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Self-Determination and National Sovereignty

ALAIN DIECKHOFF

Developing “friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples” is one of the purposes of the United Nations Organization, as stated in the founding charter of 1945. The principle of self-determination has even become a right through the Declaration on the Granting of Independence to Colonial Countries and Peoples (December 1960). The Declaration states that: “All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Self-determination has thus entered international law. Strangely enough, however, nowhere are the bearers of this right defined: who are the peoples entitled to claim self-determination? This omission is not there by chance. Indeed, the definition of peoplehood is far from evident. Should a people be defined on a territorial basis, i.e. include all the population living within a given territory delimited by given boundaries? Should it have objective characteristics: a shared language, a common history, a common religion, etc.? Should it be based on a subjective understanding as a gathering of individuals united by the desire to partake in a common political destiny? According to the definition we adopt, we will end up with quite different ways of implementing self-determination. To untangle things, we must start with the advent of the modern conception of the nation. Yet, to determine and understand this newness, we have to see how the word “nation” was understood before the eighteenth century. In fact, the concept of nation had two clearly distinct meanings.

In the Middle Ages, universities were divided into “nations.” The university of Paris was made up of four nations: “l’honorable nation de France,” “la fidèle nation de Picardie,” “la vénérable nation de Normandie,” and “la constante nation de Germanie.” The four nations referred to geographical areas, sometimes very broad, with a rather weak linguistic basis. The largest

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nations were the French and the German. The first included all students coming from France (except the northeast and the north), Italy, and Spain, while the second included students from the Holy Roman Empire and the British Isles. The Norman nation referred to Normandy and the Picard nation to the area stretching from northern France to the contemporary Netherlands. There was a very loose cultural affinity within the nations: speakers of Romance languages were mainly in the “French nation,” speakers of German and English in the “German nation.” The Norman nation was the most homogeneous with its Norman speakers, while, on the contrary, the Picard nation gathered speakers of Picard (a Romance language) and of Dutch (a Germanic language). The same idea is present with the “Collège des Quatre Nations,” created by Cardinal Mazarin in 1661 for educating young men originating from the four provinces just incorporated into the kingdom of France: Artois, Alsace, a small part of Savoy,  Lorraine, and Cerdagne. These places were mainly, at the time, inhabited by people speaking dialects drawn respectively from Dutch, German, Italian, and Catalan. Thus, the idea of nation was first and foremost linked with a community of origin, based on some linguistic closeness.

Another understanding of the concept of nation came up progressively during the late Middle Ages. This understanding was political. In 1512, the Holy Roman Empire became the Holy Roman Empire of the German Nation by a decision made by the Diet in Cologne. This German nation, however, did not include the people speaking German or living within the changing boundaries of the empire: “it consisted of the imperial aristocracy (Reichsadel), the imperial Church (Reichskirche) and the imperial cities (Reichsstädte), who were assembled in the Imperial Diet (Reichstag).”¹ The German nation consisted only of the political elite who ruled with the emperor. This narrow political definition of the nation was omnipresent throughout Europe. The Peace of Szatmár (1711) was concluded by the Habsburg emperor Charles VI with the “Hungarian nation,” a term that “did not refer to the Hungarian people as a whole, but, as expressly stated in the treaty, to the barons, prelates and nobility of Hungary.”² Montesquieu wrote that “under the first and second race [i.e. the Merovingians and the Carolingians], the nation, was often assembled; that is, the lords and bishops; the commons were not yet thought of.”³

¹ Hagen Schulze, *States, Nations and Nationalism* (Oxford: Blackwell, 1996), 104.

² *Ibid.*

³ Charles de Secondat, Baron de Montesquieu, *The Spirit of Laws* (Kitchener: Batoche Books, 2001), 544.

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This double definition – cultural and political – of nation encountered a major shift when the word “nation” was given its modern meaning. Sovereignty is no more vested in the monarch. Rather, it becomes an attribute of the entire population, including the masses. Such qualitative transformation has been located at different moments of history, some saying it occurred in early sixteenth-century England,⁴ others that it came about during the second half of the eighteenth century with the American Declaration of Independence (1776) and, even more so, the French Revolution (1789).⁵ Whatever the turning point, the decisive feature is that the spreading, by many Western thinkers, of the idea of the people as the bearer of sovereignty generated nationalism as the ideology of the rule of the people. As the Declaration of the Rights of Man and the Citizen approved by the French National Assembly (26 August 1789) had it: “The principle of sovereignty resides essentially in the Nation; no body of men, no individual, can exercise authority that does not emanate expressly from it.” The political constitution is freely chosen by the nation (or rather its representatives); the political order is no longer a “natural” given, inherited through centuries, organized around royal dynasties. The nation is self-referential; it chooses its political organization on a democratic basis. This principle introduced a “new style of politics”⁶ based on the expression of the will of the people. This political self-determination, praised at the end of the eighteenth century on both sides of the Atlantic, had truly revolutionary domestic consequences as it led to the advent of a new state, the United States of America, severed from Great Britain, and to a new republican regime in France, after the arrest and execution of King Louis XVI. It could not but have major effects on the international order, as was clear after the French National Convention approved on 19 November 1792 the decree promising fraternity and help to every people that wanted to regain its freedom. Such an appeal was rightly seen as undermining the political order prevailing in Europe at the time.

