

The right to self-determination in international politics: six theories in search of a policy

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Abstract. The principle of the self-determination of peoples is enshrined in the United Nations Charter and based on liberal and democratic values. However, the international community has, until recently, interpreted this principle very restrictively, so that it has amounted to little more than the right to be free from European colonialism. The collapse of the USSR and Yugoslavia, as well as persistent ethno-nationalist conflicts around the world, have provoked new thinking about the right of self-determination in political theory. This article reviews six theories, and identifies what they have in common and on what they differ. It draws some cautious policy conclusions from this analysis and, in doing so, seeks to clarify the role and limits of theory in international politics.

The problem

Justice itself requires that the right [to national self-determination] be granted: for there is no more certain injustice than alien rule imposed against the will of a people.¹

Article 1 of the United Nations Charter declares one of the purposes of the United Nations to be to ‘develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples’. The common article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which were both adopted by the UN General Assembly in 1966, appears to spell out this principle in unequivocal terms. ‘All peoples’, it says, ‘have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development’.

The fact that the right to self-determination is the only right common to the two human rights covenants of 1966, and the fact that it was placed in the first article of both, strongly suggest that the member states of the UN were recognising its special importance. Yet few, if any, principles of international law are so uncertain in meaning and so controversial in character. ‘The effective exercise of a people’s right to self-determination’, Hector Gros-Espiell wrote in 1980, ‘is an essential condition . . . for the genuine existence of the other human rights and freedoms’.² In similar vein, Lord Avebury has recently written: ‘There can be no doubt but that the right to

¹ S. Hoffman, *Duties Beyond Borders: On the Limits and Possibilities of Ethical International Politics* (Syracuse, NY: Syracuse University Press, 1981), p. 34, citing Immanuel Kant.

² H. Gros-Espiell, *The Right to Self-Determination: Implementation of United Nations Resolutions* (New York: United Nations, 1980), para. 59.

self-determination is the most important of all human rights'.³ Yet Rupert Emerson could write with equal confidence: '[W]hat emerges beyond dispute is that all peoples do *not* have the right of self-determination. They have never had it, and they will never have it'.⁴ Little wonder, then, that U Thant, then UN Secretary-General, exclaimed, perhaps a little exasperatedly, in 1970: 'The concept of self-determination is not properly understood in many parts of the world'.⁵

U Thant was certainly right that the concept of self-determination was not properly understood. What is less certain is what it was that was not understood. There was a consensus among UN state elites until recently that the right to self-determination of peoples should not be interpreted literally as the right of all peoples to self-determination. This is Emerson's point, and underlaid U Thant's. The literal interpretation is not possible because there is no agreed definition of 'peoples' in international law nor among scholars, and this interpretation was never intended by the makers of the UN texts. The UN conception of the right to self-determination of peoples was closely associated with the world-wide movements against colonialism and racism. Thus, the right to self-determination was generally interpreted to be limited to emancipation from European imperial rule, and the right not to be subject to racist domination (as in South Africa) or alien occupation (e.g., the situation of the Palestinians).⁶ As is common at the UN, it was applied inconsistently, so that, for example, the right of the Tibetans to self-determination was not recognised, although they were eligible by most criteria, except that their alien rulers were not European. What was not understood was the *principle* (if any) that could justify the dominant interpretation agreed by 'the international community' of this right to which it had accorded such particular importance.

International politics may, as 'realists' claim, be driven primarily by self-interest and power, but principles, ideals and norms certainly constitute the discourse of international relations,⁷ and confused principles can have real, and serious outcomes. The collapse of the USSR and that of Yugoslavia were accompanied by a plethora of self-determination claims and ethno-nationalist violence. The Western powers vacillated in the face of these claims. Even the declarations of independence by the Baltic states, the legality of whose annexation by the USSR had not been generally recognised, were treated with caution, for fear of undermining Gorbachev's reform programme. Yugoslavia, however, exposed most cruelly the flaws in the dominant conception of the right to self-determination. The first Western reaction was to reaffirm the territorial integrity of the Yugoslav state, which implied that the relevant people with the right to self-determination was the Yugoslav people as such. Then Germany led the European Union into the recognition of Slovenia, Croatia and Bosnia-Herzegovina. The recognition of (the former Yugoslav Republic of) Macedonia was held up by Greek objections, even though Macedonia was deemed

³ E. Aveybury, 'A Positive Legal Duty: The Liberation of the People of East Timor', in D. Clark and R. Williamson (eds.), *Self-Determination: International Perspectives* (Basingstoke, 1996), p. 221.

⁴ R. Emerson, 'Self-determination in the Era of Decolonization', *Occasional Papers in International Affairs*, No. 9, 1964, p. 64.

⁵ Quoted in L.C. Buchheit, *Secession: The Legitimacy of Self-determination* (New Haven, CT: Yale University Press, 1978), p. 87.

⁶ A. Cassese, *Self-determination of Peoples: A Legal Appraisal* (Cambridge: Cambridge University Press, 1995).

