{182} Roberts, \textit{supra} note 6, at 62. Israel ratified the four 1949 Geneva Conventions in 1951. \textit{Id.}
\textsuperscript{183} Id. at 64; see also Israeli Ministry of Foreign Affairs, Memorandum of Law (Aug. 1, 1977), 17 I.L.M. 432, 433 (1978) (decision on offshore oil exploitation in the Suez questions the applicability of the Fourth Geneva Convention).
\textsuperscript{184} Roberts, \textit{supra} note 6, at 66.
\textsuperscript{185} Id. If Palestinians are advocating that international legal resolutions apply, such as the recognition of U.N. resolutions terming the Israeli occupation as illegal, the Palestinian position is weakened considerably. See \textit{id}. For example, Palestinian self-determination was never mentioned in either U.N. Security Council Resolutions 242 or 338. See \textit{id}. Security Council Resolution 242 (Nov. 22, 1967) provided for Israeli withdrawal from occupied territories in the 1967 war, on top of the cessation of all claims or states of belligerency. See \textit{id}. Security Council Resolution 338 (Oct. 22, 1973) reaffirmed Resolution 242. See Roberts, \textit{supra} note 6, at 66.
right to struggle to attain such independence. Finally, the U.N. also granted the PLO observer status, further "legitimizing," under international law, the PLO as a liberation movement.

C. The Current Status: Political Resolutions Abrogating International Law

As peace negotiations continue, a sort of cultural nothingness that former self-determination movements, now citizens in a burgeoning state, must face, raises Palestinian tensions. Youths accustomed to often violent rebellion must somehow rechannel their former aggression into coalescence, accepting the Palestinian government in order to cease such tensions. Further, the peace proposal, which envisions Palestine somehow being in a confederal relationship with Jordan, has raised concerns with Palestinians and Jordanians alike. Specifically, the relationship between Jordan and the PLO, now the recognized government of the Palestinian-controlled territories, has been a history marked with violence and tensions. These tensions included a threat by the PLO to usurp power from King Hussein in Jordan during the 1970s.

Following the Peace Accords, both PLO Chairman Yassir Arafat as well as Israeli Prime Minister Yitzhak Rabin and Foreign Minister Shimon Peres received international accolades, culminating in the receipt of the Nobel Peace Prize. The Israeli prime minister was assassinated on November 4, 1995 by a Jewish extremist upon exiting

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186 See Resolution 2625, supra note 46.
187 See Roberts, supra note 6, at 80 (citing G.A. Res. 3237 (Nov. 22, 1974)).
188 See Greenberg, supra note 5, at F9. Palestinian police must now confront violent separatist groups such as the Fatah Hawks. Id.
189 See id.
190 Taher Shriteh, Palestinians Pessimistic About Arab Summit, Reuters World Service, June 22, 1996, available in LEXIS, News Library, Rewuld File. Palestinians continue to feel pessimistic about general Arab support, as evidenced by the cynical attitude prevalent among the Palestinians prior to the Arab Summit of 1996, where Palestinian self-rule was supposed to be discussed. Id. In actuality, the Arab Summit did agree upon a stern communique, requiring Israel to withdraw from the Occupied Territories (including Jerusalem), and enable the Palestinians to set up an independent state. Storer H. Rowley, Arabs Tell Israelis to Honor Peace Plan, CHI. TRIB., June 24, 1996, at 1.
191 George J. Church, All Together Now, TIME, Sept. 20, 1993, at 36, 86. The PLO seeks confederation to be a freely chosen act by a fully independent state, while the Israelis want such a confederation a condition. Id.
192 Bickerton & Clausner, supra note 112, at 168–69.
193 Gerner, supra note 120, at 127.
a pro-peace rally of 150,000 people in Tel Aviv.\textsuperscript{195} The assassination came on the heels of growing resentment in certain circles to the Palestinian Peace Accords, which ceded most of the West Bank as well as all of Gaza to Palestinian self-rule.\textsuperscript{196} For example, the conservative Likud Party has long opposed the "land for peace" proposal which the Labour Party has embraced.\textsuperscript{197} The Likud party platform itself contained a goal for settling the West Bank and Gaza Strip.\textsuperscript{198}

Further, though declining in membership, Hamas has fanatical members, with its leaders dominating members through visions of armed struggle, as well as securing Jerusalem as the capital of the Palestinian state.\textsuperscript{199} Hamas, viewing the PLO's accord with Israel as too lenient and insufficient openly considers Chairman Arafat a traitor,\textsuperscript{200} and vows to continue its violent efforts.\textsuperscript{201} The grass-roots support of Hamas\textsuperscript{202} has led to the development of major Hamas training centers in Hebron, Nablus and Ramallah in the West Bank, and in East Jerusalem.\textsuperscript{203} Each time Hamas undertakes a violent course of events, such as the suicide bombings in Israel on March 3–4, 1996, the Israeli Peace Process is invariably affected.\textsuperscript{204}

