

# **Nationalism and Human Rights**

**In Theory and Practice in the  
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## National Rights, Minority Rights, and Ethnic Cleansing

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Nationalists have not been shy about invoking the concept of rights for their own purposes. Among their contributions to the discourse about rights is the idea of a right of self-determination that can be invoked by ethnonational groups in order to found independent nation-states. This chapter compares this idea with the related but distinct notion that minorities, when they are oppressed, may claim a right of self-determination. A close examination of these ideas and of two historical instances—the competing claims to self-determination invoked to establish a South Slavic state (i.e., Yugoslavia) in the 1920s and a Jewish state in Palestine (i.e., Israel) in the 1940s—demonstrates that only a “special right” of *oppressed* minorities has cogency. Otherwise, conflicts among ethnonational groups need to be resolved by recourse, not to rights claims, but by institutional and territorial schemes that defuse conflict through mechanisms of political integration, rather than separation.

### Do Nations Have Rights?

While the ideas of self-determination, as understood by nationalists; and rights, as used by liberals, both have philosophical origins in Enlightenment thought,<sup>1</sup> they are conceptually quite distinct. The idea of rights is based on a conception of the individual as naturally existent and possessed of certain entitlements, whether from divine sanction or from the absence of external constraints. Paradigmatic of this idea is Locke’s view, among other philosophers from the period.<sup>2</sup> The notion of self-determination relies on a conception of social entities that have a collective identity sufficient

to assert themselves politically and make claims. This idea of collective selfhood originates in Rousseau's conception of the collective, or "general," will; and it gains further specification from Kant's notion of autonomy.<sup>3</sup>

Today, these notions of collective autonomy and individual rights have been brought together in the idea of collective rights. Advocates of national self-determination frequently have sought to give their claim the status of a right, which would confer it greater legitimacy and priority. But such a notion of national rights—paradigmatically, to self-determination—is incoherent. If groups are accorded rights of any sort, it is only upon certain conditions having to do with their oppression within an existing state. Such rights are applicable only to minority groups and only under a definite set of circumstances.

In classifying different sorts of arguments that can be made for group rights, there is a general faultline to be noted. This is the difference between general rights, accorded to groups of various kinds, and special rights, accorded only under certain conditions. Further, there is a difference to be noted between the claimants of such rights. Claimants may be defined broadly so that they include all social groups or all ethno-national groups; more narrowly as only those groups that have minority status within a state; or even more narrowly as such groups to the extent that they suffer various conditions, including social oppression or political exclusion. The differentiation of these categories of claimants hinges on the issue of whether the claim-right should be considered a permanent right, which may be invoked by the claimants at any time and for perpetuity, or a temporary right, which may only be invoked upon the existence of a particular condition and only so long as that condition persists. Temporary rights are therefore essentially remedial rights, designed to remedy an undesirable condition of some sort. Permanent rights, on the contrary, are therefore nonremedial—not dependent on the existence or continuation of such a condition.

These distinctions yield three positions that have been maintained by a number of theorists. First is the view that there can be a general self-determination right for ethnonational groups (hereon referred to as "nations"). This "general-nationality" argument holds that this right can be claimed without invoking any particular condition to be remedied, and as such is a permanent right. On this perspective, the 1990 article by Avishai Margalit and Joseph Raz, "National Self-Determination," deserves close attention, both because it has been influential and because they provide a careful exposition of all the concepts contained in an argument for a general right of national groups to statehood. Second is the "general-minority" argument that only minority groups can claim the right of self-determination, and that they may do so as a general matter, not dependent

on the existence of particular circumstances. The work of Will Kymlicka, especially *Multicultural Citizenship* (1995), is the best venue within which to discuss this idea. Third, there is the view that only minority groups may claim self-determination rights, and only when particular conditions of oppression, exclusion, or discrimination obtain (and only for as long as they do so). This idea is best examined in the sophisticated version offered by Allen Buchanan in his 1991 book *Secession* and subsequent works.

My argument here is that the third view mentioned above is the only one of the three that is coherent. Furthermore, the conception of "general-nationality" and "general-minority" rights, as applied to the historical conditions of the twentieth-century conflicts in the Balkans and Syria-Palestine, exacerbated already serious problems of ethnonational strife. Therefore, only the third view provides ethically valid solutions to these types of conflicts.

### Self-Determination as a General Right of National Groups

In considering whether self-determination can be a general right of national groups, the type of rights claim must be clarified. Some nationalists write as if their claim to self-determination were a negative right—one to be exercised without interference by others.<sup>4</sup> However, another view is that, because action must be taken by a state for the right to be exercised, self-determination is a positive right—one requiring institutional redress.<sup>5</sup>

A right can only be one premised on the noninterference of others if it is possible to exercise one's right without interfering with others.<sup>6</sup> Thus, an individual may claim the right to perform an action without interference from others because its performance will not affect other persons. But this is not the case with nations and states. In fact, if anything, it is the reverse: too many nations have conflicting claims over territory and resources that, if realized, would entail interference with other nations or states. The realization of any rights-claim with the purpose of establishing independent nation-states must do so through a disruption of existing political and territorial arrangements. Thus, a justification for such a rearrangement must be a justification for a duty of existing states to adjust their boundaries and sovereignties so as to enable the creation of these new nation-states. That is to say, it must be the justification of a positive general right that is to be facilitated by the relevant parties and that is acknowledged as legitimate by all others. This includes positive acts by other members of the international community, particularly diplomatic recognition, which has usually been essential for the viability of new states.<sup>7</sup>

Beyond its status as a positive right, national self-determination can be regarded as being essentially a collective or group right. This is premised on the idea that collective rights exist because collective goods exist.<sup>8</sup> Groups have the right to appropriate the conditions necessary for their existence as a group because collective goods have an intrinsic value.<sup>9</sup> Such a right derives from the connection between human well-being and the existence of groups with distinctive cultures—what Margalit and Raz refer to as “encompassing groups”:

The right to self-determination derives from the value of membership in encompassing groups. . . . 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.<sup>10</sup>

Encompassing groups have a common character defined by their cultural mores, aesthetic styles, distinct languages or dialects, and patterns of everyday life. This common character tends to “encompass” individuals through a process of socialization into the dominant cultural tradition of the group.<sup>11</sup> Encompassing groups identify those individuals deemed members through a process of “mutual recognition,” a process that makes membership in these groups an important sign of *personal* identity, as well.<sup>12</sup> These groups are therefore not defined by measures of achievement or excellence, but by a more intangible process of belonging to a group with common habits, tastes, and inclinations.<sup>13</sup> An encompassing group is inevitably larger than any group defined by personal acquaintance or actual encounters. While groups based on familiarity identify their members through particular relationships, encompassing groups are able to do so through more anonymous indicators of identity and through the ascription of these qualifying indicators to strangers.<sup>14</sup>

Therefore, the crucial claim behind the right of national self-determination is not the political right of self-rule but the protection of distinct cultural groups and their ways of life.<sup>15</sup> This “cultural” sense of self-determination needs to be distinguished from the idea of cultural rights prevalent in international law, which are aimed at protecting minority communities against existing governments “to preserve their distinctive culture and to protect aspects of personal dignity that are based on membership in a cultural community.”<sup>16</sup> National groups might seek to preserve their existence by securing a “public space” in which one “can live in accordance with the customs and the traditions of [a] people.”<sup>17</sup>

However, the set of qualities that define encompassing groups raises a problem: if invoking a right of self-determination is supposed to protect

encompassing groups, yet such groups are able to propagate their distinctive cultures, what need is there for such a right? On one hand, if such groups exist and are able to protect their cultures sufficiently to socialize the young, then they would seemingly have no need for a special right of self-determination. On the other hand, if they are unable to propagate their cultural traditions through socialization, they would therefore also be unable to maintain that they are in fact an encompassing group and, consequently, could not claim any right to self-determination.