⁷ M. Frost, *Ethics in International Relations: A Constitutive Theory* (Cambridge: Cambridge University Press, 1996).

to have met EU criteria, whereas Croatia had not. The principle of the territorial integrity of states, the restrictive interpretation of the right to self-determination, and extreme caution in recognising new self-determination claims were all normally justified by appeal to the values of peace and the stability of the international order. The disintegration of Yugoslavia showed that the self-determination policy of the international community could not achieve its own objectives.⁸ The priority that the international community gave to territorial integrity over the self-determination of peoples left ethno-nationalist minorities vulnerable and fearful in newly recognised states; encouraged 'ethnic cleansing' and generated massive refugee flows; provoked violence and gross violations of human rights; and threatened international peace and security by involving great powers in local ethno-nationalist conflicts. It was clearly time that the concept of self-determination became better understood. But what *was* the meaning of the concept? And what was its underlying justification?

The UN doctrine

The Preamble to the UN Charter declares that the 'peoples of the United Nations' have, through their governments, agreed to the Charter in order, among other objectives, to save future generations from the scourge of war and to reaffirm faith in human rights. Thus the UN state elites legitimated their new order by appeal to the principle of popular sovereignty. Article 1 of the Charter sets out three purposes of the organisation. The first is the maintenance of international peace. The second is to develop friendly relations among nations, based on respect for the principle of equal rights and self-determination of peoples. The third is to achieve international co-operation in solving economic, social, cultural and humanitarian problems, and in promoting respect for human rights. Formally, the three purposes are independent of each other, but both the organisation of the text and the practice of states show that the second and third principles are subordinate to the first. The UN is an association of state elites, whose primary purposes are to protect and promote the interests of their states and to maintain the existing states order. Commitments to the self-determination of *peoples* (whatever they are) and the rights of *individuals* are subordinate to these purposes.

Article 1 refers to a 'principle' of the self-determination of peoples. This 'principle' was transformed into a *right* by the UN General Assembly Resolution on the Granting of Independence to Colonial Countries and Peoples (1960). The right to self-determination of *peoples* was now linked to the granting of independence to colonial *countries*: i.e., colonies were to be converted into nation-states. This link was strengthened by agreement among the UN states that the principle of *uti possidetis juris* applied to the new, independent states. This consensus was justified by the perceived need to empower the new states and to stabilise the new states-system. It was widely recognised that the new, post-colonial states had inherited polyethnic societies, and that they were not fully developed nation-states as the most advanced

⁸ K. S. Shehadi, *Ethnic Self-determination and the Break-up of States* (London, 1993); A. Heraclides, 'Ethnicity, Secessionist Conflict and the International Society: Towards Normative Paradigm Shift', *Nations and Nationalism*, 3 (1997), pp. 493–520.

societies were. In these circumstances, one of their primary tasks was understood to be that of 'nation-building'.

The post-colonial consensus that prevailed in the international community, and especially in UN forums, from about the mid-1960s to the late 1980s was unstable, both in theory and practice. It was unstable in theory because the legitimacy of the new, post-colonial states derived from the illegitimacy of colonialism, which in turn was based on two political principles that had emerged from Western experience: those of democracy (i.e., self-government by the people) and of nationalism (i.e., self-government of nations). These principles had, however, been interpreted in the light of the overriding requirements of state sovereignty, territorial integrity and *uti possidetis juris*, which had their sources in the Westphalian traditions of international law and politics. During the process of decolonisation, it was assumed that these principles were mutually compatible. When aggrieved ethnic groups challenged the new, post-colonial state elites by appeal to the principle of democratic-nationalist self-determination, neither the new state authorities nor the international community had a convincing theory with which to oppose them.

The post-colonial world order was unstable in practice as a result of several general causes. Firstly, the constitutional forms of Western liberal democracy, which many post-colonial states had inherited, quickly broke down under the combined pressure of economic development (or lack thereof) and ethnic conflict. Secondly, internal conflicts in post-colonial societies were often sustained by the larger conflicts of the Cold War. Thirdly, the Westphalian character of the UN world order offered recognition, status and influence to states, while refusing them to peoples without states. It gave stateless nations an incentive to become nation-states while denying legitimacy and practical help to such struggles, except where 'realist' state interests took priority over professed principles. Nevertheless, notwithstanding the robust statism of the UN system, the potent ideology of anti-colonialism encouraged both discontented peoples in post-colonial countries to rebel against their states and minority nations in the old states (the Irish, Scots, Welsh, Bretons, Corsicans, Basques, Catalans and others) to assert the right to national self-determination in various forms and by various means. The Cold War superpower balance managed these conflicts to some extent, but rival superpower interests rendered this management only partially successful. However, the collapse of the Soviet Communist system and the end of the Cold War revealed the extent to which Russian imperialism and superpower confrontation had had stabilising effects. The removal of these controls ignited the explosive contradictions of the UN nation-state system.

The UN had always been based on a political theory that had sought to reconcile the principle of the territorial integrity of states with that of the self-determination of peoples. This theory rested on the assumption that the Western model of the integrated, liberal-democratic nation-state provided a universal recipe for stability and justice. The turbulent history of much of the post-colonial world and the shocking violence of several post-Communist societies appeared to call for new thinking about nation-states and the rules of the international order. The persisting, unsolved conflicts in the Third World (for example, Ethiopia/Eritrea, Sudan, Rwanda, Burundi, Angola, the Kurds, East Timor, the Philippines, Tibet), the horrors that occurred in some post-Communist societies (especially the former Yugoslavia), the potential for instability elsewhere (e.g., the Caucasus, Slovakia,

Macedonia), and, not least, problems arising within the almost taken-for-granted stability of the old democracies (Quebec/Canada, Northern Ireland, the Basques in Spain) showed that the prospects for order in the 'new world order' were not very good. The fact that the international system, officially committed to the high ideals of the UN, was not very effective in delivering either peace or justice could no longer be blamed on the Cold War. In the domain of political theory the rivalry between 'totalitarian' Marxism and capitalist liberal-democracy had suddenly lost its importance. This formerly central theme of modern political theory was replaced by a new concern with the relation between nations and states, and with that between the polyethnic and multi-national character of actually existing states and the stability of the international order. The putative right to self-determination of peoples, which had been ossified by the anti-colonialist ideology, the Westphalian consensus and *uti possidetis juris*, had been revitalised by a new surge of sometimes violent self-determination claims. One effect of this new crisis in the relations among the international order and its component states and peoples was a reconsideration of the underlying political theory of national self-determination.

