

# Self-Determination and International Order

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*The Monist* 89, 2, pp. 356-370

## 1. The Principle of Self-Determination

Towards the end of the first world war, a “principle of self-determination” was proposed as a foundation for international order. In the words of its chief advocate, U.S. President Woodrow Wilson, it specified that the “settlement of every question, whether of territory, of sovereignty, of economic arrangement, or of political relationship” is to be made “upon the basis of the free acceptance of that settlement by the people immediately concerned and not upon the basis of the material interest or advantage of any other nation or people which may desire a different settlement for sake of its own exterior influence or mastery” (Wilson 1927, 233). The principle played a significant role in deliberations about lands newly liberated by the first world war, and, in the aftermath of the second, it was enshrined within Article 1 of the United Nations Charter which called upon member nations “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.” Its status within international law was further heightened by the 1966 Covenants on Civil and Political Rights and on Economic Social and Cultural Rights, whose first articles specify the following: “All peoples 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.” In 1970, General Assembly Resolution 2625 added that, “every state has the duty to respect this right in accordance with the provision of the Charter.”

Despite these credentials, the principle of self-determination is problematic as a norm of international order. On one hand, it has a firm niche within modern democratic thought. Since the justice and stability of a political arrangement in a territory must be responsive to what its established inhabitants take to be in their legitimate interests, then, by voluntarily binding themselves to that arrangement they impose upon themselves a moral obligation to abide by its terms, thereby enhancing prospects for stable peace and orderly development. Imposing an arrangement upon people, by contrast, creates resentment that threatens future instability, either domestically or internationally depending on the source of that imposition. At the same time, while the principle has been used to justify independence movements in lands formally under colonial domination, calls for self-determination have generated conflict when distinct “peoples” existing in the same or overlapping regions raise competing claims of self-determination. Moreover, if each people has a right to be self-determining, including those that presently are not self-determining, how can such rights be reconciled with the sovereign right and territorial integrity of existing states?

Thus, while the principle of self-determination is a recognized norm of international order, ensconced within the democratic framework, attempts to apply it have generated conflicting claims to sovereignty. What, then, can be said for its status as a component of international justice? Has it been misinterpreted? Is it anything other than a source of normative confusion? These questions demand a closer look at the concept of self-determination and at what exactly is mandated by a correlated principle of self-determination. The basic issues are these:

- What is the content of a request or demand for self-determination, that is, what is it that an entity possesses in being a self-determining unit?
- What are the relevant moral norms concerning self-determination, i.e., is self-determination to be construed as a right, a privilege, an ideal, a recommendation, a regulative principle, a maxim of diplomacy, etc.?
- Who are the proper beneficiaries of self-determination, that is, who or what is entitled to be self-determining?

In what follows, the principal focus is upon the last of these questions, though in answering it the former must first be addressed.

## **2. Content, Norm and Standard Beneficiaries**

In general terms, self-determination is an entity's *autonomy*, viz., managing its own affairs as it sees fit independently of external interference. While individuals almost never gain complete self-rule, societies can achieve significant measures of autonomy within limited areas. In the strict sense usually intended, self-determination is a matter of statehood, that is, of a political community's possessing and exercising *sovereignty* over its territory (Copp 1997, 278). There are lesser degrees of autonomy that fall short of full sovereignty, however, and these might take various forms of restricted localized self-rule, e.g., at the level of provinces, municipalities, neighborhoods, or of culturally or economically defined minorities.

Whether collective self-determination is best conceived as a legal right, a moral ideal, or a political maxim is a more difficult matter. Wilson spoke of "an imperative principle of action which statesmen will ignore at their own peril" (Wilson 1927, 180), in

which case the principle is envisioned as a political maxim binding upon those who possessed *de facto* control over “unsettled territories,” namely, to let the people “immediately concerned” determine their own future. Yet, this norm is difficult to separate from the claim that such peoples are *entitled* to be self-determining, and, in the development of international law since World War II, the language of a ‘right’ to self-determination has increasingly appeared in documents codifying international law (as indicated above). These facts have not ended the debate, however (Kapitan 1997, 43; Dahbour 2003, 63-68), and some argue that a call for self-determination is not so much a single principle as a “placeholder for a range of possible principles specifying various forms and degrees of independence” (Buchanan 1991, 50, and see also Pomerance 1984, 337).