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\textsuperscript{196} Id.
\textsuperscript{197} Michael Parks, \textit{Shambles in Likud Over Peace Plan}, \textit{The Guardian}, Sept. 28, 1993, at 12. Specifically, Likud has demanded the prevention of any Palestinian state, the preservation of the unity of Jerusalem, the maintenance of the Israeli Army's responsibility for security and no readmission of Palestinian refugees. \textit{Id.}
\textsuperscript{198} Tom Masland, \textit{Israel vs. Israel: The Enemy Within}, \textit{Newsweek}, Nov. 13, 1995, at 47, 47.
\textsuperscript{199} Perlmutter, \textit{supra} note 169, at A19.
\textsuperscript{200} Mary Curtius, \textit{Militants Toss Arafat from Mosque}, \textit{Ottawa Citizen}, Nov. 4, 1994, at D12. One example of the Palestinian growing dissatisfaction with Arafat's leadership was the jostling of Arafat, who attempted to pray over a Palestinian nationalist. \textit{Id.} Further, a Hamas team based in Jordan purportedly conspired to assassinate Arafat during a visit to Gaza's Martyr's Cemetery on April 28, 1996. Martin Sieff, \textit{Arafat Bargains with Israel for a Palestinian State}, \textit{Wash. Times}, May 6, 1996, at A1.
\textsuperscript{202} Wafa Amar, \textit{Hamas Founder Said to Want Attacks Suspended}, Reuters World Service, May 23, 1996, \textit{available in LEXIS}, News Library, Reuwlrd File. The jailed Hamas leader, despite the acts of the Hamas organization, has called for the group to suspend attacks against Israel until final status peace talks between Israel and the PLO end. \textit{Id.}
\textsuperscript{203} Parks, \textit{supra} note 168, at 1.
\textsuperscript{204} See \textit{Hamas Bombings in Israel Send Peace Process Reeling}, Mar. 7, 1996, Facts on File World News Digest, \textit{available in LEXIS}, News Library, Papers File. Following those bombings, then Prime Minister Peres vowed that Israel would recognize no territorial restrictions in its response to
The effect of Hamas to forestall peace negotiations through violent acts has been counter-productive. Following the Hamas bombings in March of 1996, the Palestinian National Council voted to scrap calls for the destruction of Israel in its 1968 Charter. The vote, 504 to 54 in favor, while also attempting to aid the Peres bid for re-election, was primarily in hopes of Israel continuing to fulfill that nation’s commitments under the Peace Accords: a partial withdrawal from the West Bank town of Hebron, the freeing of prisoners and the building of access roads between the West Bank and Gaza.

Arguably the most daunting roadblock to the continuation of Palestinian-Israeli peace talks is the 1996 election of Benjamin Netanyahu as prime minister of Israel. Prior to his election, Netanyahu pledged to keep building new Jewish settlements in land supposedly being turned over to the Palestinians under the 1993 Israel-PLO peace understanding. He also vowed never to negotiate with the PLO regarding Jerusalem, and to suspend the redeployment of Israeli troops from the West Bank town of Hebron. Each of these issues is a reversal of previous Peres-led negotiations. The final phase of negotiations, which was to discuss the status of Jerusalem, was already a great dividing point for the more liberal Peres government and the PLO even before Benjamin Netanyahu became prime minister.

The election divided Israel, as Peres, who sought to negotiate with the PLO, was rejected by the slimmest of margins, and thus Netanyahu cannot claim a mandate given to him by the majority of Israeli voters.

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205 See Curtius, supra note 200, at D12.
207 Id.
208 See Storer H. Rowley, Netanyahu Looks Like A Real Winner, CHI. TRIB., May 31, 1996, at 1 [hereinafter Netanyahu Looks]. Netanyahu, the Likud party leader, won election over Peres by an estimated 50.3 percent to 49.6 percent. Id.
209 Id.
210 Palestinians Clash with Israeli Soldiers in Hebron, Reuters World Service, June 3, 1996, available in LEXIS, News Library, Reuwwd File. Hebron remains a flashpoint of Israeli-Arab violence, where a Jewish settler massacred 29 Moslem worshippers in a Mosque in 1994 and was the last West Bank city to be evacuated by the Israeli Army. Id. Some 400 militant Jewish settlers live in Hebron amid more than 100,000 Arabs. Id.
211 Id.
213 See Netanyahu Looks, supra note 208.
Palestinian Authority representatives, hoping for a continuation of the Peres government, were not optimistic about the ability to negotiate with the hardline, Netanyahu-led government.²¹⁴ In fact, a June, 1996 draft detailing the proposed initiatives of the Netanyahu government with respect to the peace process forced a response from Palestinian ministers stating that a declaration of war would exist if those initiatives were ever implemented.²¹⁵