Contemporary theories of self-determination

I shall identify six contemporary theories of national self-determination. All are based on liberal-democratic values. I shall limit myself to varieties of liberal-democratic theory because the liberal principles of human rights and the democratic idea of popular sovereignty are normative foundations of the official, legitimating ideology of the international community. Liberal-democratic principles are, of course, also normative foundations of Western nation-states, and inform widely shared values of the peoples of those states. The six theories are 'ideal types' in that actual theories of self-determination combine elements from these ideal-typical theories in different ways. The ideal types are useful insofar as they clarify both the overlapping consensus among liberal-democratic theorists and on what and why they differ. We shall see that different combinations of values imply different policies.

Liberal theories

Classical liberal theory is concerned with the protection of the rights of *individuals*. Governments have the obligation to provide this protection. If a government fails to fulfil this obligation systematically and persistently, individuals have the right to emigrate, resist or secede. Because this theory is based on the rights of *individuals*, it cannot easily produce a theory of *national* self-determination. A liberal theory of national self-determination must show that national self-determination is necessary to protect the fundamental rights of individuals.

The most influential liberal theory of national self-determination is the *remedial theory*. This theory holds that it is a sufficient condition of the internal legitimacy of a national society that it respects the human rights of its members. If it does, no-one

has the right of secession and no question of national self-determination arises, except vis-à-vis external agents, especially other nation-states. There is a right of secession or national self-determination *only* if there are serious and persistent violations of human rights *and* no solution other than self-determination is available.⁹ This is a liberal *rather than* a nationalist theory, for individual rights rather than nationhood are the fundamental values. The theory might support the right to national self-determination if the victims of serious and persistent human-rights violations constituted a nation. A more radical version of this theory holds that self-determination is justified if it would *improve* respect for human rights.¹⁰

Beran has proposed a quite different liberal theory, which may usefully be called the *voluntarist* theory. This theory begins with the assumption that the most fundamental value of liberalism is the right of individual self-determination. This entails the right to freedom of association. It follows, Beran argues, that a political community is rightful only if membership is voluntary. Thus, any individual who wishes to leave a political community has the right to do so. If the majority of a population inhabiting a part of a state's territory wish to secede from that state, they have the right to do so. This theory differs from the remedial theory, because it holds that human-rights violations are neither necessary nor sufficient conditions of the right to self-determination. It holds also that nations have the right to self-determination if, but only if, they meet its conditions. Beran maintains that this is the only theory of national self-determination that liberals can support.¹¹

Beran qualifies the right to secession with several conditions.¹² I shall comment only on those that link liberalism to nationalism. Liberals, according to Beran, can recognise the right of groups to self-determination only if the groups will respect the human rights of all those individuals who live in the newly formed state. Further, the new, secessionist state must recognise the right to secession of the majority in any territory within its borders. This generates what Buchheit has called the problem of 'indefinite divisibility'.¹³ If the right to secede is granted in other than the most exceptional circumstances, it is said, the states-system would fragment into a large number of small states, with consequent anarchy. Beran has proposed four answers to this objection: (1) secession is almost never justified if it leads to war, although, if opponents of an otherwise justified secession start the war, they, not the secessionists, should be blamed for it; (2) war apart, the liberal case for secession overrides the objection from indefinite divisibility; (3) in practice the tendency towards indefinite divisibility would be limited by the self-interest of groups considering self-determination; (4) the problem of indefinite divisibility could be diminished by

⁹ A. H. Birch, 'Another Liberal Theory of Secession', *Political Studies*, XXXII (1984), pp. 596–602.

¹⁰ C. R. Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press, 1979).

¹¹ H. Beran, 'A Liberal Theory of Secession', *Political Studies*, XXXII (1984), pp. 21–31; 'More Theory of Secession: A Response to Birch', *Political Studies*, XXXVI (1988), pp. 316–23; 'The Place of Secession in Liberal Democratic Theory', in P. Gilbert and P. Gregory (eds), *Nations, Cultures and Markets* (Aldershot, 1994); 'A Democratic Theory of Political Self-Determination for a New World Order', paper presented to the 16th World Congress of the International Political Science Association, Berlin, 1994; 'An Attempt to Formulate a Democratic Theory of the Right of Political Self-Determination and Secession', paper presented at the 23rd Joint Sessions of Workshops, European Consortium for Political Research, Bordeaux, 1995.

¹² Beran, 'A Liberal Theory'.

¹³ Buchheit, *Secession*, pp. 19–20.

enlightened concessions by states from which secession is sought.¹⁴ Cobban has also pointed out that the fear that small states are more likely to fight each other than Great Powers is not supported by history.¹⁵ The empirical relation between self-determination and conflict is complex, and neither Beran nor his critics can properly rely on simple generalisations.

