

**NATIONALISTIC SELF-DETERMINATION: A STUDY OF THE
EVOLVING RELATIONSHIP BETWEEN NATIONALISM AND POWER
AND THE APPLICATION OF THE FINDINGS TO THE CASE OF
PUERTO RICO**

ARTICLE

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INTRODUCTION

NOT LONG AGO THERE WAS AN ERA WHEN THE THOUGHT OF NATIONALISM as a world changing force was forgotten in favor of the more modern idea of internationalism.¹ The resilience of nationalistic² philosophy

^{*} Student at the University of Puerto Rico School of Law. The author would like to thank Professor Rubén Berrios Martínez; his courses, articles, and our conversations in and out of classroom regarding the relations between the United States and Puerto Rico inspired this article. The author would also like to thank Professor Luis Enrique Romero, of the Interamerican University of Puerto Rico School of Law, for his recommendations and guidance, which helped develop this article.

¹ “Robert Conquest notes that ‘[f]rom Lenin’s point of view, as from Marx’s, international proletarian interests were the central issue, and nationality a temporary distraction ‘Nation’ was a category marking the epoch of capitalism Socialism would overcome this and, eventually, ‘merge’ the nations.” DAVID PATRICK MOYNIHAN, PANDAEMONIUM: ETHNICITY IN INTERNATIONAL POLITICS 109 (1993) (citing ROBERT CONQUEST, STALIN: BREAKER OF NATIONS 52-53 (1991)).

was tested, its strength questioned, but nevertheless it proved to be immovable. Internationalism was a political philosophy visualized as the dawn of a socialist utopia. Regardless of its good intentions, and the unifying ideals such a philosophy would entail in promoting a conflict-free world, the power of nationalism was grossly underestimated. As Michael Lind, in his essay *National Good*, notes:

In a lecture series delivered in 1985, the American historian William H McNeill argued that the era of nation-states, which began in 1789, came to an end in 1945. In the post-national future, as in the pre-national past, political identity and ethnic identity would be separated, as a result of mass immigration and multiculturalism. In 1990, Eric Hobsbawm echoed McNeill in his book *Nations and Nationalism since 1780*. According to Hobsbawm, nationalism “is no longer a global political programme, as it may be said to have been in the 19th and 20th centuries . . . Nation-states and nations will be seen as retreating before the new supranational restructuring of the globe. Nations and nationalism will be present in history, but in subordinate and rather minor roles.”³

This paragraph is quickly followed by an awakening realization: “in the decade between the time these historians wrote and the present, nationalism has reshaped the map of the world and has been the main cause of conflict.”⁴ Lind cannot explain it better; nationalism survived the rise of internationalist philosophy and is still a prevailing idea. As he continues, “[c]ontrary to those who have predicted the imminent demise of the nation-state, nationalism is alive and well. Indeed, it is the most powerful political force in the world today.”⁵

Nationalism has been a driving force in the modern world of politics.⁶ It withstood the changes of modernity, socialism, and proletarian internationalism. Even Karl Marx himself broke the internationalist precedent and accepted the importance of nationalism during the London First International in 1865. Here, the Marxist commitment to self-determination for all national groups was asserted. This commitment was later reaffirmed during the Second International in 1896.⁷ Nationalism, in a sense, defeated Marxism; it was a factor that was not

² For the purposes of this article, the terms nationalist and nationalistic are used interchangeably.

³ Michael Lind, *National Good*, NEW AMERICA FOUNDATION, <http://newamerica.net/node/5839> (last visited Nov. 8 2011).

⁴ *Id.*

⁵ *Id.*

⁶ Nationalism is a social and cultural occurrence, following John Stuart Mill’s definition of it as common sympathies, hence a feeling that reflects itself via political ideology in its search for national recognition and power.

⁷ Referring to the First International, Moynihan emphasizes that:

The point was clear and the irony considerable . . . Nationalism and internationalism equally present at the creation. (Indeed, at this time Marx wrote: “Formerly, I thought the separation of Ireland from England impossible. Now I think it inevitable.”) Connor points out the irony that “this most famous credo of nationalism should make its first appearance in a public document which was drafted by history’s most famous internationalist.”

accounted for and totally incompatible with internationalist theory. George Kennan describes nationalism as being a great force to be reckoned with, “the greatest emotional-political force of the age.”⁸ This description very much resembles Lind’s. Furthermore, Kennan asserts that nationalism “has triumphed most decisively, in particular, over the radical Marxism that loomed so large as an emotional-political force for a time in the early decades of this century.”⁹

Internationally, nationalism has created great crises as nations seek self-determination and ignite all types of political conflict and violent hostilities.¹⁰ As of today, we all recognize that all peoples should have the power to choose their own destiny, and such it has been declared by the international community.¹¹ This need for self-determination translates to the need for political power. Since each nationality, in its essence, strives for self-determination, it is unavoidable that this leads to different types of power struggles. In his book *Disputed Territories*, Stefan Wolff discusses this phenomenon:

In their attempts to preserve, express and develop their respective ethnic identities, all the above groups perceive threats and opportunities. The more deeply felt these perceptions are, the more they will be linked to the very survival of the group and the more intense will the conflict be that they can potentially generate. This links the issues of ethnicity and nation to the notion of power This desire to gain political power for an ethnic group is expressed in the concept of nationalism¹²

Hence the concept of nationalism is intrinsically linked to that of political power. The intense power struggles that have resulted from the breakdown of previously multinational states have been particularly significant. In these cases, the power struggle is between nationalities that share a common territory and compose a single state. This turns a nationalist idea of self-determination into a

Moynihan, *supra* note 1, at 108-09 (citation omitted).

8 *Id.* at 111.

9 *Id.*

10 On situations in which ethnic groups demand self-determination, Stefan Wolff mentions:

According to Quinn, since the end of the Second World War alone, “[seventy-nine] territorially concentrated ethnic groups have waged armed conflicts for autonomy or independence, not counting the peoples of former European colonies.” In an assessment focused on Europe only, Csergo and Wolff identify a total of 82 groups in 28 countries who have sought a greater degree of political control over territories they consider their traditional homelands at some stage after 1945.

Stefan Wolff, *Conflict Management in Divided Societies: The Many Uses of Territorial Self-governance*, 20 INTERNATIONAL JOURNAL ON MINORITY AND GROUP RIGHTS 27 (2013), available at <http://www.stefanwolff.com/files/TSG-IJMGR.pdf> (citing David Quinn, *Self-determination Movements and their Outcomes*, in PEACE AND CONFLICT REPORT 33 (2008)).

11 Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514 (XV), U.N. Doc. A/RES/1514 (Dec. 14, 1960).

12 STEFAN WOLFF, *DISPUTED TERRITORIES: THE TRANSNATIONAL DYNAMICS OF ETHNIC CONFLICT SETTLEMENT* 6 (2003).

political territorial dispute that has great potential for turning violent. Many of these struggles have caused the destruction and dissolution of formerly strong states such as Czechoslovakia and Yugoslavia, prompting horrible wars and crimes in the process. The state of Kosovo was born out of the dissolution of Yugoslavia and went through the aforementioned type of turmoil. Following the Second World War, the old Kingdom of Yugoslavia was replaced by a federation of six republics under a central government led by Josip Broz Tito. In 1980, after the death of Tito, previously subdued political unrest in Yugoslavia grew rapidly. Each of the federated states that composed Yugoslavia pushed for independence. This led to a terrible period of wars and unrest in the region.¹³ Each republic, following nationalistic principles, fought for its right for national power¹⁴ and self-determination.

More recently, nationalist expressions have reappeared in the broader international discourse. An exemplification of nationalism may be witnessed in the annexation of Crimea by Russia and the ongoing conflict between Ukraine and its pro-Russian separatist forces. In an area in which Russian influence has been extremely powerful throughout history,¹⁵ it is not strange that many across the

¹³ The breakup of Yugoslavia is summarized as follows:

On June 25, 1991, Slovenia and Croatia declared their secession from the Yugoslav federation. Macedonia followed suit on December 19, and, in February-March 1992, Bosnian Muslims (Bosniaks) and Croats voted to secede. As civil war raged, Serbia and Montenegro created a new federation, adopting a new constitution on April 27, 1992.

....

Economic sanctions and a reorganization in the Yugoslav parliament finally ended support for Serb rebellions in Bosnia and Croatia in 1995. Meanwhile, growing pressure in Kosovo from the majority ethnic Albanians for greater autonomy escalated into civil war in 1998. In the wake of failed international efforts to mediate the conflict and in response to a major Serbian military offensive against the Kosovo Liberation Army, the North Atlantic Treaty Organization retaliated in March 1999 with a bombing campaign, prompting Serbian leader Slobodan Milošević to order a campaign of “ethnic cleansing” that made refugees of hundreds of thousands of Kosovar Albanians.

Yugoslavia, ENCYCLOPÆDIA
<http://global.britannica.com/EBchecked/topic/654783/Yugoslavia/228363/The-third-Yugoslavia> (last visited Oct. 26 2014). BRITANNICA,

¹⁴ For purposes of this article, the term national power, makes reference to the political power of a nation.

¹⁵ Crimea has been in the frontline of Russia’s expansion since the seventeenth century. Previously the region was known as the Crimean Khanate, which had been under the dominion of the Ottoman Empire since 1475. In 1774, as result of a war between Russia and the Ottoman Empire, an independent Crimean Tatar state was established. Nevertheless, in 1783, Crimea was annexed by Russia’s Catherine II. After the Russian Revolution led to the collapse of the Russian Empire in 1917, Crimea was again declared an independent state for a brief period that lasted until 1921, when the defeat of Crimea during the Russian Civil War led to its reorganization as the Crimean Autonomous Soviet Socialist Republic. Soviet repression led to the mass deportation of ethnic minorities in the region, especially the Tatars. In 1954, Crimea was transferred to the Ukrainian Soviet Socialist Republic. After the disintegration of the Soviet Union and the independence of Ukraine in 1991, Crimea was still kept as part of Ukraine. *Crimea*, ENCYCLOPÆDIA
BRITANNICA,

set state borders identify themselves with a different nationality than the official nationality of their state.¹⁶ In the case of Ukraine, the stronger Russian influence throughout the years has led to increasing pro-Russian nationalistic sentiment within its borders. According to the official Ukrainian census of 2001, 58.3% of the population of the Autonomous Republic of Crimea identified themselves as Russians, 24.3% as Ukrainians, and 12.0% as Crimean Tatars.¹⁷ Considering that the majority of the Crimean population identifies themselves as Russian, the results of the March 16, 2014 Crimean status referendum, in which the electorate opted for annexation to Russia, were easily foreseen. In reference to the differences between Russians and Crimean Tatars, Karina Korostelina explains that:

Russians and Crimean Tatars differ in their conceptions of the legitimacy of their positions in Ukraine. Crimean Tatars consider it legitimate to reclaim their possessions and reestablish national-territorial autonomy. Russians aspire to establishing closer relations with Russia and perceive the Crimean Tatar autonomy as a step toward Crimean incorporation in the Muslim world. Conversely, Crimean Tatars fear that local autonomy will never be granted if Crimea is part of Russia. Hence, the goals of Russians and Crimean Tatars are incompatible with formation of a common national identity.¹⁸

Considering the aforementioned factors, the formal annexation of Crimea by Russia was inevitable. Notwithstanding, the conflict in Ukraine still persists and has escalated into civil war in Ukraine's Donetsk and Luhansk regions. A quick analysis of the composition of the population in these regions demonstrates that a large sector of its inhabitants identify themselves as Russians. The national structure of Donetsk has been identified as 56.9% Ukrainian and 38.2% Russian, while results in Luhansk revealed self-identification of 58% Ukrainian and 39% Russian.¹⁹ Ukrainian citizens of eastern regions identify themselves as Russians at a much higher percentage than those of western regions. Therefore, we can understand why these regions, after the recent annexation of Crimea and the political unrest in Ukraine, have been more difficult to control and have developed a pro-Russian separatist movement. The Russians in Ukraine strive to reunite their territory with the political entity they believe embodies their true nation: Russia. The nation (Russian or Ukrainian) that exerts more power (be it political or mili-

<http://global.britannica.com/EBchecked/topic/143010/Crimea/314881/History> (last visited Oct. 26, 2014).

¹⁶ On Russian power in the region, Chase argues: "It is important to note that designations of both borders and regional status within the former Soviet Union was largely arbitrary and, where it was not arbitrary, it was deliberately designed to dilute the power of local populations." Philip Chase, *Conflict in the Crimea: An Examination of Ethnic Conflict under the Contemporary Model of Sovereignty*, 34 COLUM. J. TRANSNAT'L L. 219, 222 (1996).

¹⁷ *All-Ukrainian Population Census 2001*, STATE STATISTICS COMMITTEE OF UKRAINE, <http://2001.ukrcensus.gov.ua/eng/results/general/nationality/> (last visited Oct. 26, 2014).

¹⁸ Karina Korostelina, *The Impact of National Identity on Conflict Behavior: Comparative Analysis of Two Ethnic Minorities in Crimea*, 45 INT'L J. OF COMP. SOC. 213, 215 (2004).

¹⁹ *All-Ukrainian Population Census 2001*, *supra* note 17.

tary) will prevail in establishing control over the region. Thus, the situation in eastern Ukraine has deteriorated into military conflict, with both the Ukrainian and Russian governments striving to control these areas. No matter how or when the conflict ends, the situation will never be completely resolved until boundaries are traced according to the will of the nationalities residing in the contentious territory. Still, to this day, the forces of nationalism take many by surprise. We have seen that nationalism is not an easy force to be reckoned with and will always exist wherever nation which strives for power exists.

I. POWER-SHARING THEORIES

As a result of volatile situations, such as those previously mentioned above, proponents of nationalism have produced many theories regarding the political structures that have emerged based on power-sharing. As we have discussed, the world has experienced a reemergence of the need to deal with the force of nationalism. This force can serve as either a powerful unifying element or as a destructive centrifuge. It can be internally unifying whenever a whole nation fights for its self-determination, or alternatively it can be externally destructive if the nation has to fight against other nations, domestic state power, or foreign states to achieve its self-determination. The problem with this is that it creates an imbalance, domestically and internationally. Some theories, such as the consociational theory, have emerged on how to reconcile both sides of this dilemma: the desire for self-determination and the need for a structured order.

A prosperous and organized state can decay into an anarchical catastrophe if it does not respond to nationalist upheaval appropriately. Furthermore, the international community can be greatly affected by a state's failure in addressing robust nationalist sentiments. This kind of state failure frequently requires international intervention in internal conflicts such as the previously described. Because of this, many studies have been conducted to explain nationalism, power struggles, and the effect of external involvement in nationalist endeavors toward self-determination.

The consociational theory, based on Arend Lijphart's theory of consociational democracy, is seen as a solution to internal nationalist conflicts by some. As stated by Lijphart, the theory proposes a power-sharing government and cooperation among elites as its primary feature.²⁰ Consociational theory is based on

²⁰ Van Schendelen quotes Lijphart's definition of consociational democracy and its four characteristics:

"The first and most important element is government by a grand coalition of the political leaders of all significant segments of the plural society The other three basic elements are (1) the mutual veto . . . (2) proportionality . . . and (3) a high degree of autonomy for each segment." However, "Elite cooperation is the primary distinguishing feature of consociational democracy."

M.P.C.M. Van Schendelen, *Consociational Democracy: The Views of Arend Lijphart and Collected Criticisms*, 14 THE POL. SCI. REVIEWER 143, 153 (1985) (quoting AREND LIJPHART, DEMOCRACY IN PLURAL SOCIETIES 1, 25 (1977)).

willful power-sharing by the different ethnic groups that might inhabit a territory. Other similar theories, such as centripetalism,²¹ *power-dividing*,²² and *territorial self-governance*,²³ are based on similar power-sharing principles. In his article *Consociationalism, Power Sharing, and Politics at the Center*, Stefan Wolff describes these power-sharing processes and what they entail. Nonetheless, all of these theories are focused on power-sharing as the sole solution to ethnic conflict and a nation's need for self-determination. In my view, these theories are completely incompatible with the ultimate expression of national self-determination and its relation to power. That is, the creation of a national state, the ultimate goal of the nationalistic search for power.

