Democratic Confederalism in Syria: The Nation-State, the Kurds, and International Law

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Introduction

When the bloody French mandate in Syria finally came to an end in 1946, Syria was 'in many respects a state without being a nation-state, and a political entity without being a political community'.[1] Syria's borders had been, in large part, imposed by European powers[2] and there was a general consensus that the divisions between the States were artificial.[3] To the extent that there was a nationalist movement, it emphasised Arab unity rather than Syrian unity[4].

This chapter seeks to sketch-out some features of Syria's development into a nation-state, with a particular focus on how that new nation-state reconceptualised the nature of the link between ruler and ruled in a way that grounded the oppression of Syria's Kurds. The chapter will then explain how the Kurds and their allies seek to reconstitute the Syrian State by disaggregating its sovereignty along federal lines. At the same time, this chapter is concerned with how international law legitimised French influence over the early stages of nation-state development in a way that contributed to the later injustices committed against the Kurds, and how international law interfaces with the Kurds' proposed federal model.

Part I provides context for the discussion by explaining that ethno-cultural differences in Syria were largely politically irrelevant under the Ottoman Empire. Part II explains that post-war international law legitimised French colonial practices in Syria. Those colonial practices, it is argued, instrumentalised the newly emerged minority rights discourse and contributed to (but did not directly cause) the future development of an exclusionary official Syrian nationalism. Part III describes the form of official nationalism that evolved after Syria won its independence, and how that exclusionary nationalism grounded grave abuses against Syria's Kurds. Part IV describes the Democratic Confederalism project of the Kurds and their allies and its commonalities with some other models of autonomy. Part V seeks to analyse the role of international law in the reconstitution of the Syrian State, and some of the ways in which it might validate the claim to a federal model.

I. Syria and the Kurds under the Ottoman Empire

Modern-day Syria was an integral part of the Ottoman Empire from 1516 until 1918. Due to its size and diversity, the Empire had to reach ad-hoc, non-territorial autonomy arrangements with various religious groups in order to function more-or-less effectively. The political

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[1] Nikolaos Van Dam, *Destroying a Nation: The Civil War in Syria* (IB Tauris, 2017), 5.

[2] The border between Syria and Iraq was not determined wholly in Europe. See Elieuzer Tauber, 'The Struggle for Dayr Al-Zur: The Determination of Borders Between Syria and Iraq' (1991) 23 Int. J. Middle East Stud. 361. The border with Turkey remained uncertain for several years after World War I.

[3] John McHugo, *Syria: A Recent History* (Saqi Books, 2015), 112.

[4] Albert Hourani, *Syria and Lebanon: A Political Essay* (OUP, 1946), 96.

salience of religion was expressed via the *millet* system, which institutionalized and refined some earlier, pre-Ottoman, methods of incorporating non-Muslim religious group into Muslim dynasties. Under the *millet* system, certain religious groups (which sometimes overlapped with ethnic groups) including the Greek, Armenian and Jewish communities were empowered to organise their own existence and take charge of some of their own affairs wherever they resided within the Empire[5] The nature and extent of those powers changed and fluctuated over time due to the unsystematic nature of the system.

While the *millet* system could be described as a form of minority rights protection *avant la lettre,* it is important to bear in mind that *ethno-cultural* differences were not, at that time, of particular political importance. Since the Empire derived its legitimacy, in large part and for most of its history, from religion rather than a claim to represent a particular people or nation, it did not matter whether the ruler shared the language or ethnicity of the ruled[6]. The majority of Syria's population spoke Arabic, but that fact was largely politically inconsequential[7]. Although Kurdish principalities were often repressed by Ottoman authorities, there were no direct threats to Kurdish identity and no attempts to Turkify them[8]. Indeed, as White highlights, it was the evolution of the Ottoman communities into nations that coincided with the evolution of minorities: a development that he describes as a 'traumatic epistemological transformation…'[9].

The various communities that we would today conceptualise as ethno-cultural minorities because of their cultural differences and numerical inferiority did, of course, exist within the Ottoman Empire. But it was the relatively recent development of the nation-state form, attended by the re-articulation of the relationship between ruler and ruled based on close ties to a particular ethno-cultural majority that gave meaning to the term 'ethno-cultural minority'[10].

Nationalism only became an animating idea among the educated urban minority in the two decades prior to World War I, and was initially concerned with attempts to preserve the Ottoman Muslim community in the face of expanding European power[11]. Over time, competing nationalisms began to develop - largely in reaction to each other. Turkish nationalism was partly a reaction to pressure from European States and the concomitant secession of many Christian peoples of the Empire. In turn, the emphasis eventually placed upon the Turkish nation began to make Arab nationalism more explicit[12].

As explained in the next section, Kurdish nationalism was a relative latecomer. Although the presence of a Kurdish population in Syria pre-dates the creation of the Syrian State and the

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[5] Karen Barkey and George Gavrilis, 'The Ottoman Millet System: Non-Territorial Autonomy and its Contemporary Legacy' [2016] Ethnopolitics 24.

[6] See Benjamin White, *The Emergence of Minorities in the Middle East: The Politics of Community in French Mandate Syria* (EUP, 2011), ch 1.

[7] Nikolaos Van Dam, *The Struggle for Power in Syria: Politics and Society Under Asad and the Ba'th Party* (IB Tauris, 2011), 2.

[8] Jordi Tejel, *Syria's Kurds: History, Politics and Society* (Routledge, 2009), 16.

[9] Benjamin White, 'The Nation-State Form and the Emergence of 'Minorities' in Syria' [2007] SEN 64, 64.

[10] White (n 6), ch. 1.

[11] Albert Hourani, *A History of the Arab Peoples* (Faber and Faber, 2013), 309-310.

[12] Ibid.

French Mandate[13] they did not constitute a homogeneous group at the beginning of the twentieth century because of their history, lifestyle, geographic origins and settlement[14]. They did not have a common reference point in some kind of shared ethno-cultural minorityhood, rather they were divided into various tribes, sects, villages, and other smaller groups[15].

II.   The French Mandate and the instrumentalisation of minorities

As is known, World War I brought about the collapse of the Ottoman Empire and the occupation of Syria by European powers: first the British and then, after their overthrow of the short-lived Faysal government in 1920, the French. The French occupation of Syria derived its legality at the international level from Article 22 of the League of Nations Charter, which inaugurated the Mandates System. As a former part of the Ottoman Empire, Syria's existence as an independent nation-state was provisionally recognised subject to an undefined period of tutelage.

Whereas pre-war international law had been heavily positivist in nature (leaving the internal workings of sovereign States immune from international legal scrutiny) the Mandates System, along with other innovations such as the minority rights treaties, made it possible for international law to lift the veil of sovereignty and access the interior of sovereign States. This major development was occurring at the same time as non-European territories, such as Syria, were beginning to demonstrate that they had the potential to enter the international community as sovereign equals[16].

The legally sanctioned division of the Arab provinces of the former Ottoman Empire between European powers served to slow their advance to full and formally equal membership of the international community as independent States. In the Syrian context, it was also a method of legitimising French control over the crucial early stages of development of the Syrian nation-state.

Although the imposition of the French Mandate was contrary to the political opinion of the Syrian people, who would have preferred absolute independence[17], the Mandate was justified (at least for the 'Class A mandates', of which Syria was one) by reference to the principle of self-determination[18], the idea being that Syria only needed Mandatory assistance until it was able to stand alone.

White argues convincingly that the emergence of minorities in Syria must be understood in the context of the French Mandate due to the interplay of two distinct factors: French policies

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[13] Michael M. Gunter, *Out of Nowhere: The Kurds of Syria in Peace and War* (Hurst, 2014), 8.

[14] Jordi Tejel, 'The Kurdish Cultural Movement in Mandatory Syria and Lebanon: An Unfinished Project of "National Renaissance"' in Djene Rhys Bajalan and Sara Zandi Karimi (eds), *Studies in Kurdish History: Empire, Ethnicity and Identity* (Routledge, 2015), 161.

