

The Ethical Significance of Nationality†

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I

My object in this paper is to defend the view that national boundaries may be ethically significant. The duties we owe to our compatriots may be more extensive than the duties we owe to strangers, simply because they are compatriots. On the face of it, such a view is hardly outlandish. On the contrary almost all of us, including our leaders, behave as though it were self-evidently true. We do not, for instance, hesitate to introduce welfare measures on the grounds that their benefits will be enjoyed only by Americans, or Britons, or whomever. Why, then, is it worth defending this view at length? Precisely because there is a powerful thrust in the ethical theories that are most prominent in our culture toward what I shall call universalism: namely, the view that the subject matter of ethics is persons considered merely as such, independent of all local connections and relations; and that the fundamental questions of ethics can be posed in some such form as: What duties do I owe to my fellow human beings? What rights do they have against me?¹ Here the basic principles are worked out without reference to social boundaries. Boundaries may come into the picture at some later point—for instance, as a convenient way of parceling out basic duties—but they themselves never have fundamental ethical significance. The fact that we do normally attribute deeper significance to boundaries is to be explained as some sort of moral error—for instance, as the intrusion of irrational emotional attachments into an arena that ought to be governed by impartial reason.

Although my aim is to show that conationals can rightly make special claims on us, I do not want to suggest that these claims exhaust the ethical universe. There may indeed be duties that we owe to our fellow

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1. Since the paper hinges on the contrast between universalism and particularism in ethics, and since, as many now think, the terms 'moral' and 'morality' tend to bias our thinking in a universalist direction, I try wherever possible to use 'ethics' and 'ethical' as comprehensive and neutral terms for the phenomena under discussion.

human beings in the abstract. The point is rather that, once we see why national boundaries make a difference, we shall be in a position to see what space they leave for duties that transcend these limits. Thus the argument is not intended to be a defense of narrow-minded and exclusive nationalism; nor for that matter is it intended to underwrite all national identities regardless of their content. It is directed rather against a naive form of internationalism that is grounded on an inadequate view of ethics and that appears to offer a simple solution to the problem of international obligations but does so at the cost of losing touch with the way we actually think about such issues.

Before embarking on a critique of universalism, I need to explain briefly the idea of nationality which I am counterposing to it. National boundaries, it hardly needs saying, are not the same as borders between states. A state may include more than one national grouping; conversely, people sharing a common national identity may be found living under the auspices of two or more states. How, then, are nations to be individuated? It is fairly clear that no objective criterion, such as language, race, or religion, will be adequate to mark all national distinctions, even though these criteria may enter into particular national identities.² Thus nationality is essentially a subjective phenomenon, constituted by the shared beliefs of a set of people: a belief that each belongs together with the rest; that this association is neither transitory nor merely instrumental but stems from a long history of living together which (it is hoped and expected) will continue into the future; that the community is marked off from other communities by its members' distinctive characteristics; and that each member recognizes a loyalty to the community, expressed in a willingness to sacrifice personal gain to advance its interests. We should add, as a final element, that the nation should enjoy some degree of political autonomy. The classic nationalist belief, of course, was that every nation should have its own sovereign state, but I can see no reason for making it part of the definition of a nation that its members should be nationalists in this strong sense. On the other hand, a social group that had no political aspirations at all would surely be counted as an ethnic group rather than as a nation. (I shall say more about the relation between ethnicity and nationality below.)

One feature of this definition deserves underlining. Whether a nation exists depends on whether its members have the appropriate beliefs; it is no part of the definition that the beliefs should in fact be true. This makes the question about the ethical significance of nationality a particularly pointed one. If national allegiances can be based on false beliefs, how is it possible for a purportedly rational institution such as morality to accommodate them?

2. See B. Barry, "Self-Government Revisited," in *The Nature of Political Theory*, ed. D. Miller and L. Siedentop (Oxford: Clarendon Press, 1983).

II

The view I have called ethical universalism may at first sight seem simply to *be* the ethical point of view. Surely it is definitive of ethics that all of its particular injunctions should be derived from universal, rationally grounded principles?³ Against this, I want to suggest that such a way of looking at ethics embodies a specific and potentially controversial view of moral agency. The moral subject is seen as an abstract individual, possessed of the general powers and capacities of human beings—especially the power of reason—but not fundamentally committed to any particular persons, groups, practices, institutions, and so forth. In arriving at his most basic principles, the subject can disengage himself from commitments of this latter sort and see himself simply as one member of a moral universe made up of symmetrically placed persons, each of whom likewise possesses only general human capacities. A view of this kind is presented, for example, in Rawls's notion of the original position, in which subjects are asked to choose principles under conditions in which they are deprived of all particular knowledge of their identities, existing commitments, personal values, and so on.⁴ Having adopted such an abstract point of view, the subject asks: What duties is it rational for each of us to acknowledge toward all the rest (or, conversely, what rights can each of us claim against all the rest)? Once the basic duties have been established, it is then possible to work out derivative duties for people placed in particular circumstances. Broadly speaking, there are two ways in which this can be done. First, the basic duties can be distributed in such a way that particular persons become responsible for carrying out specific aspects of those duties. To illustrate, suppose that we endorse the basic principle that the needs of children who are not able to look after themselves should be provided for. Feeding in some familiar facts, we can easily derive the subsidiary principle that the primary responsibility for discharging this duty should fall on the parents of each child. Second, the basic rights and duties can empower individuals to create particular duties by voluntary acts—promises, contracts, and so forth. These powers are justified by general considerations about human beings advanced at the basic level.

Most theories of a universalist type do therefore make room for individuals' particular duties, responsibilities, and rights—the duties of parents, colleagues, and so on—but these are never regarded as fundamental commitments. The moral self is defined by its rational capacities, so only general principles can have this basic status; other commitments are contingent and subject to revision if, for example, new facts come

3. A view advanced, e.g., in R. M. Hare, *Moral Thinking* (Oxford: Clarendon Press, 1981).

4. J. Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), chap. 3.

to light which demand this. In contrast, consider a second view of ethical agency in which the subject is seen as already deeply embedded in social relationships. Here the subject is partly defined by its relationships and the various rights, obligations, and so forth that go along with these, so these commitments themselves form a basic element of personality. To divest oneself of such commitments would be, in one important sense, to change one's identity. On this view, the agent can still aspire to rationality, but the rationality in question cannot be that of abstract principle. Rather it consists in the capacity to reflect on existing commitments, jettisoning some and reaffirming others, depending on how they stand up to scrutiny. How might such rational appraisal proceed?

First, each commitment can be examined singly to see whether it stands up to the facts of the case, so far as these can be ascertained. For instance, I may have pledged my loyalty to a group of people, but it turns out on closer inspection that the group does not really exist as a group, in the sense that no one, except myself, takes his or her commitment seriously. My commitment is based on false assumptions and, once these are brought to light, it must simply evaporate. (In a similar way, it is possible to *discover* commitments by reflecting on what is already the case.)

Second, one can investigate the coherence of one's existing set of commitments—that is, the extent to which the understanding of personal identity provided by each is consistent with that provided by the others. For instance someone committed both to being a caring father and to being a ruthless tycoon might come to believe that this involved an incoherence—not in the relatively superficial sense that the two commitments might require incompatible actions on certain occasions,⁵ but in the deeper sense that he simply could not be both kinds of person at the same time; that the qualities needed to be a good father just could not be reconciled with those needed to be a tycoon. Having reached this point, he must then decide which of his two commitments really is the more fundamental.

These remarks are made to deflect the charge that ethical particularism is simply an irrationalist outlook which elevates our existing prejudices to the status of objective truths. Plainly it does embody a less sweeping notion of rationality than universalism, which tends to identify rationality with the adoption of the impersonal point of view. But it is not so clear that this is finally a drawback.⁶ An ethical theory must presumably have

5. Anyone whose ethical outlook embraces a number of distinct commitments must be prepared to make judgments of priority when the demands of these commitments clash (e.g., whether to put friends or family first in a particular case). But such conflicts do not show that the commitments themselves are mutually incoherent. What I am envisaging in the text are commitments which draw upon incompatible qualities of character, so that someone trying to embrace both would experience a crisis of identity, not merely a problem of practical choice.

