

Self-determination. Right or demon?

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Abstract: *Four subjects are dealt with: the confusion between self-determination and separatisms; self-determination as a point or as a process; the mystery regarding who the “self” in self-determination refers to; and the link between self-determination and democracy. As for the first topic, the author maintains that self-determination cannot be identified with political separatisms, since it is a form of “social being”, of “collective existence”. Its great political power lies to the fact that it is perceived as essential for reaching objectives that are valued morally and shared socially, such as control over one’s own life and destiny. As such, it cannot be a point, a single political event. The author holds that it is indispensable to make a collective effort to find a rigorous criterion - revising the approaches so far used in international law and adopted by governments - by means of which to define those who claim the right to self-determination. It is also necessary to strengthen the tie between self-determination and democracy. He states, in fact, that the violence that often accompanies such phenomena is due not to self-determination but to its negation, and this is incompatible with democracy, which can prosper only by respecting the right of peoples to self-determination. The challenge is to transform these basic principles into effective political and legal institutions.*

Keywords: *Self-determination, separatism, secession, political independence, peoples, region, minority, conflict.*

Sommario: *Vengono trattati quattro temi: la confusione tra auto-determinazione e separatismo; l’auto-determinazione come punto o come processo; l’enigma riguardo a chi si riferisca l’“auto” in auto-determinazione; il legame tra auto-determinazione e democrazia. Riguardo al primo tema l’autore sostiene che l’auto-determinazione non può essere identificata con il separatismo politico, in quanto è una forma di “essere sociale”, di “esistenza collettiva”. Il suo grande potere politico sta nel fatto che viene percepita come essenziale al raggiungimento di obiettivi che vengono valutati moralmente e condivisi socialmente, come il*

controllo della propria vita e del proprio destino. In quanto tale, non può essere un punto, un evento politico unico. L'autore ritiene indispensabile uno sforzo collettivo per trovare un criterio rigoroso - rivedendo gli approcci fino ad ora usati nel diritto internazionale e dai governi - mediante il quale definire quanti rivendicano il diritto all'auto-determinazione. È poi necessario rafforzare la connessione tra auto-determinazione e democrazia. Egli afferma infatti che la violenza che spesso accompagna tale fenomeno è dovuta non all'auto-determinazione ma alla sua negazione, e ciò è incompatibile con la democrazia, che può prosperare solo rispettando il diritto dei popoli all'auto-determinazione. La sfida è quella di trasformare questi principi base di istituzioni politiche e legali efficaci.

Parole chiave: *Auto-determinazione, separatism, secession, indipendenza politica, popoli, regione, minoranza, conflitto.*

Self-determination has been receiving a lot of bad press lately. A lead article in the recent Winter issue of *Foreign Policy* angrily denounces the “Evils of Self-Determination” (Etzioni 1993). The U.S. Senator Patrick Moynihan, who helped some years ago to make the term “ethnicity” intellectually fashionable, now cautions that the unlearned lesson about self-determination is that “minorities not infrequently seek self-determination for themselves in order to deny it to others” (Moynihan 1993:70).

It would seem that for some people self-determination is somewhat akin to an exclusive club: you fight hard to gain access yourself, but once you are in you'd rather not see any new upstarts come along. Ever since it was proposed as a principle of international relations, self-determination has had its defenders and its detractors. So, it was after the first world war, so it was during the era of decolonization, and so it is today. The British scholar Rupert Emerson made his position quite clear some years ago: “What emerges beyond dispute is that all peoples do not have the right to self-determination; they have never had it; and they will never have it” (Umozurike 1972:177). It was long held by reputable experts that the era of self-determination (ushered in by “that idealist” Woodrow Wilson and the realist Vladimir I. Lenin) had happily come to an end after decolonization. The world was now faced with more pressing matters: the challenge of nuclear balance and arms control, free and fair trade and economic development, and almost as an afterthought, human rights and

democracy. Fortunately, for us all, moreover, we are now told, mankind has found the universal and homogeneous liberal state that appears at the end of history... (Fukuyama 1992)

How does this view square with the conflicts and the violence, the secessions and the break-ups of multinational states, with the ethnic cleansings and the genocides, with the nationalisms and fundamentalisms, the refugees and the migrants, the xenophobia and the racism, the riots and the protests that have burst upon the post-Cold War world with a vengeance? Did the quest for self-determination, which many consider to be a basic human motivation (Ronen 1979), really end when the Berlin Wall came tumbling down? Did the right of peoples to self-determination attain its highest level of achievement with General Assembly Resolution 1514, or perhaps with Article 1 of the Human Rights Covenants? And should we consider all that has occurred since as minor adjustments, derivative implications, or problems of practical implementation?