IV. THE HISTORY OF CANADA’S SELF-DETERMINATION MOVEMENTS

Today, the largely French-oriented population of Quebec plays a crucial role in the overall framework of the Canadian state.²¹⁶ Currently, French speakers, or Francophones, comprise eighty-two percent of Quebec’s 7.3 million residents.²¹⁷ French is one of the two official languages of Canada, and Quebec holds 75 of 295 seats in Parliament, more than any other province except Ontario.²¹⁸ The Quebecois drive for independence, if successful, would involve the potential loss of 6.9 million Canadian citizens and nearly fifteen percent of Canada’s territory.²¹⁹

A. History

The French explorer Jacques Cartier claimed Canada for a largely disinterested France in 1534.²²⁰ In 1608 Quebec was founded, and seven years later the Jesuits in Canada became established.²²¹ In 1759, the British seized Quebec from the French.²²² The 1759 defeat has been emblazoned within the Quebec spirit ever since, as the words “Je me
souviens” (I remember) are, for example, inscribed onto every automobile license plate. The English government recognized the French language, French civil law, and the Catholic Church in their new colony in the Quebec Act of 1774, but left English the sole official language of Canada. By 1791, the English government divided the present Canadian state into Lower (French-native controlled) and Upper (English controlled) Canada, with England controlling one third of the Lower Canada seats in that respective legislature.

A rebellion, designated “La Guerre des Patriotes,” (The Patriots’ War) lasted eighteen months beginning in 1837, and was characterized by gratuitously violent acts such as church desecrations, torched villages, and public hangings before the rebellion’s end. Church leaders, fearing the anti-clerical and democratic emphasis of the rebellion, which included the nationalization of church lands, opposed the revolt. Few major changes followed the rebellion, and ethnic tensions continued to simmer.

Lower and Upper Canada united in 1840, and Quebec and English-speaking Canada joined the Confederation in 1867. Under this new union, French became the official language of Canada’s federal Parliament, the Quebec legislature and the courts. In 1869, French speakers in the provinces rebelled due to growing national anti-French legislative moves, including the revocation of school guarantees, and land seizures. Nationalism, accordingly, arose in Quebec, fanning outrage when a rebel leader was hung in 1885. In 1896, Wilfred Laurier became the first French-Canadian prime minister, thus thawing French-English relations.

The Revolution Tranquille (Quiet Revolution), signaling the political resurgence of Canadian separatists, began on the night of June 22,

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223 Id.
225 Id.
226 Id.
227 FITZMAURICE, supra note 220, at 15-16.
228 See id.
229 What Does Quebec Really Want?, supra note 224, at F1.
230 Nickerson, supra note 218, at A6.
231 What Does Quebec Really Want?, supra note 224, at F1.
232 Id.
233 Id.
234 Id.
1960, when Liberals won the Quebec election. The growing Quebecois sentiment that the province was being dominated by the anglophone elite rallied French separatist intentions. The most startling emergence of Quebec nationalism was prompted by French General Charles de Gaulle's visit to the city in 1967, where he exclaimed, "Vive le Quebec libre!" (Long Live Free Quebec).

From June, 1960, beginning with the Liberal government of Jean Lesage, until the return of the Union Nationale in 1966, the Revolution Tranquille gained popular support. The power of the Church declined, and severe unemployment and failure to garner foreign investment prompted an alliance between the national bourgeoisie, technocratic professionals, organized labor and intellectuals to reject rural nationalism and support wider autonomy, modernization and pluralism. Thus, the Revolution Tranquille realized the thawing of a conservative, highly Catholic-influenced state.

1. The Emergence of Nationalist Groups

Nationalism in twentieth century Quebec began with the group Union Nationale. The group offered a conservative, nostalgic, and heavily Catholic-influenced vision. The first truly organized Quebec separatist party, the Rassemblement pour L'Independence Nationale (RIN), sought the creation of a socialist state.