Restricting ourselves to the strict political meaning of ‘self-determination,’ different entitlements jump to the fore. Perhaps the most obvious holders of a right of self-determination are states, and the simplest description of a right of self-determination is the following:

***Self-determination of States:*** Each *state*—an organized political community already possessing control over its territory—has a right to exercise rule in that territory through the operations of governmental institutions without external intervention.

This is a claim-right placing a demand upon all other states, groups, and individuals—including its own citizens—for recognition of its sovereignty over its territory and non-intervention in its internal affairs. It is limited in two ways. First, it can be overridden whenever intervention by external agents is called for, e.g., against a state engaging in

rampant human rights abuses. For this reason, some would confine the right of self-determination to *legitimate* states, viz., those with effective institutional safeguards of human rights, thus, not engaged in systematic social, economic, legal, or political discrimination over a segment of its population, and not pursuing a campaign of belligerent aggression against external populations (Buchanan 1997b, Copp 1997, 1999, Rawls 1993, 68-71). But even a legitimacy restriction does not overcome the second limitation stemming from a citizenry's right to reconstitute the political institutions under which it exists (Copp 1997, 281), whether by replacing the existing constitution or basic laws, dissolving the state into separate sovereignties, or merging with a larger political entity. In fact, this limitation stems from a more general right of self-determination:

***Self-Determination of Citizens:*** The *citizenry* of each state has a right to establish, maintain, and alter the political institutions under which it is to live and be governed, (viz., popular sovereignty belonging to the people and exercised collectively).

Arguably, a state's right of self-determination derives from this more basic right, implying that when an external agent violates a legitimate state's sovereign right it thereby violates the right of the citizenry—a people—to constitute and maintain itself as a self-governing political entity in that territory.

Does a people's right of self-determination derive from anything more basic? One source is the fact that a collective's self-determination is the best means for protecting the human rights of its members and, thereby, improving the quality of their lives. Also, if a collective's right over its members derives from the latter's consent, then an individual's right to self-governance provides a further basis for the collective's right. This does not

mean that each individual is entitled to sovereignty over a territory, but, minimally, that he or she has a right to meaningfully participate in decisions about sovereignty over the territory in which he or she resides. Insofar as individuals exercise autonomy at the political level only through voluntary participation in a self-governing collective, then violating a citizenry's right to self-governance is *ipso facto* denying individual citizens the right of political participation. In this way, an established citizenry has a right of collective self-determination only *because* individuals have the right to be self-governing in the sense specified.<sup>1</sup>

The issue of *how* collective self-governance is to be implemented is another matter, and it is left unspecified by both the mentioned international covenants. A citizenry's right of self-determination requires that governing institutions are to derive from the consensus of the entire community, not by the preferences of internal minorities or agencies, or by external communities or nations. But once the decision is effected, the precise mode of subsequent citizenry participation in the governing institutions is open to debate. While it has become customary to expect that institutions regulating public life be freely determined through popular consent and operate on democratic principles, it is less clear that the notions of "popular consent to" and "free determination of" a particular political order require democracy (MacCallum 1987, 50-52; Moore 2001, 214-217). For example, a society might have an established and widely supported tradition whereby significant political decisions are deliberated upon and made by an unelected council of elders. Although decisions are not made within a democratic system characterized by universal suffrage, so long as the society enjoys freedom from external intervention, there is no automatic violation of the mentioned rights of self-determination.

### 3. The Problem of Exceptional Beneficiaries.

While the principle of self-determination confers a right “to acquire or continue to possess the status of a state” (Copp 1997, 278), existing states and their peoples are only its default or *standard* beneficiaries. In debates about international law and morality, self-determination has also been taken as a prerogative of yet other agents. The most contested appeals to the principle have concerned *exceptional* applications to non-autonomous groups desirous of self-governance, whether recently liberated from previous rulers as a result of war, de-colonization, or the break-up of a state, or, currently engaged in secessionist struggles.