It is clear that these theories are motivated by the desire to maintain state order and peacefully resolve conflicts, in order to prevent the struggle for power from becoming a significant problem. Nevertheless, they only serve as temporary solutions. They are no more than small obstacles that nationalism will eventually and undoubtedly surpass. If one understands nationalism at its core, these theories can only be understood as an unviable model. Nationalism cannot be stopped by merely compromising, for its ultimate goal will always be a nation-state. The people can, nonetheless, choose by their own will in an act of self-determination to share power, but this does not mean that the yearning for a nation-state will disappear and not return in the future.

Stefan Wolff mentions that, when developing the *power-dividing* theory of government, its creators realized that consociational and other power-sharing practices only produce short-term solutions:

²¹ “Centripetalism emphasizes that rather than designing rigid institutions in which elected representatives have to work together *after* elections, ‘intergroup political accommodation’ is achieved by ‘electoral systems that provide incentives for parties to form coalitions across group lines or in other ways moderate their ethnocentric political behaviour.’” Stefan Wolff, *Consociationalism, Power Sharing, and Politics at the Center*, in *THE INTERNATIONAL STUDIES ENCYCLOPEDIA* 9 (Robert A. Denmark ed., 2010), <http://www.stefanwolff.com/files/Consociationalism,%20Power%20Sharing,%20and%20Politics%20at%20the%20Center.pdf> (quoting Donald L. Horowitz, *The Alternative Vote and Inter-ethnic Moderation: A Reply to Fraenkel and Grofman*, 121 *PUBLIC CHOICE* 507 (2004)).

²² Power dividing is defined as “a strategy that seeks to avoid either privileging a single dimension along which majority and minorities are defined or replicating the same cleavage in different guises within all institutions.” *Id.* at 12 (quoting Phillip G. Roeder, *Power Dividing as an Alternative to Power Sharing*, in *SUSTAINABLE PEACE: POWER AND DEMOCRACY AFTER CIVIL WARS* 62 (Philip G. Roeder & Donald Rothchild eds., 2005)).

²³ As to *territorial self-governance*, Wolff argues that:

[S]elf-governance needs to be complemented with what liberal consociationalists term “shared rule,” i.e. the exercise of power at and by the center and across the state as a whole. While grand coalitions, proportionality, and minority veto rights continue to be favored by liberal consociationalists, the emphasis is on cooperation and consensus among democratically legitimized elites, regardless of whether they emerge on the basis of group identities, ideology, or other common interest.

Id. at 8.

Roeder and Rothchild's main finding is that power sharing is a useful short-term mechanism to overcome commitment problems that may prevent conflict parties in the immediate aftermath of civil wars from agreeing to and sticking with a peace settlement, but that it is detrimental to peace and stability in the long term, arguing that "[p]ower sharing institutions . . . in ethnically divided societies after intense conflicts . . . typically have a set of unintended but perverse consequences." This general finding is remarkably similar to Horowitz's observation that "[c]ivil wars . . . can sometimes be brought to an end with consociational arrangements, but the desirability and durability of such agreements are often in doubt."²⁴

Despite these assertions, I still consider that proponents of *power-dividing* theories miss the point. Their *power-dividing* theories rely on some type of sharing of government between nationalities. Although their proposed government is perhaps *shared* more than other forms of power-sharing governments, these theories still overlook the national desire for a nation-state. The focus of these theories seems to be that political power, by itself, is the ultimate goal of a nation, but this is not so. The ultimate goal of a nation is the nation-state. The nation-state represents much more than political power; it is also the ideal realization of a nation, the last step in the road to self-determination, not only politically, but also culturally. The nation-state implies that a people have collectively reached their maximum expression as a group. Furthermore, attainment of a nation-state grants international recognition as an independent and unique nation of the world. Furthermore, attainment of a nation-state grants international recognition as an independent and unique nation of the world. While these theories may be effective when dealing with divided political factions, or with other non-ethnic, non-nationalistic factors, they are ultimately ineffective when dealing with a state whose population is divided into different nationalities. By mentioning that these theories are not effective, I do not suggest that states with populations of different nationalities that have adhered to a power-sharing structure will inevitably divide or befall into civil war (though this is always a possibility).²⁵ Rather, I assert that the national feeling, or what John Stuart Mill described as "common sympathies,"²⁶ and the political ramifications of the specific self-determining needs of each nationality, will never go away.

²⁴ *Id.* at 12 (citation omitted).

²⁵ As in the case of the Russian annexation of Crimea, and the current war in Ukraine, where a majority of the population identifies themselves with a different nationality than that which the state represents, the potential for political and social unrest is greater, as we are dealing with a large sector of the population which is unsatisfied.

²⁶ As to common sympathies, Mill argues:

A portion of mankind may be said to constitute a nationality if they are united among themselves by common sympathies which do not exist between them and any others - which make them co-operate with each other more willingly than with other people, desire to be under the same government, and desire that it should be government by themselves, or a portion of themselves, exclusively. This feeling of nationality may have been generated by various causes. Sometimes it is the effect of identity of race and descent.

II. THE POWER-CONCENTRATING REGIME

It cannot be denied that the most successful and enduring models for maintaining stability and order under a nationalist dispute are either complete autonomy and independence, or complete destruction and suppression of the nationalist movement (usually through a power-concentrating regime). Of course, the first option is the preferred one, since the second option would most likely ensure the subjugation and denigration of a whole people. The latter option is not only immoral, but has been explicitly prohibited by the international community.²⁷ From this perspective, any other type of model that tries to incorporate power-sharing in any form which ignores nationalistic spirits, is meant to fail eventually. The final expression of nationalism is a self-governing nation-state (even though, as we shall discuss later, perhaps there is an escape to this paradox.) Many authors present their ideas of power-sharing as effective, but one must ask: for how long? It might seem like a logical and viable solution now, and maybe for decades to come. But one cannot completely reject the idea that nationalism is always present and at some point nationalistic self-determination must happen. Although the pacifying effect of these power-sharing governments will not last forever, as I mentioned earlier, this does not mean that every power-sharing political structure is destined for violent upheaval for control of power.

In her book *Driving Democracy: Do Power-Sharing Institutions Work?*, Pippa Norris also delineates the failure of consociational governments, though she specifies that this failure has to do with situations in which the consociational government is implemented by a third party.²⁸ I expand her concerns to the idea of dealing with nationally divided countries as a whole. Notably, she discusses how power-concentrating regimes are essential in some cases to keep order, specifically after violent conflicts.²⁹ Following this idea, I propose that this is the

Community of language and community of religion greatly contribute to it. Geographical limits are one of its causes. But the strongest of all is identity of political antecedents; the possession of a national history, and consequent community of recollections; collective pride and humiliation, pleasure and regret, connected with the same incidents in the past.

JOHN STUART MILL, CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT 308 (1869).

²⁷ 1514 (XV). Declaration on the Granting of Independence to Colonial Countries and Peoples. A/RES/1515/1514; 2200 (XXI) of 16 December 1966 International Covenant on Civil and Political Rights.

²⁸ Norris notes that:

Power-sharing constitutions which are imposed by external powers on a country after intense ethnic conflict seem least likely to survive and to provide durable peace-settlements, particularly once the outside powers withdraw and cease to enforce the arrangement. The chances of a durable peace remain relatively poor; for example, Collier estimates that 40% of civil wars recur within a decade and thus, on average, a country that has terminated civil war can expect the outbreak of a new round of fighting within six years.

PIPPA NORRIS, DRIVING DEMOCRACY: DO POWER-SHARING INSTITUTIONS WORK? 30 (2008).

²⁹ Norris argues that:

The initial period of peace-building in such a society is one fraught with considerable uncertainties and risks, where a few spoilers may use violent tactics to block full implementa-

only way to *completely* subdue a nationality if its independence is to be restricted (genocide, and other forms of violence being out of the question).³⁰

Norris mentions that power-sharing settlements tend to *freeze* divisions already existing in the country:

Power-sharing is one of the easiest ways to arrive at a multiparty negotiated peace-settlement but nevertheless this arrangement may tend to freeze in the divisions already present in a country. The peaceful transition to democracy, Mansfield and Snyder argue, requires that states first need to establish national boundaries, administrative capacity, and rule of law, concentrating power in strong central state institutions, for example, in the public sector and police force, before taking the step of encouraging mass political participation and elections.³¹

Although she addresses the context of a country immersed in a post-war process, I believe that the effect that a power-sharing government has on any type of nationally divided state is the same. The *divisions*, as she discusses, would be set in place and, though the power-sharing deal might pacify the situation, nationalistic sentiments will continue to be present until either the nation is fully eradicated (by state oppression) or it accomplishes its maximum expression as a nation-state.

A perfect example of a power-concentrating regime that maintained various nationalities suppressed for decades was the Russian Empire, and its succeeding entity, the Soviet Union. Although the Soviet Union was born from the revolution that overthrew the Russian monarchy, the new government barely changed state posture towards nationalist sentiments. The multiple nations under its political grasp were suppressed by the great political of the Soviet Union, in concert with Russian national power. The only nationalism that Soviet authorities accepted was Russian nationalism.³² Nationalities that did not willingly integrate into the Soviet Union after the fall of the monarchy were forced to do so. Thus, the central power of one regime was transferred to another, nationalities still remained repressed, intimidated, and unable to choose their own political destiny. These Soviet policies had a great and lasting effect on the composition of the

tion of any constitutional settlement In this context, constitutional settlements which generate power-concentrating regimes may be preferable, by strengthening the capacity of elected government leaders to take difficult but necessary actions to improve security and rebuild the state.

Id.

³⁰ Later on we shall discuss the benefits of supranationalism and federalism, which are alternatives to independence. Nevertheless, these are alternatives that will not subdue a nationality. As such, I stay firm in the opinion that the only way to completely subdue a nationality is through the suppressive and absolute control of a power concentrating regime.

³¹ Norris, *supra* note 28, at 31.

³² Victoria Khiterer, *Nationalism in the Soviet Union*, ENCYCLOPEDIA OF RUSSIAN HISTORY (2004), <http://www.encyclopedia.com/doc/1G2-3404100886.html> (last visited Oct. 26, 2014).

population of Crimea and its political atmosphere, ultimately leading to the present political situation.³³ As Khiterer explains:

Different nations of the former Russian empire believed that the collapse of the monarchy gave them a chance for independence. The establishment of Soviet power in the national republics was strongly resisted. The Russian empire had the reputation as the “prison of nations,” thus, nationalities that were newly liberated from the one yoke after the February 1917 revolution did not rush into another bondage. But the resistance of the various nations was not strong enough to defend their independence.³⁴

As Khiterer expresses, it seems that the title *prison of nations* was transferred from one regime to the other. Ironically, a regime founded on the Marxist concepts of internationalism was in itself acting upon the founding notions of nationalism. It was protecting its own ethnic and cultural identity and enforcing it upon all others under its dominance. The Soviet Union attempted to eliminate all other national identities and consolidate all the peoples under one single Soviet-Russian identity. *Sovietization*, Khiterer explains, was one of the main causes of the suppression of nationalities under the Soviet Union:

From the second half of the 1930s the national policy of the Soviet Union lost its internationalist coloring. The Soviet leaders enhanced the role of the Russian nation and diminished the relative importance of all others. However, during the Soviet era, all nations became of the victims of sovietization and even Russians were not exempt from this policy. Peasant communities were destroyed, religious institutions devastated, and even the best of the national literatures, music, and art were forbidden for their “anti-socialist contents.”³⁵

33 An example of the Soviet Union suppression would be the following:

The Soviet collectivization process was especially harsh in the Crimea, and tens of thousands of Crimean Tatars perished during Joseph Stalin’s suppression of the ethnic minorities. In May 1944 the remaining Crimean Tatars some —200,000 people— were forcibly deported to Siberia and Central Asia for allegedly having collaborated with the Nazis during World War II.

Crimea, ENCYCLOPEDIA BRITANNICA, <http://global.britannica.com/EBchecked/topic/143010/Crimea/314881/History> (last visited Oct. 26, 2014). On the origins of the Crimean Tatars:

Crimean Tatars, who dominated the region under the Crimean Khanate until the 18th century but were deported *en masse* by Stalin, are beginning to return to the region with the help of the Ukrainian government. Tatars now compose nearly 10% of the Crimean population. The remaining population, which is primarily ethnic Ukrainian, has found common ground with the Crimean Tatars. Although that relationship is becoming strained, Ukrainians and Tatars both fear the rise of Russian nationalism within the Crimea. They have aligned themselves with Kiev against the Russian population seeking greater levels of autonomy in the Crimea.

Chase, *supra* note 16, at 219, 222-23.

34 Khiterer, *supra* note 32.

35 *Id.* Khiterer adds that:

The effectiveness of Soviet suppression cannot be denied. The Soviet Union was a world power unhindered by nationalistic problems for almost seven decades. It is not difficult to understand why many political theorists during this time believed nationalism was dead. The world during this period was divided ideologically between communism and capitalist-democracy, between East and West. People were paying attention to the big picture, but not the details. Nationalism was not dead, it was on the sidelines, and in the case of the Soviet Union it was just suppressed. This theory was proven with the collapse of the Soviet Union in 1991.³⁶ After its collapse, the Soviet Union divided into fifteen states. Nationalities took power and sought self-determination. With no powerful regime subduing them and acting as a centripetal political force, and with the right to self-determination being widely accepted internationally and policed by the United Nations, these various nations sought to form their own independent states.

Power-concentrating regimes are not widely accepted, and even less if they violently suppress non-governing nations. But it cannot be denied that they can maintain order effectively where otherwise there could be chaos. From this perspective, it would be wise to revisit the previously discussed case of the disintegration of Yugoslavia. The Yugoslav case, particularly the situation of Kosovo, is a perfect example of all that we have previously discussed. This was a country held together by a centralized regime. In fact, its first constitution “was closely modeled on that of the Soviet Union.”³⁷ After the centralized regime lost power,

Many Soviet political campaigns affected specific nationalities more than others. For example, the collectivization and mass deportations of rich peasants to Siberia devastated the Ukraine. There the local population had more severely resisted collectivization, and Soviet authorities forcibly took all crops from the peasants. The result of this policy was horrible starvation in Ukraine in 1932-1933 that took the lives of six to seven million people. Another example was the forced settlement of the nomadic population, which decimated the Kazakhs. Also, purges of the national cadres greatly affected the Jews. By the end of the 1930s almost all Jews were dismissed from leading positions in the Communist Party of the Soviet Union and in the government.

Id.

36 As to the collapse of the Soviet Union, Chase emphasizes that:

The collapse of the Soviet Union is unprecedented and the sudden emergence of the republics of the former Soviet Union has created a set of legal issues that are both widespread and novel. One particularly troubling problem that characterizes the dissolution of the Soviet Union is the emergence of distinct ethnic populations that find themselves isolated within the boundaries of a nation with which they share no ethnic identity. Ethnic tensions are often aggravated by neighboring states who share an ethnic identity with the minority enclave.

Chase, *supra* note 16, at 219-20.

