

# The Ashgate Research Companion to Ethics and International Relations

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ASHGATE

# Nationalism, Self-Determination and Secession

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## Introduction: History

The interrelated topics addressed in this chapter have only fairly recently come to the explicit attention of large numbers of philosophers, although this recent upsurge of interest supplements and advances debates within political theory, normative international relations theory and international law. While nationalism is a phenomenon that has preoccupied historians for some time, and self-determination is a concept well known to jurists through much of the last century, philosophers have thought about these phenomena only under the duress of the end of the Cold War and the resultant shifts in political sovereignties occurring thereafter.

This is not to say that such issues—even that of secession—have not been implicit in political philosophising throughout the whole of the modern era (Livingston 1998). They concern, in various ways, the bases of political authority and the international recognition thereof—certainly a foundational problem of political philosophy. It is not completely accurate to maintain that this problem was ignored in the modern classics. There is, for instance, Rousseau's essay on the 'government of Poland' and Hegel's meditations on the relation of nations to states in his *Philosophy of Right* and *Philosophy of World History*. More pointedly, Fichte gave his 'Addresses to the German Nation' in 1807–08, to be followed later in the century by a very different (though not incompatible) justification of nationalism in a chapter of John Stuart Mill's *Considerations on Representative Government*. But there is not much else.

In the mid-twentieth century, there was a brief flurry of interest in the 'national question' and its connection to the idea of self-determination by political and intellectual historians, no doubt due to the immanent demise of the British and other colonial empires and the pressing question of what was to replace them (Cobban 1970; Kedourie 1960). But we have had to await recent developments in international relations—to find ourselves in the post-colonial and now post-communist eras—in order to witness the philosophers' turn to consideration of this problem. Rather than tell the (all-too-brief) story of the awakening of this interest,

this chapter will provide a conceptual outline of the main issues and controversies that have arisen in this recent development of a philosophy or philosophies of nationalism (and its alternatives).

The chapter is divided into five sections, each considering a specific question that has received significant recent attention: (1) what are nations and is there such a thing as 'national identity'?; (2) is nationalism an *ethically* relevant category for understanding the nature of political legitimacy and social justice?; (3) are multinational states legitimately entitled to insist on the reconciliation of the competing demands of ethnonational groups within them?; (4) is self-determination, whether applicable to national groups or not, (still) an important norm in international law?; and (5) does self-determination (ever) entail a right of secession, perhaps including national groups, and on what basis is such a right justifiable?

### National Identity

The classic problem of denoting essential features of national identity, which has been a central concern of historians from the nineteenth century until now, received some attention from philosophers in the 1990s. This, no doubt, had become a pressing issue for newly emergent nationalist movements and their opponents as a result of the end of the Cold War and the dissolution of several multinational states (such as the Soviet Union, Yugoslavia and Czechoslovakia). The ground had been prepared by a debate among historians and anthropologists in the 1980s concerning two rival conceptions of national identity. These conceptions came to be referred to as the modernist and primordialist conceptions.

The first, and more popular one, considered national identities to be the products of features of modern society, whether of industrialisation and the creation of large-scale economies or of capitalism and the establishment of linguistically based markets for capital accumulation (Gellner 1983, Anderson 1983). The second conception suggested that national identities were rooted in more historically enduring ethnic communities, which pre-dated recent socioeconomic changes (Smith 1986). This debate was resolved to some extent by other research which showed that, while ethnicities were important in providing a basis for national identities, these ethnicities were themselves not necessarily enduring ('primordial') so much as constituted by the *belief* that they were (Connor 1994). In addition, it was also shown that the mobilisation of these beliefs was a contingent matter, dependent on the vicissitudes of modern political histories and the available means of expressing social discontent (Breuilly 1982; Horowitz 1985).

Philosophers entered the debate on national identity by linking the concept with philosophical notions of personal identity on the one hand, or of political identity on the other. In the first instance, nations were seen as contexts for individuation, analogous to families, and, because of this, gave rise to special obligations of a moral nature (Poole 1999). In the second instance, nations were seen to be generated by

political demands of a certain kind (of nations seeking states) and therefore to be inextricably tied to this type of political goal (Gilbert 1998).

