

Two Faces of Self-determination in Political Divorce

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Abstract: For decades, international law has denied the right to secede even if it enshrines self-determination. Existing scholarship explains this contradiction by opposing the right to self-determination and the principle of territorial integrity: self-determination itself does not justify a valid claim to the disputed territory. This article, against conventional wisdom, argues that the opposition is superficial. The real problem lies within the notion of self-determination itself. Self-determination contains within it two opposite faces: one breeds separatist movements; the other supports unification and territorial sovereignty. Historically, self-determination grounded both union and separation in the rise of the nation-state; secessionist self-determination only came into play when epochal wars had weakened the sovereignty of the parent state. Conceptually, the ambiguity of self-determination makes defining the 'self' a daunting task for the law, especially when both the parent state and the seceding group make national claims.

Keywords: Self-Determination, Secession, Nationalism, Territorial Sovereignty, International Law.

Self-determination is merely the statement of a problem and not the solution of it.

— Arnold Toynbee¹

The twentieth century bias against political divorce, that is secession, is just about as strong as the nineteenth century bias against marital divorce.

— Samuel Huntington²

I. Introduction

From Scotland to Crimea, the specter of secession haunts the world again. Since the American Civil War, secession has troubled the world, sometimes violently.³ In the mean-

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1 AJ Toynbee, 'Self-Determination' (1925) 484 *Quarterly Review* 317, 317-38.

2 As quoted in N Stultz, *Transkei's Half Loaf: Race Separatism in South Africa* (Yale University Press 1979) 4.

3 D Doyle, *Introduction to Secession as an International Phenomenon* (Don Doyle ed, University of Georgia Press 2010) 1: 'Secession has left a bloody trail that runs through nearly every part of the globe. The very word "secession" is fraught with contested meaning. The term has been deliberately employed by its proponents to connote peaceful and legitimate withdrawal from an existing state and by its opponents to connote treasonous rebellion interfering with the unity of a state!'. R Premdas, 'Secessionist Movements in Comparative Perspective' in Premdas, de Samarasinghe & Anderson (eds), *Secessionist Movements in Comparative Perspective* (Continuum International Publishing Group Ltd 1990) 12-13:

time, it has been justified by various political and legal theories. When the Southern states tried to secede from the American Union in 1860, the principle of consent and the right to revolution was invoked.⁴ In the 20th century, however, ethnic groups that attempt 'political divorce'⁵ usually turned to the principle of national self-determination, the claim that every people/nation has the right to determine its own political status, including independent statehood.⁶ National self-determination was the leading idea in modern disunion of states in the wake of World War I and decolonization,⁷ as well as numerous secessionist movements lacking political might and international assistance.⁸ The 20th century witnessed the codification of self-determination in post-war international legal instruments.⁹

'Bloodshed, chaos and suffering tend to accompany the birth of the secessionist child. It is likely to be illegitimate, spawned in conspiracy and the result of rape. The mother country must be dismembered. Maimed fractions must now become healthy wholes. ...Prolonged struggle demoralises all sections in the conflict equal, polarises and demoralises nearly all members, creates a garrison mentality, cripples democratic institutions, breeds fanaticism and helplessly accepts a distorted existence as normal and inevitable!)

- 4 SC Neff, *Justice in Blue and Gray: A Legal History of the Civil War* (Harvard University Press 2010) 7: ('The supporters of the Confederacy adamantly maintained that the secession of the Southern states in 1860-1861 was a lawful act. This insistence was rooted in a particular view of the legal nature of the federal union ... that the Union was, in essence, an ongoing contractual arrangement between the states. Flowing logically from this core belief was the conclusion that each state possessed a legal right to dissolve the contract if it was breached by other states parties.') WW Freehling, *The Road to Disunion: Secessionists Triumphant 1854-1861* (OUP 2007) 346-47 ('Disunionists needed ... an inspiring justification of a right to secede, one that aroused cheers even among anti-secessionists. In the tradition of 1776—in the (white) people of any single state's natural right to withdraw consent to be governed—disunionists found their stirring state's rights dogma.') JM McPherson, *Battle Cry for Freedom: The Civil War Era* (OUP 2003) 240: ('Those southerners [mostly conditional unionists] who found [the theory of lawful secession] a bit hard to swallow could fall back on the right of revolution').
- 5 Contemporary liberal theories usually analogize secession of a group from a state to marital divorce between two individuals. With such an analogy, a group suffering injustice in a state can secede just as a battered spouse has a right to divorce. Similarly, a nation whose territory was involuntarily annexed to another state can reclaim its territorial right, just as a person can regain independence from a compelled marriage. See A Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Westview Press 1991); RE Ewin, 'Peoples and Secession' (1994) 11 *Journal of Applied Philosophy* 2, 226. In his first Inaugural Address, Abraham Lincoln famously opposed the analogy by noting the difference between political separation and marital divorce famously: Physically speaking, we cannot separate. We cannot remove our respective sections from each other, nor build an impassable wall between them. A husband and wife may be divorced, and go out of the presence, and beyond the reach of each other; but the different parts of our country cannot do this. They cannot but remain face to face; and intercourse, either amicable or hostile, must continue between them. Is it possible then to make that intercourse more advantageous, or more satisfactory, after separation than before? The First Inaugural Address, (4 March, 1861), in 4 *Collected Works of Abraham Lincoln* (RP Basler ed 1953) 269; see also Lincoln's Second Annual Message to Congress (1 December, 1862), in 5 *Collected Works of Abraham Lincoln*, 527-28. For a general critique of the analogy between secession and divorce, see H Aronovitch, *Why Secession is Unlike Divorce* (2000) 14 *Public Affairs Quarterly* 1, 27-37.
- 6 H Hunnum, 'Rethinking Self-determination' (1993-1994) 34 *Virginia Journal of International Law* 2: ('separation is often justified by invoking the right of self-determination').
- 7 See *infra*.
- 8 L Chen, 'Self-Determination as a Human Right', in Reisman & Weston (eds), *Toward World Order and Human Dignity: Essays in Honor of Myres S Mcdougal* 198, 200 (The Free Press 1976; 198, 200).
- 9 Both the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights, for example, enshrine the right to self-determination in their first articles. International Covenant on Civil and Political Rights, GA Res 2200A (XXI), 21 UN GAOR Supp (No 16) at 52, UN Doc A/6316 (1966), 999 UNTS 171, entered into force 23 March 1976. International Covenant on Economic, Social and Cultural Rights, GA Res 2200A (XXI), 21 UN GAOR Supp (No 16) at 49, UN Doc A/6316 (1966), 993 UNTS 3, entered into force 3 January, 1976.