[15] Tejel (n 8) 9. The same was true of the majority of the population: Moshe Ma'oz, 'Attempts at Creating a Political Community in Modern Syria' (1972) 26 Middle East Journal 389, 393

[16] Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP, 2004), ch 3.

[17] See 'King-Crane Commission Report' (*World War I Document Archive*) <https://wwi.lib.byu.edu/index.php?title=The_King-Crane_Report&printable=yes> accessed 8 January 2018.

[18] Anghie notes that the status of the mandate peoples in Africa and Asia was more uncertain. There, the mandatory powers were required to promote 'self-government': a more ambiguous term. Anghie (n 16), 121.

designed to exacerbate distinctions between communities, and the transition to a nation-state form[19], which had by then become the norm under the League of Nations.

To begin with the latter, the transition to a sovereign nation-state form did not occur upon the establishment of the French mandate. Although Syria was provisionally recognised as an independent nation under Article 22 of the League of Nations Charter, the Mandates System essentially created a space from which sovereignty was banished, or held in abeyance[20]. The ostensible *raison d'être* of the system was, however, to create the conditions necessary to support a functioning nation-state[21]. It was the decolonisation process that effectively universalised the nation-state form[22], but the early stages of the transition to that form occurred under French occupation.

As Ma'oz explains, it was not until the French mandate officially ended that Syrian leaders were in a position to embark on the difficult task of achieving national unity[23], but the future course of that task was partly influenced by the way in which France, under the legitimising umbrella of international law and institutions, sought to exacerbate differences between communities and instrumentalise the newly emerged discourse on minority rights for imperialist ends.

It is widely acknowledged that French policy in Syria sought to divide-and-rule the population in an attempt to counteract growing Arab nationalism. One such policy involved promoting isolated religious minority enclaves[24]. Apart from decreeing a new State of Lebanon in August 1920, the French also created separate States of Damascus and Aleppo and, in 1922, proclaimed the Jabal Druze a separate State under French protection. It was not until 1942 that the Jabal Druze and the separate Alawite State were reunited with the Syrian State[25].

Part of the French plan was to forestall a widespread sense of Arab nationalism that might threaten their position in Syria and elsewhere by driving wedges between communities based on their religious differences. This policy found some support in the text of the Mandate agreement, which noted, for example, that the Mandatory shall 'encourage local autonomy' (Article 1), and protect religious minorities (Article 8). Indeed, France cloaked its occupation of Syria in the legitimizing language of minority protection, based on the claim that France was the historic defender of Syria's Christians.

Although religious differences rather than ethnic differences were emphasised, the French occupiers employed minority ethnic communities to police the population at large. For

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[19] White (n 6) ch. 2.

[20] Susan Pedersen, *The Guardians: The League of Nations and the Crisis of Empire* (OUP, 2015), ch 7.

[21] Anghie (n 16), 117.

[22] Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870 – 1960* (CUP, 2001), 175

[23] Ma'oz (n 15), 398

[24] Philip Khoury, *Syria and the French Mandate: The Politics of Arab Nationalism, 1920-1945* (Princeton, 1989), 5

[25] Ibid 58-59.

example, Kurds were recruited to combat the 1925 Great Rebellion[26]. Given that French rule, despite its earnest attempts to forestall Syrian Arab nationalism, actually provided a stark rallying-point for a kind of anti-imperialist nationalism[27] that would continue well into the post-independence period, those ethnic minority communities were easily singled-out as traitors and potential sources of weakness. The Kurds were again viewed as 'hired agents in the service of powerful foreign enemies of Arabism' after Syria had won its independence[28]: a view that developed under the French Mandate and was then re-shaped to fit new circumstances.

As White points out, the move to reconceptualise distinct communities as minorities (pursuant to international law's newly emerged concern with minorities) began in the 1930s. For France, it contained the possibility of continuing to intervene in Syria's internal affairs after independence had been granted. For some of the communities agitating to be recognised as minorities, it meant the ability to appeal above the Syrian government's head for protection[29]. Again, when Kurdish activists latched onto the new minority rights discourse in an attempt to gain the support of European powers, Syrian nationalists saw it as treachery[30].

The constant threat of outside interference partly explains why Syria's nascent Arab nationalism came to be tinged by a pronounced paranoia about ethnic minorities. The importance of this dynamic should not be underestimated: Tejel notes that the fear of minority groups being used as pressure points by external powers has been 'one of the constant and undeniable features of the region's modern history'[31].

French actions in Syria were often legitimized by the League of Nations' PMC. For example, the brutal suppression of the 1925 Great Revolt, which Khoury describes as a 'popular and widespread anti-imperialist uprising with a pronounced nationalist orientation'[32], and which even some within the West had begun to see as a war of national liberation[33] resulted in Syrian petitioners to the PMC being told that the choice of Mandatory power was not up for discussion and that the shortest route towards independence was sincere collaboration with France[34]. The PMC also declared that it was permissible for France (in its own interests) to carve-up Syria into smaller States[35].

Overall, Pedersen argues that the aim of the mandates system was to 'enlist the great powers in a drama of public accountability that would legitimate this form of alien rule before a

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[26] Eva Savelsberg, 'The Syrian-Kurdish Movements: Obstacles Rather Than Driving Forces for Democratization' in David Romano and Mehmet Gurses (eds), *Conflict, Democratization, and the Kurds in the Middle East: Turkey, Iran, Iraq, and Syria* (Palgrave, 2014), 87.

[27] Khoury notes that although nationalism was a growing force during the final years of the Ottoman Empire, "it was the Mandate system which ensured that nationalism became the overwhelming flavour of the stew". Khoury (n 24), 219.

[28] Tejel (n 8), 41-42.

[29] White (n 6), 133.

[30] Janet Klein, 'The Minority Question: A View from History and the Kurdish Periphery' in Will Kymlicka and Eva Pföstl (eds), *Multiculturalism and Minority Rights in the Arab World* (OUP, 2014), 45-46.

[31] Tejel (n 8), 41-42.

[32] Khoury (n 24), 205.

[33] Pedersen (n 20), 147.

[34] Ibid 161.

[35] Ibid 158-159.

sometimes critical, newspaper-reading, *Western* public'[36]. In other words, international law provided a fig leaf to mask a method of exploitation that left lasting, deep scars on Syria, as elsewhere[37].

Having briefly outlined some of the ways in French rule (legitimised by international law) strengthened divisions between communities by instrumentalising the minority rights discourse, it is important to point out that even if Syria had *not* been occupied by France there would still have been political and social pressures driving Syria towards an exclusivist definition of State and nation. The example of Turkey – which was tutored towards the ideal of European civilization by its own, home-grown orientalist[38], rather than by colonizing European orientalists - and its parlous relationship with Turkey's Kurds serves as a reminder that the process of articulating a new relationship between ruler and ruled along nation-state lines can, and often does, result in exclusionary forms of nationalism. Indeed, the Faysal administration that was overthrown by France was originally called the *Arab*-Syrian government and the Syrian Congress had decided in 1920 to pursue a united Syrian kingdom that would be Arabic in its language and culture[39]. During the Mandate period, the National Bloc adopted a brand of nationalism that emphasised ethno-cultural unity and loyalty to a distinctly Arab nation[40].

Although there was nothing inevitable about it, the Kurds, who (as the next section indicates) would soon begin to be exposed to their own form of nationalism, and who spanned Syria's borders with Iraq and Turkey, could still have emerged as 'marked citizens'[41] even without French divide-and-rule policies. The fear of Kurds being used as pressure points by external powers continued post-independence, but did not necessarily rely on the presence of a threatening *European* power. Neighbouring States have frequently taken advantage of each other's Kurdish populations to exert pressure. The late Memed Aksoy called this grim phenomenon the 'Kurdish snare'[42].