Attempts to define nationality, both historical and philosophical, have oscillated between two different axes: on the one hand, between objectivistic and subjectivistic definitions; on the other hand, between realist and nominalist ones. The common moves have been either to link an objectivist notion of national features or characteristics (ethnicity, language) with a realist conception of their immutability or to connect a subjectivist notion founded on beliefs in nationhood with a nominalist conception of the mutability of such beliefs.

The historians have tended to favor the first, objective-realist, view, while philosophers have opted for the second, subjective-nominalist, view. But, in fact, neither linkage is required. National identities do seem to pertain to beliefs of some kind – whether of ethnicity/consanguinity or of political allegiances. But these beliefs have a real historical presence; they are not easily changeable – at least not without other historical or political transformations. It is in fact a subjective-realist view of national identities – that they are founded on beliefs in a common ancestry or ethnicity, which are themselves regarded as substantial manifestations of the real world – that seems closest to resolving the debate on the meaning of national identity (Dahbour 2003, 17–37).

This means, as Paul Gilbert has argued, that nations are necessarily linked to nationalism, that is, to a particular political ideology. But this also means, as Ross Poole has maintained, that national identities are real (though illusory *in their content* – the belief that nationalities are immutable), since ideologies do have historical substance and effects. Analysis of the meaning of national identity therefore necessarily leads to the study of nationalism.

## Nationalism

Historians of nationalism are sometimes agnostic on the definitions of nations, in part because they focus on political movements that are apparently self-defining as nationalist. Yet, some philosophers have also seemed to dodge the definitional issue, to the extent that they are concerned with the ethical dimensions of nationalism. The existence of this ethical dimension is itself contestable: nationalism may appear as either ethically noxious or, at best, neutral. However, there has been a lively debate about the ethical significance, if any, of nationalist ideas in the last couple of decades. The historical significance of nationalist movements is not in doubt; but the claim that nations are important and distinctive venues for ethical obligation, or are important and vital claimants of political or moral rights, has been the subject of lively debate among philosophers. There are two sorts of claims that have been made that nations do have this ethical significance – they can wear the labels of communitarian and liberal nationalism, respectively. There are also two sorts of attacks that have been made against such claims; these attacks have come from

political cosmopolitans on the one hand, and from certain political liberals on the other.

The idea that nations are the proper context for ethical life is what David Miller has called the 'principle of nationality' (1993, 12). This principle asserts the proper claim of nationalities to state power – that is, 'national self-determination'. Miller, and other communitarians, are keen to distinguish this claim from the idea that a specific body of people desire or consent to a government. Nationalism as an ethical idea is equivalent to the notion that, to the extent that a nation exists, it can invoke such a claim. Self-determination is an entailment of the idea that nations exist, in other words. There is no other purpose to nations than that.

The first philosopher to give a detailed accounting of this notion was Michael Walzer, starting in his influential book, *Just and Unjust Wars* (1977). Walzer developed a number of suggestive concepts to justify the idea of a nationality principle – that is, that nations were the primary context of an ethical life and, as such, had legitimate claims to political independence, irrespective of prevailing constitutional or territorial arrangements. Walzer's adoption of the designation of nations as 'communities of character' (from Otto Bauer, the leading historian of the 'national question' among the Austro-Marxists of the late Hapsburg Empire) introduced an ethical dimension definitionally (Walzer 1983, 62). But it was his emphasis in *Just and Unjust Wars* on 'communal autonomy' as a foundational value of international relations that gave nationalism an intrinsically ethical dimension. International law and politics was to maximise the autonomy (for example, independence and integrity) of communities, above all else; and it was this that gave nations the right to claim self-determination, to the extent that they could be identified as 'communities of character'. A further dimension was added by Walzer in his later book, *Spheres of Justice*: essential to achieving a measure of social justice was what Walzer referred to as the primary good of 'membership' (*ibid.*, 31–63). This was the right of communities to determine (and restrict) their membership, so as to allow for a (limited) just distribution of social goods. This right was not subject to prior considerations (of justice), nor were later just distributions of other goods possible without it. Lest others find *this* idea unethical, Walzer later introduced a notion meant to produce consistency of application of the prior norm of communal autonomy. This was the notion that all must abide by a 'reiterative universalism', by which nations seeking autonomy respect others also seeking it (1989, 535).