A standard response to this dilemma is to argue that groups have such a right when they are persecuted, discriminated against, or oppressed, conditions that disrupt or destroy a group's capacity for cultural expression. But Margalit and Raz maintain that a group's legitimate claim to self-determination both is and is *not* a function of the group's persecution by others (more below).<sup>18</sup> In their view, persecution cannot, in and of itself, constitute a basis for a *general* claim to or right of self-determination. Instead, the general-nationality argument holds that the essence of a claim of self-determination concerns not the substance of well-being in a material sense but the “right to decide” about the conditions of well-being for a group.<sup>19</sup> The core of the idea of self-determination is that the well-being of persons includes the capacity of an encompassing group to decide about crucial issues concerning the group's well-being, which is understood as the maintenance of cultural traditions and lifeworlds.<sup>20</sup>

Furthermore, the “right to decide” that Margalit and Raz defend as necessary for the “culture and self-respect” of encompassing groups is the right to decide about the legitimacy of boundaries and sovereignties: “[The] importance [of encompassing groups] 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.”<sup>21</sup> This statement points to the heart of the matter, that self-government for Margalit and Raz concerns *who is to decide* about the boundaries and citizenship of territories: “A group's right to self-determination is its right to determine that a territory be self-governing. . . . [I]f [a group] has the right to decide, its decision is binding even if it is wrong, even if the case for self-government is not made.”<sup>22</sup> This statement makes it clear that what is at stake in a claim of self-determination is the political authority to determine the status of territories. Thus, even if a group does not appear to need self-determination in order to solve problems of poverty or discrimination, it still may be the case that the group will choose and should have the right to choose to exist as an independent state.<sup>23</sup>

Margalit and Raz make this clear when they distinguish between *possession of* and *title to* territory.<sup>24</sup> Possession of territory resides with those

who occupy it at present, so long as they did not (recently) seize it by force. The determination of possession of a given country or region is "based largely on public-order considerations." Title to a territory is different. Title is a *right to have* possession of a particular territory. That is to say, title is conferred, not just on those who have legitimate possession of a territory, but also on those who have legitimate *claim* to possession, even if they choose not to presently exercise their claim. This is the case with ethnonational groups as encompassing groups within larger states, as they do not presently have possession of "national territory" independent of their membership in the larger entities. Thus, a nation may "choose" to exist within a multinational state, living within its "national territory" as a component of a larger state. Yet, the nation still has title to the territory and can choose to exercise it at any point in the future.<sup>25</sup>

When this distinction is made between title and possession, a crucial assumption is also made: that groups can lay claim to territory as their property, and that such claims can override considerations of public good. But this overlooks the limited nature of property rights, which most contemporary theorists of property regard as limited in various ways by considerations of general welfare or distributive justice. As Buchanan argues, "any theory of justice that allows for any redistribution whatsoever . . . must concede . . . that the individual right to private property is a *limited* right, not a right against all interference or a right of unlimited accumulation."<sup>26</sup> Raz himself concedes that it is not the case that property rights "are either inalienable or of absolute or near absolute weight."<sup>27</sup> If this is the case, the distinction between title and possession as forms of property rights collapses,<sup>28</sup> and property arrangements need to be justified on the grounds of political norms.<sup>29</sup> No direct connection, in short, can be made between the existence of encompassing groups and the legitimate title to rule over territory. Therefore, the intermediate step of instrumentally justifying such title must be taken.

So the claims of national groups to territories (and states) must proceed from the espousal of the value of cultural identity for individuals to the necessity of a nation-state—as a "public space" in which culture can exist and flourish—for the realization of this value.<sup>30</sup> It is not enough for persons to see themselves as members of a cultural nationality; they also need to identify themselves vicariously with a nation through its embodiment in a state as the only means of ensuring one's own sense of national identification.<sup>31</sup> This view of what is entailed in national identities actually involves a choice as to what form such identities *should* take. Historically, and at present, most national cultures have never had states—yet many such cultures have existed and often flourished.<sup>32</sup> Nevertheless, what is assumed in the general-nationality argument is the value, not of a national culture, but of a nation-state as the most perfect manifestation of such a culture.

But this in turn implies an essentialist conception of culture and personal identity, which contradicts the more nuanced understandings in contemporary social theory of how culture and personality are constituted. As Iris Marion Young has pointed out, the traditional view of cultural difference "assumes an essentialist meaning of difference; it defines groups as having different natures." But another—and more accurate—view of cultural identities "defines difference more fluidly and relationally as the product of social processes."<sup>33</sup> Thus, while national identities are undoubtedly a part of the cultural experiences of many individuals, they are not equivalent to cultures in general.<sup>34</sup> Any particular collective cultural identity is the result of "the activation of one or more *potential* individual identities."<sup>35</sup> The ability of persons to lead fulfilling lives seems to be best served when individuals have the maximum opportunity to change their group affiliations and cultural identities in relation to changing needs and interests.<sup>36</sup> Besides minimizing the importance of individual choice in the construction of cultural identities, nationalists also trivialize human culture in valorizing its politically symbolic manifestations.

This brings us back to the issue of the persecution of, discrimination against, or domination over groups, and what relation, if any, these conditions have to the legitimate rights-claims of the groups. Margalit and Raz are of two minds about this. On the one hand, the underlying rationale for the idea of self-determination is that the well-being of groups cannot be ensured unless they have the right to protect their own interests.<sup>37</sup> On the other, if self-determination were dependent for its legitimacy on the actual persecution of encompassing (specifically, national) groups, then there could be no "right to decide." Thus, Margalit and Raz maintain that the persecution of groups *cannot* serve as grounds for a right of self-determination:

. . . a history of persecution is neither a necessary or 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 . . . 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 . . . only make their members worse off.<sup>38</sup>

Therefore, if the case for the self-government of encompassing groups cannot be based on the lack of well-being of those groups, but rather on the idea of a "right to decide," then what can this right be, if not an instrumental response to at least the possibility of group persecution? In which case, a special or remedial claim to self-determination under conditions

of discrimination, for instance, will suffice. Absent such conditions, the dispersal or disappearance of certain (national) cultures could probably only be prevented through interference with the choices of individuals, which is objectionable on grounds of their moral autonomy.

### "General" Minority Rights

Is there any intermediate ground between the general argument for group rights made by Margalit, Raz, et al. and a special argument for remedial rights of oppressed minority groups? Will Kymlicka attempt to make such a case for a general right of national minorities to self-government. The case involves certain ideas about the relation of minority to majority cultures and does not restrict minority rights to cases of oppression or discrimination.

The difference with the general-nationality argument for rights lies in the view of groups as minorities rather than nations—thus, the emphasis on minorities and the de-emphasis on territorial sovereignty rights (such as secession). Yet the reasons for the claim have to do with the right of national minorities to protect their unique cultures against assimilation by majorities, even if this assimilation is peaceful and voluntary. Therefore, in the end, this is not a significant difference.