Several Canadian secessionist political parties emerged in the 1960s, including the Association Socialiste pour L'Independence de Quebec, Rassemblement National (RN), founded in 1964 and its parent party, the Creditistes, founded in 1962. One especially violent group was the Front de Liberation du Quebec. That group's terrorist tactics culminated in 1970's October Crisis, as illustrated by the kidnapping of

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236 Id.
237 FITZMAURICE, supra note 220, at 40.
238 Id. at 54.
239 Id. at 55.
240 See id.
241 See id.
242 FITZMAURICE, supra note 220, at 32.
243 Id. at 41.
244 Id. at 41, 56–57.
245 See id. at 56–57.
a British diplomat, as well as the Quebec Labor Minister, who died in his captor's custody.\textsuperscript{246} The Armee De Liberation Du Quebec also organized violent acts of protest.\textsuperscript{247}

Rene Levesque\textsuperscript{248} founded the separatist movement Parti Quebecois,\textsuperscript{249} another French-separatist party in 1968.\textsuperscript{250} Levesque and G. Gregoire, the leader of the RN, agreed to a fusion of both the RN and MS groups to form the Parti Quebecois.\textsuperscript{251} The Parti Quebecois, in 1976, created the nationalistic Bill 101.\textsuperscript{252} The Bill set strict rules for the utilization of French in business, forced immigrants into French schools, imposed French fluency for licensed professionals, and banned the use of English commercial signs.\textsuperscript{253} In 1982, constitutional revisions occurred, notably Part I, "The Charter of Rights and Freedoms" and Part III, "Equalization and Regional Disparities."\textsuperscript{254} The Charter safeguards distinct individual political, legal, and mobility rights as well as the collective rights of language minorities and aboriginal peoples, reinforcing a sense of national citizenship.\textsuperscript{255} Both revisions indicate the volleying between successive Canadian governments, with the revisions rejecting the singular French exception in favor of a government seeking to preserve a national character.\textsuperscript{256}

2. From the Meech Accord to the 1995 Referendum

In 1980, separatists, led by Rene Levesque, lost a province-wide independence referendum by a sixty to forty percent margin.\textsuperscript{257} The Quebec separatists thus failed in garnering secession\textsuperscript{258} from Can-

\textsuperscript{247} Fitzmaurice, supra note 220, at 40.
\textsuperscript{248} Id. Levesque left the Liberal Party in 1967, founding the secessionist Mouvement Souveraintee-Association (MS). Id. at 41. The RIN promptly dissolved. Id.
\textsuperscript{249} Nickerson, supra note 218, at A6.
\textsuperscript{251} Fitzmaurice, supra note 220, at 41.
\textsuperscript{252} Part II, supra note 250, at F1.
\textsuperscript{253} Id.
\textsuperscript{255} Id.
\textsuperscript{256} See id.
\textsuperscript{257} See Donald Neuchterlein, Will Province of Quebec Split Off From Canada?, RICHMOND TIMES-DISPATCH, Oct. 27, 1995, at A17.
\textsuperscript{258} Sneesby, supra note 246, at 1369–70. The legal ability to secede by Quebec has been studied by various theorists, who have evaluated the validity of separation by constitutional amendment
ada. In 1987, French-speaking nationalists became extremely agitated with the failure of the passage of the April, 1987 Meech Accord, which had designated Quebec as a “distinct society” within Canada. Manitoba did not assent, New Brunswick withdrew its ratification, and the Meech Accord thus failed.

Quebec secessionists did not abandon their hopes of realizing independence. In 1990, a constitutional accord offering recognition of Quebec as a “distinct society” failed to win ratification. The Quebec separatists were narrowly defeated in a recent referendum held on October 30, 1995, with the vote being 50.6 percent to remain in Canada, and 49.4 percent for secession. Over ninety percent of eligible Quebec voters voted.

B. The Elements in Consideration of Canadian Nationalism

1. Religion

Religion has played an extensive role in the quest for Quebecois self-determination. French Canadian Catholicism incited rural, nationalistic tendencies and attempted to keep its members from getting involved in the existing political climate. Moreover, the Church discouraged higher learning for its citizens, as evidenced by an enormous high-school drop-out rate, another indication that the Church was

under the Constitution Act of 1982 and unilateral provincial secession (as of the 1995 referendum). Id.

Nickerson, supra note 218, at A6. The officially translated ballot question is as follows: “Do you agree that Quebec should become sovereign, after having a formal offer to Canada for a new economic and political partnership, within the scope of the bill respecting the future of Quebec and of the agreement signed on June 12, 1995? Yes/No.” Id.

Brown, supra note 254, at 342-43. The Meech Lake Accord provided: (1) an interpretative clause recognizing Canadian duality (French and English-speaking communities) and the “distinct society” of Quebec’s Francophone majority; (2) explicit recognition of the federal spending power along with curbs on its use in areas of provincial jurisdiction; (3) restoration of aspects of concurrent jurisdiction in immigration; (4) a guarantee of the existing convention that three of the nine justices of the Supreme Court of Canada would be from Quebec’s civil bar; and (5) a veto for Quebec on constitutional amendments affecting national institutions. Id.

Part II, supra note 250, at F1.