Arguably, national self-determination had become a right in international law, not just a political principle.¹⁰

As a legal right, can self-determination justify secession outside of the context of decolonization?¹¹ Positive international law generally says 'no': it neither supports nor opposes secession,¹² and secession does not constitute a right in international law.¹³ In the heyday of self-determination, if grounded a wave of secession in decolonization. Now international law tends to restrict its scope by distinguishing between two forms of self-determination: internal and external — while the former means group autonomy within a state, the latter means secession and independence.¹⁴ External self-determination is exceptional: only 'oppressed peoples, the ones whose basic rights are not being respected by the mother state and the ones who are often subject to heinous human rights abuses' can enjoy 'a right to external self-determination' as 'a right to remedial secession and independence.'¹⁵ In other words, secessionary self-determination applies only as a remedial, not primary, right for oppressed peoples in extreme situations.¹⁶ It seems that before

10 J Summers, *Peoples and International Law* (2nd edn, Martinus Nijhoff 2013) 70-78.

11 There is a long-time debate about whether non-decolonization secession can be justified by self-determination. See JI Charney, 'Self-Determination: Chechnya, Kosovo, and East Timo' (2001) 34 *Vanderbilt Journal of Transnational Law* 455, 457.

12 J Crawford, *The Creation of States in International Law* (2nd edn, OUP 2007) 390: Secession is 'neither legal nor illegal in international law, but a legally neutral act the consequences of which are regulated internationally.'

13 AP Rubin, 'Secession and Self-Determination: A Legal, Moral, and Political Analysis' (2000) 36 *Stanford Journal of International Law* 253, 259; C Tomuschat, 'Secession and Self-Determination,' in M Kohen (ed), *Secession: International Law Perspectives* (CUP 2006) 42.

14 K Senaratne, 'Beyond the Internal/External Dichotomy of the Principle of Self-Determination' (2013) 43 *Hong Kong Law Journal* 463, 496 ('[T]he right to self-determination in international law is a synthesis of the right to 'internal self-determination' and the right to 'external self-determination'. In broad terms, the former concerns the right of peoples within the State to form a democratic government (and therefore concerns their 'internal' status), while the latter is concerned with their right to choose the 'external' status or character of the State.'). M Sterio, 'On the Right to External Self-determination: 'Self-istans,' Secession, and the Great Powers' Rule' (2010) 19 *Minnesota Journal of International Law* 1, 146, 47 ('[C]ourts and scholars came up with two different forms of self-determination: internal versus external. The former potentially applies to all peoples, and signifies that all peoples should have a set of respected rights within their central state. ... The latter applies to oppressed peoples, the ones whose basic rights are not being respected by the mother state and the ones who are often subject to heinous human rights abuses. Such oppressed peoples, in theory, have a right to external self-determination, and external self-determination signifies that such peoples have a right to remedial secession and independence'). Regarding the secession of Quebec, the Canadian Supreme Court interprets the right to self-determination in terms of the internal/external distinction. *Reference re: Secession of Quebec*, DLR 161 (1998) 4th Series, para 126. The distinction is also invoked by the separate opinions of two judges in the ICJ's Kosovo Advisory Opinion in 2010. See Cañado Trindade, Separate Opinion, *Kosovo* (Advisory Opinion), ICJ (2010) 596-597, para 184; Judge Yusuf, *ibid* 621-622, paras 9-10.

15 M Sterio (n 14) 147.

16 For the remedial theory of secession, see A Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (OUP 2004); AH Birch, *Nationalism and National Integration* (Routledge 1989) 64-66; AH Birch, 'Another Liberal Theory of Secession' (1984) 32 *Political Studies* 596; J Berg, 'The Right to Self-Determination' (1991) 5 *Public Affairs Quarterly* 211; R Howse and K Knop, 'Federalism, Secession, and the Limits of Ethnic Accommodation: A Canadian Perspective' (1993) 1 *New Europe Law Review* 269, 269-320; MP Scharf, 'Earned Sovereignty: Judicial Underpinnings' (2003) 31 *Denver Journal of International Law and Policy* 373, 381. Other scholars defend secession as a primary right, they argue that, every group or people has a right to secede from a state, regardless of their treatment by that state. See CH Wellman, *A Theory of Secession* (CUP 2005); D Philpott, 'In Defense of Self-Determination' (1995) 105 *Ethics* 2; H Beran, 'A Liberal Theory of Secession,' (1984) 32 *Political Studies* 21. For a summary of the literature of the normative debate over secession, see A

the sovereign state 'declines precipitously'; remedial, secessionary self-determination 'is most unlikely to become normal rather than exceptional' in international law.¹⁷

The reluctance of international law to recognize a primary right to secessionary self-determination has a realist consideration. Just as Robert Lansing, United States Secretary of State under President Woodrow Wilson, famously said: 'The phrase [national self-determination] is simply loaded with dynamite. It will raise hopes which can never be realized'.¹⁸ The general recognition of secessionary self-determination threatens the international order by de-stabilizing state borders.¹⁹ In 1970, UN Secretary-General U. Thant said, 'The United Nations will never accept the principle of secession of a part of its Member states'.²⁰ Along with this realist position of the UN, state practice generally did not allow unilateral secession.²¹

Mirroring the practice, academic discussions on national self-determination and secession are usually concerned with the opposition between national self-determination and territorial sovereignty, both of which are enshrined principles in postwar international law.²² This conventional account, however, is not unchallenged. Legal scholarship has found the opposition to be superficial and unhelpful in understanding the problem of secession.²³ Secession, accordingly, involves not only identifying a distinct 'people', but also a territorial dispute.

Following the trend of reflecting upon conventional understanding, this article argues that secessionary self-determination is unacceptable to international law not only because of conflict over territory, but also because of the internal, conceptual conflict within the notion of self-determination itself: national self-determination has both centripetal and centrifugal dimensions. The centripetal dimension of national self-determination consecrates, rather than challenges, territorial integrity in postwar international law. National self-determination and territorial sovereignty are not colliding principles, but rather reinforcing ones. It is the ambiguity of national self-determination itself that makes secession

Pavković & P Radan (eds), *Creating New States: Theory and Practice of Secession* (Routledge 2007) 199-220.