Beran argues that those who have the right to the property that they occupy have the right to alter the sovereignty over that property. He employs several theories of property, but fails to relate them coherently either with each other or with his liberal premises. People have the right, he says, to live in their 'traditional homeland'; communities have the right to occupy the land that they do occupy if their existence depends on it *and* they have acquired occupancy *justly*; all people have the right to a fair share of the habitable territory of the earth.¹⁶ Thus property rights may be based on tradition, communal need, just acquisition and fair shares. Beran argues, further, that disputes about property arising from secession can, in principle, be settled by agreement. Sceptics may think that, under actual conditions of secession, such agreement may be difficult to achieve. Beran's treatment of property rights forms the link between the *individualist* premises of his theory and the *collective* right to secession. The link is, however, logically confused and empirically questionable.¹⁷

Buchanan has proposed another liberal approach to secession.¹⁸ He holds that the right to secession must be derived from a variety of ethical considerations. Two features of his theory are particularly noteworthy. The first is that it emphasises *economic discrimination* as a relatively strong ground for secession. The second is the low value that it accords to the preservation of cultures, because cultures change over time; because liberals should value culturally plural states; because secession for the sake of cultural self-determination would lead to indefinite divisibility; and because culturally-based secessions are likely to lead to serious human-rights violations.¹⁹ Buchanan criticises Beran's theory of secession for its lack of realism. The desire to develop a *practicable* theory of self-determination leads him towards the remedial theory.²⁰ His theory thus balances liberalism and realism, and is unsympathetic to specifically nationalist considerations.

Beran assumes that the right to individual self-determination is the foundation of all liberal theories. It is not. Some liberal theories are explicitly anti-foundational.²¹ Some liberal theories, while valuing individual self-determination, recognise a more

¹⁴ Beran, 'A Liberal Theory', pp. 29–30.

¹⁵ A. Cobban, *The Nation-State and National Self-determination* (London: Collins, 1969), pp. 291–2.

¹⁶ Beran, 'A Liberal Theory', p. 24.

¹⁷ Beran leaves this problem unsolved in the most recent version of his theory: H. Beran, 'A Democratic Theory of Political Self-determination for a New World Order', in P. B. Lehning (ed.), *Theories of Secession* (London: Routledge, 1998), p. 39.

¹⁸ A. Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder, CO: Westview Press, 1991).

¹⁹ Buchanan, *Secession*, pp. 48–51.

²⁰ A. Buchanan, 'Self-determination, Secession and the Rule of Law', paper presented to the 23rd Joint Sessions of Workshops, European Consortium for Political Research, Bordeaux, 1995; 'The International Institutional Dimension of Secession', in Lehning (ed.), *Theories of Secession*, p. 232. In the latter work Buchanan characterises his original theory as a version of the remedial theory. I do not wish to question this characterisation, but I do wish to point out that it differs in certain significant respects from the simple remedial theory of Birch.

²¹ J. Raz, *The Morality of Freedom* (Oxford, 1986); O. O'Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996).

fundamental role for justice.²² Although there is no consensus among liberals on the theory of justice, a justice-based theory of self-determination would provide solutions to problems that Beran failed to solve. In particular, it would give a coherent account of the relation between individual and collective values, and that between particular and universal obligations. Such a theory is necessary if liberal individualism and nationalism are to be reconciled.²³

Democratic theories

Beran has called his theory 'liberal', 'democratic' and 'liberal-democratic', although its premises are clearly liberal.²⁴ Liberal democracy is now usually seen as a unified idea. However, the liberal and the democratic traditions are distinct and merged only quite recently. The logic of liberalism and that of democracy are quite different. Liberalism is grounded on individual-related values, such as autonomy or human rights, whereas democratic theory is a view of legitimate *power*, and locates such power in *the people* rather than in an elite. Liberalism places limits on the legitimate power of governments, whether they are democratic or not, whereas democracy grants power to the people, whether it is liberal or not, and is reluctant to limit the power of democratic governments. Liberalism emphasises the rights of individuals, whereas democratic theory gives priority to the will of the people. The popular will does not necessarily respect individual rights. Liberal-democratic theory seeks to show either that liberal premises about individual values entail democratic political conclusions or that the collective value of democratic politics entails liberal conclusions.²⁵ The two different approaches can lead to different policy conclusions. Liberal democrats, for example, tend to favour the constitutional protection of individual rights against the decisions of popular majorities, whereas democratic liberals prefer disputes about rights to be settled by democratic procedures, with the final decision resting with elected assemblies rather than with unelected judges.

Modern nationalism was originally closely associated with democracy. However, contemporary theories of national self-determination that are democratic *rather than* liberal are relatively rare. Philpott has proposed a predominantly democratic case for self-determination, but argues that individual moral autonomy is the basis of both liberalism and democracy.²⁶ His theory is consequently not very different from Beran's, although its emphasis is to some extent democratic rather than liberal. Some theorists have considered democracy and national self-determination to

²² J. Rawls, *A Theory of Justice* (London: Oxford University Press, 1972).

²³ A. Gewirth, 'Ethical Universalism and Particularism', *Journal of Philosophy*, LXXXV (1988), pp. 283–302; *The Community of Rights* (Chicago: The University of Chicago Press, 1996); B. Barry, *Justice as Impartiality* (Oxford: Clarendon Press, 1995); 'Statism and Nationalism: A Cosmopolitan Critique', paper presented to the annual meeting of the American Political Science Association, 1996; P. Bauhn, *Nationalism and Morality* (Lund: Lund University Press, 1995).