Let us not entertain any illusions: the drive to self-determination is as powerful a mobilizing force today as it ever was. Politicians and scholars alike can wish it away or ignore it only at their own peril, as President Wilson pointed out long ago¹. While ideas may be simply the expression of the prevailing material interests in society at any historical time, we know only too well that ideas do become material historical forces in their own right. Certainly self-determination is one of these.

It does riot help matters that “self-determination” means different things to different persons. It is, as one international lawyer asserts, “one of those unexceptionable goals that can be neither defined nor opposed” (Cutler in Halperin, Schefer, and Small 1992). Is it then, a goal, an aspiration, an objective? Or is it a principle, a right? And if the latter, is it only a moral and political right, or is it also a legal right? Is it enforceable? Should it be enforceable? Or is it none of these, or all of these at the same time, and more? If I had a post-modernist inclination, I would be tempted to deconstruct the self-determination discourse, and end up showing that it is nothing but a “text” whose

¹ In his February 1918 speech to Congress: “Self Determlnation is not a mere phrase. It is an imperative principle of action which statesmen will henceforth ignore at their peril” (Ofuat-ey-Kodjoe 1977).

only meaning is that given to it by a succession of readers. However, I believe, with Gellner that post-modernism is not particularly enlightening or useful - a kind of hysteria of subjectivity (Gellner 1992:29) - for an understanding of objective social facts. And self-determination has become, indeed *is*, a social and political fact in the contemporary world, which we are challenged to understand and master for what it is: an *idée-force* of powerful magnitude, a philosophical stance, a moral value, a social movement, a potent ideology, that may also be expressed, in one of its many guises, as a legal right in international law. Whereas for some the “self” in self-determination can only be the singular individual human being (Ronen 1979:8), for others the right of collective self-determination, that is, the claim of a group of people to choose the form of government under which they will live, must be treated as a myth in the Levy-Straussian sense (that is, as a blueprint for living); not as an enforceable or enforced legal, political or moral right (De George in Twining 1991).

It needs no belabouring that the right of self-determination of peoples harks back to older universal principles such as equality, freedom, liberty and the pursuit of happiness. Since its inclusion in the United Nations instruments, it is considered by most serious scholars to be a fundamental human right, but this is still rejected by some. The proponents of these two contradictory positions usually cite long lists of authorities to bolster their arguments. I would compare self-determination with, say, the concept of “emancipation” which in its time was just as powerful an *idée force* as self-determination is today. Emancipation pertained to the oppressed, the excluded, the downtrodden: slaves, serfs, women, European Jews, Indian *harijans*.² Today it is generally agreed that self-determination, now enshrined as a universal human right, is particularly relevant to colonised peoples and oppressed nations (Shivji 1989). One author argues that it pertains essentially, if not only, to indigenous peoples in their struggle against colonialism (Bhalla in Twining 1991). It is, as a French scholar puts it: “un principe de revendication, un principe de lutte” (Guilhaudis 1976).

I will develop four main points in this essay: a) the unfortunate confusion between self-determination and separatism; b) the issue of self-determination as point or process; c) the conundrum of who is the “self” in self-determination; d) the linkage between self-determination and democracy.

2 Arnold Toynbee, long ago, made this “connotive connection”.

a) It is noteworthy that in most of the current discussions on the topic, self-determination is identified with “separatism”, “secession”, “political independence”. And, as such, it is usually rejected because it implies the break-up of existing states, which is widely perceived as threatening to international peace and stability. Before recent events in Eastern Europe, one of the most strictly kept taboos in the international relations field, for almost half a century, was to question the principle of the territorial inviolability of existing states, a principle upon which the United Nations itself was founded. We all remember the traumatic exceptions of Bangladesh and Biafra, in which secession was successful in one case and unsuccessful in the other. But at what cost of human suffering in both instances (Heraclides 1991)! The exemption to this rule, of course, was the break-up of the colonial empires, as yet the only internationally legally sanctioned exercise of the right of peoples to self-determination.

So we have cases of “good” self-determination against “bad” states (the colonial empires), and “bad” self-determination against “good” states (other members in good standing of the United Nations Organization.) This is surely a fragile pedestal for such a noble ideal. If self-determination is only seen as territorial secession, then it is not surprising that it receives such short shrift from those whose main concern, for one reason or another, is the maintenance of existing state structures.

In response to this limited and to some extent non-constructive interpretation of the right of self-determination, recent discussion has followed upon Antonio Cassese’s distinction between “external” and “internal” self-determination. While emphasis on the external aspects of self-determination may indeed lead to the break-up of states, which in itself should not be judged a priori as either good or bad in a moral sense, focusing on its internal characteristics may lead to a number of other possibilities. But even Cassese’s distinction, useful as it surely is, remains of limited applicability in our complex world.