37 John R. Lampe, *The second Yugoslavia*, ENCYCLOPÆDIA BRITANNICA, (April 17, 2013) <http://global.britannica.com/EBchecked/topic/654783/Yugoslavia/228362/The-second-Yugoslavia> (last visited Oct. 26, 2014). “[T]he new state was at first highly centralized both politically and economically, with power held firmly by Tito’s Communist Party of Yugoslavia and a constitution closely modeled on that of the Soviet Union.” *Id.*

it was inevitable that the constituent republics would opt for secession. Hence, in 1992, the new Yugoslavia was now only comprised of Serbia and Montenegro, with a Serb-dominated government. Kosovo, led by the Kosovar-Albanians, tried repeatedly to gain autonomy or independence from Serb-governed Yugoslavia.³⁸

The situation quickly turned violent. The Kosovar-Albanian nation looked for political power and self-determination, while the Serb nation looked to preserve both the power and territorial integrity of Yugoslavia. After international intervention to negotiate a peace treaty between the two factions proved hopeless, N.A.T.O. had to intervene militarily, but it was not until 1999 that a peace agreement was reached. Soon after, the United Nations also intervened and created an interim administration in Kosovo. The interim administration in Kosovo was established to stabilize the country and to facilitate “a political process designed to determine Kosovo’s future status.”³⁹ Almost a decade later, in 2008, after continuing negotiations under the interim government proved ineffective, Kosovo unilaterally declared its independence.⁴⁰ Furthermore, after Kosovo’s declaration of independence, the international community solicited an inquiry on the legality of the unilateral declaration. The International Court of Justice (I.C.J.) was tasked by the United Nations General Assembly to analyze the matter.

While the court restricted itself to not determine whether the declarations indeed created a state, it did recognize a right of self-determination in international law.⁴¹ As the court put it: “During the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation.”⁴² The I.C.J. also declared that “the scope of the principle of territorial integrity [was] confined to

³⁸ John R. Lampe, *Kosovo*, ENCYCLOPÆDIA BRITANNICA, (March 21, 2014) <http://global.britannica.com/EBchecked/topic/322726/Kosovo/283792/Kosovo-in-Yugoslavia> (last visited Oct. 26, 2014).

³⁹ S.C. Res. 1244, U.N. Doc. S/RES/1244 (June 10, 1999).

⁴⁰ Kosovo’s secession process has been described as follows:

Talks initiated by the UN in 2005 on the future of Kosovo led in 2007 to a plan, submitted by UN envoy Martti Ahtisaari, that laid the groundwork for self-rule but stopped just short of full independence. Rapid endorsement of the plan by Kosovar Albanians was countered with intransigent opposition from the Serbian government. Months of further talks between Serbian and Kosovar leaders failed to resolve Kosovo’s future status, and by early 2008 Kosovo was determined to secede. On Feb. 17, 2008, Kosovo formally declared independence.

Antonia Young, *Kosovo*, ENCYCLOPÆDIA BRITANNICA, <http://global.britannica.com/EBchecked/topic/322726/Kosovo/283793/Self-declared-independence> (last visited Aug. 3, 2014).

⁴¹ Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 403, 424 (Jul. 22). “[T]he Court does not consider that it is necessary to address such issues as whether or not the declaration has led to the creation of a State or the status of the acts of recognition in order to answer the question put by the General Assembly.”

⁴² *Id.* at 436 (citation omitted).

the sphere of relations between States,”⁴³ comprehending that the Kosovo situation did not deal with “relations between States,” and thus disarming previous arguments pronouncing that the concept of territorial integrity prohibited unilateral declarations of independence.⁴⁴ Finally, in regards to the original question presented before them, the I.C.J. determined that Kosovo’s unilateral declaration of independence did not violate any applicable rule of international law.⁴⁵

The situation in Syria is a more recent example of the centrifugal force that emerges in a multinational state after a power-concentrating regime weakens. Its one-party Ba’ath regime, led by president Bashar al-Assad, had until recently maintained the country in relative order through its dictatorial repressive powers. After the uprisings in 2011 led to civil war, the balance of power in the region was greatly destabilized. Nationalities, ethnic, and religious groups that had previously been maintained in order are no longer restricted by the regime. More powerful groups are free to impose their nationality, and less powerful groups (e.g. Kurds) are left vulnerable due to lack of protection from the Ba’ath regime.

Although the type of political structure seen in the aforementioned cases (i.e. the power-concentrating regime) is not the most favorable, it is indeed efficient in maintaining order when multiple nationalities are in place. On the other side of the spectrum of national order is, of course, the moral option of self-determination and independence. Just like we saw in the case of Kosovo, after years of international intervention and negotiations, the only solution was, after all, the national self-determination of the Kosovar nation. Needless to say the best option, and the only true answer to the *question of nationalism*, is nationalistic self-determination; that is, the creation of an independent nation-state.⁴⁶ In the case of Crimea, the overwhelming political desire of the majority of the Russian population opted for the annexation with Russia. Hence, there was no need to create an independent nation-state; the nationalistic self-determination process of the Crimean region resulted in annexation. A true nationality will not strive for anything less than national self-determination; even if it is suppressed or dampened throughout its path, its ultimate goal will always be to express this right of self-determination. Self-determination can be seen as an obstacle to state interrelationships, but this is only when the nation is not permitted to reach its autonomic goal. Negation of a nation’s autonomic goal leads to many of the aforementioned disputes. Thus, the international community has come up with different methods throughout the years to deal with the unrelenting force of nationalism. Many of these methods have to do with the restriction, via specif-

43 *Id.* at 437.

44 The concept of *territorial integrity* is discussed in Part IV of this article.

45 *Id.* at 452. “The Court has concluded . . . that the adoption of the declaration of independence of 17 February 2008 did not violate general international law, Security Council resolution 1244 (1999) or the Constitutional Framework. Consequently the adoption of that declaration did not violate any applicable rule of international law.”

46 That being said, and as we will discuss later on, there can be situations in which the best option, an independent nation-state, is not completely viable.

ic criteria, of what groups can be called a *nation*, and which of these nations have a legitimate claim to self-determination.

III. FROM NATION, TO A VIABLE NATION-STATE

In his book *Nations and Nationalism since 1780*, Eric Hobsbawm starts his fourth chapter with a quote from Austrian politician Karl Renner.⁴⁷ Because I find these words fascinating and associated to our current discussion, as an introduction to this section I thought it pertinent to quote Renner as well:

Once a certain degree of European development has been reached, the linguistic and cultural communities of peoples, having silently matured throughout the centuries, emerge from the world of passive existence as people (*passiver Volkheit*). They become conscious of themselves as a force with historical destiny. They demand control over the state, as the highest available instrument of power, and strive for their political self-determination. The birthday of the political idea of the nation and the birth-year of this new consciousness, is 1789, the year of the French Revolution.⁴⁸

This quote cannot better describe the historical emergence of a nation, its historical connection, and its need to attain political power. Although the term *nation* has had multiple definitions over its historical existence, the definition used for purposes of this article, and that which I believe is the most complete and truthful definition, is the one coined by John Stuart Mill. Mill defines nation as a group “united among themselves by common sympathies” which “desire to be under the same government, and desire that it should be government by themselves, or a portion of themselves, exclusively.”⁴⁹ He also sees the concept of nation as a feeling that can be achieved by an identity of race, descent, language, religion, and geographical limits.⁵⁰ Finally, he concludes that the strongest elements of a nation have to do with “political antecedents; the possession of a national history, and consequent community of recollections; collective pride and humiliation, pleasure and regret, connected with the same incidents in the past.”⁵¹ This definition is well summarized by the *Black’s Law Dictionary*.⁵² Furthermore, a psychological factor is recognized as well, as these peoples share

⁴⁷ E.J. HOBSBAWM, *NATIONS AND NATIONALISM SINCE 1780* (1990). Though we have mentioned earlier that Hobsbawm was mistaken about the persistence of nationalistic force in the twenty first century, he is still an exceptional and well-recognized source on the study of the rise and evolution of the concepts of nation and nationalism.

⁴⁸ *Id.* at 101 (quoting KARL RENNER, *STAAT UND NATION* 89 (1899)).

⁴⁹ MILL, *supra* note 26, at 120.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Nation* is defined as a “large group of people having a common origin, language, and tradition and [usually] constituting a political entity. When a nation is coincident with a state, the term *nation-state* is often used.” BLACK’S LAW DICTIONARY 1121 (9th ed. 2009).

a sense of belonging to this entity.⁵³ Thus a nation, in essence is a group of people that share a common culture and history, and, I would add, who strive united for political power. It must be pointed out that the term *nation* has another definition, more as a synonym for *state*. As Professor Rubén Berríos points out, the term *nationality* tends to be used interchangeably with that of *citizenship*, and so is the term *nation-state* confused with that of a *political state*.⁵⁴ This confusion, as he explains, dates back to the use of the terms during the French and American revolutions.⁵⁵ Though the term is still used interchangeably by some, for the purpose of our current analysis the definition of *nation* will be the one established by Mill.

Originally, the concept of *nation* was unassociated with that of *territory*, in other words, the idea of a *nation-state* was yet unknown.⁵⁶ It wasn't until what Hobsbawm calls the *Age of Revolution* that "[t]he equation nation = states = people, and specially sovereign people, undoubtedly linked nation to territory."⁵⁷ This period also brought forward the notion of *popular self-determination*. Once the concept of nation-state was introduced, the idea of self-determination (and the understanding that a nation should have its own state) began to take hold in the international arena. Consequently, there was an urgent need to define the limits of this new ambitious concept. Furthermore, and as Hobsbawm also indicates, this new linkage of *nation to territory*, and the resulting idea of self-determination as promoted by the newborn nation-states of the era,⁵⁸ failed to clearly specify *what constituted a people*⁵⁹ and which peoples, or *nations*, possessed the right to self-determination.

At that time, in an effort to define the limits of the claim to this right, the notion of a *viable state* also arose. The scholars of the era determined that in order for a nation to have the right to make a claim of self-determination, the nation-state that would result from such action would have to meet certain cri-

53 "[T]he type of nationalism which emerged towards the end of the nineteenth century had no fundamental similarity to state-patriotism, even when it attached itself to it. Its basic loyalty was, paradoxically, not 'the country', but only to its particular version of that country; to an ideological construct." HOBBSAWM, *supra* note 47, at 93.

54 Rubén Berríos Martínez, *Un conflicto de nacionalidades* (Jan. 30, 1991), http://www.independencia.net/index.php?option=com_content&view=article&id=176:un-conflicto-de-nacionalidades&catid=86:rubén-berríos-Martínez&Itemid=137&lang=es (last visited Oct. 26, 2014) (translation by author)[hereinafter Berríos Martínez, *Un conflicto de nacionalidades*].

55 *Id.*

56 HOBBSAWM, *supra* note 47, at 17.

57 *Id.* at 19.

58 Hobsbawm cites the French Declaration of Rights of 1795 in which the term *people* is used but not defined: "Each people is independent and sovereign, whatever the number of individuals who compose it and the extent of the territory it occupies. This sovereignty is inalienable." *Id.*

59 Hobsbawm adds: "In particular there was no logical connection between the body of citizens of a territorial state on one hand, and the identification of a 'nation' on ethnic, linguistic or other grounds or of other characteristics which allowed collective recognition of a group membership." *Id.*

teria (this has been called *threshold principle*).⁶⁰ This meant that the “principle of nationality’ applied in practice only to nationalities of a certain size” which were viable culturally and economically.⁶¹ This was not untrue, as different times have required different characteristic for states to survive in the international arena. At that time, the size of a state, its access to resources, and population could directly determine its subsistence or its demise. As scholar Jeffrey Herbst explains, “[t]he nation-state rose to dominance largely because its unique ability to unite a market and population under sovereign rule provided leaders in successive centuries with important economies of scale in military, economic, and political affairs that could not be achieved any other way.”⁶² In the end, it was understood that “in economic terms the state should be large to achieve economies of scale.”⁶³

In his article *The Nation-State’s Rise and the Advantages of Size*, Herbst clarifies that state size is not a determinant factor in today’s international community. The *large* nation-state (main proponent of the theoretical limitations for the creation of *small* nation-states) was important in light of military, economic and political interests. In the past it was believed that no state could survive in the international community unless it could have a strong enough economy and large enough territory (*i.e.* natural resources and population) to exert itself internationally and, in any case, be able to defend itself militarily. The main objections towards the creation of small nation-states, as Herbst shows, are no longer viable notions. Herbst explains that in today’s international arena the benefits are either already available to small nation-states (*e.g.* economic benefits of a large market) or unnecessary (*e.g.* military prowess). In his words: “Countries do not become rich today by mining a vast hinterland or by dint of large labor forces. Rather, they become rich by possessing advanced manufacturing . . . and service sectors.”⁶⁴ He also explains that “[t]he military advantages associated with size have also changed fundamentally,”⁶⁵ partly because of the relationship between economic and military power, and the changes in modern economies as

60 *Id.* at 30. Hobsbawm cites Friederich List’s ideas, which were followed by other scholars of the era and basically said that a nation “had to be of sufficient size to form a viable unit of development. If it fell below this threshold, it had no historic justification.” *Id.*

61 *Id.* at 31.

62 Jeffrey Herbst, *The Nation-State’s Rise and the Advantages of Size*, in *THE SELF-DETERMINATION OF PEOPLES: COMMUNITY, NATION, AND STATE IN AN INTERDEPENDENT WORLD* 13, 16-17 (Wolfgang Dan-speckgruber ed., 2002).

63 *Id.* at 17 (quoting CHARLES P. KINDLEBERGER, *MULTINATIONAL EXCURSIONS* 28 (1984)).

64 *Id.* at 19.

65 *Id.* at 22. To fully explain this point, Herbst continues:

Although there are today an unparalleled number of weak states that cannot defend their own boundaries, they are not invaded. Part of this change undoubtedly has to do with international norms. But part also is due to the fact that the economic value of land and other resources traditionally taken in wars of conquest is far less than it used to be.

Id. (citing RICHARD ULLMAN, *SECURING EUROPE* 23 (1991)).

stated before. Therefore, today, both large nation-states and small nation-states enjoy the benefits that were previously enjoyed exclusively by large nation-states. This, in theory, although not the only reason to have in mind,⁶⁶ can explain the rise in numbers of nation-states in the modern international community,⁶⁷ and the resurgence of claims for self-determination by many nations around the world. The modern globalized economy has made it easier for states to have viable economies, thus limiting the historical restrictions of *state creation* and opening the doors to small nations that strive for political power.

Although the question of *nation-state viability* has been answered by time itself, the questions of which people hold the right to claim a nation-state, and that of how to determine and limit the claims to this right of self-determination, are still a work in progress and have further motivated the international discussion regarding self-determination.

IV. SELF-DETERMINATION AND TERRITORIAL INTEGRITY

As the international discussion on the concepts of nation-state and the right to self-determination evolves, the need to limit when this right can be exercised persists, especially now that the modern viability of states has broadened the definition a *viable nation-state*. The principle of *territorial integrity* has thus taken ground. As mentioned earlier in the case of Kosovo, the I.C.J. validated the right of self-determination, declaring that “the principle of territorial integrity [was] confined to the sphere of relations between States,”⁶⁸ and that the concept of territorial integrity did not prohibit unilateral declarations of independence. This makes it known that such concept is not incompatible with the recognition of an act of self-determination that leads to the secession from a state. Nevertheless, as we will see, although it is not incompatible, it is greatly limited by such a

⁶⁶ Herbst mentions the period between 1948 and 1963 as one where “dozens of countries gained independence and chose as the vehicle to independence the nation-state as defined politically and geographically by their former colonizers.” *Id.* at 15.

⁶⁷ As we can see, the second half of the twentieth century saw a rise in the number of nations in the world:

Since the creation of the United Nations more than 80 former colonies have gained their independence. Among them, all eleven Trust Territories have achieved self-determination through independence or free association with an independent State. There are 17 Non-Self-Governing Territories remaining today.

The Charter binds administering Powers to recognize that the interests of dependent Territories are paramount, to agree to promote social, economic, political and educational progress in the Territories, to assist in developing appropriate forms of self-government and to take into account the political aspirations and stages of development and advancement of each Territory. Administering Powers are also obliged under the Charter to convey to the United Nations information on conditions in the Territories. The United Nations monitors progress towards self-determination in the Territories.

The United Nations and Decolonization: History, UNITED NATIONS, <http://www.un.org/en/decolonization/history.shtml> (last visited Oct. 21, 2014).