6. See the fuller discussion in A. MacIntyre, "Is Patriotism a Virtue?" (Lawrence: University of Kansas, Department of Philosophy, 1984), secs. 3–4.

practical ambitions in the sense that it aspires to be the theory which people will use to guide their activities. If the theory embodies a view of the subject which is far removed from people's actual experience of agency, what claims can it make on them? Why should they accept its interpretation of rationality? Put slightly differently, the issue is one of ethical motivation. Impartial reason dictates that I should perform such-and-such an action: but why should that give *me* a reason to perform it? These issues have been pursued in far greater depth than is possible here, for instance by Michael Sandel in his critique of the Rawlsian theory of the self⁷ and by Bernard Williams in his displacement of "morality"—a term he reserves for universalist theories of obligation—from the central position in ethics.⁸ My aim has been not so much to defend particularism as to indicate why it is at least a plausible view, and to show how it differs from universalism.

III

I now want to show—what may already be intuitively clear—that if nationality is going to have an ethical significance, it must be from a particularist perspective. I do not at this stage attempt to demonstrate that nationality *does* have such a significance. My concern is only to investigate what we need to assume for this even to be a possibility. Universalism can generate surrogates for national attachments but not the genuine article. The main options for the universalist are outlined in Robert Goodin's contribution to this symposium, so I will simply draw on that discussion to make the point.

If we seek to demonstrate, from universalist premises, that people owe special duties to their compatriots, there are broadly two ways in which we can attempt to do so. First, we can interpret the significance of social boundaries, in contractual or quasi-contractual terms (this approach is likely to recommend itself to Kantians). As Goodin puts it, we are to think of nations as "mutual benefit societies" in which our special obligations to fellow countrymen are derived from our common participation in a practice from which all may expect to benefit—perhaps along the lines of the principle of fair play defended by Hart and Rawls.⁹ But this approach is fraught with difficulties. We have first to show that the scope of the mutual benefit practice coincides with existing social boundaries, rather than running within them or across them.¹⁰ Then we have

7. M. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982).

8. B. Williams, *Ethics and the Limits of Philosophy* (London: Fontana, 1985).

9. R. Goodin, "What Is So Special about Our Fellow Countrymen?" in this issue, sec. 4; H. L. A. Hart, "Are There Any Natural Rights?" in *Political Philosophy*, ed. A. Quinton (Oxford: Oxford University Press, 1967); Rawls, secs. 18, 52.

10. For an attempt to derive international obligations in this way, see C. Beitz, *Political Theory and International Relations* (Princeton, N.J.: Princeton University Press, 1979), pt. 3, chap. 3. For criticism, see B. Barry, "Humanity and Justice in Global Perspective," in *NOMOS XXIV: Ethics, Economics and the Law*, ed. J. R. Pennock and J. W. Chapman (New York: New York University Press, 1982).

to show that mutual benefit logic accurately models the obligations we do in fact acknowledge to fellow countrymen.¹¹ Beyond these there is a further difficulty that is particularly salient for my purposes. Obligations of this kind are clearly tied to established practices. If there currently exists a practice toward which all participants contribute in some way, and in return receive certain benefits, then as a beneficiary I have an obligation to contribute. But in the absence of the practice I clearly have no obligation of this kind, even if the practice would be beneficial to me and others if it did exist (and therefore *ought* to exist). This suggests that, if the contractual argument works at all (leaving aside the two earlier difficulties), it will be targeted on states rather than nations. States, with their codified systems of rules, *might* qualify as mutual benefit societies. Nationality, however, is not so much a cooperative practice as the *grounding* for such a practice. It is because we already share an attachment to our compatriots that we support the setting up of mutual benefit practices and the like. The ethical significance of nationality is not obliterated if, for some reason, the practices in question do not exist.¹² So if we assume that nationality *does* have an ethical significance, it will not be captured in these terms.

An alternative approach is contained in Goodin's suggestion that we see social boundaries as a convenient way of allocating responsibilities that themselves derive from general duties.¹³ This in general is how utilitarians may be expected to approach the boundaries issue—essentially as a solution to a coordination problem. This approach, too, has difficulties which occur at different levels. At ground level we face the fact that boundaries enclose sets of people whose mean standards of living vary very greatly, so if the general duty from which the special responsibilities derive is something like a duty to promote welfare (to meet needs, to relieve suffering, etc.), it would seem odd to put the well-off in charge of the well-off and the badly-off in charge of the badly-off. To put this another way, simple coordination rules, like "Help the person standing next to you," make sense when, as far as we know, each person is equally in need of help and each is equally able to provide it. But this is hardly an accurate representation of the international scene. De facto, of course, British officials have been "given responsibility" for the welfare of Britons, and so forth, but the question must be whether this is the mode of assigning responsibilities that the general principle demands.

This leads naturally to the second level of difficulty, which is similar to that facing the contractual account. It may be possible to find considerable room for conventions in a consequentialist ethical theory on the grounds that it often matters much more that *someone* should discharge a duty

11. See Goodin, sec. 4.

12. I leave aside here the difficult question whether attachments that have no practical expression can survive indefinitely. Certainly there seems to be a feedback mechanism whereby attachments motivate practices of mutual aid that in turn strengthen feelings of attachment.

13. Goodin, sec. 5.

than that some particular person should. But this line of thought leads us toward states as the institutions which currently assign most of the relevant responsibilities. Nationality as such has no place in this picture. If we move away from existing conventions toward those conventions which we can show to be optimal from the point of view of our underlying goal (e.g., the promotion of welfare), along the lines suggested in the last paragraph, it is again difficult to see where nationality can get a foothold. The consideration which, for instance, would justify us in assigning primary responsibility for children to their parents (essentially that parents are very likely to be in the best position to know what the child's interests are) can hardly be extended to nations, composed as they are of people who are mainly strangers to one another, with widely varying patterns of life.

I conclude that the most plausible accounts of special duties from a universalist perspective will give no weight to nationality. The universalist may of course reply, "So much the worse for nationality." I want instead to take the claims of nationality seriously, which therefore means examining them according to particularist criteria. At the end I shall throw some crumbs to comfort the universalist.

IV

It is perhaps not a surprise that when particularists offer examples to rebut the claims of universalism, they usually choose very specific attachments to make their point, in the expectation that these will carry most weight with their readers. Forster's remark, "If I had to choose between betraying my country and betraying my friend, I hope I should have the guts to betray my country," seems now to represent the conventional wisdom. But does this merely signify a failure of nerve on the part of the particularist? If his aim is to replace the abstract individual as ethical subject with the embedded individual, then it might seem that he should give pride of place, among constitutive attachments, to those that are *not* voluntarily acquired and therefore not a matter of choice. This would leave family, ethnic group, and nation as prime candidates, and of these the family seems, as our century advances, to be taking on more and more the characteristics of a voluntary institution. Why, then, is there so much coyness about holding up national allegiances as precisely the kind of attachments that make up the substance of ethical life, properly understood? Part of the reason, obviously, is the twentieth-century experience of rampant nationalism, an experience distasteful to liberals and the Left alike. But behind this lies a feeling that 'the nation' is itself a suspect category and therefore not a fitting object of loyalty. One way of expressing this doubt is to say that nations are, in Benedict Anderson's phrase, "imagined communities."¹⁴ Those who acknowledge national

14. B. Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, 1983). Anderson draws particular attention to the importance of the printed word in allowing dispersed bodies of people to think of themselves as belonging to a single community.

attachments believe themselves to be bound to their compatriots by ties of community, but these ties are in an important sense fictitious. Thus, it is claimed, national allegiances cannot withstand rational reflection, even of the more limited kind recognized by particularists. Such reflection would reveal the imaginary quality of the community in question and, in so doing, destroy it as a possible object of allegiance.