Kymlicka maintains that cultural survival requires that a group be a "societal culture."<sup>39</sup> These have three characteristics: cultural distinctness, geographical concentration, and "institutional completeness." If a culture fails to attain these characteristics, its survival is doubtful. But even if a group does possess these characteristics, if the state within which it resides is dominated by a majority culture distinct from its own, the minority culture risks oblivion. This is the problem that the idea of minority rights is designed to solve.

Societal cultures bear obvious similarities to encompassing groups. Minority rights are designed to address only the problems of national minorities, not social groups in general. Rather than a general affirmation of group rights in all instances of group distinctiveness, legitimacy is accorded to group claims when such groups have minority status, and only when they do. The reason is because presumably majority cultures control their governments and do not risk cultural survival because of the protections such control affords them. This is not available to minorities, since the idea that governments could be neutral with respect to cultural practices is "patently false."<sup>40</sup> Two other types of groups are excluded. First, groups suffering discrimination of some sort are not entitled to what Kymlicka refers to as "self-government rights" if this discrimination

is the only characteristic that distinguishes the group. This is because it may reasonably be thought that such discrimination is temporary (given adequate redress, of course).<sup>41</sup> Second, there are ethnic groups which, as distinct from national minorities, are groups produced by immigration, but without a history (or even, perhaps, a possibility) of self-government or the prerequisites of self-government.<sup>42</sup> Ethnic groups do, however, have a legitimate claim to "polyethnic rights" to engage in cultural (especially religious) practices that might otherwise be forbidden, as well as to entitlements to public funding for cultural practices in schools and other institutions.<sup>43</sup> However, these rights do not entail a mandate for any form of self-government.

For national minorities, in contrast, the right to self-government, including separate administration, taxation, and legal systems, is mandated. There is a three-part argument that justifies this. First, all societies have a majority culture that establishes and mandates its own particular cultural practices. Second, this creates a situation in which minority cultures are "at a systemic disadvantage in the cultural market-place." Third, "cultural equality" demands redress for this disadvantage through differential treatment.<sup>44</sup> Again, the right to self-government is accorded only to groups that have minority status, not to all groups and not to majority cultures.

But at least two problems remain. We may call these the "privilege problem" and the "backlash problem." The privilege problem is one in which a minority in a state is not disadvantaged by their minority status but, on the contrary, is wealthier, more privileged, and also in control of governmental resources to which the majority culture does not have (equal) access. The backlash problem is one of whether legitimate limits may be put on the self-government rights of minorities, especially in cases where there are substantial "costs" involved in exercising them—"costs" being a polite term for civil war, ethnic cleansing, and associated horrors that could result from a backlash to a secessionist effort. If assertion of a minority right to self-government would likely precipitate civil violence, is it unjustified?

As to the first problem, Kymlicka does not consider the case of a privileged minority. Jorge Valadez, who otherwise largely agrees with Kymlicka's view of minority rights, writes that Kymlicka does not seem to consider the "impact of material factors" on minority self-determination.<sup>45</sup> However, as we will see below, in crucial cases—Palestine and Yugoslavia among them—it was the relative economic (and, to some degree, political) advantages of minorities over majority populations that led to demands for self-government and, eventually, statehood. Furthermore, it was the threat that these demands would result in the continuing impoverishment and disenfranchisement of majorities that contributed significantly

to ethnic conflict and war. In light of historical cases such as these, are minorities *always* justified in claiming rights to self-government simply by virtue of their being a minority?

Turning to the second problem, Kymlicka's answer is that if the costs are too great, then minority rights are not mandated.<sup>46</sup> Such costs presumably arise from the breakdown of authority that precipitates violent conflict between groups. But this very breakdown can be viewed as legitimate politics if it is considered to be a case of justified secession. Here Kymlicka is vague about when self-government rights justify secession and/or partition. While he contends that rejecting self-government demands seems certain to provoke more extreme demands for independence, he concedes that acceding to minority self-government can also lead to secessionist claims.<sup>47</sup> If it can be shown—though Kymlicka thinks it cannot—that national minority claims have led repeatedly to *more* conflict and violence, then what status does a rights claim have? Without a more robust argument for the rights of groups, the possible consequences of recognizing such claims outweigh the benefits of doing so.

### "Special" Minority Rights

What we are left with then is an argument for *special* minority rights—rights *only* in cases of oppression or discrimination, and only so long as such conditions last. This makes such a right remedial—exactly what Raz, Kymlicka, and other nationalists want to resist doing. But, I will argue, it is the only approach that can avoid the path to separation, conflict, violence, and worse. Furthermore, as the Palestinian and Yugoslavian cases that I examine below suggest, it must be accompanied by a specific institutional design in order to be effective. But for now, simply defining a limited right to self-determination is important in order to differentiate the principle from its nationalist conception.

A special right is one that can be claimed only in cases of discrimination or oppression—"special" cases. Such a right is not a function of identities—national, ethnic, or ethnonational—of membership (in groups), of cultural affinities (and the survival thereof), or anything other than a specific condition of injustice. It is a remedial right, and therefore temporary in essence. Whether it generates a legitimate claim to sovereignty is a function of whether the right is recognized by the existing regime. To the extent that it is recognized, then secession is precluded. If it is not recognized within a state, then exit from that state becomes a legitimate option.

The difficulty here is in defining discrimination and oppression. Allen Buchanan's work on secession provides a useful starting point. Buchanan

advocates three possible grounds for legitimate secession. The justifying grounds for secession are at the same time grounds for minority rights. The three, on Buchanan's account, are violations of human rights, unjust seizures of territory, and the existence of a pattern of "discriminatory redistribution." It is the last that is applicable here.

Human rights violations, while legitimate grounds for redress, do not require a new principle of self-determination. Existing international human rights law has formulated instruments—ranging from foreign aid to military intervention—to provide redress. While some of these instruments are controversial, the controversies do not necessarily involve a reconceptualization of self-determination.<sup>48</sup>

The notion of an unjust seizure—unless it denotes a situation that generates rights violations sufficient to regard the seizure as an emergency condition in itself—requires a historical baseline for judgment. Such a baseline is never ready to hand and may be impossible to determine due to rival claims of historical injustice. Determining what is a historical injustice—who was illegitimately deprived of a state—is a problem because there is no beginning point, no originally just state of affairs, with which to compare present injustices.<sup>49</sup> Seizures can more fairly be judged as to results in the present, rather than to disputable historical accounts of past injustices.

Discriminatory redistribution is a condition that alone provides a meritorious ground for minority self-determination rights, up to and including independence. Following Buchanan, discriminatory redistribution can be defined as the forcible reallocation of resources and productive capacities from one group to another within a state, or the forcible imposition of an inappropriate mode of development upon a group by a central government.<sup>50</sup> The goal of eliminating discriminatory redistribution is justified as a means of sustaining regional ecosystems and lifeways. The dominance of substate regions by other regions or by central governments committed to regionally unsustainable conceptions of economic development defines a problem that only self-determination understood in this sense can solve.