How do we demarcate this further class of beneficiaries? Plainly, not just any such group qualifies. Individual families do not, nor do business organizations, sports teams, professional associations, religiously affiliated convents, or social clubs, even if they aspire to political autonomy. At least two minimal conditions must be met. First, a beneficiary must be *politically coherent*, that is, it must be an intergenerational community capable of political independence whose members share adequate means of communication and enough normative moral ideals capable of sustaining their adherence to the same political and legal institutions.<sup>2</sup> Second, a beneficiary must have an appropriate connection to a territory that is both *geographically unified*—where any point in it is accessible from any other point without having to pass through foreign territory—and *politically integrable*—that is, a region in which the exercise of normal state functions (e.g., maintaining a police force) would not violate the sovereign rights of existing states in distinct regions outside its boundaries. Geographical unity might not be

necessary for political integrability, but departures from it weaken an aspirant's claim for self-determination (Berg 1991, 214).

Yet, even this is not enough to single out a viable class of exceptional beneficiaries. If *every* politically coherent collective residing in a politically integrable region claimed a right of self-determination in that region, the world would be faced with a bewildering justification not only for conflicting claims between populations and sub-populations, but also for the fragmentation of virtually all existing states. Attempts to locate a mean between such extreme liberality and the restriction to standard beneficiaries are complicated by a significant divergence of opinion about how to demarcate exceptional beneficiaries. The problem stems from the two historical sources of the principle of self-determination, namely, the doctrine of popular sovereignty on one hand, and national liberation movements on the other. According to the former, the right of self-determination is a demand of self-governance on the part of the *communities* of legitimate residents of politically defined territories (whose rationale is mentioned in section 1 above).<sup>3</sup> According to the national source—a view popularized under the 19th Century call for the *Selbstbestimmungsrecht* (sovereign right) of peoples (Umzurike 1972, 3)—the right of self-determination is predicated on the idea that cultures or nations are worth preserving, so that the furtherance of cultures is the very purpose of the principle. Here, the appropriate claimants of a right to self-determination are *nations* or *national groups*, that is, collectives whose members share linguistic, cultural, and historical, or “national” ties.<sup>4</sup>

A collective might be both a community and a nation, in which case the regional and the national versions of self-determination would converge when a culture is



“preserved” through the exercise of popular sovereignty by a population consisting of members of a single national group. But convergence is the exception. Typically, not every regionally identifiable population is a single people, and not every national group is a regionally identifiable population. Moreover, just as state preservation of a culture can occur without popular sovereignty of its population, the converse is equally true. Failure to distinguish these two distinct interpretations of beneficiaries is partly due to the common perception that while the principle of self-determination calls for national autonomy, the terms ‘nation’, ‘national’ and ‘people’ are ambiguous between a purely political or a cultural interpretation. In the former sense, rights of self-determination are nothing beyond what is accorded to states and their citizenries, while in the latter sense, autonomy is mandated for culturally defined groups.

Are there, then, two further rights of self-determination, one calling for popular sovereignty within *any* region, the other for self-governance for *any* nation or national group? Admitting this would generate conflicts of rights, especially since a “nation” cannot be self-determining except in a “region.” A national group’s bid for self-determination in a territory might be insensitive to the interests of the established majority of that territory or a larger territory of which it is a part, just as a demand for regional autonomy might be oblivious to the cultural diversities and rivalries that prevail within a given region. Rather than speaking of two conflicting principles under the same title, it is better to avoid contradiction by adjudicating between rival interpretations of a single principle. Before attempting that, however, it must be observed that neither the notion of a *community* or of a *national group*, as such, suffices to demarcate the remaining class of beneficiaries. Granting a right of self-determination to every people,

under either interpretation, would generate the problems of conflict and fragmentation noted above. Plainly, not every regionally-defined population merits self-determination, and not every national group, or sub-group, can claim a privileged connection to territory that would warrant being self-determining *qua* that group.<sup>5</sup> Regardless of which interpretation we take, we still need a specification of the precise conditions under which a non-standard collective is deserving of self-determination. This is the problem of *demarcating* exceptional beneficiaries.