²⁴ Beran, 'A Liberal Theory'; 'The Place of Secession'; 'A Democratic Theory'. Beran has recently stated that his theory is intended to be 'consistent with democratic principles': Beran, 'A Democratic Theory', in Lehning (ed.), *Theories of Secession* p. 32.

²⁵ Gewirth, *The Community of Rights*; D. Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Cambridge: Polity Press, 1995).

²⁶ D. Philpott, 'In Defense of Self-Determination', *Ethics* 105 (1995), pp. 352–85, especially at pp. 355–6.

be almost or precisely synonymous. In particular, the right to national self-determination has been interpreted as the right to democratic government.²⁷ The *democratic* case for *national* self-determination, however, requires a consideration of *communitarianism*.

Communitarian theories

Communitarians argue that national membership is not, contrary to what liberals such as Beran suggest, based on voluntary agreement. Most people are born into their nation, and it forms part of their identity.²⁸ Most scholars of nationalism agree that nations are communities.²⁹ Communitarians argue that, if there is a right to self-determination, it must be a communal right.³⁰

Margalit and Raz assume that the world is composed of states and various tribal, ethnic and national groups. The right of self-determination, they argue, is based on the value of entrusting political power over a group to that group. The kind of group that may have the right to self-determination has a common culture that encompasses many important aspects of the lives of its members. Membership of such groups helps to form the identity of individuals and renders it secure by making identity rather than achievement the criterion for belonging. Secure identity is important to individual well-being, as is the successful pursuit of worthwhile goals and relationships. Goals that go beyond what is necessary for biological survival and relationships are culturally determined. The prosperity of encompassing groups is therefore vital to the well-being of their individual members. The absence of effective enforcement machinery in international politics makes it reasonable to let such groups have the right to determine whether the territories in which they live shall form independent states in order to protect the cultures of the groups. Persecution is, according to this theory, neither a necessary nor a sufficient condition for self-government. It is not necessary, because groups may suffer from neglect rather than persecution. It is not sufficient, because there are other solutions to persecution; because independence may bring more costs than benefits to persecuted groups; and because self-government may unjustifiably harm the interests of non-members and *individual* interests of members. The communitarian theory of the right to national self-determination is, therefore, quite distinct from the remedial theory. Margalit and Raz acknowledge that groups may be pernicious, based on exploitation of members or non-members, or on the denigration and persecution of other groups. If they are, the case for their right to self-determination is weakened, and may disappear altogether.³¹

²⁷ A. Cassese, *Self-determination of Peoples*.

²⁸ Y. Tamir, *Liberal Nationalism* (Princeton, NJ: Princeton University Press, 1993).

²⁹ B. Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1983); A. D. Smith, *The Ethnic Origins of Nations* (Oxford: Blackwell, 1986); D. Miller, *On Nationality* (Oxford: Clarendon Press, 1995). For some controversy on this point, see J. O'Neill, 'Should Communitarians Be Nationalists?', *Journal of Applied Philosophy*, 11 (1994), pp. 135–43; D. Archard, 'Should Nationalists Be Communitarians?', *Journal of Applied Philosophy*, 13 (1996), pp. 215–20.

³⁰ Raz, *The Morality of Freedom*, pp. 207–9.

³¹ A. Margalit and J. Raz, 'National Self-determination', *Journal of Philosophy*, LXXXVII (1990), pp. 439–61.

A comparison of Buchanan's theory with that of Margalit and Raz shows both the overlapping consensus and the differences between liberal and communitarian theories of self-determination. Buchanan is reluctant to grant much ethical weight to the protection of ethnic and national cultures, in part because he fears their pernicious (rights-violating) effects, but he is willing to concede that they may contribute to individual well-being. Margalit and Raz emphasise the contribution of national cultures to individual well-being, but acknowledge that cultures can be pernicious. Liberals can, therefore, be nationalists, but tend to view nationalism with suspicion, whereas communitarians can be more enthusiastic nationalists, even though they should be concerned with the harm that nations can do to the interests of both communities and individuals.³²

Miller has developed a theory of national self-determination as part of a social-democratic conception of social justice. Although his theory contains liberal, democratic and socialist elements, it has a strong communitarian basis. Nations, according to Miller, are ethical communities, such that the obligations which their members owe to their fellow-nationals are more extensive than those which they owe to human beings as such. Nationality, for him, is an identity that embodies historical continuity. 'Because our forebears have toiled and spilt their blood to build and defend the nation, we who are born into it inherit an obligation to continue their work'.³³ Nations, Miller argues, facilitate democracy because such circumscribed bodies of people bound together by common customs are well suited to representative government. The territorial element of national identity forges the connection between nations and states, since states are those bodies that claim authority over geographical areas. Where the boundaries of nations and states coincide, obligations of nationality are strengthened by those of citizenship, thereby creating the solidarity necessary to realise social justice. Since membership of a national community has such ethical value for Miller, he believes that everyone has the right to such membership, and each nation should recognise the right to self-determination of every other nation. The right to national self-determination is, therefore, universal.³⁴