The emphasis on the Mandates System is not an attempt to argue that the brutalisation of Syria's Kurds can be solely attributed to French colonial policies. Nor is it an attempt to identify a simple linear progression from Mandatory rule to the exclusionary character of the Syrian nation-state. This was influenced in complex ways by wider processes of nation-state formation against the backdrop of broader international discourses and regional events. Syrian rulers' prominent roles in the struggle over Palestine and the occupied Golan Heights, and their ability to maintain a kind of forced internal stability (until recently) are also major

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[36] Ibid, 168.

[37] A fuller account of the Mandate System is provided by Anghie (n 16), ch 3.

[38] See Welat Zeydanlioglu, '"The White Turkish Man's Burden": Orientalism, Kemalism and the Kurds in Turkey' in Guido Rings and Anne Ife (eds), *Neo-colonial Mentalities in Contemporary Europe? Language and Discourse in the Construction of Identities* (Cambridge Scholars Publishing, 2008).

[39] Ma'oz (n 15), 395.

[40] Khoury (n 24), ch 10.

[41] On 'marked citizens' see Klein (n 30).

[42] Memed Aksoy, 'The Kurds' 100 year Resistance and the Islamic State' (*Kurdish Question,* 18 August 2015) http://kurdishquestion.com/oldarticle.php?aid=the-kurds-100-year-resistance-and-the-is accessed 23 January 2018.

factors in the development and maintenance of Syria's exclusionary official nationalism[43]. While separate from the events that occurred under Mandatory rule, these events also represent a degree of continuity because they helped perpetuate the anti-imperialist flavour of Syria's nationalism.

Nevertheless, it remains the case that international law legitimised French rule and therefore played an important role in the future development of an exclusionary form of nationalism in Syria. It is hardly surprising that the instrumentalisation of the newly emerged minority rights discourse by imperialist powers should have at least *contributed* to that development.

III. Kurds in the Syrian nation-state

The French occupation of Syria had catalysed an already-growing Arab nationalism as an element of the resistance to imperial rule, but the independent Syria that emerged from the French mandate was, as the introduction to this chapter notes, 'a State without being a nation-state'. Although it had the institutions of a nation-state and was recognised internationally as a nation-state, the process of building national unity was just beginning. There was a general consensus that the borders were artificial and, as Van Dam notes, political consciousness stressed pan-Arab ideology and sub-national loyalties at the expense of commitment to the Syrian nation-state[44].

The new Syrian nation-state was characterised by ethnic and religious diversity. Writing shortly before the outbreak of the 2011 Syrian war, Van Dam noted that Arabic-speakers constituted a majority of 82.5% of the population, and Sunni Muslims constituted a religious majority of 68.7%. The majority of Syria's population (57.4%) consisted of Arabophone Sunnis. Major religious minorities included the Alawis, at 11.5% of the population; Christians, at 14.1% of the population; and smaller communities of Druze, Isma'ilis, Yezidis and others[45]. The largest ethnic minority is the Kurds, the exact size of which is disputed: Kurdish sources claim to represent 12-15% of the overall population and conservative sources claim that they represent around 8% of the overall population[46].

Some Kurds were present in Syria before Syria's independence and before the French mandate. Others fled to Syria after the 1925 Shaykh Sa'id rebellion in Turkey, which was brutally repressed[47]. Some of those exiled Kurds established the *Khoybun* league, which began to conceptualise the doctrine of Kurdish nationalism in Syria[48]. Thus *Khoybun*, Gunter writes, played 'a constructive role by helping to begin the process of creating or inventing Kurdish nationalism' by 'bringing [Kurds] into belated contact with nationalist concepts already widespread among the Arabs and Turks'[49].

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[43] Auroroa Sottimano, 'Nationalism and Reform under Bashar al-Asad: Reading the "Legitimacy" of the Syrian Regime' in Raymond Hinnesbusch and Tina Zintl (eds), *Syria from Reform to Revolt, Volume 1: Political Economy and International Relations* (Syracuse University Press, 2015).

[44] Van Dam (n 7), 4-5.

[45] Ibid 1

[46] Harriet Allsopp, *The Kurds of Syria* (2015, IB Tauris), 18.

[47] See Martin Van Bruinessen, *Agha, Shaikh and State: The Social and Political Structures of Kurdistan* (Zed Books, 1992), ch. 5.

[48] Tejel (n 8), 17.

[49] Gunter (n 13), 11-12.

Although the Kurds are dispersed across Syria, they are also territorially concentrated in certain northern regions. The areas of Afrin, Kobane and Qamishli in northern Syria are mostly Kurdish[50]. The territories lying between those areas contain mixed Arab-Kurdish territories and some non-Kurdish territories[51]. The mostly Kurdish territories are therefore non-contiguous.

As McHugo explains, the ideology that most affected Syria during and after 1946 was Ba'athism, which stressed (and still stresses, at least in rhetoric) the extinction of lesser loyalties that contradict Arab unity (which had been fragmented by artificial, externally imposed borders)[52]. The First Principle of the Ba'ath Party constitution notes 'The Arabs are One Nation, which has its natural right to live under One State…' and 'The Arab Homeland belongs to the Arabs. They alone have the right to administer its affairs, wealth and running of its potentials'[53]. With its emphasis on secularism, the potential strength of Arab nationalism lay in the possibility of unifying the large Arab nation by overcoming religious differences, such as those exploited under French rule[54].

The exclusivist emphasis on the Arab nation is clear, but its relationship with the actually existing nation-states created after World War I is less clear. That relationship has developed over time. Zisser notes that throughout the twentieth century Syrian identity oscillated between Arabism and 'Syrianism', with most Syrian leaders searching for a middle-ground that would reconcile the two[55]. By the time of the 1970s, the trend was 'towards difference [between Arab States] and even hostility rather than greater union'[56].

Despite the *de facto* abandonment of plans for a single Arab homeland, the official line that the State is the exclusive property of its Arab inhabitants has persisted, even though in reality there has been an almost total identification of the State with its leader[57], who has demonstrated his willingness to brutally oppress *all* segments of Syrian society. Achcar describes pre-2011 Syria as a 'patrimonial State' that was owned by its ruling family[58] - a state of affairs that Syria's patrimonial rulers sought to legitimise via appeals to Arabism[59].

[50] Fabrice Balanche, 'Rojava's Sustainability and the PKK's regional strategy' (*Washington Institute for Near East Policy,* 24 August 2016) <http://www.washingtoninstitute.org/policy-analysis/view/rojavas-sustainability-and-the-pkks-regional-strategy> accessed 9 January 2018.

[51] Ibid.

[52] McHugo (n 3), 117-118.

[53] 'The Constitution of the Baath Arab Socialist Party' (*Baath Arab Socialist Party National Leadership*, 31 August 2015) http://www.baath-party.org/index.php?option=com_content&view=category&id=307&Itemid=327&lang=en accessed 18 January 2018.

[54] Robin Yassin-Kassab and Leila al-Shami, *Burning Country: Syrians in Revolution and War* (Pluto, 2016), 9.

[55] Eyal Zisser, 'Who's Afraid of Syrian Nationalism? National and State Identity in Syria' (2006) 42 Middle Eastern Studies 179, 183.

[56] Hourani (n 11), 426

[57] Zisser (n 55), 179

[58] Gilbert Achcar, *Morbid Symptoms: Relapse in the Arab Uprising* (Kindle edn, Saqi Books 2016), location 187. Also note that Article 8 of the 1973 constitution referred to the Ba'ath Party as 'the leading party in the society and the State'.

[59] Roger Owen, *State, Power and Politics in the Making of the Modern Middle East* (3rd ed) (Taylor and Francis, 2004), 64. As Klein puts it, Arab nationalism became 'a movement of resistance to "colonial" rule and was quickly exploited by rulers and power-seekers… to legitimize their rule or claims to power," Klein (n 30), 43.