Sneesby, supra note 246, at 1364.

See Part II, supra note 250, at F1.

Id.

Thread of Ethnocentrism, supra note 216, at 12A.


What Does Quebec Really Want?, supra note 224, at F1.

See id.
reluctant for any of its members to upset the existing political order. In short, the Catholic Church, which enjoyed latitude under the English rule as a surrogate sovereign in the absence of a French-controlled government, did not want to see that power wrestled away. The Church thus often camouflaged any potential tendencies which would encourage self-determination, stating that such acts were not condoned by the Church. For example, the Catholic Church, controlling the French-language schooling system, admonished French Canadians that they would lose their identity if they sought material pleasures. Thus, while Catholicism provided French Quebecois with a means of unity against the English (and Protestant) controlled-government, the Catholic Church initially discouraged active political participation.

The so-called Revolution Tranquille eventually convinced the Quebecois to embrace the modern world and not rely solely on Church positions if they wished to shake off British domination. An increasingly pluralist and secularized society contributed to a massive decline in Church influence and membership, as the proportion of Catholics actively practicing their religion fell from sixty to thirty percent between 1960 and 1970, and for those under twenty-four it fell to twelve percent. The Church, reacting to the conflict and rapidly changing structure within the Catholic Church itself, did not react to the declining Church influence. The Cardinals of Montreal and Quebec were heavily engaged in the Second Vatican Council of 1960–1965. Thus, the Church leaders, preoccupied, failed to successfully curtail the popular threats to its power.

2. Economics

The prospect of Quebec sovereignty has been theorized as being financially disastrous, both to Quebec as well as the remainder of Canada. Separation would not necessarily allow a common cur-

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269 See id.
270 See id.
271 See id.
272 Sibley, supra note 235, at C1.
273 Id.
274 See id.
275 FITZMAURICE, supra note 220, at 60.
276 See id.
277 Id.
278 Id. at 59.
279 Nickerson, supra note 218, at A6. Economists have predicted that the short-term future for
For example, when Czechoslovakia split up, the common currency lasted approximately thirty-nine days before a flight of capital from the Slovaks to the Czechs necessitated a new currency. The prospect of such an occurrence in Quebec may prove a harbinger to Quebec secessionists. Further, economic treaties such as the North American Free Trade Agreement would not necessarily apply to Quebec, because Canada, and not a sovereign Quebec, signed the agreement. Possible job losses would be staggering in Quebec, ranging from 100,000 to 300,000 positions, if several major companies were to relocate beyond Quebec.

If secession is successful, the existing economic system in Canada would be completely overturned. A negative psychological effect will occur as the lifestyle, and economic prestige that an integrated Canada (and as a part of Canada, Quebec) enjoys will face some inevitable change. For example, Canada currently has a wide amount of economic integration.

As of 1993, inter-provincial and international trade account for more than one-third of the total Canadian economy, with interprovincial trade as high as eighteen percent of the gross domestic product in 1984. Any sizable shift in the provincial structure will necessarily affect the economic structure of interdependence which currently exists. Further, even if laws controlling monetary transactions are created, which would mirror each other in both Quebec and the remnants of Canada, treaties must be constructed to ensure that active cooperation will occur. Thus, any economic separation would need...
to involve future political associations, questioning whether secession would ever really occur.291

3. Language

Unlike the rest of Canada, where both English and French are recognized as official state languages, Quebec recognizes only French.292 Unprompted by public opinion, the Quebec government currently plans to resume strict enforcement of language laws, enforcing the 1977 Charter of the French Language.293 The Charter mandates and governs the use of French in the workplace, in business and in schooling, and regulates where (and how prominently) English and other languages may appear on public signs.294 The laws were diluted in 1993, allowing English in outdoors signs, so long as the words appear at half the size of equivalent French words.295 The use of such laws causes friction between the minorities, who cannot speak the French language, and die-hard Quebeckois.296

C. Popular Discontent, “Nous et Les Autres”297

Unlike other secessionist movements, the Quebec drive for separation is largely based upon xenophobic tendencies,298 which state that “the people” will only exist when “the people” become their own state.299 Cultural statistics create a sense of urgency for secessionist Quebeckois.300 These statistics, which illustrate an overall downswing in the French culture, include the low birthrate among French-speaking Quebeckois, the increasing bilingual abilities of their children, and the increasing political-economic clout of the non-Francophone areas of Alberta and British Columbia.301

