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**THE GEORGE  
WASHINGTON  
INTERNATIONAL  
LAW REVIEW**

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# THE CITY'S RIGHT TO SELF-DETERMINATION, *PARS PRO TOTO?*

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## ABSTRACT

*International law does not recognize the city as a holder of the right to self-determination because it continues to see the city as an artificial entity. As a result, decolonization has been confined to the overseas territories of twentieth-century empires—the periphery. The surviving metropole of these empires, what became the modern nation-state, is not recognized as part of the same colonization process. Colonization, however, is the craftsmanship of cities that amass enough military and economic powers to subjugate other human settlements. The city has been able to grow its influence incessantly. First, it succeeded in conquering surrounding territories and later on in expanding overseas. Today, the twenty-first century version of the metropolis, what is known as the global city, is embarking on a new form of colonization. International law needs to respond to this challenge. This Article explains that the city is capable of holding rights because it is a superorganism, with rights similar to those of nature. It also explains why U.N. pronouncements of the right to self-determination are not prohibitive of the city being a subject of this right. The envisaged recognition of the city's right to self-determination does not necessarily entail secession from the metropole. Internal self-determination can deliver to the city its due freedom, justice, and democracy. On the other hand, not recognizing this right could destabilize these global cities.*

## I. INTRODUCTION

Humanity is on the cusp of a new dawn. By the end of this decade, “*Homo sapiens* . . . will become *Homo sapiens urbanus* in virtually all regions of the planet.”<sup>1</sup> After 6,000 years of civilization, the promise of happiness that the city brings will finally be shared by the majority of humanity.<sup>2</sup> However, this promise is not absolute.

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1. U.N. HABITAT, STATE OF THE WORLD'S CITIES 2010/2011: BRIDGING THE URBAN DIVIDE, at VIII (2008).

2. See generally WILL DURANT & ARIEL DURANT, THE STORY OF CIVILIZATION (1935–1975) (recounting the story of Eastern and Western civilizations in eleven volumes).

From the favelas of Rio de Janeiro to the slums of Johannesburg, we witness injuries to the city. Along with the huge inequalities in the standard of living within cities, we also bear witness to inter-city inequality within the same country as much as between continents. As the majority of us become city dwellers, the well-being of all becomes predicated on delivering on this promise. Lest echoes of history's admonition continue to fall on deaf ears, from the Parisian storming the Bastille in 1789 to the Petrograd striking at Putilov in 1917, to Mohamed Bouazizi's self-immolation in Sidi Bouzid in 2011, empowering the city assumes an air of urgency.

There is a growing body of literature that argues for cities to assume a greater constitutional role.<sup>3</sup> Generally, this literature confirms that cities lack a constitutional status that would allow them to contribute to their well-being and that of their nation-states. While Gerald Frug began a revival of legal arguments for empowering cities in the 1980s, earlier scholars from other disciplines have also called for this empowerment.<sup>4</sup> For example, Leopold Kohr called for city empowerment through his critique of large nation-states,<sup>5</sup> and Jane Jacobs through her critique of the

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Happiness here is identified as subjective wellbeing. See Richard Florida, Charlotta Melander & Peter J. Rentfrow, *The Happiness of Cities*, 47 REG'L STUD. 613, 613 (2013) (analyzing through economic theories the characteristics of cities that tend to affect the happiness of their constituents). For the link between cities and happiness, see Dimitris Ballas, *What Makes a 'Happy City'?*, 32 CITIES S39, S40 (surveying studies on factors affecting the quality of life in cities). But see L. Wirth, *Urbanism as a Way of Life*, 44 AM. J. SOCIO. 1 (1938) (arguing that urbanism *per se* has negative effects on happiness).

3. See, e.g., BENJAMEN GUSSEN, AXIAL SHIFT: CITY SUBSIDIARITY AND THE WORLD SYSTEM IN THE 21ST CENTURY (2019) (envisaging the emergence of the city as the dominant scale for political organization within nation-states and on the international stage); Barbara Oomen, Moritz Baumgärtel & Elif Durmus, *Accelerating Cities, Constitutional Brakes? Local Authorities Between Global Challenges and Domestic Law*, in 2020 EUR. Y.B. OF CONST. L. 249 (E. Hirsch Ballin, G. van der Schyff, M. Stremler, M. De Visser) (looking at how domestic courts limit challenges by cities' invoking international human rights to symbolic outcomes).

4. See GERALD FRUG, CITY-MAKING: BUILDING COMMUNITIES WITHOUT BUILDING WALLS 5, 9 (1999) (contrasting the conception of the city as a legislative instrument of the state with the city as a quasi-sovereign entity to argue that the objective of local government is to enable the creation of metropolitan regions that integrate cities into legal entities enjoying a wide autonomy); Gerald Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057, 1067 (1980) (pointing to the powerlessness of cities due to their legal status as instruments created and controlled by state legislation, and how this powerlessness is engendering a "crisis of the city").

5. See LEOPOLD KOHR, THE BREAKDOWN OF NATIONS (1957) (arguing for smaller nation-states); LEOPOLD KOHR, THE OVERDEVELOPED NATIONS (1977) (arguing that, in order for political organization to be stable, it has to be at a characteristic or optimal scale).

top-down planning of American cities.<sup>6</sup> Similarly, Peter Kropotkin, Lewis Mumford, Kenneth Boulding, Murray Bookchin, and Ernst F. Schumacher presented the powerlessness of cities as a scale distortion that manifests itself by amplifying ecological, economic, and political crises.<sup>7</sup>

This literature focuses mainly on the weakness of the city vis-à-vis the nation-state and the possibility of empowering the city through domestic legal reform. Some have also written about cities “pursuing greater autonomy from the state” by “becom[ing] active players on the international stage.”<sup>8</sup> However, there is a paucity of analysis of the city as the subject of *jus cogens* and obligations *erga omnes*.<sup>9</sup> That the city has a long history of self-determination is a straightforward proposition.<sup>10</sup> I hope to convince the reader that the city is a subject of the United Nations’ (U.N.) universal right to self-determination. More specifically, I argue that the city holds an unalienable right to internal self-determination, one that does not necessarily lead to secession, but affords cities a meta-jurisdictional autonomy: the claim-right to negotiate the extent of their autonomy with the nation-state.<sup>11</sup> Put differently, the right imposes on

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6. See JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* (1961) (exposing the detrimental effects of top-down city planning on the wellbeing of citizens); JANE JACOBS, *THE ECONOMY OF CITIES* (1970) (identifying city independence as a key driver of urban prosperity).

7. See GUSSEN, *supra* note 3, at 147 (“[A] synthesis of Kropotkin, Mumford, Boulding, Bookchin, and Schumacher reveals a problematization of scale. The prediction is a resurrection of city sovereignty.”).

8. Heana M. Porras, *The City and International Law: In Pursuit of Sustainable Development*, 36 *FORDHAM URB. L.J.* 537, 539 (2009) (identifying David Barron, Yishai Bank, and Gerald Frug as pioneers in observing “a new phenomenon: the emergence of cities and transnational associations of cities as a new type of actor on the international stage”).

9. *But see* Daniel Weinstock, *Self-determination for (Some) Cities?*, in *ARGUING ABOUT JUSTICE: ESSAYS FOR PHILIPPE VAN PARIJS* 377 (Axel Gosseries ed., 2011), <http://books.openedition.org/pucl/1845> [<https://perma.cc/7PXN-EGLF>] (arguing that the distinctiveness of cities invites a constitutional status based on the principle of subsidiarity); Francesco Palermo, *Owned or Shared? Territorial Autonomy in the Minority Discourse*, in *MINORITY ACCOMMODATION THROUGH TERRITORIAL AND NON-TERRITORIAL AUTONOMY* 29–32 (Malloy and Palermo eds., 2015) (distinguishing between autonomy of a territory and autonomy for a minority); Barbara Oomen & Elif Durmus, *Cities and Plural Understandings of Human Rights: Agents, Actors, Arenas*, 51 *J. LEGAL PLURALISM & UNOFFICIAL L.* 141, 146–47 (2019) (arguing that the city is becoming a subject of international law, where “[l]egal subjecthood, after all, is the capacity to have rights and obligations under international law, and arguably also to make and enforce that law.”).

10. See, e.g., Porras, *supra* note 8, at 549 (“The city, the *polis*, has long been associated with notions of community, self-government, and citizenship.”) (emphasis in the original) (citations omitted).

11. The reader will note that I refer to self-determination as a right when my focus is on the subject of self-determination, namely “peoples.” When I refer to it as a principle, I am focusing on its operation as a limit on the political state. I need to clarify, however, that

the nation-state a duty not to prevent the city from obtaining greater autonomy. I claim that this right negates any hierarchy between the nation-state and the city. Additionally, all cities have access to this right. Capital and global cities have no legal superiority over other cities.<sup>12</sup> All cities have the same right to self-determination, although asymmetrical jurisdictions are expected given the institutional readiness of each city. The objective of this right is to enable cities to apply their own intelligence to eliminate these differentials.

In Section II of this Article, I advocate acceptance of the city's self-determination by explaining how the city differs from other human settlements in that it has collective conscience, which allows it to develop a swarm intelligence, provided it has the autonomy to self-organize. In Section III, I furnish a historical contextualization to illustrate self-determination as a remedy to city's colonization and to argue its potential application to the city through a reconstruction of existing U.N. pronouncements. The last section provides final remarks, including thoughts on possible future constitutional designs.

## II. THE CITY AND COLONIZATION

In this section, I start by explaining the concept of 'the city' to motivate my conclusion that the city is capable of holding a legal right. To explain why the city holds a right to self-determination, given the historical focus of this right on decolonization, I analyze the role of the city in colonization. I then explain why the focus of self-determination is shifting from external to internal colonization, and finally, how this shift might affect the constitutional design of nation-states.

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self-determination started as a state principle rather than as a human right. Prior to 1945, self-determination was based on the ability of a group of people occupying a certain territory to form a political state. See, e.g., Anna Yeatman, *Who Is the Subject of Human Rights?*, 43 AM. BEHAV. SCIENTIST 1498, 1498–99 (2000) (explaining the transformation of international law from one based on state sovereignty to one based on universal human rights).

12. For the concept of a global city, see Saskia Sassen, *The Global City: Introducing a Concept*, 11 BROWN J. WORLD AFFS. 27, 36 (2005) (arguing that globalization is introducing a new organizational structure that requires a corresponding conceptual architecture, and that the global city is an element in this architecture.).

A. *What Is a City?*

Major European languages have two words for describing human settlement.<sup>13</sup> For example, in English, there is the word “city” and the word “village.” In French there is *ville* and *village*; in German, *Stadt* and *Dorf*; in Italian, *città* and *Villaggio*; and in Spanish, *ciudad* and *pueblo*. This binary suggests that the city differs from the village by its larger size. Hence, a city is defined as a territory characterized by centers of high population density that enable spatial integration of a man-made built environment.<sup>14</sup> However, there is no consensus as to the size that enables a human settlement to claim the status of a city. More broadly, the city has been defined as a human settlement where one finds special types of institutions, such as markets; or one that has cultural characteristics, such as art; or one that exhibits impersonal social interactions.<sup>15</sup> The legal-political perspective of the city is a sub-category of the institutional approach, where the city is “a kind of corporate entity possessing certain delegated powers.”<sup>16</sup> These proxies for military and economic power led to defining the city as “a point of maximum concentration for the power and culture of a community.”<sup>17</sup> This power began as military force. A historical example is London.<sup>18</sup> Over time, military force became the province of the nation-state, while cities such as Venice became distinguished by

13. See MICHAEL PATRICK O’CONNOR, *The Biblical Notion of the City*, in CONSTRUCTIONS OF SPACE II: THE BIBLICAL CITY AND OTHER IMAGINED SPACES 18 (Jon L. Berquist & Claudia V. Camp eds., 2008) (critiquing the use of the term “city” in interpreting theological and archaeological conceptions of human settlement as found in the Bible).

14. See Weinstock, *supra* note 9, at 378 (“[C]ities like Montreal, Berlin[,] and Brussels (to name but three) are divided into legally defined municipalities with a significant amount of jurisdictional autonomy. On my view, however, ‘Montreal’ and ‘Brussels’ each refer to one city, given their satisfaction of the spatial integration criterion.”); see also JOHN J. MACIONIS & VINCENT N. PARRILLO, CITIES AND URBAN LIFE 253 (2004) (“[A] city is a relatively large, dense settlement that has a complex social structure that greatly reflects, intensifies, and recreates cultural values and forms.”).

15. See CLAUDE FISCHER, THE URBAN EXPERIENCE 25–26 (2nd ed. 1984); see also ERIC O. JACOBSEN, SIDEWALKS IN THE KINGDOM: NEW URBANISM AND THE CHRISTIAN FAITH 139 (2003) (“A city is a place where it is acceptable to be a stranger.”).