Although their primary concern has been the prolongation and entrenchment of their own power whatever the consequences for Syria's Arabs (who are, under the Ba'ath Party Constitution, supposed to be the sole people administering Syria's affairs), Syria's leaders have also taken concrete action that is consistent with an exclusionary form of Arab nationalism.

The 1973 Syrian Constitution (which was subsequently amended in 2012) stretched the short, tight skin[60] of the Arab nation over the ethnically diverse Syrian population, and so attempted to conceal its heterogeneity. For example, the name of the State is the Syrian *Arab* Republic and Article 1(3) states: 'The people in the Syrian Arab region are a part of the Arab nation', which glosses over the fact that many Kurds consider themselves part of a separate Kurdish nation that transcends the borders imposed after World War I. The insistence on the strict unitary nature of the State, and the exclusionary definition of the nation as consisting solely of the monolithic ethnic majority puts Syria in the same *monistic* category as neighbouring Turkey[61].

Syria's Kurds, excluded from the definition of the nation, have been able to participate fully in the Syrian State and society only to the extent that they were willing to adopt an Arabic identity[62]. Kurds who refused to commit cultural suicide by surrendering their identities were severely oppressed.

Perhaps the most striking example of the oppression of the Kurds resulted from the 1962 Hasakeh census, which was ostensibly concerned with differentiating between Kurds who had a right to Syrian citizenship and Kurds who had fled to Syria from Turkey and Iraq. Yildiz notes that the inhabitants of al-Hasakeh 'received no prior warning that a census would be conducted, nor were they given any indication of its consequences'[63]. The inhabitants of al-Hasakeh were given a single day to prove that they had lived on the land before 1945, and many deliberately avoided participating in the snap census in order to avoid military conscription[64]. The result was that 120,000 Kurds were classified as *ajanib* (foreigners) and thereby unable to vote, own property or work in government jobs[65]. Since the *ajanib* status was inherited, the number of Kurds affected was approximately 300,000 or more by 2014[66]. A further 75,000 Kurds were labelled *maktoumeen* (concealed). They had virtually no civil rights at all, and were worse off than the *ajanib*[67]. An expert report referenced by *International Crisis Group* notes that it was difficult for Kurds rendered stateless to hold legal jobs, go to high school and university, and ride on public busses and sleep in hotels: all activities that required a Syrian identity card[68].

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[60] These are Benedict Anderson's memorable words. Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso, 2006), 86.

[61] Article 66 of the Turkish constitution declares that 'Everyone bound to the Turkish State through the bond of citizenship is a Turk'.

[62] Van Dam (n 7), 18.

[63] Kerim Yildiz, *The Kurds in Syria: The Forgotten People* (Pluto, 2005), 33.

[64] Ibid.

[65] Gunter (n 15), 2.

[66] Ibid.

[67] Ibid.

[68] 'Popular Protest in North Africa and the Middle East (VI): The Syrian People's Slow Motion Revolution' (*International Crisis Group*, 6 July 2011), 20 https://www.crisisgroup.org/middle-east-north-africa/eastern-

Another striking illustration of how the Kurds were *othered* is provided by the report of Lt Muhammad Talab Hilal, published confidentially in November 1963. In the report, Hilal likened the Kurds to a 'malignant tumour that had developed in the body of the Arab nation'[69] and proposed that the tumour be excised via the settlement of Arabs in Kurdish areas, displacement of Kurds from their lands, and the denial of Syrian citizenship.

One of Hilal's recommended methods of bringing the Kurdish 'tumour' into remission involved Arabisation: policies designed to assimilate Kurds into the Arab nation. In 1965, a 275km long and 15km wide *cordon sanitaire*, known as the Arab Belt, running along the Turkey-Syria border was planned[70]. In 1973, the policy was implemented by ordering families in Kurdish villages to disperse to the interior regions of Syria, where they would be more remote from the Kurdish population. Arab families who had themselves been displaced by the construction of the Tabqa Dam were moved into areas vacated by Kurds[71]. Furthermore, in 1970 al-Assad blocked the distribution of land in order to avoid creating a Kurdish landowning class. The objective, Balanche notes, 'was to push the Kurdish population to emigrate to the big Syrian cities where it would be more likely to Arabize'[72].

The mostly Kurdish areas of northern Syria were also deliberately underdeveloped by successive Syrian regimes. Some of the majority Kurdish areas are rich in cotton, wheat and oil: commodities of great importance to Syria as a whole. But the creation of industrial enterprises was long forbidden by the State and the residents of those areas were forced into a situation of economic dependency. As Balanche puts it, resource rich places like Hasakeh 'came to resemble an internal colony forced to feed western Syria with raw materials'[73]. Again, the similarities with neighbouring Turkey[74] are quite striking: there too the Kurdish regions are economically underdeveloped - with the predictable result that many Kurds opt to move to the interior to become a source of cheap labour that can be more easily assimilated into the dominant ethnic group.

Other notable methods of cultural oppression included a *de facto* ban on publications in the Kurdish language[75]; a ban on the teaching of, or teaching in, the Kurdish language – even in private schools[76]; and policies aimed at replacing Kurdish names, business titles, and toponyms with Arabic ones[77].

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mediterranean/syria/popular-protest-north-africa-and-middle-east-vi-syrian-people-s-slow-motion-revolution accessed 10 January 2018.

[69] Yildiz (n 63), 34.

[70] Allsopp (n 46), 25.

[71] Yildiz (n 63), 36.

[72] Febrice Balanche, 'From Qamishli to Qamishlo: A Trip to Rojava's New Capital' (*Washington Institute for Near East Policy*, 8 May 2017) http://www.washingtoninstitute.org/fikraforum/view/from-qamishli-to-qamishlo-a-trip-to-rojavas-new-capital accessed 9 January 2018.

[73] Febrice Balanche, 'Rojava Seeks to Break Out in Syria' (*Washington Institute for Near East Policy*, 12 April 2017) www.washingtoninstitute.org/policy-analysis/view/rojava-seeks-to-break-out-in-syria accessed 10 January 2018.

[74] See generally Veli Yadirgi, *The Political Economy of the Kurds in Turkey: From the Ottoman Empire to the Turkish Republic* (CUP, 2017).

[75] Yildiz (n 63), 114.

[76] Ibid, 117.

[77] Ibid, 117-119.

Having sketched-out some of the consequences for the Kurdish minority of the official Arab nationalism exercised by the patrimonial Syrian nation-state, the next section will examine how the *Democratic Union Party* (PYD) - which became the dominant party in certain parts of northern Syria during the Syrian war - and associated groups intend to redefine the Syrian State and redistribute its sovereignty in order to salve the wounds inflicted upon the Kurds, and upon others, by the Syrian nation-state.

IV.   Democratic Confederalism and the Democratic Federation of Northern Syria (DFNS)

When Assad regime forces withdrew from Kurdish areas of northern Syria in July 2012, the PYD's institutions filled the power vacuum, and by November 2013 its armed wings had become the dominant military forces in almost all Kurdish-populated areas[78]. At the time of writing, the PYD's multi-ethnic (but mostly Kurdish) Syrian Democratic Forces (SDF) have liberated areas beyond the Kurdish-inhabited territories (including Raqqa - the former 'capital' of the Islamic State) and established their influence over roughly one third of Syria.

The PYD is part of the KCK, which is an umbrella organisation encompassing several distinct parties and groups across Syria, Turkey, Iraq and Iran[79]. These organisations have as their common denominator an attachment to 'Democratic Confederalism' as an alternative paradigm to the nation-state[80].