In one sense it is clear that nations cannot be genuine communities. If a community is a face-to-face group based on personal acquaintance and direct practices of mutual aid, then it is obvious enough that nations cannot qualify. But this understanding of community is a very narrow one. Normally we would speak of community in cases where a group is held together by common recognition, a shared culture, and mutually acknowledged obligations, even where the group is spatially dispersed and its members are not all linked by personal acquaintance. It is in this sense that we speak of ethnic groups as constituting communities ("the Jewish community," for instance), and this seems a justifiable extension of the concept.

However, this only serves to sharpen the problem. For it is characteristic of nations that their identities are formed not through spontaneous processes of ethnic self-definition but primarily according to the exigencies of power—the demands of states seeking to assure themselves of the loyalty of their subjects. Nationality is to a greater or lesser degree a manufactured item. This is brought out in Anthony Smith's recent study of the formation of nations out of older ethnic communities.¹⁵ Smith distinguishes broadly between two cases. In the first, the nation is based on a single dominant ethnic group, and the culture of that group is imposed more or less successfully on ethnic minorities falling within the territorial boundaries of the emergent nation. In the second, a dominant culture is lacking and has to be forged in order to create a nation out of a series of disparate ethnic groups. In both cases, but especially the second, nation-building is a work of invention, in particular the invention of a common national past. As Smith puts it, "If the nation is to become a 'political community' on the Western territorial and civic model, it must, paradoxically, seek to create those myths of descent, those historical memories and that common culture which form the missing elements of their ethnic make-up, along with a mutual solidarity. It must differentiate itself from its closest neighbours, distinguish its culture from theirs, and emphasize the historic kinship of its constituent *ethnie* and their common ties of ideological affinity. This is done by creating or elaborating an 'ideological' myth of origins and descent."¹⁶

Let us take it, then, that nations require histories which are to a greater or lesser degree "mythical" (as judged by the standards of impartial scholarship) and that those stories are not only needed at the time during

15. A. D. Smith, *The Ethnic Origins of Nations* (Oxford: Blackwell, 1986).

16. *Ibid.*, p. 147.

which a national identity is first being created, but they also pass into that identity itself—so that in order to understand what it means to be French or Greek, one has to accept (some version of)¹⁷ the common story. Do these facts imply that national loyalties cannot withstand rational reflection?

To answer this question we need to make a distinction between beliefs that are constitutive of social relationships and background beliefs which support those constitutive beliefs. To illustrate the former, consider the example of friendship. For A and B to be friends, it must minimally be true that each is willing to put himself out for the other. Suppose that A believes that B would put himself out, but in fact the belief is false. B is merely a fair-weather friend: should an occasion arise on which he is called on to sacrifice something for A's sake, he will certainly renege. A's loyalties to B are then drained of their value, since the reciprocal attitudes that constitute friendship are not in place. An indicator of this is that A, if he is rational, must want to be informed if indeed it is the case that his 'friendship' is not being reciprocated.¹⁸

But now consider a different case. Suppose there is a family, call them the Smiths, who exemplify all the best features of that institution: there is love, mutual support, and a wide range of activities performed in common. If asked what it is that makes these attitudes to one another appropriate, the Smiths would point, among other things, to the fact that members of the family are biologically related. Suppose now that owing to some dreadful mix-up at the hospital, one of the Smith children is in fact not a Smith. We can then say that the family relationship is backed up by a false belief: the love and concern they feel for one another is supported by a supposed genetic connection which in one case fails to obtain. But a falsity of this kind does not mean that the attachment of each member to the family is itself valueless. The *constitutive* beliefs are all in order; each does genuinely identify with the family unit, and his beliefs about the others' attitudes are correct. In contrast to the first case, it would not be rational in these circumstances to want to have the false belief brought to light.¹⁹

17. Very often political disputes within a nation will surface as disputes about the precise character of the national past—see for instance the intense competition between Whig and Tory accounts of English history in eighteenth-century Britain. But the competing accounts will recognizably be different versions of the same general story with many basic facts not in dispute.

18. If A resists the passing on of this information, then the emotion he feels for B is not friendship but love, which (proverbially) is blind.

19. Some may think that it is always rational to divest yourself of irrational beliefs, but this is a superficial view. Here we are on Jon Elster territory. See, e.g., his discussion of "decisions to believe" in J. Elster, *Ulysses and the Sirens* (Cambridge: Cambridge University Press, 1979), sec. 2.3. The essential point is that there may be beliefs which it is valuable for a person to have in the light of his underlying goals, in which case it is rational for him to set up mechanisms which ensure that he has them (and, if necessary, which protect the beliefs from later rational scrutiny).

If we apply this distinction to the case of nations, the imagined national past, which as we have seen appears to be an essential element in the process of nation-building, must count as a background (rather than constitutive) belief. It does of course matter (given my definition in Sec. I above) that nations should see their identities as extending over time, but the constitutive belief is only that there should be some national past. The particular story which a nation tells itself about its past is a background belief. It is important that the story should be generally believed—or to put the point more precisely, that there should be substantial convergence in the versions of the story that are believed²⁰—but not that it should be historically accurate.²¹ Indeed, since the story is told for the purpose of self-definition, and since the nation's self-definition bears on the goals that its members will try to pursue in the future, we should expect a dynamic nation, actively engaged in critical debate on its common purposes, regularly to reinterpret the past as well.

But there may be doubts whether the distinction I have invoked can do all the work that it is needed to do. For even if we can successfully interpret the national past as a background belief, we may not be able to do the same with the national present. Nations need a common view about what they now are; a view about what distinguishes membership of this nation from membership of others. To use an old-fashioned phrase, they need some conception of "national character." But, it might be urged, these beliefs are also to a large extent mythical, in the sense that they attribute a spurious homogeneity to a set of people who, if looked at objectively, vary enormously in values, lifestyles, cultural attributes, and so on. And this observation destroys a *constitutive* belief, because it is constitutive of national identity that members of a nation should have characteristics in common which make it appropriate for them to be lumped together politically, rather than parceled out in some other way. Take away national character and all we are left with is *de facto* boundaries between states.

To rehearse the most persuasive version of this objection, the real bases of social identity are ethnic groups defined by their shared inheritance of strong cultural traits. Nationalities are heterogeneous populations, *masquerading* as ethnic groups, which often in practice means that the dominant ethnic group has its cultural norms paraded as the national culture, with other groups being ignored and by implication disparaged.

As a description of existing national practice, this criticism obviously has much force. But we need to ask to what extent it is essential to the very idea of nationality that it should trespass in this way on ethnicity. The question could be posed in this form: Can we separate nationality

20. See n. 17 above.

21. Historical accuracy is not important from the point of view of constituting the nation. In a wider perspective, it may make a good deal of difference how far removed the national myths are from historical truth. If the distance is great, this may have serious repercussions for scholarly research and intellectual toleration generally.

from ethnicity without collapsing the former into mere adherence to a set of political institutions? Nationality must be something more than de facto citizenship. It must amount to a common identity that *grounds* citizenship. Can it be this while still being less substantial than ethnic affiliation?

To ask this question is to ask whether there can be a public culture that is shared among groups of people with differing private cultures. How tenable is such a public/private distinction? Some elements of culture seem to fall naturally on one or the other side of this dividing line. Political beliefs—beliefs, say, in social equality or in toleration—fall into the public realm. Styles of dress, tastes in food, and forms of music fall into the private realm. Among the more difficult cases are likely to be language and religion. Language is obviously frequently used to designate ethnicity; at the same time it can hardly be considered irrelevant to nationality, since national identity needs linguistic expression (in speeches, histories, and so forth) and the form of the expression, on most theories of language, modifies what is expressed. One need not accept the strong Herder line on the centrality of language to nationality to see that a nation made up of ethnic groups none of which is willing to have its language relegated to the private realm is in difficulties.²² The problems posed by religion are less sweeping, but in practice many nations surround important occasions (investitures, state funerals, memorials to war dead) with religious ceremony, and the ceremony must draw on some tradition or other. Limited ecumenical gestures are possible: Catholics can be invited to participate in Protestant rites (and vice versa) without much difficulty, but it would be hard to envisage this offer being extended to, say, Buddhists.