⁶⁸ 2010 I.C.J. 403, 405.

concept. The idea of territorial integrity, safeguarded by already existing states, has served as the foremost reason for denying self-determination claims. As Wolfgang Danspeckgruber mentions, initially, “[t]he redrawing of borders and the shapes of the new states had to be in line with the strategic interests of the great powers rather than the actual needs of the communities.”⁶⁹ The concept of self-determination is one that has not always been taken kindly. Although its moral and human rights aspects have helped the concept flourish in the last century, the fear of international destabilization resulting from the dissolution of existing states has kept the concept in check.

The concept of territorial integrity is better understood if one studies the different international circumstances that brought it to life. In his essay *Self-Determination Under International Law: The Coherence of Doctrine Versus the Incoherence of Experience*, Richard Falk discusses how in 1964 the Organization of African Unity (O.A.U.) passed a resolution which “agreed that colonial frontiers, even if arbitrary and unjust, were to provide the only acceptable basis for delimiting sovereign states in Africa as colonial entities achieved independence.”⁷⁰ As he explains, “the African consensus on self-determination was intended to deny ethnic and tribal claimants any right of secession or independence in the midst of decolonization.”⁷¹ On this, Falk adds: “[t]he African fear was that the moment of independence, if coupled with the invalidation of colonial boundaries, would open up the continent to devastating civil strife, possibly producing a pattern of ethnically oriented and nonviable states that had little chance of coping with the challenges of modernity.”⁷²

The I.C.J. based its opinion regarding the border dispute between Burkina Faso and the Republic of Mali on these same principles.⁷³ In this case, although the court did not directly utilize the concept of territorial integrity, it used the principle of *uti possidetis juris*⁷⁴ to resolve the dispute between the parties. Based on this principle the court demanded each state to keep their boundaries as they existed at the moment when each state achieved its independence from France. Although the principle *uti possidetis juris* is not identical to the concept of territorial integrity, its application in the case considered the same motive upon

⁶⁹ Wolfgang Danspeckgruber, *Self-Determination and Regionalization in Contemporary Europe*, in *THE SELF-DETERMINATION OF PEOPLES: COMMUNITY, NATION, AND STATE IN AN INTERDEPENDENT WORLD* 165, 168 (Wolfgang Danspeckgruber ed., 2002).

⁷⁰ Richard Falk, *Self-Determination under International Law: The Coherence of Doctrine Versus the Incoherence of Experience*, *THE SELF-DETERMINATION OF PEOPLES: COMMUNITY, NATION, AND STATE IN AN INTERDEPENDENT WORLD* 31, 44 (Wolfgang Danspeckgruber ed., 2002).

⁷¹ *Id.*

⁷² *Id.* at 45.

⁷³ Case Concerning the Frontier Dispute (Burkina Faso/Republic of Mali), 1986 I.C.J. 554 (Dec. 22).

⁷⁴ *Uti possidetis* is defined as “[t]he doctrine that the administrative boundaries will become international boundaries when a political subdivision or colony achieves independence.” *BLACK’S LAW DICTIONARY* 1686 (9th ed. 2009).

which the concept of territorial integrity is founded, the prevention of conflict and the respect of sovereignty between states (in this case through the stabilization of two countries' borders). In his article *The International Court of Justice and the Development of the Right to Self-Determination: An Approach to the Case of Puerto Rico*, Professor Luis Enrique Romero-Nieves discusses the aforementioned case and provides a detailed discussion of other I.C.J. opinions that deal the subject of self-determination.⁷⁵ As he explains, the court case recognized the interrelationship between the principle of *uti possidetis juis* and the right to self-determination in the Burkin Faso-Mali case.⁷⁶ As Romero-Nieves further details:

The ICJ has nonetheless addressed the principle of *uti possidetis juris* in a way that seems to be contradictory with the right to self-determination. However, the *uti possidetis juris* principle has been adopted and justified in connection with the right to self-determination on the basis of other interests identified by the Court. As discussed in the case of Burkina Faso and Mali, under the *uti possidetis juris* principle, the boundaries drawn by the colonizer in relation to a former territory, become international frontiers at the time when independence is obtained. In other words, under the *uti possidetis juris*, a colony's extension will be limited to the boundaries drawn by the power that illegally ruled over it. According to the Court and publicists' opinions, this principle is necessary to ensure the stability of the emerging States' frontiers. Even so, the ICJ has recognized that two [or] more neighbor States may consent and agree upon the demarcation of their respective boundaries in order to fix their own frontiers.⁷⁷

The long-standing fear of destabilization that has always followed the concept of self-determination and the interest of already existing states to preserve their sovereignty and maintain regional political balances unaffected by claims for self-determination was clearly present in the Burkin Faso-Mali case.

A way to deal with claims for self-determination is to ask the question: to what peoples should the right of self-determination be available? Discussion on the matter has moved the international community, led by already existing states, to determine the conditions under which the right to self-determination should be recognized. The international consensus seems to be that not all peo-

⁷⁵ Luis Enrique Romero-Nieves, *The International Court of Justice and the Development of the Right to Self-Determination: An Approach to the Case of Puerto Rico*, 67 REV. JUR. UIPR 668 (2013).

⁷⁶ Romero-Nieves states:

After identifying the principle of *uti possidetis juris* as the applicable law to the controversy, the Court recognized that “[a]t first sight this principle conflict outright with another one, the right of peoples to self-determination.” Nevertheless, the Court also stated that this principle is capable of coexisting with that of self-determination, since it “is logically connected with the phenomenon of the obtaining of independence, whenever it occurs.” “It’s obvious purpose is to prevent the independence and stability of States endangered by fratricidal struggles provoked by the challenging of frontiers, following the withdrawal of the administering power.”

Id. at 691-692 (citation omitted).

⁷⁷ *Id.* at 699.

ples have this right. When initially accepted internationally, the concept of self-determination was accepted specifically for the case of decolonization but, as the concept grew, it led to more and more peoples claiming this right. In his book *Self-Determination of Peoples: A legal reappraisal*, Antonio Cassese describes four variants of the concept in political philosophy:

(i) a criterion to be used in the event of territorial changes of sovereign States (interested populations should through plebiscites have the right to choose which State to belong to); (ii) a democratic principle legitimizing the governments of modern States (the people should have the possibility of choosing their own rulers); (iii) an anti-colonialist postulate (peoples subject to colonial rule should have the right to secure independence or at any rate freely choose their international status); (iv) a principle of freedom for 'nations' or ethnic or religious groups constituting minorities in sovereign States (these groups should have the right to create an independent State or join groups existing in another State).⁷⁸

Although the history and evolution of the concept of self-determination is much more complex,⁷⁹ I will use these four variants to try and establish an easy to follow timetable that can explain the evolution of the theory of self-determination. Though Cassese doesn't clearly establish time periods, I believe his four points could be divided amongst following four historical periods:

1. First Period (1776-1917): This period begins with the emergence of the concept of self-determination during the American (1776) and French (1787) revolutions.⁸⁰ Here the concept of self-determination was being born as a result of the merging of the ideas of nation and state. As Hobsbawm indicates: "[s]elf-determination for nations applied only to what where considered to be viable nations: culturally, and certainly economically (whatever exactly viability meant)."⁸¹
2. Second Period (1917-1960): This period begins with the reemergence of the concept of self-determination. The reemergence of the concept of self-determination can be witnessed with the use of the term in the negotiations

78 ANTONIO CASSESE, *SELF-DETERMINATION OF PEOPLES: A LEGAL REAPPRAISAL* 32 (1995).

79 *Id.*

80 Though Cassese times the emergence of the concept of self-determination during the period of the French Revolution, CASSESE, *supra* note 78, at 33, I follow a more earlier time period as established by Moynihan in his book *Pandaemonium: Ethnicity in international Politics*, which dates the emergence of the concept to the American Revolution in 1776. This time frame would also correspond with Eric Hobsbawm's classification of the "classical period of liberal nationalism," which was followed by the *Wilsonian Era* and would fall under my classification of the second time period. HOBBSAWM, *supra* note 47, at 31-32. Though Hobsbawm's determinations are made mainly with the concept of nationalism in mind, rather than self-determination, both concepts are intrinsically linked.

81 HOBBSAWM, *supra* note 47, at 32.

leading to the end of the First World War by Austro-Hungarian foreign minister Count Czernin in an official diplomatic document (1917)⁸² and Woodrow Wilson during a joint session of Congress (1918).⁸³ The term was also utilized by Lenin in *The Declaration of the Rights of the People of Russia* (1917). During this period, “the political postulate of self-determination only entered the realm of international law in 1945, when it was proclaimed in Article 1(2) of the UN Charter.”⁸⁴ That is why “the adoption of the UN Charter marks an important turning-point; it signals the maturing of the political postulate of self-determination into a legal standard of behaviour.”⁸⁵ The definition of self-determination during this time is strictly based on the concept of *self-governance*.⁸⁶

3. Third Period (1960-1966): This period commences with the adoption of the *Declaration on the Granting of Independence to Colonial Countries and Peoples* (1960). That is, the surpassing of the definition of self-determination as meaning only *self-government* and the breaking down of limitations prohibiting the self-determination of colonial peoples. The period ended with the adoption of the two U.N. covenants on human rights in 1966, which in their first articles, defended the right of all peoples to self-determination.⁸⁷

82 DANIEL PATRICK MOYNIHAN, PANDAEMONIUM: ETHNICITY IN INTERNATIONAL POLITICS 78 (1993).

83 *Id.* at 117.

84 CASSESE, *supra* note 78 at 65.

85 *Id.* at 43.

86 Cassese states that:

The concept of self-determination upheld in the Charter can only be negatively inferred from the debate preceding the adoption of Article 1(2). Self-determination *did not mean* (a) the right of a minority or an ethnic or national group to secede from a sovereign country; (b) the right of a colonial people to achieve political independence; for these peoples self-determination could only mean ‘self-government’ (. . . a systematic interpretation of the Charter would thus warrant the conclusion that, by the application, ‘self-government’ did not mean ‘independence’); (c) the right of the people of a sovereign state freely to choose its rulers through regular, democratic and free elections; for these peoples also self-determination only meant ‘self-government’; (d) the right of two or more nations belonging either to a sovereign country or two sovereign countries to merge; this right is ruled out by the ban on secession

Id. at 42.

87 The article reads:

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. 3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-

Though the meaning of the concept was expanded, it remained restrictive. During this period, the concept of self-determination was limited via international consensus to colonial peoples.⁸⁸

4. Fourth Period (1966-present): The current period commenced with the adoption of the two U.N. covenants. It has been characterized by the extension of the right of self-determination to all peoples⁸⁹ through the development of the concept of “internal self-determination.”⁹⁰

This article focuses on the Fourth Period given that it is in this period that the “principle of freedom [is granted to] ‘nations’ or ethnic or religious groups constituting minorities in sovereign States.”⁹¹ In turn, this has created many of the recently witnessed international conflicts.

As mentioned above, the Fourth Period began with adoption of the U.N. covenants on human rights. This can be deduced from the fact that: (1) these covenants extended the right of self-determination to *all peoples*, and (2) this time period coincides with a rise in nationalist claims. Examples of these claims

determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI), ¶ 1, U.N. A/RES/21/2200 (Dec. 16 1966).

88 As Cassese explains when discussing the processes that led to the adoption of article 1 of the two U.N. covenants on human rights:

By the time the Article on self-determination was finally adopted in 1955 only a few States still maintained that it should be limited to colonial situations. These States feared that if the provision were not so limited, it might be interpreted as conferring rights on national minorities, which would disrupt sovereign States. However, their fear was misplaced: the overwhelming majority of countries had already explicitly stated that the provision was not intended to cover such minorities.

Cassese, *supra* note 78, at 51-52.

89 *Id.* at 59-62.

90 Cassese discusses that:

Article 1 [of both UN Covenants on Human Rights] (1) requires that the people choose their legislators and political leaders free from any manipulation or undue influence from *domestic* authorities themselves. In this respect, in order to understand the exact parameters of internal self-determination one must refer to the other provisions of the Covenant on Civil and Political Rights. Internal self-determination presupposes that all members of a population be allowed to exercise those rights and freedoms which permit the expression of the popular will. Thus, internal self-determination is best explained as a manifestation of the totality of rights embodied in the Covenant, with particular reference to: freedom of expression (Article 19); the right of peaceful assembly (Article 21); the right to freedom of association (Article 22); the right to vote (Article 25 b); and, more generally, the right to take part in the conduct of public affairs, directly or through freely chosen representatives (Article 25 a). Only when individuals are afforded these rights can it be said that the whole people enjoys the right of internal self-determination.

Id. at 53.

91 *Id.* at 32.

are illustrated in the cases we have already discussed (Ukraine, Crimea, Russia, and Yugoslavia). These claims for self-determination follow Cassese's conclusion that the inclusion of article 1 in both of these covenants induced the spread of the concept to peoples other than those subjected to a colonial condition or other types of foreign domination. As Cassese explains:

[T]he general spirit and context of Article 1, combined with the preparatory work, lead to the conclusion that Article 1 applies to: (1) entire populations living in independent and sovereign States, (2) entire populations of territories that have yet to attain independence, and (3) populations living under foreign military occupation.⁹²

Through the inclusion of the words *all peoples* in both covenants, the emergence of the additional situation for which the right of self-determination is now available (that described by Cassese in point (1) of the previous quote) leads to a possible expansion of the term. The right to self-determination has been expanded to what Cassese views as "two main issues that are especially problematic: (1) peoples living in sovereign states and (2) minority groups."⁹³ Then, the concept of self-determination not only applies to occupied peoples (*e.g.* colonies) but also to cases of *internal self-determination*. The term has been expanded to signify that *all peoples* have the right to choose their own government. This development, nevertheless, has excluded minorities.⁹⁴ The previously mentioned and well-guarded concept of territorial integrity is the main reason for negation of minorities' right to self-determination. The concept of territorial integrity serves to isolate from dispute questions that could result in border alteration (*e.g.* creation of new nation-state within the territorial boundaries of the predecessor state). The concept of territorial integrity has stood as a bulwark against the extension of the right of self-determination to minorities or indigenous groups. In his essay *Self-Determination under International Law: The Coherence of Doctrine Versus the Incoherence of Experience*, Richard Falk explains that "the claim by one people of a right of self-determination can often be satisfied only by its denial to other peoples, partly because ethnic and other identities are increasingly intermingled in relation to geographical space."⁹⁵ But, as he explains, "[n]ot all claims possess the same moral and political weight. For instance, a separatist claim in a deeply divided societal unit is far more likely to produce disaster than if the claiming unit is homogeneous."⁹⁶

92 *Id.* at 59.

93 *Id.*

94 *Id.* at 51-52.

95 Falk, *supra* note 70, at 31.

96 *Id.* at 37. Falk also discusses the cases of Chechnya, Kashmir and Tibet and Kurdish populations:

Chechnya, Kashmir, and Tibet, and the various Kurdish populations are examples of entrapped peoples for whom the legal and political ideal of territorial unity causes moral havoc and harsh degrees of social, economic, and cultural injustice, producing great suffer-

A direct example of such a situation is the previously discussed case of Crimea and the war in Ukraine. Crimea, having a mostly homogenous population consisting of Russians, has already been annexed by Russia. Areas in which heterogeneity between Russians and Ukrainians is high (*i.e.* Eastern Ukraine) currently face civil strife, while the rest of Ukraine (*i.e.* Western Ukraine), having a mostly homogenous Ukrainian population, is at relative peace for now.