France exported its credo of political self-determination all over Europe, a credo which found, for instance, large resonance in a divided Germany. Although the French Revolution frightened some German writers and intellectuals (Schiller, Wieland, Goethe), especially after its Jacobin turn, others praised it, including Hegel, who depicted it as a “wonderful sunset,” and

⁴ Liah Greenfield, *Nationalism: Five Roads to Modernity* (Cambridge, MA: Harvard University Press, 1992).

⁵ Geoffrey Best, *The Permanent Revolution: The French Revolution and its Legacy* (Chicago: University of Chicago Press, 1988).

⁶ Elie Kedourie, *Nationalism* (Oxford: Blackwell, 1993), 1–11.

Kant, who saw in it an accomplishment of the republican ideal. Revolutionary ideas of freedom spread with the deployment of French troops in Germany. The modernization of the administrative and political institutions was profound, but variable, especially on the left bank of the Rhine, annexed to France, in “French Germany,” i.e. kingdoms and duchies ruled by close relatives of Napoleon, and in German “vassal states” (Bavaria, Grand Duchy of Baden): the introduction of the Civil Code, abolition of feudalism, the selling of church properties, religious tolerance toward religious minorities. However, these modernizing developments were gradually counterbalanced by negative effects (rising taxes, conscription of soldiers) which generated a growing resentment against French domination. This resentment was first articulated by some writers after Prussia’s defeat at Jena (October 1806). Ernst Moritz Arndt, for example, rose against the cosmopolitan ideals of the Age of Enlightenment and extolled the German people and their uniqueness. The trajectory of Johann Gottlieb Fichte is most telling. He began as a philosopher praising the French Revolution for having given internal freedom to human beings by freeing them from political subjection. Yet it was the same man who delivered in 1807–1808 (while Prussia itself was severely weakened) his *Addresses to the German Nation*, in which he glorified the greatness, the uniqueness, and even the superiority of the German nation. This was a bold statement as at that time there were Bavarians and Saxons, Württembergers and people from the Rhineland, but surely no Germans in the generic sense. His main argument was that despite their political divisions, the Germans were indeed one nation because they shared a common language. This cultural definition of the nation fell on fertile ground as, driven by the new romantic spirit, a wide array of writers (Achim von Arnim, Clemens Brentano, the Grimm brothers) collected poems, folk songs, fairytales, all presented as cultural creations of the German people. The political rejection of the French yoke followed this cultural effervescence and led to the Liberation War of 1813, when the peasants and the townspeople, finally, mobilized, along with the armies of the Sixth Coalition – mainly Russia, Sweden, Austria, Prussia, and some of the smaller German states.

After Napoleon’s defeat, however, national self-determination was clearly rejected by the victorious monarchies. At the Vienna Congress (October 1814–June 1815), the two principles that were stressed were the restoration of traditional legitimacy, around the reigning dynasties, and the European balance of power managed through a European concert, i.e. a system of diplomatic meetings. National self-determination had to be

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thwarted. Although the Holy Roman Empire was not rebuilt, Germany remained divided into thirty-five monarchies (including the western parts of the Austrian Empire) and four free cities, loosely linked within a German Confederation. The Allies divided up the territorial booty within Europe in total disregard of the will of the people. Thus, Austria obtained the creation of the kingdom of Lombardy–Venetia ruled by the Habsburg emperor while Russia was able to absorb for itself the greatest part of Poland.

However, as the mastermind of the Congress, Austrian Chancellor Metternich, noticed with acuteness, nationalism was the hydra of the revolution, and could only resurface again and again because the principle of sovereignty of the people was just too strong. The *ancien régime* was, in the long run, doomed. The revolution of February 1848 in Paris represented a major turning point. Although it had been preceded by some harbingers, such as the uprisings in Cracow (1846) and in Palermo (January 1848), the riots in Paris leading to the overthrow of the “July Monarchy” and the establishment of the Republic had tremendous consequences in various places in Europe, especially in the Austrian Empire (Vienna, Prague, Buda, Pest), in Germany (Munich, Berlin), and in the Italian kingdoms under Austrian domination (Milan, Modena). What was at stake, in Paris as elsewhere, was the rejection of authoritarianism and the willingness to adopt liberal, democratic constitutions. There was a deep longing for political freedom, cherished by a liberal bourgeoisie that resented being excluded from political power. However, in those countries which were either included in empires (like Bohemia or Hungary), or divided (Germany, Italy), this quest for political sovereignty was increasingly coupled with the quest for national self-determination understood as the building of new independent states. In fact, this process had already been achieved in Central and South America, where the Spanish and Portuguese colonies had severed their links with Madrid and Lisbon and become independent in 1810–1820. And on the southeastern flanks of Europe, an independent Greece arose in 1830, after a long and bloody struggle, with the military help of France, Russia, and Great Britain and the support of large segments of European public opinion. This was the first outcome of the Ottoman Empire’s slow decay.