16. Leo F. Schnore, *The City as a Social Organism*, 1 URB. AFFS. REV. 58, 58 (1966).

17. LEWIS MUMFORD, THE CULTURE OF CITIES 3 (1981); see also Lewis Mumford, *What Is a City?*, 82 ARCHITECTURAL REC. 59, 59 (1937) (“The city in its complete sense, then, is a geographic plexus, an economic organization, an institutional process, a theater of social action, and an esthetic symbol of collective unity.”). See generally Michael Crane, *Defining the City*, RADIUS: GLOB. CITIES NETWORK, <https://radiusglobal.org/2020/06/defining-the-city/> [<https://perma.cc/8HS5-HBNR>] (canvassing definitions of cities to illustrate the difficulty of identifying what constitutes a city).

18. See, e.g., Simon Marsh, *The Construction and Arming of London's Defences 1642–1645*, 91 J. SOC'Y FOR ARMY HIST. RSCH. 275 (2013) (explaining the military importance of London from the fifteenth century up to the English Civil War).

their economic power.<sup>19</sup> Wealth continues to distinguish cities today. Some cities even have a Gross Domestic Product (GDP) greater than that of nation-states. For example, Tokyo's GDP in 2020 was USD 1.6 trillion, more than double the GDP of Saudi Arabia in that year.<sup>20</sup>

The difficulty with these definitions is that they represent the city as an artificial entity, as a machine.<sup>21</sup> Emphasis on proxies of size and power is an emphasis on outcomes, rather than on the processes that lead to the emergence of the city. Evolution is, therefore, not prohibitive of the above definitions.

My definition of the city emphasizes its evolution because this process explains the critical role of the city in colonization, and hence the need for the city to hold a Hohfeldian claim-right to self-determination and be subject to its correlative duty.<sup>22</sup> By way of analogy, the above definitions are a snapshot of an adult human being. The process that leads the same person to grow from a child to an adult is simply ignored. The time scale for these definitions is therefore much shorter than the life span of the city itself. On the other hand, conceiving the city as a natural person is not a radical proposition. To see this, we only need to replace the word "nation" with the word "city" in the following quote:

*The nation is a person, with all the attributes of personality, conscience, and will. The person[-]nation is, in reality, distinct from the State; it is anterior to it; the State cannot exist except where there is a nation; and the nation can subsist even when the State no longer exists or does not yet exist.*<sup>23</sup>

19. See, e.g., Frederic C. Lane, *Recent Studies on the Economic History of Venice*, 23 J. ECON. HIST. 312 (1963) (analyzing the factors that led to Venice becoming the birthplace of capitalism).

20. For Tokyo's GDP, see *The 150 Richest Cities in the World by GDP in 2020*, CITY MAYORS STATISTICS, <http://www.citymayors.com/statistics/richest-cities-2020.html> [https://perma.cc/-QA52] [hereinafter *150 Richest Cities*]. For the GDP of Saudi Arabia, see GDP (current US\$) – Saudi Arabia, The World Bank, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=sa> [https://perma.cc/5HZR-SXA7].

21. See ASH AMIN & NIGEL THRIFT, *CITIES: REIMAGINING THE URBAN* 78 (2002) (introducing the machinic city, where mankind engineers the certainty of routine processes).

22. Interpreting the right to self-determination through a Hohfeldian lens helps explain how this right changed from a liberty (privilege) to a power, and finally to a claim-right. See W.N. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning* 26 YALE L.J. 710 (1917) (providing a taxonomy of legal entitlements and burdens). Hohfeld provided a taxonomy of fundamental legal rights. This Hohfeldian taxonomy helps us focus on the relational nature of rights, where changes to the relationship between the parties has an impact on the type of rights created by the relationship.

23. Chimène I. Keitner, *National Self-Determination in Historical Perspective: The Legacy of the French Revolution for Today's Debates*, 2 INT'L STUD. REV. 3, 12 (2000) (emphasis added) (quoting I LÉON DUGUIT, *TRAITÉ DE DROIT CONSTITUTIONNEL* 607 (1921)). But see Yishai Blank, *International Legal Personality/Subjectivity of Cities*, in RESEARCH HANDBOOK ON INTER-

The role of the city in creating the nation-state, as I have mentioned above and as I delineate below, suggests that nationhood, as an idea, is born from the sensory experience created by cities: “Sensations generate ideas and ideas progressively lead to consciousness . . . [i.e., the city’s] awareness of itself as an entity that is at once linked to the world and distinct from it.”<sup>24</sup> Émile Durkheim defines collective consciousness as “[t]he totality of beliefs and sentiments common to the average members of a society [that] form[ ] a determinative system with a life of its own.”<sup>25</sup> Hence, a capital city is the nervous system of the nation-state. It is the locus of the nation’s collective consciousness. This city projects its consciousness on other human settlements, including other cities, in what becomes the territory of a nation-state or even an empire. Unlike the city, a village is not capable of collective consciousness because it is still in an embryonic phase of its development. It is not yet aware of its distinctiveness from other human settlements. It sees itself as part of a mother-child relationship with a city. Over time, the village is also likely to become a city, unless its proximity to an existing city absorbs it into a conurbation, or where no such proximity obtains, where the city prevents it from so becoming.<sup>26</sup> This collective consciousness should not be confused with swarm intelligence.<sup>27</sup> For the city to be able to apply its consciousness to continue growing, self-organization needs to

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NATIONAL LAW AND CITIES 103, 103 (Helmut Philipp Aust & Janne E. Nijman eds, 2021) (“[C]ities are neither persons nor subjects of international law,” but the “denial of cities’ status in international law [is inapposite] to their growing importance as central actors on the international legal plane.”).

24. Antoine Picon, *Urban Sensing: Towards a New Form of Collective Consciousness?*, in HUMANIZING DIGITAL REALITY: DESIGN MODELLING SYMPOSIUM 63, 70 (Klaas De Rycke et al. ed., 2017) (citing ÉTIENNE BONNOT DE CONDILLAC, TRAITÉ DES SENSATIONS (Treatise on the Sensations) (1754)). See generally THE CITY AS POWER: URBAN SPACE, PLACE AND NATIONAL IDENTITY (Alexander C. Diener & Joshua Hagen eds., 2018) (illustrating the role of the city in creating national identity).

25. ÉMILE DURKHEIM, THE DIVISION OF LABOUR IN SOCIETY 38–39 (1893).

26. A conurbation is a group of cities and villages that forms a contiguous urban area. See PATRICK GEDDES, CITIES IN EVOLUTION: AN INTRODUCTION TO THE TOWN PLANNING MOVEMENT AND TO THE STUDY OF CIVICS, in PATRICK GEDDES: SPOKESMAN FOR MAN AND THE ENVIRONMENT 113, 127 (Marshall Stalley ed., 1972) (using the word “conurbation” to denote a “new form of population-grouping, which is already, as it were subconsciously, developing new forms of social grouping and of definite government and administration”).

27. See G. Beni & J. Wang, *Swarm Intelligence in Cellular Robotic Systems*, PROC. NATO ADVANCED WORKSHOP ON ROBOTS AND BIOLOGICAL SYSTEMS 703, 703 (Tuscany, Italy, June 26–30, 1989) (defining swarm intelligence as the ability of “systems capable of producing order” to exhibit certain types of unpredictability).

emerge.<sup>28</sup> This link between self-organization and swarm intelligence is the essential criterion for defining the city.<sup>29</sup>

To enable the requisite processual understanding of the city, it only needs to be understood as a type of organism.<sup>30</sup> In one word, the city is a superorganism, similar to a beehive or an ant colony.<sup>31</sup> I, therefore, define the city as a human settlement that exhibits collective consciousness, and that through self-organization, develops swarm intelligence. This definition attributes a form of life to the city. It is not a *pars pro toto*.<sup>32</sup> The city has a personality, just like a natural person: “The city is complex because it overwhelms, yes, but also because it has a *coherent personality*, a personality that self-organizes out of millions of individual decisions, a global order built out of local interactions.”<sup>33</sup> However, the nation-state, through legislative instruments, can limit the ability of the city to self-organize, just like it limits the decisions of a natural person.

In the following Part, using the definition of the city as a human settlement capable of collective conscience, I elaborate on the link between the city and the right to self-determination. The analysis shows that the city created the need for self-determination because of its role in the process of colonization.

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28. See S. CAMAZINE ET AL., SELF-ORGANIZATION IN BIOLOGICAL SYSTEMS 8 (2001) (defining self-organization as “a process in which pattern at the global level of a system emerges solely from numerous interactions among the lower-level components of the system”).

29. Rick Blaisdell, *Swarm Intelligence and Real-Life Applications*, RICK'S CLOUD: ARTIFICIAL INTELLIGENCE (Jan. 13, 2020), <https://rickscloud.com/swarm-intelligence-and-real-life-applications/> [https://perma.cc/B3F5-5HBT] (“If we want to better understand how swarm intelligence works in practice, we should consider two main principles: self-organization and stigmergy. Basically, each member of the group has a simple set of rules to follow, leading to self-organization and self-sufficiency. But a small change by a group member causes other members to behave differently, leading to a new pattern of behavior. This process is called stigmergy.”)

30. See LEWIS MUMFORD, THE CITY IN HISTORY 34 (1961) (explaining the emergence of the city from “little communal village cells, undifferentiated and uncomplicated, every part performing equally every function, turned into complex structures, organizes on an axiate principle, with differentiated tissues and specialized organisms, and with one part, the central nervous system, thinking for and directing the whole”).

31. See KEVIN KELLY, OUT OF CONTROL: THE NEW BIOLOGY OF MACHINES, SOCIAL SYSTEMS AND THE ECONOMIC WORLD 89 (1994) (defining a superorganism as “a collection of agents [which can] act in concert to produce phenomena governed by the collective”); STEVEN JOHNSON, EMERGENCE: THE CONNECTED LIVES OF ANTS, BRAINS, CITIES, AND SOFTWARE 99–100 (Scribner 2001) (referring to the “city superorganism”).

32. See Dirk Vanderbeke with Christoph Gossel, *The City as a Superorganism*, in THE MIGHTY HEART OR THE DESERT IN DISGUISE? THE METROPOLIS BETWEEN REALISM AND THE FANTASTIC 1, 1 (Anne Hegerfeldt et al. eds., 2004) (explaining why the personification of the city is not like the personification of the nation).

33. STEVEN JOHNSON, EMERGENCE: THE CONNECTED LIVES OF ANTS, BRAINS, CITIES, AND SOFTWARE 39 (Scribner 2001) (emphasis added).

### B. *The Significance of the Metropole*

As European empires relinquished their control over peripheral (overseas) territories, both the metropole and the periphery of these empires became nation-states.<sup>34</sup> The word “metropole” dates back to the fifteenth century and means “[t]he homeland or main territory of a colonial regime.”<sup>35</sup> For example, what used to be the metropole of the Roman Empire is today the nation-state of Italy.<sup>36</sup> Etymologically, the word comes from the Greek words for “mother” and “city,” and is therefore related to the word metropolis: “a very large and densely populated industrial and commercial city.”<sup>37</sup> In ancient Greece, the word “metropolis” designated a city-state that created colonies across the Mediterranean.<sup>38</sup> Since the eleventh century, “metropolis” has denoted “the see of a metropolitan bishop.”<sup>39</sup> The metropolis was therefore the seat of secular as well as religious authority.

To elaborate on the link between the right to self-determination and the city, I first need to provide some historical contextualization of European colonization. I use this contextualization to argue that the city is at the heart of the colonization process. A good starting point is the Roman Empire.<sup>40</sup> According to Roman historians, the Eternal City’s journey to world dominance began in the eighth century B.C.<sup>41</sup> Through a combination of treaties and military expeditions, Rome gained control, first of its surrounding regions, then the Italian peninsula, and finally the Mediterranean

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34. See, e.g., Ludovic Halbert, Gilles Pinson & Valérie Sala Pala, *Contester la Metropole* [*Contesting the Metropolis*], 28 METROPOLES (2021) (tracing the changing meaning of the terms “metropolis” and “metropolitanisation” within the political sphere); Philip Pomper, *The History and Theory of Empires*, 44 HIST. & THEORY 1, 1 (2005) (“Liberal theorists and historians of empire generally trace a complex process in which expanding imperial power systems led ultimately to nation-states, democracy, and market economies.”).

35. *Metropole*, NEW OXFORD AMERICAN DICTIONARY (2015).

36. STEPHEN L. DYSON, *THE CREATION OF THE ROMAN FRONTIER* 126 (1985) (explaining that Italy was the homeland of the Romans, i.e., their metropole).

37. *Metropole, Metropolis*, NEW OXFORD AMERICAN DICTIONARY (2015).

38. See generally GREEK CIVILIZATION: AN ACCOUNT OF GREEK COLONIES AND OTHER SETTLEMENTS OVERSEAS (Gocha R. Tsetschladze ed., 2008) (explaining the relationship between colony and metropolis in ancient Greece).

39. *Metropolis*, NEW OXFORD AMERICAN DICTIONARY (2015).

