
Self-Determination and Cultural Diversity

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Tallyrand's dry rule-skepticism—"non-intervention is a word with the same meaning as intervention"¹—could have been directed with at least equal logic at the concept of self-determination. Barely a cause, claim, or faction in need of a call to arms during the last century did not, or could not have, averred support from the principle of self-determination. In independence movements, wars of liberation, rebellions, and insurgencies that raged from one corner of the globe to the next, nary a "freedom fighter" could be found who could not in some manner claim justification from this mystical concept. "Everybody pays lip-service to it as the constitutive principle of international order," Stanley Hoffmann has observed, "and yet it is fraught with so many uncertainties that it is a major source of strife and a major invitation to external intrusions."² By the end of the twentieth century, self-determination had become international law's answer to the Greek god Proteus, who could assume any shape that he pleased so as to avoid capture.

One reason for the concept's incoherence derives from the fact that, at the time of its juridical incarnation, it was joined at the hip with the notion of personal autonomy. While the political idea had been around for some time, I date its birth, as a principle of modern international law, with the publication of John Stuart Mill's 1859 essay, "A Few Words on Non-Intervention."³ That year is significant: 1859 is, of course, the same year in which Mill published his more famous essay, "On Liberty," perhaps the most forceful and eloquent defense of the notion of personal autonomy in all of philosophy. It was no accident that Mill should have written, virtually simultaneously, a defense of *community* autonomy. In his mind, personal and community autonomy were not simply linked; the two concepts flowed from the same initial premises concerning the right to seek freedom, to cultivate virtue, and to make non-harmful choices free from external interference. Thus Mill rejected "going to war for an idea." To go to war for an idea, he wrote, "is as criminal as to go to war for territory or revenue; for it is as

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little justifiable to force our ideas on other people, as to compel them to submit to our will in any other respect.”⁴ Moral principles that govern individuals also govern states, he believed. “The only moral laws for the relation between a civilized and a barbarous government, are the universal rules of morality between man and man.”⁵ Over himself, Mill famously wrote, the individual is sovereign—and, he believed, the same applies to at least some communities, those that had achieved the status of sovereign statehood.

Two difficulties attend Mill’s theory. The first is that it conflates group autonomy and individual autonomy, though the rationale for each is different. Self-determination accorded a community can actually serve to undermine the very values that the concept is thought to protect, since non-harmful individual choice is constricted rather than maximized when an oppressive community is protected against outside interference that might be undertaken on behalf of aggrieved individuals

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within it. Autonomy, in other words, can militate *against* respect for group rights and in favor of respect for individual rights. The reason is that, in key respects, corporate entities are not like individuals. They do not experience joy, sorrow, pain, or pleasure. Self-fulfillment and self-actualization have no meaning for communities. What is protected by notions of autonomy is thus very different for communities than for individuals. That people within a state *do* experience joy,

sorrow, pain, or pleasure is reason to think that states should calculate the consequences of their acts for individuals, not groups. For this reason Grotius⁶ and Vattel⁷ both supported a state’s right to intervene on behalf of oppressed peoples. To disaggregate the community is to strengthen the case for interventionism. In this sense, the principle of autonomy does not reinforce the principle of self-determination, it weakens it. Insofar as self-determination implies autonomy for communities as well as individuals, the concept is internally contradictory.

The problem created by conflating individual autonomy with community autonomy is serious enough. But theoretical difficulties with self-determination do not stop there. Mill’s approach mistakenly proceeds from the assumption that the “self” in *community* self-determination is as easily and readily identified as the self at issue for purposes of *individual* autonomy. It is not. There can be no mistaking individual identity. Yet the group that constitutes the *community* in question often is anything but obvious. In the case of a secessionist movement or a movement of national liberation, the community benefiting from a right of self-determination depends upon an arbitrary, prior designation of a whole or a part of the community to be protected. The concept of autonomy cannot, by itself,