In France, prospective popular sovereignty had a natural framework: the territorialized French state, with its undisputed boundaries. In Hungary and Poland, as in Italy and Germany, the idea of popular sovereignty was necessarily fuzzier: where exactly was the sovereignty-bearing people located geographically? As it was not possible to define the people on a preexisting bounded territorial basis, as there was no “proper unified state,” at the end of

the day, the definition was inevitably cultural. The nations were self-defined on a linguistic basis. However, this approach raised a major problem: where should the boundaries of the state be set?

A good illustration of this dilemma was given in Germany. The 1848 Revolution led to the election in May, on universal male suffrage, of the first German parliament which assembled in St. Paul's Church in Frankfurt. Dominant among the 585 deputies, the liberal bourgeoisie pushed for the establishment of a democratic regime. On 21 December 1848, the Imperial Act concerning the basic rights of the German people was adopted. It affirmed, among other things, the equality of everyone before the law and the protection of personal and political liberties (freedom of the press, of expression). The constitution itself, adopted on 27 March 1849 – but never applied – put representative institutions in place, such as a directly elected *Volkshaus* (House of Commons). The general spirit was pervaded by moderate liberalism,⁷ but gave political self-rule to the people. As regards what Germany should consist of, there were, however, deep divisions. The main question had to do with Austria: should the German lands of the Habsburg Empire be part of the German Reich? After heated debates, the solution adopted was the *kleindeutsch* ("little German") solution, i.e. the creation of a unified federal state on the territory of the German Confederation, without Austria, though the constitution left the eventual participation of the Austrian lands open.⁸ However, this seemingly reasonable solution was only reluctantly accepted: "Greater Germany, the old empire resurrected under Habsburg emperors, but anointed with a few drops of liberal oil – that was the alternative dreamed of by a majority of the assembled dignitaries."⁹ The tremendous difficulty for Germany and other nations longing for a state of their own was to reconcile political sovereignty with national determination understood in an ethnocultural sense. The strong counterrevolution in 1849, which thwarted/suppressed all democratic movements in Hungary (exile of Lajos Kossuth), Italy (defeat of Piedmont), and Germany (dismantling of the parliament) and led to

⁷ The constitution gave strong powers to the emperor who appointed the government. The question of the government's accountability to parliament remained unsettled.

⁸ It should be noted that the Austrian lands were not only the German-speaking areas of the empire but also, at least, Bohemia, Moravia, Trentino, Istria, i.e. all areas historically part of Austria.

⁹ Schulze, *States, Nations and Nationalism*, 210.

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a restoration of the princes, temporarily postponed the problem but did not solve it.

It resurfaced very soon with the unification process of Germany, which showed the ups and downs of nationalism. The first step was the question of Schleswig-Holstein. The three duchies of Lauenburg, Holstein, and Schleswig, linked by a personal union with the king of Denmark, had already become a bone of contention in 1848 with the development of the national movement in Germany. The first war between Prussia and Denmark (1848–1852) did not change the status quo, but the Schleswig-Holstein issue was raised by German nationalists against the “oppressive rule” of Denmark. It is interesting to notice that Holstein (and the small duchy of Lauenburg) was conflated with Schleswig although their fates raised quite different issues. Indeed, Holstein, a member of the German Confederation where the dominant spoken language was low German, was logically and according to the nationality principle, a “natural candidate” for the union within a German state and that fact did not raise much debate within Denmark. Dissimilar was the situation in Schleswig, which was originally Danish speaking but had become predominantly German speaking in its southern part, in the course of centuries. A strict application of the nationality principle should have led to a division of the duchy between the two parties but, for the German side, the duchy clearly had to remain a territorial unit. A new war broke out in 1863–1864 between Denmark and Prussia (joined by Austria), which led, after a short-lived Prussian–Austrian condominium followed by the seven-week Austro-Prussian War, to the final absorption of the duchies within the newborn North German Confederation, built in 1866, which gathered all German states north of the Main around Prussia. This episode is most telling of the basic contradiction of nationalism: although the ethnocultural principle is put forward to justify national self-determination, it is swiftly pushed aside, in favor of a historical-territorial argument, when the latter is more beneficial for land-grabbing. But there is more to it. Although “the people” is ritually referred to as the basis of legitimacy, the inhabitants of Schleswig were never asked what they wanted. Only after the First World War did a referendum take place, which resulted in northern Schleswig returning to Denmark.