A different justification for the ethical significance of nationalism, and one relying not on communitarian principles but on a Millian liberalism, was advocated by a number of philosophers in various forms in the 1990s (Margalit and Raz 1990; Tamir 1993). This 'liberal nationalism' generally did not see the nationality principle as a political one, entailing a state as a necessary embodiment of communal life – though this was often the *practical* outcome of advocating the principle. Instead, nationality was understood as primarily cultural, not political; but there were cultural rights that *individuals* possessed to live within a culture of their own (Tamir 1991, 565–6). The state was viewed instrumentally as the best means of realising this goal, thus justifying a principle of self-determination. But the crucial move was

to view nationalism as simply the instantiation of liberal principles of individual rights, entailed by the primacy of moral personhood.

Criticism of the idea that nationalism is ethically mandated or even permissible was not long in coming. In fact, recent attacks at the end of the Cold War had been anticipated by two intellectual historians writing at the end of the colonial era. Elie Kedourie, in his classic work, *Nationalism*, emphasised the deficiencies of reordering states according to a principle of national self-determination. Echoing Lord Acton's powerful critique of the Millian view of self-governing nationalities as a norm for determining state boundaries, Kedourie maintained that invoking a principle of self-determination was little more than an invitation to violence and disorder. As he put it in a number of places and ways, *good* government was always preferable to *self-government* (see 1960, 135).

Taking a somewhat different tack, Alfred Cobban, in a survey of international legal doctrine pertaining to nationality conflicts at the end of the World Wars, argued against the use of national identities as determinative of state sovereignties or boundaries (1970). While maintaining that nation-states were historically exceptional and difficult to establish, Cobban most importantly argued that the identities upon which they were supposedly based were an unstable foundation, since national identities (and the personal identities that they comprised) were malleable and susceptible to constant alteration (*ibid.*, 125). The liberal nationalists' espousal of nation-states based on stable national cultures was a chimera.

In more recent times, different versions of these criticisms of nationalism have been brought to bear by political cosmopolitans and liberals concerned to circumscribe the power of nations, states and nation-states. A prominent view in international ethics today is that of political cosmopolitanism – the view that ethical values are universalisable globally, and that a prominent task is to develop the political institutions capable of instantiating these values. The role of nation-states in realising the cosmopolitan agenda, an agenda that focuses on the protection of human rights and the alleviation of global poverty, is negligible (Pogge 2000; Singer 2002). In fact, arguments for partiality toward co-nationals are regarded as fallacious. This is so in part because nationalism cannot explain the perpetuation of global poverty as a fact about discrete societies or national groups. The global rich are complicit in this poverty (and often the denial of rights, as well) (Pogge 1998, 498–502). But it is also the case that the alleviation of suffering can occur without the rich incurring significant costs; this suggests that they have a duty to alleviate, irrespective of national allegiances.

While some nationalists might not deny these claims, they would still insist that there is a hierarchy of obligations, with ones to co-nationals taking priority – even if they do not exclude further or subsidiary obligations. But political cosmopolitans such as Peter Singer seek to deny this view as well. Singer claims that neither ethnic consanguinity nor geographical proximity have 'any moral significance' (2002, 166, 168). There are no special or partial obligations to fellow nationals or citizens, due to the increasing mutual interrelations of our 'global community' (*ibid.*, 168–170). In fact, in the present situation, with dire survival needs at risk for substantial

populations, the needs of foreigners will often trump the needs or claims of co-nationals, at least for members of the rich countries (*ibid.*, 175).

Unlike political cosmopolitans, political liberals do not reject the idea of bounded territorial communities as having ethical significance – they simply deny that nation-states have any special status in this regard. While the reasons for this belief are not always made explicit, Cobban's view about the instability of ethnonational identities may serve as a justification of the political liberals' conclusion. John Rawls, for instance, while noting the difference between nations and states, makes the claim that a just society – just, that is, according to the principles of political liberalism – will sufficiently satisfy the legitimate 'cultural' needs of national groups within it (1999, 25).