- 17 B Kingsbury, 'Reconstructing Self-Determination: A Relational Approach' in Aikio Scheinin (ed) *Operationalizing the Right of Indigenous Peoples to Self-Determination* (Institute for Human Rights, Abo Akademi University 2000) 23 ('The remedial human rights justification for self-determination, while persuasive in some cases, is most unlikely to become normal rather than exceptional unless the sovereignty and legitimacy of states declines precipitously').
- 18 R Lansing, *The Peace Negotiations, A Personal Narrative* (Houghton Mifflin Company 1921) 97.
- 19 The UN has held such a view since its founding. While the principle of 'self-determination of peoples' is referred to in the UN Charter, the Charter also affirms the sanctity of territory integrity. The 1970 UN Declaration on Principles of International Law Concerning Friendly Relations opposes 'any action aimed at the partial or total disruption of the national unity and territorial integrity of any other state or country'. Declaration on the Granting of Independence to Colonial Countries and Peoples, GA Res 1514 (XV), 15 UN GAOR, Supp (No 16) 66 UN Doc A/4684 (14 Dec 1960). For discussion, see A Heraclides, *The Self-Determination of Minorities in International Politics* (Routledge 1991) 21.
- 20 As quoted in R Emerson, 'Self-Determination' (1971) 65 *American Journal of International Law* 459, 46.
- 21 Between 1947 and 1991, apart from decolonization, the independence of Bangladesh from Pakistan was the only case of successful secession. Large waves of secession occurred after the Cold War, yet most of the secessions were actually the dissolution of states like the Soviet Union, Yugoslavia, and Czechoslovakia. See *infra*.
- 22 A Cobban, *The Nation State and National Self-Determination* (Collins 1969) 136; J Castellino, 'Territorial Integrity and the "Right" to Self-Determination: An Examination of the Conceptual Tools' (2008) 33 *Brooklyn Journal of International Law* 503.
- 23 L Brilmayer, 'Secession and Self-Determination: A Territorial Interpretation' (1991) 16 *Yale Journal of International Law* 177, 179.

so problematic in international law. Secession, therefore, only becomes legitimate when the state's self-determining sovereignty has already been weakened by internal or external forces.

The argument takes the following form. Part I demonstrates that generally, secessions, although numerous and justified by national self-determination, occurred only after epochal worldwide wars — World War I, World War II, and the Cold War — had undermined or weakened multinational states. Nationalism, which grounded the principle of self-determination, was employed by both centralizing state-building processes and separatist movements. Part II describes what I call 'the dialectic' of the nation-state founded on the principle of national self-determination. National self-determination is an ambiguous concept that can legitimize both unification and separation; it can justify secession by legitimizing national rights and delegitimize secession by grounding territorial integrity. Part III deals with the role of law in responding to claims of self-determination. Legalization of self-determination in international law does not eliminate its contested, indeterminate nature. Defining the 'self' in 'self-determination' is a highly difficult task because national identity is a fluid, vague, and ambiguous political construct. Moreover, as a practical matter, international law post WWII has restricted secessionary self-determination to exceptional situations. In normal situations, it transposes self-determination into minority rights. Both the indeterminacy and exceptionality of self-determination render secession an extra-legal, political practice, despite the 20th-century codification of national self-determination.

II. Secession, National Self-determination, and Epochal Wars

Although self-determination is often traced far back to the French Revolution in the late 18th century,²⁴ its contemporary form — national self-determination — was invented in the early 20th century. Before examining the nature of self-determination, it is useful to look back on how it fared in the 20th century.

The creation of new states helped to define the 20th century. There were three great moments of state creation. The first was the collapse of the Ottoman, Romanov, and Habsburg Empires after World War I, when secession, justified by invoking the principle of self-determination, ended dynastic empires and created nation-states. The second was post-WWII decolonization. With self-determination written into the UN Charter, secession dismantled colonial empires. The third was the post-Cold War disunion of states: except

24 D Ronen, *The Quest for Self-Determination* (Yale University Press 1979) 1 ('The French Revolution was not the first revolution in human history, but it embodied forcefully the ideas and aspirations of former revolutions, and its impact on institutions and political thought was lasting. By proclaiming the principle of popular sovereignty, the revolution altered the then prevailing conception of the state; the divine right of kings was not only discredited, as it had been in England since the beginning of the eighteenth century, but was also replaced by the divine right of the people'); AR Sureda, *The Evolution of the Right of Self-Determination* (Sijthoff 1973) 17 ('The history of self-determination is bound up with the history of the doctrine of popular sovereignty proclaimed by the French Revolution: government should be based on the will of the people, not on that of the monarch, and people not content with the government of the country to which they belong should be able to secede and organise themselves as they wish. This meant that the territorial element in a political unit lost its feudal predominance in [favor] of the personal element: people were not to be any more a mere appurtenance of the land').

for Eritrea, all new states emerged from the breakup of socialist states: the Soviet Union, the Yugoslav Federation, and Czechoslovakia.

One cannot understand these moments of 20th-century state creation without understanding the immediate historical antithesis-empires.²⁵ Empires, land-based or maritime, reigned over much of the world at the beginning of the 20th century. Dynastic monarchy still dominated Europe, with the significant exception of the French Republic. Many tracts of land in Asia and Africa were European colonies — the 'scramble for Africa' that began in the 1880s had just been completed in 1905.²⁶ Some prior nationalist movements did challenge empires, yet secession was not on their agenda. Intelligentsia within Eastern European empires, for example, generally wanted no more than cultural autonomy, particularly in the form of the use of their own language.²⁷ Against such a background, it was generally assumed that territorial annexation would follow World War I; the right of conquest in traditional international law would reappear as in the aftermath of previous wars.²⁸ Indeed, for a national group, joining an imperial state was almost necessary: since the threat of conquest still loomed, small nations were susceptible to annexation by big empires.

Historically, the introduction of nationalism into state politics was the consequence of earlier imperial projects. It is commonplace to contrast the nation-state and the imperial state, as if empires defied nationalism. In fact, late imperial states 'exalted nationalism and claimed it for themselves'.²⁹ Responding to the rising popular nationalism during the second half of the 19th century, dynastic empires employed nationalism to foster nations' loyalty to the state in two ways. First, reigning dynasties 'naturalized' themselves as representative of the nations they ruled. By the mid-19th century, all the dynasts had started to use national vernaculars as official state languages.³⁰ The Habsburgs began to speak German, the Ottomans Turkish, and the Romanovs Russian. Fearing that the ground of authority in the divine rights of kings was weakened by the advancement of capitalism and science, they now resorted to the principle of nationality. Second, some empires adopted policies aimed at building a unified nation. Rudolf of Austria, one-time heir to Emperor Franz Josef of the Austria-Hungarian Empire, for example, proposed to his father an ethnographic study in order to foster a national consciousness of multiple ethnic groups.³¹

More intensive and violent policies were carried out in the Czarist Empire. The Romanov dynasty spared no effort in building an 'official nationalism', a process known as 'Rus-

25 In this article, I use empires and imperial states interchangeably. Empire is a historical form of the state, that is the imperial state.

26 A Esler, *The Western World: A Narrative History* (2nd edn, Prentice Hall College Division 1997) 578.

27 O Bauer, *The Question of Nationalities and Social Democracy* (first published 1924, JO Donnell tr, 2nd edn, University of Minnesota Press 2000).

