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# REPORT

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# Report about the ECMI Workshop on Non-territorial Autonomy

# Flensburg, Germany; 24-25 June 2011

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# Minorities Report about the ECMI Workshop on Non-territorial Autonomy

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*The European Centre for Minority Issues convened the workshop for the purpose of discussing whether the notion of non-territorial autonomy (hereinafter – NTA) can productively serve as a category of analysis in any of the social sciences, and in case the answer to this question is affirmative for examining ways, limits and potential outcomes of such application and its translation into practice. The workshop sought to bring together people with various national, professional and disciplinary backgrounds to address the applicability of NTA from different perspectives. Inputs based on considering the NTA theoretical and practical origins, on examining its place among various modes of ethnic diversity conceptualizations, and on analyzing certain practical arrangements labeled 'autonomy' were expected to result in a better understanding of the very possibility of employing the notion of NTA and the most productive ways of doing this.*

**Alexander Osipov & Jana Groth, July- August 2011**

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## I.  WHAT IS THE ISSUE AS STAKE?

The idea of non-territorial autonomy on ethnic grounds emerged in the  late nineteenth century (usually it is perceived as ascending from Austro-Marxists), became popular in the early twentieth century, contributed to minority-related debates in 1920-30s and in the last twenty years again has become a topic for scholarly and political debates.[1] There is no uniform understanding of what NTA or similar terms could mean; usually this implies internal organization of an ethnic group and the pursuit of its interests on ways other than territorial autonomy. "Autonomy is a device to allow ethnic or other groups claiming a distinct identity to exercise direct control over affairs of special concern to them."[2] Austro-Marxists (Karl Renner, Otto Bauer, and Victor Adler) perceived 'cultural' or 'personal' autonomy as a complex institutional arrangement where ethnic groups ('nations') would be organized as corporate self-governing entities based on individual membership rather than on territory and residence.[3] One can find several legal and institutional arrangements resembling Austro-Marxist ideas in different national contexts throughout the twentieth century and well as at present.[4] There is no doubt that 'non-territorial autonomy' and similar terminologies serve as categories of practice in politics, public administration or civil activism. They

occasionally emerge in specific contexts and as a rule are being instrumentalised for concrete narrowly tailored purposes.[5] Interpretations of NTA and the respective terminologies vary significantly from certain institutional designs in minority accommodation to a broad idea of ethnic groups' agency.

## II.   QUESTIONS TO BE ADRESSED

There are a growing number of academic publications, comments of international organizations and of their experts on the opportunities non-territorial autonomy may open for conflict prevention and minority protection. Terminologies vary, and in most applications emphasis is placed on their opposition to territori[1]al autonomy. Therefore, the term 'non-territorial' seems to be most comprehensive in this context.

There have been several attempts to use NTA as an analytical category. The purposes and directions of these undertaking were too diverse as well as the approaches applied. As a result, the same single notion still remains a label for different ideas and practices, and defies coherence in usage. NTA has been applied to a function of organization, to basic principles of individual freedom, to acknowledgement of group boundaries etc.[6] One can assume that handling a broad obscure term which covers completely different phenomena is a normal and even a typical situation with no reasons to worry about. Another possible assumption is that some general coherent interpretations can be found, and therefore the notion of NTA can be employed as an analytical tool.

At the moment the future discussion is open-ended; and one cannot predict in advance what the answer to this basic question of whether NTA can serve as a category of analysis or not would be. Presumably academia can address multiple and various manifestations of ethnicity without resorting to a new terminology. If, on the contrary, the answer is positive, and the

notion can serve as an analytical tool, one has to determine the areas, limits and ways for its application.

One can also hardly predict the disciplinary area(s) in which NTA might prove to be used correctly and productively. The area may turn out to be broad or narrow; its can be ultimately acknowledged as a set of broad philosophic principles or reduced to a certain practice-oriented activity. The broad area of ethnicity and nationalism is being successfully explored from a multiplicity of disciplinary perspectives. Human activities such as creation of networks, maintenance of boundaries, claim-making, mobilization are approached with a variety of research tools. The first issue to be addressed here is whether the notion of NTA can bring something new to the analysis and theoretical understanding of structural conditions and agency. The other issue is the implications which the term NTA bears.