The international community has been resistant to the self-determination claims of small minorities and indigenous peoples. As Falk expresses:

Resistance to this new set of self-determination claims is reinforced by political worries that endowing indigenous *peoples* with such a right of self-determination could be used to validate extreme scenarios of statist fragmentation, there being several thousand potential claimants on a global scale if all “peoples,” numbering in all about 250 million, are included.⁹⁷

The subject of territorial integrity is the key factor in the implementation of this ideology.⁹⁸ The importance of territorial integrity is such that the United Nations has turned it into a legal obligation for states. Both the Charter of the United Nations⁹⁹ and Resolution 2625 of the U.N. General Assembly¹⁰⁰ have recognized and strengthened the importance of the principle. The violent history of European disputes over state boundaries made this essential.¹⁰¹ As it is, the concept of territorial integrity is the utmost factor that holds back the granting of

ing and endless strife for these peoples. Such oppression seems legally correct according to the stricter international law accounts of the doctrine of self-determination as limited to repudiation of alien rule only at the level of the state.

Id. at 36.

⁹⁷ *Id.* at 37.

⁹⁸ “It is important to keep in mind the inevitable tension between the exercise of [the right of self-determination] and the parallel set of rights associated with the territorial integrity of existing and emerging sovereign states.” *Id.* at 44.

⁹⁹ U.N. Charter art. 1, para. 4.

¹⁰⁰ Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), U.N. Doc. A/RES/25/2625 (Oct. 24, 1970).

¹⁰¹ Stefan Wolff argues that:

European history to date has produced two almost wholly incompatible maps of the continent — a political and an ethnic one, the border lines of which rarely coincide. The majority of ethnic conflicts in Europe were, and are, to some extent, results of boundary changes dividing homelands, detaching groups of people from their (ethnic) nations and placing them under the sovereignty of an oftentimes adversarial host-state. The past and present of ethnic conflict in Europe, and arguably also its future, has thus largely been one of ethno-territorial cross-border conflict in which two states and two ethnic groups face each other

WOLFF, *supra* note 12, at 217.

additional sovereign powers or independence to minority and indigenous groups.¹⁰² In reference to Resolution 2625, some authors have said that:

[It] provokes the interplay of the right to self-determination with the principle of territorial integrity [It] provides that the “affirmation of the right to self-determination should not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.”¹⁰³

A well construed explanation of the difference between *minority* or *indigenous* groups and *peoples* (as used in both of the human rights covenants), can be found in Milena Sterio’s book *The Right to Self-Determination under International Law: “Selfistans,” Secession, and The Rule of The Great Powers*.¹⁰⁴ In the book, Sterio traces a clear line dividing both groups. As she explains:

Traditionally, a two-part test has been applied to determine when a group qualifies as a people. The first prong of the test is objective and seeks to evaluate the group to determine to what extent its members “share a common racial background, ethnicity, language, religion, history, and cultural heritage,” as well as “territorial integrity of the area the group is claiming.” The second prong of the test is subjective and examines “the extent to which individuals within the group self-consciously perceive themselves collectively as a distinct *people*,” and the “degree to which the group can form a viable political entity.”¹⁰⁵

If a particular population does not meet the criteria required to constitute a *people* then they do not possess the right to self-determination; they are considered minority or indigenous groups.¹⁰⁶ Sterio establishes that:

102 In the aforementioned article by Professor Romero-Nieves, he provides further insight into this matter:

The right to self-determination is subjected only to one constraint, and that is the principle of “territorial integrity.” Scholars maintain that ‘the exercise of the right to self-determination should not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.’ In our opinion, as it derives from our analysis, the right to self-determination is only limited by the interests of the international community to preserve the stability of existing sovereign States.

Romero-Nieves, *supra* note 75, at 699 (quoting MORTON H. HALPERIN ET AL., SELF-DETERMINATION IN THE NEW WORLD ORDER 23 (1992)).

103 *Id.* at 692 (citation omitted).

104 MILENA STERIO, *THE RIGHT TO SELF-DETERMINATION UNDER INTERNATIONAL LAW: “SELFISTANS,” SECESSION, AND THE RULE OF THE GREAT POWERS* (2013).

105 *Id.* at 16 (quoting Michael P. Scharf, *Earned Sovereignty: Judicial Underpinnings*, 31 DENV. J. INT’L L. & POL’Y 373 (2003)).

106 In order to determine if a group is a *people*, instead of a minority or indigenous group, Sterio outlines:

How does one define membership in an indigenous group, defined well enough to constitute a people? First, often the existence of a people in a given territory precedes the creation of the larger mother state therein. Such minority groups often self-identify as a peo-

The term *people* is also distinct from the notion of minority rights “Minority rights protect the existence of national, religious, linguistic or ethnic groups, facilitate the development of their identity and ensure that they can fully and effectively participate in all aspects of public life within the state.”

. . . .

The right for minority groups to have their language, culture, religion or ethnicity respected by the mother state is not synonymous with the right to self-determination. While all minority groups enjoy the former, only those minority groups that qualify as peoples enjoy the latter.¹⁰⁷

The rights of minority groups are well recognized and protected by the international community.¹⁰⁸ Nevertheless, the recognition of their rights does not extend to the right of self-determination. As mentioned above, this follows the interest of existing states in maintaining international power balances and avoiding situations in which the sovereignty or territorial integrity of a state is comes under threat, causing regional instability, armed conflict or eventual border alterations. In her book, Sterio, in accordance with the previously described jurisprudence and secondary sources on the subject, agrees with the importance of the territorial integrity doctrine and the resultant existing distinction between *peoples* and *minorities*. Sterio explains that:

[I]f every minority group were entitled to self-determination, “there would be no limit to fragmentation, and peace, security and economic well-being for all would become ever more difficult to achieve.” Thus, the distinction in international law between a minority group and a people is purposeful and incredibly significant.¹⁰⁹

ple, thereby satisfying the subjective element of the definition presented earlier — that members of a people must perceive themselves as distinctly forming a separate entity. Moreover, many indigenous groups or peoples are dispersed into small communities of a few hundred people. This can be problematic if one attempts to define peoples territorially. Territorial self-government of peoples presupposes “that all people resident within a particular jurisdiction, and so subject to its rules, have input or democratic voice in the making of these decisions.” Thus, identifying peoples in a territorial manner is problematic and can jeopardize the possibility of self-rule for peoples. Instead, other factors . . . should be looked to, such as whether the group shares a common race, ethnicity, language, religion, culture or history. Territoriality, if unaccompanied by these traits, may be entirely at odds with the definition of a group as a people.

Id. at 16-17 (quoting M. Moore, *An Historical Argument for Indigenous Self-Determination*, in SECESSION AND SELF-DETERMINATION 89, 107 (Stephen Macedo & Allen Buchanan eds., 2003)).

¹⁰⁷ *Id.* at 17-18.

¹⁰⁸ As Sterio brings to our attention, article 27 of the International Covenant on Civil and Political Rights protects minority group’s rights. It reads: “[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right . . . to enjoy their own culture, to profess and practice their own religion, or to use their own language.” *Id.* at 17 (quoting International Covenant on Civil and Political Rights G.A. Res. 2200 (XXI), ¶ 27, A/RES/2200 (Dec. 16 1966)).

¹⁰⁹ *Id.* at 18 (citation omitted).

Consequently, the international need for stability has deeply rooted itself into the doctrine of self-determination and has created restraints to keep it from expanding to what would be the faithful meaning of *all peoples*. Is this policy merely a strategy by the already existing powerful states to maintain their regional or international hegemony? That is a question to be discussed in another piece of work.

V. THE CREATION OF SUPRANATIONAL ENTITIES: A SOLUTION TO NATIONALISTIC DESIRES?

We have seen that all nations strive for political power (with the volatile conditions this can create) and that anything short of national self-determination will only prolong the inevitable. Also, following the evolution of the right of self-determination we have seen how this right has been expanded and how it is frequently in contraposition to the concept of territorial integrity. Lastly, we have seen to which groups the right of self-determination is available. With all these factors in mind, perhaps a modern solution, the creation of supranational entities, has arrived to resolve the situation, taking into consideration the aspirations and needs of every nationality, regardless whether they are developed enough to be a nation-state or not. Power, at the center of it all, commands the idea of a supranational entity.

A. *Supranational Entities*

The formation of the European Union in 1992 was the last step in a long effort to create a European supranational organization. The origins of this effort can be traced to the end of the Second World War and the creation of the European Coal and Steel Community (E.C.S.C.).¹¹⁰ In pursuit of the benefits of economic and social unity, the E.C.S.C. evolved into the European Economic Community (E.E.C.) which advanced the creation of a common market.¹¹¹ The Maas-

¹¹⁰ With the conclusion of the Second World War, the European Coal and Steel Community (E.C.S.C.) was created in a search for unity among the western European powers. More specifically:

At the end of the war, several western European countries sought closer economic, social, and political ties to achieve economic growth and military security and to promote a lasting reconciliation between France and Germany. To this end, in 1951 the leaders of six countries — Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany — signed the Treaty of Paris, thereby, when it took effect in 1952, founding the European Coal and Steel Community (ECSC).

Matthew J. Gabel, *European Union (EU)*, *ENCYCLOPÆDIA BRITANNICA* (May 27, 2014), <http://global.britannica.com/EBchecked/topic/196399/European-Union-EU> (last visited Oct. 21, 2014).

¹¹¹ On this point, we see that:

On March 25, 1957, the six ECSC members signed the two Treaties of Rome that established the European Atomic Energy Community (Euratom) — which was designed to facilitate cooperation in atomic energy development, research, and utilization — and the

tricht Treaty, which was signed on February 7, 1992, officially created the European Union, formalizing the creation of a common currency and promoting further integration.¹¹² The European Union and its success has turned the eyes towards this new type of political organization. Perhaps, via integration into these supranational entities and through the decentralization of individual state power, nations can achieve the type of political power they yearn for without requiring the formation of a nation-state.

The perceived benefits of supranational regional entities led to the creation of the *Comunidad de Estados Latinoamericanos y Caribeños* (CELAC or Community of Latin American and Caribbean States, in English). Created in Riviera Maya, Mexico, in 2010, CELAC is currently composed of thirty-three members and constitutes an effort to create a Latin American supranational entity that can establish the same economic and social unity delivered by the European Union to its member states. CELAC's stated purpose is to advance decisively towards an organization that unites all of the states of Latin America and the Caribbean. This purpose reaffirms the member states' perceived need to realize efforts among Latin American and Caribbean peoples that will advance their unity and political, economic, social and cultural integration. CELAC also seeks to advance social wellbeing, quality of life and economic growth, and promote Latin American and Caribbean independent and sustainable development, based on democracy, equity and the most ample social justice.¹¹³

Though still young, CELAC promises the great benefits that could result from a concerted effort by significant sectors of Latin American and Caribbean peoples. Thus, we have lately seen what seems to be the next step in political

European Economic Community (EEC). The EEC created a common market that featured the elimination of most barriers to the movement of goods, services, capital, and labour, the prohibition of most public policies or private agreements that inhibit market competition, a common agricultural policy (CAP), and a common external trade policy.

European Union: Creation of European Economic Community, ENCYCLOPÆDIA BRITANNICA, <http://global.britannica.com/EBchecked/topic/196399/European-Union-EU/224462/Creation-of-the-European-Economic-Community> (last visited Oct. 21, 2014).

112 On the Maastricht Treaty:

The treaty consisted of three main pillars: the European Communities, a common foreign and security policy, and enhanced cooperation in home (domestic) affairs and justice. The treaty changed the name of the European Economic Community to the European Community (EC), which became the primary component of the new European Union. The agreement gave the EC broader authority, including formal control of community policies on development, education, public health, and consumer protection and an increased role in environmental protection, social and economic cohesion, and technological research. It also established EU citizenship, which entailed the right of EU citizens to vote and to run for office in local and European Parliament elections in their country of residence, regardless of national citizenship.

The Maastricht Treaty, ENCYCLOPÆDIA BRITANNICA, <http://global.britannica.com/EBchecked/topic/196399/European-Union-EU/224464/The-Maastricht-Treaty> (last visited Oct. 21, 2014).

113 *Comunidad de Estados Latinoamericanos y Caribeños - CELAC*, PARLAMENTO LATINOAMERICANO, <http://www.parlatino.org/en/proyecto-de-la-celac.html> (last visited Oct. 21, 2014) (translation by autor).

organization in our world, an entity (which as we shall see) promises to transcend state and nationalistic boundaries alike, without having to destroy them. As Herbst expresses in his aforementioned mentioned article:

Classical political theory stressed the importance of small political units, ideally city-states. Plato calculated the optimal number of citizens at 5,040; Aristotle believed that all the citizens should be able to assemble in one place and hear a speaker. Later, Rousseau and Montesquieu would also stress the importance of the relationship between size and democracy.¹¹⁴

Although mentioned by Herbst in the context of the viability of small-states, this same principle is what lies at the foundation of what could be the success of supranational entities in solving the conundrum of the nationalistic want for power and self-determination. Perhaps these ancient thinkers were correct. As we have seen in our discussion, the rise in nationalistic claims and the resulting fragmentation of states is an ever-persistent occurrence. It seems that the more the world *globalizes*, the more *peoples* realize their uniqueness in respect to the rest of the world and the more they claim their rights to power, to take their destiny into their own hands, and make themselves visible in the international community. Taking this into consideration, the theory stated above by Herbst, which follows the postures of classical philosophers on the subject, could be on point. But how can the ever-continuing fragmentation of political power lead to an effective state? The answer is not in the creation of a *state* but in the creation of a supranational entity that would accommodate the needs of every national minority without having to result in the eradication of state borders and the loss of territorial integrity.¹¹⁵ Wolfgang Danspeckgruber cannot explain better the new state of affairs such entities create:

[T]he drive of the European Community's (and since 1991 the European Union's) member states toward deeper economic-industrial, fiscal, political, and even strategic integration, along with a wider readiness to cooperate with one another in general, has not eliminated the appeal of self-determination and self-realization (*Selbstverwirklichung*) on the communal level . . . [S]uch integration and cooperation may have changed the approach and objectives of those seeking self-determination: although still aiming for maximum autonomy and self-

114 Herbst, *supra* note 62, at 18.

115 Danspeckgruber adds:

A supranational entity automatically downgrades the importance of borders between its member states. Communities in search of greater self-determination and autonomy will not necessarily be interested in new international borders if they can obtain the benefits of unlimited membership in the supranational entity by other means. Maximum devolution and decentralization of the central government can offer sufficient self-government to the community, enabling it to participate more directly in EU integration and thus in the global marketplace while not necessarily altering the territory of its state or its international boundaries.

Danspeckgruber, *supra* note 69, at 176.

governance, communities may no longer be looking for sovereignty, independence and new boundaries.¹¹⁶

The local and regional authorities are well represented by the Committee of the Regions in the European Union.¹¹⁷ The Committee gives representative political power, regarding E.U. policies, to internal sectors inside each member state. As such, this represents a viable solution for the needs of nations, even small ones. Through local representation and decentralization, nationalities can achieve the power they want via representation in the political entities of the supranational entity. Nevertheless, this is a process that is still far from being completely effective. As Danspeckgruber mentions, the unwillingness of member states to cede power has become an obstacle towards the E.U.'s interest in decentralization of power. Danspeckgruber provides a satisfactory explanation of the conundrum of the regional desire for power versus the state government's unwillingness to completely concede it:

[C]ertain member states (France, Denmark) began to resist the further transfer of sovereign powers to Brussels The struggle for self-governance in Europe contributes to a potential polarization between the European Parliament and the Committee of the Regions on the one hand and the Council of Ministers and the governments of member states on the other. The latter are opposed to granting too independent a voice to their regions in the EU process. In the regions, however, a more independent role in the EU decisionmaking process is seen as the way to reduce the power of the national administrations, introduce a *supra*-national dimension, and provide maximum financial, scientific, and technical assistance for the regions' cultural, social, and economic development. For the EU regions, integration brings enhanced autonomy, decentralization, and devolution of power.¹¹⁸

116 *Id.* at 165-66.

117 The Committee of the Regions has been described as:

[A]n advisory body representing local and regional authorities in the European Union.

The role of the Committee of the Regions (CoR) is to put forward local and regional points of view on EU legislation. It does so by issuing reports (*opinions*) on Commission proposals. The Commission, the Council and the Parliament must consult the Committee of the Regions before EU decisions are taken on matters concerning local and regional government (for example on employment policy, the environment, education or public health).