40. The word “colonization” itself comes from Latin “colonia,” which originally denoted a Roman military outpost in an occupied territory. See generally A.J. Coles, *Roman Colonies in Republic and Empire*, 3 BRILL RESEARCH PERSPECTIVES IN ANCIENT HISTORY 1 (2020) (canvassing evidence on Roman colonies to contextualize their changing role throughout the evolution of the Roman Empire).

41. See Titus Livy, *The History of Rome*, in 2 CLASSICS IN TRANSLATION: LATIN LITERATURE 283 (Paul MacKendrick & Herbert M. Howe eds., 1959); HERMANN KINDER & WERNER HILGEMANN, *DTV-ATLAS ZUR WELTGESCHICHTE* 73 (1964).

and much of the European continent.<sup>42</sup> By the second century A.D., it became one of the greatest empires in world history.<sup>43</sup> However, this was not the only time that Europe had experienced its own internal colonialization by cities that overpowered vast areas of surrounding territories, even ones with distinctly different cultures.<sup>44</sup> Hence:

Even before the expression colonial empire existed, the city republics of the end of the Middle Ages did, in a real sense, possess one. It had strong points, it had the characteristics of modern capitalism, and all this well before the Great Discoveries. With regard to Genoa and Venice, Fernand Braudel has spoken of “European expansion” taking place as early as from the twelfth century. It was an enterprise realized by the new towns and cities. These aggressive little entities were oriented towards external trade and no longer lived in an exclusive relationship with the countryside around them.<sup>45</sup>

Other examples of this internal colonization are London and Paris. Although it was not called the London Empire, the colonization of the British Isles, and later on, much of the Old and New Worlds, was by and through London: “From the 16th century, London created and directed the establishment of England by establishing its provincial economies as satellites of the capital. England then expanded into Ireland, Scotland, and Wales, where Celtic populations were subjugated by military conquest and forcibly united with England in different ways.”<sup>46</sup> Similarly,

The region around Paris (the Ile de France) created France through the sometimes violent subjugation and incorporation of numerous territories: Normandy (1204) and Occitania (1271), in which there lived essentially a different people, with a different (Mediterranean) culture and a different language (langue d’oc); and, by 1500, Burgundy, Brittany (a region of Celtic culture), and Aquitaine. These areas were subordinated to the Ile de France for centuries. Unequal exchange between Paris and the provinces ensured that Paris would continue “to

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42. See generally ADRIAN GOLDSWORTHY, *IN THE NAME OF ROME: THE MEN WHO WON THE ROMAN EMPIRE* (Yale Univ. Press, 2016) (2004) (analyzing the military genius of Rome from the fall of Carthage to the demise of the Western Roman Empire).

43. See generally ADRIAN GOLDSWORTHY, *PAX ROMANA: WAR, PEACE AND CONQUEST IN THE ROMAN WORLD* (2006) (explaining how the city of Rome rose to become the largest empire in the ancient world).

44. See 2 FERNAND BRAUDEL, *THE WHEELS OF COMMERCE: CIVILIZATION AND CAPITALISM 15TH–18TH CENTURY* at 376, 420 (Siân Reynold trans., Book Club Assocs. 1982) (1979); see also ERIC HOBBSBAWM, *NATIONS AND NATIONALISM SINCE 1780: PROGRAMME, MYTH, REALITY* 182 (2d ed. 2012).

45. MARC FERRO, *COLONIZATION: A GLOBAL HISTORY* 51 (1997).

46. See Sandra Halperin, *The Imperial City-State and the National State Form: Reflections on the History of the Contemporary Order*, 139 *THESIS ELEVEN* 97, 100 (2017) (citations omitted).

grow more handsome and more populous . . . at the expense of the rest of the country.”<sup>47</sup>

In the 1400s, at the beginning of what came to be known as the Age of Discovery, Portugal and Spain had already embarked on the acquisition of overseas territories.<sup>48</sup> Through the doctrine of discovery, these powers obtained legal justification for the colonization of such territories.<sup>49</sup> Chief Justice Marshall explained this doctrine as follows: “But as [the nations of Europe] were all in pursuit of nearly the same object, it was necessary, in order to avoid conflicting settlements and consequent war with each other, to establish a principle which all should acknowledge as the law by which the right of acquisition.”<sup>50</sup> The maintenance of peace between European powers was therefore a salient reason for the development of the doctrine of discovery. By 1600, at the end of the Age of Discovery, maintaining the peace within the Old Continent itself led to the 1648 Peace of Westphalia.<sup>51</sup> The treaty sealed the hegemony of Europe’s sovereign states on the international stage.<sup>52</sup> This hegemony enabled a globalization of the colonization process that started in Europe.<sup>53</sup> The same European sovereign states were now in control of vast territories within the Old World.<sup>54</sup> The same process continued to repeat until the twentieth century,<sup>55</sup> when national sovereignty justified the independence

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47. *Id.* at 100–01 (citations omitted).

48. See DAVID ARNOLD, *THE AGE OF DISCOVERY, 1400–1600* (2002) (examining factors that led to Portugal and Spain to pursue links with overseas territories).

49. See SUSAN SHOWN HARJO, *NATION TO NATION: TREATIES BETWEEN THE UNITED STATES AND AMERICAN INDIANS 15–16* (2014).

50. *Johnson & Graham’s Lessee v. McIntosh*, 21 U.S. 543, 572–73 (1823) (emphasis added).

51. On the Age of Discovery, see Arnold, *supra* note 48. For the political context leading up to the Peace of Westphalia, see generally Jason Farr, *Point: The Westphalia Legacy and the Modern Nation-State*, 80 INT’L SOC. SCI. REV. 156 (2005).

52. Farr, *supra* note 51, at 156 (“After 1648, national sovereignty, characterized by autonomy and interstate competition, became the primary governing system among European states.”).

53. See generally JARED DIAMOND, *GUNS, GERMS AND STEEL: A SHORT HISTORY OF EVERYBODY FOR THE LAST 13,000 YEARS* (1997) (analyzing the reasons for Europe’s colonial expansion beginning in 1500 A.D.).

54. Halperin, *supra* note 46, at 97, 101 (“Although the term ‘imperialism’ came to be used exclusively to mean the direct or indirect domination of overseas colonial territories by modern industrial states, the process of building states in Europe and empires abroad was essentially similar.”); see also R. RICHARD KOEBNER & HELMUT DAN SCHMIDT, *IMPERIALISM: THE STORY AND SIGNIFICANCE OF A POLITICAL WORD, 1840–1960* (1964).

55. See, e.g., David Arnold, *Europe, Technology, and Colonialism in the 20th Century*, 21 HIST. & TECH. 85 (2005) (explaining the role of technology in decolonization).

movements in Latin America.<sup>56</sup> However, unlike the secession of the United States from Great Britain, under this decolonization process, with the exception of Brazil, the independence of Latin states from the same metropole did not translate into a shared nationhood. The result was the creation of a multitude of new states, each claiming a newly conceived national identity.

As the history of London and Paris illustrates, an essential characteristic of cities is territorial expansion.<sup>57</sup> The concentration of military and economic power in the city led to an internal colonization of surrounding territories, which led to the creation of the metropole.<sup>58</sup> Later, continued expansion led to external colonization on a global scale.<sup>59</sup> Even after the decolonization of the peripheral territories of the British and French Empires in the twentieth century, London and Paris, as global cities, continue to have a direct influence on the world's socio-economic affairs.<sup>60</sup> Today, however, this incessant agglomeration of power is non-territorial. Inevitably, agglomeration also suggests that cities are locked in an evolutionary struggle.<sup>61</sup> At its core, therefore, self-determination addresses the organism nature of cities and their tendency to colonize other human settlements.

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56. See Alejandro Alvarez, *Latin America and International Law*, 3 AM. J. INT'L L. 269 (1909) (confirming the influence of the American Revolution on the independence of Latin States).

57. See Alexander Thomas, *Urbanization Before Cities: Lessons for Social Theory for the Evolution of Cities*, 18 J. WORLD SYS. RES. 211, 227 (identifying territorial expansion as an essential evolutionary characteristic of all cities, including the earliest cities in the Fertile Crescent).

58. See Halperin, *supra* note 46.

59. See, e.g., THE OXFORD HISTORY OF THE BRITISH EMPIRE (P.J. Marshall ed., 2001); FREDRICK QUINN, THE FRENCH OVERSEAS EMPIRE (2001); see H.R. Tate, *The French Colonial Empire*, 39 J. ROYAL AFR. SOC'Y 322, 325 (1940).

60. See SASKIA SASSEN, THE GLOBAL CITY 5 (1991) ("Top-level control and management of the industry has become concentrated in a few leading financial centres, especially New York, London, Tokyo, Frankfurt, and Paris. These account for a disproportionate share of all financial transactions and one that has grown rapidly since the 1980s. The fundamental dynamic posited here is that the more globalized the economy becomes, the higher the agglomeration of central functions in a relatively few sites, that is, in global cities.").

61. See, e.g., STEVEN A. FRANK, FOUNDATIONS OF SOCIAL EVOLUTION (1998) (using a combination of analytical approaches to explain the evolution of social cooperation and conflict). On the evolution of cities, see generally Sarah E. Diamond & Ryan A. Martin, *Evolution of Cities*, 52 ANN. REV. ECOLOGY, EVOLUTION & SYSTEMATICS 519 (2021) (developing an analytical framework for aligning research approaches to urban evolution); Gideon Sjöberg, *The Origin and Evolution of Cities*, 213 SCI. AM. 54 (1965) (explaining the process through which cities evolve).

In the next section, I argue for extending decolonization to the metropole from within the history of self-determination as a self-help remedy, a political principle, and a human right.

### III. A STYLIZED HISTORY OF SELF-DETERMINATION

Notoriously, the formulation of self-determination in international law is “indeterminate, incoherent, and unprincipled.”<sup>62</sup> Sir Ivor Jennings articulated this difficulty as follows:

[In 1918,] a Professor of Political Science, who was also President of the United States, President Wilson, enunciated a doctrine which was ridiculous, but which was widely accepted as a sensible proposition, the doctrine of self-determination. On the surface, it seemed reasonable: let the people decide. It was in fact ridiculous, *because the people cannot decide until someone decides who are the people.*<sup>63</sup>

Today, the answer to the question of who “decides who . . . the people [are]” remains unsettled. The clearest legal statements of the doctrine, the U.N. Charter and General Assembly resolutions, confirm that the right of self-determination applies to “all peoples.”<sup>64</sup> However, these statements do not define the meaning of the word “peoples.”<sup>65</sup> To overcome this difficulty, I focus on the denotation of this doctrine, that is, on its essential characteristics, rather than on the changing connotation of its applicability. This approach precludes the need to define to which people or territories self-determination applies. My intention is to illustrate the focus of self-determination on decolonization. As we will see, attention to the imperative of a nexus between people and territory

62. Fernando R. Tesón, *The Conundrum of Self-Determination, Introduction to THE THEORY OF SELF-DETERMINATION I* (Fernando R. Tesón ed., 2016).

63. SIR IVOR JENNINGS, *THE APPROACH TO SELF-GOVERNMENT* 55–56 (1956) (emphasis added); see also John R. Moys, “Mars for the Martians”?: *On the Obsolescence of Self-Determination*, in *THE THEORY OF SELF-DETERMINATION* 184, 184 (Fernando R. Tesón ed., 2016) (“[S]elf-determination was a phenomenon of the twentieth century from which we have collectively and globally moved on, normatively if not historically.”).

64. U.N. Charter art. 1, ¶ 2 (“To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.”); see also G.A. Res. 35/35, at 176 (Nov. 14, 1980), 34/44, ¶ 3 (Nov. 23, 1979), 33/24, ¶¶ 3, 10 (Nov. 29, 1978).

65. See Alain Pellet, *The Opinions of the Badinter Arbitration Committee: A Second Breath for the Self-Determination of Peoples*, 3 *EUR. J. INT’L L.* 178, 179 (1992) (“The United Nations Charter extends the right of self-determination to *all* peoples. However, it neither defines what is to be understood by the word ‘peoples’, nor does it lay down rules as to how this right is to be exercised; a right which so far has been successfully invoked by colonial peoples only.”) (emphasis in the original); M. Bedjaoui, *Article 1 (commentaire général)*, in *LA CHARTE DES NATIONS UNIES* 23 (J.P. Cot & A. Pellet eds., 1991).

suggest an implied acknowledgment of the city's role in self-determination.

While self-determination became a legal principle only after the Second World War, it emerged in the eighteenth century as a remedy to European colonization.<sup>66</sup> Just like other political organization principles, we can trace the origin of self-determination to metaphysical philosophy.<sup>67</sup> In the Anglo-American tradition, the principle originated in the seventeenth century as a reaction to determinism.<sup>68</sup> It is no surprise, therefore, that John Locke, the father of liberalism, played a key role in inspiring the American Revolution.<sup>69</sup> For Locke, self-determination manifested the relational nature of government, where a government that violates "an individual's natural rights, simultaneously betrays the trust placed in it by him, and justifies him in considering himself no longer bound to obey that government's laws."<sup>70</sup> Locke offers self-determination as a principle justifying secession.<sup>71</sup> The 1776 United States Declaration of Independence explains the remedial aspect of self-determination as follows:

When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another . . . a decent respect to the opinions of mankind requires that they should declare the causes which impel

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66. See Ingrid Barnsley, *Self-Determination: From Decolonization to Deterritorialization*, 20 GLOB. CHANGE, PEACE & SEC. 121, 123 (2008) (tracing the modern origins of self-determination to the eighteenth century).

