

# Dilemmas of autonomy and liberal pluralism: examples involving Hungarians in Central Europe\*

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**ABSTRACT.** Liberal pluralists have argued that minority cultural communities are necessary for the liberty of minorities. On the premise that individual rights are insufficient to protect these cultural communities, they argue that ethnic and national groups should be allocated some type of collective autonomy. In this article, we critically examine this claim through a discussion of policies regarding Hungarian minorities. We show that liberal pluralist approaches (1) privilege ethnic and national identities over other types of communal identities, (2) require that ethnic and national communities be clearly bounded, but do not address how lines should be drawn, and (3) increase the power of cultural communities over their members. Policies based on liberal pluralist ideas therefore violate principles of equality *and* are likely to harm the autonomy of individuals. Rather than looking to liberal pluralist theories as a panacea for minority concerns, we demonstrate why we should be sceptical about this effort to move beyond minority protections based on individual rights.

Democratic theory has long wrestled with the possibility of majorities infringing on the liberty of minorities, a particularly salient concern when majorities and minorities are cultural groups. Even in long-established democracies, controversy remains over how permanent cultural minorities should be governed, sustaining debates about the nature of rights and justice, the importance of cultural identity, and the means to determine the boundaries of political communities. Since 1989 these debates have raged throughout East Central Europe, where multiethnic states remain in the process of constructing new democratic institutions. For Hungary and its neighbors, the

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issue of minority governance has been central to some of the most contentious policy debates. At the core of this dispute are dilemmas over how to balance individual liberty, the autonomy of cultural communities, and the sovereignty of the entire political community.<sup>1</sup>

Within European democracies, two distinct lines of thought have developed on minority policy. European institutions have attempted both to address basic minority demands and to emphasise the liberal view of individual autonomy. At the same time, a number of political theorists have also sought to develop a liberal theory of minority rights.<sup>2</sup> These liberal pluralists (or liberal nationalists) argue that individual rights are insufficient to protect minorities because they cede too much power to the majority community. In their view, some form of collective autonomy is necessary for minority cultures.

This paper examines theoretical difficulties in liberal pluralist claims through examples of policies by the Hungarian state, as well as those of its neighbours towards Hungarian minorities.<sup>3</sup> Because some of these policies explicitly invoke collective rights and cultural autonomy, they provide a useful basis to illustrate the implications of liberal pluralism. Through examples and comparison, we show that liberal pluralist approaches privilege ethnic and national identities over other types of communal identities and require that ethnic and national communities be clearly bounded. Because they require individuals to be members of bounded cultural communities, policies strictly based on liberal pluralism would infringe on core liberal principles of individual equality and autonomy. Thus, most actual minority policies in the region have made major concessions to liberalism. Rather than looking to liberal pluralism as a panacea for minority concerns, recent developments in European norms show how many liberal pluralist goals can be addressed without harming individual rights.

### **Liberal pluralism**

In the late 1980s, theoretical debates intensified over the role of difference in democracy. Seeking to explode myths of liberal neutrality, writers like Charles Taylor (1992) and Iris Young (1990) argued for a multicultural vision of democracy, one in which group membership would be explicitly recognised. Liberal pluralists build on these critiques as well as the debate between liberals and communitarians, who assert that the liberal emphasis on individuals has overlooked the centrality of communities in human existence (Avineri and de-Shalit 1992). Attempting to bridge these perspectives and yet contain the debates within the bounds of liberalism, liberal pluralism seeks to protect both individual autonomy and the ability of minority cultural communities to exercise their notion of the public good (Kymlicka 1989; Tamir 1993).

Liberal pluralism begins with the premise that membership in cultural communities is essential to our personal identity and provides individuals with

the necessary framework to exercise true liberty (Kymlicka 1995: 82–93; Tamir 1993: 16–34; Raz 1994: 160–3). As only national and ethnic communities provide this framework, membership in these communities is a primary good, the protection of which would be just behind a Rawlsian veil of ignorance (Kymlicka 1989: 162–7). Liberal pluralists part with communitarians in emphasising that individuals should be allowed to change their cultural identity and that communities must abide by liberal principles internally (Tamir 1993: 25–32; Raz 1994: 162). With these modifications it is seen as possible to protect individual liberty against the power of the community while at the same time enhancing community autonomy.

While just societies, in the liberal pluralist view, must provide equal opportunities for individuals to benefit from membership in a national community, minority communities in liberal democracies do not have powers equal to the majority group, as the principle of ‘majority rule’ translates demographic dominance into political dominance. They thus face a host of pressures to culturally assimilate. Collective rights therefore are necessary to maintain goods that are collectively held, such as culture or language,<sup>4</sup> and only autonomous minority institutions can legitimately provide both minority cultural goods and protect the minority from the majority. In other words, in order to achieve justice, minority cultural communities must have powers of self-governance that cannot be abrogated by the state (Kymlicka 1995: 75–130; Raz 1994: 155–76).