Allen Buchanan also introduces the idea of justice as a primary consideration in evaluating the claims of groups to self-determination (1991, 51). He asserts that the claims of national groups to states are clearly unjustifiable on consequentialist grounds, since they would result in extreme political fragmentation and instability. While national groups *may*, in certain circumstances, have legitimate claims to states, this would only be as a result of a grave injustice done to them, an injustice for which a separate state was a remedy – and a remedy of last resort. In any case, political liberalism cannot sanction a claim-right for national groups, since such a right would have to be justified on grounds (such as the right to a culture or an identity) that are not legitimately determinative of political authority, at least from the point of view of political liberals.

### Multinationalism

So even if national identities are taken to have ethical significance, this does not necessarily mean that political entitlements follow from this. It may be the case that nationalities are due no more than toleration within sovereign territorial states, which will often be multinational. Yet the recently troubled history of multinational states and their dissolution – from the Hapsburg and Ottoman empires at the beginning of the twentieth century to the Soviet Union and Yugoslavia at the end of it – suggest that such states are fragile and in need of legitimation. This would seem to run contrary to a major tendency in twentieth-century history – the emergence of ethnonational identities and the creation of political movements that seek to foster and institutionalise these identities. This has recently come to be known as 'identity politics', and, as Charles Taylor has noted, nationalism was the first form of identity politics (1997, 46).

The question of the extent to which national identities *can* be politically manifest in multinational states was raised particularly by Taylor in his essay, 'The Politics of Recognition' (1994). What Taylor espoused in this influential essay was not only the value of toleration for ethnonational groups in multinational states (such as Taylor's home country of Canada) but of their 'equal recognition'. In fact Taylor went further, arguing that the 'cultural survival' of these groups was what was

most importantly at stake – and ensuring such survival might require governments committed to fostering and protecting cultures, including their languages and customs (*ibid.*, 58–9).

This view differed markedly from one that regarded multinational states as superior to nation-states precisely because the former did *not* identify and separate ethnic groups resident within them, but provided a context within which they could flourish or not, whichever was the case (McNeill 1986). Taylor and others argued that, even if the survival of particular cultures was not immediately at issue, their recognition as equals – especially in relation to other nationalities that might be larger, wealthier or more politically powerful – was a matter of justice. As Will Kymlicka maintained, multinational states could only argue for their own legitimacy if they recognised and enfranchised, rather than ignored and subordinated, the various nationalities within their borders (1995, 189).

What does recognition mean in this context? As Alan Patten has written more recently, it must include a measure of self-government for the national group within the state. Self-government means a 'democratic forum in which [the people in a national group] form a majority and to that extent can think of themselves as making collective decisions together as a group' (2002, 564–5). Yet, two questions arise: first, where such arrangements do not exist or are prevented from being established by others within the state, is a national group entitled – on the basis of a claim of self-determination – to secede from the multinational state? Second, even if such arrangements are established (or could be established), can a nationality *still* legitimately claim a state of its own on the basis of a national self-determination principle? Patten voices one view of the matter: 'there is no right to secede from a perfect state' (*ibid.*, 563). But there have been others who disagree and assert unilateral claim-rights of one sort or another for nationalities. Such assertions involve, first, establishing a particular meaning of self-determination and, second, advocating a right of secession on the basis of that meaning.

## Self-Determination

In current international law, after a century or more of disputation, a principle of self-determination seems well established. It is, however, a conditional principle, and its referents – who can claim it and when – are still controversial. In general, the peoples who are or can claim to be self-determining are indeterminate; but, once specified, they can lay claim to political independence and a bounded territory. This is, however, conditional in that 'the principle informs and complements other general principles of international law, viz., of state sovereignty, the equality of States, and the equality of peoples within a State. Thus self-determination is employed in conjunction with the principle of non-intervention' (Brownlie 2003, 555).