This theory raises several problems. Firstly, the ethical basis of nationalism is unclear. It is not clear why the actions of our forebears should generate obligations for us, especially since, as Miller concedes, the actions of our forebears were both good and evil (by our standards and theirs). Further, Miller retreats from his emphasis on the ethical status of forebears in order to incorporate immigrants into the national community. To achieve this, he emphasises common political culture rather than common history as the basis of the nation. Secondly, Miller sometimes conflates the self-determination of *nations* with the self-determination of *states*.³⁵ Notwithstanding the ethical importance he attributes to *nations* as such, he is reluctant to countenance the break-up of *states* which include seriously aggrieved nations. A final objection to Miller's theory is that individuals are required to discriminate against foreigners. This requires each individual to divide humanity into first-class and second-class ethical persons, and favours the existing distribution of

³² O'Neill, 'Should Communitarians be Nationalists?'; Archard, 'Should Nationalists Be Communitarians?'

³³ Miller, *On Nationality*, p. 23.

³⁴ Miller, *On Nationality*.

³⁵ Barry, 'Statism and Nationalism'.

wealth in the world, since it requires rich nations to serve their own interests before those of needy nations. It is doubtful, therefore, whether the theory generates an ethically satisfactory conception of justice.

Realist theories

By 'realist' theories I mean something similar to, but not quite the same as, theories that are normally called 'realist' in the academic discipline of international relations. I refer to theories with two properties: (1) they endorse only those conceptions of the right to national self-determination that could be accepted by the power-holders (particularly, states) in the contemporary world; (2) they accord priority to the stability of the existing states-system. I risk confusing international-relations scholars by altering somewhat the meaning of 'realism', but, in the context of comparing different theories of self-determination, this seems the most appropriate term. Shehadi has produced the most compelling realist theory of self-determination. He argues that the self-determination policy of the international community has failed by its own criteria, as world history since the end of the Second World War has been full of secessionist violence. He believes that the international community must clarify its conception of the right to self-determination; this conception must balance the principle of the territorial integrity of states with the aspirations of aggrieved nations; and there should be international institutions with the authority to settle self-determination disputes in accordance with the rule of law rather than the rule of force.³⁶ Shehadi is, therefore, less concerned with theoretical purity than with practical policies. His argument may, however, be too idealistic to attract the support of many states, and too pragmatic to satisfy the demands of nationalism or of international justice. Precisely the most intractable and the potentially most violent self-determination disputes may be the least susceptible to settlement by legal means, and respect for the territorial integrity of states, being part of the problem, may not easily be made part of the solution.

There is a widespread consensus among scholars of self-determination who wish to reconcile liberal idealism with realism that the right to secession should rarely be recognised (perhaps the remedial theory should apply here) but that states should be encouraged to be more generous in recognising forms of national self-determination that fall short of secession.³⁷ One problem with this solution is that many state elites fear that any concessions to the self-determination of national minorities might lead down a slippery slope to secession. Although such fears may sometimes appear to be unjustified, the empirical evidence suggests that we cannot say that they always are.³⁸

³⁶ Shehadi, *Ethnic Self-determination*. Buchanan has recently argued for the remedial theory on realist grounds: Buchanan, 'The International Institutional Dimension', pp. 237, 240. Shehadi's 'realism' allows more space to nationalism, whereas Buchanan's emphasises more the protection of liberal rights.

³⁷ H. Hannum, *Autonomy, Sovereignty and Self-determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1990); A. Eide, 'In Search of Constructive Alternatives to Secession', in C. Tomuschat (ed.), *Modern Law of Self-determination* (Dordrecht: Martinus Nijhoff, 1993).

³⁸ J. McGarry and B. O'Leary (eds), *The Politics of Ethnic Conflict Regulation: Case Studies of Protracted Ethnic Conflicts* (London: Routledge, 1993).

Some commentators argue that imaginative new political forms that neither seek to abolish the sovereign state nor insist on preserving traditional conceptions of sovereignty should be explored. The joint approach of the Irish and UK governments to the solution of the Northern Ireland problem is seen by many as an example of just such a cautiously innovative measure. That these two states, relatively rich and committed to liberal-democratic values by global standards, employing a combination of realism and imagination, have made such slow progress shows how intractable problems of national self-determination can be.

Cosmopolitan theories

Miller contrasts nationalism with cosmopolitanism, which he treats as a shallow, cultural eclecticism.³⁹ However, Miller's nationalist theory of self-determination itself has a cosmopolitan dimension, since it treats the right to self-determination as a universal right. Realist theories are also cosmopolitan insofar as they are concerned with *world* order. Classical liberalism was cosmopolitan in holding that important ethical relations can cross the borders of states independently of national identities. The fundamental principle of cosmopolitan ethics can be found in Article 1 of the Universal Declaration of Human Rights: 'All human beings are born free and equal in dignity and rights'. Cosmopolitans infer from this that national identities and state borders are, in principle, irrelevant to any human being's entitlement to the necessary conditions of a good life.⁴⁰ Cosmopolitanism is, as Barry says, 'a moral outlook, not an institutional prescription'.⁴¹ It is not necessarily opposed to either nations or states, or to the right to national self-determination. It does, however, deny to state and national institutions *primary* ethical value. What does have such value is the good for human beings. Although different philosophies give different accounts of the good, cosmopolitans are committed to the principle of universal moral equality and the priority of the good to institutions.⁴²

Cosmopolitanism is, therefore, indeterminate with regard to the right to national self-determination. In this it does not differ from the theories that support the right relatively strongly—such as those of Margalit and Raz and of Miller—for these theories qualify the right in various ways. The right to national self-determination ought to be conditional upon the kind of nation that is claiming it and the probable outcomes of recognising it. Cosmopolitanism differs from many other theories of self-determination and secession in that it takes into account, not only the interests of those claiming self-determination and of those from whom they are claiming it, but all those whom it may affect. Beran notes that secession raises questions of distributive justice, not only between the secessionists and the remainder-state, but globally, for secessionists and remainder-state may reach an agreement that is unjust

³⁹ Miller, *On Nationality*, p. 186.