The second significant step was the military defeat of Austria against Prussia in 1866 (Battle of Sadowa), which definitively imposed the “kleindeutsch” solution, i.e. German unification without Austria. Chancellor Bismarck clearly chose the path of political self-determination of Germany, around Prussia, rather than seeking the idealist dream of uniting the whole, or rather the overwhelming majority, of the German nation.

Finally, the annexation of Alsace-Lorraine to the German Reich, after France's crushing military defeat in January 1871, turned things in the other direction: this time it was the ethnocultural justification that was put forward. Indeed, the inhabitants of the three French *départements* became German citizens – although for some time second-class citizens. Again, they were not canvassed through a referendum, on the grounds that since their language and customs belonged to German culture they should be included in the new Germany. A totally different view was presented by the deputies of Alsace and Lorraine in their protest declaration at the French National Assembly (1 March 1871), in which they stated, “in the name of those provinces, their willingness and right to remain French,” and declared, “once again null and void a pact that disposes of us without our consent.” The Alsace-Lorraine question crystalized a feverish debate among French and German historians who presented two antagonistic conceptions of the nation, and thus of self-determination. On the German side, both David Friedrich Strauss, a critical theologian, and Theodor Mommsen, a historian of Rome, justified the annexation of Alsace-Lorraine in the name of German unification¹⁰. To the former, philologist Ernest Renan answered that “Germans had spoken too much about historical rights which are the rights of orangutans and the rights of the dead; they haven't taken account of the right of the human, the right of the living which entitles the Alsatians to choose their nationality.”¹¹ To the latter, Numa Fustel de Coulanges, also a historian of Rome, retorted that “what distinguishes nations is neither race nor language. Men feel in their hearts that they are one and the same people when they have a community of ideas, interests, affections, memories and hopes.”¹² Renan came back to this question ten years later in his famous 1882 address, “What is a Nation?” by claiming that a nation was “a soul, a spiritual principle” made of two things, which are but one: “One is in the past, the other is in the present. One is the possession in common of a rich legacy of remembrances; the other is the actual consent, the desire

¹⁰ In his posthumous book *Economy and Society* (1921), Max Weber took a different view, stressing that many German-speaking Alsatians “feel a sense of community with the French because they share certain customs and some of their ‘sensual culture’ and common political experiences.” Max Weber, *Economy and Society*, vol. 1 (New York: Bedminster Press, 1968), 396.

¹¹ Quotation of Renan in Albert Lévy, *David-Frédéric Strauss: la vie et l'œuvre* (Paris: Félix Alcan, 1910), 246.

¹² Numa Fustel de Coulanges, *L'Alsace: est-elle allemande ou française? Réponse à M. Mommsen* (Paris: Dentu, 1870), 10.

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to live together, the will to continue to value the heritage which all hold in common.”¹³ The Alsace-Lorraine issue caused a clear division between the proponents of a civic and contractual idea of the nation, as a free political association of citizens, and the champions of a cultural and ascriptive idea of the nation as a historical community.¹⁴

The non-coincidence between territorial/political and ethnocultural boundaries has often led states to try to assimilate minority groups. The German Reich attempted to Germanize the Poles of Posen, the Danes of Schleswig, and the French speakers in Moselle (around the city of Metz), with mixed results. The compromise of 1867 (*Ausgleich*) which established the dual monarchy of Austria-Hungary satisfied the Hungarians’ yearning for national self-determination. However, this fed the anger of the Croats, Slovaks, and Romanians who deeply resented the pressures of Magyarization.

The same contradiction resurfaced at the end of the First World War. After the defeat of the Central Powers, it became evident that the fate of Austria-Hungary was sealed and that a new territorial map should be drawn in eastern Europe¹⁵. The US president Woodrow Wilson in his famous speech to Congress on 8 January 1918 claimed that much of the postwar settlement should be based on the principle of nationalities. (See Figure 21.1.) This meant building new states (or adjusting the boundaries of those already existing) for peoples defined on an ethnocultural basis. Thus, the “relations of the several Balkan states to one another should be determined by friendly counsel along historically established lines of allegiance and nationality,” while a “readjustment of the frontiers of Italy should be effected according to clearly recognizable lines of nationality.” As for Poland, an independent state “should be erected which should include the territories inhabited by indisputably Polish populations.” That was, of course, easier said than done, because the commingling of populations made it impossible to draw clear and precise lines of demarcation between them to match state with nationality.