It is therefore almost inevitable that there will be areas in which nationality *does* trespass on ethnicity and the fostering of national identity will require the curtailment of certain aspects of ethnic identity in the interests of creating and maintaining a common public culture.²³ The extent of the trespass will depend on the particular national identity in question. To the extent, for instance, to which national rituals can be given secular trappings, there need be no intrusion on the religious element in ethnic self-definition. Equally, some ethnic identities are less vulnerable to intrusion than others. If a group can define itself entirely by, say, descent and private social practices (a group like Italian-Americans, e.g.) there is no reason why ethnic identity and national identity cannot peacefully coexist, one nesting inside the other. So the size of the problem depends on empirical facts. But we cannot in general hope that it will disappear entirely. Either national identity is to a degree fraudulent

22. Herder's view was that nationality required the perpetuation of a distinct language in every nation. See *Herder on Social and Political Culture*, ed. F. M. Barnard (Cambridge: Cambridge University Press, 1969).

23. I have explored this further in "Socialism and Toleration," in *Justifying Toleration: Conceptual and Historical Perspectives*, ed. S. Mendus (Cambridge: Cambridge University Press, 1988).

because it supposes a cultural homogeneity which is denied by the existence of ethnic divisions, or it is genuine, but at the expense of overriding lesser identities, which, so it is argued, are more authentic because they arise in a less artificial way.

V

How might we respond to this critique of nationality? There are broadly two strategies. One remains within a particularist framework and tries to defend national identities from within—tries, that is, to defend the nation as an object of attachment in cases where this loyalty would conflict with other (especially ethnic) loyalties. The other looks at the issue in universalist terms and tries to show why, on impartialist criteria, it is a good thing for people to have such attachments. These strategies are not incompatible, though particularists will of course view the second as an irrelevance. I shall offer brief sketches of both.

From a particularist perspective, the first move is to show that the nation as an object of allegiance is not necessarily in much worse shape than other possible objects. Taking it for granted, in other words, that it is valuable for individuals to form attachments to various groups and institutions, we go on to challenge the view that there is something especially inappropriate in regarding nationality in this way. In particular, we may challenge the assumption that ethnicity is a more genuine form of allegiance than nationality. What makes this assumption plausible is that it is often fairly easy to see how national identities are being created and manipulated in the interests of those who hold (or aspire to hold) power in particular states. But ethnic identities, too, are far more plastic than they usually appear to be to those who define themselves by these identities. If we look historically at the ways in which specific ethnic groups have adapted their self-definitions and criteria of inclusion to advance their economic interests or social status,²⁴ we will see that ethnic identity is often as “fictitious” as national identity, in the sense that the self-understanding of an ethnic group relies on an interpretation of the past which is not borne out by the facts. Since, moreover, ethnicity is *defined* by descent, this revelation is liable to be more corrosive than the equivalent revelations about the national past. The point, then, is that ethnic identities tend to adapt spontaneously, in response to the economic or social needs of group members at any moment, whereas national identities tend to be manipulated consciously: this makes the artificiality of national identities more visible, but it is not at all clear that it makes national identities any less eligible as objects of loyalty.

Moving on to the offensive, it can be said in favor of nationality that the nation is potentially a self-sufficient object of allegiance and therefore one that is subject to rational control. If national aspirations are fulfilled,

24. See D. L. Horowitz, “Ethnic Identity,” in *Ethnicity: Theory and Experience*, ed. N. Glazer and D. P. Moynihan (Cambridge, Mass.: Harvard University Press, 1975).

and the nation gains political autonomy, then it has the chance to determine its own destiny—subject, of course, to the activities of other members of the system of states. Some nations are just not viable, either for internal or for external reasons; but where nationality works, so to speak, members of the nation can exercise at the collective level the equivalent of autonomy at the individual level; that is, they can shape their future (including their own future character) by conscious decision, on the basis of a self-understanding informed by a common past.²⁵ Ethnic groups, having no aspirations to political autonomy, can hold out no such promise. They are at the mercy of nations, and whether a particular ethnic identity remains viable—whether one can maintain it without sacrificing other commitments to an intolerable degree—depends on the contingencies of national politics. That is not an argument for abandoning ethnicity in favor of nationality, but for harmonizing the two: it is an argument for having national allegiances that promise to protect your ethnic ties.²⁶

Let me stress that this is not intended as an argument *for* national loyalties, in the sense of an argument that might appeal to someone starting out ethically with a clean slate. In particularist terms there can be no such argument: crudely speaking, either one has loyalties or one does not (this is too crude, because as I suggested earlier, one may be involved in social relationships that demand loyalty, but initially one may not grasp this fact; so there is room for persuasion). The argument is directed toward someone who feels the pull of nationality but thinks he has good reason to reject that pull; specifically, someone who is willing to entertain particularist commitments but believes that there is something fishy about nationality. To this person I have tried to present the nation as potentially a worthy object of allegiance, though without giving an *a priori* guarantee that an acceptable national identity will always be available.

VI

What can be said for nationality from a universalist perspective? Since I have already argued that universalist arguments for limited obligation will not converge on nationality, the answer might seem to be “nothing.” However there are forms of universalism that may claim to avoid this conclusion. One is the generalized analogue of what Bernard Williams has nicely labeled “Government House utilitarianism.”²⁷ This is the view that only a select minority are capable of guiding their ethical behavior

25. I hope it is clear that appealing to national identity in political debate is very different from endorsing the policies pursued at any time by the ruling authority. A patriot can be a radical critic of existing policy (and even, at some level, of existing institutions). This point is well made in MacIntyre, sec. 4.

26. There are of course cases in which harmonization is impossible, since the available national identity contains elements that are directly hostile to the ethnic group in question—the situation of Jews in Nazi Germany, for instance. Here the only option is to formulate an alternative nationality.

27. Williams, pp. 108–10.

by universalist criteria; the remainder—the natives, as it were—need a localized set of rules that they do not attempt to derive from universal principles. Williams introduces this view in order to deride it, and we should follow him. A more appealing view looks for reasons *holding for every agent* for not applying universalist criteria directly to one's choice of action. A position of this kind requires that whatever has basic ethical value can in general only be created as a by-product of activities aimed overtly in a different direction. Philip Pettit, for example, has presented such a consequentialist case for acknowledging various specific loyalties.²⁸ The argument, essentially, is that the security of expectation that these loyalties bring—a consequentialist value—depends on the agents involved *not* taking up a calculating stance when deciding how to act. To make this stick, we would have to show how it is possible for agents to maintain a universalist conception of basic value while regulating their actual behavior by particularist standards (such as loyalties to friends and to groups). Does the universalist standard have practical force, and if so how are agents to avoid consulting it when deciding how to act? Or, to put the point the other way round, can loyalties be genuinely maintained if their ultimate justification (for the agent, not merely for an impartial spectator) is couched in universalist terms? What sort of moral psychology would make this possible? Suppose, though, that these doubts could be resolved and a Pettit-type position maintained. What could be said specifically in favor of nationality as a focus of loyalty?

The answer will depend on which universalist criteria we have in mind. I want to focus here on a particular principle of distributive justice, the principle of distribution according to need. There are two important respects in which this principle depends for its implementation on identifying a relevant community. First, since the principle is comparative in form—it specifies how people are to be treated relative to one another²⁹—it requires that its field of application be identified. We have to know *which* people are to have their needs considered. Second, we must also know what is to count as a need. As soon as we move beyond indisputable biological needs, a social element enters the definition. A person's needs will be whatever they must have in order to enjoy a minimally decent existence in *this* society with its particular pattern of life. This is the truth in Michael Walzer's remark that "the idea of distributive justice presupposes a bounded world within which distribution takes place: a group of people committed to dividing, exchanging, and sharing social goods, first of all among themselves."³⁰ However, we have still to

28. P. Pettit, "Social Holism and Moral Theory," *Proceedings of the Aristotelian Society* 86 (1985–86): 173–97; P. Pettit and G. Brennan, "Restrictive Consequentialism," *Australian Journal of Philosophy* 64 (1986): 438–55.