The Committee of the Regions currently has 353 members (and as many alternate members) from all 28 EU countries. Members and alternates are appointed for a five-year term by the Council, acting on proposals from the EU countries. Each country chooses its members in its own way, but the delegations all reflect the political, geographical and regional/local balance in their country. The members are elected members of or key players in local or regional authorities in their home region.

Committee of the Regions, EUROPEAN UNION, http://europa.eu/about-eu/institutions-bodies/cor/index_en.htm (last visited Oct. 24, 2014).

118 Danspeckgruber, *supra* note 69, at 172-73.

As Danspeckgruber later indicates, the situation is not only hindered by state governments, but by nationalist forces which can still act as a disuniting force. The E.U.'s "simultaneous demand for ever-greater integration, standardization, sharing of common values, consideration for the weakest members, and transfer of powers from member governments to EU institutions creates tensions as communities strive to retain their identity."¹¹⁹ Not even supranational organizations have been able to completely overcome nationalism. The forces of nationalism continue to prove to be a powerful force to be reckoned with, and as such, we must always keep them in mind.

The complete success of the supranational project requires a paradigm shift in international thought. It is a two-way process, in which both existing governments and nationalities must transform their views and compromise on their aspirations to achieve the ideal realization of the supranational entity. Nationalities must realize that it is no longer necessary to possess a full sovereignty and a fixed territory (*i.e.* a nation-state) to obtain the representation and power their people require. Governments must understand that the relinquishment of some of their control would only bring stability, order and progress (and not the contrary) through the appeasement of nationalistic movements. It is a process in which both sides must sacrifice a keen ambition or interest in order to reap the larger benefits of a supranational entity. This is a process that undoubtedly calls for a new model of thought which focuses on the larger goal of integration via devolution of power, rather than integration by centralization of power.

Through the successful implementation of the supranational project, the nationalistic feeling can be passively reduced by way of common consensus, rather than through the imposition of aggressive external policies. This way, perhaps we will come to a future phase in history where the words *nation* and *nationalism* will no longer be associated with fragmentation and upheaval, but with unity and cultural recognition. Then, once the concept of territorial integrity is safeguarded and the concept of state sovereignty accedes to its evolution, the international community, led by the interests of state interrelations, may stop considering the prospect of a claim to self-determination as a destructive force.

Even now, as we have seen with the creation of the CELAC, states are realizing the potential of such entities. As Danspeckgruber states, "[u]nder certain conditions, communities elsewhere may be able to see the same cost-benefit calculation as in Europe: Obtain maximum autonomy in order to participate in both regional integration and the global marketplace; leave hard external boundaries untouched but soften them over time."¹²⁰ Perhaps sooner rather than later, this advancement of the international political system will take hold and change for the better the conceptual relationship between nation and state.

The importance of state interrelations in today's world is unquestionable, but this need cannot diminish the rights of nationality nor the powers of a fully

119 *Id.* at 174.

120 *Id.* at 178.

determined nation. The solution to this dilemma regarding state interrelations is a supranational political structure such as the European Union. In this type of structure, all member states maintain absolute sovereignty and independence and reap all the benefits of being a self-determined nation, but have institutional means to cooperate with other states, be it for economic purposes, or international sovereign aspects such as membership in international organizations, and national foreign policy and diplomacy.

If nationalistic self-determination is the only solution, why have so many *transitional power sharing* solutions become so popular? I believe there are two reasons for this. First, it is the only option in which today's powerful multinational states are willing to compromise. They can no longer afford to suppress nationality through power concentrating regimes and are still unwilling to cede power and territory for the creation of new independent nation-states. Second, transitional power sharing solutions have gained popularity through their apparent effectiveness, an effectiveness that is merely superficial. *Power-sharing* governments create a false sense of self-determination. Through these processes it is possible that a nationalistic movement is subdued into a false sense of self-accomplishment. This false sense of self-accomplishment is what I understand keeps nationalistic impulses pacified in somewhat successful power-sharing governments. It is false because it does not correspond to the final purpose nor the final need of the national group, rather it lulls them into the sense that they have chosen the path of power-sharing through self-determination. This, however, was a path that was not nationalistic at its core. Therefore, a difference must be made between nationalistic self-determination and mere self-determination. Mere self-determination, as in choosing a path for the nation that is not a step towards the creation of a nation-state, will never quench the nationalistic need for power and, though it may be pacified and anaesthetized, the aspiration will be forever in the minds of a nation's members and its nationalistic movements. In this way, also, the nationalistic movement can be diminished so much that it can never regain its initial strength, and will only be a vestige of what that nation once was.

This brings us to a third method that can be distinguished from the ones of complete national subjugation or national independence. This third method would be willing assimilation. Willing assimilation can result from two or more nationalities willingly merging into one. But this is a more complex process, and it ultimately depends on the similarity of the participating nationalities. As I have no knowledge of this ever occurring, it is a purely theoretical process. Nevertheless it can be applied as a possible, although almost illusory, solution to colonial problems such as the ones perceived in Puerto Rico. In the same manner, merely seeing this as a possibility helps understand better the relationship between the United States and Puerto Rico. I believe that this *similarity factor* required for a nationality to willingly assimilate with another can be artificially created, as is the case of Puerto Rico. This subject takes us to the next chapter of this discussion.

VI. THE CASE OF PUERTO RICO

The Puerto Rican nation, as Professor Rubén Berríos Martínez expresses, “constitutes a distinct nationality, regardless of what definition we choose to give to the term.”¹²¹ In fact, as he continues, “particularly because of its geographic condition as an island and because of its population density, Puerto Rico is almost the prototype of a nationality and undoubtedly one of the most homogeneous nationalities in the world.”¹²² Puerto Rico is without question a nation falling squarely within the definition of the word.¹²³ We have a common culture, which can be traced back to the arrival of our Spanish ancestors on the island. We share common historical memories of events that have shaped our nation (e.g. Spanish and U.S. colonization). Even our experience as a U.S. colony has helped strengthen national sentiment.¹²⁴ We share a common language, Spanish being our national language, and we conceive ourselves as a unique people among the nations of the world.

Puerto Rican nationality sharply differs from U.S. nationality. The governmental policies imposed by the U.S. on Puerto Rico since it acquired the island in 1898 have very effectively subdued the Puerto Rican national movement.¹²⁵ Despite the fact that since 1952 the island has possessed the status of a Commonwealth with a governmental structure that grants significant autonomy to the Puerto Rican people regarding internal affairs, the damage resulting from the previous U.S.-managed, power-concentrating militaristic governments was done. During explicit U.S. colonial rule, the nationalistic movements were completely pacified, and to date such nationalistic movements represent a much smaller fraction of the Puerto Rican political will. Furthermore, in 1952, through the establishment of the Commonwealth and the creation of its Constitution, the Puerto Rican people were said to have exercised their right to self-determination. But this merely created an illusory sense of self-determination, different from the real nationalistic self-determination we have mentioned above. In his 1976 article, Rubén Berríos Martínez wrote on the subject:

¹²¹ Berríos Martínez, *Un conflicto de nacionalidades*, *supra* note 54 (translation by author).

¹²² *Id.* (translation by author).

¹²³ In the previously cited article, Rubén Berríos Martínez quotes the definition of nation according to the *Real Academia Española*, which defines it in accordance to the definition we have previously stated in this article: “The classic definition of nation is the one included in the dictionary of the Spanish Academy since 1925 and I quote: ‘A group of people that have the same ethnic origin and that, in general terms, speak a common language and share a common tradition.’” *Id.* (translation by author).

¹²⁴ “The unity imposed by conquest and administration might sometimes, in the long run, produce a people that saw itself as a ‘nation’, just as the existence of independent states has sometimes created a sense of citizen patriotism.” HOBBSAWM, *supra* note 47, at 138.

¹²⁵ See Rubén Berríos Martínez, *La nacionalidad, ciudadanía y nacionalidad dual: la ciudadanía americana y Puerto Rico*, in PUERTO RICO: NACIÓN INDEPENDIENTE, IMPERATIVO DEL SIGLO XXI 150 (2010)[hereinafter Berríos Martínez, *La nacionalidad, ciudadanía y nacionalidad dual*].

The establishment of Commonwealth was used to create the myth —both for internal and external consumption— that Puerto Ricans exercised the right to self-determination because in 1952 they accepted Commonwealth in a yes-or-no referendum. Puerto Rico, according to the official version, freely self-determined against self-determination; we were asked to believe that a people can use one of the instruments of the republican form of government, i.e., the right to vote, to deny themselves the very essence of a republican form of government which is the full participation of the governed in creating the laws which are to govern them.¹²⁶

Because of this guise and the continued repressive power of the U.S., the majority of the population has been pacified. The Popular Democratic Party (PPD) also helped and propagated the subjugation of the national pro-independence movements.¹²⁷ This political party has been, as I understand, the most significant factor in the Puerto Rican assimilation process. There is no more efficient way to reduce nationalistic motivation than by helping the colonizers promote their own agenda in exchange for power in the new government to come. Many other factors have contributed to the suppression of Puerto Rican nationalist movements, mainly the economic interrelationship and the persistent need for resources from the U.S. that this asymmetrical relationship has caused.¹²⁸ All of these are classic characteristics of a colonial relationship. Therefore this subdued colony, led into a false sense of self-determination, has seen an incredible increase of its pro-annexation movement. This was an inevitable side effect that the U.S. seems to have overlooked back in 1898. The U.S. government's grant of U.S. citizenship to residents of Puerto Rico through the Jones Act of 1917 prompted growth of the island's pro-annexation movement. The PPD's implementation of anti-nationalistic policies further exacerbated the island's shift in favor of annexation. These policies developed a firm relationship with the U.S. and ultimately promoted growth of pro-annexation sentiment.¹²⁹

126 Rubén Berríos Martínez, *Independence for Puerto Rico: The Only Solution*, 55 FOREIGN AFFAIRS 561, 567 (1976).

127 Carrión explains that:

To limit political opposition to the new colonial arrangement, which was worked out in complicity between the U.S. colonial authorities and the PPD, severely repressive legislation inspired by the McCarthyism then sweeping the United States was passed that practically made it illegal to be in favor of independence. To be seen at a pro-independence rally could be sufficient cause for prosecution. These laws were in force until the mid-1950s.

Juan Manuel Carrión, *Puerto Rican Nationalism and the Struggle for Independence*, THE NATIONAL QUESTION: NATIONALISM, ETHNIC CONFLICT, AND SELF-DETERMINATION IN THE 20TH CENTURY 144 (1995).

128 “An economic program for Puerto Rico almost exclusively financed by the import of U.S. capital to promote industrial development and almost totally devoted to production for export to U.S. markets was obviously incompatible with independence.” Berríos Martínez, *supra* note 126, at 568.

129 “The main beneficiary of the changing socioeconomic conditions and the massive and intense anti-nationalist campaign carried out by the PPD was the pro-statehood movement, which favored

Realizing that the only two real options for Puerto Rico are independence or statehood,¹³⁰ it seems that the majority of the population has opted for latter annexationist option. There is a persisting fear that statehood could, unless new parameters are set for the case of Puerto Rico, lead to complete national assimilation. Of course, the case of Puerto Rico being very different to that of all other states of the Union, one could argue that Congress would be willing to make an exception. This seems extremely unlikely, but is still within the realm of theoretical possibilities. The fact is that the final solution to Puerto Rico's dilemma will not be known until the will of the U.S. Congress is known, regardless of the will or desires of the people of Puerto Rico. Back to the discussion at hand, if Puerto Rico decided to become a state of the Union, and it were accepted as such, it could be considered a case of willing assimilation. But similarity between two nations is a key factor for willing assimilation to occur. In his book *Disputed Territories*, Stefan Wolff cites Professor Allen Buchanan on and adds upon the importance of similarity between nations for the success of alternatives to secession (e.g. annexation). In the case of Puerto Rico, as discussed above, the conception of this *national similarity* with the U.S. was artificially created yet is increasingly present. Wolff describes how:

As Buchanan has put it, the availability of alternatives to secession depends on whether 'the boundaries of a political unit . . . contain, for the most part, individuals who have *enough* in common to be able to engage in meaningful participation in rational, principled political decision-making.' If such a minimum of common political culture is missing, alternatives to internal settlements must be sought; and in this context, secession may well be worth considering.¹³¹

Having this in mind, the future of Puerto Rico clearly hangs on whether our similarities with the U.S. are a powerful enough factors or not. It is undeniable that the *common political culture* between Puerto Rico and the United States has increased because of our centennial colonial relationship. Nonetheless, one must ask if this is enough to surpass the difficulties of integrating a different nationality into an existent nation-state's political structure. Ultimately, this will depend on the people of Puerto Rico themselves and how willing they are to change the path of their nation. Regardless, I believe our nation is a strong one and will not be dissolved regardless of the chosen path. I believe our nation is enduring enough to avoid *complete* national assimilation if we become a state of the Union. A possible scenario along this path would be the creation of a new distinct national identity by way of incorporation of annexing state's cultural characteris-

total annexation and had bases of popular support among both high-income and low-income sectors of the island's population." Carrión, *supra* note 127, at 145 (translation by author).

¹³⁰ For the purposes of the forthcoming sections, the terms *statehood* and *annexation* will be used interchangeably.

¹³¹ Wolff, *supra* note 12, at 29-30 (quoting Allen Buchanan, *Democracy and Secession*, in NATIONAL SELF-DETERMINATION AND SECESSION 23 (Margaret Moore ed., 2000)).

tics (a process that can be said to have been occurring for some time now in Puerto Rico).

Nevertheless, I believe that if Puerto Rico became a state of the Union we would maintain a distinct national identity. Hence, complete assimilation would not occur. We would continue to share a distinct culture, national memory and history. We would still be a unique nation, albeit a new one, in the world of nations. Of course, annexation and creation of new adapted national identity could never be as fulfilling for the Puerto Rican nation as the dream of achieving an independent nation-state. That is, Puerto Rican fulfillment of the maximum expression of national self-determination, a feeling that should be experienced by every member of every nation. Still, history and politics steer peoples into stray paths, and one must deal with the realistic circumstances at hand. Due to Puerto Rico's colonial condition and the policies that have led to its present political, economical and socio-cultural status, the number of viable paths is cut short. For many, the only solution is complete integration into the U.S. as a state of the Union. It is undeniable that, as a result of the aforementioned U.S. and PPD policies, many Puerto Ricans consider annexation the only viable option. With only two real choices available to conclude our search for sovereignty (independence or annexation), it is not hard to understand why the national support has shifted more and more towards statehood. The years of repression towards nationalism and the economic abuse sustained as a colony have left us with diminished nationalistic hopes. Our economy seems unable to sustain itself without the U.S. economic help. All this explains why preference for a path of annexation or some other type of permanent political relationship with the U.S. seems like an inherited illness. We, the current generation of Puerto Ricans, cannot blame ourselves; in a way, this illness has been forced upon us. A nation in its prime and unaltered condition would desire nothing less than to exercise its self-determination and obtain independence. A persistent nation must find a way to survive even when possibilities are obstructed and unnatural conditions are imposed.

The need for power is always evident in political will. In its present colonial condition, Puerto Rico has almost no power. Lack of power makes Puerto Rico defenseless against colonial abuse. For this to change, a change in Puerto Rico's colonial status is essential. This is not only a political issue but also an issue of national concern. We cannot reach any type of real self-determination under the present circumstances. National self-determination and the aspiration for political power cannot be appeased under the current colonial system. The element of nationalism should always be taken into account when choosing the future of a state. Should independence never be a feasible route, I hold that, because national identity transcends all boundaries, a strong one could persist any change of political status. But, however, I present no guarantee that our search for national power will end there, rather it will be an issue that will last as long as our nation desires complete national self-determination.