Applying the principle of national self-determination in such a patchwork of peoples carried huge dangers that Wilson’s own secretary of state, Robert

¹³ Quoted from John Hutchinson and Anthony D. Smith (eds.), *Nationalism* (Oxford: Oxford University Press, 1994), 17.

¹⁴ On this dichotomy and its necessary relativization, see Alain Dieckhoff, *Nationalism and the Multination State* (New York: Oxford University Press, 2016), 15–31.

¹⁵ The redrawing of the map in eastern Europe had also to do with the collapse of the Russian Empire and the Polish–Soviet War which made it possible for the new Polish state to set its eastern boundaries much to the east of the Curzon line first set down by the Allies.



Figure 21.1 Woodrow Wilson, the Twenty-Eighth President of the United States, attended the Paris Peace Conference ending the First World War in 1919. The conference redrew the boundaries in eastern and central Europe, taking into consideration the principle of national self-determination, which was implied by Wilson's famous Fourteen Points speech (8 January 1918) and which he embraced more explicitly over subsequent months. (Photo by Oscar White/Corbis/VCG via Getty Images.)

Lansing, grasped immediately with remarkable prescience. In December 1918 he wrote in his diary,

There are certain phrases in the President's "Fourteen Points" which I am sure will cause trouble in the future because their meaning and application have not been thought out . . . When the President talks of "self-determination" what unit has he in mind? Does he mean a race, a territorial area, or a community? Without a definite unit which is practical, application of this principle is dangerous to peace and stability . . . The phrase is simply loaded with dynamite. It will raise hopes which can never be realized. It will, I fear, cost thousands of lives.¹⁶

Events would tragically prove this analysis to be premonitory.

¹⁶ Cited by Daniel Patrick Moynihan, *Pandaemonium: Ethnicity in International Politics* (Oxford: Oxford University Press, 1991), 82–83.

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As should have been expected, the states arising from the Paris Peace Conference (1919) had boundaries which hardly squared with the ethnonational distribution of the various peoples. Italy wanted it both ways: it wanted both Dalmatia on historical grounds, – it had been part of the Republic of Venice for several centuries – and the German-speaking area south of the Brenner Pass for geopolitical reasons. Finally, Italy did not gain the former (apart from Zadar and some islands) but obtained the latter: the northeastern boundaries were thus set in clear contradiction with the principle of nationality. Poland became an independent state which included almost 30 percent minorities (Germans, Belorussians, Ukrainians, Russians, and above all Jews). Although all members of the minorities became full-fledged citizens of the Polish republic, the state was not really theirs. It was the state of the ethnic Poles. Jews, especially, were clearly treated as second-class citizens. The discrimination was sometimes legal, as with the law that made Sunday the mandatory day of rest, thus compelling religious Jews to stop working during two consecutive days. Discrimination against Jews was mainly covert, but it was formidable: unfair taxation, near impossibility to become a municipal or state employee, limitation of licenses for tradesmen, limitation of public funds supporting Yiddish and Hebrew schools.¹⁷

In such a situation of marginalization, three options can be summed up easily through Hirschman's famous triptych: exit, voice, and loyalty.¹⁸ Despite the hardships, some chose loyalty, as in the case of the large community of orthodox religious Jews represented by the Agudat Israel Party. Its leaders believed that the best way to help Jews was through discreet intervention with the political authorities, which was the traditional age-old mode of negotiation for the Jews in exile. Others defended a strong voice, as did the followers of the Bund, a left-wing party advocating cultural autonomy in a socialist-democratic Poland. The Zionists also chose the voice option and were instrumental, with the German minority, in building the Minorities Bloc within the Polish parliament, which was a source of vocal opposition to the nationalist Polish right. In the medium term, however, the Zionists favored an exit strategy and emigration to Palestine: 100,000 Polish Jews crossed the Mediterranean during the interwar period. The exit strategy also led 300,000 Jews to cross the Atlantic Ocean to the United States, Canada, and Latin America.

¹⁷ Yisrael Gutman, Ezra Mendelsohn, Jehuda Reinharz, and Chone Shmeruk (eds.), *The Jews of Poland between the Two World Wars* (Hanover, NH: University Press of New England, 1989).

¹⁸ Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Cambridge, MA: Harvard University Press, 1970).

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In order to square the granting of political independence to the “Polish populations,” to use Wilson’s own words, and the presence of large national minorities, the latter were protected through a minority treaty signed during the Paris Peace Conference with the Allied powers.¹⁹ It guaranteed “total and complete protection of life and freedom of all people regardless of their birth, nationality, language, race or religion” and gave them the right to establish religious, social, and educational institutions as well as the right to freely use the minority tongues. The same kind of treaty was signed with Czechoslovakia, Romania, Greece, and the kingdom of Serbs, Croats, and Slovenes. The system worked with difficulty as the new states (or enlarged ones) saw the treaties as seriously infringing their political sovereignty, while minorities found that the Council of the League of Nations, in charge of the enforcement of their rights, did not protect them effectively.