resolve this issue. On the one hand, the notion implies that the people of a state should be able to determine their own form of government free from outside interference. Some argue that a correlative prohibition against outside interference is implicit in self-determination.⁸ On the other hand, self-determination often can be achieved only *with* outside interference, as was most notably true when weak colonies fought stronger colonial powers for their independence. In a secessionist dispute, the concept lends support to one side or the other depending upon which group is the point of reference. If the province of Kosovo is the referent, for example, “self-determination” counsels the right of Kosovo to secede from Yugoslavia, whereas if Yugoslavia itself is the referent, and a majority of the people of Yugoslavia wish that state and government to remain intact,⁹ an opposite conclusion obtains. For these reasons, the legal framework of self-determination is, as Richard Falk puts it, “in disarray.”¹⁰

Nor is it possible to get a coherent picture of self-determination by looking at state practice.¹¹ I have elsewhere described the interventionist practices of states since the framing of the United Nations Charter after World War II.¹² I conclude from actual state practice that it is impossible to know, using the traditional tools of international law, whether armed intervention is unlawful. Intervention has occurred so often under the Charter’s use of force regime that, states’ words notwithstanding, their deeds create irresolvable doubts whether they in fact accept the prohibition against use of force set out in Article 2(4) of the United Nations Charter.

This same historical record of frequent and widespread intervention—culminating in the intervention by 19 Western democracies in Yugoslavia in 1999—defeats assertions that there exists an intelligible concept of self-determination. Every use of force violative of the Charter necessarily constitutes a breach of the supposed norm of self-determination, since force used or threatened against the territorial integrity or political independence of a state undermines the ability of a people to determine their own destiny. Similarly, even if unlawful intervention in a civil war is not seen as a violation of Article 2(4), such intervention undermines that same supposed right of a people to decide their own future, by ballot or bullet, free from external interference.

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States simply do not take seriously the idea that a “right” to self-determination poses limits on intervention, and they did not take it seriously for the better part of the twentieth century.¹³ Even though 40 percent of the territory of Colombia apparently is under the control of an insurgency, and even though that

insurgency involves a substantial number of people, the United States has just instituted a massive program of support for the besieged Colombian government with nary a voice raised, in Congress or in the executive branch or even in the scholastic international law academy, questioning whether such assistance is consistent with the principle of self-determination.

The reason that state practice fails to support this alleged principle, I suggest, is that two other values are seen by a substantial part of the international

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community as taking precedence over the principle of self-determination. One is the protection of international human rights. The other is the promotion of international peace. NATO's action in Kosovo illustrates at once the priority given these dual desiderata when weighed against the demands of self-determination. The 19 NATO democracies chose human rights over self-determination by flouting the long-recognized prerogative of a sovereign state to resolve its internal affairs free from external coercion, and at the same time choose international peace over self-determination by declining

the importuning of the Kosovo Liberation Army (KLA) to support its separatist aspirations with more robust military intervention.

NATO's action in Kosovo also illustrates *why* support for the principle of self-determination, at least in one of that principle's personae, can subvert the promotion of international human rights and international peace. Like most separatist movements, the KLA is culturally homogeneous. Its members speak the same language. They practice the same religion. They share the same ethnicity. They partake in a common history. To accede to the claims of a culturally homogeneous minority to its own state, it is argued, would undercut rather than advance both human rights and international peace.

Because of the centrality of this issue, close consideration of each of these claims is appropriate. Does cultural homogeneity—which normally is the upshot of successful secessionist movements—promote intrastate oppression? Does it promote interstate conflict?