There are two types of cases in which significant discriminatory redistribution has taken place. First, there are regions within states that have been systematically disadvantaged, often to support the development of other, more politically powerful regions within the state. Examples of this tend to be found in the large imperial states, such as the United States, Soviet Union, China, or Brazil. The second type are cases where peoples' pursuit of traditional or semitraditional lifeways are threatened by unsustainable development schemes that would destroy the material bases of such lifeways. Such cases are the basis for "indigenous rights" claims, as distinct from the claims of ethnic groups or nations.

A major problem with this view is the apparent lack of conceptual baseline for determining an unjust distribution of resources. However, historians have had little problem identifying imperial and colonial relations of oppression and exploitation, however much they may vary across historical cases. The basic criteria include legal systems mandating discrimination; land tenure systems not recognizing or expropriating traditional landholdings; taxation schemes that discriminate against indigenous producers; and trade relations mandating unfavorable terms of exchange. The more overt forms of expropriation or discrimination involve the use of force by military conquest, destruction or theft of productive resources, and terrorization of indigenous populations. These historical conditions allow for a variety of interpretations based upon diverse philosophical conceptions of social justice, which converge upon a mid-range, substantive conception of colonialism or neocolonialism as unjust.

Buchanan has doubts about how feasible it will be to generate such a mid-range conception of unjust redistribution in the postcolonial world.<sup>51</sup> But a reformulation of discriminatory redistribution in ecological terms—that is, in terms of a conception of sustainability—can suggest such a mid-range conception of distributive justice that can serve as a baseline for normative judgment. In discussions of the environmental impact of economic development policies over the past 20 years, a new international consensus has emerged that rejects the concepts of growth and modernization as measures of development. A conception of sustainability has come into play as a means of gauging when development policies are appropriate for meeting local needs in various regions and ecosystems. If development policies are unsustainable in terms of a region's natural resources and social structures, they are increasingly condemned as unjust. Discriminatory redistribution thus can be understood to apply when unsustainable development policies, including schemes of land tenure and resource allocation, are imposed on regions that cannot sustain them.

In his more recent work, Buchanan expresses doubts about the possibility of operationalizing *any* concept of discriminatory redistribution.<sup>52</sup> He has two reasons for this. First, any but the most minimal standard of distributive justice will not command assent, and such a minimal standard would be subsumable under a conception of human rights. Second, advocating the elimination of discriminatory redistribution could encourage wealthier regions or groups to assert self-determination to avoid redistribution in service to a more egalitarian allocation of resources in a given state. These are serious problems, but not disabling ones. Buchanan admits that his recent work is in legal philosophy, which involves the formulation of institutionally feasible and juridically acceptable norms, rather than the development of a conception of social justice as such. But trying to

reduce a notion of social justice to a norm of human rights is questionable in any case, because it depends on normatively controversial assertions about the justification and content of human rights. In terms of abuses of claims about discriminatory redistribution, it is not clear that, in the case of ecologically distinct regions, it is unjust for regions with greater natural resources to object to redistribution that supports more resource-poor regions. If the difference, by contrast, is between ecologically similar areas, marked by historically divergent patterns of development, it is unclear that they can be distinguished as separate regions.

In any case, this discussion about self-determination has moved quite some way from a notion concerned with the purported cultural rights of ethnonational groups in order to hypothesize a different notion of self-determination. For the present, one final question must be: Is there any reason to believe, as Kymlicka and others have maintained, that according to national minority groups self-determination rights would go some way to solving conflicts between such groups? Examining two seminal historical cases of ethnonational conflict can serve us well toward attempting a provisional answer to this question.

### Minority Rights and Ethnic Cleansing: Yugoslavia to Israel

Does self-determination, understood as a right of minority groups, reduce or exacerbate ethnonational conflict? Much depends on what is understood by minority rights: whether they are general or special rights, and whether such rights entail claims to territorial sovereignty, not just self-government short of statehood. Kymlicka claims that "recent surveys of ethnonationalist conflict around the world show clearly that self-government *arrangements* diminish the likelihood of violent conflict, while refusing or rescinding self-government rights is likely to escalate the level of conflict."<sup>53</sup> But at least one of his sources, Donald Horowitz, has maintained that "[p]referential policies, if pursued vigorously, tend to generate dangerous reactions [and] to increase ethnic conflict."<sup>54</sup>

Such generalizations can only go so far, however. The argument about self-determination as minority rights needs more historical specificity in order to understand the real costs of legitimizing national minority claims to self-determination.

There is a geographical zone within which this issue has been continually fought over from the late nineteenth century up to the present. This is the broad area previously occupied by the three multinational empires destroyed during World War I—the realms of the Hapsburgs, Romanovs, and Ottomans. Stretching from the borders of Germany on the North



Central European Plain, across Poland and the Baltic Countries to Russia, then south through the Balkan and Anatolian Peninsulas to the borderlands of the Syrian Desert, lie a myriad of ethnonational groups, formerly—and, in at least two crucial areas, still—intertwined by the historical patterns of agricultural cultivation, urban settlement, and long-distance trade. Much of the twentieth century was occupied with the “sorting out” of these groups by means ranging from voluntary migration to forced “ethnic cleansing” to extermination.<sup>55</sup>

Today, there are two areas in which this history is still very much alive—the statelets that succeeded the former Yugoslavia and the states and quasi-states that occupy the former French and British colonial territories of Syria and Palestine. Is the fact that conflict is ongoing in these areas—but not in adjacent parts of this broad geographical domain—a result of the failure of minority rights policies or of the failure to employ them? Are these the last areas awaiting “successful” ethnic cleansing, or are they opportunities to try a yet untested approach to minority rights? Before going further into the history of these areas, one provisional distinction can be made. Whatever else may be said about the short and troubled history of Yugoslavia, it was an area in which an attempt was made to construct a federated state comprised of ethnonational groups, each possessing a degree of self-government. Conversely, this was not the case in Palestine, where instead a rapid transition to the endgame of minority rights—national independence and partition—was attempted, though with similarly dire results. If in no other way, these cases provide an instructive contrast.

The origin of the Yugoslav state is little known. Yet, it was this early history that in crucial respects prefigured the eventual breakup of the state in the late 1980s.<sup>56</sup> The “first Yugoslavia” was created partly out of the initiatives of the ideologists of pan-Slavism, partly out of the exigencies of the end of World War I. The crucial moment was the forging of a material alliance of Croat and Serb nationalists. While earlier efforts to create a South Slav state—which included the second largest South Slav nationality, the Bulgarians—had produced no result, it was the results of the war that created an alliance that would serve as the basis for the Yugoslav state.

In 1918, with the collapse of the Austrian army, the “borderlands” of Austria-Hungary—Croatia and Bosnia, in particular—saw the breakdown of civil order. However poorly it had acquitted itself in the war, the Serb army was still intact at the end. Croat nationalist politicians called on the Serb army to restore order within their territories, preventing peasant uprisings that were sacking the holdings and housing of the Croat nobility among other things. A *de facto* South Slav alliance was born.<sup>57</sup> The other element was the improbable political initiatives of the Slovene nationalists

to unite the three nationalities in an independent state. The Slovenes had never—unlike both Croats and Serbs—had a national state; they inhabited an area, Carniola, integral to German Austria for centuries, and at the time comprised a total population of barely a million. Yet, their success at forging a national identity in the nineteenth century and maintaining it effectively to create the Yugoslav state in the twentieth “appears as an achievement of seemingly supernatural scale.”<sup>58</sup>

The result was the Kingdom of the Serbs, Croats, and Slovenes, governed by a Serb prince, now king, Aleksandar, in conjunction with a parliament filled with ethnonationalist parties. In fact, the only party not organized along national lines was the Social Democrats.<sup>59</sup> Already by 1928, cooperation between the nationalities had broken down sufficiently for the Croat and Slovene parties to petition the king to allow the dissolution of the union, with an independent Croat-Slovene state or states alongside Serbia. The response of the king was to dissolve the parliament itself the following year and to rule thereafter by decree.