Philosophers have had a variety of reactions to this relatively settled doctrine in international law – some affirm it (such as John Rawls), some want to expand it to accommodate the demands of nationalities (for example, Avishai Margalit and

Joseph Raz), some reject it (such as Charles Beitz), and some want to restrict it, since it is regarded as too vague, absent reference to other, antecedent principles (for example, Allen Buchanan). Each of these views will be discussed in turn.

Philosophers who support a general principle of self-determination do so because, in Rawls's words, 'it is surely a good for individuals and associations to be attached to their particular culture and to take part in its common public and civic life' (1999, 111). This good means that a world of self-determining (that is, self-governing) peoples in a loose confederation is preferable to a more strictly ruled or regulated global regime. But this is so only to the extent that the other conjunctive principles of international law, particularly that of non-intervention, are observed. An entailment of this view is that a patriotic attachment to one's country is a good and necessary aspect of political life: 'A proper patriotism is an attachment to one's people and country, and a willingness to defend its legitimate claims while fully respecting the legitimate claims of other peoples' (*ibid.*, 111–12).

This view of self-determination, which continues to have its advocates (Macedo 2004), is nevertheless attacked for being too restrictive of claimants to self-determination, not restrictive enough, or simply incoherent. Among those who argue for expanding the principle, there are those who argue that, unless it is to simply ratify existing power relations between states, it must be applicable to national groups in general. The principle of self-determination is therefore given a basis in an account of the nature of national groups and the rights that they can claim as a result of their needs for furthering and protecting their identities. On this account, nationalities are the 'encompassing groups' within which individuals obtain their individuation and socialisation, in accordance with a culture and way of life (Margalit and Raz 1990, 456–7). States play a necessary role in this process of acculturation; a right to a state is therefore a legitimate claim of encompassing (for example, national) groups.

This view, influential as it has been, comprises a number of questionable claims. Three in particular are noteworthy: first, that the claimants of self-determination being encompassing groups somehow resolves the difficulty of who, at any particular time and place, can make a claim; second, that such a claim unproblematically issues a title to territory, whether or not the claimants possess (inhabit) that territory; and third, that self-determination is a claim-right, not a principle based on conditional assessments of well-being and needs (Dahbour 2003, 98–113). These problems have led others to a rejection of a general claim-right of self-determination, though as a conditional and limited claim few would deny its applicability.

The classic criticism of this general principle or right of self-determination was made by Charles Beitz in one of the foundational works of contemporary international ethics (1979). In this work, Beitz attacked the idea of 'state autonomy', under which were subsumed all arguments for the unconditional rights of political groups or communities. His critique of state autonomy pre-dated recent philosophical defenses of nationalism such as Margalit and Raz's; it was focused on advocacy of anti-colonialism on the one hand, and on the principle of non-intervention – the negative equivalent to the self-determination principle – on the other. But much of the critique remains pertinent. For instance, in attacking

the idea that groups claiming self-determination could be identified by certain characteristics or features, Beitz writes that no such characteristics or features are sufficient to denote populations with common political preferences or indeed with common political problems (such as persecution or oppression) (*ibid.*, 111). Furthermore, even if such populations could be identified, what has been identified is a group or association of persons; no claim or indeed connection to a particular territory, much less right to it, has been shown. The latter, on his account, requires a separate theory of property rights (*ibid.*, 109). Finally and most importantly, self-determination claims, especially those arising from colonial situations, gain their justification not from the fact that colonialism is non-consensual – since all government is non-consensual to some extent – but from the fact that colonial rule is (or may be) unjust: ‘claims of a right of self-determination ... are properly understood as assertions that the granting of independence would help reduce social injustice’ (*ibid.*, 104).

These doubts lead to the conclusion that there is no general principle of self-determination; at most a claim to self-determination is a *means* of addressing social problems of a particular kind. Similar worries led Buchanan to conclude that the principle of self-determination as such is too vague to do much work in sorting out conflicting claims of sovereignty. This is because self-determination

*... is a kind of placeholder for a range of possible principles specifying various forms and degrees of independence. These more specific principles do not express a substantive fundamental value, called self-determination. Instead, the moral force of any particular specification ... depends upon the more basic values that implementing it might serve in a particular context (1991, 50).*

After appearing to draw back from employing the discourse of self-determination at all (because of the problems enumerated above), Buchanan, in his more recent work, has stated that ‘the need for a principled stance on self-determination has never been greater’ (2004, 332). But this ‘principled stance’ should not be the assertion of some fundamental right of self-determination; it should instead be a ‘proposal for an international legal response to claims and counterclaims regarding self-determination’. As Buchanan notes, secession (of groups or regions from existing states) is the ‘most dramatic form assertions of self-determination can take’. So disputes over self-determination should devolve into a theory of secession – and this has indeed been the emphasis of most recent work in this area.