291 See id.
293 Id.
294 Id.
295 Id. The “language police,” in 1993, responded to 1855 complaints about offending signs, of which 90 percent came from four individuals. Id.
296 See Trueheart, supra note 292, at A23.
297 Thread of Ethnocentrism, supra note 216, at 12A. Translated as “We and the Others,” it has been used as a rallying cry of inspiration for a generation of Quebeckois. Id.
298 Nickerson, supra note 218, at A6. “Soft” secessionists, however, utilize threats of secession as a way of forcing Canada to grant greater autonomy and special constitutional rights. See id.
299 Thread of Ethnocentrism, supra note 216, at 12A.
300 Nickerson, supra note 218, at A6.
301 Id.
These Quebecois cultural concerns have taken a discriminatory form toward those who live in Quebec and are not assimilated into the French culture. Following the separatists' narrow defeat, Quebec Premier Jacques Parizeau blamed the slim loss on "money and the ethnic vote," while vowing to "reap our revenge." Moreover, growing racial divisiveness exists. Some Quebecois discriminate against anyone who is not "pure laine" (pure wool), those who claim ancestry from the region's 18th-century French colonials. Following the failed drive for autonomy in 1995, some commentators noted an increase in chauvinism to those who are non-French. The decision to separate based upon ethnicity poses an even more confusing dilemma to non-French groups in Quebec: for example, Indian tribes such as the Cree and the Innu may wish to secede from Quebec if it ever does become autonomous from Canada.

D. International Law

While international law generally allows states carte blanche in the administration of their own governmental affairs, an examination of the basic tenets of international law regarding the Quebecois separation must be conducted, as the Canadian constitution does not explicitly deal with secession. The objective and subjective standards of international law for a people to separate are, however, met by Quebec. Under the subjective standard, a group must popularly desire to form a political entity, which accordingly may be satisfied by a plebiscite. The objective standard allows secessionist groups with common characteristics such as history, geography, ethnicity, religion, or race to associate freely through the hope of group cohesion.
The Quebecois arguably consider themselves, based upon the recent referendums which barely reaffirmed the present Canadian state, distinct from fellow Canadians.\(^{313}\) This would entitle secession based upon the subjective standard.\(^{314}\) The Quebecois do appear to meet the objective standard as well, as Quebecois largely reside in the territorial expanse of the Quebec province,\(^{315}\) share the French language,\(^{316}\) and belong to an ethnic French group.\(^{317}\) Moreover, Quebec remains primarily Roman Catholic, and thus the Quebecois share a "common" religion.\(^{318}\) Finally, Quebec was originally a French colony lost in 1796, and thus arguably has still-existing French foundations, given the large remaining French-cultural population today.\(^{319}\)

V. A Possible Solution Before Dissolution, and Dealing With What Follows Secession

Political theorists have argued that one way to contend, successfully, with nationalist movements is to simply discourage their inception by creating a secure, stable atmosphere for that given state’s members, if remotely possible.\(^{320}\) The two case studies which this Note addresses, the Palestinian and Quebec self-determination movements, pose unique variations. One involves a people, the Palestinians, on the brink of independence.\(^{321}\) The other movement, the Quebecois, involves a group temporarily forestalled by their own popular will.\(^{322}\)

The Quebec model involves a Francophone people with a history of antagonism toward their English-ancestry countrymen, and a people desperately seeking to retain their Francophone past.\(^{323}\) The history, however, of the Quebecois is colored with relatively little bloodshed and violence.\(^{324}\) These people seem to accommodate each other despite numerous quests for autonomy by Quebec.\(^{325}\) As the 1995 refer-

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\(^{313}\) Thread of Ethnocentrism, supra note 216, at 12A.
\(^{315}\) Sneesby, supra note 246, at 1382.
\(^{316}\) Nickerson, supra note 218, at A6.
\(^{317}\) Thread of Ethnocentrism, supra note 216, at 12A.
\(^{318}\) Sneesby, supra note 246, at 1382.
\(^{319}\) Nickerson, supra note 218, at A6.
\(^{320}\) Morgenthau, supra note 25, at 123.
\(^{321}\) Israeli Extremist, supra note 195, at A1.
\(^{322}\) Thread of Ethnocentrism, supra note 216, at 12A.
\(^{323}\) Nickerson, supra note 218, at A6.
\(^{324}\) See id.
\(^{325}\) See id.
Endum illustrates, however, there are signs that the accommodation is wearing thin.326

The Palestinian model involves a people who do not share the unique claims to the past that the Quebecois do.327 During the Ottoman Empire, Palestinians were a disparate group who did not share a common consciousness.328 The Israeli occupation, and subsequent feeling of abandonment by Arab states, as well as the animosity with Jordan, created a rallying cry and hence a fiercely nationalistic group.329 Rather than the Quebecois, where a federal government has nearly failed in keeping the national minority placated, the occupying Israeli government never made such moves of accommodation.330 The recent overtures towards the end of the occupation was celebrated by Palestinians.331

The question of what is to be done now does remain. The fledgling Palestinian Authority, while seemingly heading into eventual integration, has not seen that goal realized as yet. This Note proposes suggestions based upon the National Rights model for the Quebecois. Whether a battered national identity such as that shared by the Palestinians, a national spirit molded by hatred and now being torn asunder through violent internal disputes, can ever be achieved, is uncertain.