Another major problem came up with the defeated states. Germany lost 88,000 square kilometers, mainly in favor of Poland (Poznań, part of Upper Silesia). Hungary was reduced to one-third of the former kingdom of Hungary. This led many ethnic Germans and Hungarians to be included in new states, generally without their opinion being sought.²⁰ This situation nourished irredentism and revisionism, i.e. the willingness to revise the geopolitical order inherited from Versailles. Austria became a small rump state of 83,000 square kilometers, but was both severed from the ethnic Germans in Bohemia and forbidden to unite with Germany. This proved that *Realpolitik*, the desire to prevent Germany from gaining in population, territory, and power, superseded the principle of national self-determination. One way of solving the contradiction between national self-determination and the mixing of peoples would have been to simplify the ethnic map by organizing population exchanges. However, the Allies, who claimed to have fought the war in the name of liberal principles, could not possibly advocate such a brutal policy. The one exception took place at the periphery of Europe, on the borders of Greece, Bulgaria, and Turkey, during the Greek–Turkish War (1920–1922). First, a (partly) voluntary exchange supervised by a mixed commission took place as more than 100,000 Bulgarians (mostly Muslims) were resettled in Bulgaria, while more than 50,000 Greeks left Bulgaria for Greece (80,000

¹⁹ Carole Fink, “The Minorities Question at the Paris Peace Conference: The Polish Minority Treaty, June 28, 1919,” in Manfred F. Boemeke, Gerald D. Feldman, and Elisabeth Glaser (eds.), *The Treaty of Versailles: A Reassessment after 75 Years* (Cambridge: Cambridge University Press, 1998), 249–274.

²⁰ There were some exceptions as, for example, the plebiscites in 1920 in Mazuria (which remained part of East Prussia) and in 1921 in Upper Silesia (which was divided between Germany and Poland).

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others, mostly Bulgarians, moved outside the frame of the commission). Second, a compulsory exchange between Greece and Turkey was organized through a convention signed on 24 July 1923 alongside the Treaty of Lausanne that definitely sealed the fate of the former Ottoman Empire. The convention was in some ways a post-facto regularization of expulsions that had actually already occurred: of the 1.3 million Greeks expelled from Anatolia, 1.1 million had already left. However, to strike some sort of balance, more than 350,000 Turks who had not been affected by the war had to leave Greece. The criterion for setting apart Greeks and Turks was religious: those of Greek Orthodox religion originating or living within the territory of modern Turkey were expelled; so were those of Muslim religion living in Greece.²¹ Ethnic cleansing was the ultimate consequence of building a national state.

Woodrow Wilson concluded his famous Fourteen Points speech by saying: "An evident principle runs through the whole program I have outlined. It is the principle of justice to all peoples and nationalities, and their right to live on equal terms of liberty and safety with one another, whether they be strong or weak. Unless this principle be made its foundation no part of the structure of international justice can stand." However, it quickly became clear that self-determination was not an option for everyone. The redesigning of sovereignty in order to accommodate the national yearnings of the Poles, Czechs, and Slovaks was warmly received. Several delegations, claiming political independence on behalf of other peoples, were present at the Paris Conference, but few got anything out of it. Two limits were drawn. First, national self-determination, so readily accepted for the defeated Austria-Hungary, was not considered at all as a valid principle to be applied by the victorious powers on their own territory. Even though Ireland was shaken at that time by strong nationalist unrest, the Irish question was not seen as something to be debated. The territorial integrity of western European states was unquestionable. Second, national self-determination was clearly not an issue for colonized peoples. Among the five major powers, the United Kingdom and France had large overseas empires they wanted to keep, and Italy and Japan had smaller ones. Although not a colonial power, the United States shared the vision of racial inequality between developed races (Japan included) and the "underdeveloped."²² Thus, for the Arab provinces of the

²¹ There was a mutual exception for the Muslims in Western Thrace and for the Greeks in Istanbul who could remain. Figures are taken mostly from L. V. Smith, *Sovereignty at the Paris Peace Conference of 1919* (Oxford: Oxford University Press, 2018), 169–179.

²² The "racial equality clause" put forward by Japanese foreign minister Baron Makino Nobuaki in February 1919 would have guaranteed an equal and just treatment, without

Ottoman Empire and for German colonial possessions (in Africa and Oceania), a system of mandates was introduced through the Covenant of the League of Nations (Article 22) which adopted a variable-geometry self-determination policy. Class A mandates were designed for “certain communities formerly belonging to the Turkish Empire [that] have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone.” Class B mandates were suited for the peoples, “especially those of Central Africa, [that] are at such a stage that the Mandatory must be responsible for the administration of the territory.” Finally, there were class C mandates for some territories, “such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centers of civilization, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory.” The mandate system introduced incremental self-determination for colonized peoples.