## Secession

Buchanan, who published the first major study of secession, has more recently provided a helpful typology of views, including his own (1997a). A preliminary distinction can be drawn between views that regard secession as a ‘primary’ right and those (including Buchanan’s) that regard it as a ‘remedial’ right, only. In

addition, unmentioned in this typology, is the view that there is not, nor should there be, any legal or constitutional right to secession. Within the view of secession as a primary (or fundamental) right, there is a further distinction to be made. Some maintain what Buchanan refers to as an ascriptive-group theory of secession, while others advocate an associative-group theory. These four views – secession for ascriptive groups, for associative groups, as a remedial right, and as no right at all – will be discussed in turn.

The notion of an ascriptive group is similar to Margalit and Raz's concept of the encompassing group; it is a group of persons to which a characteristic or feature can be ascribed that provides a marker of identity (in this instance, nationality). What Buchanan refers to as the ascriptive-group conception of secession is the idea that ascriptive groups have a right to secede and form independent states, under certain conditions. David Miller notes the following three such conditions of a legitimate secession: (1) that the group is distinct from another such group that inhabits a state; (2) that the seceding group has a legitimate title to a part of the territory of the state (a title legitimated by their actual habitation of and attachment to the territory); and (3) that no significant damage is done to the ability of the non-seceding group to continue to live in the remainder territory as a 'viable political community' (2000, 117–18, 122–4).

This view has sustained significant criticism, both from those inclined to different views of legitimate secession and those disinclined to sanction secession as a general right. Buchanan has criticised the ascriptive-nationalist justification of secession because it does not fulfill certain criteria of what he regards as an adequate theory of secession. For instance, one such criterion is that a secession be consistent with just principles of international law, such as the protection of the independence and integrity of other states. Another criterion is that secession should not create 'perverse incentives' – for instance, to resist decentralisation *by* existing governments or to use threats of 'exit' (secession) to extract concessions *from* existing governments (Buchanan 2004, 349–50). A more severe critic of secession is Donald Horowitz, whose influential work on ethnic conflict has led him to conclude that secessions and partitions exacerbate, rather than defuse, conflicts between ethnonational groups. He argues that a better approach to ending conflict than sanctioning secessions is the constitutional reorganisation of multinational states in order to protect minority groups within them (2003).

The associative-group conception of secession is derived from a consent theory of political legitimacy, in that groups that are eligible to make secessionist claims are not defined by particular characteristics (as in the ascriptive conception) but by the consent of their members to associate for mutual advantage. There are several versions of this theory currently, but the originator of the idea, Harry Beran, subscribes to what could be called a 'pure consent' theory of secession, in which there are no legitimate limits or counter considerations that would overrule the actual consent of persons to associate in a state of their own (1987; 1998). A 'hybrid consent' theory has also been proposed, in which other considerations, in particular the continued viability of non-seceding state remnants, must be weighed (Wellman 1995; 2005).

It is doubtful, however, whether either the pure or hybrid theories will assuage critics of this theory of secession. Three criticisms of the theory are apt (Brilmayer 1991; Dahbour 2005, 262–6). First, it does not pass the ‘perverse incentive’ test since, by giving reasons for *unilateral* withdrawal from prior associations, those associations are undermined by the potentially coercive actions of minorities. Second, the use of plebiscitary mechanisms to render an explicit consent to secession possible violates the majoritarian intent of consent theory. Minority groups (or areas in which minority groups are a majority) must be given *exclusive* access to voting rights, or secession could virtually never be consensually derived. Third, if secession is a type of right of association, it does not provide a right to territorial possession, without which secessions are impossible.