Democratic Confederalism has been described by its leading theorist - the imprisoned leader of the PKK, Abdullah Öcalan - as 'a non-state political administration or democracy without a state'[81]. It is inspired, in part, by the writings of Murray Bookchin, whose powerful critiques of nationalism and nation-states[82] led to a call for a form of direct democracy. In outline, Bookchin's ideas involve the local self-management of municipalities and (in order to avoid the tendency towards parochialism that could develop from that project) a confederation that transcends the boundaries of the municipality. Within that framework, the means of production would fall under the purview of a local assembly and administrative tasks would be delegated to leaders or collective bodies, provided that they were immediately recallable if they began to abuse their power[83]. In Bookchin's confederalist model, 'policymaking is exclusively the right of popular community assemblies based on the practices of participatory democracy' and 'Power thus flows from the bottom up instead of from the top down'[84]. The flow of power from the bottom up, Bookchin writes, 'diminishes

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[78] 'Flight of Icarus? The PYD's Precarious Rise in Syria' (*International Crisis Group*, 8 May 2014) www.crisisgroup.org/~/media/Files/Middle%20East%20North%20Africa/Iraq%20Syria%20Lebanon/Syria/151-flight-of-icarus-the-pyd-s-precarious-rise-in-syria.pdf accessed 11 January 2018.

[79] See generally Seevan Saeed, *Kurdish Politics in Turkey: From the PKK to the KCK* (Routledge, 2017).

[80] Ibid 62.

[81] Abdullah Öcalan, *Democratic Confederalism* (Transmedia Publishing, 2011), 21.

[82] Murray Bookchin, 'Nationalism and the "National Question" (1994) 2 Democracy and Nature 8.

[83] See Murray Bookchin, *The Next Revolution: Popular Assemblies and the Promise of Direct Democracy* (Verso, 2015), chs 1-2.

[84] Ibid 75.

with the scope of the federal council ranging territorially from localities to regions and from regions to ever-broader territorial areas'[85].

To this emphasis on direct, communal, and confederal democracy as an alternative to the nation-state, the project in Syria adds a strong emphasis on the long-overdue emancipation and empowerment of women[86].

The Democratic Confederalism project, writes Jongerden, rejects the assumption that the nation-state is the natural social and political form of society[87] and disassociates democracy from nationalism and nation from State[88]. In its stead, self-determination is conceptualised 'in terms of the right of people to make decisions, to take responsibility for the organisation and regulation of their social, economic, political and cultural affairs (democratic autonomy), and a bottom-up, council democracy for its administration (democratic confederalism)'[89]. In theory then, the aim is not to carve a Kurdish nation-state from an Arab nation-state, or even to carve a Kurdish federal region from an Arab nation-state, but to *banish the nation-state entirely*. If successful, such a project could result in a situation whereby power is not claimed to be exercised on behalf of the majority (with guarantees to protect minorities) but where power is exercised by individuals and local communities in cooperation with each other.

In concrete terms, the original 'Social Contract' of the DFNS (then called *Rojava* – an overtly Kurdish name that was deliberately replaced by the more neutral DFNS) defined itself in its preamble as a 'confederation of Kurds, Arabs, Assyrians, Chaldeans, Arameans, Turkmen, Armenians and Chechens'. The updated version of the Social Contract (unofficially translated into English and published by a prominent journalist with much on-the-ground experience in the DFNS[90]) notes that the DFNS is based on 'democratic self-administrations' (Article 7) and that 'Cultural, ethnic, and religious groups and components shall have the right to name its self-administrations…' (Article 33).

Several observers note that the base level of organisation in the DFNS is the local commune, which federates up to the neighbourhood level, the district level, and finally to a body made up of all district councils. Around this confederal system is built a series of committees focusing on women, defence, economics, politics, justice and ideology[91].

Although different in some important respects, Democratic Confederalism as expressed in the Social Contract has some things in common with the model of national-cultural autonomy. Like that model, which 'rejects the idea of ethnically or nationally exclusive control over

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[85] Ibid.

[86] See Abdullah Öcalan, *Liberating Life: Women's Revolution* (International Initiative, 2013).

[87] Joost Jongerden, 'The Kurdistan Workers' Party (PKK): Radical Democracy and the Right to Self-Determination Beyond the Nation-State' in Gareth Stansfield and Mohammed Shareef (eds), *The Kurdish Question Revisited* (Hurst, 2017), 248.

[88] Ibid 252-253.

[89] Ibid 254.

[90] Wladimir van Wilgenburg, 'Social Contract of the Democratic Federalism of Northern Syria' (*Transnational Middle East Observer*) http://vvanwilgenburg.blogspot.co.uk/2017/03/social-contract-of-democratic.html accessed 11 January 2018.

[91] Michael Knapp, Anja Flach, and Ercan Ayboga, *Revolution in Rojava: Democratic Autonomy and Women's Liberation in Syrian Kurdistan* (Pluto, 2016), ch. 6.

territory'[92], Democratic Confederalism focuses instead on the self-administration of cultural, ethnic and religious groups at the local level. Democratic Confederalism also incorporates some elements of consociational models. For example, according to the most recent Social Contract the executive councils of the various cantons must adopt a fair representation of peoples, groups and social segments[93].

There are several notable critiques of the Democratic Confederalist model[94], and of its implementation. Exigencies of space preclude a full examination of those critiques, but some of them are worth briefly summarizing. Leezenberg, for example, argues that the DFNS actually resembles 'a Leninist one-party statelet' dominated by the PKK[95]. In his view, there is a "strange tension" between the discourse of democratic confederalism and the "consistently hierarchical, centralistic and top-down organization that the PKK has maintained in practice"[96]. In his important book on the DFNS, Schmidinger paints an intermediary picture which eschews both idealistic views of the DFNS and the view that real control is exercised by an authoritarian PKK. In Schmidinger's reckoning there is indeed tension between the organs of democratic confederalism (communes, councils, etc.) and the PKK, but although the PKK has the final say in decisive questions, the councils do at least play an important role in day-to-day decision making[97]. Joseph and Isaac have produced some sharp criticisms of the cultural pluralism claimed by the PYD. They argue that Assyrian organisations with almost no popular support among Northern Syria's Assyrian population are essentially instrumentalised by the PYD as propaganda for the Democratic Confederalism project. They argue that the Democratic Confederalism project is in fact a mask hiding the PYD's true intentions, namely the eventual creation of an independent Kurdish state[98].

Despite the importance of these criticisms, several first-hand accounts suggest that despite the 'daunting challenges' that undoubtedly face such a radical project[99], sincere efforts are being made to construct a 'unique system of self-government' springing from 'popular assemblies and democratic councils'. These sincere efforts are said to make possible a form of direct

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[92] Ephraim Nimni (ed), *National-Cultural Autonomy and its Contemporary Critics* (Routledge, 2005), 10.

[93] Van Wilgenburg (n 90), Article 56.

[94] David Harvey, for example, writes that in the absence of a 'higher authority' taking policy decisions from the top-down, there could emerge large scale inequality between those living in the more privileged communes and those living in the less privileged communes: David Harvey, *Rebel Cities: From the Right to the City to the Urban Revolution* (Verso, 2013), 152.

[95] Michael Leezenberg, 'The ambiguities of democratic autonomy: the Kurdish movement in Turkey and Rojava' (2016) 16 Southeast European and Black Sea Studies 671.

[96] *Ibid* p. 675.

[97] Thomas Schmidinger, *Rojava: Revolution, War, and the Future of Syria's Kurds* (Pluto Press, 2018), pp. 134-135.

[98] Max J. Joseph and Madean Isaac, 'Romancing Rojava: Rhetoric vs. Reality' (Syria Comment, 31 July 2018) https://www.joshualandis.com/blog/romancing-rojava-rhetoric-vs-reality/ accessed 22 August 2018.