28 S Norman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Clarendon 1996) 135.

29 P Bobbitt, *The Shield of Achilles: War, Peace, and the Course of History* (Knopf 2002) 570.

30 B Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso 1991) 85.

31 Rudolf wrote: 'The ... Monarchy still lacks a great ethnographic work which ... shall ... present a comprehensive picture of our Fatherland and its race of peoples... The study of the peoples living within the boundaries of this empire ... is ... of practical use in the development of united patriotism. By the growing recognition of the qualities and characteristics of the single ethnographical groups and of their mutual and material dependence, that feeling of solidarity which is to unite all the peoples of our Fatherland must be strengthened'. As quoted in A Wheatcroft, *The Habsburgs: Embodying Empire* (Penguin 1996) 279-280.

sification'. At the end of the nineteenth century, for example, Russian was made the compulsory language in schools, public and private, in the Baltic German-speaking area.³² In a word, before nationalism was invoked to justify secession, it was commonly used by empires for their unifying projects. Nationalism actually facilitated the modernization of the dynastic state.³³

Once unleashed, nationalism easily escaped its patriotic version. It became a vehicle for separation. Suddenly the old order began to collapse. The idea of national self-determination, as a centrifugal variant of nationalism, emerged in the 20th century as its critical conceptualization. The wine of nationalism that had been brewed by politicians and intellectuals with the help of ethnographers and political theorists during the 19th century now began to bubble. The moment when separationist nationalism triumphed in the international arena was at the end of World War I, although that was neither predictable nor intended at the start of the war by the future victors.³⁴ The old principles of composite kingly states that survived republican revolutions and nationalist movements in the 18th and 19th centuries could not survive the fall of dynastic empires. The new principle of nationality brought both changes and challenges to international society.

A. Post-WWI Settlement

The end of World War I brought a huge change to the world.³⁵ The breakup of the Habsburg, Hohenzollern, Romanov, and Ottoman Empires marked the fall of dynastic, composite states and the rise of a new form of the state — the nation-state.³⁶ Separatist events before the War also forebode the coming of the nation-state: Norway seceded from Sweden in 1905; Ireland did the same from Britain four years later.³⁷ Dynastic titles for territorial acquisition became invalid.³⁸ Territory and people, under the new notion of na-

32 Anderson (n 30) 87.

33 We can better appreciate the imperial use of nationalism to strengthen its legitimacy through Nietzsche's critique of the imperial state: somewhere there are still peoples and herds, but not where we live ... here there are states. State? What is that? ... I shall speak to you about the death of peoples. State is the name of the coldest of all cold monsters. Coldly it tells lies too; and this lie crawls out of its mouth: 'I, the state, am the people.' This is a lie! ... This sign I give you: every people speaks its language of good and evil, which the neighbor does not understand. It has invented its own language of customs and rights. But the state tells lies in all the languages of good and evil; and whatever it says, it lies — and whatever it has it has stolen. FW Nietzsche, 'Thus Spake Zarathustra' in Kaufmann (ed, tr) *The Portable Nietzsche* (Viking Press 1954) 160-161.

34 E Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality* (CUP 1992) 131.

35 M Koskeniemi, 'National Self-Determination Today' (1994) 43 *International and Comparative Law Quarterly* 241, 254 (The old imperial state system 'was ... challenged by Lenin's famous decree of 1918 and the 14 points that Wilson brought in his suitcase to the Paris peace negotiations at the end of that same year. The break-up of the four great empires — the Habsburg, Hohenzollern, Romanov and Ottoman — seemed, for a brief moment after 1918, to have created the possibility of a realisation of national self-determination in its romantic variant').

36 Anderson (n 30) 113 ('The First World War brought the age of high dynasticism to an end. ... From this time on, the legitimate international norm was the nation-state, so that in the League even the surviving imperial powers came dressed in national costume rather than imperial uniform'). The imperial regime was abandoned even before the War in many other places like the War in Portugal (the October Revolution in 1910) and China (the Xinhai Revolution in 1911).

37 Bobbitt (n 29) 579.

38 WG Grewe, *The Epochs of International Law* (Michael Byers tr, De Gruyter 2000) 627 ('[I]n the democratic climate of the inter-war period, it was clear that [titles for the acquisition of territory which corresponded to the principles of dynastic succession] had died').

tionalism, were no longer thought to be the private possession of the king.³⁹ The people were to become the master of their own territories. Ethnic nationalism had developed in the later 19th century. Now, that idea was used to support a political idea of the national self-determination, which became the basis of the new type of state — the nation-state.⁴⁰

Secession played a leading role in amplifying national self-determination and in creating the nation-state as the paradigm of legitimate political organization. New states were created out of the defeated empires. From the Russian Empire, Finland, Estonia, Lithuania, and Latvia became independent. Poland and Czechoslovakia gained independence from the Austro-Hungarian Empire. Yugoslavia, Romania, and Bulgaria came into being from the debris of the Ottoman Empire.

Post-WWI secessions were generally justified by the principle of national self-determination — an uneasy mix of ethnic nationalism and democratic self-determination, denoting both self-rule against alien rulers and self-government against despotic kings.⁴¹ Originally, the principle of self-determination flowed from the republican idea of self-government and civic virtues, invented during the Enlightenment and vindicated by the French and American Revolutions.⁴² Not until after WWI was this idea of democratic legitimacy widely linked to the 19th-century idea of nationalism. For example, in the 19th century, Italy was united not by plebiscite, but by nationalist state-building.

Woodrow Wilson was the principal figure responsible for spreading the principle of national self-determination at the beginning of the 20th century.⁴³ Wilson went to Paris to make democracy the basis of a new international order.⁴⁴ Self-determination, for Wilson, followed the principle of the consent of the governed.⁴⁵ It meant not only independent statehood but also internal self-government through democratic, free elections. Most importantly, the people, as the pre-political nation, should choose their sovereigns as well as their government leaders. For Wilson, nationalist claims reflected the quest for demo-

39 James Mayall, 'Sovereignty, Nationalism, and Self-Determination' (1999) 47 *Political Studies* 474, 476 ('It was no longer possible to defend the state as a private possession of particular individuals or families. But if prescription was out, consent had to be in; ownership of the state, in other words, has to be transferred to the people').

40 Cobban (n 22); Bobbitt (n 29) 402 ('Self-determination presumably applied to the Irish as well as to the Indians, Algerians, and Indochinese. ...What made these aims so objectionable was not simply their astonishing scope, it was that at their very basis they presumed a relationship between the State and its people that was inconsistent with European ideas of sovereignty dating back to the origin of the modern State in the fifteenth century').

41 E McWhinney, *Self-Determination of Peoples and Plural-Ethnic States in Contemporary International Law: Failed States, Nation-Building and the Alternative, Federal Option* (Martinus Nijhoff Publishers 2007) 2.