67. See JAMES SUMMERS, PEOPLES AND INTERNATIONAL LAW 39 (2013); see also Ian Brownlie, *An Essay in the History of the Principle of Self-Determination*, in STUDIES IN THE HISTORY OF THE LAW OF NATIONS 90 (C.H. Alexandrowicz ed., 1970) (arguing that the history of self-determination points to the right of a community to have its the district character reflected in the institutions of government).

68. See Mecca Chiesa, *Implications of Determinism: Personal Responsibility and the Value of Science*, in BEHAVIOR THEORY AND PHILOSOPHY 243, 258 (K.A. Lattal et al. eds., 2003) (canvassing philosophical reactions to determinism). For the seminal influence of Jean-Jacques Rousseau (1712–1778) on self-determination via revolution, see generally WILL DURANT & ARIEL DURANT, X THE STORY OF CIVILIZATION: ROUSSEAU AND REVOLUTION (1967).

69. See Kenneth D. Stern, *John Locke and the Declaration of Independence*, 15 CLEV. ST. L. REV. 186, 186–87, 193–95 (1966) (arguing that Locke had a strong influence on Thomas Jefferson's ideas around self-determination). But see Clarence E. Manion, *The Founding Fathers and the Natural Law: A Study of the Source of Our Legal Institutions*, 35 A.B.A.J. 461, 463 (1949) ("It is misleading to attribute the philosophy of the Declaration [of Independence] to the writings of John Locke . . ." because Locke suggested that the rights of minorities are subordinated to those of the majority). For John Locke's recognition as the father of liberalism, see, e.g., Michael Oakshott, *John Locke*, 54 THE CAMBRIDGE REV., 72, 73 (1932).

70. Stern, *supra* note 69, at 187.

71. Avishai Margalit & Joseph Raz, *National Self-Determination*, 87 J. PHIL. 439, 440 (1990) (arguing that the core content of the right of self-determination is "a right to determine whether a certain territory shall become, or remain, a separate state (and possibly also whether it should enjoy autonomy within a larger state)").

them to the separation. . . . [W]hen a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security. Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.<sup>72</sup>

Compare the above quote to Locke's rationale for this remedy:

[I]f a long train of abuses, prevarications, and artifices, all tending the same way, make the design visible to the people . . . 'Tis not to be wondered that they should then rouse themselves and [e]ndeavour to put the rule into such hands which may secure to them the ends for which government was at first erected."<sup>73</sup>

There exists here a clear example of the influence of Locke's writings on the 1776 Declaration. This version of the principle of self-determination was a reaction to perceived injustices at the hands of the British government. The American Revolutionaries found in self-determination not only a self-help remedy against tyranny—namely, secession—but also a justification for accepting the seceding territory as a new member in the club of nation-states.

Given my analysis in Part I, the American Revolution was an evolutionary struggle between a metropolis, London, and an army of human settlements that were only beginning to develop their own collective conscience. In the middle of the eighteenth century, the population of London was approximately 650,000,<sup>74</sup> while the largest of the colonial cities, Philadelphia, had a population of only 40,000.<sup>75</sup> Today, New York City, one of the thirteen cities that led the Revolution, boasts a GDP twice that of London.<sup>76</sup> Had New York City remained part of London's periphery, would it be what it is today?

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72. THE DECLARATION OF INDEPENDENCE, paras. 1, 2 (U.S. 1776).

73. JOHN LOCKE, SECOND TREATISE OF GOVERNMENT: AN ESSAY CONCERNING THE TRUE ORIGINAL, EXTENT AND END OF CIVIL GOVERNMENT 138, ¶ 225 (Richard H. Cox ed., 1982) (1689).

74. *Greater London, Inner London & Outer London Population & Density History, DEMOGRAPHIA*, <http://www.demographia.com/dm-lon31.htm> [<https://perma.cc/A5LD-GXF8>].

75. Lawrence Yun, *Largest Cities in the United States in 1776, and in 2076*, NATIONAL ASSOCIATION OF REALTORS' OUTLOOK (July 3, 2012), <https://www.nar.realtor/blogs/economists-outlook/largest-cities-in-the-united-states-in-1776-and-in-2076> [<https://perma.cc/AF4P-KC7Y>].

76. See 150 Richest Cities, *supra* note 20.

Secession was not the only remedy available under this version of self-determination. The link between self-determination and revolution can also be seen in the justification for the 1789 French Revolution. However, unlike the American Revolution, the French Revolution did not seek secession, but the abolition of the *Ancien Régime*.<sup>77</sup> It was a direct attack on the metropolis. To do so, the revolution needed to resolve the logical difficulty of loyalty. How can the revolution justify abolishing the Kingdom of France, and ensure acceptance of the new state as a legitimate one? To justify an overthrow of government, loyalty had to be conceptually transferred from the monarch to the “nation.” This meant that the sovereign to whom loyalty is owed was now the nation rather than the monarch: “The nation is the original holder and source of sovereignty.”<sup>78</sup> Self-determination was therefore based on the concept of sovereignty.<sup>79</sup> The unity of this sovereign was a natural consequence of the sovereign’s original locus, the monarch. By 1799, the French Revolution ushered the principle of “one nation, one state” as the dominant mode of political organization.<sup>80</sup> Those who monopolized the power over a certain territory were also able to reconstitute that territory as a new legitimate state. The salient role of sovereignty in self-determination during this period reflects the historical development of human rights, given that “[p]rior to 1945, international law was determined by the right of sovereignty as expressed in the obligation of states to recognize each other’s sovereignty.”<sup>81</sup>

Understanding both this critical role of nationhood in the success of the French Revolution and the fact that nationhood is produced through the collective conscience of the metropolis (see

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77. MICHAEL P. FITZSIMMONS, *THE NIGHT THE OLD REGIME ENDED: AUGUST 4, 1789 AND THE FRENCH REVOLUTION*, at ix (2002).

78. Keitner, *supra* note 23, at 12 (citing LÉON DUGUIT, *1 TRAITÉ DE DROIT CONSTITUTIONNEL* 607 (1921)). The main thrust of this Article is a critique of attributing “personality, conscience, and will,” *id.*, to the nation but not to the city.

79. See Paul Sieghart, *International Human Rights Law: Some Current Problems*, in *HUMAN RIGHTS FOR THE 1990S: LEGAL, POLITICAL AND ETHICAL ISSUES* 24, 25 (Robert Blackburn & John Taylor eds., 1991) (“Sovereignty, in this context, meant—and still means—the unfettered exercise of power within the prince’s ‘domain’; . . . the territory over which he ruled, and the individuals within that territory who owed him allegiance, originally called his ‘subjects’ but now more usually described as the state’s ‘citizens.’”).

80. See Keitner, *supra* note 23, at 4, 8–9 (arguing that a historical perspective of national self-determination emphasizes the need to balance internal and external options for statehood using four dimensions: conception, constitution, composition, and confrontation).

81. Anna Yeatman, *Who Is the Subject of Human Rights?*, 43 *AM. BEHAV. SCIENTIST* 1498, 1502 (2000).

Part I) illuminates the city's role in self-determination. As Paris developed a different consciousness, the other metropole cities mirrored this new identity.<sup>82</sup> It was inevitable that the *Ancien Régime* would come to an end. Arguably, had these other cities been afforded a wide margin of autonomy, it would have been more difficult to align their consciousness with that of Paris. Therefore, a city's self-determination can also be a remedy for revolution. The jurisdictional asymmetry among these cities guarantees the stability of the metropole. Unfortunately, this asymmetry remained a historical counterfactual. In a Hohfeldian sense, at this juncture of its history, self-determination was a privilege with a correlative liability. The nation-state had the right of sovereignty (the privilege) and the obligation to recognize the sovereignty of other nation-states (the liability). Before the Magna Carta of 1215, there was no right to self-determination. There was only a Hohfeldian liberty. The sovereign had no correlative obligation on exercising this power, which negates a Lockean understanding of government as relational. After the French Revolution, however, the Lockean relational justification for exercising national sovereignty continued to inform the principle of self-determination until the development of human rights under international law in the twentieth century.<sup>83</sup> For example, in the aftermath of the French Revolution, Johann Gottlieb Fichte continued to develop the principle into a relational theory of statehood, one based on a compact of a common will.<sup>84</sup> Inevitably, his formulation became a corollary to the concept of nationalism.<sup>85</sup> Notwithstanding that, Fichte conceptualized nationalism beyond ethnic homogeneity.<sup>86</sup> More broadly, the American and French approaches differ from the German one in their civic, rather than ethnic, nationalism, where "revolutionary rhetoric tended to focus on political rights rather than ethnic belonging."<sup>87</sup> After 1945, as I explain below, self-determination became a Hohfeldian claim-right with a correlative duty. Now the right belonged to peoples that were subjects of

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82. See discussion *infra* Part I.

83. Neil MacFarlane & Natalie Sabanadze, *Sovereignty and Self-Determination: Where Are We?*, 68 INT'L J. 609, 614, 615 (2013).

84. See SUMMERS, *supra* note 67, at 37, 39.

85. HURST HANNUM, AUTONOMY, SOVEREIGNTY, AND SELF-DETERMINATION: THE ACCOMMODATION OF CONFLICTING RIGHTS 27 (1990).

86. See Arash Abizadeh, *Was Fichte an Ethnic Nationalist? On Cultural Nationalism and its Double*, 26 HIST. POL. THOUGHT 334, 335 (2005) (discussing Fichte's attempt at conceptualizing a cultural-based nationalism as opposed to ethnic nationalism).

87. Keitner, *supra* note 23, at 7.

an overseas sovereign, while the sovereign was under a duty to uphold this right.

### C. *During World War I*

In the twentieth century, the principle of self-determination continued to lead to more decolonization. In a testament to the principle's universal acceptance, it found support from the Soviet Union as much as from the United States. Now, however, we see the beginning of a transition from a sovereignty-based discourse to one based on human rights. Hence, in 1916, before the October Revolution, Vladimir Lenin formulated the principle as "the right of the oppressed nations to self-determination, i.e., the right to free political separation."<sup>88</sup> Understandably, for Lenin, the principle attached to nations, and only in a secessionist sense.<sup>89</sup> Why? It is well known that after Austria annexed Bosnia and Herzegovina in 1908, national independence claims in the Balkans led to the assassination of the heir presumptive to the Emperor of Austria on June 28, 1914.<sup>90</sup> By mid-August of the same year, open hostilities were already under way.<sup>91</sup> The annexation was a form of European colonization similar to that carried out by Paris and London. Before that, Constantinople, which also had a long history of colonization, colonized Bosnia and Herzegovina.<sup>92</sup> The difference in 1914 was that other European powers came to the aid of the Balkan states.<sup>93</sup> The war led to the creation of independent European

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88. 22 VLADIMIR LENIN, *The Socialist Revolution and the Right of Nations to Self-Determination*, in V.I. LENIN COLLECTED WORKS 143, 143 (George Hanna ed., Yuri Sdobnikov trans., 1964).

89. See Rita Augestad Knudsen, THE FIGHT OVER FREEDOM IN 20TH- AND 21ST-CENTURY INTERNATIONAL DISCOURSE: MOMENTS OF 'SELF-DETERMINATION', 33 (2020) ("Lenin referenced the 'right of nations to self-determination' in numerous publications between 1903 and 1917" and "[t]o Lenin, the 'national question' and 'self-determination' belonged to the same conceptual *problématique*") (emphasis in the original) (citation omitted).

90. See ROBIN S. DOAK, ASSASSINATION AT SARAJEVO: THE SPARK THAT STARTED WORLD WAR I 296 (2009).

91. See generally THE ORIGINS OF WORLD WAR I (Richard F. Hamilton & Holger H. Herwig eds., 1st ed. 2008) (suggesting that the elitist assumption "that apart from infrequent revolutionary episodes, 'the masses' do not participate in the governance of nations" was the cause of WWI).

92. See G. Ostrogorsky, *Byzantium and the South Slavs*, 42 THE SLAVONIC AND E. EUR. REV. 1, 1 (1963) ("[T]he imprint left by the Byzantine empire on the political and cultural development of the South Slav peoples was extremely strong.").

93. See generally Sean McMeekin, THE RUSSIAN ORIGINS OF THE FIRST WORLD WAR (2011) (discussing competing theories of the origins of the First World War, from Germano-Austrian designs for the Balkans, to Russian imperial ambitions in this region).

states such as Poland, Czechoslovakia, and Yugoslavia.<sup>94</sup> Nation-states were replacing empires.