29. For amplification of this point, see my "Social Justice and the Principle of Need," in *The Frontiers of Political Theory*, ed. M. Freeman and D. Robertson (Brighton: Harvester, 1980).

30. M. Walzer, *Spheres of Justice* (Oxford: Martin Robertson, 1983), p. 31.

determine what the scope of this “bounded world” should be. There is nothing strictly incoherent in seeking to extend its range to cover the whole globe. Nonetheless, such an extension would be wildly implausible. We do not yet have a global community in the sense that is relevant to justice as distribution according to need. There is no consensus that the needs of other human beings considered merely as such make demands of justice on me, nor is there sufficient agreement about what is to count as a need. It is therefore unrealistic to suppose that the choice lies between distributive justice worldwide and distributive justice within national societies; the realistic choice is between distributive justice of the latter sort, and distributive justice within much smaller units—families, religious communities, and so forth.

The universalist case for nationality, therefore, is that it creates communities with the widest feasible membership, and therefore with the greatest scope for redistribution in favor of the needy. Smaller units would be hampered by their limited resource base; wider units, although advantageous for the reverse reason, would be unable to generate a distributive consensus. Backhanded testimony to the truth of this proposition can be obtained from those classical liberals who have been opposed to distributive justice, and by extension to nationality, as the basis for the state. This was Acton’s argument for a multinational state,³¹ and the same thought fuels Hayek’s anxiety that liberal ideals are currently being threatened by “the inseparable forces of socialism and nationalism,” which themselves represent a recrudescence of “tribal sentiments” wholly inappropriate to the “Great Society.”³² The liberal objection to nationality, then, is that it may create a consensus for redistribution at a level which allows redistributive ideals to be implemented politically rather than merely by voluntary transfers.

We may still be tempted to reply: if distributive justice can only function within communities with predefined memberships, so much the worse for distributive justice. Our concern should be with the sick and the starving regardless of membership and regardless of how we conceptualize our obligations to them. The question this raises is whether we should think of ethical concern as a commodity in limited supply, such that if we intensify our concern for our fellow countrymen, we diminish our concern for those outside our borders. I have no space here to tackle this question properly, but it is worth saying that the picture of ethics implied in it is far from self-evident. Indeed a very different picture is intuitively more plausible: so long as different constituencies do not impose conflicting demands on our ethical capacities, a strengthening of commitment to a smaller group is likely to increase our commitment to wider constituencies. Empirically it does not seem that those most

31. See Barry, “Self-Government Revisited,” p. 131.

32. F. A. Hayek, *The Mirage of Social Justice*, vol. 2 of *Law, Legislation and Liberty* (London: Routledge & Kegan Paul, 1976), pp. 133–34.

committed to distributive justice at home are in consequence less inclined to support foreign aid.

Let me stress in conclusion that I have not attempted here to derive national allegiances from universalist standards. The argument in Section III still stands: if we begin from universalist criteria, we shall not end up with nationality as the optimal basis for special obligations. The point rather is that if we start out with selves already heavily laden with particularist commitments, including national loyalties, we may be able to rationalize those commitments from a universalist perspective. Whether we should *seek* to do so is another matter, and it depends on how successfully we can resist the pull of a universalism which, as I remarked at the outset, is so prominent a feature of contemporary ethical culture.

Chapter 46

Secession and Nationalism

ALLEN BUCHANAN

Secession, Autonomy and the Modern State

The past decade and a half has witnessed a rash of secessionist movements. Some have succeeded, some have failed; some have involved large-scale conflict and ethnic cleansing, some have been remarkably peaceful. These momentous events call into question not only the legitimacy of particular states and their boundaries, but also the nature of sovereignty, the purposes of political association and the scope of majority rule.

Less publicized and less dramatic movements for greater self-determination of groups within the framework of existing states are also becoming pervasive. The indigenous peoples' rights movement, pursued with vigour in the United Nations and other arenas of international law, embraces Indians in North, Central and South America, Southeast Asian Hill Tribes, the Saami (Lapps) in a number of countries touched by the Arctic Circle, and Native Hawaiians, among others. Self-determination movements among Flemings in Belgium and Scots in the United Kingdom appear to be building as well. In most of these cases the groups in question do not seek full sovereignty, but rather greater autonomy through the achievement of limited rights of self-government as distinct subunits within the state.

The proper analysis of the concept of sovereignty is, of course, a matter of dispute. However, the root idea is that of a supreme authority – one whose powers are unrestricted by those of other entities. It is useful to distinguish between *internal* and *external* sovereignty (McCallum, 1987, pp. 36–45). Internal sovereignty is the state's supremacy with respect to all affairs within its borders. External sovereignty is the state's supremacy with respect to its relations with other political units beyond its borders; in particular, its right to the integrity of its territory, and to control crossings of its borders, as well as the right to enter as an independent party into economic agreements or military alliances or treaties with other states.

No state enjoys literally unrestricted external sovereignty. International law imposes a number of restrictions on every state's dealings with other states, the most fundamental of which is that each is to recognize the others' territorial integrity. In addition, virtually all modern states acknowledge (in principle if not in practice) that their internal sovereignty is limited by *individual rights*, in particular the human rights recognized in international law.

Autonomy movements seek to impose further limitations on internal sovereignty through the recognition of various *group rights*. These include not only so-called minority cultural rights, such as the right to speak one's own language or to wear cultural dress, but also collective property rights for the group, rights of internal self-government, and in some cases rights to participate in joint decision making concerning the development and exploitation of resources in the area occupied by the group (Quebec, 1991).

Autonomy movements may appear to be less radical than outright bids for secession. After all, what they demand is not the dismemberment of the state into two or more new states, but only a reallocation of certain powers within the state. This appearance, however, is misleading. If a state recognizes substantial powers of self-determination for groups within its borders, it thereby acknowledges limits on its own sovereignty. And if the modern state is defined as a political authority which (credibly) claims full sovereignty over the entire area within its borders, then a state that recognizes rights of self-determination for minorities within its borders thereby transforms itself into something less than a fully sovereign state. (For example, American Indian law, in conferring significant powers of self-government upon Indian tribes, uses the term 'Indian Nations', and is increasingly regarded as approaching the status of *international law*; Williams, 1990, pp. 74–103.)

Thus, secession movements only threaten the myth of the permanence of the state; autonomy movements assault the concept of state sovereignty itself. Successful and frequent secession would certainly shatter the international order; but it would not challenge the basic conceptual framework that has governed international law for over three hundred years, since the rise of the modern state. What is fundamental to that framework is the assumption that international law concerns relations among sovereign states. If successful, autonomy movements within existing states may make the case of sovereign states the exception rather than the rule (Hannum, 1990, pp. 14–26, 453–77).

Even though secession is in this sense a phenomenon which the traditional framework of international law and relations can in principle accommodate, it is the most extreme and radical response to the problems of group conflict within the state. For this reason, a consideration of the case for and against secession puts the moral issues of group conflict in bold relief. In what follows, we will explore the morality of secession, while bearing in mind that it is only the most extreme point on a continuum of phenomena involving the struggles of groups within existing political units to gain greater autonomy.

Nationalism and the Justification of Secession

Some see the recent spate of secessionist movements as the expression of an unpredicted and profoundly disturbing resurgence of *nationalism*. And indeed one of the most familiar and stirring justifications offered for secession appeals to *the right of self-determination for 'peoples'*, interpreted such that it is equivalent to what is sometimes called the *normative nationalist principle*. It is also one of the least plausible justifications.