⁴⁰ M.C. Nussbaum and A. Sen (eds), *The Quality of Life* (Oxford: Clarendon Press, 1993); O. O'Neill, 'Justice and Boundaries', in C. Brown (ed.), *Political Restructuring in Europe: Ethical Perspectives* (London: Routledge, 1994); Gewirth, *The Community of Rights*.

⁴¹ Barry, 'Statism and Nationalism', p. 30.

⁴² M. Freeman, 'The Priority of Function to Structure: A New Approach to Secession', in Lehning (ed.), *Theories of Secession*, pp. 12–31.

to others. Even though there is no prospect of consensus on a cosmopolitan theory of justice, cosmopolitans insist that the global dimension of self-determination problems be taken into account, and that, at least, no solution to a self-determination conflict is ethically acceptable if it entails obvious injustice to outside parties.

Cosmopolitan realism

Cosmopolitan realism is, strictly speaking, not a sixth theory, but a combination of two others. I identify it separately, however, because I wish to defend it, and, in particular, because I wish to refute the common charge that cosmopolitanism is utopian.

Buchanan defends a presumption in favour of the sovereignty of existing states, even though he admits that the ethical status of that sovereignty is dubious.⁴³ Cosmopolitans deny that existing state borders have primary ethical value, although some actual states may be ethically commendable, and the costs of changing even unsatisfactory borders may be so high that such changes should not be made. Similarly, cosmopolitans would doubt the ethical value of Miller's kind of nationalism, although they would allow that some nationalisms are ethically much better than others.

Since cosmopolitanism values the well-being of human beings before any institutions, it is not, contrary to what is sometimes supposed, necessarily committed to world government. If critics of the idea of world government are right in claiming that it is either impossible or dangerous, cosmopolitans can agree with them. Similarly, cosmopolitans are not committed to a uniform, universal morality.⁴⁴ A just, cosmopolitan world might well contain nations, states and a rich cultural diversity. If realism can be cosmopolitan, cosmopolitanism can be realistic. Although cosmopolitanism can endorse the right to national self-determination in some circumstances, it recognises no such general right because it calls into question the vision of a world of nation-states that the right to national self-determination presupposes. Margalit and Raz assumed a world composed of states and various tribal, ethnic and national groups. Tully has recently shown that the world is in fact composed of a 'strange multiplicity' of internally heterogeneous, overlapping and interactive cultural groups.⁴⁵ Thus, while some national self-determination claims may deserve recognition, we should also explore institutional solutions that go beyond traditional ideas of nation and state, such as semi-sovereign communities associated with states, or inter-state organisations (such as the European Union) and trans-state, quasi-national associations that might be accorded associate status by the UN without recognising them as sovereign states and thereby threatening the territorial integrity of the states in which they are located.⁴⁶

⁴³ Buchanan, *Secession*. In 'The International Institutional Dimension' Buchanan defends the ethical status of sovereign, territorial states, provided that they meet certain basic, liberal conditions, such as respect for human rights.

⁴⁴ O'Neill, *Towards Justice and Virtue*.

⁴⁵ J. Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995).

⁴⁶ T. Pogge, 'Cosmopolitanism and Sovereignty', in Brown (ed.), *Political Restructuring in Europe*.

Policy implications: political theory and its limits

There is no absolute right to national self-determination. All rights have costs, as Raz points out, and there cannot be an absolute right to impose unreasonable costs on others. Rights also protect interests, interests can conflict, and rights therefore can conflict. The concept of absolute rights in conflict is incoherent, since two conflicting, absolute rights could not both be recognised. The right to national self-determination potentially imposes great costs on others, and therefore should be recognised only with great caution.⁴⁷

My conclusion is, therefore, that the right to national self-determination requires a complex analysis, and that each particular claim to the right should be judged on its particular merits. Having come to this robustly indeterminate conclusion, I should like to draw attention to some particular problems that the foregoing analysis has raised. Attention to these problems may be more fruitful than further canvassing of general arguments for and against the right to national self-determination.

The international heckler's veto

Beran has identified the problem of the international heckler's veto most clearly (although he does not name it as such).⁴⁸ The problem derives its name from a well-known dilemma of domestic civil liberties. Suppose that a person or group, A, has a strong, *prima facie* right to some good, X, say to hold a peaceful public meeting or to national self-determination. Suppose then that a thuggish party, B, wrongfully threatens that, if A exercises A's right to X, B will create considerable harm, for example, by starting a riot or a war. The problem is whether, in such a situation, the authorities (the state or the international community) should capitulate to B's threat, in order to avoid the threatened harm, thereby collaborating with the violation of A's right, or defend A's right, thereby risking the harm threatened by B. Beran's solution—which I believe is correct—is that, if the harm that B will do is both probable and extreme, A's right should not be implemented, but we should clearly judge that B is the wrongdoer, and everything practicable should be done to remedy the injustice that B has done to A. Thus, if recognition of a *prima facie* justifiable claim to national self-determination would lead to war, recognition should not be given, but the rights of the claimants should be implemented as far as possible.⁴⁹

Demonstration effects

Suppose that N₁, a national group, has a strong, *prima facie* right to self-

⁴⁷ Raz, *The Morality of Freedom*.