The state was dissolved in fact during the Italian-German occupation of World War II. When it was reassembled in 1946, it took the form of a federation, which was really a façade for the highly centralized communist regime that actually governed.<sup>60</sup> The debate about how centralized the Yugoslav state should be—a debate that had also taken place before the war under a monarchical regime—now continued within the one-party state.<sup>61</sup> The result was a compromise in which sovereignty was shared legally by the federal state and the six constituent republics.<sup>62</sup> The government effectively acquiesced to the same ethnonational divisions that had marked Yugoslav society before the war.<sup>63</sup>

There were two fundamental problems that would destroy this arrangement when economic exigencies took command in the 1980s. First, there had never been any real coalescence of a Yugoslav identity—national, patriotic, or otherwise. This was as abundantly clear after the 1940s as it had been before. By the 1960s, efforts to create an ideology of “Yugoslavism” had largely been abandoned.<sup>64</sup> Thereafter, any accommodation was largely the result of bargaining between the various nationalities, though taking place within the ruling communist party.<sup>65</sup>

Second, dissatisfaction with the federation varied between national groups. Prior to the economic collapse of the 1980s, it was largely Serbs and Albanians who viewed the federation with disgruntlement: Serbs because they saw themselves divided between several republics and unable to mobilize politically to remedy their economic disadvantage within the federation; Albanians because they did not feel themselves adequately represented or protected either in Kosovo or Macedonia (the first was not a federal republic, the second was a “Macedonian” one).<sup>66</sup> From the 1970s

onward (as in the 1920s), it was the Croats and Slovenes who agitated against the federal state, viewing it as exploiting them to redress the self-imposed poverty and underdevelopment of Serbia and other republics. When confronted with this history of ethnonational antagonism, along with an economic crisis of catastrophic proportions, the federal arrangement collapsed. In some ways, it was remarkable that it had held for as long as it did. But what is less commented upon is that there was no necessity for the creation of *this* federation in the first place. The history of Yugoslavia is colored by a high degree of arbitrariness, given the strange emergence of the Slovenes, the shifting loyalties of the Croats, the remarkable recovery of the Serbs from defeat in World War I, and the haphazard invention of further nationalities—"Bosnians," "Macedonians"—as it suited the objectives of the post-World War II Yugoslav regime.

What is remarkable about the political situation in Syria-Palestine is that, for all the attempts, no compromise short of war ever came close to being acted upon. This was not for lack of proposals. In this respect, the long continual war of the postindependence period between Israel and the Arabs is not particularly surprising. The interesting question was whether the colonial occupation by the British (and to a secondary degree, that of the French in Syria) could have ended any other way. Of course, it is World War II that effectively interrupted what might have been a few more years in which to work out a solution. As Roger Louis and Robert Stookey write in their study of the end of colonialism in Palestine, "It is arguable that neither partition nor a binational state would have provided a workable solution before World War II. Certainly the events of the European war itself virtually guaranteed that there could be no resolution of the Palestine struggle without armed conflict."<sup>67</sup>

There were however some possibilities other than these prior to the attempted imposition of the United Nations partition plan outlined in 1947. While it might seem that there was a straight road from the 1917 Balfour Declaration, mandating a "national homeland" for the Jews in British-occupied Palestine, to the eventual creation of a Jewish state, the latter option actually seemed improbable for much of the intervening period. In particular, two proposals considered by the British occupation government and put forward in negotiations with Jewish and Arab parties in Palestine suggested a very different resolution might have been possible.

After two decades of subsidized immigration and land acquisition by Zionist agencies, the Jewish population in Palestine still constituted a distinct minority of the total inhabitants, with landholdings also a relatively small percentage of total area. To some extent, this was the result of Arab resistance to the British toleration of, or active assistance in, this colonization process. The Arab revolt of 1936 in particular seemed to have

convinced the British administration that the Jews could not easily continue to colonize Palestine without producing massive upheavals. The result was the appointment of the Peel Commission to draft a plan for resolving the Arab-Jewish struggles over land. The Commission Report anticipated in some particulars the later U.N. plan, especially in arguing for a partition into Jewish and Arab sectors, with a permanently occupied British sector overlapping with both. While Zionist leaders looked cautiously but usually with favor on the plan, Arab Palestinian leaders rejected it out of hand.<sup>68</sup>

The clear opposition of a large majority of the population convinced the British to try again. At the same time, the immanent arrival of war in Europe suggested to the British that they must try to mollify the Arab inhabitants or face a militantly pro-German population within their Mediterranean colonies. Given this political necessity a very different proposal, the 1939 White Paper, was offered.<sup>69</sup> The White Paper included neither the idea of partition nor of a binational state (if such a thing was even considered). Palestine was to be granted eventual independence in accordance with majority (inevitably, Arab) rule, along with some provisions for British control—and limitation—of Jewish immigration up until that point. Jewish leaders inevitably rejected the White Paper, as it did not include any provision for a Jewish state. But Arab leaders, including Amin al-Husayni, the Mufti of Jerusalem and most prominent political leader, also rejected it, largely because the plan allowed continued Jewish immigration for some time yet and included reference to a "Jewish National Home" in Palestine.<sup>70</sup> Nevertheless, from an ethical, if not a diplomatic, perspective, the White Paper seems a prospect that could have had some legitimacy, if enacted. It embodied the prospect of majority rule in Palestine, while through the rhetoric of the Jewish National Home leaving open the possibility of Jewish minority rights, should the Jewish community be at a disadvantage in the Arab majority state.

But, of course, the eruption of war changed this—not least as a result of a much more large-scale and precipitous Jewish emigration from Europe than had been anticipated. When the British (and the United States) sought a location for the millions of Jewish refugees—other than the U.K. or United States, of course—the existence of a Jewish state in Palestine seemed a much more urgent prospect. The subsequent unfolding of the conflict appears, from the late 1940s, all too inevitable.

What lessons can be learned from the histories of Yugoslavia and Palestine? It is important to recall the proposals that philosophers have offered for dealing with such conflicts. The nationalist approach involves two options: (1) general rights for ethnonational groups and/or minorities, and (2) secession rights for these same groups. In the first case, such general rights would entail a federal state comprised of ethnonational

units, which themselves would have rights of secession, or a state in which these same rights apply to minorities. In the second case, federation would not be attempted, but ethnonational groups would opt for secession (with the attendant partition of territory) directly, and by right. The first case was applied to Yugoslavia, the second to Palestine.