Classic liberals maintain that individual rights should remain the foundation of policies, contending that attaching claimable rights to national identity privileges it over other identities. It is also impossible to allocate such rights consistently and coherently under the premise of liberalism. Viewing *a priori* notions of substantive justice as interests and values (Dahl 1989: 163–75), ethnic and national cultures are considered neither necessary ingredients for the democratic process nor central to liberal theory. Furthermore, overcoming neutrality is a red herring as states are never neutral in terms of outcome. Liberal democracies enact laws and benefits affecting individuals in a variety of categories, such as the disabled and elderly. Likewise, individual members of ethnic and national cultural communities may benefit from public policies, but only as an outcome of a liberal democratic process. The notion that liberalism inherently requires ethnic or national groups to be collectively recognised, but not homosexuals, religious sects and other identity groups that generate meaningful communities, is simply untenable under a liberal theory as it violates principles of equality (Pogge 1997: 187–221; Barry 2001: 123–31). Furthermore, liberal pluralist assumptions may produce state policies that empower ethnic and national communities even in the face of low demand from individuals in the communities themselves, while at the same time increasing the power of the community over the individual. For these reasons, liberals find the assertion troubling that ethnic and national groups have *a priori* rights against the state.

*From theory to practice*

Controversies over the meaning of equality and the role of cultural communities lie not merely in the realm of political theorists, as they are now often invoked in policy debates within East Central Europe. However, policies based on liberal pluralism immediately spark problems with the recognition and maintenance of clear boundaries between communities. If minority communities have autonomy and other collective rights, there must be a principle for determining who belongs to a group and how the boundaries around the community will be drawn. In other words, there must be some legal identification attached to individuals to determine *who* is subject to the minority community's governance and for the allocation of collective rights, benefits and duties. There also must be a process to regulate entrance into and exit from the community, in order to allow individuals to change community membership. Finally, individuals only can be part of one community.

While such boundaries are crucial to the provision of group autonomy, liberal pluralists do not present clear principles for drawing and maintaining these boundaries. Democracies routinely allocate benefits and obligations to groups that can be defined by objective criteria, such as age and socio-economic status, or that are based on membership in an organisation, such as religious affiliation or union membership. This categorisation and ability to determine when an individual moves into and out of a category is more difficult when dealing with subjective identities – but if rights and public goods are tied to membership in cultural communities, states must confirm and enforce community boundaries.

Many liberals fear that membership rules to enforce group boundaries, by creating barriers to individual entry and exit, will reduce individual autonomy. Although liberal pluralists support individual autonomy in choosing group membership, they warn that overly permeable boundaries may result in a community being overrun by 'inauthentic' members, particularly if there are perceived benefits to joining it. As the influx of new individuals without roots in the community's culture could damage the group's identity, groups may establish rules to exclude those who wish to self-identify as members (Barry 2001: 112–18, Kymlicka 1989: 151). But once a group moves away from self-identification and establishes 'objective' criteria for membership, such as blood or family heritage, changing membership becomes impossible. Recognising this concern over self-identification, the Council of Europe has concluded that personal choice is 'a necessary element, but not a sufficient one' (Venice Commission 2001) to establish community membership. The rules that *are* 'sufficient' must be determined by the state, embedding this decision in the domestic political process. Whether state policies eventually promote hard or soft group boundaries, delineating who is inside and outside inevitably influences individual and collective identities.

At the extreme, some observers fear that claims for the tight boundary regulation and autonomy by cultural communities may be used to justify acts

such as territorial secession and ethnic cleansing (Ramet 1997: 8–10). For example, at a Bosnian conference a representative from Repulika Srpska (RS) argued that as a majority in the RS did not want Muslim and Croat refugees to return, international efforts to force their return violated democratic principles of community rule (ECMI 2001). The speaker even mentioned Kymlicka as a Western liberal who would support this position. Although not an accurate interpretation of liberal pluralism, neither is it an entirely surprising one, particularly if one focuses solely on the right to self-governance by minority communities.

Despite problems in drawing and regulating the community boundaries necessary to translate liberal pluralism into policy, liberal pluralism has resonated strongly among Hungarian theorists and politicians (Kántor 2003; Salat 2003). These theories are understood to legitimate both collective autonomy and the imagining of a community that transcends state boundaries. For minorities in Central Europe, liberal arguments regarding the centrality of the individual seem empty. Instead, group rights and cultural autonomy are seen as the wave of the future in a new Europe without borders (Csergo and Goldgeier 2004). The sections that follow outline examples of minority policies of concern to Hungarian organisations, self-declared Hungarians and the Hungarian state, noting particularly how these policies deal with issues of community boundaries, individual autonomy and the power of the political community.

### **Minority policy, European norms and Hungarians**

Hungarians in Romania and Slovakia have adopted the rallying cry: ‘Decisions about us should not be made without us!’ (Czibulya 1993; *Szabadság* 1994), and Hungarian organisations and political parties have attempted to influence minority policy within their states. Here we examine policies regarding language and education, devolution of government and representation and participation. European norms illustrate how we might implement policy to address many minority concerns without relying on notions of collective rights or minority autonomy, but rather by adhering to individual rights.

#### *Language and educational rights*

Recognition and support for minority language, education and culture are the most commonly claimed rights by minorities, as they view them as crucial to the survival of the cultural community. For these reasons, the European norms on these issues are comparatively well developed. An emphasis on individual rights emerged in the aftermath of World War II, partly in reaction to the perceived failures of more collectivist approaches during the interwar period (Preece 1998: 38). This emphasis on individual rights over collective rights was clearly articulated in the influential 1968 ‘Belgian Linguistics Case’

by the European Court of Human Rights. The court ruled that no individual or collection of individuals had the right to public education in any specific language, but neither could states place undue burdens on the ability of parents to have their children privately educated in the language of their choice (ECHR 1968). In other words, while norms have not guaranteed public support, they *have* guaranteed free expression and private support of minority language, culture and education.