Such criticisms have led some to advocate a conditional theory of secession, most often called the remedial right (only) theory (Buchanan 1997b). In such a theory, secession is legitimate only if it is a remedy of last resort for grave injustices; there is no primary or fundamental claim-right of secession. Injustices are here of three kinds: (1) violations of human rights; (2) ‘discriminatory redistribution’ of wealth and resources (including land) by one group or region from another; and (3) threats to the ‘cultural survival’ of a people. Such a conception, however, as Buchanan seems to acknowledge, requires a full-fledged conception of justice that would justify specific claims of injustice. Furthermore, if the theory is to be operationalised in the international arena, such a theory must command wide, if not universal, assent. One precedent for such assent is the critique of colonialism that was institutionalised in several international legal instruments (Buchanan 1997b, 312–13). But it is not clear that this precedent would be sufficient to suggest the level of unanimity necessary to legitimate a general, though remedial, right to secession.

This problem indicates that ‘legalising’ secession might generate problems of its own. Cass Sunstein has argued that secession in fact violates basic principles of constitutional law, and that this is the reason it will prove difficult to institutionalise. He contends that a right of secession would generate ‘continuous risks to self-government’, which it is the purpose of constitutional provisions to encourage and protect self-government (1991, 635). In particular, Sunstein contends that making secession a continual option in constitutional processes would ‘create factionalism, instability, impulsiveness, chaos, stalemate, collective action problems, myopia, strategic behavior, or hostilities so serious and fundamental as to endanger the governmental process itself’ (*ibid.*, 642). The fundamental problem is that legalising secession would encourage groups to use their legal option to secede as a bargaining chip in negotiations with others to extract concessions (Dahl 1989, 196).

Others have recently challenged the view that secession is necessarily unconstitutional. On one account, a constitutional right to secession can ‘lower the stakes of political disintegration, so that nations break apart without disaster’ (Brandon 2003, 305). Such a right ought to be legalised so that it can ‘normalise’ a process of state dissolution that may happen in any event. The point is to find a middle course between a general right of secession and no right at all. By adopting a procedural approach to secession, the option may be tamed and constitutional regimes protected from the worst (Weinstock 2001).

### Conclusion: Sovereignty

What the recent debate about secession and constitutionalism suggests is that there has been a shift in philosophical interest from the justification of an ideal of the nation-state to the investigation of procedures by which such an ideal can be made compatible with existing international law. It may be the case that ethnic nationalism as an historical phenomenon has not yet played itself out, even though at the time of writing we are approaching the completion of two decades after the end of the Cold War and the multiple readjustments of sovereignty that resulted from that event (Muller 2008). But it may also be the case that the philosophical bloom is off the rose of nationalism and that a new consensus is emerging to seek means of replacing an old conception of state sovereignty with something more amenable to the changes that have resulted from the 'new nationalism'.

The outlines of this 'postnational' conception of sovereignty have yet to become manifest; they will undoubtedly range from advocacy of various forms of federalism (such as the EU) to that of the devolution of existing states into more small-scaled entities. But while few advocates of the nation-state as such may remain, the nationalism debate in contemporary philosophy will have left its mark in two important ways. First, the importance of sovereign territorial states, however legitimated and however organised, will no doubt continue to be recognised, despite attacks from advocates of various kinds of political cosmopolitanism. This is one consequence of the renewed emphasis on the positive value of statehood by philosophical nationalists. Second, the renewed significance of an international norm of self-determination, though increasingly shorn of any association with nationalism as such, is also a long-term consequence of the debate. In this respect, the nationalism debate renovates certain philosophical lessons learned from the critique of colonialism in the mid-twentieth century; that is, that international law must continue to recognise political freedom as an important determinant of international legitimacy, even if that freedom is interpreted and acted upon in ways not necessarily congruent with prevailing cosmopolitan norms. The result of the nationalism debate may well, therefore, be neither a philosophical nationalism nor internationalism as traditionally conceived, but a new set of ideas about how to conceptualise political self-determination and sovereignty without acquiescing in the old dichotomy between the ideals of a system of nation-states and a regime of global governance.

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