

National Self-Determination

Author(s): Avishai Margalit and Joseph Raz

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NATIONAL SELF-DETERMINATION*

IN the controversy-ridden fields of international law and international relations, the widespread recognition of the existence of national rights to self-determination provides a welcome point of agreement. Needless to say, the core consensus is but the eye of a raging storm concerning the precise definition of the right, its content, its bearers, and the proper means for its implementation. This paper will not address such questions, though indirectly it may help with their investigation. Its concern is with the moral justification of the case for national self-determination. Its purpose is critical and evaluative, its subject lies within the morality of international relations rather than within international law and international relations proper.

It is assumed throughout that states and international law should recognize such a right only if there is a sound moral case for it. This does not mean that international law should mirror morality. Its concern is with setting standards that enjoy the sort of clarity required to make them the foundations of international relations between states and fit for recognition and enforcement through international organs. These concerns give rise to special considerations that should be fully recognized in the subtle process of applying moral principles to the law. The derivation of legal principles from moral premises is never a matter of copying morality into law. Still, the justification of the law rests ultimately on moral considerations, and therefore those considerations should also help shape the contours of legal principles. That is why the conclusions of this paper bear on controversies concerning the proper way in which the law on this subject should develop, even though such issues are not here discussed directly.

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Moral inquiry is sometimes understood in a utopian manner, i.e., as an inquiry into the principles that should prevail in an ideal world. It is doubtful whether this is a meaningful enterprise, but it is certainly not the one we are engaged in here. We assume that things are roughly as they are, especially that our world is a world of states and of a variety of ethnic, national, tribal, and other groups.¹ We do not question the justification for this state of affairs. Rather, we ask whether, given that this is how things are and for as long as they remain the same, a moral case can be made in support of national self-determination.

I. ISOLATING THE ISSUE

The core content of the claim to be examined is that there is a right to determine whether a certain territory shall become, or remain, a separate state (and possibly also whether it should enjoy autonomy within a larger state). The idea of national self-determination or (as we shall refer to it in order to avoid confusion) the idea of self-government encompasses much more. The value of national self-government is the value of entrusting the general political power over a group and its members to the group. If self-government is valuable then it is valuable that whatever is a proper matter for political decision should be subject to the political decision of the group in all matters concerning the group and its members. The idea of national self-government, in other words, speaks of groups determining the character of their social and economic environment, their fortunes, the course of their development, and the fortunes of their members by their own actions, i.e., by the action of those groups, in as much as these are matters which are properly within the realm of political action.² Given the current international state system, in which politi-

¹ This fact is doubly relevant. It is a natural fact about our world that it is a populated world with no unappropriated lands. It is a social and a moral fact that it is a world of nations, tribes, peoples, etc., that is, that people's perception of themselves and of others and their judgments of the opportunities and the responsibilities of life are shaped, to an extent, by the existence of such groups and their membership of them. It may be meaningful to claim that our views regarding national self-determination apply only to a populated world like ours. One may point to different principles that would prevail in a world with vast unoccupied fertile lands. Such speculation is utopian but it may serve to highlight some of the reasons for the principles that apply in our condition. To speculate concerning a reality different from ours in its basic social and moral constitution is pointless in a deeper way. Such social facts are constitutive of morality. Their absence undercuts morality's very foundations. We could say that under such changed conditions people will have normative beliefs and will be guided by some values. But they are not ones for which we can claim any validity.

² This qualification is to take account of the fact that, according to doctrines of limited government, certain matters are outside the realm of politics, and no political action regarding them may be undertaken.

cal power rests, in the main, with sovereign states,³ the right to determine whether a territory should be an independent state is quite naturally regarded as the main instrument for realizing the ideal of self-determination. Consideration of this right usually dominates all discussions of national self-determination. To examine the justification of the right is the ultimate purpose of this article. But we shall continuously draw attention to the fact that, as we shall try to show, the right of self-determination so understood is not ultimate, but is grounded in the wider value of national self-government, which is itself to be only instrumentally justified.

The next section deals with the nature of the groups that might be the subject of such a right. Section III considers what value, if any, is served by the enjoyment of political independence by such groups. Section IV examines the case for conceding that there is a moral right to self-determination. This examination may lead to revising our understanding of the content of the right. It may reveal that moral considerations justify only a narrower right, or that the argument that justifies the right warrants giving it a wider scope. But the core as identified here will provide the working base from which to launch the inquiry.

Before we start, a few words about this way of identifying the problem may be in place. In two ways the chosen focus of our examination is narrower than many discussions of self-determination in international relations. First, we disregard the claims made, typically by third-world countries, in the name of self-determination, against the economic domination of multinational companies, the World Bank, or against powerful regional or world powers. The considerations canvassed in this paper are relevant to such issues, but fall short of directly tackling them. To be complete, a discussion of a right must examine both its grounds and its consequences. This paper is concerned mostly with the grounds for the right of self-determination. It asks the question: Who has the right and under what conditions is it to be exercised? It does not go into the question of the consequences of the right beyond the assumption, already stated, that it is a right that a territory be a self-governing state. A good deal of the current turmoil in international law, and international relations, has to do with the exploration of that last notion. What is entailed by the fact that a state is a sovereign, self-governing, entity?

³ Among the exceptions to this rule are the slowly growing importance of super-national, especially regional, associations, such as the European Community, the growth of a doctrine of sovereignty limited by respect for fundamental human rights, and the continuing (usually thinly veiled) claims of some states that they are not bound by the international law regarding the sovereignty of states.

The claims that economic domination violate the right to self-determination belong to that discussion. The conclusions of this paper provide part of the grounds by which such claims are to be settled. But we do not propose to pursue this question here.