A. *The Puerto Rican Claim to Self-Determination*

Whenever considering the case of Puerto Rico one must question:

1. *Is Puerto Rico a nation?*
2. *Can Puerto Rico become a viable-nation state?*
3. *Do the people of Puerto Rico have the right to exercise self-determination?*

The answer to the first question has already been answered: *we* Puerto Ricans *are* undeniably a nation. The second question, we must further delve into. It is commonly perceived among Puerto Rican society that Puerto Rico can never become a viable nation-state. To this we must answer that Puerto Rico possesses the necessary framework to become a viable nation-state. As we have seen before, size is no longer an issue in the modern international community. On this subject, professor and economist Francisco Catalá Oliveras understands that, as the previous economic limitations for small nation-states are no longer an obstacle, the biggest economic impediment affecting Puerto Rico is its colonial status, to which he sees independence as the solution.¹³² Along the same vein, already considering Puerto Ricans as a unique nation, one could say that the only element needed to form a Puerto Rican nation-state would be complete sovereignty (*i.e.* independence). From my perspective, Puerto Rico has the economic potential to become a sovereign nation-state. If in today's modern world nations with less population, less territory, and less economic development than Puerto Rico¹³³ can achieve a viable nation-state, so can we. Therefore the issue is not one of viability but, rather, within the realm of ideological and socio-cultural resistance.

On November 6, 2012, the Puerto Rican people rejected the current colonial political status through a referendum.¹³⁴ That being so, our claim for the right to exercise self-determination is now more evident than ever. We have reached an important crossroad in the history of our nation. We, for the first time, must choose the path that will lead us to the maximum expression of our nationality. In our search for national political power, we must choose between annexation and independence. There can be no other option, as any other choice would only serve to prolong the inevitable. There can be no *power-sharing*. Any other version of *commonwealth* or *free association* would only lead to a continued longing

¹³² Francisco Catalá Oliveras, *La economía de Puerto Rico: del enclave colonial al imperativo de la Independencia [The Economy of Puerto Rico: from Colonial Settlement towards Independence]*, in *PUERTO RICO: NACIÓN INDEPENDIENTE, IMPERATIVO DEL SIGLO XXI* 47 (2010).

¹³³ According to The World Bank, Puerto Rico has one of the highest GDPs of all the small states. *Data: Puerto Rico*, THE WORLD BANK, <http://data.worldbank.org/country/puerto-rico> (last visited Oct. 25, 2014).

¹³⁴ GENERAL ELECTIONS 2012 AND PLEBISCITE ON PUERTO RICO POLITICAL STATUS, STATE ELECTIONS COMMISSION (2012), *available at* http://64.185.222.182/REYDI_Escrutinio12/index.html#es/default/CONDICION_POLITICA_TERRITORIAL_ACTUAL_ISLA.xml.

for real representation and nationalistic expression. A prolongation of the current political status, or an analogous one, will just worsen our political, economic, and cultural conditions.

As we have seen, Puerto Rico is a nation, which strives for political power, claims its right for self-determination, and can become a viable state (the only missing element is complete sovereignty). These truths cannot be concealed. That which is obvious, in both legal and moral terms, cannot be denied, even in face of zealously clouded political judgment. Thus, with open minds, we must look at the factual choices we have at hand.

B. The Options

While presenting these options, I will attempt to maintain a neutral ground. Also, I will limit myself to the discussion related to the subjects of this article: nation, power, and self-determination. There are three options for Puerto Rico on the table as of the moment. These are same options that are described in the United Nations General Assembly Resolution 1541: independence from the United States, annexation to the United States, or a free association with the United States.¹³⁵ Of these three options, I only deem viable the first two. The latter option, as I will explain, is as detrimental and dangerous to the wellbeing of the Puerto Rican nation as the perpetuation of colonialism. Consequently, I consider it as unviable as the current status. We must keep in mind that the moment for action and decision-making is now. The Puerto Rican political situation is ripe for change and our society is in a state of economic and social alarm.¹³⁶ If we do

¹³⁵ The United Nations General Assembly Resolution 1541 (XV), on *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73 e of the Charter*, establishes in its sixth principle that “[a] Non-Self-Governing Territory can be said to have reached a full measure of self-government by: (a) Emergence as a sovereign independent State; (b) Free association with an independent State; or (c) Integration with an independent State.” G.A. Res. 1541 (XV), ¶ 6, U.N. Doc. A/RES/1541 (Dec. 15, 1960).

¹³⁶ Evaluating Puerto Rico’s economy, the United States Government Accountability Office found that:

[I]ts economy largely has been in recession since 2006, and its levels of employment and labor force participation are relatively low, compared to those of the states. Persistent deficits have resulted in an increase in Puerto Rico’s public debt, which represents a much larger share of personal income than in any state (and in February 2014, Puerto Rico’s general obligation bonds were downgraded to speculative — noninvestment — grade by three ratings agencies). Puerto Rico has taken recent steps to improve its fiscal position, such as reducing its government workforce and reforming its largest public employee retirement system.

U.S. GOV’T ACCOUNTABILITY OFFICE, *PUERTO RICO: INFORMATION ON HOW STATEHOOD WOULD POTENTIALLY AFFECT SELECTED FEDERAL PROGRAMS AND REVENUE SOURCES*, at iii (2014). This report also points out the following:

Puerto Rico’s latest economic downturn has been longer and more extreme than the mainland U.S. downturn . . . Puerto Rico’s recession began in the fourth quarter of 2006, and the economy contracted every fiscal year from 2007 to 2011. After growth of 0.1 percent in

not act to solve our current political problem, the social fibers of our society may continue to degrade at such a rate that they would turn the state of affairs even more volatile, putting us in a position in which perhaps the situation itself might end up choosing a permanent political status for us. An unstable society with an unstable economy brings about political disarray.

i. The Choice for Independence

As affirmed above, the ultimate expression of a nation and the ultimate objective of its search for power is nationalistic self-determination resulting in an independent sovereign nation-state. The ultimate truth is that no nation will ever let go of its desire for power and international recognition until the birth of its respective nation-state. The only solution, if the nation-state is not to be achieved, is the pacification of this matter via the introduction of the nation into a supranational entity, an option that would fulfill the interest of power and recognition without the need for the territorial factor¹³⁷ that a nation-state entails. Still, in this circumstance, nationalistic drives are not destroyed but are merely satisfied. Nationalistic impulses can still emerge and turn into a problem if the relationship between a nation and a supranational entity deteriorates or if the needs of the member nations are not met and dissatisfaction pervades. Hence, nationalism is still very much alive; in cases where nations integrate into supranational entities, they cede on some of their terms (*e.g.* the formation of a nation-state) in order to achieve their goals in a more realistic and internationally friendly method.

In the case of Puerto Rico it is evident that before choosing to join a supranational entity, we would first have to achieve independence from the United States. The creation of a Puerto Rican nation-state could be our ultimate expression of self-determination or it could well be succeeded by the decision to join a supranational entity, such as CELAC, in order to receive the benefits of cooperation that belonging to such an organization conveys. In fact, CELAC has recognized the Puerto Rican right to self-determination and affirmed its intent to help

fiscal year 2012, the economy is projected to have contracted in fiscal year 2013 by 0.4 percent, according to the Government Development Bank for Puerto Rico.

Likewise, income levels and employment in Puerto Rico have been lower than in the states. For example, in 2011 Puerto Rico had 1) a greater percentage of its population with income below the federal poverty threshold, 2) higher unemployment, and 3) lower labor force participation — the proportion of the civilian noninstitutional population older than 15 that is employed

Id. at 8-9 (citation omitted).

¹³⁷ Going back to the previously discussed notion of territorial integrity and the contraposition of this term with that of nationalistic self-determination, if the need for a national territory with fixed boundaries is no longer needed, then a major hindrance in the process to nationalistic self-determination is eliminated.

the Puerto Rican nation join the group as a sovereign nation.¹³⁸ Still, there are many obstacles to overcome before Puerto Rico can become an independent nation. First, we would have to deal with the reality that a large sector of the Puerto Rican population is not welcoming to the idea of independence from the United States. Second, we would have to convince the U.S. Congress to grant Puerto Rico its independence. Both seem difficult elements to deal with as seen independent from each other, but when seen together, perhaps the problem is simplified. If the U.S. favors the idea of Puerto Rican independence, its decision will prevail regardless of the will of the Puerto Rican people. Furthermore, to the moment, Congress has demonstrated resistance, and showed lasting disinterest in the face of the many proposals presented to it paving a path for Puerto Rican statehood. Hence, the first element of the situation would be dragged along by the second. If the Puerto Rican people consider statehood unobtainable as a result of a Congressional expression deeming it an unavailable option, they are more prone to consider independence as the viable option to obtain national fulfillment. The Puerto Rican nation will never find itself whole, and feel completely realized until nationalistic self-determination takes place. Theoretically speaking, independence is the only coherent choice if we are to strictly follow the principles of nationhood and self-determination.

ii. The Choice for Statehood

As of now, the majority of Puerto Ricans long to be either accepted into the Union or to continue some type of close relationship with the United States. Following that centennial fraternal feeling, the complete political separation of both nations seems improbable from a perspective of popular will. When it comes to the desire of this continued relationship with the U.S., one must look at the inherent psychological factors involved. As mentioned above, the term *nation* presupposes a psychological factor in which the members of a group identify themselves and the group as a collectivity different from others of the world. In the case of Puerto Rico, it can be said that this element has been altered. The Puerto Rican nation may not be strictly complying with the previously stated principles of nationalistic self-determination.

As Professor Efrén Rivera Ramos discusses in his book *The Legal Construction of Identity*, one of the foremost effects of the U.S. colonialism in Puerto Rico has been the reproduction of U.S. hegemony in the country. He determines that the *legal consciousness* related to rights discourses, and the *safeguard* of these, have promoted the psychological need in Puerto Rican society for U.S. presence.¹³⁹ He explains this as follows:

¹³⁸ Declaration of Santiago of the First CELAC Summit art. 25, CELAC, Jan. 28, 2013, available at http://www.2020visioncampaign.org/fileadmin/user_upload/PDF-Dateien/Declaration-of-Santiago-engl.pdf.

¹³⁹ Professor Rivera Ramos provides us with insight on the concept of *legal consciousness*:

The crucial fact, as far as the reproduction of hegemony is concerned, is that, for considerable segments of the population, this source of moral worth is the American legal and political system. It is in the institutions of the metropolis that *safeguards* of this worth are perceived to be located. The paradox that results is that the devaluation that colonialism has historically entailed becomes invisible, concealed, as it is compensated by the sense of worth that is felt to derive from being an American citizen and a bearer of rights. As we have seen, that citizenship and those rights have very serious limitations. But they are accorded enough value to provoke strong reactions in their defense and to stimulate aspirations to see their benefits extended.¹⁴⁰

As Rivera Ramos further explains, the American way of life has made its way into the Puerto Rican way of life in almost every aspect, including legally, socially and culturally.¹⁴¹ As result of this century long integration, our social and cultural aspects have been influenced along this time and, now more than ever, the Puerto Rican society is intertwined with the United States.¹⁴² Furthermore, the

The discourse of rights promotes a view whereby social relations and needs are interpreted and articulated in terms of rights possessed, claimed or denied. Rights discourse is a component of a broader phenomenon that may be called *legal consciousness*, or the awareness of law as a constitutive element of personal and social experience that, in turn, produces a tendency to view the world through juridical lenses. Legal consciousness and rights discourse, therefore, constitute a particular subjectivity. They form part of the subject's perception and evaluation of the world and of the subject's relationship to it. Through those lenses, the world is perceived either as conforming or deviating from law, as fulfilling or frustrating the promises held by rights. The discourse of rights, then, has contributed to produce a certain way of viewing the world, that is, a certain type of subjectivity, within the Puerto Rican community.

EFRÉN RIVERA RAMOS, *THE LEGAL CONSTRUCTION OF IDENTITY: THE JUDICIAL AND SOCIAL LEGACY OF AMERICAN COLONIALISM IN PUERTO RICO* 218 (2001).

140 *Id.* at 219.

141 On this point, Professor Rivera Ramos adds:

Certainly, a century of American influence has left an imprint on Puerto Rican society. The signs of that presence are everywhere. But they are particularly entrenched in the country's institutional framework and processes. In many ways the metropolitan society has become an "exemplary center" for Puerto Rican social life. Economic practices, political processes, legal forms, educational policies, communication techniques, knowledge systems (including specific ways of problematizing reality and providing solutions to social and personal conflicts) and, to a certain degree, the very style of life of the metropolitan society have become paradigms generally adopted in the colonial society. The reproduction of American ways of living and acting has been especially, although not exclusively, prevalent among the Puerto Rican middle and upper classes. The process has led to a gradual incorporation and acceptance of some of the fundamental premises and values that underlie the institutional framework and life processes of the dominant society.

Id. at 68-69.

142 Regarding the implications of this, Rivera Ramos explains:

Set in another location in the spectrum of political discourses within the Puerto Rican community, a recent postnationalist critique has stressed the value of rights for the Puerto Rican people as they have accrued throughout a century under U.S. rule. This perspective acknowledges the subordinate condition that colonialism entails. It explains the

fear of losing the U.S. *safeguards* and the guarantees of citizenship push many to desire a closer relationship with the metropolis. All this brings many strong bonds that are difficult, perhaps impossible, to destroy. If we want to be realistic, whatever future we might choose for our nation, this must be taken into account. A great number of Puerto Ricans have family members living in the United States. Perhaps an even larger number have some professional, academic, or social ties to groups in the United States. As well, in some areas, our cultures have merged in a way that some Puerto Ricans might be indistinguishable from mainland U.S. citizens. All these factors work towards the preservation of a Puerto Rican-U.S. relationship. Since a *nation* is made up of individuals the wants (and needs) of the individuals¹⁴³ will always affect the wants of the nation. Hence, if the majority of individuals in Puerto Rico are knotted into U.S. society in such a way that they disagree with any idea of separating from it, independence may not be the most viable option of self-determination. Independence is not viewed as a viable option due to factual reasons, but rather because of a subjective element of societal consciousness that influences, and possibly determines, actual national political will.

However, we must see the situation from another perspective. The desire for statehood is not necessarily wrong. Rather, it is a result of human nature. Perhaps it is not the most utopian option according to nationalistic theory, but it responds to the reality of our age-old colonized and somewhat assimilated nation. Individual needs push the aspirations of a whole nation towards a specific direction. Desire for statehood is an inherited condition that our Puerto Rican modern society has been born into. As such, we must deal with it accordingly. Desire for statehood cannot be frontally attacked despite its sharp contradiction with the most common nationalistic mantras. A possible solution is reeducation; that is, the awakening of the people to the reality which all nations ultimately yearn, their own sovereign nation-state. Still, at the moment, reeducation would probably not succeed due to the combined effect of pervasive structural and cultural U.S. influence and the governmental control of a pro-status quo colonial PPD government. Even if the majority of the population were open to nationalist ideas, it could prove insufficient to promote a definitive push towards independ-

ideological attachment of most Puerto Ricans to U.S. citizenship as being the product of a conscious choice based on the appreciation of the democratic gains of the population flowing from a regime of civil and political rights. This position has ended up rejecting independence out of concern that an independent Puerto Rico will become a neo-colonial state deprived of the rights now enjoyed through U.S. citizenship. Some of its members have adhered to statehood as the solution to the status problem. Others have called for a nonessentialist approach to the status question, expressing a willingness to consider any political status as long as it does not imply severing the connection to the United States and losing the benefits of U.S. citizenship.

Id. at 219.

143 The *wants and needs of the individual* are, in this case, the basis for a continued relationship with the U.S. As we have discussed and will continue to do so further on, the *wants and needs of the individual* include elements of family ties, cultural and social aspects, as well as other psychological factors.

ence. The link between the U.S. and Puerto Rico may prove too resilient to be severed. Consequently, given the fact that the majority of the population of Puerto Rico does not favor independence, statehood may be the most realistic choice for those who favor finalizing our current colonial situation.