In recent decades, minority policy norms of the Council of Europe and the Organisation on Security and Cooperation in Europe (OSCE) have shifted from non-discrimination against minorities to requiring states to actively preserve and support minority language and culture. For example, the Council of Europe's Charter for Regional or Minority Languages (1992) calls for states to facilitate the use of the minority languages. However, it does not explicitly guarantee the right of any individual or group to use the language in any specific situation. Similarly, the Council of Europe's Framework Convention for the Protection of National Minorities (1995) calls on states to promote minority languages, education and culture, and provides parameters for acceptable policies. By avoiding any hint of collective rights or tying the rights to specific persons, it eliminates the ability of minorities to make collective claims against the state (Venice Commission 1996; Gilbert 1996).

These recent documents approach questions about minority language, education and culture as matters of providing public goods, rather than as issues of rights and justice, as would be the focus of liberal pluralists. In this way, they place the interpretation and implementation of minority policy within the political process. States are thus prompted to enact language policies and sponsor institutions for minority education and culture only in response to articulated claims by minority groups, rather than to proactively create state-sponsored institutions for minority education and culture. Furthermore, such an approach does not require individuals to have fixed and legal ethnic or national identities. This is the case with Hungary's neighbors (with the partial exception of Slovenia), as policies can be planned based on census data, surveys of demand or other kinds of aggregate data. For this reason, as with other public goods, there is no discussion of excludability; any citizen is free to either partake or not partake in the good. This reading of the norms is reinforced by the fact that the many of these documents contain no (or only the vaguest) definition of a minority. As European states maintain very different policies towards different types of minority communities – immigrant communities, regional minorities and between similar types of minorities – it has been impossible to agree on which kinds of minorities may deserve what policies. The European approach thus stands in stark contrast to that of the liberal pluralists, who have tried to classify just policy by particular types of minorities (Carens 1994; Kymlicka and Opalski 2001).

While language and education rights are frequently lumped together in analysis, there are important distinctions between them. Rights to use minori-

ty languages publicly are exercised by individuals, are granted by states, and provide citizens with equal access to the state. As such, they can be considered as a means to integrate members of minorities more fully into the polity. However, these policies may remain controversial. In Slovakia and Romania, for example, throughout the 1990s there was considerable debate over the use of the Hungarian language in public administration. Hungarian speakers claimed that requirements to use Romanian or Slovak presented an undue burden on their efforts to use state services and carry out their rights and duties as citizens (Komáromi Lapok 1994; *Szabad Újság* 1998; CCRIT 1999).

In 1999 the Romanian and Slovak parliaments finally passed laws on public administration that allow speakers of minority languages to use their languages with local officials in cities in which twenty per cent or more of the local population declare the language their mother tongue, a policy that avoids questions of autonomy and group boundaries. These provisions clearly fall within European norms by making reasonable accommodation for minority-language speakers. By not singling out specific minorities, it has benefited the Roma as well as the Hungarians and leaves open future possible applications of the law, avoiding distinctions found in liberal pluralism over which kinds of cultural communities deserve language rights. In these cities, citizens of any ethnicity may choose to use either the state or minority language. Furthermore, a liberal pluralist approach would negate the twenty per cent threshold because if cultural communities have collective language rights, the very nature of rights should mean that they are not contingent on demography.

While language rights may serve to integrate minorities into the polity, minority education can be a way of separating minorities from the majority and to replicate minority culture. It is for this reason that minorities often claim autonomous educational institutions to be essential. While European norms do not ensure a specific right for minorities to education in their language, much less autonomous educational institutions, state provision of minority language education has emerged out of the democratic process throughout Europe. The Framework Convention elaborates European norms on this issue. First, states are to provide minority education when 'feasible'. Furthermore, if a state provides minority education, it cannot discriminate or specify who is eligible or ineligible to partake in minority education. Finally, the responsibility for minority education lies with the state, not the minority community – a situation that does not resolve minority complaints regarding how their history and culture is characterised in state curricula.

All of Hungary's neighbouring states contain Hungarian minorities, but their populations are most sizable in Romania, Slovakia, Serbia and Ukraine. Each of these states (and their predecessors) has continued a long tradition of providing Hungarian-language education. In Romania and Slovakia, certain subjects may be pursued in the Hungarian language through to PhD level. While the existence of such schools has remained consistent, the number and type of institutions providing Hungarian-language education remains a contentious issue. Hungarians tend to view existing provisions as minimal and

seek to reverse the diminution in the number of Hungarian-language schools during the last decades of communism, while majority groups tend to view minority-language education as quite extensive (CCRIT 1999; Stroschein 2004). In addition, there are on-going debates over the level of resources that are devoted to minority schools, how they should be managed, which historical narratives to stress and when majority languages must be used.