42 Brilmayer (n 23) 179.

43 TA Bailey, *Woodrow Wilson and The Lost Peace* (The Macmillan Company 1944) 332 ('While the idea of self-determination was not original with Wilson, he was doubtless attracted to it because it was so closely in harmony with American tradition as embodied in the Virginia Bill of Rights and the Declaration of Independence. It is also worth noting that Wilson was a Southerner, reared in war-ravaged Georgia, and the war fought by the South was one of the most perfect examples of self-determination in modern history').

44 Hobsbawm (n 34) 133 ('At all events, no equally systematic attempts has been made before or since, in Europe or anywhere else, to redraw the political map on national lines').

45 Bobbitt (n 29) 395 ('Wilson explained why the United States joined WWI: 'But the right is more precious than peace, and we shall fight for the things which we have carried nearest to our hearts — for democracy, for the right of those who submit to authority to have a voice in their own governments, for the rights and liberties of small nations, for a universal dominion of right by such a concert of free people as shall bring peace and safety to all nations and make the world itself at last free'.)

cratic government.⁴⁶ Nationalism was the practical, visible side of democratic self-determination. Gone was the ancient regime in which peoples were 'bartered about from sovereignty to sovereignty as if they were mere chattels and pawns in a game'.⁴⁷ In the new international order, Wilson envisaged: 'There shall be no annexations, no contributions, no punitive damages. ... Every territorial settlement involved in this war must be made *in the interest and for the benefit of the populations concerned*, and not as a part of any *mere adjustment or compromise of claims amongst rival states*'.⁴⁸

Wilson envisioned a new world based on democratic self-determination and equality of states, with an association of self-determining states to protect mutual independence and territorial integrity — the League of Nations.⁴⁹ He aspired to liberate the world from empires and create a new order of nation-states. Wilson's 'Fourteen Points', as Professor Philip Bobbitt points out, resembled Lincoln's Emancipation Proclamation.⁵⁰ To apply democratic principles to international politics and create a proper relation between a state and its nation was quite novel to European powers: 'the Allies ... shared a European conception of sovereignty that held the State's authority to have come by descent from its predecessors, and not to arise directly from its people. Even democratic states like Britain and France held sovereignty to be distinct from elections...'.⁵¹

Like Wilson, Lenin too was an apostle of self-determination from the socialist side. Leninist self-determination was also linked to ethnic nationalism, but pointed beyond to world socialism. For Lenin, self-determination had three components: first, every ethnic or national group has the right to determine their own fate; second, self-determination applies to territorial change following interstate wars; third, self-determination aims at the liberation of all colonial peoples. Nations, Lenin thought, should first secede from capitalist empires through violent revolutions, then join into a federation of socialist republics, and finally achieve 'the inevitable integrations of nations'.⁵² Accordingly, secession is a transitional moment in a move towards universal socialism.⁵³ National liberation and social revolution would go hand in hand. The leftist vision of international order put universal socialism in place of the League of Nations.

46 Woodrow Wilson, War Aims of Germany and Austria (11 Feb 1918), in Baker and Dodd (eds), *The Public Papers of Woodrow Wilson: War and Peace* Vol 2 (Harper 1927) 177, 182-183 ('National aspirations must be respected; peoples may now be dominated and governed by their own consent. ... [A]ll well-defined national aspirations shall be accorded the utmost satisfaction that can be accorded them without introducing new or perpetuating old elements of discord and antagonism that would be likely in time to break the peace of Europe and consequently the world').

47 *ibid* 182.

48 As quoted in Bobbitt (n 29) 403 (emphasis added).

49 *ibid* 394-95 ('America went to war in 1917 in order to create a system of nation-states whose legitimacy would be based on democracy and self-determination. Within this system all states were to be legally equal, because Wilson and House believed that such a system would prevent future wars against the democracies. ... The establishment of the League of Nations came to be America's principal war aim because it gave an institutional structure to these ideas').

50 *ibid* 400 ('The Fourteen Points, which some historians have ranked with the Emancipation Proclamation in importance, proposed a world order of parliamentary nation-states that was significantly at variance with the order of state-nations but that also excluded fascist and communist nation-states').

51 Bobbitt (n 29) 395.

52 VI Lenin, 'Theses on the Socialist Revolution and the Right of Nations to Self-Determination' in *Select-Ed Works* 160 (Lawrence and Wishart 1969) ('In the same way as mankind can arrive at the abolition of classes only through a transition period of the dictatorship of the oppressed class, it can arrive at the inevitable integration of nations only through a transition period of the complete emancipation of all oppressed nations, i.e. their freedom to secede').

53 A Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (CUP 1995) 18.

The ideal in both its Wilsonian and Leninist forms was frustrated by reality. Defeated states, rather than their victors, were subjected to the application of the principle of national self-determination⁵⁴ and even that application was far from ideal. First, democratic consent played little role in state creation. The Wilsonian idea of self-determination held that state borders should be drawn by a democratic test of opinion or a referendum. Yet practically, no referenda or plebiscites were held in of post-WWI state creation or territorial change.⁵⁵ The proposal to decide territorial change by democratic consent ultimately failed, 'not merely because of the irreconcilable territorial claims in central and eastern Europe after the first World War, nor because the great powers had no intention of testing their legitimate title in their own possessions by this method',⁵⁶ but was also because statesmen at the Paris Peace Conference found it difficult to define the 'self' in 'self-determination' in a consistent fashion.⁵⁷ Without an agreed-upon-'self', there can be no self-determination.

Second, although new state borders were supposed to follow national lines,⁵⁸ practice turned out to be far from ideal.⁵⁹ Both Poland and Czechoslovakia, created from the Polish and the Czech nations, included a substantial number of Germans; Yugoslavia did not achieve a national self-identity as Yugoslav, since Croats, Serbs, and Slovenes had separate identities; Slovaks did not see themselves as Czechs; German, Slovene, and Croat minorities in Italy took the place of Italian minorities in the Habsburg Empire.⁶⁰ These arrangements tended to involve strategic considerations. The victors hoped that new states would be created in such a way to serve as potential enemies of the defeated states. In other words, state creation was guided by an intent to weaken the adversaries in future wars.⁶¹ For example, 'Germany and Austria were prevented from amalgamating with the Sudetenland, Alsace-Lorraine, and each other ... despite the fact that, of all the peoples of Central Europe, the Germans had the clearest claim to a single state on the grounds of national self-determination'.⁶²

Such a settlement, partly pragmatic and partly strategic, sowed the seeds for future ethnic conflicts within the new nation-states and inter alia for World War II. Post-WWI Europe became a world of nation-states in form, but multinational states in reality; it faced

54 P Hastings, *Between the Wars* (Ernest Benn Ltd 1968) 12 ('the principle of national self-determination was not applied equally to victors and vanquished...').