NTA can be viewed as a way to conceptualize ethnic diversity like multiculturalism, minority protection, power sharing etc. It is not obvious that NTA has a room of its own in between such terminologies and approaches. If NTA is regarded as a new broadly accepted analytical category, the term must provide for some new outlook and shall (1) denote more or less clearly distinguished phenomena; (2) not duplicate other terminologies; (3) in case of partial overlap with other notions depict certain realities better than they do. Does NTA satisfy these requirements? Or otherwise, can we do without it?

There is another issue deserving attention. The very term 'autonomy' leads to reification of notions such as 'group', 'community', and 'culture'. Are the implications, assumptions, idioms and rhetoric strategies leadings to reification of groups and their boundaries unavoidable?

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## III.   THE WORKSHOP DISCUSSION

### *The participants*

The point of departure was the participants' agreement on the statement of Tove Malloy, the Director of ECMI that this workshop should be not a one-off event, but the beginning of long-lasting research cooperation on the topic explored insufficiently. At the outset, the participants who were of completely different disciplinary and professional backgrounds from six European countries told about their involvement in the topic.

**Tove Malloy** – political theorist and ECMI Director – spoke about her interest in the Danish-German border region and explained that the literature on different types of autonomy on the one hand and the observation of the arrangements in this region on the other hand don't actually fit together. The situation of the Danish minority in Germany and the German minority in Denmark can neither be sufficiently described as personal or cultural autonomy nor as a form of power sharing. Tove Malloy also mentioned that her main interest lies in the model of functional autonomy and the revision of the existing theories within the field of NTA; therefore empirical cases are required in order to adjust and/or extend the latter.

**Dmitry Nurumov** – legal advisor to the OSCE High Commissioner on National Minorities – pointed out that the HCNM contributed extensively to the promotion of NTA ideas.[7] In the meantime, the HCNM does not use the term 'non-territorial autonomy' as such. The Lund Recommendations for example, make reference to 'non-territorial arrangements'. It is assumed that such arrangements along with territorial autonomy can be used as instruments by the state to ensure effective participation of minorities in public affairs. In some participating states of the OSCE the concept of NTA for minorities is provided at the constitutional or legislative level. However, the implementation

of this concept in practice yields widely different results. Sometimes they even lead to the marginalization of minorities, especially if the rights of national minorities are not respected and there are no democratic mechanisms to ensure proper functioning of such institutions.

**Detlev Rein** – lawyer and head of division M II 4 within the Federal Ministry of the Interior of the Federal Republic Germany – is working on legal aspects of minority politics in Germany and Europe.[8] His division deals with European policies on minorities and national minorities and other language groups in Germany. Currently he is working on institutional arrangements for the Sorbian minority, and a self-governing public law body looks like a promising solution in the Sorbs case; the issues at stake were the criteria for membership or representation. The issues of particular interest for him are feasible models for minority representation and membership criteria for self-governing and representative bodies.

**Bill Bowring** – Barrister and Professor of Law at Birkbeck College, University of London –first become involved with NTA when asked to advise the Council of Europe on the first Framework Convention report, and the Russian experiment in NCA which had begun in 1996. He published three articles and book chapters on the issue;[9] now he is an expert in the European Union - Council of Europe Joint Programme on Russia's ratification of the Languages Charter. His current work asks why the ideas of NTA should be so attractive in Russia.

**Sherrill Stroschein** – Lecturer at the Institute of Political Science of the University College London – used to study the situation of Native Americans; later on she also did research on Hungary, Belgium and Kosovo.[10] All those cases generated debates on non-territorial arrangements and prompted political solutions of this kind.

**Ephraim Nimni** – Reader at the School of Politics, International Studies and Philosophy, Queen's University of Belfast – pointed out that

he was only interested in NTA theory and also in concrete and practical applications of the concept.[11] Within his own research he is asking two main questions: 1. How can this concept separate collective self-determination from territorial sovereignty and thus contribute to the resolution of protracted conflicts (e.g. Northern Ireland)? 2. Why is there so much resistance to the idea of non-territorial autonomy?