### *Minority education in Hungary*

In its own policies toward minority education, the Hungarian state has attempted to create a model for its neighbours to follow. Under Hungarian law, schools must provide minority programmes when the parents of eight or more students of a national minority request them, and these programmes are then limited to students whose parents register them at school as members of the minority. The Hungarian government's effort has produced some unintended consequences, though. These policies create a number of incentives for local governments to increase the number of children classified as minority and provide no barriers to parents who wish to change school records on the ethnic identity of their children. The most conspicuous result is the huge growth in the official number of German children; in 1998 almost 45,000 primary school students were enrolled in German-minority programs, which, by the latest census, is about 8,000 more than the number of ethnic Germans in Hungary (Deets 2002). In light of perceived future returns on having their children study German language and culture, many Hungarian parents decided to declare to the local school that their children are ethnic Germans. A similar situation exists in Slovenia, which provides minority educational programs for students declared Hungarian or Italian. One estimate is that as few as a quarter of the children in the Italian minority programmes have at least one parent who self-identifies as an Italian (Flere 2000).

These examples illustrate that non-minorities may demand access to public goods associated with minority culture just as minorities may want access to majority cultural goods. Furthermore, when there is high demand by ethnic majorities for certain goods of minority cultures, such as the languages of affluent states, questions emerge on whether the minority should have sole control over the access to such goods and their content. In the case cited above, as parents may declare their children to be German to obtain linguistic benefits, liberal pluralists would argue that the German minority has been overrun by inauthentic members and has lost control over its group boundaries. They would argue that an authentic German community should therefore be granted greater control over the content of German education and should be able to decide who is eligible for it. In fact, this is what German organisations in Hungary have demanded (Koncsek 2000). Many liberals would find the situation neither surprising nor alarming, for the Hungarian policy of free identification and non-exclusive access is undoubtedly liberal.



Current European norms in the areas of minority language and education are able to meet basic minority interests without resorting to autonomy or collective rights. Governments are mandated to support minority language, education and culture, but at the same time, minorities, either individually or collectively, are denied claimable rights to these goods. Decoupling the provision of cultural goods from the right to enjoy them makes the question of who is a member of which community less relevant *and* provides more power to the individual to decide whether or not to partake of the cultural goods. This stance avoids the problems with boundaries outlined above. At the same time, these European norms limit the power of majorities to assimilate minorities, and thereby give those minorities who wish to maintain their community greater ability to do so.

*Territorial autonomy: transforming majoritarianism?*

While central governments may provide minority education and other cultural goods, territorial autonomy allows minority groups more direct control over these policies. The geographic component of territorial autonomy is also understood to provide a protective space in which the cultural community can develop. One problem with territorial autonomy, however, is that *all* individuals living in the territory fall under its jurisdiction, regardless of whether they are members of the designated group. This situation inevitably creates minorities within minorities. In such cases, it is now the minority *within* the minority that might be subject to discrimination and assimilation pressures on the autonomous territory. Debates over autonomy thus tend to be highly contentious.

In the early days of democratic transition in Eastern Europe, many minorities understood self-determination to be a natural implication of democracy.<sup>5</sup> In this view, a majority of voters in a certain territory should be able to approve referenda to secede from or to obtain autonomy within a state. This line of thinking was clear in efforts to establish territorial autonomy in Ukraine in the early 1990s. As Ukraine voted for independence from the Soviet Union in December 1991, voters in the south-western region of Transcarpathia also approved a referendum for its 'autonomous status within Ukraine'. This autonomous region was asserted to be *multiethnic* in character, reflecting the numerous ethnic groups in the region (Ukrainians, Ruthenians, Russians, Hungarians, Slovaks, Romanians, Germans and Roma) and the belief that these groups contributed to a cultural community that was distinct from the rest of Ukraine. Simultaneous with these two referenda, Transcarpathia's Berehovo district voted to become a 'Hungarian Autonomous District' (*Magyar autonóm körzet*). The central Ukrainian government essentially ignored both referenda, but in many Hungarian circles the Berehovo district is described as a real entity (Reisch, 1992; *Kárpáti Igaz Szó*, 1991).

The lack of international pressure for Ukraine to accept, or even acknowledge, these referenda indicates the extent to which international law gives *de*

*jure* primacy to state borders. International law prioritises the ability of states (excepting in cases of severe discrimination or genocide) to regulate their own affairs within those borders – including decisions on autonomy (Heintze 1998; Preece 1998). Thus, even when a majority on a clearly bounded territory expresses support for autonomy through a democratic process, current norms give the citizens *of the entire state* the power to determine whether this demand is just, a position endorsed by some liberals (Dahl 1989: 193–209). It should be noted that the confusing and inconsistent policies towards the Yugoslav wars of secession muddled these norms (Kovacs 2003).

In an attempt to clarify norms on minority autonomy, in 1993 the Council of Europe proposed that Recommendation 1201 be added to the European Convention on Human Rights. Had it been adopted, its provisions would have become claimable legal rights, allowing suits against states in the European Court for Human Rights for violations. Article 11, which deals with autonomy, states:

In the regions where they are in a majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state. (COE 1993)

The article reflects liberal pluralist approaches in promoting the governance of cultural communities. It also demonstrates some practical difficulties with liberal pluralism, as enacting Article 11 would require defining what constitutes a region and appropriate autonomy. The war in Bosnia-Herzegovina, for example, was rooted in the inability to resolve the problem of delineating boundaries and agreeing on appropriate autonomy (Burg and Shoup 1999: 62–127, Ramet 1997). While Bosnia-Herzegovina may be a worst-case scenario, enshrining autonomy as a right instead of an interest creates an enormous burden on new democracies.