Second, claims of self-determination are invariably raised whenever one state invades and occupies another, or a territory belonging to another. Yet it is important to distinguish between the wrongness of military invasion or occupation, and the rights available against it, and the right (whatever it may turn out to be) to self-determination. In a word, the latter is a source of title, whereas the former is a possessory right based largely on public-order considerations. Any legal system, international law not excluded, recognizes certain ways as legitimate ways of solving disputes, and outlaws others. Subject to the exceptions of legitimate self-defense and self-help, the use of violence is forbidden. Violation of that prohibition gives rise to a right to have the *status quo ante* restored, before the deeper sources of the dispute between the parties are examined; that is, regardless of the soundness of one's title to a territory, one may not use force to occupy it. This is why the right to recover a territory lost by force is a possessory right. It does not depend on the ultimate soundness of one's title, and that is why it was said to be based on public-order considerations. A large part of its justification is in the need to establish that the proper means of dispute resolution be the only ones resorted to.

Not surprisingly, invocation of this possessory right is, however, accompanied by a claim of good title (the merits of which are not immediately relevant). The underlying title is often the right to self-determination. Hence the temptation to confuse the two. But notice that, apart from the different justificatory foundations, the two are far from identical in consequence. They merely overlap. The claims of a people who have been for many years ruled by another cannot be based on the possessory right that applies only against a recent occupier. On the other hand, the occupation of portions of Antarctica, or of some uninhabited island, do violate the possessory right, but not the right of self-determination. The latter is that of the inhabitants, and does not apply when there are no inhabitants.⁴

II. GROUPS

Assuming that self-determination is enjoyed by groups, what groups qualify? Given that the right is normally attributed to peoples or

⁴ The substantive right protected indirectly by the possessory right in cases of this kind is one of the other rights providing a title in a territory. The right to self-determination is only one of the possible sources of title.

nations, it is tempting to give that as the answer and concentrate on characterizing "peoples" or "nations." The drawbacks of this approach are two: it assumes too much and it poses problems that may not require a solution.

It is far from clear that peoples or nations rather than tribes, ethnic groups, linguistic, religious, or geographical groups are the relevant reference group. What is it that makes peoples particularly suited to self-determination? The right concerns determination whether a certain territory shall be self-governing or not. It appears to affect most directly the residents of a territory, and their neighbors. If anyone, then residents of geographical regions seem intuitively to be the proper bearers of the right. Saying this does not get us very far. It does not help in identifying the residents of which regions should qualify. To be sure, this is the crucial question. But even posing it in this way shows that the answer, "the largest regions inhabited by one people or nation," is far from being the obvious answer.

We have some understanding of the benefits self-government might bring. We need to rely on this in looking for the characteristics that make groups suitable recipients of those benefits. We want, in other words, to identify groups by those characteristics which are relevant to the justification of the right. If it turns out that those do not apply to peoples or nations, we shall have shown that the right to self-determination is misconceived and, as recognized in international law, unjustified. Alternatively, the groups identified may encompass peoples (or some peoples) as well as other groups. This will provide a powerful case for redrawing the boundaries of the right. Either way we shall be saved much argument concerning the characterization of nations which, interesting as it is in itself, is irrelevant to our purpose.

Having said that, it may be useful to take nations and peoples as the obvious candidates for the right. We need not worry about their defining characteristics. But we may gain insight by comparing them with groups, e.g., the fiction-reading public, or Tottenham Football Club supporters, which obviously do not enjoy such a right. Reflection on such examples suggests six characteristics that in combination are relevant to a case for self-determination.

1. The group has a common character and a common culture that encompass many, varied and important aspects of life, a culture that defines or marks a variety of forms or styles of life, types of activities, occupations, pursuits, and relationships. With national groups we expect to find national cuisines, distinctive architectural styles, a common language, distinctive literary and artistic traditions, national

music, customs, dress, ceremonies and holidays, etc. None of these is necessary. They are but typical examples of the features that characterize peoples and other groups that are serious candidates for the right to self-determination. They have pervasive cultures, and their identity is determined at least in part by their culture. They possess cultural traditions that penetrate beyond a single or a few areas of human life, and display themselves in a whole range of areas, including many which are of great importance for the well-being of individuals.

2. The correlative of the first feature is that people growing up among members of the group will acquire the group culture, will be marked by its character. Their tastes and their options will be affected by that culture to a significant degree. The types of careers open to one, the leisure activities one learned to appreciate and is therefore able to choose from, the customs and habits that define and color relations with strangers and with friends, patterns of expectations and attitudes between spouses and among other members of the family, features of lifestyles with which one is capable of empathizing and for which one may therefore develop a taste—all these will be marked by the group culture.

They need not be indelibly marked. People may migrate to other environments, shed their previous culture, and acquire a new one. It is a painful and slow process, success in which is rarely complete. But it is possible, just as it is possible that socialization will fail and one will fail to be marked by the culture of one's environment, except negatively, to reject it. The point made is merely the modest one that, given the pervasive nature of the culture of the groups we are seeking to identify, their influence on individuals who grow up in their midst is profound and far-reaching. The point needs to be made in order to connect concern with the prosperity of the group with concern for the well-being of individuals. This tie between the individual and the collective is at the heart of the case for self-determination.

As one would expect, the tie does not necessarily extend to all members of the group, and failure of socialization is not the only reason. The group culture affects those who grow up among its members, be they members or not. But to say this is no more than to point to various anomalies and dilemmas that may arise. Most people live in groups of these kinds, so that those who belong to none are denied full access to the opportunities that are shaped in part by the group's culture. They are made to feel estranged and their chances to have a rewarding life are seriously damaged. The same is true of people who grow up among members of a group so that they absorb

its culture, but are then denied access to it because they are denied full membership of the group.