As for eastern Europe, national self-determination had major destabilizing effects which reached their summit in the 1930s. Indeed, Hitler manipulated it shamelessly to create, as he put it in his speech at the Reichstag at the end of the military campaign in Poland (6 October 1939), “a new order of ethnographic conditions.” This objective required an expansionist policy to include as many ethnic Germans (*Volksdeutsche*) as possible within an expanded Reich. This policy had already begun with the annexation of Austria (March 1938) and the Sudetenland (March 1939). It became systematic with the war, which made it easier both to expel the non-Germans from the Reich and to welcome ethnic Germans from abroad. Thus, after Poland’s surrender, while Poles and Jews were expelled from western Poland which was annexed to the Reich, Germany had to make space for ethnic Germans expelled from Galicia and Volhynia which was annexed by the Soviet Union. This Nazi plan to realize “racial self-determination” required the systematic mass murder of Jews and Romany, the killing or enslavement of Slavs, and the brutal domination of all “non-Aryan” people. The SS *Generalplan Ost* (the Master Plan for the East) contemplated the killing or expulsion of 80 million people!

distinction of race or nationality, but only among nationals of member states of the League of Nations. It was not a universal plea for equality.

Self-Determination and National Sovereignty

Ironically, when they started to think about the postwar settlement (Potsdam Conference, 17 July–2 August 1945), the “Big Three” allies (the United States, United Kingdom, and USSR) decided to use mass expulsions in order to simplify the ethnic map of eastern Europe: the German populations remaining in Poland, Czechoslovakia, and Hungary had to be transferred to Germany.²³ The idea was clear: homogenize the three states in order to prevent any future irredentist claim from a rebuilt Germany. Thus, contrary to the post-First World War period when population transfers were the exception, after the Second World War it was an assumed policy which led to the flight or expulsion of 12.5–14 million Germans, who settled mostly in what became West Germany in 1949 (between 0.5 million and 1.5 million people died during this exodus).²⁴

The political manipulation of self-determination led the international community to revise its interpretation of the principle after 1945. Indeed, although the UN Charter mentions the principle of self-determination of peoples, the peoples’ right to decide their own future is no longer recognized for nations (in the ethnocultural sense) following the Wilsonian logic, but only for peoples who have been deprived of free self-determination by colonialism. Only peoples colonized by Western powers (with whom Palestinians under Israeli occupation and the black population of South Africa have been assimilated) can, in the eyes of international law, legitimately shake free of what is considered foreign political domination and form an independent state. People entitled to self-determination are defined on a strictly territorial basis and the whole decolonization process in Asia and Africa from the 1940s to the 1960s took place on that basis. For instance, it was not the Baoulé, Agni, and Bété peoples who were allowed the right to self-determination to free themselves from French colonization, but the people of Côte d’Ivoire; in other words, all the colony’s inhabitants. The principle of the sanctity of borders handed down from the colonial period is a natural consequence of the territorial definition of self-determination.

Between Wilson’s Fourteen Points and the development of the UN legal arsenal, the basis for application of the self-determination principle has in fact

²³ In fact, the flight had started already in fall 1944; *Volksdeutsche* were also expelled from Yugoslavia and Romania.

²⁴ Figures taken from R. M. Douglas, *Orderly and Humane: The Expulsion of the Germans after the Second World War* (New Haven: Yale University Press, 2013). See also Alfred-Maurice de Zayas, *A Terrible Revenge: The Ethnic Cleansing of the East European Germans* (New York: Palgrave Macmillan, 2006).

shifted from ethnic and cultural identities to territorial boundaries²⁵. Furthermore, the right to self-determination is valid for a single use only. Once it has come into effect within the framework of the colonial administrative boundaries, it cannot be legally claimed by peoples that are part of an independent state seeking their own self-emancipation. Thus, the right to secession is not recognized within constituted states, and such states are entitled to defend their territorial integrity, by force if necessary. This interdict explains the failure of the attempted secessions of Katanga (1960–1963) and Biafra (1967–1970) after most of the world's states refused to recognize them. Up until the early 1990s, the only victorious secession was that of East Pakistan in 1971, which owed its success to a particular geopolitical context (the province had been geographically separated from West Pakistan by 1,700 kilometers since 1947) and specific political circumstances (Indian military support for the revolt).