The question of what autonomy rights would mean in practice was one reason why Recommendation 1201 was never approved. By 1996, the Council of Europe's Venice Commission concluded that there is no common right of special status for minorities and that it would be impossible for international law to impose territorial solutions for minorities. The Commission stated that rights to autonomy or participation may be granted to *individuals* in association with other individuals, but not to a collective ethnic entity. Instead it interpreted the article as encouraging states to 'enable persons belonging to a minority to participate effectively in decision-making' (Venice Commission 1996). These recommendations led the Council to suspend the Recommendation, demonstrating their lack of will to embrace liberal pluralist approaches. However, in the few years that the COE considered 1201, it was a frequently cited justification by Hungarian minorities in pushing for autonomy (Enache 1997; Komáromi Lapok 1994). Recommendation 1201 is also mentioned in both the Hungarian-Slovak treaty (1995) and the Hungarian-Romanian treaty (1996).

Despite Hungarian government support for Recommendation 1201, past problems with territorial autonomy have led to ambivalence among Hungarians in Romania about establishing an autonomous territory. In 1952 the Romanian government created the Hungarian Autonomous Region (HAR) as an island in the center of the state. Although the region was majority Hungarian, only one-third of Romania's Hungarians lived within its boundaries. In 1960 Hungarian areas were detached from the HAR and Romanian areas were added, and by the end of the decade, the HAR was eliminated altogether (Vago 1989: 48–71). After a brief period of pushing territorial autonomy in the early 1990s, even the Hungarian party in Romania (Hungarian Democratic Union of Romania [UMDR]) began to move away from the issue (*Szabadság* 1994). This shift is partly due to recognition by the moderates dominating the party that it is impossible to draw a district that is both majority Hungarian and encompasses most Hungarians in Romania. Furthermore, many party elites themselves do not live in Hungarian-majority regions. Still, in 2003 the issue re-emerged as one of the most contentious within the UMDR (RFE/RL 2003).

Territorial autonomy attempts to 'correct' the size of the political unit by making national minorities into local majorities. However, international documents give national and cultural communities no more claim to territorial autonomy than other kinds of community. Special autonomous districts for ethnic and national communities thus often raise objections based on equality. Instead of viewing territorial autonomy as inherently just, as liberal pluralists assert, territorial autonomy should be understood only as the pragmatic result of political negotiations and compromise; i.e. as the outcome of democratic processes. Territorial boundaries for autonomy create internal minorities and exclude members of the cultural community who fall outside of these new lines, which can leave open some of the concerns that autonomy is meant to resolve. While Kymlicka (Kymlicka and Opalski 2001: 91) has explicitly argued for territorial autonomy for Hungarians in Romania, the UMDR recognises some of its problems and instead has focused its energies on devolving powers to local governments.

#### *Devolution and minority interests*

International documents on minority rights increasingly emphasise government participation instead of autonomy (Venice Commission 1996; Council of Europe 1995). Devolution is one way to make participation more effective, enabling individuals to exercise greater power at the local level and thereby resolving some concerns of majoritarianism at the state level. Decentralisation often has particular significance for geographically concentrated minorities. Both ethnic Hungarians and ethnic majorities in Hungary's neighbors recognise that decentralisation can have some of the same practical implications of territorial autonomy (Jarábik 2002; Stroschein 2004).

As the battle over decentralisation in Slovakia demonstrates, decentralisation still may be contentious. Ethnic Hungarians in Slovakia are concentrated in the south, along the country's long border with Hungary. Raising Slovak fears of secession, in 1993 and 1994 ethnic Hungarian parties produced a series of declarations calling for increased autonomy for the southern region. In 1996, the Slovak government, led by Vladimír Mečiar, instead created eight regions with few powers. The new regions' boundaries deliberately divided the Hungarians, leading Hungarian organisations to complain that the government was diluting their powers.

Prospects for regional reform changed dramatically after Mečiar's party lost the 1998 elections and the Hungarian Coalition Party (SMK) joined the governing coalition. The SMK devised a devolution proposal that would create a majority-Hungarian district, which differed from the government's official program. Given this divide, a proposal to preserve the Mečiar administration's eight regions unexpectedly passed in 2001. The SMK then pressured the government to devolve additional powers to the regions (Jarábik 2002). They now have some power over language, education and culture, although not as much as in federal states. Regions can also co-operate with regional governments in other states, such as those in Hungary, a provision that was particularly important to the SMK. Finally, due to a comparatively high turnout by Hungarian voters, the SMK did surprisingly well in the first regional elections in 2001 (Tynan 2001). These regional boundaries, though not initially favored by Hungarian politicians, will have fewer deleterious effects than initially feared.

Devolution may produce added levels of minority control without some of the concerns generated by autonomy. First, because devolution allocates powers symmetrically, it is a more egalitarian solution than asymmetric autonomy for particular groups. Second, negotiations on territorial autonomy often take place only between the central government and representatives of the minority, while in decentralisation the entire polity is involved. Non-ethnic interests may participate and invoke claims regarding economic or geographic concerns during the process. While liberal pluralists fear that devolution may divide minorities and limit their autonomy, devolution remains a useful way to increase powers of minorities without antagonising majorities.

### *Participation and representation*

Increasing minority participation and control over their community does not require a territorial component. One non-territorial means to increase access to decision-making procedures is through guaranteed representation in government bodies. A second option is to create separate bodies to represent minority interests in the policy-making process. While advocates of deliberative democracy argue that multiple groups must be represented in governing structures, it may be difficult to determine which individuals are sufficiently representative. Representation for certain groups can also raise

claims by other groups, who may feel that they are entitled to equal involvement in decision-making processes.