#### **4. Defending a Regional Interpretation of Exceptional Beneficiaries**

A traditional argument for national self-determination is based on the importance of protecting and promoting the existence of distinct cultures. In recent years, it has also been added that individual rights of cultural expression are best secured if cultural groups are self-governing (Margalit and Raz 1990, Tamir 1991, 1993, Miller 1995, Moore 2001). Localized autonomy might be sufficient in most cases, but a national group acquires a right to territorial sovereignty in the region to which it has the best claim when it faces a severe threat to its very existence—provided that it satisfy the liberal demands of legitimacy, viz., that its state would safeguard the rights of individuals and cultural minorities. This modest brand of nationalism delimits exceptional beneficiaries in political terms without endorsing the blanket nationalistic demand of “a state for every nation” or promoting the aspirations of cultural groups that do not have a “best” claim to any territory as their own.<sup>6</sup>

But even a so-qualified version of liberal nationalism is subject to the familiar criticisms of nationalism in general (see, for example, Dahbour 2003, ch. 6). In brief,

while we can recognize the value of cultural autonomy, whenever we consider a proposed practical principle we distinguish what it might yield if people were perfectly impartial from what it is likely to produce in practice. The fact is that, by definition, a nation-state is constituted for the sake of a specific national group, and inevitably, its institutions, laws, and policies will reflect the culture of that group and favor their interests. Here is where the dangers lie. Few areas of the world are culturally homogenous, and most experience culturally-based competition and discrimination. Since human beings are unlikely to abandon the habit of identifying with cultural groups to which other collectives are unfavorably compared, the *de jure* favoring of one group's cultural values is bound to be feared and resented by other groups who see in it a threat of being disenfranchised or discriminated against in the distribution of benefits and privileges (Barry 1999). Granting one national group a right to strict self-determination would inevitably be perceived as threatening the cultural autonomy of another and, thereby, generate inconsistent demands for self-rule, as witnessed by the recent histories of Bosnia, Kosovo, Northern Ireland, Israel-Palestine, Cyprus, eastern Turkey, and northern Iraq.

There are also historical reasons to favor a regional construal of exceptional beneficiaries. Though it is often assumed that the Wilson's principle of self-determination is to be interpreted along nationalistic lines,<sup>7</sup> Wilson's own language and appeals to the ideal of popular sovereignty reveal a regional orientation. For example, in the 1918 speech in which he first employed the term 'self-determination' he stated that "peoples may now be dominated and governed only by their own consent. 'Self-determination' is not a mere phrase. It is an imperative principle of action that statesmen

will henceforth ignore at their own peril” (Wilson 1927, 180). The implied “principle of action” contains nothing about preserving cultures, but everything about the respect for the consent of the governed. Again, in arguing that observance of self-determination is an essential measure for preventing future wars and making the world safe for democracy, Wilson said,

no peace can last, or ought to last, which does not recognize and accept the principle that governments derive all their just powers from the consent of the governed, and that no right anywhere exists to hand peoples about from sovereignty to sovereignty as if they were property. (Pomerance 1976, 2)

The easy transition from ‘the governed’ to ‘peoples’ together with the occurrence of ‘freely accepted’ reveals a concern for popular sovereignty rather than the preservation of cultures, and the same can be said for the contrast between self-determination and being “handed” from one sovereignty to another. A regional emphasis is also evident in his subsequent advocacy of the treaty establishing the League of Nations:

the principle underlying the treaty was that every land belonged to the native stock that lived in it, and that nobody had the right to dictate either the form of government or the control of territory to those people who were born and bred and had their lives and happiness to make there. (Wilson 1927, 49)

If we underline the phrases “the native stock that lived in it” and “born and bred,” then the underlying principle is that self-determination must be accorded to the *inhabitants* of territories under discussion.