The risk we take, and which I believe provokes most nationalistic anti-annexation sentiments in Puerto Rico, is assimilation. On this subject I must say that Puerto Rico has survived a century under U.S. colonial rule in which potent assimilation policies were undertaken, especially during the first half of the twentieth century, and still, here we are, a unique nation among the nations of the world. We have the advantage of being an island, not only separated from the mainland states of the Union, but abundant in local cultural and historic memories that strengthen national identity. Annexation by the Union would not equate to the destruction of the Puerto Rican nation. Rather, it would reflect a rational decision by the nation of Puerto Rico to obtain representation in the Federal Government. Annexation would constitute an exercise of self-determination, despite not being the optimal choice (as would be the creation of a sovereign nation-state or subsequent integration into a supranational entity). Membership in a supranational organization grants more national freedom and power than integration into the U.S. federalist structure.¹⁴⁴ However, as we have

¹⁴⁴ Membership in a supranational organization would bring more power at the national level than would a membership in the federal structure of the United States. The essence of the supranational structure focuses on the integration in certain areas, while many policies at the national level, including international representation, are left to the member states. As described by Rafael Leal-Arcas:

As for the political structure of the EU, it highlights the centrality of the EU Member States. In Europe, unlike the U.S., national governments are responsible for decision-making at national and supranational levels. These principles of normative supranationalism provide a framework into which substantive rules and policies must be fitted. The Treaty of Rome provides a system in which the Member State governments play a key role in filling in the normative framework. This means that the Community did not opt for a classical federal governmental system, where there is a federal legislature directly elected by the people and a federal executive elected in the same way. What the Fathers of the Treaty of Rome thought was that by creating a hybrid structure of decision-making, the interest of the Community would prevail, despite the strong role of the Member States.

Rafael Leal-Arcas, *Theories of Supranationalism in the EU*, 8 J.L. SOC'Y 88, 105-106 (2007). In the same article, Leal-Arcas cites Joseph Weiler's point of view on the subject:

For Weiler, the Community remains a multi-sectoral condominium (since there is joint control over economic and other sectors of policy). There are still many fields, some of which are crucial such as defense, education, and aspects of fiscal policy *inter alia*, that remain outside the Community sphere. My personal opinion is that there is still a lack of consensus on a broad range of important matters in the Community.

Id. at 105 (citation omitted). Contrasting this, Leal-Arcas shares with us Ipsen's view that a supranational organization is a middle ground between federalism and an international organization: "Ipsen does not agree with the constitutionalist-federalist approaches of integration, nor does he agree with the idea of limiting the EU to an organizational body in international law. For him, Community law is a *tertium* between the law of federal systems and that of international organizations." *Id.* at 110. As such, representation in a supranational entity would be more effective at the national level than representation through federalism.

discussed, the case of Puerto Rico is different from that of other nations, as our national course is steered by more complex factors than the mere want for national power. In our case, annexation to the U.S. constitutes the path of least resistance for increasing national power if we take into consideration the aforementioned psychological factors in play and the wants of the island's individuals. This would not only be a product of our present cultural and social condition, but also a quite logical choice. As for the concern with complete assimilation, it is not as significant a factor as some would make it seem. We have to understand that assimilation has already taken place over the last century and our national distinctions have prevailed. The result has been a new Puerto Rican culture, similar to U.S. culture but still undeniably unique. We still feel more Puerto Rican than anything else, and we still pride ourselves in all that is ours. To change that, if even possible, it would take much more than a change of political status.

In his book *American Nations*, Colin Woodard divides North America into eleven regional nations that have existed and prevailed during the rise of the United States.¹⁴⁵ Woodard points out that “[t]here isn’t and never has been one America, but rather several Americas,”¹⁴⁶ which, as he expresses in the introduction to his book, “by the time they agreed to share a federated state, each had long exhibited the characteristics of nationhood.”¹⁴⁷ Perhaps he is right if we consider the multiple nationalities that have made up the U.S. population since its creation. This raises the question: what has happened to these nationalities? As Woodard answers, they never actually dissolved, but merely adapted and regionalized. Woodward even goes as far as presupposing that some of these nations will secede in the future. Woodard elaborates a very intriguing theory of how these nations have survived their age-old membership in the U.S. and still avoided assimilation. I consider this theory relevant when considering the case of Puerto Rico. Following professor and cultural geographer Wilbur Zelinsky’s discussion on the *doctrine of first effective settlement*, Woodard explains this enigma. Woodard cites Zelinsky in the definition of the concept,¹⁴⁸ which, for further detail, I cite directly from Zelinsky’s work:

[T]he Doctrine of First Effective Settlement, [is] roughly analogous to the psychological principle of imprinting in very young animals. Whenever an empty territory undergoes settlement, or an earlier population is dislodged by invaders, the specific characteristics of the first group able to effect a viable, self-perpetuating society are of crucial significance for the later social and cultural geography of the area, no matter how tiny the initial band of settlers may have been Thus, in terms of lasting impact, the activities of a few hundred, or even a few score, initial colonizers can mean much more for the cultural geography of a place than the contributors of tens of thousands of new immigrants a few gener-

145 COLIN WOODARD, *AMERICAN NATIONS: A HISTORY OF THE ELEVEN RIVAL REGIONAL CULTURES OF NORTH AMERICA* (2011).

146 *Id.* at 2.

147 *Id.* at 3.

148 *Id.* at 16.

ations later. The history of the northeastern United States clearly illustrates how indelibly the early colonial patterns have marked its cultural landscape.¹⁴⁹

Woodard, following Zelinsky's ideas, explains how these eleven nations' identities have remained strong and intact throughout U.S. history. In fact, in his book *The Cultural Geography of the United States*, Zelinsky refers to the case of Puerto Rico.¹⁵⁰ Zelinsky mentions the resilience of the Puerto Rican population, both in resisting assimilation and in having a cultural impact in the places they inhabit.¹⁵¹ The descendants of Puerto Ricans who reside in the U.S. still possess a unique culture. This culture has clear Puerto Rican traits and is different from that of other peoples of the mainland. The inhabitation of a single island¹⁵² in which national culture is unquestionably imprinted is a powerful deterrent against complete assimilation. The other nations described by Woodward lack this *national territorial integrity*. As he explains, these eleven nations are spread across state lines.¹⁵³ Although this does not preclude national survival, it without a doubt weakens these nations. As noted above, the nation of Puerto Rico has the advantages of inhabiting a single geographical political unit and possessing a homogenous culture. If Puerto Rican culture, despite slight alterations, persists among the Puerto Rican descendants in the mainland, it is reasonable to assume that cultural resilience would be even greater in the island regardless of annexation. Though gradual assimilation will probably continue among Puerto

149 WILBUR ZELINSKY, *THE CULTURAL GEOGRAPHY OF THE UNITED STATES* 13-14 (1992).

150 *Id.* at 24, 28, 39.

151 Contrary to immigrants experiencing "*culture shock* followed by total acculturation, if not in the first generation, then certainly in the second or third," Zelinsky illustrates:

Exemption has been granted only to those immigrants who were not forced to snap ties with the homeland abruptly: the French-Canadians, Mexicans, and Puerto Ricans. Those French-Canadians filtering into New York and New England from Quebec and New Brunswick, but still commuting socially and psychologically, if not physically, between domicile and homeland, have not yet all been Americanized past the point of no return. Exactly the same situation prevails for those Mexicans crossing into Texas and the Southwest in general. The tether binding Puerto Rico and Virgin Islanders to their home islands is a short one, in hours and in dollars, if not in miles; and their comings and goings are frequent enough to subvert acculturative tendencies.

Id. at 24.

152 In strict geographic terms, the political unit of Puerto Rico is an archipelago composed of the main island of Puerto Rico, the island municipalities of Vieques and Culebra, and the uninhabited island of Mona, among others. The overwhelming majority of Puerto Ricans reside in the main island.

153 On the artificiality of European-drawn North American boundaries, Woodard points out:

For the most part, those boundaries are as arbitrary as those chosen by European colonial powers to divide up the African continent. The lines on the map slash through cohesive cultures, creating massive cultural fissures in states like Maryland, Oregon, or New York, whose residents have often found they have more in common with their neighbors in other states than they do with one another.

Woodard, *supra* note 145, at 4.

Rican descendants residing in the U.S. mainland, complete assimilation of the Puerto Rican population residing in its homeland territory is virtually impossible. The Puerto Rican nation could strive to become a nationally distinct state and powerful force within the Union.

iii. The Choice of Free Association

The maintenance of the current *status quo* is the most deleterious aspect of the current Puerto Rican political situation. Fear of change, as an added element, can turn the concoction that is our political condition into an element that contributes to the destruction of the Puerto Rican nation. The problem is that fear of change is not an unfamiliar element to the human being. Fear is a powerful motivating or disheartening factor. Fear can play such a significant factor that governments throughout history have harvested it in order to facilitate the goals of the state. As such, in our case, fear would prove to be the most detrimental factor to national advancement. Free association embodies national vulnerability to the paralyzing effects of fear. It represents an idea that does not strive far from our current status and sounds much more familiar and safe than the transformative formulas of *statehood* and *independence*. The majority of the Puerto Rican population could, out of ignorance or fear, opt for free association. The trend of popular support in favor of free association is a legitimate threat to the ultimate realization of the Puerto Rican nation.

The discussion of free association as an option has already surfaced in the current political status debate that has arisen in the wake of the ever more obvious realization that the moment for Puerto Rican self-determination is on the horizon. Selection of the free association option would only prolong the political and social disarray that we currently face. Selection of free association through a legitimate self-determination process could also neutralize, perhaps indefinitely, the possibility of Puerto Rican nationalistic self-determination (*i.e.* a sovereign and independent nation-state). On the option of free association, Berríos Martínez states:

[I]n the case of Puerto Rico Free Association would only serve to unnecessarily prolong the subordination to the United States through the delegation of faculties of our own government to the government of that country [T]he political and material circumstances in which this mutilated version of national sovereignty has been implemented are not present in our country and, therefore, this alternative would constitute a gratuitous and inexplicable abdication of our inalienable right to the plenitude of powers of a free and sovereign nation.¹⁵⁴

Professor Berríos Martínez accurately describes the aimlessness of opting for the free association option. Berríos Martínez asserts that the model of free association has been an option used to achieve decolonization only in cases in which

¹⁵⁴ Berríos Martínez, *La nacionalidad, ciudadanía y nacionalidad dual*, *supra* note 125, at 171-72 (translation by author).

low population and extreme dependence precluded the creation of a viable governmental structure and economy capable of sustaining an independent and sovereign nation-state.¹⁵⁵ This, as we have discussed, is not the case of Puerto Rico. Puerto Rican free association would liken the continuation of the colonial relationship under another name. In the law journal article *Free Association: The United States Experience*, Keitner and Reisman provide insight into the power relationships in a free association:

Where two states of unequal power establish formal and durable links, we may speak of an *association*. In terms of the power relationships we have just described, *associations* are hardly novel. In terms of authority, however, there are significant innovations. A relationship of association in contemporary international law is characterized by recognition of the significant subordination and delegation of competence by one of the parties (the associate) to the other (the principal), but maintenance of the continuing international status of statehood of each component.¹⁵⁶

As Keitner and Reisman recognize, free association implies the subordination of one of the parties. This observation is consistent with Professor Berríos' assessment regarding what free association brings to the table and the consequences it would bring about. He argues that:

Contrary to the structures of federal or supranational integration in which the constituents delegate certain attributes and competences to a central entity in which each constituent has, at the same time, some proportion of decisional participation, in the model of free association the exercise of the powers delegated to the *minor* state takes place in a virtually unilateral manner by the *major* state in the association relationship The reality, however, is that the absolute financial and governmental dependence on the *major* state by the *minor* state turns the latter in a subjugated and subordinated entity.¹⁵⁷

Considering this and the aforementioned needs of nationhood, the option of free association should be immediately discarded. When referring to the case of Puerto Rico, Keitner and Reisman make no effort to differentiate the current political status from that of a free associated state.¹⁵⁸ They express the following:

¹⁵⁵ *Id.* at 173.

¹⁵⁶ Chiméne I. Keitner & W. Michael Reisman, *Free Association: The United States Experience*, 39 TEX. INT'L L.J. 5 (2003).

¹⁵⁷ Berríos Martínez, *La nacionalidad, ciudadanía y nacionalidad dual*, *supra* note 125, at 173 (translation by author).

¹⁵⁸ On the variety of relationship types that may exist under U.S. law, Keitner and Reisman expose:

This analysis has adopted the position that *free association* as an international legal concept encompasses a range of relationships, from the commonwealth arrangement that the United States has with Puerto Rico and the CNMI, to the explicit *compacts of free association* between the United States and the RMI, the FSM, and Palau.

Keitner & Reisman, *supra* note 156, at 51.

Three states have compacts of free association with the United States that codify this arrangement: the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. However, associations do not need to be called associations in order to provide similar benefits. The Commonwealth of the Northern Mariana Islands and the Commonwealth of Puerto Rico also enjoy significant internal self-government and a degree of separate international personality. The details of these relationships . . . indicate the wide range of possibilities available to political communities seeking certain benefits of sovereign statehood but unwilling or unable fully to bear its burdens.¹⁵⁹

Since Puerto Rico is capable of fully bearing the burdens of sovereign statehood, free association would be an unnecessary a perpetuation of our current political problem. Free association, as mentioned above, entails political subordination. Hence, free association goes against all mantras of nationhood. Free association is incapable of providing nation of Puerto Rico with either the sovereignty enjoyed by an independent nation-state power or the adequate representation granted to a state of the Union.

Furthermore, the international community would comprehend the selection of free association as the finalization of our claim to self-determination. The Puerto Rican people clearly expressed their disapproval of the current colonial political status through the November 6, 2012 plebiscite.¹⁶⁰ Electoral disapproval of the current colonial political status can only be understood as a clear expression of Puerto Rico's desire to exercise its right to self-determination in accordance to international norms.¹⁶¹ Having Puerto Rico rejected the continuation of its present colonial political status, it follows that the next plebiscite or referen-

¹⁵⁹ *Id.* at 2.

¹⁶⁰ The vote in rejection of the current political status won with 958,915 (53.97%), while the option in favor of maintaining the status quo received 816,978 (46.03%) votes. GENERAL ELECTIONS 2012 AND PLEBISCITE ON PUERTO RICO POLITICAL STATUS, *supra* note 134.

¹⁶¹ The United Nations Resolution 748 (VIII) states:

Having received the communications dated 19 January and 20 March 1953 informing the United Nations of the establishment of the Commonwealth of Puerto Rico, as a result of the entry into force on 25 July 1952 of the Constitution of Puerto Rico, and stating that, in consequence of these constitutional changes, the Government of the United States of America would cease to transmit information under Article 73 e of the Charter

G.A. Res. 748 (VIII), U.N. Doc. A/RES/748 (Nov. 25, 1953). The Resolution continues: “[The General Assembly] [*r*]ecognizes that, when choosing their constitutional and international status, the people of the Commonwealth of Puerto Rico have effectively exercised their right to self-determination.” *Id.* The General Assembly also expressed:

[I]ts assurance that, in accordance with the spirit of the present resolution, the ideals embodied in the Charter of the United Nations, the traditions of the people of the United States of America and the political advancement attained by the people of Puerto Rico, due regard will be paid to the will of both the Puerto Rican and American peoples in the conduct of their relations under their present legal statute, and also in the eventuality that either of the parties to the mutually agreed association may desire any change in the terms of this association.

Id.

dum must constitute a legitimate exercise of our right to self-determination under international law. If through the exercise of our right to self-determination we opt for free association (as well as any other permanent status option), we would very possibly no longer be able to stake a claim to the determination of our national future; there is an inherent risk that the international community will consider a single exercise of self-determination as final. Hence, we would, at least for a generation, sacrifice the right to steer our nation in the course of our desire (*i.e.* exercise of right to self-determination) in exchange for the preservation of the current *status quo*, albeit slightly disguised as free association.