These concerns are apparent in policies on minority representation. Slovenia, for example, guarantees one parliamentary seat each for the miniscule Italian and Hungarian minorities (with controlled ethnic voting rolls), but none for the much larger Croatian and Roma communities (Flere 2000). In Romania, national and ethnic minorities whose parties do not pass the five per cent vote threshold are, under certain circumstances, eligible for a seat in parliament. In the 2000 elections, for example, the UDMR crossed the threshold, but the law also gave nineteen other minorities seats in the parliament who had not. Non-ethnic groups, such as the Pensioners' Party and the Greens, who received far more votes than the Hutul and Polish minorities, were left out. As the Romanian law does not require ethnic voting rolls, the number of ethnic parties as well as the number of ethnic groups in Romania has exploded, fueling cynicism about the background of some of these ethnic parties and the fairness of the law (Deets 2002).

Minority councils designed to advise and consent on policies important to minorities also provide voice and representation. For example, Austria's 1976 Ethnic Groups Act allowed the six autochthonous minorities in Austria to form such councils. The actual performance of these councils, however, is less than impressive; the Hungarians became the first to even form one, more than ten years later. While the councils have some oversight over cultural funds and provide advice on certain types of legislation, there is no requirement that the government must follow their recommendations. Finally, council members are often selected because of their ties to various political interests, leading minorities themselves to question whether these self-identified representatives really promote community interests (Sanford 1996). Ethnic advisory councils in Slovakia and Romania have also been criticised for being ineffective (Pufferova 2000). This criticism could be raised in all democracies with advisory bodies filled with those appointed for political reasons, and then ignored. The councils do provide some voice to minorities without violating liberal principles. Liberal pluralists, however, would prefer an explicit endorsement of autonomy for a bounded group.

### **Attempts to enact liberal pluralism: innovations of the Hungarian state**

Non-territorial autonomy is another means to provide cultural communities with increased control over issues of concern to them. This possibility allows for a group to administer its cultural, linguistic or religious matters through non-territorial structures (Lapidoth 1997: 5, 17). Because geography is not involved, non-territorial autonomy avoids creating minorities within minorities, and therefore avoids some of the criticisms levied against territorial autonomy. At the same time, non-territorial autonomy illustrates some of the greatest difficulties with liberal pluralist ideals.

Like *millets* under the Ottoman Empire, non-territorial governing structures are de-linked from territorial space. Karl Renner and Otto Bauer elaborated similar notions of governance in the early 1900s as a means to address the national concerns of Austria-Hungary (Bauer 2000). In the common rhetoric of Hungarian scholars and politicians, non-territorial autonomy encompasses three types of autonomy that are closely related (Stroschein 2004). Cultural autonomy involves self-administration over 'identity issues' such as language and education, including over schools. Personal autonomy involves an administrative structure to address these issues – one option might be representative and decision-making bodies for the minority group that are not linked to territory. Finally, functional autonomy denotes the transfer of certain state functions and rights to minority organisations (Heintze 1998: 20–4).

Similar to the case of representation and participation outlined above, under non-territorial autonomy difficulties remain in creating boundaries and deciding upon the degree to which they should be permeable. Because individuals must actively and publicly affiliate with a cultural community in order to receive its benefits, the state must create a process for documenting who is a member of which community. One outcome of this process may be collusion between certain factions of ethnic majorities and minorities who put forth a single notion of which minority communities should be recognised and who their members should be – the fear of many liberals. Another possibility is the creation of weak boundaries and the minority complaint of being overrun by inauthentic members – the concern of liberal pluralists. In addition, non-territorial autonomy challenges liberal conceptions of equality by granting rights only to certain cultural communities.

### *Dilemmas of promoting cultural autonomy in Hungary*

As Hungary would prefer that its neighbouring states take a collective-rights approach to protect Hungarian minorities, it is one of few European states to base its own domestic minority policy on collective rights. Its 1993 Act on the Rights of Ethnic and National Minorities states that 'minority rights cannot be fully guaranteed within the bounds of individual civil rights; thus, they are also to be formulated as rights of particular groups in society' (Waters and Guglielmo 1996: 181). In addition to addressing language and culture, this law establishes minority self-governments, a form of non-territorial autonomy. Under the law, it is particularly easy to create minority governing councils – partly reflecting the limited demand for such governments by minorities initially. The thirteen eligible groups now have councils, but these minority self-governments demonstrate the ambiguities inherent in putting non-territorial autonomy into practice.

Considerable debate remains over the purpose and powers of these councils (Melykuti, 1998; Kaltenbach 2000). In theory, they are to consent to local laws and ordinances that affect minority culture, media and education. While

some consultation takes place between the national councils and the Hungarian parliament, the practice of consultation varies wildly at the local level (Szegeged Roma and Polish Minority Self-Governments 2000). The councils are also intended to promote minority culture, but the state government only grants \$2,000 a year to each local minority self-government, too little to truly advance this goal. Some proposals have been made to enhance these governments' powers over cultural institutions and schools, but they remain quite controversial and are unlikely to be put into practice (Asbót 2000).