Nothing in the above presupposes that groups of the kind we are exploring are geographically concentrated, let alone that their members are the only inhabitants of any region. Rather, by drawing on the transmission of the group culture through the socialization of the young, these comments emphasize the historical nature of the groups with which we are concerned. Given that they are identified by a common culture, at least in part, they also share a history, for it is through a shared history that cultures develop and are transmitted.

3. Membership in the group is, in part, a matter of mutual recognition. Typically, one belongs to such groups if, among other conditions, one is recognized by other members of the group as belonging to it. The other conditions (which may be the accident of birth or the sharing of the group culture, etc.) are normally the grounds cited as reasons for such recognition. But those who meet those other conditions and are yet rejected by the group are at best marginal or problematic members of it. The groups concerned are not formal institutionalized groups, with formal procedures of admission. Membership in them is a matter of informal acknowledgment of belonging by others generally, and by other members specifically. The fiction-reading public fails our previous tests. It is not identified by its sharing a wide-ranging pervasive culture. It also fails the third test. To belong to the fiction-reading public all we have to do is to read fiction. It does not matter whether others recognize us as fiction-reading.⁵

4. The third feature prepares the way for, and usually goes hand in hand with, the importance of membership for one's self-identification. Consider the fiction-reading public again. It is a historically significant group. Historians may study the evolution of the fiction-reading public, how it spread from women to men, from one class to others, from reading aloud in small groups to silent reading, from reliance on libraries to book buying, etc.; how it is regarded as important to one's qualification as a cultured person in one country, but not in another; how it furnishes a common topic of conversation in some classes but not in others; how belonging to the group is a mark of political awareness in some countries, while being a sign of escapist retreat from social concerns in another.

Such studies will show, however, that it is only in some societies

⁵ The fiction-reading public can take the character of a literary elite with mutual recognition as part of its identity. The importance of "acceptability" in such groups has often been noted and analyzed.

that the existence of these features of the fiction-reading public is widely known. For the most part, one can belong to the group without being aware that one is a typical reader, that one's profile is that of most readers. Sometimes this is a result of a mistaken group image's being current in that society. Our concern is rather with those cases where the society lacks any very distinct image of that group. This indicates that, in such societies, membership of that group does not have a highly visible social profile. It is not one of the facts by which people pigeonhole each other. One need not be aware who, among people one knows, friends, acquaintances, shopkeepers one patronizes, one's doctor, etc., shares the habit. In such societies, membership of the fiction-reading public is not highly visible, that is, it is not one of the things one will normally know about people one has contact with, one of the things that identify "who they are." But it happens in some countries that membership of the reading public becomes a highly visible mark of belonging to a social group, to the intelligentsia, etc. In such countries, talk of the recently published novel becomes a means of mutual recognition.

One of the most significant facts differentiating various football cultures is whether they are cultures of self-recognition: whether identification as a fan or supporter of this club or that is one of the features that are among the main markers of people in the society. The same is true of occupational groups. In some countries, membership is highly visible and is among the primary means of pigeonholing people, of establishing "who they are"; in others, it is not.

Our concern is with groups, membership of which has a high social profile, that is, groups, membership of which is one of the primary facts by which people are identified, and which form expectations as to what they are like, groups membership of which is one of the primary clues for people generally in interpreting the conduct of others. Since our perceptions of ourselves are in large measure determined by how we expect others to perceive us, it follows that membership of such groups is an important identifying feature for each about himself. These are groups, members of which are aware of their membership and typically regard it as an important clue in understanding who they are, in interpreting their actions and reactions, in understanding their tastes and their manner.

5. Membership is a matter of belonging, not of achievement. One does not have to prove oneself, or to excel in anything, in order to belong and to be accepted as a full member. To the extent that membership normally involves recognition by others as a member, that recognition is not conditional on meeting qualifications that indicate any accomplishment. To be a good Irishman, it is true, is an

achievement. But to be an Irishman is not. Qualification for membership is usually determined by nonvoluntary criteria. One cannot choose to belong. One belongs because of who one is. One can come to belong to such groups, but only by changing, e.g., by adopting their culture, changing one's tastes and habits accordingly—a very slow process indeed. The fact that these are groups, membership of which is a matter of belonging and not of accomplishment, makes them suitable for their role as primary foci of identification. Identification is more secure, less liable to be threatened, if it does not depend on accomplishment. Although accomplishments play their role in people's sense of their own identity, it would seem that at the most fundamental level our sense of our own identity depends on criteria of belonging rather than on those of accomplishment. Secure identification at that level is particularly important to one's well-being.

6. The groups concerned are not small face-to-face groups, members of which are generally known to all other members. They are anonymous groups where mutual recognition is secured by the possession of general characteristics. The exclusion of small groups from consideration is not merely ad hoc. Small groups that are based on personal familiarity of all with all are markedly different in the character of their relationships and interactions from anonymous groups. For example, given the importance of mutual recognition to members of these groups, they tend to develop conventional means of identification, such as the use of symbolic objects, participation in group ceremonies, special group manners, or special vocabulary, which help quickly to identify who is "one of us" and who is not.

The various features we listed do not entail each other but they tend to go together. It is not surprising that groups with pervasive cultures will be important in determining the main options and opportunities of their members, or that they will become focal points of identification, etc. The way things are in our world, just about everyone belongs to such a group, and not necessarily to one only. Membership is not exclusive and many people belong to several groups that answer to our description. Some of them are rather like national groups, e.g., tribes or ethnic groups. Others are very different. Some religious groups meet our conditions, as do social classes, and some racial groups. Not all religions or racial groups did develop rich and pervasive cultures. But some did and those qualify.