A recent study on the subject by the Carnegie Endowment for International Peace takes the discussion further and proposes new categories of self-determination. Thus, the authors distinguish anti-colonial self-determination, sub-state self-determination, trans-state self-determination, self-determination of dispersed peoples, indigenous self-determination, and representative self-determination (Haiperin, Schefer, and Small 1992). These categories do

not refer to distinct moral or legal rights, but rather to the different sources of the claims and to various possible outcomes.

The problem of identifying self-determination exclusively with secession, as I see it, is not only its limited scope but also that it is essentially a state-centered rather than a people-centered approach. There is a contradiction here, because we see self-determination as a right of peoples, but secession as a process relating to states. Clearly, we have here two distinct levels of analysis, two different analytical categories. “Separatism” and “secession”, as well as related concepts such as “autonomy” and “sovereignty” relate to the political organization of states. Self-determination, on the other hand, involves the needs, aspirations, values and goals of the social and cultural communities we refer to as “peoples”. How to relate these two levels of analysis meaningfully is, I think, one of the unmet challenges of the times.

b) Identifying self-determination exclusively with secession and the political independence of new states has led to other difficulties as well. It is often argued that self-determination takes place only once, through plebiscites or other forms of legitimate, free political choice. But if there is a moral right to self-determination, surely it should be wielded continuously. What kind of a human right can be exercised only once to be discarded for evermore? If there is a moral and political component to the concept, and not only a technical decision in international law, then self-determination, as other human rights, must be considered an open-ended ongoing process without point of closure. There may be practical reasons for limiting the number of times a certain population might be asked to vote on a referendum for independence or for joining the United Nations or approving the Maastricht Treaty, but there can be no valid reasons for limiting any people’s right to the exercise of self-determination, just as there can be no such reason to limit the practice of democracy to a single election.

If self-determination is to be considered, as I suggest, a form of “social being”, a type of “collective existence”, rather than a one-time political happening, then it ought to break out of the harness that its earlier identification with secession or political separatism has imposed on it. As Ronen puts it, the quest for self-determination, to rule one’s self, to control one’s own life, is a basic given of the human existence, and it can only be achieved in socially meaningful ways, that is, through group action, in community, the state being

just one of many such collectivities (Ronen 1979:55). There are numerous means through which human aggregates - whatever their nature and bonds - can pursue the goal to control their own destinies on a day to day basis. That is certainly what people around the world are striving for when they invoke the right to self-determination in their manifold struggles. And it is this objective - control over one's life, one's destiny - that has imbued the movement for self-determination with such mobilizing power, such driving force.

It is puerile to lecture the world on the evils of self-determination when its basic objective - control over one's destiny - has not been achieved by most of the world's peoples. Here it is irrelevant whether the real outcome of various ways to exercise this right (which of course is different from the right itself) do in fact produce the desired objective or not. What is important is that the right to self-determination is perceived as essential. to the attainment of morally valued and socially shared goals, and this is where its political power lies.

c) The crucial question in this discussion is the nature of the "peoples" who possess the right to self-determination. If by people we simply mean existing states, then there is no need to carry the debate any further. If we refer to peoples in colonies who have now (mostly) become independent, then indeed, as some authors argue, the time for self-determination is past. Fortunately, the rights of peoples were rescued from oblivion in the last twenty years or so by multiple efforts which culminated in the principles of the Algiers Declaration of 1976, and the development of the so-called third generation human rights in the United Nations. While the Algiers principles do not constitute a legal framework (basically because they were not approved by states), they strengthen the discussion about collective rights which had somehow gotten lost during the years in which international emphasis had shifted once again to the pre-eminence of universal individual rights³. To be sure, the Algiers Declaration and the concept of "the rights of peoples" were equally careful in not questioning the principles of state sovereignty and non-interference in the domestic matters of states.

The shortcomings of the existing approaches become evident when we see the turmoil in the world today in which issues of self-determination are being

³ The Universal Declaration of the Rights of Peoples, adopted by a group of independent scholars and practitioners in Algiers in 1976 [Various, 1978].

fought over in numerous regions. There are now close to 50 countries in which ethnic conflicts related to self-determination issues are currently taking place.

In the process of decolonization, the “people” referred to were usually the variegated populations occupying a territory which by sleight of hand of some colonial cartographer was henceforth to be considered an independent state. As we now know - and some perceptive observers foresaw even then - it is here that we find the origins of so many of today’s ethnic conflicts in which self-determination - and its frustration - are the issue.