[99] Incidentally, despite the limited emancipatory potential of some aspects of international law, other aspects present obstacles to the realisation of Democratic Confederalism. The aim to democratise the economy, for example, cuts across the practice of the International Financial Institutions: see B.S. Chimni, 'International Institutions Today: An Imperial Global State in the Making' (2004) EJIL 1. For a more recent account, see Tor Krever, 'Law, development, and political closure under neoliberalism' in Honor Brabazon (ed), *Neoliberal Legality: Understanding the Role of Law in the Neoliberal Project* (Routledge, 2017).

democracy where various ethnic groups can organise autonomously[100]. As the criticisms summarized above indicate, the tension between Kurdish nationalism and Democratic Confederalism is one of those daunting challenges.

Democratic Confederalism does *not* aim to embark on the infeasible task of immediately abolishing States[101], although it does aim to transcend State boundaries. The PYD also aims to spread the Democratic Confederal model throughout Syria[102]. PYD officials claim that Democratic Confederalism is, in fact, compatible with some form of territorial federalism within Syria. According to one PYD official, it would be desirable to apply a 'geographical federal model rather than a nationalistic one on all of the Syrian territories' which might consist of four federal entities within a newly constituted Syria: 'north, south, coast and desert'[103].

In summary, Democratic Confederalism is in theory an attempt to salve the wounds inflicted upon Syrians by the imposition of the nation-state form. It is, broadly speaking, a project that aims to eventually abolish the nation-state form and the associated concept of minorities by empowering local communities to take charge of their own affairs within a radical confederal network.

V.   Reconstituting Syria: some aspects of the role of international law

Christine Bell writes that international law relates to internal conflict with an ethnic component in two ways: human rights abuses are addressed by the application of human rights and humanitarian law standards, and broader issues of 'sovereignty, territory, and access to government which are at the heart of the conflict' are dealt with via international law's self-determination and minority rights provisions[104]. There is a degree of overlap as both self-determination and minority rights are part of the broader human rights framework.

Whereas self-determination in the decolonisation period was the legal mechanism through which, as Koskenniemi puts it, the European State form was 'effectively universalized…as the only form of government that would provide equal status in the organized international community[105]', more modern understandings of self-determination emphasise its *internal*

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[100] 'Joint statement of the academic delegation to Rojava' (*Roar Magazine*, 15 January 2015) https://roarmag.org/essays/statement-academic-delegation-rojava/ accessed 12 January 2018.

[101] As Öcalan explains, peaceful coexistence with the State is possible, subject to a right of self-defence: Öcalan (n 67), 32. Bookchin notes that one must expect 'national institutions' to resist and that the democratic confederations, which embody a 'dual power against the state', will either be radicalized by that resistance and 'resolutely face all its consequences', or else they will 'sink into a morass of compromises that absorb it back into the social order that it once sought to change': Bookchin (n 69), 18.

[102] Si Sheppard, 'What the Syrian Kurds Have Wrought' (*The Atlantic*, 25 October 2016) https://www.theatlantic.com/international/archive/2016/10/kurds-rojava-syria-isis-iraq-assad/505037/ accessed 22 January 2018. Öcalan goes so far as to propose a confederate assembly to oppose the United Nations: Öcalan (n 81), 31.

[103] Mohammad Bassiki, 'Syrian Kurds focused on federalism' (*Al-Monitor*, 27 October 2017) www.al-monitor.com/pulse/originals/2017/10/syria-federal-state-kurds-turkey-russia.html accessed 12 January 2018.

[104] Christine Bell, *Peace Agreements and Human Rights* (OUP, 2003), 32.

[105] Koskenniemi (n 22), 175.

dimensions as well as its *external* dimensions and are therefore more attuned to the problems facing sub-State groups.

For Bell, the law of self-determination connects peace agreement practice to a 'normative universe'[106] and can operate to essentially blur State sovereignty through the practice of 'hybrid self-determination'[107]. In broad outline, hybrid self-determination consists of procedural and substantive components.

In its procedural aspect, self-determination entails a right of peoples to be heard[108]. In the context of State breakdown and the need to reconstitute such a State, this comes close to what Anaya calls 'constitutive self-determination', which involves individuals and groups being accorded 'meaningful participation, commensurate with their interests, in procedures leading to the creation or change in the institutions of government under which they live'[109].

In its substantive aspect, self-determination entails a right to 'effective and fair participation in public decision-making and in all public institutions'[110]. This can be implemented through periodic elections[111], coupled with three frameworks that aim to accommodate the competing demands of the conflict's contenders[112]. *State redefinition* aims at changing the nature of the State through 'articulating a new relationship between people and state'[113]. *Disaggregation of power* addresses the state's internal sovereignty[114] and could involve various forms of territorial, cultural or functional autonomy, as well as human rights mechanisms such as minority rights protection. *Dislocation of power* 'addresses the state's external sovereignty by attenuating it' and involves 'powers of governance that cross state borders and are in some sense shared between more than one state, and/or place international actors at the heart of new arrangements'[115].

International lawyers have engaged with ethnic and nationalist conflict using broadly similar techniques since the inter-war period, when they sought new ways to accommodate nationalism within a newly autonomous international law that was subservient to neither States nor nations[116].

In the context of the Syrian war, the possibility of using the above frameworks in a future peace agreement is reflected in the Geneva Communique of 30 June 2012, which was adopted by the Secretaries General of the United Nations and the Arab League, the

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[106] Christine Bell, *On the Law of Peace: Peace Agreements and Lex Pacificatoria* (OUP, 2008), 220.

[107] Ibid ch 11.

[108] Ibid, 219. See also: Jan Klabbers, 'The Right to be Taken Seriously: Self-Determination in International Law' (2006) 28 HRQ 186.

[109] James Anaya, 'A Contemporary Definition of the International Norm of Self-Determination' (1993) Transnational Law & Contemporary Problems 131, 145.

[110] Bell (n 103), 219.

[111] The focus on periodic elections has been critiqued by, *inter alia*, Susan Marks. See Susan Marks, *The Riddle of all Constitutions: International Law, Democracy and the Critique of Ideology* (OUP, 2003).

[112] Bell (n 103) 105.

[113] Ibid 106.

[114] Ibid.

[115] Ibid 106-107.

[116] See Nathaniel Berman, '"But the Alternative is Despair": European Nationalism and the Modernist Renewal of International Law' (1992) 106 Harvard Law Review 1792.

Permanent Members of the UN Security Council, Turkey, Iraq, Kuwait, Qatar, and the High Representative of the European Union for Foreign Affairs and Security Policy (although the Communique notes that a wide range of Syrians were consulted, neither the regime nor the opposition were represented at the meeting[117]). It was endorsed by the UN Security Council in Resolution 2118 on 27 September 2013.

Although the Communique does not set out in advance any particular constitutional model for Syria, it does at least note that the *process* towards a Syrian-led settlement 'must be fully inclusive in order to ensure that the views of all segments of Syrian society are heard in shaping the political settlement for transition'. This emphasises the procedural aspect of self-determination.

The Communique also notes that the *substance* of any political settlement must deliver a transition that 'Offers a perspective for the future that can be shared by all in the Syrian Arab Republic' – not just by the monolithic majority. Whatever form the political settlement takes, it should meet the broad aspiration for a State that is 'genuinely democratic and pluralistic' (para. 8(a)) and it must guarantee the rights of minorities (para. 8(c)). It must also respect the sovereignty, independence, unity, and territorial integrity of Syria (para. 11(a)). The Communique therefore leaves room for some form of federalism to be negotiated in future peace talks[118].

It is also worth bearing in mind that Syria is bound by various international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Those treaties, among others, contain some 'overarching legal categories used to support ethnocultural claims in multiple, and often overlapping ways'[119]. For example, the individual right of members of minority groups to use their own language and enjoy their own culture (ICCPR, Article 27) and the closely related rights to equality and non-discrimination (ICCPR, Article 26) have provided the basis for the UN Human Rights Committee's criticism of Syria's discrimination against Kurds and its demand that Kurds should be able to use their own language and enjoy their own culture[120]. Arguments in favour of, for example, mother-tongue education in the Kurdish language could be rooted in particular interpretations of individual human rights norms, based, in essence, on the right to preserve and develop one's culture, and on a thick understanding of equality as requiring (or at least endorsing) positive action to rectify existing inequalities.