**Mitja Žagar** – ECMI non-resident Senior Research Associate, Research Councilor at the Institute for Ethnic Studies and Full Professor at the Universities of Ljubljana and Primorska/Litoral – works on political and legal aspects of minority protection and autonomy. His main focus was basically on territorial autonomy; lately he also became interested in NTA, particularly in cultural autonomy of non-territorial minorities. He seeks to develop basic standards of minority protection for minorities of different types.

**Radomir Šovljanski** – Programme Director at the Centre for Regionalism in Novi Sad, Serbia (Autonomous Province of Vojvodina) – spoke about the political and scientific approaches to NTA in Serbia. He stressed that the so-called 'nationalities councils' in Serbia clearly show what cultural autonomy might mean and where its limits are. On the other hand, the concept of NTA is fairly new within the field of academic research. In Serbia, no one is working with it, there are no publications, no case studies and no policy recommendations pertaining to NTA.

**Vadim Poleshchuk** – Legal Advisor-Analyst of the Legal Information Centre for Human Rights in Tallinn, Estonia and Estonian expert in the European Network of Legal Experts in the Field of Non-Discrimination – is dealing with political and legal issues of minority protection in Estonia and Latvia.[12] He was studying and publicly commenting on the Estonian law on minority self-government. His interest lies with potential applications of the NTA ideas and their outcomes.

**Alexander Osipov** – sociologist and ECMI Senior Research Associate – is particularly interested in ethnicity-based discrimination and minority protection in the post-Soviet countries. Over the last decade, he has been doing research on so-called national cultural autonomy in Russia; alongside this, he has been doing a comparative study of autonomous arrangements in a number of European and non-European countries. He is also working on the definitions and interactions of cultural, personal and non-territorial autonomy.

## *Terminologies and definitions*

NTA is explained through a variety of often interchangeable terms like 'cultural', 'segmental', 'functional' 'autonomy', 'self-government' or 'self-administration'.[13] Each term and each component thereof bears its own implications and nuances of meanings and contexts of applications. The adjectives place emphasis on (non)-territoriality, culture, ethnic affiliation or type of organisation. Respectively, the ways to define and conceptualise NTA vary significantly. What opportunities do different terms and approaches open? What kinds of advantages or disadvantages do they have? How can one handle their hidden meanings and implications?

At the outset, Mitja Žagar stated that a uniform understanding and a common set of terminology which goes across disciplinary boundaries was hardly feasible, and everyone agreed on that. Nevertheless, much time was spent on discussing the definitions and implications of certain terminologies, such as autonomy, territorial autonomy, cultural autonomy, functional autonomy, multiculturalism, self-determination, self-administration, self-governance, self-government and power-sharing. In course of this deliberation the participants extensively referred to empirical examples such as minority-related institutions in Belgium, Germany, Hungary, Norway, Russia, Serbia and Sweden. This discussion turned to be fruitful and stimulating since it helped to understand and clarify each

other's point of view and the nuances of certain approaches.

Alexander Osipov stressed that the problem of different academic backgrounds needs to be always taken into account since the understanding of ethnicity, ethnic groups and autonomy varies widely between theorists and practitioners on one hand and different disciplines on the other. Mitja Žagar argued that although disagreement on a number of terminological issues persisted, scholars first and foremost must nevertheless achieve a clear and well structured understanding of what they mean by autonomy and related notions. The requirement of theoretical clarity is compatible with the methodological pluralism propagated by Michael Keating.[14]

## *Sovereignty*

The pivotal terms in the discussion were 'autonomy' and 'sovereignty'. From the very start the participants were following Ephraim Nimni's suggestion not to take up a theoretical sociological discussion about groups and ethnicity. In his view, the key question was: Why does the idea of NTA produce so much resistance and how can we overcome this skepticism? Ephraim Nimni explained that this mainly has to do with the concept of sovereignty resting on the basic perception of nation as cultural community. Therefore the concept of NTA generates suspicions that sub-state autonomy is likely to undermine the unity and/or sovereignty of the state; and to limit efficiency of governance. In his view, scholars must address these concerns and convince politicians and the general public that autonomy contributes to participation and public deliberations rather than creates cleavages.