A. Analyzing Federalism

Federalism is an economic-based governmental system, allowing federal unity to be maintained long after other motivating forces have dissipated.332 Federalism permits individuals to escape the homogenization imposed by the majority ethnic group: thus, this political system allows a minority people to exercise power within the majority state.333 Such power, if based exclusively upon majority status, would have been otherwise denied.334 Accordingly, if the minority group's acts are a consensus, a situation analogous to the common law theory of contract

326 Thread of Ethnocentrism, supra note 216, at 12A.
327 Bickerton & Clausner, supra note 112, at 15-17.
328 Id.
329 See Moffett, supra note 149, at 1.
330 See Roberts, supra note 6, at 54-61.
331 CBS Evening News, supra note 194.
332 Brown, supra note 254, at 321.
334 Id. at 271-72.
exists, where a people, freely choosing to associate with others in a state, should remain bound to that agreement. 335

B. Protections on Protections: Dealing With Threats to Federalism

Minorities gaining a majority-like status may be tempted to lash out against their former parental majority state. 336 After a time of being put down by the majority group, the minority group, now attaining at least a modicum of institutional power, may decide to impose laws restating this power, and have no other effect. 337 Thus a federal government has the choice: to exercise its powers effectively to justify the existence of a federation, and endure the continued criticism and subsequent discontent of a nationalist minority, or the federal government risks becoming impotent through attempting to initiate laws which placate the minority. 338 Canada, with its calls to Quebec to not vote for separation, provides such an illustration. 339

The length of time that the state has embodied the claimant people and the associated territory of those people also plays a factor in determining the strength of the federal body, weighed against the nationalist drive for autonomy. 340 The longer the nationalist group can identify with the federal government, and become familiarized with that government’s symbols and laws (unless those laws are discriminatory), the less likely it is that the group will secede. 341 Secessionist movements in states where a nationalist group has not been a part of that state for much time have stronger arguments for secession. 342 When such nationalist groups become frustrated that their goals are not realized, the predominant nationalist group in an entity may feel justified in behaving intolerantly toward other existing ethnic minorities. 343 For example, if Quebec ever seceded, the remaining English-speaking Quebecois would probably face disillusionment as a

335 Marchildon & Maxwell, supra note 20, at 592. The 1867 agreement by the Quebecois to freely join the Canadian federation is such an example. Id. This should be compared to the case of the Palestinians in the Occupied Territories, who primarily emigrated following the Israeli takeover. Gernert, supra note 120, at 50.
336 See Howse & Knop, supra note 333, at 273–74.
337 See id.
338 See id. at 275.
339 Sibley, supra note 235, at C1.
340 Marchildon & Maxwell, supra note 20, at 603.
341 Id. at 611–12, 618.
342 See id. Accordingly, states like Quebec, a part of Canada in one way or another since 1867, have a more difficult time in “justifying” their secession. Id.
343 See Howse & Knop, supra note 333, at 276–77.
“stranded minority,” separated from the remainder of English-speaking Canada.344

C. Possible Solutions for Quebec: The National Rights Model

A transformation to overcome nationalism in a federalist setting necessarily involves a commitment to minority rights, coupled with a commitment to such rights through federal political institutions.345 The “experience” of democracy must be felt in order to attempt a genuine balance of pluralism and homogeneity, taking into account where the after-effects of the government’s actions take place and are felt.346 If the disenfranchised minority cannot pursue its linguistic and cultural goals, it is impossible for that minority to feel a “part” of the larger state.347 In short, the federal government must make itself less alien to ethnic minorities.348

Under a so-called National Rights model, the parent state must accord a substate (the nationalist group) certain rights in order to secure conditions deemed necessary for the posterity of the substate’s members.349 Such failure to do so can justify the substate’s secession.350 In the National Rights model, secession becomes the last resort.351 Even if the larger political entity must advance common interests over time, the allegiance of that substate toward the federal government would hopefully be achieved.352 A legacy of a weak or incompetent federal government which either ignores the demands of a minority or acquiesces to the minority’s every whim, without limitation, may, however, convince one of the ethnic groups within the substate that separation may not be unattractive.353

The consciousness of the Quebecois, if genuinely recognized by the English-speaking Canadian minority, should be able to be accommodated within the framework of the National Rights Model.354 The Meech Accord, which would have reaffirmed the Francophone identity

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344 Marchildon & Maxwell, supra note 20, at 616.
345 Howse & Knop, supra note 333, at 279.
347 Howse & Knop, supra note 333, at 279.
348 Id. at 286–87. Bilinguals and affirmative action-like hiring goals may dilute the feelings of powerlessness. Id.
349 Id. at 312.
350 Id.
351 Howse & Knop, supra note 333, at 312–13.
352 See id.
353 Id. at 276–77.
354 See id.
and perhaps forestalled the 1995 referendum, would have guaranteed a special constitutional status to the French-speaking Quebecois. Much of the Quebecois leadership have openly stated that this very recognition is an integral goal of their separatist drives.