Perhaps for valid reasons, the drafters of the UN human rights instruments never attempted to define the “peoples” who are the bearers of the right to self-determination. While this may have been an advantage at the time, this lack of precise definition has now become an obstacle to further legal and political development in this field. “The present dilemma is multi-disciplinary and cross-cultural. On the one hand, the right to self-determination is clearly established in international law; on the other, it is so hedged around by escape clauses that it is virtually meaningless as a basis for legal or political debate.” So states Martin Ennals, who argues that the restrictive approach taken by some government whereby self-determination only relates to traditional colonial situations must be reviewed and the universality of the right of self-determination for all peoples confirmed (Ennals 1991).

Rhetoric aside, we can properly ask: “who are the peoples?” Are we only speaking of the populations of specific territories? Do we refer to groups that share certain objective attributes of ethnicity or nationhood such as language, religion, culture? Or do we mean those communities whose members partake in imagined or constructed identities? If “minorities” are not “peoples”, according to international law, then what are they? And why not? Will indigenous populations be recognized as peoples? And if they are, as in ILO’s Convention 169, what is the purpose of the disclaimer that the use of this term should not be construed as having political implications, if not to deny the indigenous peoples at the same time the right of self-determination? What is “peoplehood” anyway?

To carefully define the nature and characteristics of the peoples who are the subjects of the right to self-determination is not a mere exercise in labeling or classification. Surely the right to self-determination entails the right to self-definition, as indigenous organizations argue persuasively. But would this

include, for example, any fringe group that decides to define itself as a people? This possibility and its implications are precisely the kind of situation which a “minimalist” approach would try to avoid, but here we risk falling back into the “exclusive club” syndrome. Conversely, conceding general acceptance to each and every human population that might claim self-determination for itself, the “maximalist” position, may not only lead to chaos and anarchy, which is what some commentators seem to fear most. More than this, a “maximalist” position will end up demeaning and devaluing the idea of self-determination itself, and will thereby only harm those collectivities who require it the most.

What is needed now is a thorough-going collective effort to spell out the universal, rigorous criteria by which the defining characteristics of the claimants to self-determination will be accepted as widely as possible. And for obvious reasons, this cannot be left only to governments, nor to a single profession or discipline. Moreover it cannot, and should not be done behind the backs of the peoples whose self-determination is at stake.

d) It is important to insist on the close linkages between self-determination and democracy. These links are not, however, clear to everybody. In the name of self-determination we have seen, indeed are seeing, nationalist governments proceeding with “ethnic cleansing”, terrorist organizations killing innocents and eliminating political moderates, tyrannical leaders imposing their personal whims on docile or submissive majorities. Was it not a French poet who proclaimed: “Oh, Liberty! How many crimes are committed in your name?” If this is not a good reason to repudiate liberty, then neither are the crimes committed in the name of self-determination a reason to reject it.

On the other hand, there are those who reduce “democracy” to an occasional electoral poll with secret ballots and multiple contending political parties. For good measure, they throw in the free market. We have also learned the hard way in recent decades that the trappings of formal democracy do not necessarily signify a democratic society. On the contrary, they may in fact conceal injustices, inequalities and discriminations which so often are the seedbeds for movements of self-determination. With the best of intentions, the “Westminster” model of parliamentary democracy has been unable to deal, in a number of post-colonial states, with the unresolved problems of self-determination.

The link between self-determination and democracy must be strengthened, in theory as well as in practice, in policy as well as in process. *The violence*

we see around us is not generated by the drive for self-determination, but by its negation. The denial of self-determination, not its pursuit, is what leads to upheavals and conflicts, And the denial of self-determination is essentially incompatible with true democracy. It is of course true that the right of self-determination of one group, however defined, may enter into contradiction with an equally valid right of another. And when one minority achieves this right, another minority may arise in its bosom, like so many Matrioshka dolls. Hurst Hannum correctly refers to these issues as a process of accomodation of conflicting rights (Hannum 1990).

Such contradictions may be reduced to the following types of situations:

- a) Conflict between peoples who legitimately claim the right of self-determination for themselves, but are willing to deny it to others (eg. Serbs, Croatians and Muslims in Bosnia-Hercegovina);
- b) Denial of the right of self-determination in the name of the rights of the State (eg. Kurds in Iraq);
- c) Denial of the collective right to self-determination for non-State peoples in the name of universal individual human rights (eg. indigenous peoples in the Americas);
- d) Denial of both the right to self-determination and universal human rights (eg. South Africa, Palestine).

Only if the peoples' right to self-determination is respected can a democratic society flourish, and only within a truly democratic framework, in which all other human rights are given due recognition, will the right to self-determination be freed from the "demons" - real or putative - which now envelop it.

The challenge before us is how to transform these basic principles into effective political and legal institutions. The difficulties are daunting and the pitfalls many, but if peace between peoples and nations is to be brought about, then this challenge must be met.

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