The principle of self-determination received similar support from the United States in 1918, when Woodrow Wilson expressed support for the right of people to “be dominated and governed only by their own consent.”<sup>95</sup> Unlike Lenin, Wilson’s emphasis was not on secession, but on giving support to representative democracy.<sup>96</sup> Wilson’s interpretation of the concept of nation “coincided with his Anglo-American view of the nation as ‘a community of organisation, of life and of tradition,’ which he contrasted unfavorably with the German concept of Volk—a ‘community of blood and of origin.’”<sup>97</sup> Notwithstanding, Wilson’s vision was based on the principle of one-nation-one-state.<sup>98</sup> To ensure that there is one nation, the nation-state had to be a “melting pot,” where people share the same values rather than the same genes. The integrity of the resulting states, and hence the maintenance of peace, took precedence over any homogenization processes based on ethnicity. Wilson’s vision for self-determination was firmly based on a peace program:

A free, open-minded, and absolutely impartial adjustment of all colonial claims, based upon a strict observance of the principle that in determining all such questions of sovereignty the interests of the populations concerned must have equal weight with

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94. See, e.g., Marcel Radoslaw Garboš, *Border-Making and Nation-Building in Interwar Europe*, JOINT CENTRE FOR HISTORY AND ECONOMICS AT CAMBRIDGE: BARRIERS AND BORDERS, <https://www.histecon.magd.cam.ac.uk/frontiersborders/border-making.html> [https://perma.cc/72EE-XR4S]; Rogers Brubaker, *Nationalizing States in the Old ‘New Europe’ – and the New*, 19 ETHNIC AND RACIAL STUD. 411, 411 (1996) (analyzing the emergence of new national states such as Yugoslavia and Czechoslovakia).

95. Woodrow Wilson, President, U.S., Address to Congress, Analyzing German and Austrian Peace Utterances (Feb. 11, 1918), [https://wwi.lib.byu.edu/index.php/President\\_Wilson%27s\\_Address\\_to\\_Congress\\_Analyzing\\_German\\_and\\_Austrian\\_Peace\\_Utterances](https://wwi.lib.byu.edu/index.php/President_Wilson%27s_Address_to_Congress_Analyzing_German_and_Austrian_Peace_Utterances) [https://perma.cc/XT4W-JKVR].

96. See MICHLA POMERANCE, SELF-DETERMINATION IN LAW AND PRACTICE 1 (1982) (“‘Self-determination,’ as conceived by Wilson, was an imprecise amalgam of several strands of thought, some long associated in his mind with the notion of ‘self-government’, others newly hatched as a result of wartime developments, but all imbued with a general spirit of democracy (‘consent of the governed’)”); see also Anthony Whelan, *Wilsonian Self-Determination and the Versailles Settlement*, 43 INT’L & COMP. L.Q. 99 (1994) (suggesting that the Wilsonian formulation of self-determination had a coherent core based on self-determination as peoples’ Hohfeldian power to create their own jurisdiction, with the correlative immunity of states from disintegration).

97. Whelan, *supra* note 96, at 100 (citations omitted).

98. See Woodrow Wilson, Speech to the Committee on Foreign Relations of the Senate (Aug. 19, 1919), in 4 A HISTORY OF THE PEACE CONFERENCE OF PARIS 429 (H.W.V. Temperley ed., 1921).

the equitable claims of the government whose title is to be determined.<sup>99</sup>

For Wilson, the essence of self-determination is utilizing democracy to balance the interest of “the populations” with the interests of “governments” when deciding “questions of sovereignty.”<sup>100</sup> No longer is self-determination based on exercising a Hohfeldian privilege over a territory and its people, but on a claim-right and a correlative duty. Hence, the earliest statement of self-determination as a principle of international relations, the 1919 Covenant of the League of Nations, describes self-determination as “the *principle* that the well-being and development of [peoples that cannot yet govern themselves] forms a sacred trust of civilization.”<sup>101</sup> The Covenant imposed a duty on “advanced nations” toward “peoples” in “colonies and territories” to the end of establishing these peoples and their territories as independent nations.<sup>102</sup> The Covenant inched us closer to a right of self-determination.

The 1919 Covenant envisages that the people cannot yet govern themselves suggests that while they have a collective consciousness, they are not yet able to self-organize. Self-determination is viewed as the obligation on the metropole to enable these people to govern themselves. But how would that be done? Without a seat of government and without the institutions of governance, there can be no self-government. Therefore, a prerequisite for self-determination is the creation of a capital city. The nation-state resulting from decolonization is only a new metropole for this capital. In an evolutionary sense, self-determination prevents the imperial metropolis from cannibalizing this new capital, allowing for the creation of a new nation-state. Unfortunately, this has not always been the case, especially where the “peoples” had no capital city. The Holocaust is a case in point.

#### D. *During World War II*

One single event completed the transformation of self-determination from a principle to a right. This event was the Shoah (Holocaust).<sup>103</sup> The Shoah illustrates the evolutionary effect of a struggle between a metropolis, Berlin, and a people that have been

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99. *President Woodrow Wilson's Fourteen Points*, THE AVALON PROJECT, [https://avalon.law.yale.edu/20th\\_century/wilson14.asp](https://avalon.law.yale.edu/20th_century/wilson14.asp) [<https://perma.cc/QH6J-P8FQ>].

100. *Id.*

101. League of Nations Covenant art. 22 (emphasis added).

102. *See id.* (providing for mandates).

103. *See, e.g.*, JEREMY BLACK, *THE HOLOCAUST: HISTORY AND MEMORY* (2016) (recounting the systematic and large-scale murder of Jews by Nazi Germany).

alienated from their metropolis, Jerusalem. Through a long history of colonization, Jerusalem lost its Jewish consciousness.<sup>104</sup> Although Theodor Herzl identified the looming threat of antisemitism across Europe as early as 1896, the movement for Jewish self-determination was only able to restore the requisite evolutionary balance after the Shoah.<sup>105</sup> The restoration came through a self-remedy not very different from the American and French Revolutions.<sup>106</sup> The ensuing threat to international peace and stability from the Holocaust brought about a move to underwrite certain guarantees that similar atrocities would never obtain.<sup>107</sup> Hence, self-determination found endorsement in the Atlantic Charter, signed in 1941 by President Franklin D. Roosevelt and Prime Minister Winston Churchill, as “the right of all people to choose the form of government under which they will live.”<sup>108</sup>

In addition, in 1945, the U.N. Charter elevated the principle to a Grundnorm of international relations, together with the principles of friendship, equal rights, and universal peace.<sup>109</sup> Critically, the 1945 Charter adopted a wide definition of the territories attracting self-determination as “territories whose peoples have not yet attained a full measure of self-government.”<sup>110</sup> Two elements would therefore qualify a territory for self-government: First, the territory is inhabited by “peoples,” and second, these peoples have not yet attained self-government.

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104. See, e.g., ALAN J. POTTER, *THE HISTORY OF JERUSALEM: ITS ORIGINS TO THE EARLY MIDDLE AGES* (2020) (explaining the replacement of Jerusalem’s Jewishness with Christian and Islamic identities).

105. See generally THEODOR HERZL, *THE JEWISH STATE: THE HISTORIC ESSAY THAT LED TO THE CREATION OF THE STATE OF ISRAEL* (Skyhorse Publishing 2019) (1896) (arguing the case for a Jewish homeland).

106. See, e.g., ERIC GARTMAN, *RETURN TO ZION: THE HISTORY OF MODERN ISRAEL* 119 (2015) (recounting the events of 12 May 1948 and the establishment of the State of Israel, even though the advice from the U.S. State Department warned against establishing a Jewish state at that point in time due to fears of an Arab invasion. This decision can be understood as a form of self-help to restore statehood to the Jewish people).

107. See Sieghart, *supra* note 79, at 25–26 (“[W]ithin a single generation . . . [international law] enumerat[ed] and closely defin[ed] certain ‘human rights’ and ‘fundamental freedoms’ for all human beings, anywhere in the world, which were thenceforth no longer to lie in the gift of the sovereign states whose citizens these human beings were, but were said to ‘inhere’ in them ‘inalienably,’ and so could not be abridged, denied, or forfeited—even by their sovereign rulers—for whatever cause.”).

108. *The Atlantic Conference: Joint Statement by President Roosevelt and Prime Minister Churchill*, Aug. 14, 1941, THE AVALON PROJECT, <https://avalon.law.yale.edu/wwii/at10.asp> [<https://perma.cc/4D6N-JV3J>].

109. See U.N. Charter arts. 1, 55.

110. U.N. Charter art. 73.

The U.N. Charter also makes reference to “metropolitan areas” as follows:

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their *metropolitan areas*, must be based on the general principle of good-neighbourliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.<sup>111</sup>

This phrase formed part of what was known as a colonial clause, now commonly referred to as a “territorial application clause.”<sup>112</sup> The clause explains the responsibility of the colonizing state, the metropole, for the international affairs of the colonized territory.

Describing the colonizing state as the “metropolitan area” suggests both the existence of a metropolis in the former and the lack of such cities in the colonized territories. It is the same evolutionary struggle that we saw in the lead up to the Shoah.

#### E. *During the Cold War*

During this period, “Third World states and peoples embraced the language of self-determination in order to articulate their grievances concerning the lack of independence.”<sup>113</sup> In the 1950s, large-scale decolonization was taking place in Africa.<sup>114</sup> Similar decolonization continued in other continents.<sup>115</sup> This was periphery self-determination. For example, the independence of Libya in 1951 can be interpreted as inter-city tension that led to the independence of Tripoli from Rome. Later, tension between Tripoli and other Libyan cities led to the 1969 Libyan Revolution and the

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111. U.N. Charter art. 74 (emphasis added).

112. See LORD McNAIR, *THE LAW OF TREATIES* 118–19 (2nd ed., 1961) (“This clause takes many forms but there are two distinctive types: one provides that the United Kingdom may, by giving special notice to any other party to the treaty, declare that the treaty shall apply to any of the territories for whose international relations the United Kingdom is responsible, thus indicating that in the absence of such notice the treaty applies only to the metropolitan territory of the United Kingdom. The other provides that the treaty shall apply both to metropolitan and overseas territories except in so far as the United Kingdom may by declaration or special notice exclude its operation from any or all of them” McNair, *Law of Treaties* (2nd ed.), 118–119).

113. KALANA SENARATNE, *INTERNAL SELF-DETERMINATION IN INTERNATIONAL LAW: HISTORY, THEORY, AND PRACTICE* 36 (2021).

114. See generally JOHN D. HARGREAVES, *DECOLONIZATION IN AFRICA I* (2014) (explaining Africa’s long road to independence, and noting that by 1995, “only two small Spanish enclaves in Morocco remain as relics of colonial government on the continent”).

115. See generally DIETMAR ROTHERMUND, *THE ROUTLEDGE COMPANION TO DECOLONIZATION* (2006) (explaining the decolonization process since 1945, covering Africa, Asia, the Caribbean, the Pacific, and the late twentieth century decolonization in Hong Kong and Macau).

2011 First Libyan Civil War.<sup>116</sup> By 2019, there were indications that Libya would break up into three separate nation-states.<sup>117</sup> Other revolutions, from the Cuban Revolution (1953-1959) to the Iranian Revolution (1977-1979), similarly demonstrate how the logic of self-determination continued to also furnish remedies against the tyranny of national governments.<sup>118</sup>

In 1952, the U.N. General Assembly confirmed that “the right of peoples and nations to self-determination is a prerequisite to the full enjoyment of all fundamental human rights.”<sup>119</sup> This formulation became the reference point for elevating self-determination to a *jus cogens* status that is an *erga omnes* obligation on all nation-states. Hence, “[t]he States Members of the United Nations shall recognize and promote the realization of the right of self-determination of the peoples of Non-Self-Governing and Trust Territories who are under their administration.”<sup>120</sup> Moreover,

[t]he States Members of the United Nations responsible for the administration of Non-Self-Governing and Trust Territories shall take practical steps, pending the realization of the right of self-determination and in preparation thereof, to ensure the direct participation of the indigenous populations in the legisla-

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116. See, e.g., Tarek Ladjal, *Tribe and State in the History of Modern Libya: A Khaldunian Reading of the Development of Libya in the Modern Era 1711–2011*, 3 COGENT ARTS & HUMANITIES 6 (2016), <https://doi.org/10.1080/23311983.2016.1183278> [<https://perma.cc/K2T6-HHR9>] (“The urban disparities (dynamic cultural life, opening up to the outside world, prosperity, trade . . .) remain visible between the three regions in modern Libya. This explains the beginning of the 1969 coup and the 2011 revolution from Cyrenaica (Benghazi), and Cyrenaica’s current inclination towards Federal rule, which is dominated by their political elites because of their sense of excellence and superiority over the rest of the Libyan regions.”). See generally Theocharis N. Grigoriadis & Walied Kassem, *The Regional Origins of the Libyan Conflict*, 28 MIDDLE E. POL’Y 119 (2021) (explaining the Libyan conflict as the outcome of economic asymmetries between its various provinces).