It is clear that, if the goal is to defuse, minimize, and/or end ethnonational conflict, neither the federation of nationalities nor the partition into nation-states has succeeded. Why not? In the case of Yugoslavia, a distinction between the "first" and "second" Yugoslavias is important. In the first, interwar state, there was no formal federal arrangement; rather, the Yugoslav nationalities were represented by ethnonational parties in the Yugoslav parliament (up to 1929). The country's unity was supposed to result from the greater affinity of these three South Slavic nationalities. (The Bulgarians, the second largest South Slavic people, were excluded; while substantial minorities of "Macedonians" and Albanians remained.) But the Croats and Slovenes were not in a qualitatively different position as minorities in a Slavic state than they had been as minorities in an Austro-Hungarian state before World War I, as the attempted secession of 1928 reflects. Unity with the Serbs had been opportunistic—a ploy to separate from the dissolving Hapsburg monarchy and to save the Croat landed estates from peasant revolts.

In the second Yugoslavia, when a formal federal system was instituted, ethnonational rivalries and competition over resources had clearly emerged by the late 1950s and provided the explicit political agenda for most elements in the state from the 1960s onward.<sup>71</sup> In what way were the Croats and Slovenes benefited by union with the Serbs, rather than continued existence in an Austrian state (in the Slovene case) or a Hungarian state (in the Croat case), ones in which they shared religious identity (Catholicism) and geographical commonality (on the Central European plain) with the majority inhabitants?

We may further consider the socioeconomic status of these minority populations. There is no meaningful sense in which the Croats and Slovenes could be said to have been disadvantaged, either by their residence in Austria-Hungary or later in Yugoslavia. In the latter case, it was in fact the opposite: their participation in the industrialization of late-nineteenth-century Austria-Hungary set them apart from the underdevelopment of Serbia (and other Balkan countries). The devastation of Serbia in defeat by, first, Austria in World War I, and, second, Germany in World War II, just exacerbated this difference. The only advantage the Serbs had was a relatively intact army and bureaucracy. In the view of some historians, the postwar federal system in Yugoslavia at least initially advantaged the Croats and other non-Serb minorities—until efforts by Serb politicians in the

1980s began (too late) to redress this imbalance.<sup>72</sup> Given this history, what rationale could have been given for group or minority rights to autonomy within a federal Yugoslavia?

Two other things must be noted. No nationality was immune from blame for their participation in ethnic conflict or, more egregiously, ethnic cleansing. All groups, even the Armenians and Jews who are the best-known victims of widespread exterminatory attacks in the 1910s and 1940s, were in those periods themselves the perpetrators of ethnic cleansing and massacres (in the Jewish case, in a different geographical venue—Palestine).<sup>73</sup> The bitter conflicts between Croats and Serbs in World War II—the former allied with the Axis, the latter with the Allies—were a dire antecedent to the meltdown of Yugoslavia in the 1990s. The general point is that minorities are not always victims, majorities not always perpetrators.

Second, while it might be thought that a federated state of related nationalities (Yugoslavia) or a sovereign nation-state (e.g., Croatia) might provide fewer opportunities for ethnic strife, the historical record has not borne this out. The breakup of Yugoslavia did not end ethnic conflict—quite the contrary.<sup>74</sup> To turn to the present for a moment, even agreements to end conflicts in Bosnia and Kosovo have not put a stop to the process of ethnic cleansing in these areas.<sup>75</sup> In fact, after a survey of the devolution of the prewar multinational empires into the quasi-nation-states of Poland, Czechoslovakia, and Yugoslavia in the 1920s, Benjamin Lieberman concludes that "[e]thnic and religious tensions that had previously caused disputes in large empires proved even more explosive within the much smaller confines of Europe's new states."<sup>76</sup> Finally, it was also the case that those larger nationalities who attempted with some temporary success to establish greatly expanded nation-states—i.e., the Greeks, the Czechs, the Poles, and the Serbs—were often to suffer diminishment, impoverishment, and defeat as a result. As Lieberman puts it, "Building a nationalist empire in the age of nationalism ultimately endangered the very nation whose interests generals and political leaders claimed to represent."<sup>77</sup>

What then of partition? Here the Palestinian example is crucial: federation between Arab and Jewish inhabitants was never attempted, despite the commitment of the British administrators to enact such a federation prior to World War II. There was, in this case, little interest on the part of any party in such a solution. From the Peel Commission in the mid-1930s, the options were either unity or partition. Again, the idea of group or minority rights for the Jewish minority within a united, independent Palestine made little sense when it was the Arab majority that was impoverished and most unrepresented. The British, to the extent that they dealt with Arab politicians at all, did so largely with those outside Palestine—especially, King Abdullah of Transjordan—as the leadership of the Palestinian

Arabs, having seen the possibility of earlier independence in alliance with Germany in the 1940s, was now largely excluded from negotiations.

In any event, by 1947 partition had become the only solution the British administration was considering. Is it hard to see why the subsequent 50-year plus history of great and small power involvement in the continuing conflict between Jews and Arabs was not an optimal outcome? But it is largely the scale of the disaster of partition, rather than the event of it, that is notable here. While there are occasional examples of peaceful and mutually agreed upon dissolution (Sweden/Norway in 1905 and Czechia/Slovakia in 1992 are most often cited), these are exceptional compared to the amount of violence, dispossession, and migration resulting from most secessions and/or partitions.<sup>78</sup>

### What Is to Be Done?

Is a special minority rights approach that makes rights claims contingent on the existence of discriminatory redistribution more promising than the general-nationality and general-minority approaches? If the Croats remained within an independent Hungary, or joined a nonfederal state of "Serbocroatia" (organized comparably to the new state of Czechoslovakia), they might legitimately have claimed special minority rights there. Similarly, if a Jewish minority had accepted an independent Palestine with an Arab majority (as recommended by the 1939 White Paper), they might legitimately have made a similar claim. But absent these circumstances—and these two cases themselves *might* have been examples of states containing privileged minorities—there is no good argument for minority rights.

As for secession, it is the absence—and only the absence—of such special minority rights to redress discriminatory policies that would justify a (unilateral) claim to secession. Without the existence of injustice, there is no compelling rationale, on a group or minority rights basis, to break apart a country. Clearly, the Jews in Palestine had no such case in the 1930s. Of the various proposed plans, it was only the 1939 White Paper that recognized this and laid plans for Palestinian independence as a unified state. The balance between Arab population and landholdings and Jewish wealth and political power suggested the possibility of an admittedly fragile, yet workable, balance of power in an independent Palestine.

### Conclusion

The general conclusions about group and minority claims by nationalities that can be drawn from this examination of theories and cases are the

following: The rights under discussion are divided into (a) general and special rights, and (b) those pertaining to ethnonational groups or minorities. The category of special rights is applicable to any nation or minority that qualifies in terms of the criteria for invoking such a right—so there is no important difference between groups and minorities in this respect.

General group rights imply two different policies. One is a policy of self-government for the group within an existing state, which amounts to both a set of self-government institutions—including, most importantly, regional autonomy for the group in a defined territory (within the larger state)—and special representation rights within a representative body of the whole state. The other is the option of exit from the state—that is, secession, accompanied by partition of territories.

It has been my contention that such a right is unjustified. Claims of (self-defined) national groups to self-government "as of right" are unwarranted given that historical cases show that the costs of such rights claims outweigh the purported benefits of invoking the right. Even when such rights claims are restricted to minorities—historically, it has almost always been minorities that have been the groups to invoke such rights in any case—such costs are not avoided.