III. THE VALUE OF SELF-GOVERNMENT

(A) *The Value of Encompassing Groups.* The description of the relevant groups in the preceding section may well disappoint the reader. Some will be disappointed by the imprecise nature of the

criteria provided. This would be unjustified. The criteria are not meant to provide operational legal definitions. As such they clearly would not do. Their purpose is to pick on the features of groups which may explain the value of self-determination. As already mentioned, the key to the explanation is in the importance of these groups to the well-being of their members. This thought guided the selection of the features. They are meant to assist in identifying that link. It is not really surprising that they are all vague matters of degree, admitting of many variants and many nuances. One is tempted to say "that's life." It does not come in neatly parceled parts. While striving to identify the features that matter, we have to recognize that they come in many shapes, in many shades, and in many degrees rife with impurities in their concrete mixing.

A more justified source of disappointment is the suspicion that we have cast the net too wide. Social classes clearly do not have a right to self-determination. If they meet the above conditions then those conditions are at best incomplete. Here we can only crave the reader's patience. We tried to identify the features of groups which help explain the value of self-determination. These may apply not only beyond the sphere in which the right is commonly recognized. They may apply to groups that really should not possess it for other reasons yet to be explored.

The defining properties of the groups we identified are of two kinds. On the one hand, they pick out groups with pervasive cultures; on the other, they focus on groups, membership of which is important to one's self-identity. This combination makes such groups suitable candidates for self-rule. Let us call groups manifesting the six features *encompassing groups*. Individuals find in them a culture which shapes to a large degree their tastes and opportunities, and which provides an anchor for their self-identification and the safety of effortless secure belonging.

Individual well-being depends on the successful pursuit of worthwhile goals and relationships. Goals and relationships are culturally determined. Being social animals means not merely that the means for the satisfaction of people's goals are more readily available within society. More crucially it means that those goals themselves are (when one reaches beyond what is strictly necessary for biological survival) the creatures of society, the products of culture. Family relations, all other social relations between people, careers, leisure activities, the arts, sciences, and other obvious products of "high culture" are the fruits of society. They all depend for their existence on the sharing of patterns of expectations, on traditions preserving implicit knowledge of how to do what, of tacit conventions regarding what is part of this

or that enterprise and what is not, what is appropriate and what is not, what is valuable and what is not. Familiarity with a culture determines the boundaries of the imaginable. Sharing in a culture, being part of it, determines the limits of the feasible.

It may be no more than a brute fact that our world is organized in a large measure around groups with pervasive cultures. But it is a fact with far-reaching consequences. It means, in the first place, that membership of such groups is of great importance to individual well-being, for it greatly affects one's opportunities, one's ability to engage in the relationships and pursuits marked by the culture. Secondly, it means that the prosperity of the culture is important to the well-being of its members. If the culture is decaying, or if it is persecuted or discriminated against, the options and opportunities open to its members will shrink, become less attractive, and their pursuit less likely to be successful.

It may be no more than a brute fact that people's sense of their own identity is bound up with their sense of belonging to encompassing groups and that their self-respect is affected by the esteem in which these groups are held. But these facts, too, have important consequences. They mean that individual dignity and self-respect require that the groups, membership of which contributes to one's sense of identity, be generally respected and not be made a subject of ridicule, hatred, discrimination, or persecution.

All this is mere common sense, and is meant to be hedged and qualified in the way our common understanding of these matters is. Of course, strangers can participate in activities marked by a culture. They are handicapped, but not always very seriously. Of course, there are other determinants of one's opportunities, and of one's sense of self-respect. Membership of an encompassing group is but one factor. Finally, one should mention that groups and their culture may be pernicious, based on exploitation of people, be they their members or not, or on the denigration and persecution of other groups. If so, then the case for their protection and flourishing is weakened, and may disappear altogether.

Having regard for this reservation, the case for holding the prosperity of encompassing groups as vital for the prosperity of their members is a powerful one. Group interests cannot be reduced to individual interests. It makes sense to talk of a group's prospering or declining, of actions and policies as serving the group's interest or of harming it, without having to cash this in terms of individual interests. The group may flourish if its culture prospers, but this need not mean that the lot of its members or of anyone else has improved. It is in the interest of the group to be held in high regard by others, but it

does not follow that, if an American moon landing increases the world's admiration for the United States, Americans necessarily benefit from this. Group interests are conceptually connected to the interests of their members but such connections are nonreductive and generally indirect. For example, it is possible that what enhances the interest of the group provides opportunities for improvement for its members, or that it increases the chance that they will benefit.

This relative independence of group interest is compatible with the view that informs this article: that the moral importance of the group's interest depends on its value to individuals. A large decline in the fortunes of the group may, e.g., be of little consequence to its members. There is no a priori way of correlating group interest with that of its members or of other individuals. It depends on the circumstances of different groups at different times. One clear consequence of the fact that the moral significance of a group's interest is in its service to individuals is the fact that it will depend, in part, on the size of the group. The fortunes of a larger group may be material to the well-being of a larger number of people. Other things being equal, numbers matter.