Although the rights to culture and equality are *individual* rights, it is possible to link them (and other individual rights) with the *group* right to self-determination by arguing that some kind of autonomy arrangement would be, in a particular context, the most effective way of allowing the group's culture to develop and of allowing the group to re-integrate into the

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[117] Van Dam (n 1), 140.

[118] Although polling data suggests that people in both regime and opposition-held areas reject federalism. 'Syria: Opinions and Attitudes on Federalism, Decentralization, and the experience of the Democratic Self-Administration' (*The Day After,* 26 April 2016) <http://tda-sy.org/en/category/publications/survey-studies> accessed 13 January 2018.

[119] Gaetano Pentassuglia, 'Ethnocultural Diversity and Human Rights: Legal Categories, Claims, and the Hybridity of Group Protection' (2015) 6 The Yearbook of Polar Law 250, 257-258.

[120] UNHRC, 'Concluding observations of the Human Rights Committee: Syrian Arab Republic' (9 August 2005) UN Doc CCPR/CO/84/SYR, para 18.

State on more equal terms, and/or the most effective way of meeting other human rights obligations, such as the right to participation (ICCPR, Article 25)[121]. Indeed, as Pentassuglia argues, 'there might be circumstances in which autonomy appears to be the only way of implementing existing obligations'[122]. The point, he notes, is that 'human rights norms have the capacity to validate autonomy arrangements'; a capacity that 'does not necessarily or automatically require or presuppose a distinctive right to that effect'[123].

From a normative angle, it is possible to argue that the legitimacy of the demand for a federal form of internal self-determination in Syria is significantly augmented by the need to correct the State's past and present injustices[124]. Although international law has not validated or legitimised those injustices and rights violations, it has at least played an important role in validating Syria's exercise of coercive power over the Kurds by recognising it as a sovereign entity[125]. In validating the exercise of coercive power over the entire territory of Syria, international law participated in the creation of the Kurdish minority[126] and has therefore at least indirectly contributed to the injustices suffered by the Kurds and others. Moreover, as explained in Section II, international law legitimised French colonial influence over the initial stages of Syria's transition to the nation-state form and is therefore implicated in the negative consequences that flow from that period of colonialism. If internal self-determination is, as Macklem argues, concerned with promoting a more just exercise of sovereign power[127], then the claim to some form of federalism (as against arguably more limited individual rights to cultural protection and equality) is significantly bolstered by Syria's history of brutality and rights violations. Broadly speaking, the claim here reflects the view, widely shared among scholars, that self-determination contains remedial aspects and that claims to 'thicker' forms of self-determination (such as federalism) are therefore more legitimate if they might help to overcome injustices that flow from the exercise of sovereign power.

Since the DFNS is, in its present configuration, a very diverse *de facto* entity[128] the ongoing ability of the federal project to engage democratically with the diverse groups that together make up the population of the DFNS, and to gain or maintain their support, will add another important layer of legitimacy. A project that protects the rights of all groups and individuals

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[121] The Commentary of the Working Group on Minorities notes that 'the duty of the State to protect the identity of minorities and to ensure their effective participation might in some cases be best implemented by arrangements for autonomy… The autonomy can be territorial, cultural and local, and can be more or less extensive': UNESC, 'Commentary of the Working Group on Minorities to the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities' (4 April 2005) UN Doc E/CN.4/Sub.2/AC.5/2005/2, para 20. Similarly, in his concurring opinion in *Diergaardt et al. v Namibia*, Martin Scheinin noted that 'Some forms of local, regional or cultural autonomy may be called for in order to comply with the requirement of effective rights of participation': UNHRC, *Diergaardt et al. v Namibia* (6 December 2000) UN Doc CCPR/C/69/D/760/1997.

[122] Gaetano Pentassuglia, 'Do Human Rights Have Anything to Say about Group Autonomy?' in Gaetano Pentassuglia (ed), *Ethno-Cultural Diversity and Human Rights: Challenges and Critiques* (Brill, 2018), 139.

[123] Ibid 140.

[124] See Gaetano Pentassuglia, 'Self-Determination, Human Rights and the Nation-State: Revisiting Group Claims through a Complex Nexus in International Law' (2017) 19 International Community Law Review 443.

[125] See Patrick Macklem, *The Sovereignty of Human Rights* (OUP, 2015), ch 2.

[126] Ibid 104.

[127] Ibid 183.

[128] Even before its expansion into majority Arab regions of Syria, the Kurds barely constituted a majority. See Fabrice Balanche, 'Arabs in the PYD-Controlled Area' in Patrick Clawson (ed), *Syrian Kurds as a U.S. Ally: Cooperation and Complications* (Washington Institute for Near East Policy, 2016).

in the DFNS (as Democratic Confederalism claims to do) clearly has a firmer grounding in international human rights law than an exclusionary Kurdish nationalist project ruling over a majority Arab entity. In this regard, the most recent Social Contract notes that the DFNS shall 'abide by the international declaration of human rights and all related charters of human rights' (Article 17). It also proclaims that cultural oppression shall be considered a crime against humanity that gives rise to a legitimate right to resist (Article 20). Concretely, one of the most important ways of allowing cultural groups to thrive involves protecting or promoting their languages, and the Social Contract declares that 'All languages in northern Syria are equal in all areas of life' and that 'Every people shall organize its life and manage its affairs using its mother tongue' (Article 4).

But whatever normative arguments can be advanced for or against federalism within the framework of the Geneva Communique and international law more generally, one must continue to bear in mind that, as McAuliffe puts it, 'the primary concern of conflict principals ultimately remains with strategies that best meet their interests and security needs'[129]. The same rings true for the major external powers presently engaged in Syria - such as Russia, Iran, Turkey, and the USA – who play prominent roles in the stuttering peace negotiations. This is not the place to explore the complex political machinations at work in Syria: suffice it to say that the Kurds have many regional enemies who may have the ability to influence the outcome of any future peace negotiations, no matter what normative arguments can be advanced for a federal arrangement.

VI.   Conclusions

This chapter has sought to explain how the Syrian regions of the Ottoman Empire evolved into the Syrian nation-state, and how international law legitimised French colonialism which, in turn, contributed to the evolution of an exclusivist form of official nationalism. That official nationalism stretched the short, tight skin of the majority Arab nation over a diverse landscape. French colonial practices were important in that the instrumentalisation of minorities for colonial purposes meant that the Syrian nation-state was born in an anti-imperialist struggle where certain minority groups emerged as 'marked citizens'.

When Syrian leaders were finally free to begin building a political community, they adopted a similar *monist* system to neighbouring Turkey. This involved conceptualising the nation in terms of the dominant ethnic majority and seeking, through various techniques, to assimilate unwanted ethnic others such as the Kurds, who were viewed as threats to the territorial integrity of the State and as potential traitors in the hands of foreign enemies.

It has also sought to explain how the oppression of Syria's Kurds has its roots in (or has at least been cloaked in the legitimacy of) that exclusivist nationalism. The chapter continued with a description of how some ruling Syrian Kurdish parties and their allies conceptualise a new Syria, eventually without the nation-state form, in order to salve the wounds inflicted upon them. The chapter concluded by considering how international law interfaces with both the process and the eventual outcome of any putative peace negotiations, and how it might validate the claim to a federal model.

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[129] Padraig McAuliffe, 'The Post-Conflict Security Dilemma and the Incorporation of Ethno-Cultural Diversity' in Gaetano Pentassuglia (ed), *Ethno-Cultural Diversity and Human Rights: Challenges and Critiques* (Brill, 2018), 369.