The normative nationalist principle states that every 'people' is entitled to its own state; that is, that political and cultural (or ethnic) boundaries must coincide (Gellner,

1983, pp. 1–3). In other words, according to the normative nationalist principle, the right of self-determination is to be understood in a very strong way, as requiring complete political independence – that is, full sovereignty.

An immediate difficulty, of course, is the meaning of ‘peoples’. Presumably a ‘people’ is a distinct ethnic group, the identifying marks of which are a common language, shared traditions and a common culture. Each of these criteria has its own difficulties. The question of what count as different dialects of the same language, as opposed to two or more distinct languages, raises complex theoretical and meta-theoretical issues in linguistics. The histories of many groups exhibit frequent discontinuities, infusion of new cultural elements from outside, and alternating degrees of assimilation to and separation from other groups.

More disturbingly, if ‘people’ is interpreted broadly enough, then the normative nationalist principle denies the legitimacy of any state containing more than one cultural group (unless all ‘peoples’ within it freely waive their rights to their own states). Yet cultural pluralism is often taken to be a distinguishing feature of the modern state, or at least of the modern liberal state. Moreover, if the number of ethnic or cultural groups or peoples is not fixed but may increase, then the normative nationalist principle is a recipe for limitless political fragmentation.

Nor is this all. Even aside from the instability and economic costs of the repeated fragmentation which it endorses, there is a more serious objection to the normative nationalist principle, forcefully formulated by Ernest Gellner.

To put it in the simplest terms: there is a very large number of potential nations on earth. Our planet also contains room for a certain number of independent or autonomous political units. On any reasonable calculation, the former number (of potential nations) is probably much, *much* larger than that of possible viable states. If this argument or calculation is correct, not all nationalisms can be satisfied, at any rate not at the same time. The satisfaction of some spells the frustration of others. This argument is furthered and immeasurably strengthened by the fact that very many of the potential nations of this world live, or until recently have lived, not in compact territorial units but intermixed with each other in complex patterns. It follows that a territorial political unit can only become ethnically homogenous, in such cases if it either kills, or expels, or assimilates all non-nationals. (Gellner, 1983, p. 2)

With arch understatement, Gellner concludes that the unwillingness of people to suffer such fates ‘may make the implementation of the nationalist principle difficult’. Thus to say that the normative nationalist principle must be rejected because it is too *impractical* or *economically costly* would be grossly misleading. It ought to be abandoned because the *moral costs* of even attempting to implement it would be prohibitive.

It is important to see that this criticism of the principle of self-determination is decisive *only* against the strong version of that principle that makes it equivalent to the normative nationalist principle, which states that each people (or ethnic group) is to have its own fully sovereign state. For the objection focuses on the unacceptable implications of granting a right of self-determination to all ‘peoples’ *on the assumption that self-determination means complete political independence, that is, full sovereignty*.

However, as we have already suggested, the notion of self-determination is vague or, rather, multiply ambiguous, inasmuch as there are numerous forms and a range of

degrees of political independence or autonomy that a group might attain. Instead of asserting an ambiguous *right* to self-determination, it might be better to acknowledge that many if not most groups have a *legitimate interest* in self-determination and that this interest can best be served in different circumstances by a range of more specific rights or combinations of rights, including a number of distinct group rights to varying forms and degrees of political autonomy, with the right to secede being only the most extreme of these.

I have argued elsewhere that there is a moral right to secede, though it is a highly qualified, limited right. It is not a right which all 'peoples' or ethnic or cultural groups have simply by virtue of their being distinct groups. Instead, only those groups whose predicament satisfies the conditions laid out in any of several sound justifications for secession have this right. In this sense the right to secede, as I conceive it, is not a general right of groups, but rather a special or selective right that obtains only under certain conditions (Buchanan, 1991, pp. 151–62).

Types of Theories of the Unilateral Right to Secede

The greatest controversy and the greatest risk of violence arise in the case of unilateral or non-consensual secession – that is, cases where a group tries to secede without the consent of the state from which it is seceding. The current literature exhibits three main types of theories of the unilateral or non-consensual right to secede: (1) Remedial Right Only Theories, according to which the unilateral right to secede is a remedial right, a right a group comes to have as the result of the state committing violations of its rights or the individual rights of its members; (2) Primary Right Theories, which hold that groups can have the right to secede even in the absence of rights violations, either simply because they are nations, on the assumption that nations have a right of self-determination that includes secession (Nationalist Theories) or simply because they are a majority in the region in question favouring secession (Plebiscitary Theories). I have argued elsewhere in detail that Remedial Right Only Theories are more plausible, all things considered. Nationalist Primary Right Theories suffer from the difficulties noted above. Plebiscitary Theories wrongly assume that the same values that make democracy the appropriate form of government for an existing state also imply that any group that happens to be a majority within a particular part of state has the right to redraw the boundaries of the state. Without pretending to have done justice here to Nationalist and Plebiscitary Theories, I will now briefly sketch some of the kinds of arguments that make the Remedial Right Only approach attractive (Buchanan, 2004; see further Couture et al., 1996; Moore, 1998; Macedo and Buchanan, 2003).

Rectifying past unjust takings

This first justification is the simplest and most intuitively appealing argument for secession. It has obvious application to many actual secessionist movements, including some of those that completed the dissolution of the Soviet Union. The claim is that a region has a right to secede if it was unjustly incorporated into the larger unit from which its members seek to separate.

The argument's power stems from the assumption that secession is simply the reappropriation, by the legitimate owner, of stolen property. The right to secede, under these circumstances, is just the right to reclaim what is one's own. This simple interpretation is most plausible, of course, in situations in which the people attempting to secede are literally the same people who held legitimate title to the territory at the time of the unjust annexation, or at least are the indisputable descendants of those people (their legitimate political heirs, so to speak). But matters are considerably more complex if the seceding group is not closely or clearly related to the group whose territory was unjustly taken, or if the group that was wrongly dispossessed did not itself have clear, unambiguous title to it. But at least in the paradigm case, the argument from rectificatory justice is a convincing argument for a moral right to secede. The right of the Baltic Republics to secede from the Soviet Union, which forcibly and unjustly annexed them in 1940, is well supported by this first justification.

It is one thing to say that a group has the right to secede because in so doing they will simply be reclaiming what was unjustly taken from them. The *terms* of secession are another question. In some cases secession will adversely affect individuals who had no part in the unjust acquisition of the territory. Whether, or under what conditions, they are owed compensation or other special consideration is a complex matter (Buchanan, 1991, pp. 87–91).

The self-defence argument

The common law, common-sense morality, and the great majority of ethical systems, religious and secular, acknowledge a right of self-defence against an aggressor who threatens lethal force. For good reason this is not thought to be an unlimited right. Among the more obvious restrictions on it are (1) that only that degree of force necessary to avert the threat be used, and (2) that the attack against which one defends oneself not be provoked by one's own actions. If such restrictions are acknowledged, the assertion that there is a right of self-defence is highly plausible. Each of these restrictions is pertinent to the right of groups to defend themselves. There are two quite different types of situations in which a group might invoke the right of self-defence to justify secession.

In the first, a group wishes to secede from a state in order to protect its members from extermination by that state itself. Under such conditions the group may either attempt to overthrow the government, that is, to engage in revolution; or, if strategy requires it, the group may secede in order to organize a defensible territory, forcibly appropriating the needed territory from the aggressor, creating the political and military machinery required for its survival, and seeking recognition and aid from other sovereign states and international bodies. Whatever moral title to the seceding territory the aggressor state previously held is *invalidated* by the gross injustice of its genocidal efforts. Or, at the very least, we can say that whatever legitimate claims to the seceding territory the state had are *outweighed* by the claims of its innocent victims. We may think of the aggressor's right to the territory, in the former case, as dissolving in the acid of his own iniquities, and, in the latter, as being pushed down in the scales of the balance by the greater weight of the victim's right of self-defence. Whether we say that the evil state's right to territory is invalidated (and disappears entirely) or merely is

outweighed, it is clear enough that in these circumstances its claim to the territory should not be an insurmountable bar to the victim group's seceding, if this is the only way to avoid its wrongful destruction. Unfortunately, this type of case is far from fanciful. One of the strongest arguments for recognizing an independent Kurdish state, for example, is that only this status, with the control over territory it includes, will ensure the survival of this group in the face of genocidal threats from Turkey, Iran and Iraq.