55 Cobban (n 22) 72; S Wambaugh, *Plebiscites since the World War* (Carnegie Endowment for International Peace 1933) 3-14.

56 Mayall (n 39) 478.

57 As Jennings famously put it: 'On the surface it seemed reasonable: let the people decide. It was in practice ridiculous because the people cannot decide until someone decides who are the people.' Ivor Jennings, *The Approach to Self-Government* (CUP 1956) 56.

58 This phenomenon was not novel. The second great movement in the 19th century decolonization, comprised of the South American Revolutions, encountered the same situation: creole nationalists built their new states along with the provincial borders of the Spanish Empire because they were bounded by these borders and restricted to their home province. See Anderson (n 30) 50-65 (1983).

59 Hobsbawm (n 34) 133 ('Inevitably, given the actual distribution of peoples, most of the new states built on the ruins of the old empires, were quite as multinational as the old 'prisons of nations' they replaced').

60 Think of the partition of India into India and Pakistan, and then the independence of Bangladesh. See Hobsbawm (n 34) 133 ('similar developments were to become even more obvious in many of the states produced by national and colonial liberation, and for similar reasons. The people did not identify with their "nation" in the way prescribed to them by their leaders and spokesmen').

61 Bobbitt (n 29) 576.

62 *ibid.*

the problem of ethnic minorities and risked separatist tendencies.⁶³ Like previous dynastic empires, many new states began to construct official nationalism through authoritarian policies, assimilating various ethnic identities to the national identity of the state, e.g., Kemal's Turkish nationalism. But many minority nations or ethnic groups within such states resisted these policies; they did not imagine themselves as part of such a 'nation'. After 1919, nationalist movements were directed against nominally national, but actually multinational, states.⁶⁴

Alongside the course of imperial disintegration, however, there was an opposite trend of transnational union. Of course, there was the League of Nations. There were also projects of union under the domination of a nation. Thus, there was the French idea of a 'pan-European Organization'. Germany conceived of *Grossraum*. The United States had the idea of a 'Western Hemisphere,' or a 'Pan-American Union'. Japan dreamed of an 'East Asian Welfare Sphere'. But of these dreams, only the Russian one came true. In 1922 the Soviet Union was established, uniting the Russian SFSR, Transcaucasian SFSR, Ukrainian SSR, and Byelorussian SSR. In this move, Russia actually recovered its territorial extent under the Tsarist Empire.⁶⁵ The Soviet Union was founded upon the Leninist socialist idea of self-determination; it created many 'nations' and ethno-linguistic territorial 'national administrative units'.⁶⁶ A member republic's right to secede from the Soviet Union was prescribed in its Constitution, although not put into practice until the Union's collapse.⁶⁷ In fact, the Russian Empire came back with a new face: a socialist empire.⁶⁸

B. Decolonization

After World War II, 'self-determination of peoples' was written into the Charter of the United Nations, the successor of the League of Nations. With this principle enshrined, it was the old maritime empires' turn to be dismembered.⁶⁹ Decolonization in Asia and Africa dismantled the British, French, and Portuguese empires. More than seventy states were created in a short period of history. Again, secession played its role in promoting the nation-state over old-fashioned empires.

63 H Arendt, *Origins of Totalitarianism* (Harcourt, Brace, Jovanovich 1973) 267-290.

64 As Hobsbawm observes ('The main change was that states were now on average rather smaller and the 'oppressed peoples' within them were now called 'oppressed minorities'. The logical implication of trying to create a continent neatly divided into coherent territorial states each inhabited by a separate ethnically and linguistically homogeneous population, was the mass expulsion or extermination of minorities. Such was and is the murderous *reductio ad absurdum* of nationalism in its territorial version, although this was not fully demonstrated until the 1940s. ... The homogeneous territorial nation could now be seen as a [program] that could be realized only by barbarians, or at least by barbarian means. Hobsbawm (n 34) 133.

65 *ibid* 165 ('In 1939-40 the USSR in practice recovered all that Tsarist Russia had lost, except for Finland (which had been allowed to secede peacefully by Lenin) and former Russian Poland').

66 *ibid* 166.

67 Article 17 of the 1936 Constitution of the Soviet Union declared: 'To every Union Republic is reserved the right freely to secede from the USSR'.

68 Anderson (n 30) 108 ('[A] Union of Soviet Socialist Republics[s] stretch is strangely reminiscent of Czardom's').

69 E Hobsbawm, *Age of Extremes: The Short Twentieth Century 1914-1991* (Michael Joseph 1994) 222 ('In fact, by 1970 no territories of any significant size remained under direct administration by the former colonialist powers or their settler regimes ... The imperial era was at an end. Less than three quarters of a century earlier, it had seemed indestructible. Even thirty years earlier, it covered most of the peoples of the globe').

Decolonization came to pass partly because World War II weakened Western imperial control in African and Asian colonies. Focusing on the war, the powers set aside colonial issues. Many African colonies enjoyed temporary *de facto* independence.⁷⁰ Moreover, European powers plagued by the war began to lose their grip on their overseas empires. Some lost their colonies during the war and could not restore their rule afterward.⁷¹ Others were depleted economically by the war; they perceived the maintenance of a colonial empire as a great burden. Colonial peoples came to see that white men and their empires were not invincible, which encouraged their nationalist resistance against empires.⁷² Exploitation before the war and the abandonment during it precipitated decolonization in Africa. Finally, it should be remembered that both the United States and the Soviet Union, the two winners of the war, were hostile to colonialism, at least ideologically. They generally supported anti-colonial movements. Responding to colonial imperialism, they formed an 'unholy alliance'.

Decolonization challenged Western imperial states, but it did not deny the form of the state as created by the West.⁷³ The nationalism that drove decolonization movements was liberation nationalism, not ethnic nationalism as in Eastern Europe after World War I. 'What was important for the liberators was to seize the particular forms of State power ... that had been introduced by colonial rule, not to re-establish whatever tribal or statal entities preceded colonialism.'⁷⁴ The primary task of decolonization was to create territorial states, not to restore pre-colonial, tribal organization. The Marxist leaders of the new states like Angola, Mozambique, and Nicaragua had mostly been educated in Europe; they appealed to principles of sovereignty, territorial integrity, and independence invented by Europeans.⁷⁵ The problem of national self-determination in such a context was not that states were not aligned with nations, but that there were no organized nations at all.