A further issue regards how the councils are elected. The elections for minority self-governments are held at the same time as the national elections. As there is no registry in Hungary of members of minority groups, *anyone* can vote for the members of self-governments, though a person can only cast votes for one council. Over half the voters in the 1998 general elections, for example, also cast a ballot for one of the self-governments (Korhecz 2002). It is not uncommon for individuals who run for Roma councils to campaign among self-identified Hungarians (Szegeged Roma and Polish Minority Self-Governments 2000). Serbian nationalists have been elected to Croatian councils. Many people want to be on the German councils because of their access to foreign funding and trips to Germany (Koncsek 2000). Even the government admits that such instant ethnic 'memberships' are a problem (Kaltenbach 2000). However, there is no agreement on how to solve the problem without limiting individual rights to self-identification (Asbót 2000; Szegeged Roma and Polish Minority Self-Governments 2000).

These difficulties with minority self-governments in Hungary illustrate the problems inherent in policies founded on collective rights within the context of a liberal democracy. The controversy over who has the right to vote for and to be elected to the minority self-governments is hard to solve without restricting self-identification – a step that would be quite controversial in Hungary and that would undercut the core liberal feature of the law. Questions regarding the mandate and scope of powers for the self-governments also raise the issue of whether they are truly necessary. For example, some minority-oriented foundations run more schools and organise more programmes to promote minority culture than do these self-governments (Móhacsi 2000). Because these minority governments simply represent certain interests and cultures, rather than pushing for the autonomy of a culturally bounded community, they have alleviated some liberal concerns. The lack of ethnic voting rolls for their elections is one example of this. However, these self-governments have become so effectively de-linked from specific communities that they also fall outside the realm of liberal pluralism.

### *The challenge of the Hungarian Status Law*

A second non-territorial policy incorporating notions of collective rights is the 2001 Hungarian Status Law. When liberal pluralists discuss autonomy for

cultural communities, they typically refer to communities within state boundaries. But cultural autonomy, particularly in a non-territorial form, also can be applied to transnational communities. The Status Law aimed 'to ensure that Hungarians living in neighbouring countries form part of the Hungarian nation as a whole' (Hungarian Status Law 2001). While the Hungarian state long expressed concerns over the 'Hungarians abroad', the law's timing reflected the approach of Hungary's entry into the EU, which Hungarians inside and outside of Hungary feared would create a new iron curtain along Hungary's eastern and southern borders.

Passed in June 2001 by an overwhelming 92.4 per cent vote of the Hungarian parliament, the law officially took effect in January 2002. Under the original law, ethnic Hungarian citizens of Romania, Slovakia, the Republic of Serbia and Montenegro, Croatia, Slovenia and Ukraine could apply to the Hungarian government for a 'Hungarian identity card' which would make the bearer eligible for certain transportation, health and employment benefits in Hungary. The law also provided for educational benefits inside and outside Hungary as long as the study was conducted in Hungarian.

The goals and policies of law challenged existing international norms regarding state sovereignty and European norms on state-based minority policy in several ways (Stroschein and Deets 2002). European norms clearly establish that it is states, and not cultural communities, that have obligations to protect the minorities within their borders. Because one of the law's goals was to discourage ethnic Hungarians from immigrating to Hungary, its initial provisions attempted to improve the situation of ethnic Hungarians in their states of citizenship. One benefit provided for holders of the ID to apply for financial assistance from the Hungarian state to pay for learning materials if they had children attending a Hungarian-language school in their state of citizenship (Hungarian Status Law 2001). Critics and even some supporters of the law believed the real purpose of this assistance was to tie ethnic Hungarians to the Hungarian state (Grexa 2003; Varhegyi 2001).

The Hungarian government meant to implement these policies even over the objections of its neighboring states. In this way, the Hungarian government was signaling that cultural communities may take precedence over legal political communities. Furthermore, if the Hungarian state takes responsibility for providing public goods to Hungarian minorities, this reduces the rationale for its neighbours to provide such goods to their citizens. In this way, the logic of the Status Law could actually reduce the autonomy of Hungarians in these neighbouring states by shifting the locus of decision-making about the community from, for example, Bratislava, Slovakia, where ethnic Hungarians who are Slovak citizens have voice and representation, to Budapest, Hungary.

Other problems involved questions of equality and the process to determine who is Hungarian. The original law required individuals to obtain a recommendation attesting to their Hungarian identity from an organisation within their state that had been approved by the Hungarian government. This



provision for determining group membership violated principles of individual autonomy by requiring individuals to have official ethnic identities and by requiring that such membership could not simply be self-declared. Self-identification, while sufficient for Hungary's own minority governments, was considered inadequate for the Status Law, recognising that many citizens in neighbouring states may desire ID cards in order to work in Hungary. In their evaluation of the law, European bodies condemned as discriminatory this differential treatment of individuals on an ethnic premise (Venice Commission 2001; Jurgens Report 2003).

The Status Law also caused an uproar in Hungary's neighbours, especially Romania and Slovakia (Duray 2003; Szechy 2003). Beyond the law's symbolic meaning, the Slovak government focused on issues of discrimination and extraterritoriality, especially the education benefits (Grexa 2003). Romania primarily objected to the rules on dependents and discrimination in labor benefits. 'Romania is not a colony from which Hungary can recruit labor', declared the Romanian Prime Minister (RFE/RL 2001).