⁴⁸ Beran, 'A Democratic Theory', in Lehning (ed.), *Theories of Secession*, pp. 53–4.

⁴⁹ Buchanan argues against liberal theories, such as Beran's, and communitarian theories, such as that of Margalit and Raz, on the ground that they provide perverse incentives to governments to engage, for example, in ethnic cleansing or cultural genocide in order to prevent the conditions that would give rise to the right to self-determination from coming into being: Buchanan, 'The International Institutional Dimension', pp. 246–9. The concept of the 'heckler's veto' requires us to distinguish the perversity of such actions from the dilemmas of those who have to respond to, or anticipate them.

determination, but that, if this right is recognised, N₂, a group that is ethnic kin to N₁, but which has a weaker right to self-determination (say, its rights are better respected), may, as a consequence, make strong demands for the recognition of its putative right to autonomy, or even secession. National self-determination could thus be highly infectious in such a way that just causes provoke unjust claims. This is a common concern of realist opponents of the right to self-determination. As with the heckler's veto, justice conflicts with peace, although, in this case, justice may require the *refusal* to recognise the right to national self-determination. The general nature of the solution is also similar. We should be clear about what justice requires, and do our best to implement it, but we have to take into account the probable consequences for the well-being of others. Thus, unjust demands for national self-determination should be rejected in principle, but practical policies towards such demands should take into account the consequences for third parties. In this way, cosmopolitan realism combines a 'deontological' and a 'consequentialist' approach to the ethics of international policy-making. Political theory cannot eliminate painful dilemmas or moral compromises from the world. This is recognised by the 'realist' component of cosmopolitan realism. It can, however, criticise those who confuse such dilemmas and compromises with justice. This is required by ethical cosmopolitanism.

The right to secession versus secessionist violence

The dominant view of the international community (i.e., of state elites) has been that it should not recognise a right to secession because such recognition would encourage secessionist violence. Shehadi has cogently argued, however, that the rigid refusal to recognise a right to secession in any circumstances has *increased* the amount of secessionist violence in the world. The disintegration of Yugoslavia demonstrated the confusion and disastrous consequences of the orthodox policy. It is a false and dangerous dogma that secession necessarily leads to violence. Secessionist claims come in diverse forms with diverse consequences. The decision whether or not to recognise a secessionist claim should depend on a complex set of principles and a consideration of particular circumstances.

Autonomy: just compromise or slippery slope?

Various forms of collective autonomy—such as devolution, federalism, consociationalism, etc.—are often favoured as solutions to self-determination conflicts, since they recognise both a limited right to national self-determination and the territorial sovereignty of existing states. Such policies are, however, not necessarily successful. Conservative fears of slippery slopes to secession are sometimes justified. Canada has made a number of concessions to the francophone Québécois without having removed the threat of secession. One problem, which Horowitz has excellently analysed, is that concessions to those seeking national self-determination even in

moderate forms can provoke a backlash from the dominant nation.⁵⁰ This may be a special case of the problem of the heckler's veto. If so, the heckler's-veto solution applies. Such cases, however, usually require wise judgment and the solutions cannot be captured in simple theoretical generalisations.

Beyond the nation-state: deconstructing sovereignty

Solutions to self-determination problems can go down, up or across. Downward solutions involve some form of autonomy within existing nation-states. Upward solutions involve the participation of wider political entities, such as the European Union. Horowitz is, however, very sceptical, on the basis of the evidence, about this way to solve ethno-nationalist conflicts.⁵¹ Trans-state solutions have been less considered. When nations cross state borders, the international community might recognise representative institutions of those nations without necessarily treating them as sovereign states. Such solutions make the concept of sovereignty more flexible while avoiding the unrealistic policy of seeking to abolish it.

Theory and judgment

The right to self-determination should be constrained by liberal rights and democratic accountability. The dispute between nationalist and cosmopolitan conceptions of self-determination is rooted in the unsolved philosophical problem of how we should reconcile particular with universal moral obligations.⁵² Just claims to self-determination have also to be reconciled with the value of peace. Confronted with these ethical dilemmas, we reach the limits of theory. Ethical principles, O'Neill has convincingly argued, are action-guiding, not action-determining.⁵³ Theory has to be supplemented by judgment in particular circumstances. Appeals to the right to self-determination arouse strong emotions of national pride and fear of xenophobic violence. Few political principles appear both so noble and so dangerous. Few, consequently, require so urgently both clear theoretical analysis and wise practical judgment.

⁵⁰ D. L. Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985).

⁵¹ Horowitz, *Ethnic Groups in Conflict*.

⁵² Gewirth, 'Ethical Universalism'; Tamir, *Liberal Nationalism*; Barry, *Justice as Impartiality*; Bauhn, *Nationalism and Morality*; Miller, *On Nationality*; J. Cohen (ed.), *For Love of Country: Debating the Limits of Patriotism* (Boston: Beacon Press, 1996).

⁵³ O'Neill, *Towards Justice and Virtue*.