Domestically, it is argued, cultural homogeneity produces tribalism. "Tribalism flourishes in places that have had too little contact with the outside world (Serbia and Rwanda)," a recent article in *Foreign Policy* argues. "The intermingling of peoples is the antithesis of tribalism, and it provides the best defense against social conflict. The more diverse a society, the safer it is. Increasingly, the best measure of a society is how it deals with difference."¹⁴ The same argument is made in more

extensive form in Thomas M. Franck's recent book, *The Empowered Self*. Democracy, Franck argues, "tends to flourish in diversity precisely because diversity requires mutual respect and accommodation among the variegated constituent interests inhabiting a common political space."¹⁵ The post-war repression of Kosovar Serbs by Kosovar Albanians—like the pre-war repression of the Albanians by the Serbs—provides a vivid illustration, it might be argued, of the fruits of the insular, unrestrained tribalism that can flow from extreme cultural homogeneity.

Internationally, it is further argued, cultural homogeneity fosters conflict. "The multi-ethnic democratic state is a preparatory school," Franck writes, "sensitizing and training those who would participate in the global system: burnishing their capacity for accommodation and skills in negotiating to consensus."¹⁶ The success of a secessionist movement encourages its leaders to believe that compromise and accommodation are unnecessary. "If the multi-nation states break up into their components, there would be less impetus for leaders and people to pursue the balancing of interests, or to cultivate habits of accommodation and constraint."¹⁷ The implications for international peace and stability are ominous. "[T]raining people to deal with all alien others by hating, fearing, and trying to destroy them...[is] not the best survival strategy for the states of a fragile global system."¹⁸ "In such a world one would expect to see the birth of new grudges and of myriad unsatisfied territorial claims, boundary disputes, and irredentist agitations."¹⁹ Disputes would proliferate. There is an additional reason, according to Franck, for concern about secessionism. A community consisting of 2,000 states could result in "an unmanageable world"²⁰ that is "less governable."²¹ "It is not fashionable," Michael Howard acknowledges, "to express sympathy with those imperial administrators who regarded the preservation of order as the ultimate criterion of justice....[B]ut the question must arise, at what point does this fissile process of self-determination stop?"²²

Each of these sets of concerns is answered with arguments marshalling the supposedly *salutary* effects of cultural homogeneity upon both human rights and international peace.

With respect to domestic human rights, Robert Dahl starts, as Franck does, with the premise that "under a peaceful democratic process, settling political conflicts generally requires negotiation, conciliation, compromise."²³ Yet he concludes that "[d]emocratic institutions are more likely to develop and endure in a country that is culturally fairly homogeneous and less likely in a country with sharply differentiated and conflicting subcultures."²⁴ Cultural conflicts over issues like religion, language, equality, and discrimination, Dahl points out, often find adherents on both sides of controversies who take positions with quasi-religious fervor, and, as a consequence, are less willing to compromise. Their demands are non-negotiable. What of culturally diverse states such as Switzerland, Canada, and the United States? These seem in most respects to be healthy democracies.

“Their experiences, though very different,” Dahl writes, “show that in a country *where all the other* conditions are favorable to democracy, the potentially adverse political consequences of cultural diversity can sometimes be made more manageable.”²⁵ Michael Lind makes much the same point. “Almost all stable democracies are nation-states,” he writes, “while multinational states tend to be dictatorships. The reason is simple. In a mono-ethnic society, ethnic power is not an issue; whichever party wins in Sweden will be made up of Swedes.”²⁶