This is not to say that there may not be special cases in which the right to self-government or self-determination is justified. But this makes such rights legitimate on the basis of the particular circumstances or conditions that may apply, not on the identity-based claims of groups *per se*. The best category for defining such conditions is that of discriminatory redistribution. Such a right entails the establishment of the two types of self-government institutions mentioned above: regional autonomy for disadvantaged minority groups in regard to certain matters of governance and special representation rights for such groups within the representative bodies of existing states. While the details of implementation are more a matter for a robust theory of democratic governance,<sup>79</sup> the interest here has been whether claims for group or minority rights can yield legitimate challenges to existing sovereignty rights.

When the legitimacy of special rather than general rights is recognized, the additional consideration is precisely the *absence* of such special rights. In other words, sovereignty claims can only be justified if special rights for (disadvantaged) minorities are *not* instituted. Acceptance of existing sovereignties is contingent upon such institutionalization in situations where there are injustices to be addressed. The establishment of such institutions of minority autonomy—institutions of a temporary nature, it should be noted—would render *illegitimate* any additional claims to self-determination, sovereignty, or statehood on the part of that minority group.

One way in which the nationalist claim to the right to self-determination differs from the view defended here is that, for the nationalist, secession claims are derived from the *same* principle of self-determination that yields special representation or autonomy provisions. Such a view assumes that no additional considerations are necessary in order for national groups to make a claim to sovereignty. This neglects what seems clear from what historians of ethnic cleansing have pointed out, that the fragmentation of power not only does not end conflict, but rather may exacerbate it. What might be added is that neocolonial solutions imposed by imperial powers (the United States), putative powers (the E.U.), alliances (N.A.T.O.), or international agencies (the U.N.) only postpone an accounting until the intervening parties tire of their involvement or are forcibly expelled.

In any case, peace is often, especially in the face of great-power rivalries, a fragile entity. Best not to add incentives to conflict derived from philosophically dubious notion of national rights.

### Notes

1. See Elie Kedourie, *Nationalism*, 4th ed. (Oxford: Blackwell, 1993 [1960]), esp. Ch. 2.
2. See Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca, NY: Cornell University Press, 1989), Ch. 5.
3. See Lewis Hinchman, "Autonomy, Individuality, and Self-Determination," in *What Is Enlightenment? Eighteenth-Century Answers and Twentieth-Century Questions*, ed. James Schmidt (Berkeley: University of California Press, 1996). See also the brief discussion of this point in Omar Dahbour, "The Ethics of Self-Determination: Democratic, National, and Regional," in *Human Rights in Philosophy and Practice*, ed. Burton M. Leiser and Tom D. Campbell (Aldershot, UK: Ashgate, 2001), pp. 508–509.
4. David Copp, "Do Nations Have the Right of Self-Determination?," in *Philosophers Look at Canadian Confederation*, ed. Stanley G. French (Montreal: Canadian Philosophical Association, 1979), 79.
5. Rita Hauser, "International Protection of Minorities and the Right of Self-Determination," *Israel Yearbook of Human Rights* 1 (1971), 93.
6. Here, as at a number of other points, the parallels between a right of national self-determination and a right to private property become apparent: just as in the "noninterference" version of the former, so the "original acquisition" (Lockean) version of the latter presupposes a "free" or empty space that can be occupied, acquired, and worked on. This idea is dependent on underlying assumptions of a "state of nature" and of an original "grant" of untrammelled nature from God to humanity. Objections to the "original acquisition" theory of private property often begin by rightly questioning the speciousness of these assumptions; see, e.g., Alan Ryan, *Property and Political Theory* (Oxford: Basil Blackwell, 1984), 18ff.
7. For instance, the recent German recognition of Croatia and Slovenia (followed by recognition by the European Community and the United States) has been seen to be crucial to the success of their secession from Yugoslavia (as well as to the eruption of civil war in Bosnia); see Misha Glenny, "Yugoslavia: The Revenger's Tragedy," *New York Review of Books*, Aug. 13, 1992. Biafra is frequently cited as a case of national self-determination that failed due to the lack of international recognition; see Heather Wilson, *International Law and the Use of Force by National Liberation Movements* (Oxford: Clarendon Press, 1988), 84–85, and W. Wentworth Ofuatey-Kodjoe, *The Principle of Self-Determination in International Law* (New York: Nellen Publishing Co., 1977), 162.
8. Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), 216.
9. *Ibid.*, 209.
10. Margalit and Raz, "National Self-Determination," *Journal of Philosophy* (1990) 87 (9), 456–57.
11. *Ibid.*, 444.
12. *Ibid.*, 446.
13. *Ibid.*, 446–48.
14. *Ibid.*, 447.
15. Yael Tamir, "Right to National Self-Determination," in *Philosophical Perspectives on the Israeli-Palestinian Conflict*, ed. Tomis Kapitan (Armonk, NY: M. E. Sharpe, 1997), 565–566.
16. Donnelly, *Universal Human Rights* (1989), 156.
17. Tamir, "Right to National Self-Determination" (1997), 582.
18. See Margalit and Raz, "National Self-Determination," (1990), 457, 450–451.
19. *Ibid.*, 454.
20. *Ibid.*, 452.
21. *Ibid.*, 457.
22. *Ibid.*, 454.
23. It should be emphasized that Margalit and Raz do not use the term "self-government" to mean a democratic form of rule for all the inhabitants of a given territory, but rather as a condition under which a "self" (an encompassing group—that is, a nation) has its own government.
24. Margalit and Raz, "National Self-Determination," (1990), 442.
25. One inference from this theory of title is that residency is not a necessary condition for claiming a title to territory. Since a group requires a particular territory not for its livelihood but for its self-respect, it is conceivable that the territory could presently be occupied by someone else. Yet, the group still may have title to that territory, should it so assert it. One example that comes to mind is the claim of Jewish title to Palestine. Of course, such a claim will inevitably clash with those groups that currently have possession and may also be expected to assert a claim to the area.
26. Allen Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder, CO: Westview Press, 1991), 42.
27. Raz, *Morality of Freedom* (1986), 255.

28. An exception is the libertarian theory of property advocated by philosophers such as Robert Nozick, who see any form of redistribution as illegitimate; see, for example, Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), esp. 150–182. While Nozick does not differentiate terminologically between title and possession, he does argue, following Locke, for a right of ownership based on the “original acquisition” of property. This original acquisition is the basis of a right to ownership that cannot be abrogated by other considerations. Criticisms of Nozick’s view may be found in Anthony Kronman, “Contract Law and Distributive Justice,” *Yale Law Journal* 89 (1980); in various articles in *Reading Nozick: Essays on “Anarchy, State, and Utopia,”* ed. Jeffrey Paul (Totowa, NJ: Rowman & Littlefield, 1981), particularly Onora O’Neill, “Nozick’s Entitlements”; and Richard Norman, *Free and Equal: A Philosophical Examination of Political Values* (Oxford: Oxford University Press, 1987), esp. 144–153.

29. C. B. MacPherson has most emphatically asserted the political character of property relations and their consequent need for justification in political terms. For instance, in his essay “The Meaning of Property,” MacPherson defines property as a “political relation between persons,” and writes that

[p]roperty is not thought to be a right because it is an enforceable claim: it is an enforceable claim because it is thought to be a human right. This is simply another way of saying that any institution of property requires a justifying theory. . . . Property has always to be justified by something more basic; if it is not so justified, it does not for long remain an enforceable claim. (In *Property: Mainstream and Critical Positions*, ed. MacPherson [Toronto: University of Toronto Press, 1978], 4, 11–12.)