(B) *The Instrumental Case.* Does the interest of members in the prosperity of the group establish a right to self-determination? Certainly not, at least not yet, not without further argument. For one thing we have yet to see any connection between the prosperity of encompassing groups and their political independence. The easiest connection to establish under certain conditions is an instrumental one. Sometimes the prosperity of the group and its self-respect are aided by, sometimes they may be impossible to secure without, the group's enjoying political sovereignty over its own affairs. Sovereignty enables the group to conduct its own affairs in a way conducive to its prosperity.⁶ There is no need to elaborate the point. It depends on historical conditions. Hence the prominence of a history of persecution in most debates concerning self-determination. But a history of persecution is neither a necessary nor a sufficient condition for the instrumental case for self-government. It is not a necessary condition, because persecution is not the only reason why the groups may suffer without independence. Suffering can be the result of neglect or ignorance of or indifference to the prosperity of a minority group by the majority. Such attitudes may be so well entrenched that there is no realistic prospect of changing them.

⁶ This is not meant to suggest that there are not often drawbacks to self-rule. They will be considered below.

Persecution is not a sufficient condition, for there may be other ways to fight and overcome persecution and because whatever the advantages of independence it may, in the circumstances, lead to economic decline, cultural decay, or social disorder, which only make their members worse off. Besides, as mentioned above, pernicious groups may not deserve protection, especially if it will help them to pursue repressive practices with impunity. Finally, there are the interests of nonmembers to be considered. In short, the instrumental argument (as well as others) for self-government is sensitive to counterarguments pointing to its drawbacks, its cost in terms of human well-being, possible violations of human rights, etc.

We shall return to these issues below. First, let us consider the claim that the instrumental argument trivializes the case for self-government by overlooking its intrinsic value. Of the various arguments for the intrinsic value of self-government which have been and can be advanced, we examine one which seems the most promising.

(C) *An Argument for the Intrinsic Value of Self-government.* The argument is based on an extension of individual autonomy or of self-expression (if that is regarded as independently valuable). The argument unravels in stages: (1) people's membership of encompassing groups is an important aspect of their personality, and their well-being depends on giving it full expression; (2) expression of membership essentially includes manifestation of membership in the open, public life of the community; (3) this requires expressing one's membership in political activities within the community. The political is an essential arena of community life, and consequently of individual well-being; (4) therefore, self-government is inherently valuable, it is required to provide the group with a political dimension.

The first premise is unexceptionable. So is the second, though an ambiguity might be detected in the way it is often understood. Two elements need separating. First, given the importance of membership to one's well-being, it is vital that the dignity of the group be preserved. This depends, in part, on public manifestations of respect for the group and its culture, and on the absence of ridicule of the group, etc., from the public life of the society of which one is a member. One should not have to identify with or feel loyalty to a group that denigrates an encompassing group to which one belongs. Indeed, one should not have to live in an environment in which such attitudes are part of the common culture. Second, an aspect of well-being is an ability to express publicly one's identification with the group and to participate openly in its public culture. An encompassing group is centered on mutual recognition and is inevitably a

group with a public culture. One cannot enjoy the benefits of membership without participation in its public culture, without public participation in its culture.

Both elements are of great importance. Both indicate the vital role played by public manifestations of group culture and group membership among the conditions of individual well-being. To the extent that a person's well-being is bound up with his identity as a member of an encompassing group it has an important public dimension. But that dimension is not necessarily political in the conventional narrow sense of the term. Even where it is, its political expression does not require a political organization whose boundaries coincide with those of the group. One may be politically active in a multinational, multicultural polity.

Here supporters of the argument for the intrinsic value of self-government may protest. The expression of membership in the political life of the community, they will say, involves more than its public expression. It involves the possibility of members of an encompassing group participating in the political life of their state, and fighting in the name of group interests in the political arena. Such actions, they will insist, may be not only instrumentally valuable to the group, but intrinsically important to its politically active members. They are valuable avenues of self-fulfilment. These points, too, have to be readily admitted. There is no reason to think that everyone must take part in politics, or else his or her development is stunted and personality or life are deficient. In normal times, politics is but an option that people may choose to take or to leave alone. Although its availability is important, for its absence deprives people of valuable opportunities, its use is strictly optional. Even if it is possible to argue that one's personal well-being requires some involvement with larger groups, and the avoidance of exclusive preoccupation with one's own affairs and those of one's close relations or friends, that involvement can take nonpolitical forms, such as activity in a social club, interest in the fortunes of the arts in one's region, etc.

Politics is no more than an option, though this is true in normal times only. In times of political crises that have moral dimensions, it may well be the duty of everyone to stand up and be counted. In Weimar, Germans had a moral duty to become politically involved to oppose Nazism. There are many other situations where an apolitical attitude is not morally acceptable. But all of them are marked by moral crises. In the absence of crisis there is nothing wrong in being nonpolitical.

Having said this, we must repeat that the option of politics must remain open, and with it the option of fighting politically for causes

to do with the interests of one's encompassing groups. But there is nothing here to suggest that this should be done in a political framework exclusive to one's group or dominated by it. There is nothing wrong with multinational states, in which members of the different communities compete in the political arena for public resources for their communities. Admittedly, prejudice, national fanaticism, etc., sometimes make such peaceful and equitable sharing of the political arena impossible. They may lead to friction and persecution. This may constitute a good argument for the value of self-government, but it is an instrumental argument of the kind canvassed above. There is nothing in the need for a public or even a political expression of one's membership of an encompassing group which points to an intrinsic value of self-government.

(D) *The Subjective Element.* In an indirect way, the attempt to argue for the intrinsic value of self-government does point to the danger of misinterpreting the instrumental approach to the question. First, the argument does not deny the intrinsic value of the existence of the political option as a venue for activity and self-expression to all (adult) members of society. We are not advocating a purely instrumentalist view of politics generally. The intrinsic value to individuals of the political option does not require expression in polities whose boundaries coincide with those of encompassing groups. That is the only point argued for above.