It might be added that Dahl’s sanguine instinct concerning cultural homogeneity seems to be borne out by Alexis de Tocqueville’s observations about America’s fledgling democracy. Tocqueville believed that civility was fostered by sameness, not difference. “[T]he manners of society become more humane and gentle, in proportion as men become more equal and alike,”²⁷ he wrote. And Americans were indeed alike—“all belonging to one family, owing their origin to the same cause, and preserving the same civilization, the same language, the same religion, the same habits, the same manners, and imbued with the same opinions, propagated under the same forms.”²⁸ A common tongue was key to the success of American democracy. “The tie of language is, perhaps, the strongest and most durable that can unite mankind. All the emigrants spoke the same tongue; they were all offsets of the same people.”²⁹ In addition to language, this “same people” was united in its respect for the rule of law. “[A]ll parties had been obliged in their turn to place themselves under the protection of the laws, [and] their political education had been perfected in this rude school....”³⁰ Unlike most of their European contemporaries, “they were more conversant with the notions of right, and the principles of true freedom....”³¹ Democracy flourished on common cultural ties, and democracy meant freedom. “I think that democratic communities have a natural taste for freedom: left to themselves, they will seek it, cherish it, and view any privation of it with regret.”³² Mill, too, believed that democracy, freedom, and cultural homogeneity went hand-in-hand. “Free institutions are next to impossible in a country made up of different nationalities,” he wrote. “[U]nited public opinion” is “necessary to the working of representative government” and is impossible if people “read and speak different languages.” Thus Mill concluded that it is “in general a necessary condition of free institutions that the boundaries of government should coincide in the main with those of nationalities.”³³

As cultural homogeneity promotes democracy, it is further argued, democracy promotes peace. Not only do democracies generally respect human rights;³⁴ democracies do not go to war with one another.³⁵ (These tendencies have generated various calls for institutionalizing democratic global dominance).³⁶ Internationally, therefore, while the success of secessionist movements would cause an expansion of the community of nations, it is not true that a greater number of sovereign entities would necessarily mean more war. Moreover, it is

pointed out that the spread of democracy worldwide during the latter years of the twentieth century owed in no small part to American hegemony, with the likelihood that newer, smaller states with no firm political tradition chose to “fall into line” by adopting democratic institutions simply because accommodation made it easier to do business with the United States and its allies. President Woodrow Wilson’s famous enthusiasm for ethnically-based frontiers shaped the Versailles peace settlement (though he later appeared to have had second thoughts about the idea).³⁷ As Inis Claude pointed out, the philosophy of the League of Nations was grounded upon the belief that nationalist self-determination, democracy, and peace were integrally related. The League, he wrote, was premised upon “the proper division of the world into political units based upon considerations of nationality....” Such a division, it was thought, would result in both the “diffusion of democracy and the elimination of frustrations stemming from denial of legitimate aspirations for national self-determination....” These “would combine to make international relations reasonably harmonious.”³⁸

How are these competing claims concerning the implications of cultural homogeneity to be assessed? It is impossible to formulate a sound general rule on the effects of cultural homogeneity because, at bottom, the problem is empirical as well as definitional. The empirical problem is that the data simply are inadequate to permit a reliable judgment about whether cultural homogeneity advances or retards either intrastate oppression or interstate conflict. The variable of cultural homogeneity cannot be isolated. Other things are *never* equal; “all the other conditions” that Dahl recognizes as relevant are *never* the same. There is too much “background noise” in each of the historical antecedents—there is too much else going on in each case—to permit a reliable categorization of would-be precedents.³⁹

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The definitional problem is that cultural homogeneity and heterogeneity are not discrete categories. Rather, they are poles on a spectrum—as are, for that matter, democracy and non-democracy, and human rights observance and violation. There is no such thing as “true, pure” cultural homogeneity. Even the most rabid re-drawers of national boundaries invariably succeed only in reducing, rather than in eliminating altogether, the presence of cultural minorities, with the result that those minorities who remain press noisily for religious, linguistic or other “rights” at variance with the wishes of the zealous new majority, and those who are displaced foment irredentist pressures to recover lost homelands. Tensions inevitably continue.

The same category problem plagues the concept of “democracy.” During NATO’s Kosovo campaign, the Milosevic regime was widely denounced as a

dictatorship; even Boris Yeltsin believed that Milosevic had swept the field clean of all opponents.⁴⁰ Yet within the next year, the leader of a fairly lively opposition party won a hotly contested election and took office upon the intervention of a *court*, no less—hardly standard fare in a garden-variety dictatorship. Milosevic's Yugoslavia was by no means a Western-style democracy, as its brutal repression of the Kosovar Albanians showed, but it was close enough to raise questions about the conventional wisdom that democracies don't go to war against one another. Perhaps a democracy *is* now willing to fight another (quasi-) democracy when war is cost-free to its population and big human rights gains are to be had, as NATO's no-casualty campaign suggested.