117. See DIRK VANDEWALLE, *A HISTORY OF MODERN LIBYA* (2012) (explaining how the discovery of oil influenced calls for self-independence in Libya); Jonathan M. Winer, *Origins of the Libyan Conflict and Options for Its Resolution* 4–5 (Middle East Institute, Policy Paper No. 12, 2019) (explaining the origins of the conflict in Libya).

118. See, e.g., J.R. BENJAMIN, *THE UNITED STATES AND THE ORIGINS OF THE CUBAN REVOLUTION: AN EMPIRE OF LIBERTY IN AN AGE OF NATIONAL LIBERATION* (2021) (explaining the origin of the Cuban Revolution as a response to a process of non-territorial, economic, colonization of the island); JULIO GARCÍA LUIS, *CUBAN REVOLUTION READER: A DOCUMENTARY HISTORY OF KEY MOMENTS IN FIDEL CASTRO’S REVOLUTION* (2008) (recounting the injustices in Havana and Santiago de Cuba before the revolution); see also JAHANGIR AMUZEGAR, *DYNAMICS OF THE IRANIAN REVOLUTION* 253 (1991) (explaining that the Shah did not anticipate the protests that led to the Revolution, which emphasizes the self-organizing aspect of the Revolution); Fatemeh E. Moghadam, *An Historical Interpretation of the Iranian Revolution*, 12 CAMBRIDGE J. ECON. 401 (1988) (explaining the Islamic Revolution as extending from a premodern to a modern period).

119. G.A. Res. 637 (VII) (Dec. 16, 1952).

120. *Id.* ¶ 2.

tive and executive organs of government of those Territories, and to prepare them for complete self-government or independence.<sup>121</sup>

Therefore, the right was still limited to indigenous people and territories that are governed by colonial powers. As we saw during World War II, the requisite separate collective conscience continues to define the boundaries of self-determination.

In 1960, the U.N. General Assembly provided further guidance on the requisite non-self-governing territory for self-determination as one which “prima facie” is “geographically separate and distinct ethnically and/or culturally from the country administering it.”<sup>122</sup> This presumption is also guided by “administrative, political, juridical, economic or historical” factors that “arbitrarily place[ ]” the territory “in a position or status of subordination” to a “metropolitan state.”<sup>123</sup> A few observations are in order here. First, the requirement that the territory is “geographically separate” limits this form of the right to the decolonization of overseas territories. This criterion confirms that the envisaged self-determination relates to the independence of the periphery territories of an empire. These were the colonies that European powers held outside Europe. The decolonization of territories forming part of a nation-state would not benefit from this right. Second, the “peoples” occupying these overseas territories need to be either ethnically or culturally distinct from the nation-state that administers their territory. However, the requisite territorial separation and identity distinction can be interpreted as special cases of a wider separate collective consciousness. Third, the designation of the administering country as a “metropolitan state” is informed by the role of the city in the emergence of self-determination.

Moreover, the U.N. General Assembly emphasized that the right to self-determination belongs to all people.<sup>124</sup> The Declaration confirmed that “[a]ll peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”<sup>125</sup> Self-determination became a “fundamental human right” to protect peoples against “alien subjugation, domination

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121. *Id.* ¶ 3.

122. G.A. Res. 1541 (XV), Annex, princ. IV, at 29 (Dec. 15, 1960).

123. *Id.* princ. V.

124. G.A. Res. 1514 (XV), at 67 (Dec. 14, 1960).

125. *Id.* ¶ 2.

and exploitation.”<sup>126</sup> The Declaration equates the right to self-determination with the right of “complete independence” to protect “the integrity of [the peoples’] national territory,”<sup>127</sup> and in relation to all “territories which have not yet attained independence.”<sup>128</sup> Furthermore, the right is seen as a sovereign right relating to all peoples and “their territorial integrity,”<sup>129</sup> which therefore also imposes a limit on exercising this right: there can be no “disruption of the national unity and the territorial integrity of a country.”<sup>130</sup> This is now an explicit demarcation between the self-determination of the periphery and the metropole. Any self-determination applying within the nation-state continued to be a self-help remedy.

In 1966, the right of self-determination attained primacy among U.N. basic rights.<sup>131</sup> The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) confirmed the universal applicability of this right to all people, so that they can “freely determine their political status and freely pursue their economic, social and cultural development.”<sup>132</sup> These Covenants also placed a positive duty on State Parties to “promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.”<sup>133</sup>

By 1970, the right of self-determination envisioned more political organization possibilities for non-self-governing territories, including “establishment of a sovereign and independent state, the free association or integration with an independent State or the emergence into any other political status freely determined by [the] people.”<sup>134</sup> This flexibility in giving effect to self-determination was confirmed by the International Court of Justice (ICJ) in its

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126. *Id.* ¶ 1. Cf. SUMMERS, *supra* note 67, at 71 (“[T]he difference between principle and right is essentially one of perspective [that] is borne out by the interchangeable way in which those terms have been used”). When used as a right, it emphasizes people as the subject. As a principle, self-determination focuses on the obligations born by States. *Id.*

127. *Id.* ¶ 4.

128. *Id.* ¶ 5.

129. *Id.* ¶ 7.

130. *Id.* ¶ 6.

131. STEPHEN HALL, *PRINCIPLES OF INTERNATIONAL LAW* 242 (2019).

132. G.A. Res. 2200A (XXI), art. 1, ¶ 1, International Covenant on Civil and Political Rights (Dec. 16, 1966) [hereinafter ICCPR]; G.A. Res. 2200A (XXI), art. 1, ¶ 1, International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1966) [hereinafter ICESCR].

133. ICCPR art. 1, ¶ 3; ICESCR art. 1, ¶ 3.

134. G.A. Res. 2625 (XXV), Annex, ¶ 1, at 124 (Oct. 24, 1960).

Western Sahara advisory opinion, explaining that the U.N. General Assembly has “a measure of discretion with respect to the forms and procedures by which the right is to be realized.”<sup>135</sup>

An example of this flexibility can also be seen in the 1976 Algiers Charter.<sup>136</sup> The Charter was intended as “a text collecting the norms and the principles, deriving from the interpretation of international law in force at the time.”<sup>137</sup> Section II of the Charter is dedicated to the “right to political self-determination.”<sup>138</sup> Article 5 states that “[e]very people has an imprescriptible and unalienable right to self-determination. It shall determine its political status freely and without any foreign interference.”<sup>139</sup> Article 6 confirms that “[e]very people has the right to break free from any colonial or foreign domination, whether direct or indirect, and from any racist regime,” while Section II, Article 7 elaborates on the role of democracy: “Every people has the right to have democratic government representing all the citizens without distinction as race, sex, belief or colour, and capable of ensuring effective respect for the human rights and fundamental freedoms for all.”<sup>140</sup> The formulation of self-determination in this Charter is introduced within an ecology of other rights: people’s right to existence (Section I), economic rights of peoples (Section III), right to culture (Section IV), and rights of minorities (Section VI).<sup>141</sup> The last Section in the Charter is Section VII, on guarantees and sanctions (Articles 22 to 30).<sup>142</sup> Comparing and contrasting these rights help elucidate the specificity as well as the generality of the right to self-determination.

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135. Western Sahara, Advisory Opinion, 1975 I.C.J. 12, ¶ 71 (Oct. 16).

136. PERMANENT PEOPLES’ TRIBUNAL, *The Algiers Charter: The Universal Declaration of the Rights of Peoples* (July 4, 1976), <http://permanentpeopletribunal.org/wp-content/uploads/2016/06/Carta-di-algeri-EN-2.pdf> [https://perma.cc/BSC2-L94E] [hereinafter *The Algiers Charter*]. The Algiers Charter serves as the constituting document for the Permanent Peoples’ Tribunal. PERMANENT PEOPLES’ TRIBUNAL, *The Algiers Charter*, <http://permanentpeopletribunal.org/algiers-charter/?lang=EN> [https://perma.cc/H8UC-AV6X] [hereinafter Algiers Charter Webpage]. The Permanent Peoples’ Tribunal is comprised of an international group of jurists. PERMANENT PEOPLES’ TRIBUNAL, *Composition*, <http://permanentpeopletribunal.org/composition/?lang=EN> [https://perma.cc/F88S-T8R3]. This tribunal does not have States as signatories or parties to the Algiers Charter. *Id.*

137. Algiers Charter Webpage, *supra* note 136.

138. *The Algiers Charter*, *supra* note 136.

139. *The Algiers Charter*, *supra* note 136, art. 5.

140. *Id.* art. 6–7.

141. *See generally id.*

142. *See generally id.*

The first Section in the Charter talks about people's right to their "national and cultural identity."<sup>143</sup> Therefore, it is reasonable to interpret self-determination as a right independent of that of existence as a nation. More precisely, the right to self-determination is wider, and considers political organization to be independent of the idea of nation. Similarly, the fourth Section, on the "right to culture," explains "the right to speak [one's] own language and preserve and develop [one's] own culture" independent of the right to self-determination.<sup>144</sup> Nor is the requisite of being a minority part of self-determination. The Charter provides a separate section on the "rights of minorities."<sup>145</sup> Article 21, in particular, ensures that "[t]hese rights shall be exercised with due respect for the legitimate interests of the community as a whole and cannot [authorize] impairing *the territorial integrity and political unity of State*, provided the State acts in accordance with all the principles set forth in this Declaration."<sup>146</sup> In comparison, Section II on the "right to political self-determination" affords people "the right to break free from any colonial or foreign domination . . . and from any racist regime."<sup>147</sup> Reading self-determination and the rights of minorities together suggests, therefore, that self-determination would have to be limited by the "territorial integrity and political unity of State" when applied to minorities, unless these minorities are under colonial, foreign, or racist regimes.

The history of the principle of self-determination, especially the articulation of this principle in the Algiers Charter, identifies three objectives.<sup>148</sup> The first is an inherent element of freewill when applied to political organization.<sup>149</sup> Freedom corresponds to what is known as internal self-determination, people's right to select their own governance structures, although sometimes the freedom

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143. *Id.* art. 2.

144. *Id.* art. 13.

145. *See generally id.* § VI.

146. *Id.* art. 21 (emphasis added).

147. *Id.* art. 6.

148. *See* SUMMERS, *supra* note 67, at 42–53. Note that Summers treats internal and external self-determination as separate aspects of self-determination, *id.* at 60–70; *see also* Michla Pomerance, *Self-Determination Today: The Metamorphosis of an Ideal*, 19 *ISR. L. REV.* 310, 314–15 (1984) [hereinafter *Self-Determination Today*] (discussing "self-determination" as the right to be free from alien rule, to choose one's own sovereign, and "continuous consent of the governed" through "representative democratic government").

149. SUMMERS, *supra* note 67, at 42 ("The nature of the self-determination process, therefore, can be defined by the various statuses associated with the liberty of a people."); *id.* at 55 ("The functioning of . . . [government] would constitute an *inherent* expression of the self-determination of the people involved and would normally be exercised within a state.") (emphasis added).

is limited to “the freedom of peoples within states to realize a *democratic* form of government.”<sup>150</sup> An example of internal self-determination came in the aftermath of the breakup of the Socialist Federal Republic of Yugoslavia. In 1991, the European Community Peace Conference on Yugoslavia established an Arbitration Committee (known as the Badinter Committee).<sup>151</sup> The Serbian Republic asked the Committee whether the Serbian minority in the two breakaway republics of Bosnia-Herzegovina and Croatia was entitled to self-determination.<sup>152</sup> The Committee delivered the following opinion:

In the Commission’s view one possible consequence of this principle might be for the members of the Serbian population in Bosnia-Herzegovina and Croatia to be recognized under agreements between the Republics as having the nationality of their choice, with all the rights and obligations which that entails with respect to the states concerned.<sup>153</sup>

Furthermore, the Committee stated explicitly that such minorities have “the right to choose their nationality.”<sup>154</sup> The Committee found that the Serbian minority was entitled to a separate constitutional identity within the two republics, but not to separate statehood.

This freewill objective emphasizes meta-jurisdictional autonomy.<sup>155</sup> Hence, under internal self-determination, peoples not only have the competence to organize institutions for political decision-making over certain exclusive policy areas, what is known as jurisdictional autonomy, but they also decide over which areas they have such competence. Constitutional mechanisms for sharing legislative powers must therefore enable these institutions to play a role in deciding which powers shall be devolved.

The second objective is justice, which corresponds to external self-determination under the 1919 Wilsonian formulation of the

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150. SENARATNE, *supra* note 113, at 1 (emphasis added). Senaratne’s emphasis on democracy in the identification of internal self-determination stems from his analysis of Hong Kong as a case study where “people are enjoying a greater degree of internal self-determination in economic affairs than in political and democratic freedoms.” *Id.* at 210.

151. Pellet, *supra* note 65, at 178.

152. *See Id.*

153. Conference on Yugoslavia Arbitration Commission, Opinion No. 2, 31 I.L.M. 1497, 1498, ¶ 3 (1992).

154. *Id.* ¶ 4(ii).