Also, cf. MacPherson, “A Political Theory of Property,” *Democratic Theory: Essays in Retrieval* (Oxford: Oxford University Press, 1973), 120–140.

30. Tamir, “Right to National Self-Determination” (1997), 586.
31. *Ibid.*, 585.
32. This point is made very tellingly in William McNeill, *Polyethnicity and National Unity in World History* (Toronto: University of Toronto Press, 1986), *passim*.
33. Iris Marion Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, 1990), 157.
34. And as Ross Poole points out, it is only one form that cultures have taken, often by obliterating other local or transnational forms; see his book, *Morality and Modernity* (London: Routledge, 1991), 98–99.
35. Dov Ronen, *The Quest for Self-Determination* (New Haven, CT: Yale University Press, 1979), 53.
36. *Ibid.*, 61 (italics added).
37. Margalit and Raz, “National Self-Determination,” (1990), 457.
38. *Ibid.*, 450–451.
39. Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995), 80.
40. *Ibid.*, 111.
41. *Ibid.*, 32.

42. *Ibid.*, 19.
43. *Ibid.*, 30–31.
44. *Ibid.*, 113.
45. Jorge M. Valadez, *Deliberative Democracy, Political Legitimacy, and Self-Determination in Multicultural Societies* (Boulder, CO: Westview Press, 2001), p. 172.
46. Kymlicka, *Multicultural Citizenship* (1995), 106.
47. *Ibid.*, 185–186.
48. Buchanan, of course, disagrees. See his book, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004), esp. Chs. 3 and 8. For a different view, see Omar Dahbour, “Hegemony and Rights: On the Liberal Justification for Empire,” in *Exceptional State: Contemporary U.S. Culture and the New Imperialism*, ed. Ashley Dawson and Malini Johar Schueller (Durham, NC: Duke University Press, 2007), pp. 105–130.
49. Lea Brilmayer, “Groups, Histories, and International Law,” *Cornell International Law Review*, Vol. 25, No. 3 (1992): 559.
50. See Buchanan (1991), pp. 38–45. Here is how Buchanan defines it: “implementing taxation schemes or regulatory policies or economic programs that systematically work to the disadvantage of some groups, while benefiting others, in morally arbitrary ways” (p. 40).
51. Allen Buchanan, “Self-Determination, Secession, and the Rule of Law,” in *The Morality of Nationalism*, ed. Robert McKim and Jeff McMahan (Oxford: Oxford University Press, 1997), pp. 312–313 and 318–320.
52. Buchanan, *Justice, Legitimacy, and Self-Determination* (2004), 397–398.
53. Kymlicka, *Multicultural Citizenship* (1995), 185 (italics added).
54. Donald L. Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985), 676.
55. Norman M. Naimark, *Fires of Hatred: Ethnic Cleansing in Twentieth-Century Europe* (Cambridge, MA: Harvard University Press, 2001), 6–8; Benjamin Lieberman, *Terrible Fate: Ethnic Cleansing in the Making of Modern Europe* (Chicago: Ivan R. Dee, 2006), ix–xii.
56. On this context to the Yugoslav wars of the 1990s, see Susan L. Woodward, *Balkan Tragedy: Chaos and Dissolution after the Cold War* (Washington, D.C.: Brookings Institution, 1995).
57. Arnold Suppan, “Yugoslavism versus Serbian, Croatian, and Slovene Nationalism: Political, Ideological, and Cultural Causes of the Rise and Fall of Yugoslavia,” in *Yugoslavia and Its Historians: Understanding the Balkan Wars of the 1990s*, ed. Norman M. Naimark and Holly Case (Stanford, CA: Stanford University Press, 2003), p. 117.
58. Ivo Banac, *The National Question in Yugoslavia: Origins, History, Politics* (Ithaca, NY: Cornell University Press, 1984), p. 45.
59. Aleksandar Pavkovic, *The Fragmentation of Yugoslavia: Nationalism in an Multinational State* (New York: Saint Martin’s Press, 1997), p. 27.
60. *Ibid.*, 47.
61. *Ibid.*, 61.

62. Ibid., 73.
63. Ibid., 64.
64. Ibid., 23–24, 63, 189.
65. Naimark, *Fires of Hatred* (2001), 147.
66. Pavkovic, *Fragmentation of Yugoslavia* (1997), 50–51.
67. W. Roger Louis and Robert W. Stookey (eds.), *The End of the Palestine Mandate* (Austin: University of Texas Press, 1986), p. ix.
68. Avi Shlaim, *The Politics of Partition: King Abdullah, the Zionists, and Palestine, 1921–1951* (New York: Columbia University Press, 1990), p. 57.
69. Michael J. Cohen, *Palestine—Retreat from the Mandate: The Making of British Policy, 1936–45* (New York: Holmes & Meier, 1978), Ch. 5.
70. Nevill Barbour, “The White Paper of 1939,” in *From Haven to Conquest: Readings in Zionism and the Palestine Problem until 1948*, ed. Walid Khalidi (Washington, D.C.: Institute for Palestine Studies, 1971), pp. 470–471.
71. Pavkovic, *Fragmentation of Yugoslavia* (1997), 61–63.
72. Woodward, *Balkan Tragedy* (1995), *passim*.
73. Lieberman, *Terrible Fate* (2006), 136–137.
74. Naimark, *Fires of Hatred* (2001), 154.
75. Ibid., 182.
76. Lieberman, *Terrible Fate* (2006), 152.
77. Ibid., 132.
78. See Robert K. Schaeffer, *Warpaths: The Politics of Partition* (New York: Hill & Wang, 1990), in addition to the books cited above.
79. There is a considerable literature on the nature of such special rights. In addition to the Kymlicka and Valadez books, especially their ideas about minority representation that do *not* challenge existing sovereignties, see the following sources, among others: Anne Phillips, *Democracy and Difference* (University Park: Pennsylvania State University Press, 1993), Lani Guinier, *The Tyranny of the Majority* (New York: Free Press, 1995), and Iris Marion Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000).

## 6

## Cosmopolitan Citizenship as a Thin Concept: Who Is Willing to Die for Humanity?

Filiz Kartal

The cosmopolitan ideal is based on the principle that ethical obligations and political loyalty should be directed to the community of all human beings. First propounded in the ancient world by the Greek and Roman Stoic philosophers and later adopted by the neo-Stoics of the Renaissance, cosmopolitanism rests on the idea of the oneness of humankind and the existence of a universal Natural Law, which is the means through which human beings establish ties. During the Enlightenment cosmopolitanism was revived by intellectuals the likes of Voltaire, Franklin, and Paine (Heater 1999, 135). The current revival of the cosmopolitan view is due to the increasing awareness that global problems, such as environmental degradation, extreme poverty, and the widespread violation of human rights, require greater unity among human beings regardless of their local attachments. Thus, cosmopolitanism may be understood as a response to present circumstances, including the extension of markets, emerging global media, the mobility of people, increasing worldwide economic inequalities, and threats posed by global warming.

The social changes that foster the cosmopolitan view are simultaneously bringing about the disintegration of the nation-state. First, national sovereignty has been eroded so that nation-states do not have absolute autonomy in the political, economic, and social issues that were once defined as national. Second, the growth of global labor market has meant an expansion of migrant labor seeking forms of quasi-citizenship and has given rise to diasporic cultures (Turner 2002, 58). Third, globalization