As the law also came under strong criticism from the Council of Europe, the OSCE and the EU (COE 2003; Packer 2003), in June 2003 Hungary radically revised the law with regard to extraterritoriality and questions of equality. The revised law eliminates preferential treatment in employment and health, focusing exclusively on the promotion of Hungarian education and culture. It also acknowledges the centrality of Hungary's bilateral treaties with its neighbours (COE 2003). In addition, the revised law removes the role of recommending institutions for determining membership in a Hungarian community. Individuals are now eligible for a card if they declare themselves to be Hungarian and if they either are proficient in Hungarian or belong to a Hungarian organisation. Moreover, since the stated purpose of the law is now only to promote Hungarian education and culture, citizens of neighbouring states can receive many of the benefits even without an ID card (Hungarian Status Law 2003). These changes reflect clear pressure by European bodies to ensure that principles of individual autonomy and state sovereignty take precedence over ideas of collective autonomy (Zoltán 2003).

## Conclusions

A number of issues regarding the Hungarians outside of Hungary remain open questions, as with many disputes over minorities in liberal democracies. By examining European norms, which are based on liberal principles, and experiences involving ethnic Hungarians, it is apparent why policies based on liberal pluralism do not provide the best solutions. First, many interests of minority cultural communities can be addressed under liberalism and its framework of individual rights. Second, liberal pluralism cannot be implemented coherently. The primary goal of liberal pluralism is to promote community autonomy while preserving individual liberty, but these two

aims cannot be simultaneously pursued. There is little empirical evidence of the clear cultural boundaries upon which liberal pluralism relies, or that any boundaries will remain stable over time. Boundaries must be legally created and maintained, and the enforcement of strong community boundaries harms individual liberty.

Liberal pluralism also fosters concerns about equality, as ethnic and national groups are not the only communities that generate meaning for their members. From the perspective of liberal theory, the notion that justice requires the protection of national and ethnic minority communities alone cannot be sustained. As the examples above illustrate, individuals do not always privilege their ethnic or national identities – they act within a wide variety of cultural, religious and economic frameworks. Furthermore, individuals may be tied to more than one ethnic and national community, or may not wish to be tied to any at all.

We do not mean to imply, though, that policies to promote minority culture and identity are inherently unjust. Over time, liberal democracies have moderated the negative effects of majoritarianism through rights for minority individuals and the state provision of minority cultural goods. Existing policies in Slovakia and Romania on minority education and language, which clearly fall within European norms, promote the maintenance of minority communities without resorting to collective minority rights or minority autonomy. This public goods approach also increases individual autonomy by allowing individuals a greater choice of cultural goods, another concern of liberal pluralists.

Admittedly, minority policies under liberal approaches do leave public support of minority education and culture in the hands of the majority. This reality will always raise questions about the effectiveness of government policy from the perspective of minority communities, and minorities must often mobilise to effectively pressure states to change policy. However, cultural autonomy is not the only way to mitigate these concerns. While imperfect, committees of stakeholders, such as Hungary's minority self-governments or the Austrian ethnic advisory boards, can increase the participation of minority members in designing government policies. Such organisations are compatible with liberalism as long as they do not require the permanent fixing of individual ethnic identity or create hard community boundaries.

Government devolution to the local level, rapidly becoming a norm across Europe, can also increase the ability of minority communities to influence public policy. Ethnic Hungarians in many states have begun to focus on devolution instead of territorial autonomy. EU statutes recognise that government devolution can benefit a broader range of identity-generating communities, and, as even the Slovak experience has shown, can promote the interests of ethnic and national minorities.

European norms on national and ethnic minorities are founded on notions of individual rights and on state provision of minority cultural goods. These

bases provide a better framework than liberal pluralism for achieving policies and processes that both majorities and minorities can accept as just. Liberalism minimises questions on the appropriate boundaries of cultural communities and avoids privileging national and ethnic identity, problems which are impossible to resolve under liberal pluralism. While the theoretical debates proceed, Hungary, in line with its attempts to inject collective rights into its domestic minority policies and into the Status Law, has been pushing for the incorporation of group rights into the forthcoming European Constitution. European institutions should continue to clarify liberal principles as the basis of future minority policies, rather than risking the inconsistencies inherent in collective rights and liberal pluralism.

## Notes

1 In this article, 'political community' refers to all citizens of the state.

2 While liberals tend to base rights in either natural law or derive them from notions of individual autonomy and equality and liberal pluralists tend to tie rights to theories of justice, both agree that the existence of rights is not subject to the vagaries of politics. Here the word 'rights' is used to indicate matters that are not subject to a democratic process.

3 As a primary concern of this article is the problem of defining communities, the term 'Hungarian minorities' is admittedly problematic. Most policies discussed below implicitly concern those whose primary language is Hungarian. Even this definition leaves out those who do not use Hungarian as a primary language and self-identity as Hungarian and includes those who use Hungarian as a primary language and do not consider themselves Hungarian, including many Roma in the region. While recognising the salience of the Hungarian identity (CCRIT 1999; Csergo 2002), the recognition that individuals may rebel against such ethnic labeling and the dominance of such categories in political debates in Eastern Europe is one motivation behind this paper.

4 Hungarians use the terms 'collective' (*kollektív*) or 'non-privatisable' (*nem privatizálható*) goods to note the distinction between those goods held by the community and those held by individuals.

5 Fieldwork for a larger project on Hungarian minorities by Stroschein involved approximately 160 interviews with self-declared ethnic Hungarians and members of majority groups in Romania, Slovakia and Ukraine (Stroschein 2004).

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