If so, it would matter less if the world were to evolve into a community of 2,000 states, particularly if American hegemony persists—and continues to provide a push to democracy. There is nothing, after all, inherently stable or unstable about a world of 2,000 states; what matters is the force and cohesion of underlying power structures. If anything, fissures among the weak at the bottom

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of the power pyramid, but not among the strong at its top, might be expected to enhance the relative power of the strong at the expense of the weak—and thus to promote greater, not lesser, stability. Franck acknowledges that the ultimate consequence of a proliferation of states would likely be the enfeebling of state sovereignty and equality with respect to oppressive regimes, as power flows towards states that are centers of civil society and personal free-

dom.⁴¹ Similarly, "governability" is not really an issue, since there is no world governance today; it's hard to see how an increase in the number of states would change that. That number has increased nearly 300 percent since the founding of the United Nations, without dramatically chaotic results.

Moreover, cultural heterogeneity may "require" mutual respect and accommodation, but that does not mean that rival cultural groups are able or willing to meet that requirement. Often, cultural heterogeneity yields only rancor, division, and mutual recriminations—not the best conditions for the development of democratic institutions. And proponents of multiculturalism frequently overlook the deadening sameness that is fostered by the daily intermingling of different cultures, which in fact promotes not cultural diversity but precisely the "melting pot" for which the United States was famous throughout the better part of its history. In a world moving inexorably to a Global Walking Street of yet another row of Benettons, Starbucks, Gaps and the rest, perhaps *genuine* cultural diversity is worth saving. ■