Second, the pragmatic, instrumentalist character of the approach advocated here should not be identified with an aggregating impersonal consequentialism. Some people tend to associate any instrumentalist approach with images of a bureaucracy trading off the interest of one person against that of another on the basis of some cost-benefit analysis designed to maximize overall satisfaction; a bureaucracy, moreover, in charge of determining for people what is really good for them, regardless of their own views of the matter. Nothing of the kind should be countenanced. Of course, conflicts among people's interests do arise, and call for rational resolution that is likely to involve sacrificing some interests of some people for the sake of others. Such conflicts, however, admit of a large degree of indeterminacy, and many alternative resolutions may be plausible or rational. In such contexts, talking of maximization, with its connotations of comparability of all options, is entirely out of place.

Furthermore, nothing in the instrumentalist and pragmatic nature of our approach should be allowed to disguise its sensitivity to subjective elements, its responsiveness to the perceptions and sensibilities of the people concerned. To a considerable extent, what matters

is how well people feel in their environment: Do they feel at home in it or are they alienated from it? Do they feel respected or humiliated? etc. This leads to a delicate balance between "objective" factors and subjective perceptions. On the one hand, when prospects for the future are concerned, subjective perceptions of danger and likely persecution, etc., are not necessarily to be trusted. These are objective issues on which the opinion of independent spectators may be more reliable than that of those directly involved. On the other hand, the factual issue facing the independent spectators is how people will respond to their conditions, what will be their perceptions, their attitudes to their environment, to their neighbors, etc. Even a group that is not persecuted may suffer many of the ills of real persecution if it feels persecuted. That its perceptions are mistaken or exaggerated is important in pointing to the possibility of a different cure: removing the mistaken perception. But that is not always possible, and up to a point in matters of respect, identification, and dignity, subjective responses, justified or not, are the ultimate reality so far as the well-being of those who have them is concerned.

IV. A RIGHT TO SELF-DETERMINATION

It may seem that the case for self-government establishes a right to self-determination. That is, it establishes the reasons for the right sort of group, an encompassing group, to determine that a territory shall be self-governing. But things are not that simple. The case for self-government shows that sometimes, under certain conditions, it is best that the political unit be roughly an encompassing group. A group's right to self-determination is its right to determine that a territory be self-governing, regardless of whether the case for self-government, based on its benefits, is established or not. In other words, the right to self-determination answers the question 'who is to decide?', not 'what is the best decision?'. In exercising the right, the group should act responsibly in light of all the considerations we mentioned so far. It should, in particular, consider not only the interests of its members but those of others who may be affected by its decision. But if it has the right to decide, its decision is binding even if it is wrong, even if the case for self-government is not made.⁷

⁷ It should be made clear that these observations relate to the right to self-determination as it is commonly understood in the discourse of international relations and international morality. In principle, there could be a different right of self-determination, i.e., a right that, when the case for self-government is established, self-government should be granted, i.e., that all the international agents have a duty to take what action is necessary to grant self-government to the encompassing group regarding which the case for self-government has been established. That is, there could in principle have been a substantive right to have self-government when it is

The problem in conceding the existence of such a right is, of course, not the possibility that a group that would best be self-governing does not wish to be so. Given the strong subjectivist element in the instrumentalist argument, such reluctance to assume independence would suggest that the case for its being self-governing is much weakened. The problem is that the case for self-government is hedged by considerations of the interest of people other than members of the groups, and by the other interests of members of the groups, i.e., other than their interests as members of the groups. These include their fundamental individual interests which should be respected, e.g., by a group whose culture oppresses women or racial minorities. These considerations raise the question whether encompassing groups are the most suitable bodies to decide about the case for self-government. Can they be entrusted with the decision in a matter in which their group interests are in conflict with other interests of members of the group as well as with the interests of other people? At the very least this suggests that the right must be qualified and hedged to protect other interests.

More fundamental still is the question of how the right of self-determination fits within our general conception of democratic decision making. We are used to a two-level structure of argument concerning social issues, such as just taxation, the provision of public education, etc. First, we explore the principles that should govern the matter at issue. Second, we devise a form of democratic procedure for determining what shall be done. The first level answers the question 'what should be done?'. The second responds to the question 'who should decide?'

On a simple majoritarian view, the issue of self-government seems to defy a democratic decision procedure. The question is 'what is the relevant democratic unit?' and that question cannot be democratically decided, at least not entirely so. In fact, of course, we are not simple majoritarians. We adopt a whole range of democratic procedures such as constitution-making privileged majorities, ordinary legislative processes, plebiscites, administrative processes, and decisions by special agencies under conditions of public accountability and indirect democratic control. We match various democratic processes with various social and political problems. This means that there is no universal democratic formula serving as the universal

right that one should have it, rather than a "who is to decide" right, that an encompassing group should be entitled to decide whether it should be self-governing. Below we touch briefly on the reasons that explain why the right of self-determination as we know it today is not of this kind.

answer to 'who decides?' questions. Rather, we operate a mixed principled-democratic system in which principles, whose credentials do not derive entirely from their democratic backing, determine what form of a democratic procedure is suited for what problem. Within this mixed principled-democratic framework, the right to self-determination fits as just another qualified democratic process suited to its object.