Some participants illustrated this point with empirical evidence. Vadim Poleshchuk added that almost exclusively ethnic interpretation of nationhood is the background for all debates concerning autonomy in Central and Eastern Europe. NTA is thus clearly associated with group rights; that's why it is not welcome by the governments and human rights

defenders. Bill Bowring noted the negative tendency in Russia and other states to prioritise sovereignty in a Schmittean sense. In this framework, policy-makers tend to see an existential risk to Russia posed by the continued existence of minority rights, and even the recognition of the existence of languages other than Russian.

Tove Malloy argued that the problem lies within the term "autonomy" itself, because autonomy is usually associated with collective autonomy and in the end with territorial autonomy leading to secession. This associating needs to be questioned. Sherrill Stroschein also made clear that the term NTA is just not a good term because it only explains what it *isn't*, it doesn't explain what it *is*, because it is just seen as the opposition to territorial autonomy. Sherrill Stroschein and Ephraim Nimni drew attention to the fact that the emphasis on territory in 'non-territorial' often is obscure and misleading; that supposed that the term 'national cultural autonomy' put forward by Austro-Marxists would be preferable as a neutral one.

As a general conclusion one could say that the concept of NTA is still largely misunderstood and feared by state powers but has a great potential in the field of conflict resolution and needs to be looked at more deeply.

## *Autonomy and division of power*

Sherrill Stroschein argued that although the issues of NTA usually appear to be non-political, they all are about authority and decision-making. Tove Malloy elaborated on this point saying that NTA can be replaced by such terms as divided or multi-level sovereignty. Mitja Žagar argued that autonomy and state sovereignty must not collide; he even would not oppose territorial autonomy and NTA. In practical terms, sometimes autonomy can actually stabilize the state's sovereignty, because it helps to overcome conflicts. Ephraim Nimni strengthened this position: "The more people have the feeling that they are represented in the state's institutions, that they are included in

political processes, the less they will work against the state; extreme positions are the products of the perception of exclusion".

Dmitry Nurumov underlined the differences between self-government, self-governance and self-administration on the one hand and power-sharing on the other. Minorities can exercise their rights and organize themselves collectively, receive governmental subsides, etc., but this may not amount to NTA arrangements and should be distinguished from them. The concept of self-government, self-governance and self-administration is about the delegation of competences and functions and is fixed in laws. In that sense NTA is usually about formally defined institutional arrangements for minorities. Power-sharing by contrast deals with the division of power and often is fixed in the constitution.

Mitja Žagar drew the distinction between power-sharing and NTA in a different way: the former is narrower in scope since it concerns concrete political agreements while the latter is about broad entitlements of a minority group. Radomir Šovljanski added that the difference between self-government/self-governance and power-sharing is also whether you are participating in the process of decision making or not (e.g. whether you can decide on the type of minority education system you want to have or whether the state decides for you).

## Reification of ethnicity, group rights and segregation

Tove Malloy called on scholars to take into account multiple - first of all the individual and collective - dimensions of NTA. If we want to avoid reification of boundaries and essentialisation of group identities we should regard autonomy as a process rather than condition or object. Mitja Žagar added that one should not forget about fluidity in even dominant approaches towards minority and autonomy issues. After World War I they were resting on the protection of groups while in the post World War II period they are based on individual human rights. Detlev Rein reminded

that the Framework Convention for the Protection of National Minorities envisage and acknowledge no group rights.

According to Detlev Rein's point of view, the concept of NTA usually generates suspicions that sub-state autonomy is likely to lead to segregation. These concerns must be taken into consideration although they are ungrounded: NTA or cultural autonomy in fact has nothing to do with segregation. "We are talking about self-governance under the principal of subsidiarity", he said; that must mean division of functions and competences, but not fixed affiliations or strict group boundaries.

Detlev Rein also explained the differences between multiculturalism and cultural autonomy: Multiculturalism is a top-down-process, the attempt of the state to bring different cultures together. Cultural autonomy, on the contrary, should be perceived as a bottom-up-process which allows minorities to decide themselves and influence the institutions and politics of the state.