NOTES

- 1 Quoted in Oscar Schachter, "Sovereignty and Threats to Peace," in Thomas G. Weiss ed., *Collective Security in a Changing World* (Boulder: Lynne Rienner, 1993), 29.
- 2 Stanley Hoffman, "The Problem of Intervention," in Hedley Bull ed., *Intervention in World Politics* (Oxford: Clarendon Press, 1984), 14.
- 3 Originally published in *Fraser's Magazine*, the essay is reprinted in J.S. Mill, III *Dissertations and Discussions* (1872), 153-178.
- 4 *Ibid.*, 166.
- 5 *Ibid.*, 168.
- 6 Hugo Grotius, *De Jure Belli ac Pacis* (1646 ed., F.W. Kelsey et al, trans., 1964), ch. XXII, § XI.
- 7 Emerich de Vattel, *The Law of Nations or the Principles of Natural Law* (1758 ed., C.G. Fenwick trans., 1964), ch. IV, § 56.
- 8 See, e.g., Oscar Schachter, "International Law: The Right of States to Use Armed Force," *Michigan Law Review* 80 (1984): 1620, 1641 ("For a foreign state to support, with 'force,' one side or the other in an internal conflict, is to deprive the people in some measure of the right to decide the issue for themselves.").
- 9 Franck argues that self-determination requires democratic governance, which would seem to counsel respect for majoritarian processes the outcomes of which defeat secessionist aspirations. See Thomas M. Franck, "The Emerging Entitlement to Democratic Governance," *American Journal of International Law* 86 (1992): 46.
- 10 Richard Falk, "Mission Implausible: Caught Between National Interests and Nationalism," *Washington Post*, September 19, 1999, B1. For a critique of self-determination that has been rightly termed "devastating," R. J. Vincent, *Nonintervention and International Order* (1974), 381, n. 162, see Tom Farer, "Harnessing Rogue Elephants: A Short Discourse on Intervention in Civil Strife" in Richard A. Falk, *The Vietnam War and International Law* (Princeton: Princeton University Press, 1969), 1095-1100.
- 11 Subject to one possible exception: a right of self-determination on the part of colonial peoples. See generally Roslyn Higgins, "International War and International Law," in C.E. Black & Richard A. Falk eds., *The Future of the International Legal Order* (Princeton: Princeton University Press, 1971), 104 .
- 12 Michael J. Glennon, *Limits of Law, Prerogatives of Power: Intervention after Kosovo* (New York: Palgrave, 2001).
- 13 "Military intervention in civil war was not acceptable under traditional international law," Louis Henkin has noted, "but that law may never have recovered from the wounds it suffered at many hands during the Spanish Civil War." Louis Henkin, *How Nations Behave: Law and Foreign Policy* (New York: Praeger, 1968), 306.
- 14 G. Paschal Zachary, "Get Over It," *Foreign Policy* (September/October 2000): 63.
- 15 Thomas M. Franck, *The Empowered Self: Law and Society in the Age of Individualism* (New York: Oxford University Press, 1999), 28.
- 16 *Ibid.*
- 17 *Ibid.*
- 18 *Ibid.*, 22.
- 19 *Ibid.*, 28.
- 20 *Ibid.*, 23.
- 21 *Ibid.*, 28.
- 22 Michael Howard, *The Lessons of History* (New Haven: Yale University Press, 1991), 43-44.
- 23 Robert A. Dahl, *On Democracy* (New Haven: Yale University Press, 1998), 150.
- 24 *Ibid.*, 149-150.
- 25 *Ibid.*, 151 [emphasis added].
- 26 Michael Lind, "National Good," *Prospect* (October 2000).
- 27 Alexis de Tocqueville, *Democracy in America* (Richard D. Heffner ed., 1956), 302.
- 28 *Ibid.*, 142.
- 29 *Ibid.*, 40.
- 30 *Ibid.*
- 31 *Ibid.*
- 32 *Ibid.*, 192.
- 33 John Stuart Mill, *Considerations on Representative Government* (London: Parker, Son, and Bourne, 1861), ch. xvi.
- 34 See R.J. Rummel, *Death by Government* (New Brunswick: Transaction Publishers, 1994), 2-3.
- 35 See Bruce Russett, "Politics and Alternative Security: Toward a More Democratic, Therefore More Peaceful,

- World," in B. Weston ed., *Alternative Security: Living without Nuclear Deterrence* (Boulder: Westview Press, 1990), 107, 108; Michael W. Doyle, "Liberalism and World Politics," *American Political Science Review* 80 (1986): 1151.
- 36 See, e.g., James Robert Huntley, *Pax Democratica: A Strategy for the 21st Century* (New York: Saint Martins Press, 1998).
- 37 Wilson later confessed the following to the Senate Foreign Relations Committee: "When I gave utterance to those words [that all nations had a right to self-determination] I said them without the knowledge that nationalities existed, which are coming to us day after day....You do not know and cannot appreciate the anxieties that I have experienced as a result of many millions of people having their hopes raised by what I have said." See H.W.V. Temperley ed., *A History of the Peace Conference of Paris* (New York: Oxford University Press, 1969), 429.
- 38 Inis Claude, *Swords into Plowshares: The Problems and Progress of International Organization* (New York: Random House, 1984), 53.
- 39 The presence or absence of external threats is an example. Lind argues that ethnic nationalism tends to be benign in countries with settled borders and an accepted national culture, and becomes "vicious" only "[w]here the existence of an ethnic nation" is under threat, as it was in Yugoslavia. Michael Lind, "National Good," *Prospect* (October 2000).
- 40 Boris Yeltsin, *Midnight Diaries* (New York: Public Affairs, 2000), 265 ("With the help of the war, [Milosevic] had achieved only one goal: At the price of destruction and complete international isolation, he had removed all his domestic opponents and enemies from the political stage.") Yeltsin's words were published only days before Milosevic's opponents removed him from the political stage.
- 41 *Ibid.*, 28.