International law in its modern form is capable of looking beyond formal State sovereignty and examining the inner workings of States. The right of self-determination, combined with other individual rights, can justify (and might, in some cases, require) the disaggregation of State power and blurring of State sovereignty in order to accommodate sub-state group demands for autonomy. Various factors can augment the legitimacy of the Kurdish claim for a federal Syria, including the need to rectify the State's history of injustice (to which international law contributed in various ways) and the ability of the DFNS to respect, protect and fulfil the rights of the myriad groups and individuals within its boundaries.

Bibliography

Achcar G, *Morbid Symptoms: Relapse in the Arab Uprising* (Kindle edn, Saqi Books 2016)
Allsopp H, *The Kurds of Syria* (2015, IB Tauris)

Anaya J, 'A Contemporary Definition of the International Norm of Self-Determination' (1993) Transnational Law & Contemporary Problems 131

Anderson B, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso, 2006)

Anghie A, *Imperialism, Sovereignty and the Making of International Law* (CUP, 2004)

Balanche F, 'Arabs in the PYD-Controlled Area' in Patrick Clawson (ed), *Syrian Kurds as a U.S. Ally: Cooperation and Complications* (Washington Institute for Near East Policy, 2016)

Barkey K and Gavrilis G, 'The Ottoman Millet System: Non-Territorial Autonomy and its Contemporary Legacy' [2016] Ethnopolitics 24

Bell C, *On the Law of Peace: Peace Agreements and Lex Pacificatoria* (OUP, 2008)

Berman N, '"But the Alternative is Despair": European Nationalism and the Modernist Renewal of International Law' (1992) 106 Harvard Law Review 1792

Bookchin M, 'Nationalism and the "National Question" (1994) 2 Democracy and Nature 8
-- -- *The Next Revolution: Popular Assemblies and the Promise of Direct Democracy* (Verso, 2015)

Chimni B.S., 'International Institutions Today: An Imperial Global State in the Making' (2004) EJIL 1

Graeber D, 'No. This is a Genuine Revolution' in Dilar Dirik et. al. (eds), *To Dare Imagining: Rojava Revolution* (Autonomedia, 2016)

Gunter M, *Out of Nowhere: The Kurds of Syria in Peace and War* (Hurst, 2014)

Harvey D, *Rebel Cities: From the Right to the City to the Urban Revolution* (Verso, 2013)

Hourani A, *Syria and Lebanon: A Political Essay* (OUP, 1946)
-- -- *A History of the Arab Peoples* (Faber and Faber, 2013)

Jongerden J, 'The Kurdistan Workers' Party (PKK): Radical Democracy and the Right to Self-Determination Beyond the Nation-State' in Gareth Stansfield and Mohammed Shareef (eds), *The Kurdish Question Revisited* (Hurst, 2017)

Khoury P, *Syria and the French Mandate: The Politics of Arab Nationalism, 1920-1945* (Princeton, 1989)

Klabbers J, 'The Right to be Taken Seriously: Self-Determination in International Law' (2006) 28 HRQ 186

Klein J, 'The Minority Question: A View from History and the Kurdish Periphery' in Will Kymlicka and Eva Pföstl (eds), *Multiculturalism and Minority Rights in the Arab World* (OUP, 2014)

Knapp M, Flach A, and Ayboga E, *Revolution in Rojava: Democratic Autonomy and Women's Liberation in Syrian Kurdistan* (Pluto, 2016)

Koskenniemi M, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870 – 1960* (CUP, 2001)

Krever T, 'Law, development, and political closure under neoliberalism' in Honor Brabazon (ed), *Neoliberal Legality: Understanding the Role of Law in the Neoliberal Project* (Routledge, 2017)

Leezenberg M, 'The ambiguities of democratic autonomy: the Kurdish movement in Turkey and Rojava' (2016) 16 Southeast European and Black Sea Studies 671

Ma'oz M, 'Attempts at Creating a Political Community in Modern Syria' (1972) 26 Middle East Journal 389

Macklem P, *The Sovereignty of Human Rights* (OUP, 2015)

Marks S, *The Riddle of all Constitutions: International Law, Democracy and the Critique of Ideology* (OUP, 2003)

McAuliffe P, 'The Post-Conflict Security Dilemma and the Incorporation of Ethno-Cultural Diversity' in Gaetano Pentassuglia (ed), *Ethno-Cultural Diversity and Human Rights: Challenges and Critiques* (Brill, 2018)

McHugo J, *Syria: A Recent History* (Saqi Books, 2015)

Nimni E (ed), *National-Cultural Autonomy and its Contemporary Critics* (Routledge, 2005)

Öcalan A, *Democratic Confederalism* (Transmedia Publishing, 2011)
-- -- *Liberating Life: Women's Revolution* (International Initiative, 2013)

Owen R, *State, Power and Politics in the Making of the Modern Middle East* (3rd ed) (Taylor and Francis, 2004)

Pedersen S, *The Guardians: The League of Nations and the Crisis of Empire* (OUP, 2015)

Pentassuglia G 'Ethnocultural Diversity and Human Rights: Legal Categories, Claims, and the Hybridity of Group Protection' (2015) 6 The Yearbook of Polar Law 250
-- -- 'Self-Determination, Human Rights and the Nation-State: Revisiting Group Claims through a Complex Nexus in International Law' (2017) 19 International Community Law Review 443
-- -- 'Do Human Rights Have Anything to Say about Group Autonomy?' in Gaetano Pentassuglia (ed), *Ethno-Cultural Diversity and Human Rights: Challenges and Critiques* (Brill, 2018)

Saeed S, *Kurdish Politics in Turkey: From the PKK to the KCK* (Routledge, 2017)

Sottimano A, 'Nationalism and Reform under Bashar al-Asad: Reading the "Legitimacy" of the Syrian Regime' in Raymond Hinnesbusch and Tina Zintl (eds), *Syria from Reform to Revolt, Volume 1: Political Economy and International Relations* (Syracuse University Press, 2015)

Tauber E, 'The Struggle for Dayr Al-Zur: The Determination of Borders Between Syria and Iraq' (1991) 23 Int. J. Middle East Stud. 361

Tejel J *Syria's Kurds: History, Politics and Society* (Routledge, 2009)
-- -- 'The Kurdish Cultural Movement in Mandatory Syria and Lebanon: An Unfinished Project of "National Renaissance"' in Djene Rhys Bajalan and Sara Zandi Karimi (eds), *Studies in Kurdish History: Empire, Ethnicity and Identity* (Routledge, 2015)

Van Bruinessen M, *Agha, Shaikh and State: The Social and Political Structures of Kurdistan* (Zed Books, 1992)

Van Dam N, *The Struggle for Power in Syria: Politics and Society Under Asad and the Ba'th Party* (IB Tauris, 2011)
-- -- *Destroying a Nation: The Civil War in Syria* (IB Tauris, 2017)

White B, 'The Nation-State Form and the Emergence of 'Minorities' in Syria' [2007] SEN 64
-- -- *The Emergence of Minorities in the Middle East: The Politics of Community in French Mandate Syria* (EUP, 2011)

Yadirgi V, *The Political Economy of the Kurds in Turkey: From the Ottoman Empire to the Turkish Republic* (CUP, 2017)

Yassin-Kassab R and al-Shami L, *Burning Country: Syrians in Revolution and War* (Pluto, 2016)

Yildiz K, *The Kurds in Syria: The Forgotten People* (Pluto, 2005)

Zeydanlioglu W, '"The White Turkish Man's Burden": Orientalism, Kemalism and the Kurds in Turkey' in Guido Rings and Anne Ife (eds), *Neo-colonial Mentalities in Contemporary Europe? Language and Discourse in the Construction of Identities* (Cambridge Scholars Publishing, 2008)

Zisser E, 'Who's Afraid of Syrian Nationalism? National and State Identity in Syria' (2006) 42 Middle Eastern Studies 179