The liberation aspiration of colonial peoples was to gain independent statehood. Independence requires a state and a state requires a defined territory. For the peoples in most of the formally called 'Third World regions', 'the only foundation for such independent states of the twentieth-century type were the territories into which imperial conquest and rivalry had divided them, usually without any reference to local structures.'⁷⁶ In such regions, the 'nation' in 'national self-determination' was defined by territoriality rather than

70 JH Bentley and HF Ziegler, *Traditions & Encounters: A Global Perspective on the Past* (2nd edn, McGraw-Hill 2003) 1114-1117.

71 Hobsbawm (n 69) 216 (1994) ('World War II was unquestionably an inter-imperialist war, and, until 1943, the great colonial empires were on the losing side. France collapsed ignominiously, and many of its dependencies survived by permission of the Axis powers. The Japanese overran what there was of the British, Dutch, and other Western colonies in South-east Asia and the western Pacific. Even in North Africa the Germans occupied what they chose to control up to a few score miles west of Alexandria. At one point the British seriously considered withdrawing from Egypt').

72 *ibid* ('What fatally damaged the old colonialists was the proof that white men and their states could be defeated, shamefully and [dishonorably], and the old colonial powers were patently too weak, even after a victorious war, to restore their old positions').

73 Koskenniemi (n 35) 256 ('Decolonization was not accompanied by a challenge to statehood. ... The call for authentic communal attachment was an ingredient in it but did not determine its essence or its consequences. The attempt to create a 'modern', developed State after the European model was always a stronger legitimating force').

74 *ibid* 255.

75 *ibid* 255-256.

76 Hobsbawm (n 69) 207.

nationality or ethnicity. The principle of *uti possidetis* took precedence over any competing idea of national boundaries.⁷⁷

The particular nature of liberation nationalism also explains the new states' resistance to subsequent, internal secessionist movements. Secessionists took the principle of self-determination very seriously, thinking that it legitimized their own actions. Katanga, Biafra, and Bangladesh are cases in point.⁷⁸ Few of these secessionist movements succeeded.⁷⁹ Movements in Katanga and Biafra were put down violently. The creation of Bangladesh in 1947 was exceptional, for it received sufficient external assistance from India, and no great power intervened on the other side. The independence of Singapore in 1967 was not a result of secession; Singapore was excluded by Malaysia. Insistence on existing borders not only protected the newly emerging states, but was also politically attractive to the major powers during the Cold War, because it limited the threat of international anarchy.⁸⁰

The primary justification for anti-secessionism was territorial integrity. When self-determination was written into the UN Charter, territorial integrity was also enshrined in international law.⁸¹ Ethnic groups within colonial territories were thereby denied the right of secessionist self-determination.⁸² The 'salt water' doctrine prevailed: a people have a right of self-determination only when an ocean or a sea separates the secessionists from the metropolitan.⁸³ Thus, self-determination meant decolonization: 'once a people has exercised its right to external self-determination, the right expires'.⁸⁴ Although decoloni-

77 Mayall (n 39) 490: ('Since 1945, the doctrine [of *uti possidetis*] has been promoted in particular by the African states whose governments feared that conceding the legitimacy of any secession would open a Pandora's Box of claims, from which none of them could escape. The doctrine was therefore built into the foundations of the OAU at an early stage'). See also Frontier Dispute Case (*Burkina Faso v Mali*), 1986 ICJ Report 554 (22 Dec); Resolution on the Inviolability of Frontiers, OAU Doc AGH/Res 16 (I) (1964).

78 Mayall (n 39) 483 ('[O]nly the Biafran case was debated seriously in terms of the substantive meaning of self-determination. The reintegration of Katanga into the Congo was the price the USA was prepared to pay to marginalize Soviet influence within the United Nations peacekeeping operation. The rebellion in East Bengal was often explained by academic analysts in terms of a theory of internal colonialism, but, as we have already noted, it was the Indian army which expelled Pakistan, not the Bangladeshis themselves').

79 Hobsbawm (n 34) 169 ('Outside the former Euro-Soviet red belt, successful secessions since World War II are extremely rare, and peaceful separations virtually unknown').

80 See James Mayall, *Secession and International Society*, in The Ashgate Research Companion to Secession 16 (Aleksander Pavkovic & Peter Radan eds, 2012).

81 See GA, R 1514 (XV), para 6 ('Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.'). David Armitage, The Contagion of Sovereignty 52 *South Africa Hist J*, 17 (2005) ('This is in large part because of the function of territoriality as the condition that links independence to statehood: without a defined territory, there can be no state, and without a state there can be no meaningful independence, runs the equation').

82 See Cassese (n 31) 73.

83 The UN General Assembly's Resolution 1541 (XV) states that the right to external national self-determination is only enjoyed by 'a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it'. See Principles Which Should Guide Members in Determining Whether or Not an Obligation Exists to Transmit the Information Called for Under Article 73E of the Charter, (Principle IV) GA Res 1541 (XV), Annex, (15 Dec 1960). For discussion, see L Berat, *Walvis Bay: Decolonization and International Law* (1990); Patrick Thornberry, 'Self-Determination, Minorities, Human Rights: A Review of International Instruments' (1989), 38 *International & Comparative Law Quarterly* 867, 873-874.

84 *ibid* 73.

zation legitimized nationalism in world politics, international law post-decolonization denied legitimacy to separatist groups outside of the decolonization context.⁸⁵

Decolonization has, therefore, a complicated relationship to the post-WWI moment of self-determination. On the one hand, decolonization continued the unfinished revolution of self-determination begun by the post-WWI creation of new states. Post-WWI secessions ended the dynastic principle: decolonization declared the death of colonialism. Together, they generally put an end to the classic Eurocentric international order, although in each stage the territorial settlement was far from the ideal of matching states with nations. On the other hand, decolonization differed from its predecessor in an important way. In the post-WWI settlement, national self-determination applied to ethnic communities or nations mainly defined by language and culture, while decolonization applied self-determination to the colonial peoples defined by the territorial lines delimited by colonial powers. In the former, the subjects of self-determination were relatively well-established nations; in the latter, the 'selves' were primarily pre-existing colonial political units. The first moment was concerned with the rights of ethnic groups within empires. The second moment opposed the legitimacy of secession by ethnic groups. The factor that defined the 'self' shifted from nationality to territoriality.