155. *See* Weinstock, *supra* note 9, at 377, ¶¶ 2–3; *see also* Allen Buchanan, *The Making and Unmaking of Boundaries: What Liberalism Has to Say*, in STATES, NATIONS, AND BORDERS: THE ETHICS OF MAKING BOUNDARIES 231 (A. Buchanan & M. Moore eds., 2003) (critiquing the lack of ethical considerations under liberal political theory when deciding on political boundaries).

principle. This remedial objective aims for people “to be free from alien rule.”<sup>156</sup> In terms of the city, any rule other than self-organization is alien because it comes from outside the superorganism. Legislation by a nation-state is alien rule, unless consented to by the city. Justice, therefore, limits the freedom of peoples to the extent that exercising their rights infringes on the self-determination of others. The envisaged outcome from guaranteeing the right of self-determination is “a fairer international society, in which friendly relations between nations, development and human rights can flourish.”<sup>157</sup> An example can be found in the negotiations leading up to the independence of Indonesia in 1949.<sup>158</sup> During the negotiations leading up to independence, the U.N. Commission for Indonesia explained that external self-determination is “the right of the populations to disassociate their respective territories from the Republic of the United States of Indonesia.”<sup>159</sup> In contrast, internal self-determination applied only to “the right of populations to determine, by democratic procedure, the status which their respective territories shall occupy within the federal structure of the Republic of the United States of Indonesia.”<sup>160</sup>

The third objective is the processual objective of continuous participation in one's own governance.<sup>161</sup> An example of continuous participation in governance is voting systems.<sup>162</sup> This objective comes closest to the self-organization of the city. This element ensures that self-determination is a continuous process guaranteeing the expression of the will of the people in any decision-making mechanism.<sup>163</sup> This continuous exercise of the will of the people can be seen in representative, as well as direct, democracy, although the latter can weaken the objectives of freedom and justice where there lacks compromise and negotiation.<sup>164</sup>

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156. See SUMMERS, *supra* note 67, at 42, 60 (although Summers argues that “[t]here is . . . no neat divide between self-determination as an inherent right and a remedial one,” the two positions reflect the different expectations of nationalism and liberalism from the right. These provide both limits to and support for the right, and a claim for self-determination is likely to draw on each of the two doctrines); *accord Self-Determination Today*, *supra* note 148, at 314–315.

157. SUMMERS, *supra* note 67, at 45.

158. *Id.* at 62–63 (2013).

159. U.N. Comm'n for Indon., Special Rep. to the Security Council on the Round Table Conference, ¶ 52, U.N. Doc. S/1417/Rev.1, (Nov. 10, 1949).

160. *Id.*

161. *Self-Determination Today*, *supra* note 148, at 314–315.

162. See SUMMERS, *supra* note 67, at 46–54.

163. See *id.* at 46.

164. See *id.* at 3.

During this period, the ICJ has interpreted the principle of self-determination as customary international law.<sup>165</sup> The formulation of the principle in key instruments of international law such as the U.N. Charter and the ICCPR and ICESCR also supports interpreting self-determination as part of *erga omnes* obligations.<sup>166</sup> In addition, there is “substantial support” among publicists for recognizing self-determination as a *jus cogens* norm.<sup>167</sup> The International Law Commission also discussed this position.<sup>168</sup> This proposition acknowledges the “foundational role [played by self-determination] in international law.”<sup>169</sup> The *erga omnes* character is also supported by the observation that “self-determination is framed universally as a right of all peoples.”<sup>170</sup>

#### F. *After the Cold War*

In every year dating back to the 1980s, the U.N. General Assembly has passed a resolution to reaffirm “that the universal realization of the right of all peoples, *including* those under colonial, foreign and alien domination, to self-determination is a fundamental condition for the effective guarantee and observance of human rights and for the preservation and promotion of such rights.”<sup>171</sup> As a summary pronouncement of all legal statements of self-determination since 1945, this U.N. General Assembly statement has unremittently affirmed not only that self-determination is a right of

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165. See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276*, Advisory Opinion, 1971 I.C.J. 16, ¶ 53 (June 21).

166. See SUMMERS, *supra* note 67, at 85 (“The UN Charter with 193 parties includes almost all the world’s states. The International Covenant on Civil and Political Rights has 167 parties and the International Covenant on Economic, Social and Cultural Rights has 160. These do not in principle bind every state[,] but they provide support for a legal interest for the vast majority of states in the right, which in turn underpins general obligations under custom.”); see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136, ¶ 88 (July 9) (“The Court indeed made it clear that the right of peoples to self-determination is today a right *erga omnes*.”).

167. See SUMMERS, *supra* note 67, at 78.

168. See Int’l Law Comm’n, Rep. on the Work of Its Fifteenth Session, U.N. Doc. A/5509, 18 U.N. GAOR Supp. No. 9, at 11 (1963); Int’l Law Comm’n, Rep. on the Second Part of Its Seventeenth Session and on Its Eighteenth Session, U.N. Doc. A/6309/Rev.1, 21 U.N. GAOR Supp. No. 9, at 16-17 (1966); Int’l Law Comm’n, Rep. on the Fifty-third Session, U.N. Doc. A/56/10, at 284 (2001).

169. See SUMMERS, *supra* note 67, at 85 (arguing that self-determination is a “prerequisite for human rights” and therefore “a concern of all states”).

170. See *id.* (arguing that an “obligation to respect the right of self-determination” imposes a “duty to respect its exercise by all people”).

171. *E.g.*, G.A. Res. 75/173, ¶ 1 (Dec. 16, 2020); G.A. Res. 74/140, ¶ 1 (Dec. 18, 2019); G.A. Res. 73/160, ¶ 1 (Dec. 17, 2018) (emphasis added).

all peoples, but more importantly, that it is a right the observance of which is a prerequisite for the observance of all other human rights.

The realization of self-determination as a universal right led in 2007 to the U.N. Declaration on the Rights of Indigenous Peoples.<sup>172</sup> The Declaration recognizes “the right of all peoples to be different, to consider themselves different, and to be respected as such.”<sup>173</sup> It also states that “nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law.”<sup>174</sup> In particular, the Declaration asserts that “[i]ndigenous peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social and cultural development.”<sup>175</sup> This Declaration suggests a new phase of self-determination where the emerging peripheral nation-state is held to the same claim-right that brought its own independence. Nevertheless, the nation-state that inherited the metropole remained outside the ambit of a claim-right to self-determination.

In spite of this, emphasis on self-determination as a universal right explains interest in studying its potential to expand to new subjects. Since the end of the Cold War, publicists continue to develop this right beyond claims of independence from colonial powers.<sup>176</sup> The fall of the Berlin Wall in 1989, and especially the creation of the World Trade Organization in 1995, shifted emphasis to the rise of globalization.<sup>177</sup> This shift resulted in vitiating the nexus between self-determination and the principle of “one nation, one state.”<sup>178</sup> There was now contemplation of a “missing dimension of political autonomy, or . . . [even] federal statehood within a given State,” although such revision of the right would blur the distinction between people, the holders of the right to self-

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172. See G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples, (Sept. 13, 2007).

173. *Id.* at Annex, 1.

174. *Id.* at Annex, 3.

175. *Id.* at art. 3.

176. See SENARATNE, *supra* note 113, at 45 (2021). See generally MODERN LAW OF SELF-DETERMINATION (Christian Tomuschat ed., 1993) (contributors focusing on the criteria for self-determination in a post-colonial world).

177. See Drew Keeling, *Fall of Berlin Wall, Rise of Globalization*, WHARTON MAG. 5 (Nov. 5, 2014), <https://magazine.wharton.upenn.edu/digital/fall-of-berlin-wall-rise-of-globalization/> [<https://perma.cc/F27S-K7UL>] (explaining the significance of the fall of the Berlin Wall in the context of liberalization of trade on a global scale).

178. See Keitner, *supra* note 23, at 12.

determination, and minorities, the holders of cultural rights.<sup>179</sup> Arguably, an example of this conflation is Kosovo's unilateral declaration of independence, where an ethnic group found support for self-determination.<sup>180</sup>

To prevent such blurring, the identity-based conception of self-determination is being replaced by criteria neutral to cultural and ethnic differentiation. Hence, the dimension of political autonomy is anchored in a doctrine of sociability, i.e., the right of people to "associate according to their affinities" rather than cultural or ethnic homogeneity.<sup>181</sup> This social basis for self-determination encouraged a strong moral dimension that acts as a significant limit on exercising the right, where it is interpreted as a reactive outcome, as a remedy analogous to self-defense, that is, as a "remedy of last resort."<sup>182</sup> Notwithstanding, sociability can also allow for territorial renditions of self-determination.<sup>183</sup> Why? Because social psychology exhibits superorganic features such as cooperation, and the city is a superorganism where such features emerge.<sup>184</sup>

In summary, self-determination began as a self-help remedy in response to a breakdown in the relationship between a sovereign and his subjects. This breakdown justified the exercise by some or all of these subjects of power over their territory as an expression of national sovereignty. Up to the end of World War I, self-determi-

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179. Christian Tomuschat, *Self-Determination in a Post-Colonial World*, in *MODERN LAW OF SELF-DETERMINATION* 15 (Christian Tomuschat ed., 1993).

180. See Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, 2010 I.C.J. 403, ¶ 84 (July 22) ("[G]eneral international law contains no applicable prohibition of declarations of independence.").

181. See Elizabeth Rodríguez-Santiago, *The Right to Sociability and the Future of Self-Determination*, in *THE THEORY OF SELF-DETERMINATION* 238, 238 (Fernando R. Tesón ed., 2016).

182. See ALLEN BUCHANAN, *JUSTICE, LEGITIMACY, AND SELF-DETERMINATION: MORAL FOUNDATIONS FOR INTERNATIONAL LAW* 5 (2004) (focusing on secession as the outcome from self-determination to argue against the one-nation, one-state principle, and hence rejects the primacy of self-determination within international law protections of human rights). *But see* ANNA MOLTCHANOVA, *NATIONAL SELF-DETERMINATION AND JUSTICE IN MULTINATIONAL STATES* 133, 141 (invoking moral arguments, *inter alia*, to argue for interpreting self-determination "as it applies to state institutions").

183. See Jeremy Waldron, *Two Conceptions of Self-Determination*, in *THE PHILOSOPHY OF INTERNATIONAL LAW* 397, 397 (Samantha Besson & John Tasioulas eds., 2010) (arguing that self-determination attaches to "anyone who lives permanently within the country").

184. See, e.g., Selin Kesebir, *The Superorganism Account of Human Sociality: How and When Human Groups Are Like Beehives*, 16 *PERSONALITY & SOC. PSYCH. REV.* 233, 251 (2012) (although Kesebir uses superorganism as a metaphor, she provides evidence of "superorganismic aspects of human sociality and argue[s] that multiple psychological and cultural mechanisms make human groups resemble superorganisms").

nation served mainly one outcome: decolonization.<sup>185</sup> There was now a legal mechanism for severing the tie between the imperial metropole and the periphery. Today, self-determination continues to emphasize its relational rationale by giving paramountcy to the will of the people.<sup>186</sup> This emphasis is aligned with the city as a superorganism through self-organization. Notwithstanding, the relationship of the metropolis to other cities in the nation-state remains outside the right to self-determination. In the following and last Section, I outline how existing U.N. pronouncement of the right to self-determination can guide constitutional designs that recognize the city as a superorganism.

#### IV. CONCLUSION

We saw that self-determination, whether as a self-help remedy, a principle of international relations, or a human right, resulted in the creation of nation-states. Beginning with the 1789 French Revolution, even as a self-help remedy for deposing tyrant regimes, self-determination led to the emergence of new nation-states. As a political principle, we saw how it originated in American, French, and German nationalism. Given this emphasis on nationalism as a human right, self-determination envisaged an end to colonization by the creation of new states.

I also explained why the right to self-determination is connected to the city, and how self-determination operates to empower the city. The colonial role of powerful cities is at the heart of exercising self-determination—although not exclusively. Self-determination does not preclude other subjects, including, for example, First Nations. My focus here, however, is on the city as one of these subjects. Specifically, European colonization illustrates how powerful cities created nation-states of which they usually became the capital city. Later, by controlling vast areas of overseas territories, these cities transformed themselves into empires. Recalling the origin of colonization as a process where one city imposes its

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185. Pomerance, *supra* note 148, at 329 (“For the General Assembly, the reverse has been true. Anti-colonial results ‘have been deemed more important than genuine self-determination methods.’”).