A regional interpretation of Wilson’s intent was confirmed by the 1919 Paris Peace Conference debates over territories newly liberated from foreign domination e.g.,

Alsace-Lorraine, Upper Silesia, and lands formerly under Ottoman rule. It was precisely in these "unsettled" regions that the principle of self-determination was contested *because* of nationalistic pressures. The deliberations over Palestine are particularly telling. Wilson's own Secretary of State, Robert Lansing, understood Wilson's principle in regional terms when he concluded that Wilson's principle could *not* be harmonized with Zionism (Lansing 1921, 97-98), and the King-Crane Commission that Wilson dispatched to the Near East in 1919 subsequently reported to the Peace Conference that if the principle of self-determination is to rule then,

it is to be remembered that the non-Jewish population of Palestine—nearly 9/10 of the whole—are emphatically against the entire Zionist programme. . . .To subject a people so minded to unlimited Jewish immigration, and to steady financial and social pressure to surrender the land, would be a gross violation of the principle just quoted (Khalidi 1971, 217)

The Foreign Minister of Great Britain at the time, Arthur Balfour, explicitly repudiated appeal to the principle of self-determination in rejecting the commissioners' recommendation:

in Palestine we do not propose even to go through the form of consulting the wishes of the present inhabitants of the country, though the American Commission has been going through the form of asking what they are.<sup>8</sup>

These passages reveal that a regional interpretation of the principle was virtually taken for granted at the time it was proposed.

More powerfully, the subsequent history of the Near East reveals that Britain's refusal to observe the principle of regional self-determination during the thirty-year

period in which it controlled Palestine (1917-1948)—a policy perpetuated by successive American, Israeli, and Arab governments since WWII—is the root cause of some eight decades of turmoil. Arab resentment over the imposition of a Jewish state in 77% of Palestine in 1948-49, and, since 1967, Israel’s steady and determined appropriation of the remainder, is what fuels the bitter struggle over territory that has always been the core of the Israeli-Palestinian conflict. At this point, it is the paradigm instance of how resistance against foreign domination has occasioned the strategic use of terrorism.<sup>9</sup>

While these considerations favor a regional interpretation of the principle of self-determination, they do not imply that every regionally-defined population merits self-determination (see section 3). To solve the problem of demarcating exceptional beneficiaries, we can take a page from the modest nationalism described above and define the deserving populations in *political* terms by distinguishing two types of exceptional beneficiaries. In the first place, a right of self-determination belongs to populations of regions that are politically *unsettled*, namely, regions where issues of sovereignty and the nature of the governing political, economic, social, and cultural institutions are as yet unresolved. These include regions that (i) were formerly dominated by another community but are currently free from that domination because of wars, decolonialization, etc., (ii) are currently under some form of internationally sanctioned trusteeship, or (iii) have been accorded the right of secession by a larger state of which it is presently a part. The legitimate residents of such territories have a right to be self-determining in those territories, though they might choose to exercise that self-determination in different ways, e.g., by becoming an independent country, merging with a neighboring country, or dissolving into separate countries.<sup>10</sup>

This does not address the concerns of those who are anxious to press *secessionist* demands despite a failure to meet any of the conditions (i)-(iii) for unsettled regions. While a mere demand for secession does not create a right, whenever the existing sovereign either (i) is unable to protect the rights of the people in a given region under its control, e.g., through weakness or negligence, or (ii) sacrifices legitimacy through severe discrimination, persecution, or other forms of injustice directed towards that population, then the latter may be classified as *endangered*. Its entitlement to self-determination is a right to take steps to protect the human rights of its members by going beyond the measures of political and legal redress allowed within that state. This right derives from the right of individuals to appeal to collectives to which they belong to take action in the defense of their vital interests. When the collective is regionally defined, then it may decide on behalf of its members to seek political independence, dissolution into smaller states, or merger with another state.

Combining these two considerations—that of endangered regions under an ineffective or threatening sovereign, and that of unsettled regions under no present sovereignty or under some form of trusteeship—we solve the demarcation problem for exceptional beneficiaries by means of a third principle:

***Self-Determination of Exceptional Beneficiaries:*** The legitimate residents of unsettled or endangered regions have a right to determine their political future by either constituting themselves as an autonomous political unit, or merging with another state, or dissolving into smaller states.

In the case of endangered regions, merger and dissolution would imply secession from an existing state, though political independence falling short of strict sovereignty would not. For unsettled regions, secession is not the issue.