What are the principles involved? It is tempting to see here a principle giving the part veto over the issue of membership in a larger whole. To form a new political unit, or to remain part of an existing one, all component parts should agree. To break up a political unit, or to foil the creation of a new one, all that is required is the will of the group that wants to secede or to stay out. This principle derives its appeal from its voluntaristic aura. It seems to regard the justification of all political units as based on consent. But this is an undesirable illusion. It is undesirable since, as was explained above regarding encompassing groups, the more important human groupings need to be based on shared history, and on criteria of nonvoluntaristic (or at least not wholly contractarian) membership to have the value that they have. The principle presents no more than an illusion of a contractarian principle since it refers to groups, not to individuals. But the whole contractarian ethos derives its appeal from the claim that each individual's consent is a condition of the legitimacy of political units. Beyond all that, the principle simply begs the question that it is meant to answer, namely, what are the parts? Which groupings have the veto and which do not? Can the group of all the people whose surnames begin with a 'g' and end with an 'e' count for these purposes? Do they have the veto on membership in a larger political unit?

The right to self-determination derives from the value of membership in encompassing groups. It is a group right, deriving from the value of a collective good, and as such opposed in spirit to contractarian-individualistic⁸ approaches to politics or to individual

⁸ The reference is to moral individualism, or value individualism, not to methodological individualism. It is impossible here to deal with the matter adequately. Let us simply indicate our position briefly. There is no accepted characterization of the term. In *The Morality of Freedom* [(New York: Oxford, 1986), p. 198], Raz identified moral individualism with the view that only individual goods, and no collective goods, have intrinsic values. According to individualism so understood, membership of encompassing groups, and the prosperity of such groups, cannot be of intrinsic value. But we believe that it is intrinsically valuable. Hence, on this definition our approach is not individualistic. In "Three Grades of Social Involvement" [*Philosophy and Public Affairs*, XVIII (1989), p. 133], George Sher characterizes

well-being. It rests on an appreciation of the great importance that membership in and identification with encompassing groups has in the life of individuals, and the importance of the prosperity and self-respect of such groups to the well-being of their members. That importance makes it reasonable to let the encompassing group that forms a substantial majority in a territory have the right to determine whether that territory shall form an independent state in order to protect the culture and self-respect of the group, provided that the new state is likely to respect the fundamental interests of its inhabitants, and provided that measures are adopted to prevent its creation from gravely damaging the just interests of other countries. This statement of the argument for the right requires elaboration.

(1) The argument is an instrumental one. It says, essentially, that members of a group are best placed to judge whether their group's prosperity will be jeopardized if it does not enjoy political independence. It is in keeping with the view that, even though participation in politics may have intrinsic value to individuals, the shape and boundaries of political units are to be determined by their service to individual well-being, i.e., by their instrumental value. In our world, encompassing groups that do not enjoy self-government are not infrequently persecuted, despised, or neglected. Given the importance of their prosperity and self-respect to the well-being of their members, it seems reasonable to entrust their members with the right to determine whether the groups should be self-governing. They may sacrifice their economic or other interests for the sake of group self-respect and prosperity. But such a sacrifice is, given the circumstances of this world, often not unreasonable.

One may ask why should such matters not be entrusted to international adjudication by an international court, or some other international agency. Instead of groups' having a right to self-determination which makes them judges in their own cause, the case for a group's

moral individualism as the belief that moral justification proceeds through premises relating to individuals and their preferences. His characterization is too vague to be conclusively disputed (e.g., all holistic justifications will include premises relating to preferences as well as to everything else—does that make them individualistic?). But if Sher has in mind the standard type of (actual or hypothetical) contractarian justifications, then our approach is not individualistic. Because actual individual preferences heavily depend on social practices, there is no reason to give them justificatory primacy. The content of hypothetical preferences is either too indefinite to yield any results or is made definite by assuming a certain social context to give them meaning. Either way it cannot be endowed with justificatory primacy, though of course people's capacity to respond to various conditions, and to form various goals and attachments, is central to any moral justification.

becoming self-governing should be entrusted to the judgment of an impartial tribunal. This would have been a far superior solution to the question 'who is to decide?'. Unfortunately, there simply does not exist any international machinery of enforcement that can be relied upon in preference to a right of self-determination as the right of self-help, nor is there any prospect of one coming into existence in the near future. In the present structure of international relations, the most promising arrangement is one that recognizes group rights to self-determination and entrusts international bodies with the duty to help bring about its realization, and to see to it that the limits and preconditions of the right are observed (these are enumerated in the points two to five below).

(2) The right belongs to the group. But how should it be exercised? Not necessarily by a simple majority vote. Given the long-term and irreversible nature of the decision (remember that while independence is up to the group, merger or union is not), the wish for a state must be shared by an overwhelming majority, reflecting deep-seated beliefs and feelings of an enduring nature, and not mere temporary popularity. The precise institutional requirements for the exercise of the right are issues that transcend the topic of this paper. They are liable to vary with the circumstances of different national and ethnic groups. Whatever they are they should reflect the above principle.

(3) The right is over a territory. This simply reflects the territorial organization of our political world. The requirement that the group be a substantial majority of the territory stems from further considerations aimed at balancing the interest in self-government against the interests of nonmembers. First, it is designed to ensure that self-government for a territory does not generate a problem as great as it is meant to solve, by ensuring that the independence will not generate a large-scale new minority problem. That risk cannot be altogether avoided. As was remarked before, numbers count in the end.

A further factual assumption underlying this condition is that people are, even today, most directly affected by the goings-on in their region. It is true that one's economic conditions are affected by the economic activities in far away places. This, however, is more and more true of the international system generally. The ideal of economic autarchy died a natural death. (Correspondingly, the condition of economic viability which used to figure in theories of the states in international relations has little role in the modern world.) What can be secured and protected, and what vitally matters to the

quality of life, is its texture as determined by the local culture and custom, the nature of the physical environment, etc. Hence the right is given only to a group that is the majority in a territory. The case for self-government applies to groups that are not in the majority anywhere, but they do not have the right to self-determination anywhere. Their members, like other people, may have a right to immigration on an individual basis to a territory of their choice. But their case is governed by general principles of freedom of movement and the sovereign rights of existing states. This means that their communal interests remain an important consideration to be born in mind by the decision makers, but they have no right, i.e., the decision is not up to them.