## Legal certainty

Another discussion arose around the question whether NTA needs to be delegated by the state and legally fixed in laws and constitutions. Tove Malloy viewed as problematic the assumption that power is always delegated. Social movements, for example, have a lot of power without officially receiving it from the state. Furthermore there are a lot of regions where the state was weak and not interested in what communities were doing on their own.

Detlev Rein pointed out that from a legal point of view power is delegated. The state is the only legitimate centre of power, if other institutions want to have power they need to get it from the state, and the state needs to agree on that. "To fill a gap where there is no official state power – where the state doesn't have to delegate power – is not autonomy; this is just private enterprise", he said. In his view, autonomy makes sense if it established as public law bodies; a model to follow can be professional self-regulating organizations with

compulsory membership (like auditors' or lawyers' chambers).

Sherrill Stroschein pointed out that Tove Malloy and Detlev Rein were talking about two different things (formal vs. informal arrangements) and suggested dividing the field of functional autonomy into formal and informal sections. Formal functional autonomy is comparable with formal dual sovereignty and fixed in constitutions, laws and bylaws. Informal functional autonomy refers to organizations that perform functions and competencies without a formal delegation of power by the state. This could be the case in state vacuums or in situations of *ad hoc* arrangements.

In the end everyone agreed that the legal sources and competences of NTA can be extremely diverse. Sources can be constitutional guarantees, laws, bylaws and case laws as well as customary law and traditions. Competences can include political, cultural, linguistic, religious, economic and social aspects. Radomir Šovljanski added that real acquisition and utilization of competences is a hard and complex process. There is an old tradition of NTA within the former Austro-Hungarian Empire and in Serbia, and people are basically aware of what it is, but still there is lack of clarity in real competencies that National Minority Councils in Serbia can benefit from. The right to self-government in practice may turn into the state's withdrawal from public service delivery that leads, for example, to lower standards of schooling for minorities, particularly Roma.

## *Research strategies*

Heated debates also followed on the question of appropriate research strategies for the analyses of NTA. A lot of questions needed to be asked: Shall the research concentrate on the examination of empirical cases and thus avoid discussions on theory which seem to be already deadlocked? If not, are the existing theories sufficient or do they need to be revised and/or extended? Which criteria should be used for the selection of case studies? Should there be a special focus on specific regions? Which

methodologies should be used? When one does policy-oriented studies, what are the criteria for 'good' and 'bad' examples of NTA? Should migrant communities ('new minorities') be included in the research?

Mitja Žagar suggested not excluding theoretical research as the extension/revision of theory might also influence legal arrangements and therefore has a lot of practical implications. In his view, the very acknowledgement of NTA as an independent and legitimate area of research and political analyses must be followed by preemptive theoretic explanations on the basic notions that would prevent another vicious circle of debates on terminologies. Afterwards, the concepts might be filled with content. Tove Malloy agreed on that and emphasized that there is no way to get around theory. She explained that everyone would have to look at the gaps within theory, and then look at the case studies, and then maybe revise the theory in the light of new empirical findings. Sherrill Stroschein also confirmed that a theoretical part is needed, but as a 'thin' theory. According to her explanations, theory doesn't mean that one would have to discuss basic things about (collective) identity and group boundaries again; it's just about a general framework and starting point of research.

Ephraim Nimni stressed that since the model of NTA itself runs against the common intuition how governments and states should be organized. Much work has to be done to persuade political elites. Besides this, more scholars should be involved into future debates around NTA; otherwise, the people who wish to address this topic will remain a small clique.

Tove Malloy suggested that pursuit of the future strategy must start up with two major steps. The first one would be to identify which literature exists and whether it is helpful to the project. The second step would be a search for scholars who would like to do new research or who are currently doing research on these issues (e.g. PhD students).

Alexander Osipov reminded that most publications on NTA have been in the field of history; political theorists also basically address the past, i.e. the heritage of Otto Bauer and Karl

Renner. According to him, this must not a good point of departure. Tove Malloy mentioned that there are a lot of publications on the German-Danish border region that might be helpful. Also the Hungarian and Scandinavian models are quite well described. Ephraim Nimni added that the publications on the *millet* system, i.e. organization of ethnic and religious communities in the Middle East in the pre-modern and colonial times, could be worth looking at too.[15] Bill Bowring, however, made clear that nobody will be interested in a simple collection of the existing data. "We need to have a clear research question that we are willing to answer", he said.