There is a second situation in which secessionists might invoke the right of self-defence, but in a more controversial manner. They could argue that in order to defend itself against a lethal aggressor a group may secede from a state that is not itself that aggressor. This amounts to the claim that the need to defend itself against genocide can *generate* a claim to territory of sufficient moral weight to override the claims of those who until now held valid title to it and who, unlike the aggressor in the first version of the argument, have not forfeited their claim to it by lethal aggression.

Suppose the year is 1939. Germany has inaugurated a policy of genocide against the Jews. Jewish pleas to the democracies for protection have fallen on deaf ears (in part because the Jews are not regarded as a *nation* – nationhood carrying a strong presumption of territory, which they do not possess). Leaders of Jewish populations in Germany, Eastern Europe and the Soviet Union agree that the only hope for the survival of their people is to create a Jewish state, a sovereign territory to serve as a last refuge for European Jewry. Suppose further that the logical choice for its location – the only choice with the prospect of any success in saving large numbers of Jews – is a portion of Poland. Polish Jews, who are not being protected from the Nazis by the government of Poland, therefore occupy a portion of Poland and invite other Jews to join them there in a Jewish sanctuary state. They do not expel non-Jewish Poles who already reside in that area but, instead, treat them as equal citizens. (From 1941 until 1945 something like this actually occurred on a smaller scale. Jewish partisans, who proved to be heroic and ferocious fighters, occupied and defended an area in the forests of Poland, in effect creating their own mini-state, for the purposes of defending themselves and others from annihilation by the Germans.)

The force of this second application of the self-defence argument derives in part from the assumption that the Polish Jews who create the sanctuary state *are not being protected by their own state, Poland*. The idea is that *a state's authority over territory is based at least in part in its providing protection to all its citizens* – and that its retaining that authority is conditional on its continuing to do so. In the circumstances described, the Polish state is not providing protection to its Jewish citizens, and this fact voids the state's title to the territory in question. The Jews may rightly claim the territory, if doing so is necessary for their protection against extermination.

Escaping discriminatory redistribution

The idea here is that a group may secede if this is the only way for them to escape discriminatory redistribution. Discriminatory redistribution, also called regional exploitation and internal colonization, occurs whenever the state implements economic policies that systematically work to the disadvantage of some groups, while benefiting others, in morally arbitrary ways. A clear example of discriminatory redistribution would be the state imposing higher taxes on one group while spending less on it, or placing

economic restrictions on one region, without any sound moral justification for this unequal treatment.

Charges of discriminatory redistribution abound in actual secessionist movements. Indeed, it would be hard to find cases in which this charge does not play a central role in justifications for secession, even though other reasons are often given as well. Here are only a few illustrations.

- 1 American Southerners complained that the federal tariff laws were discriminatory in intent and effect – that they served to foster the growth of infant industries in the North by protecting them from European and especially British competition, at the expense of the South's import-dependent economy. The Southern statesman John C. Calhoun and others argued that the amount of money the South was contributing to the federal government, once the effects of the tariff were taken into account, far exceeded what that region was receiving from it.
- 2 Basque secessionists have noted that the percentage of total tax revenues in Spain paid by those in their region is more than three times the percentage of state expenditures there. (A popular Basque protest song expresses this point vividly, saying that 'the cow of the state has its mouth in the Basque country but its udder elsewhere'.) (Horowitz, 1985, pp. 249–54).
- 3 Biafra, which unsuccessfully attempted to become independent from Nigeria in 1967, while containing only 22 per cent of the Nigerian population, contributed 38 per cent of total revenues, and received back from the government only 14 per cent of those revenues (Nwanko and Ifejika, 1970, p. 229).
- 4 Secessionists in the Baltic Republics and in Soviet Central Asia protested that the government in Moscow for many years implemented economic policies which benefited the rest of the country at the expense of staggering environmental damage in their regions. To support this allegation of discriminatory redistribution, they cited reports of abnormally high rates of birth defects in Estonia, Latvia and Lithuania, apparently due to chemical pollutants from the heavy industry which Soviet economic policy concentrated there, and contamination of ground water in Central Asia due to massive use of pesticides and herbicides at the order of planners in Moscow whose goal it was to make that area a major cotton producer.

An implicit premiss of the argument from discriminatory redistribution is that *failure to satisfy this fundamental condition of non-discrimination voids the state's claim to the territory in which the victims reside*, whereas the fact that they have no other recourse to avoid this fundamental injustice *gives them a valid title to it*. This premiss forges the needed connection between the grounds for seceding (discriminatory redistribution) and the territorial claim that every sound justification for secession must include (since secession involves the taking of territory). One good reason for accepting this premise is that it explains our intuitions about the justifiability of secession in certain central and relatively uncontroversial cases.

In other words, unless this premiss is acceptable, the argument from discriminatory redistribution is not sound; and unless the argument from discriminatory redistribution is sound, it is hard to see how secession is justifiable in certain cases in which there is widespread agreement that it is justified. Consider, for example, the secession of the

thirteen American Colonies from the British Empire. (Strictly speaking this was secession, not revolution. The aim of the American Colonists was not to overthrow the British government, but only to remove a part of the North American territory from the Empire.) The chief justification for American independence was discriminatory redistribution: Britain's mercantilist policies systematically worked to the disadvantage of the Colonies for the benefit of the mother country. Lacking representation in the British Parliament, the colonists reasonably concluded that this injustice would persist. It seems, then, that if the American 'Revolution' was justified, then there are cases in which the state's persistence in the injustice of discriminatory redistribution, together with the lack of alternatives to secession for remedying it, *generates* a valid claim to territory on the part of the secessionists.

The force of the argument from discriminatory redistribution does not rest solely, however, on brute moral intuitions about particular cases such as that of American independence. We can *explain* our responses to such cases by a simple but powerful principle: the legitimacy of the state – including its rightful jurisdiction over territory – depends upon its providing a framework for co-operation that does not systematically discriminate against any group.

The self-defence argument and the argument from discriminatory redistribution share an underlying assumption, namely, that the justification for a state's control over territory is at least in part *functional*. Generally speaking, what entitles a state to exercise exclusive jurisdiction ('territorial sovereignty') over a territory is the state's provision of a regime that enforces basic rights in a non-discriminatory way. If the state fails to fulfil these legitimating jurisdictional functions with respect to a group, and if there is no other way for the group to protect itself from the ensuing injustices, then it can rightfully claim the jurisdictional authority for itself.

Attempts to justify secession on grounds of discriminatory redistribution are more complicated than might first appear. The mere fact that there is a net flow of revenue out of one region does not show that discriminatory redistribution is occurring. Instead, the state may simply be implementing policies designed to satisfy the demands of *distributive justice*. (Theories of distributive justice attempt to formulate and defend principles that specify the proper distribution of the burdens and benefits of social co-operation.) The problem is that distributive justice is a highly controversial matter and that different theories will yield different and in some cases directly opposing assessments of distributive patterns across regions of a country. A policy that redistributes wealth from one region to others may be a case of discriminatory redistribution according to one theory of distributive justice, but a case of just redistribution according to another. Even if there is fairly widespread agreement that the better off owe *something* to the worse off, there can be and is disagreement as to *how much* is owed. To this extent, the theory of secession is derivative upon the theory of distributive justice and subject to its uncertainties.

Justifications for Forcible Resistance to Secession

An adequate moral theory of secession must consider not only arguments to justify secession but justifications for resisting it as well. Here I will concentrate on only two of the more influential and plausible of the latter (Buchanan, 1991, pp. 87–125).