Do historical ties make a difference? Not to the right if voluntarily abandoned. Suppose that the group was unjustly removed from the country. In that case, the general principle of restitution applies, and the group has a right to self-determination and control over the territory it was expelled from, subject to the general principle of prescription. Prescription protects the interests of the current inhabitants. It is based on several deep-seated concerns. It is meant to prevent the revival of abandoned claims, and to protect those who are not personally to blame from having their life unsettled by claims of ancient wrongs, on the ground that their case now is as good as that of the wronged people or their descendants. Prescription, therefore, may lose the expelled group the right even though its members continue to suffer the effects of the past wrong. Their interest is a consideration to be borne in mind in decisions concerning immigration policies, and the like, but because of prescription they lost the right to self-determination. The outcome is not up to them to decide.

(4) The right is conditional on its being exercised for the right reasons, i.e., to secure conditions necessary for the prosperity and self-respect of the group. This is a major protection against abuse. Katanga cannot claim a right to self-determination as a way of securing its exclusive control over uranium mines within its territory. This condition does not negate the nature of a right. The group is still entrusted with the right to decide, and its decision is binding even if wrong, even if the case for self-government does not obtain, provided the reasons that motivate the group's decision are of the right kind.

(5) Finally, there are the two broad safeguards on which the exercise of the right is conditional. First, that the group is likely to respect the basic rights of its inhabitants, so that its establishment will do good rather than add to the ills of this world. Secondly, since the

establishment of the new state may fundamentally endanger the interests of inhabitants of other countries, its exercise is conditional on measures being taken to prevent or minimize the occurrence of substantial damage of this kind. Such measures, which will vary greatly from case to case, include free-trade agreements, port facilities, granting of air routes, demilitarization of certain regions, etc.

Two kinds of interests do not call for special protection. One is the interest of a people to regard themselves as part of a larger rather than a smaller grouping or country. The English may have an interest in being part of Great Britain, rather than mere Englishmen. But that interest can be justly satisfied only with the willing co-operation of, e.g., the Scots. If the other conditions for Scottish independence are met, this interest of the English should not stand in its way. Secondly, unjust economic gains, the product of colonial or other form of exploitation of one group by another, may be denied to the exploiting group without hesitation or compensation (barring arrangements for a transitory period). But where secession and independence will gravely affect other and legitimate interests of other countries, such interests should be protected by creating free-trade zones, demilitarized areas, etc.

(6) A right in one person is sufficient ground to hold some other person(s) to be under a duty.⁹ What duties arise out of the right to self-determination? How is this matter to be settled? As the previous discussion makes clear, the right of self-determination is instrumentally justified, as the method of implementing the case for self-government, which itself is based on the fact that in many circumstances self-government is necessary for the prosperity and dignity of encompassing groups. Hence, in fixing the limits of the right, one has to bear in mind the existing system of international politics, and show that, given other elements in that system, certain duties can be derived from the right to self-determination, whereas others cannot. The first and most important duty arising out of the right is the duty not to impede the exercise of the right, i.e., not to impede groups in their attempts to decide whether appropriate territories should be independent, so long as they do so within the limits of the right. This duty affects in practice first and foremost the state that governs the territory concerned and its inhabitants.

There may be other duties following from the right of self-deter-

⁹ See Raz, *The Morality of Freedom*, ch. 7: The Nature of Rights. On the relations of moral and legal rights, see also Raz, "Legal Rights," *Oxford Journal of Legal Studies*, iv (1984), p. 1. Raz has applied this analysis to the case of constitutional rights in general in ch. 10 of *The Morality of Freedom*.

mination. In particular, there may be a duty on the state governing the territory to provide aid in exercising the right, and a duty on other states to aid the relevant group in realizing its right, and thus to oppose the state governing the territory if it impedes its implementation. But the extent of these duties must be subject to the general principles of international morality, which indicate what methods may and may not be used in pursuit of worthwhile goals and in preventing the violation of rights. As indicated at the outset, the examination of the details of such implications of the right is beyond the scope of this article.

This brings to an end our consideration of the outlines of the case for a right to self-determination and its limits. It is an argument that proceeds in several stages from fundamental moral concerns to the ways in which they can be best implemented, given the way our world is organized. The argument is meant to present the normal justification for the right. It does not claim that there could not be alternative justifications. But it does claim to be the central case, which alternatives presuppose or of which they are variations.¹⁰

Two conclusions emerge from this discussion. On the one hand, the right to self-determination is neither absolute nor unconditional. It affects important and diverse interests of many people, from those who will be citizens of the new state, if it comes into being, to others far away from it. Those who may benefit from self-government cannot insist on it at all costs. Their interests have to be considered along those of others. On the other hand, the interests of members of an encompassing group in the self-respect and prosperity of the group are among the most vital human interests. Given their importance, their satisfaction is justified even at a considerable cost to other interests. Furthermore, given the absence of effective enforcement machinery in the international arena, the interest in group prosperity justifies entrusting the decision concerning self-government to the hands of an encompassing group that constitutes the vast majority of the population in the relevant territory, provided other vital interests are protected.

AVISHAI MARGALIT

The Hebrew University of Jerusalem

JOSEPH RAZ

Oxford University

¹⁰ On the notion of a "normal justification," and the reasons why it cannot be analyzed as either a necessary or a sufficient condition, see Raz, *The Morality of Freedom*, ch. 3.