The general populace of Canada has much to lose if it dissolves. Economic disintegration would create potential feelings of unrest and uncertainty. Moreover, over 200 years of institutional framework within the Canadian system exists. The Quebecois are familiar with the existing Canadian system, and institutional changes which recognize and encourage the prospering of Quebecois culture, while also retaining the Quebecois’ sense of approachability and familiarity with the Canadian culture, should prove a means of cohesion.

D. Starting Anew: Entering Statehood Without a Purpose

Seeking cohesion in the Palestinian state will be much more difficult, given the passionate, often violent nature of the Palestinian secessionist drive from the Occupied Territories as well as the very character of the Palestinian movements themselves. Several obstacles confront the Palestinians which are not an issue for the Quebecois. First, there has never been a history of federalism in Palestine. From a province of the Ottoman Empire, to the occupation by Israel, no Palestinian federalist model has existed.

The Palestinian people themselves are completely disparate, not sharing a long history of ancient ties. While two hundred years of common occurrences have bound the Canadians together, the Palestinians have struggled against not only Israeli occupation, but also other Arab states such as Jordan, and have often faced anonymity by Arab states. Now, as a state in the making, supposedly united, the Palestinians must confront a new enemy, radical factions such as

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355 Brown, supra note 254, at 342-43.
356 Neuchterlein, supra note 257, at A17.
357 See Howse & Knop, supra note 233, at 312–13.
358 Swardson, supra note 281, at A1.
359 See Marchidon & Maxwell, supra note 20, at 618.
360 See id.
361 See Perlmutter, supra note 169, at A19.
363 See id.
364 Gerner, supra note 120, at 50.
366 Id. at 235.
Hamas, within their own ranks. Thus, there has been little opportunity for cohesion and establishing common cultural and social ties.

A National Rights model may be successfully pursued by the Palestinians if they can somehow coalesce and make the dream of creating a new, strong state an outlet for their formerly, often aggressive, nationalism. There are temptations which must be overcome. For example, as the “majority” group now in power, the Palestinian Arabs must try to win the allegiance of all of the now-minority peoples, especially the remaining Israeli settlers. Thus, it is crucial that Palestine, a former substate for Israel, and soon to be a state, allows an adequate amount of cultural, and political, autonomy to exist and thus legitimize its newfound power.

VI. Conclusion

National secession, whether actual or merely seriously considered, is a destabilizing, emotion-filled process. This Note discussed two very distinct nationalist movements in order to see if a broader analytical framework could be created, where a potential peaceful solution may be the answer. In short, given that secession is often bloody, this Note concludes that a National Rights model, which allows a state to remain intact while offering broad recognition of a minority’s cultural right to exist and prosper, must be attempted before immediately pursuing dissolution.

One movement, the Quebecois, has a people who, albeit reluctantly, share through confederation a common history. The other, the Palestinians, whose long-standing opponent has now allowed self-rule possesses a new problem: contending with inner-turmoil and desire for retribution from within their own people. Moreover, the Palestinians must confront their role as majority in context with the remaining Israeli settlers, whose parent nation is no longer in political control of their present homeland.

If self-determination is successful, a plethora of new states emerge. This often creates a global power vacuum, with states whose members received some semblance of pride based on territory and/or combined

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367 Curtius, supra note 200, at D12.
368 See id.
369 See Perlmutter, supra note 169, at A19.
370 See id.
372 See Halpern, supra note 13, at 77.
economic power suddenly confronting a need to re-evaluate their reason to exist. International law, and scholarly works, only add to the confusion: there are no universally-accepted definitions, or conceptualizations of nationalism, and the rights of self-determination.

Secession and self-determination will play a large role in the geopolitical context for some time to come. Robert Frost once noted, "Good Fences Make Good Neighbors." As this Note indicates by tracing the history of two diverse peoples seeking the lasting attainment of self-determination, merely fencing oneself in, and failing to confront the issue of nationalism is ultimately valueless. Rather, a people may reach accommodation between the majority and minority members of a state only through accommodation, tearing down such walls of isolation brick by brick.

Edward T. Canuel

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