Radomir Šovljanski suggested comparing different theoretical approaches on NTA and finding empirical examples for each one. "We could evaluate which model works quite well and which does not, and then we could come up with new models and theoretical approaches", he said. He added that there were significant gaps in empirical research done; for example, there have been no studies on Serbia. Ephraim Nimni suggested that a promising research can be done on the Sami and indigenous policies in Bolivia; Sherrill Stroshein added Romania to the list; Bill Bowring mentioned a draft law on national-cultural autonomy currently debated in Ukraine.

Mitja Žagar argued that it would be also important to think about the relationship between NTA and democracy. According to him, democracy is not needed in order to provide for NTA. So the research should address non-democratic countries too. Vadim Poleshchuk added that the future research should not only focus on good examples. There are a lot of minority groups that are not satisfied with their system of autonomy, so we should ask why they are not satisfied and whether/how this can be avoided.

Referring to questions of research subjects and respective methodologies, Alexander Osipov referred to two general possibilities. The first would be to do research on certain institutional arrangements and social practices (analysis of social structure and agency). The second would be to concentrate on the question of how the ideas and institutional arrangements are represented, perceived, e.g. by the local minorities (studies of ideologies and discourse analysis). Also the interaction between social structures and discourses could be interesting to look at. Sociologists know a lot about the production of discourses but very little on their 'consumption', i.e. reception and effects of these discourses. In this context it would be important to ask whether and why discourses on NTA lead to actual institutional arrangements. Bill Bowring added that one would also need to analyze the relationship between autonomy and conflict. All agreed that for the purposes of policy-oriented research, the general criteria for the evaluation of 'good' and 'bad' examples of NTA could be human rights, participation, inclusion and/or democracy.

## IV. PLANS FOR THE FUTURE

There was a broad consent that research on NTA must be stimulated and extended, and that the workshop participant may regard themselves as a working group and the kernel of the future collaborative research network. More scholars with new agendas, research topics and case studies should be involved. A milestone must be a multidisciplinary conference convened by the working group in the second half of 2012. In the meantime, the working group may arrange for another workshop and for a series of publications including working papers and articles.

Ephraim Nimni stressed that it was extremely important to explain why the study of NTA is necessary, especially if one wants to attract young scholars.

The participants agreed that practice-oriented activities must be first and foremost policy recommendations. Bill Bowring suggested that one of the explicit objectives of the working group should be to prepare recommendations for the HCNM, given that the Lund Recommendations say practically nothing about NTA.

## Footnotes

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[7] The Lund Recommendations on the Effective Participation of National Minorities in Public Life, The OSCE High Commissioner on National Minorities (1999); see Malloy, *op.cit.* note 6; Kristin Henrard, "'Participation', 'Representation' and 'Autonomy' in the Lund Recommendations and their Reflections in the Supervision of the FCNM and Several Human Rights Conventions", 12 (2-3) *IJMGR* (2005), pp. 133–168.

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[10] See Stephen Deets and Sherrill Stroschein, "Dilemmas of autonomy and liberal pluralism: examples involving Hungarians in Central Europe", 11 (2) *Nations and Nationalism*, (2005), pp.285–305; Stroschein, Sherrill. (2008) "Making or Breaking Kosovo: Applications of Dispersed State Control", 6(4) *Perspectives on Politics* (2008), pp. 655-674.

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[14] Donatella Della Porta and Michael Keating (eds.) *Approaches and methodologies in the social sciences: a pluralist perspective* (Cambridge, New York: Cambridge University Press, 2008).

[15] See. Kemal H Karpat, "Millets and nationality: The roots of the incongruity of nation and state in the post-ottoman era" in B. Braude and B. Lewis (eds.) *Christians and Jews in the Ottoman Empire: The Functioning of a Plural Society* (New York: Holmes & Meier Publishers Inc., 1982), pp. 141-169; Yüksel Sezgin, "How to integrate universal human rights into customary and religious legal systems?", *Journal of Legal Pluralism*, No.60 (2010), pp.5-40.

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