Things changed somewhat in the 1990s with the collapse of Yugoslavia, which led to a new acceptance of the division of already-existing states. The Yugoslavian example has a double interest. First, it shows that, at the end of the day, the breakup of states is a political and not a legal question. Indeed, while the preamble to the Yugoslavian Constitution of 1974 mentioned “the right of each people to self-determination, including the right to secede,” this basic principle needs to be interpreted in light of the articles of the constitution. But Article 5 unambiguously stipulates: “the borders of the Socialist Federal Republic of Yugoslavia may not be altered without the consent of all the republics and autonomous provinces.” By exiting the federation unilaterally in 1991–1992, without the consent of Serbia and Montenegro, the four federated republics (Slovenia, Croatia, Bosnia, and Macedonia) could well claim political legitimacy (declaration of sovereignty of parliaments, people's referendums in favor of independence) but certainly not legal justification. However, after the end of the war (1995), the political independence of the five states²⁶ became a recognized fact. Second, the thorny question of defining the borders resurfaced. After recognizing that Yugoslavia was in the process of breaking apart, the Arbitration Commission on Yugoslavia presided over by French lawyer Robert Badinter concluded that the administrative boundaries between the federated entities should become international borders. The principle of the inviolability of borders adopted in the context of decolonization was thus extended to the

²⁵ Margaret Moore pointed out this transformation in “Introduction: The Self-Determination Principle and the Ethics of Secession,” in Margaret Moore (ed.), *National Self-Determination and Secession* (Oxford: Oxford University Press, 1998), 1–4.

²⁶ The republics of Serbia and Montenegro were united, first in a federation, then in a state union from 1992 till 2006.

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disintegration of sovereign states. The rationale behind this reasoning by analogy is clear: to find a means of regulating self-determination in order to avoid the difficult task of renegotiating boundaries. However, the widespread application of this principle is far from self-evident, for two main reasons.

The first is that internal administrative boundaries are ipso facto turned into international borders. Should boundaries deemed legitimate in the domestic legal order, recognized by all, retain such a legitimacy when the encompassing state falls apart? When the original political compact that bound citizens together is broken, why should the internal territorial divisions necessarily be maintained? These questions cannot be given a straightforward answer and a distinction must be made. When administrative boundaries match long-standing historical boundaries, they acquire a strong presumption of legitimacy. This was the case regarding the border between Slovakia and the Czech lands as well as between Croatia and its neighbors, except in eastern Slavonia.

Things are different when the administrative boundaries were drawn for strategic purposes, as when Tito invented the Republic of Macedonia in 1945 to restrict Serbia's territorial base. In such a case, when borders are arbitrary, there is no reason why they should not be subject to a negotiated revision to make them consistent with a certain logic, whether in terms of function or of substance, considering historical factors, ethnic composition, and so on.

The second reason that makes the application of the inviolability of internal borders debatable lies in an important theoretical contradiction. Defense of secession is generally made in the name of a prepolitical, historical-cultural identity. Yet when it comes to defining the territorial basis of the state, nationalist leaders readily put forward administrative boundaries, especially when these borders provide the state with a more comfortable territorial base. Thus, the Republic of Croatia was declared by virtue of "the millennial national identity of the Croatian nation," but the state's borders were not defined, to use Woodrow Wilson's expression, "along clearly recognizable lines of nationality." Instead, they simply coincided with the former boundaries of the Yugoslav Republic of Croatia. Its leaders invoked both national self-determination to justify separation from the common state and territorial self-determination to fix the borders of their breakaway state. Therein lay a clear inconsistency, which the rump state generally did not fail to point out when demanding that the borders be redrawn to include as many of its "ethnic brothers" as possible within its territory. If unable to achieve this end through mutual agreement, the state in question may resort to war, as did Serbia under Milošević.

By asserting the right of peoples to freely dispose of themselves and organize their common lives, self-determination has theoretically opened up the

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possibility for all human groups claiming to be peoples to become politically independent. And in fact, for nearly two centuries now, the application of this right has become increasingly broad in scope. The first to benefit from such emancipation, during the nineteenth century, were “historic nations” (Greece, Serbia, Italy, Germany), in other words, those that could boast of sufficient political institutionalization in the past. The independence of Latin American states from the Spanish and Portuguese empires was also a harbinger of decolonization, a new phenomenon that would lend self-determination enormous momentum after the Second World War. But prior to that, by virtue of the principle of nationalities outlined by President Wilson in 1918, the second important age of self-determination was the creation of a whole set of new states in eastern Europe. The third period opened after the Second World War with the decolonization process, which was a decisive qualitative step in the universalization of the right to self-determination. Finally, the dissolution of three authoritarian federations (Czechoslovakia, the USSR, and Yugoslavia) gave a new impetus to self-determination with the creation of twenty-two independent states. Today there are strong constraints on self-determination: in a world full of states, it is not an easy task to create new ones, as, for instance, the Catalans have experienced, because existing states tend to protect their territorial integrity fiercely. Only exceptional circumstances, such as those prevailing in the 1990s in the communist bloc, have relaunched the dynamic of self-determination.

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