Avoiding anarchy

From Lincoln to Gorbachev, leaders of states have opposed secession, warning that recognition of a right to secede would result in chaos. The *reductio ad absurdum* of the right to secede is the prospect of the most extreme anarchy: not every man's home his castle; rather, every man's yard his country. Even if political fragmentation stops short of this, recognition of a right to secede is likely to produce more fragmentation than is tolerable.

This argument would be much more plausible if recognizing a right to secede meant recognizing an *unlimited* right to secede. But as we have argued, the right to secede is a special or selective right that exists only when one or more of a limited set of justifying conditions is satisfied; it is not a general right of all peoples. Nor, as we have also seen, can it reasonably be understood to be included in or derivable from an alleged right of all peoples to self-determination. At most, the threat of anarchy could create a rebuttable presumption against secession, so that secessionists would, generally speaking, have to make a case for seceding.

The theory of the right to secede sketched above can be seen as including such a presumption: a sound justification for secession is to include a justification for the secessionists' claim to the territory. In a sense, this requirement constitutes a presumption in favour of the status quo, and to that extent addresses the worry about anarchy. And since, as I have also noted, secession involves not only the severing of bonds of political obligation but also the taking of territory, this requirement seems reasonable.

Some might argue that by requiring secessionists to offer grounds for their claim to the territory, the theory proposed here stacks the deck against them (Kymlicka, 1992). Especially from the standpoint of liberal political philosophy, which prizes liberty and self-determination, why should there not be a presumption that secession is justified – or, at the very least, why should not secessionists and anti-secessionists start out on level ground in the process of justification?

There are, I believe, two sound reasons for a presumption that secessionists must make a case for taking the territory. First, a moral theory of secession should be viewed as a branch of *institutional ethics*. One relevant consideration for evaluating proposed principles for institutional ethics is the consequences of their general acceptance. So long as it is recognized that the presumption against secession can be rebutted by any of the arguments stated above in favour of a right to secede, such a presumption seems superior to the alternatives. Given the gravity of secession – and the predictable and unpredictable disruptions and violence which it may produce – legitimate interests in the stability of the international order speak in favour of the presumption.

Another consideration in favour of assigning the burden of argument where I have is that such a presumption – which gives some weight to the status quo – is much more likely to contribute to general acceptance of a right to secede in the international community. Other things being equal, a moral theory which is more likely to gain acceptance is to be preferred, especially if it is a theory of how institutions – in this case, the institutions of international law and diplomacy – ought to operate. It is often remarked that the one principle of international law that has gained almost universal acceptance is a strong presumption against violations of the territorial integrity of existing states. Requiring that secessionists be able to justify secession, and in such

a way as to establish their claim to the territory in question, serves to give appropriate weight to this fundamental principle, while at the same time recognizing that the state's claim to control over its territory is not absolute and can be overridden under certain conditions.

Avoiding strategic bargaining that undermines majority rule

It could be argued that if the right to secede is recognized, then a minority may use the threat of secession to undermine majority rule. In conditions in which the majority views secession as a prohibitive cost, a group's threat to secede can function as a veto over the majority's decisions. Consideration of this risk might lead one to conclude that the only adequate way to protect democracy is to refuse to acknowledge a right to secede.

However, as we have seen, there can be compelling justifications for secession under certain conditions. Accordingly, a more appropriate response than denying the right to secede is to devise constitutional mechanisms or processes of international law that give some weight both to legitimate interests in secession and to the equally legitimate interest in preserving the integrity of majority rule (and in political stability). The most obvious way to do this would be to allow secession under certain circumstances, but to minimize the risk of strategic bargaining with the threat of secession by erecting convenient but surmountable procedural hurdles to secession. For example, a constitution might recognize a right to secede, but require a strong majority – say three-quarters – of those in the potentially seceding area to endorse secession in a referendum. This type of hurdle is the analogue of an obstacle to constitutional amendment which the US Constitution's Amendment Clause itself establishes: any proposed amendment must receive a two-thirds vote in Congress and be ratified by three-quarters of the states.

The purpose of allowing amendment while erecting these two strong (that is, non-simple) majority requirements is to strike an appropriate balance between two legitimate interests: the interest in providing flexibility for needed change and the interest in securing stability. Similarly, the point of erecting inconvenient but surmountable barriers to secession (either in a constitution or in international law) would be not to make secession impossible but to avoid making it too easy. A second approach would be to levy special exit costs, a secession tax (Buchanan, 1991). Once these possibilities are recognized, the objection that acknowledgement of a right to secede necessarily undermines democracy is seen to be less than compelling.

Secession and the Problem of Group Conflict in the Modern State

Secession is only the most extreme – and in some cases the least desirable – response to problems of group conflict. A comprehensive moral theory of international relations would include an account of the scope and limits of the right to secede; but it would also formulate and support principles to guide the establishment of a wider range of rights of self-determination. Such a theory, if it gained wide acceptance, would

undoubtedly produce fundamental changes in our conceptions of the state, of sovereignty, and of the basic categories of international law.

References

- Buchanan, A.: *Secession: The Morality of Political Divorce: From Fort Sumter to Lithuania and Quebec* (Boulder, Col.: Westview Press, 1991).
- : *Justice, Legitimacy and Self-determination* (Oxford: Oxford University Press, 2004).
- Couture, J., Nielsen, K. and Seymour, M., eds: *Rethinking Nationalism* (Calgary: University of Calgary Press, *The Canadian Journal of Philosophy*, Supplementary volume, 22, 1996).
- Gellner, E.: *Nations and Nationalism* (Oxford: Blackwell, 1983).
- Hannum, H.: *Autonomy, Sovereignty, and Self-Determination* (Philadelphia, Pa.: University of Pennsylvania Press, 1990).
- Horowitz, D.: *Ethnic Groups in Conflict* (Berkeley, Calif.: University of California Press, 1985).
- Kymlicka, W.: 'Review of *Secession: The Morality of Political Divorce: From Fort Sumter to Lithuania and Quebec*', *Political Theory*, 20 (1992), 527–32.
- Macedo, S. and Buchanan, A., eds: *Nomos XLV : Secession and Self-Determination* (New York: New York University Press, 2003).
- McCallum, G. C.: *Political Philosophy* (Englewood Cliffs, NJ: Prentice-Hall, 1987).
- Moore, M., ed.: *National Self-Determination and Secession* (New York: Oxford University Press, 1998).
- Nwanko, A. and Ifejika, S.: *The Making of a Nation: Biafra* (London: C. Hurst, 1970).
- Quebec, Province of: *James Bay and Northern Quebec Agreement and Complementary Agreements* (Quebec: Les Publications du Quebec, 1991).
- Williams, R. A., Jr.: *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York: Oxford University Press, 1990).

Further reading

- Barry, B.: 'Self-government revisited', in *The Nature of Political Theory*, ed. D. Miller and L. Siedentop (Oxford: Clarendon Press, 1983), pp. 121–55.
- Buchanan, A. and Moore, M., eds: *States, Nations, and Border: The Ethics of Making Boundaries* (Cambridge: Cambridge University Press, 2003).
- Buchheit, L. C.: *Secession: The Legitimacy of Self-Determination* (New Haven, Conn.: Yale University Press, 1978).
- Cobban, A.: *The Nation State and National Self-Determination* (New York: Thomas Y. Crowell Co., 1970).
- Coppieters, B. and Huysseune, M., eds: *Secession, History and the Social Sciences* (Brussels: VUB Press, 2002).
- Coppieters, B. and Sakwa, R., eds: *Contextualizing Secession: Normative Studies in Comparative Perspective* (Oxford: Oxford University Press, 2003).
- Couture, J., Nielsen, K. and Seymour, M., eds: *Rethinking Nationalism* (Calgary: University of Calgary Press, *The Canadian Journal of Philosophy*, Supplementary volume, 22, 1996).
- Hannum, H. and Babbitt, E. A.: *Negotiating Self-determination* (Lexington, Mass.: Lexington Books, 2006).
- Held, V., Morgenbesser, S. and Nagel, T., eds: *Philosophy, Morality, and International Affairs* (New York: Oxford University Press, 1974).