The three rights of self-determination present a philosophical interpretation of what the principle of self-determination calls for. The questions with which we began are now answered: self-determination is a matter of right to self-governance on the part of existing states, their citizenries, and the legitimate residents within unsettled or endangered regions. The philosophical and historical considerations raised above give reason why these rights should be recognized as norms governing international relations. This said, it remains that a right of self-determination is never a *carte blanche* for a beneficiary to establish objectionable forms of discrimination and, therefore, it is neither the sole nor the overriding normative principle relevant to international order.<sup>11</sup> No matter how vigorously a community presses a bid for autonomy, both the source and limitations of its right to self-determination are found in those human rights that have emerged in the developing system of international justice.



## NOTES

1. The individual's right to political participation is mentioned in Article 21 (1) of the Universal Declaration of Human Rights (1948), and it is noteworthy that item (3) of this article is the principle of popular sovereignty. Article 25 of the Covenant on Civil and Political Rights (1966) is the closest that international law comes to granting an individual a right of self-governance. Simmons 2001, 307, 313 argues that according to Locke's view, the consent that legitimates political society also legitimates a society's claims to jurisdiction and control over a territory.
2. See Ofuatey-Kodjoe 1977, 156-159; Copp 1997, 288-291. Copp adds that the group must have a "stable and widespread desire among its members that it constitute a state" (1997, 293).
3. It is no easy matter to delineate the *legitimate residents* of a territory. The most obvious candidates are inhabitants who were born and raised to adulthood therein and whose discernible ancestors were equally indigenous. Those living on the outside without historical, cultural, or legal ties, are the clearest cases of non-residents. In between are groups of expatriates, exiles, refugees, emigrants, and immigrants, each with varying degrees of entitlement to residency depending upon the conditions under which they entered or left the territory.
4. A *nation* or *national group* is a group of individuals that share various objective characteristics such as language, history, religious and moral beliefs, and distinctive cultural traits, and, perhaps, subjective features, e.g., recognition of one's own cultural identity, a desire to live with others of one's group, etc. See Margalit and Raz 1990, and

Tamir 1991, 573-4 for additional description. Copp argues that a group is a nation only if it “has” a territory within which it could constitute a state (1997, 289).

5. This point is made by several writers, e.g., Gellner 1993, Buchanan 1991, 22-80, 151-162. See also, Tamir 1993, 158 and Miller 1995, 108-110 which are otherwise supportive of a nationalist principle.

6. That a cultural group has a “best claim” to a region can mean that it has either (1) a better claim to that region than any other cultural group, or (2) a better claim to that region than to any other region. Either reading raises problems since it is controversial what establishes a group’s claim to territory in the first place, much less a “best” claim (see Moore 2001, chp. 7).

7. See, for example, Cobban 1944, 19-22, Feinberg 1970, 45, Amstutz 1999, 59, Moore 2001, 143.

8. See Khalidi 1971, 201-211 for the full version of Balfour's text. A subsequent memorandum from the British Foreign Office to the British Cabinet was equally explicit: "The problem of Palestine cannot be exclusively solved on the principle of self-determination, because there is one element in the population—the Jews—which, for historical and religious reasons, is entitled to a greater influence than would be given to it if number were the sole test." (Lloyd-George 1939, 750).

9. See Robert Pape, “Blowing Up an Assumption” (*NY Times*, May 18, 2005)—and his forthcoming book, *Dying to Win: The Strategic Logic of Suicide Terrorism* — who reports that the sponsors of suicide terrorism in each of the 18 major political struggles during the period 1980-2003 were “seeking to establish or maintain political self-determination.”

10. The possibility of dissolution arises when there are rival claims among subgroups of the population. Khalidi 1997, 79, provides an interesting format for resolving the conflict in terms of what he calls a *smallest region principle* according to which a population of a region R1 has the right to self-determination if (a) a substantial majority of R1 desires self-determination and (b) there is no smaller sub region R2 within R1 whose substantial majority desires to exercise self-determination independently of the rest of R1.

11. This is emphasized by several writers, e.g., Emerson 1971, 466-7; Umozurike 1972, 192; Pomerance 1984, 332-7; and Etzioni 1992-93, 34.

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