186. *See id.* (“In the Western Sahara case, the Court emphasized that, in its view, the essence of self-determination was method, not result: ‘the need to pay regard to the freely expressed will of peoples.’”); *see also* Western Sahara, Advisory Opinion, 1975 I.C.J. 12, ¶ 59 (Oct. 16) (“The validity of the principle of self-determination, defined as the need to pay regard to the freely expressed will of peoples, is not affected by the fact that in certain cases the General Assembly has dispensed with the requirement of consulting the inhabitants of a given territory.”).

authority over successively expanding territories, self-determination becomes a reaction where “colonia” appropriate said authority to themselves. For example, the American Revolution explains self-determination as a transfer of power from one city to another.<sup>187</sup> By 1790, London’s control over the United States had been transferred to a new national capital.<sup>188</sup> This reconstruction of self-determination uncovers a historical process marked by more “colonia” actualizing similar transfers. The analysis suggests that the city is at the heart of the historical context that eventually led to the need to formulate the doctrine of self-determination.

In summary, self-determination is the basis for a progressive reversal of colonization.<sup>189</sup> European empires emerged from the ability of powerful cities to control other territories, including ones overseas. Within this context, the discourse of self-determination found a fertile ground for breaking the sovereignty of these cities over overseas territories, albeit not over the metropole, which continued to survive in the form of a nation-state. The metropole phase of colonization, which took place in Europe, remains in occultation as far as international law is concerned.

The focus of the right to self-determination on the decolonization of peripheral territories is the result of a periodization of history.<sup>190</sup> While the right acknowledges the freewill of individuals to enter into a collective agreement, it is neutral when it comes to the scale of political organization because it “links this collective right to individuals within the people.”<sup>191</sup> The link between self-determination and the nation-state was a consequence of the zeitgeist of the eighteenth century, when “nations and peoples [were] the nat-

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187. A (philosophical) reconstruction is an endeavor to undue logical entanglement in the construction of self-determination to the end of elucidating its city-centric origins. See JOHN DEWEY, RECONSTRUCTION IN PHILOSOPHY 51–52 (1920) (“The train of ideas represented by the Baconian Knowledge is Power thus failed in getting an emancipated and independent expression. These become hopelessly entangled in standpoints and prepossessions that embodied a social, political[,] and scientific tradition with which they were completely incompatible. The obscurity, the confusion of modern philosophy is the product of this attempt to combine two things which cannot possibly be combined either logically or morally. Philosophic reconstruction for the present is thus the endeavor to undo the entanglement and to permit the Baconian aspirations to come to a free and unhindered expression.”).

188. See An Act for Establishing the Temporary and Permanent Seat of the Government of the United States (Residence Act) 1 Stat. 130 (1790).

189. See FERRO, *supra* note 45, at 18 (providing a contextual synthesis of colonization to support the proposition that “the different forms of imperialism and colonialization overlap and penetrate each other”).

190. For periodization in this context, see Ignacio de la Rasilla, *The Problem of Periodization in the History of International Law*, 37 L. & HIST. REV. 275, 296 (2019).

191. SUMMERS, *supra* note 67, at 37, 42 (emphasis added).

ural and appropriate unit for a group identity and for taking action.”<sup>192</sup> This hegemony of nation-states continued into the twentieth century, as can be seen in the U.N. General Assembly declaration that “all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of *their national territory*.”<sup>193</sup> Nevertheless, the scale of political organization continued to shrink: “At its founding, the United Nations had 51 members . . . [and] the United Nations now has more than 190 members.”<sup>194</sup> In essence, we are witnessing nationhood returning to its urban origin:

Much research and writing argues that the scale and magnitude of global economic interaction has fundamentally transformed the state, that states are no longer the major ‘containers’ of economic and social relations, and that a new form of state is emerging as a result of a ‘reterritorialization’ or ‘re-scaling’ which produces *a type of state in which the national and urban converge*.<sup>195</sup>

The convergence is explained by the process of colonization as well as the nature of the city. Our understanding of the city as a superorganism explains nationhood as part of the collective consciousness of the city. The nation-state is simply the avatar of powerful cities. In addition, our understanding of the process of colonization explains why cities are “central actors on the international legal plane.”<sup>196</sup> A combination of technological disruption and free trade enables city-states like Singapore to be not only economically viable, but to out-perform larger nation-states.<sup>197</sup> Under globalization, cities do not need the military power of the nation-

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192. *Id.*; see also Alexander Passerin D’Entrevès, *The State*, in 4 *DICTIONARY OF THE HISTORY OF IDEAS* 312, 318 (Philip P. Wiener ed., 1973) (illustrating the historical origins of the nation-state); Yael Tamir, *The Right to National Self-Determination*, 58 *SOC. RSCH.* 565, 568 (1991) (“For D’Entrevès then, the link between states and nations is an historical coincidence which should not blur the conceptual distinction between them.”).

193. G.A. Res. 1514 (XV), at 67 (Dec. 14, 1960).

194. HALL, *supra* note 131, at 238.

195. Halperin, *supra* note 46, at 106 (2017) (emphasis added) (citations omitted); see also NEIL BRENNER, *NEW STATE SPACES: URBAN GOVERNANCE AND THE RESCALING OF STATEHOOD* 3 (2004) (“[C]ity regions have become key institutional sites in which a major rescaling of national state power has been unfolding.”).

196. Yishai Blank, *International Legal Personality/Subjectivity of Cities*, in *RESEARCH HANDBOOK ON INTERNATIONAL LAW AND CITIES* 103, 103 (Helmut Philipp Aust & Janne E. Nijman eds, 2021).

197. HOBBSAWM, *supra* note 44, at 25 (critiquing the replacement of cultural identity with external determinants of the optimal size for political organization, such as economic viability). On the role of technology in reducing the size of political organization, see BENJAMEN GUSSEN, *AXIAL SHIFT* (2019) (explaining how the Fourth Industrial Revolution is contributing to the resurrection of cities as the dominant polity).

state to access new markets.<sup>198</sup> This is why cities are producing new forms of colonization.<sup>199</sup> Today, the city spearheads a non-territorial colonization on a global scale.<sup>200</sup> Notwithstanding the common perception that nation-states are the main, if not even the exclusive, subjects of international law, what came to be labeled as “global cities” are arguably becoming its real subjects.<sup>201</sup> International law needs to respond to this new colonization. Now that we have completed the decolonization of the periphery, attention must shift to the metropole.

The proposition that the city holds a right to self-determination has a moral and an epistemological basis.<sup>202</sup> My approach to explaining the link between cities and self-determination is predicated on the essence of the right to self-determination as a response to the injustices of colonization. We saw that the city had a role in colonization, from the metropolises of ancient Greece to the metropolises of European empires, which later became the nation-states we see today. However, the existence of settlements with a separate collective conscience within the metropole are still seen today. For example, we can observe the collective conscience of a city like Milan and other Italian cities with a long history of independence.<sup>203</sup>

Epistemologically, we saw that the city is a special type of organism, a superorganism. This is not a metaphor. Understanding the city as a superorganism affords it rights similar to the rights of

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198. See, e.g., Richard Bean, *War and the Birth of the Nation State*, 33 J. ECON. HIST. 203, 220 (1973) (explaining the role of the military power of the nation-state in sustained economic development).

199. See Halperin, *supra* note 46, at 100; see also HOBBSAWM, *supra* note 44, at 169 (“Yet nationalism, however inescapable, is simply no longer the historical force it was in the era between the French Revolution and the end of imperialist colonialism after World War II.”).

200. See, e.g., Kanishka Goonewardena & Stefan Kipfer, *Postcolonial Urbicide: New Imperialism, Global Cities and the Damned of the Earth*, 59 FORMATIONS 23, 25 (2006).

201. See, e.g., Lassa Oppenheim, *International Law* 19 (Hersch Lauterpacht ed., 8th ed. 1955) (“As a rule, the subjects of the rights and duties arising from the Law of Nations are States solely and exclusively.”).

202. See Weinstock, *supra* note 9, at 377, ¶ 7 (adopting a liberal interpretation of nationalism to argue that cities’ claim to self-determination comes from the interdependence of the wellbeing of city dwellers in a way that differs from their fellow citizens in a national state).

203. See ROBERT D. PUTNAM, *MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY* 151–58 (1994) (explaining the difference in wealth between Italian cities based on their history as city-states).

nature.<sup>204</sup> When we say that the city holds a legal right, we mean that the city has a legally recognized dignity in its own right, rather than be treated as a servant to those holding rights. This dignity means that a “public authoritative body is prepared to give some amount of review to actions that are colorably inconsistent with that ‘right.’”<sup>205</sup> The proposition is that the city has standing to bring legal action, obtain legal relief for the harm it suffered, and receive remedies for its own benefit.<sup>206</sup> The difficulty is that international law has not yet accepted the city as a superorganism. However, just like women, slaves, or African Americans were once rightless, only since the 1970s have organisms’ rights been recognized.<sup>207</sup> Furthermore, the organism nature of the city urges understanding rights generally as evolving over time, and hence as relational.<sup>208</sup> It follows that “protected rights would be derived from inquiries into what is necessary to create the relationships needed for a free and democratic society.”<sup>209</sup> Naturally, these relational rights continue to be informed by the overlap between self-determination and other international law principles, such as equal sovereignty, that apply equally to all states.<sup>210</sup>

This evolution of rights suggests that it is only a matter of time before international law recognizes that the city, like nature, has inalienable rights, particularly a right to self-determination. Within the understanding of the city as a superorganism, self-determination becomes the right of the city to self-organize. This means that the city must have more than jurisdictional autonomy. It needs a meta-jurisdictional autonomy where through its own consciousness, it identifies the nature and extent of its autonomy. In comparison, minority groups could lack the ability to self-organize. Such minority groups are, therefore, the holders of cultural rights rather than a right to self-determination.<sup>211</sup> Other minority

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204. See Lidia Cano Pecharroman, *Rights of Nature: Rivers that Can Stand in Court*, 7 RESOURCES 13 (2018) (using cases from New Zealand, Ecuador, India, and Colombia to illustrate how rivers are setting precedents on rights of nature).

205. C.D. STONE, SHOULD TREES HAVE STANDING? LAW, MORALITY, AND THE ENVIRONMENT 4 (2010) (emphasis omitted).

206. *Id.*

207. See C.D. Stone, *Should Trees Have Standing?—Towards Legal Rights for Natural Objects*, 45 S. CALIF. L. REV. 450, 496 (1972).

208. Cf. Jennifer Nedelsky, *Reconceiving Rights as Relationship*, 1 REV. CONST. STUD. (REVUE D'ÉTUDES CONSTITUTIONNELLES) 1 (1993) (arguing that rights are relational, and that constitutionalism is therefore a dialogue of democratic accountability).

209. *Id.*

210. SUMMERS, *supra* note 67, at 85.

211. See Tomuschat, *supra* note 179, at 15 (explaining the difference between the right of the people to self-determination and the cultural rights of minorities).

groups, such as First Nations, are more likely to secure the requisite self-organization.

Recognizing that the city is a subject of the right of self-determination opens the door for new constitutional designs where the city can straddle internal and external self-determination. City's self-determination does not have to lead to secession. The envisaged role for cities crosses the divide between internal and external self-determination:

While internal and external aspects to sovereignty broadly relate to a state people's internal self-government and its international relations, respectively, that distinction has been eroded, not least by the right of self-determination itself. International institutions have become involved in the protection of rights within states and representatives of groups within states may play roles in international fora, such as in the drafting of the Declaration on Indigenous Peoples.<sup>212</sup>

City's self-determination necessitates new constitutional designs where the city could still form part of a larger polity. Here, I outline one such design, a post-unitary, post-federal Polkadotian polity.<sup>213</sup> This polity must move away from the Westphalian nation-state assumption of a contiguous-and-non-perforated state. Jurisdictionally, it has to be perforated. In this design, there are constitutional and non-constitutional cities. The former cities are represented by polka-dots. These are cities with a meta-jurisdictional autonomy. Until a city decides to exercise autonomy, it is a non-constitutional city. Moreover, jurisdictions are not homogeneous across constitutional cities. Constitutional asymmetry is the norm rather than the exception.

Treaties between the city and the polity determine the extent of each city's jurisdiction. The geographic extent of the jurisdiction of a constitutional city is limited to its physical boundary as evinced by its built environment and immediate hinterland. The residual territory of the polity remains outside the jurisdiction of any city. The cities in this polity share sovereignty jointly and severally with a generality representing the territorial residual. The generality is divided into regions. The boundary of each region is defined by the constitutional cities forming the nodes on the region's periphery. In other words, there can be no constitutional cities lying inside the region, except for the capital city of the polity.

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212. SUMMERS, *supra* note 67, at 67.

213. *Cf. polka dot* (1857), MERRIAM-WESTER'S COLLEGIATE DICTIONARY (2012) (a polka dot is "a dot pattern of regularly distributed dots in textile design").

To prevent the formation of a metropole, the capital city does not participate in the governance of the region it lies within. The nodal constitutional cities share the region's governance as trustees, with one constitutional city able to act as a trustee over more than one region. In this polity, elected mayors make presidential and parliamentary appointments. The elections are decided by voters from the city, and population-weighted votes from the regions of which the city is a trustee. Therefore, a city's self-determination under international law would require existing nation-states to adopt constitutional designs closer to a Polkadotian design.