Just as after World War I, disaggregation after World War II prompted a reciprocal move toward re-aggregation of states. The old Europe wanted to create something new: European states moved towards unification by establishing the European Coal and Steel Community and the European Economic Community — the beginning of the project of the European Union. More importantly, the unholy alliance between the United States and the Soviet Union against European colonial empires soon gave place to antagonism between the two superpowers and their respective allies. The Cold War began with aggregations of states on an ideological basis: communist v. capitalist, planned economy v. market economy, free speech v. censorship, etc. The Warsaw Pact united the Soviet Union and the states of Eastern Europe; NATO united Western European and North American states. The confrontation between the two unions largely defined the following decades of the twentieth century, in which secessionist aspirations were generally bottled up.⁸⁶

C. Post-Cold War Disunions

Secession had its day again in post-Cold War state creations. With the collapse of the Soviet Union, the idea of separation captivated many ethnic groups within multinational states. All the cases, except for the independence of Eritrea from Ethiopia in 1993, came from Eastern Europe: The dissolution of Czechoslovakia in 1993 and the breakup of Yugoslavia starting in 1991. The post-Cold War secessionist wave in Eastern Europe actually pointed back to the post-WWI territorial disaggregation and aggregation. 'The simplest way to describe the apparent explosion of separatism in 1988-92 is thus as "unfinished business of 1918-21".'⁸⁷

85 L Buchheit, *Secession: The Legitimacy of Self-determination* 58-97 (Yale Univ Press 1978).

86 Mayall (n 80) 15 ('[I]n general, throughout the Cold War, there was widespread antipathy to opening up the domestic political arrangements of sovereign states to outside scrutiny, and even more to any suggestion that the right of self-determination could be claimed by dissatisfied groups in existing states or colonies still awaiting independence').

87 Hobsbawm (n 34) 165.

Among these secessions, the dissolution of the Soviet Union was remarkably peaceful. The Baltic states, with indisputably legitimate territorial claims against conquest in the 1940s, set in motion the dissolution without prompting a military response from Moscow. The Central Asian republics, though at first reluctant, soon joined this trend. Moscow assented to these disunion movements for at least two reasons. First, by the end of the 1980s, the Soviet ideology had lost its charm and Russian identity had resurfaced. Ethnic prejudices, discrimination, and conflicts arose therewith. Many Russians complained that most of the other member republics were better off than Russia itself. The result was a demand to 'cast off ungrateful neighbors'.⁸⁸ Strangely, ethnic antipathy produced a consensual separation. Second, regional political rivalry emerged, and the Party, in the midst of a legitimacy crisis, no longer had the power to control outcomes.⁸⁹

The crisis of the socialist state made these secessions successful. The Soviet Union collapsed because it lost the Cold War. As Eric Hobsbawm observes, 'The changes in and after 1989 were ... essentially not due to national tensions ... but primarily to the decision of the Soviet regime to reform itself.... Nationalism was the beneficiary of these developments but not ... an important factor in bringing them out'.⁹⁰ This point is illustrated by the attitude of the Western powers. When Lithuania declared independence from the Soviet Union, the Western powers refused to recognize it until Moscow had agreed to the secession. They interpreted self-determination as the right of Eastern European states to exit the Eastern Bloc, rather than that of the member republics within the Soviet Union to unilaterally gain independence from it.⁹¹ Only when the Soviet Union began to collapse did they start to treat secessions from the Soviet Union in the same way as those of Central Europe.

The Western powers treated the post-Cold War separations from socialist states as a kind of decolonization, that is, a moment of liberation from 'the Evil Empire'.⁹² They wanted to keep intact the conventional account that secessionary self-determination is only legitimate in decolonization. The separationist wave after the Cold War did resemble decolonization in a certain aspect: New states followed the territorial lines created by the Communist regimes.⁹³ They generally followed the ethno-cultural autonomous region lines created by the Communist Party delineating what were, known as 'national administrative units', or 'nations', such as the Byelorussian and the five Central Asian units (the Kazakh, the Kirghiz, the Uzbek, the Tajik, and the Turkmen).⁹⁴ Similarly, the international commu-

88 V Zaslavsky, 'The Evolution of Separatism in Soviet Society Under Gorbachev', in Lapidus, Zaslavsky, and Goldman (eds), *From Union to Commonwealth: Nationalism and Separatism in the Soviet Republics* 83-5 (CUP 1992).

89 D Horowitz, 'Self-determination: Politics, History, and Law' in Moore (ed), *National Self-determination and Secession* 188 (OUP 1998) 188 ('No longer able to steer a course, Moscow vacillated between attempting to keep the Union together by force and speaking a wholly new language of consent. The decline of the cent[er] enabled people to act on their sentiments and politicians to pursue their rivalries. As a consequence, what might have been a series of cataclysmic secessionist wars became instead a dissolution by something close to mutual consent').

90 Hobsbawm (n 34) 167.

91 Mayall (n 39) 483.

92 *ibid* 482.

93 Hobsbawm (n 34) 166 ('the definition of 'the nation' and its aspirations ... automatically created the fracture lines along which multinational units constructed by communist states were to break, just as the colonial frontiers of 1880-1950 were to form the state frontiers of post-colonial states, there being no others available').

94 *ibid*.

nity strove to transform the federal boundaries of former Yugoslavia into boundaries of the new states.⁹⁵

Looking at the three great moments of secession in the 20th century, we can summarize some common points. First, secession was generally justified under a claim of national self-determination. Yet national self-determination was never innocent. It was invoked in geopolitical contexts and was used for strategic ends. Both Wilson and Lenin recognized the political use of nationalism to achieve transnational political visions.

Second, successful secessions almost entirely resulted from the aftermath of epochal wars that collapsed or weakened the relevant states. It required some sort of external shock to the system of states; it was not itself a matter of reform along progressive lines.

Third, along with these secessionist waves were corresponding phenomena of territorial aggregation in new forms. Secession is always accompanied by efforts toward transnational union.

Fourth, existing territorial settings, rather than democratic consent or ethnic nationality, determined the boundaries of the new states created by secessions. The project of identifying nation with territory replaced that of aligning nation with territory. To fully understand these points drawn from historical accounts, it is necessary to inquire further into the nature of national self-determination and the nation-state that follows it.

III. The Ambiguity of Self-Determination and the Triumph of Territoriality

Post-WWII developments of international law and decolonization created a new world order.⁹⁶ Undergirding the 20th-century international order was the principle of national self-determination. With the triumph of self-determination, the old right of conquest was deemed to be illegitimate, and the principle of territorial integrity was firmly established. The UN Charter, for example, declares: 'All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations'.⁹⁷ This proposition is inseparable from the purpose of the UN Charter: 'To develop friendly relations among nations based on respect for the principle of equal rights and

95 See eg, The Dayton Peace Accords, Ohio History Central, 1 July 2005. <<http://www.ohiohistorycentral.org/entry.php?rec=1640>> accessed 14 September 2016.

96 Professor Philip Bobbitt of Columbia Law School compares the 20th century with the 15th century as follows: 'In the fifteenth century the constitution for the society of states provided rules for the conquest and annexation of territory and the colonization of the New World; it governed how nonstate actors, like the papacy and the Holy Roman Empire, were to interact with the society of states; it determined which territorial polities qualified as legitimate states and what rules governed dynastic succession; and, above all, it specified the relationship between the sectarian allegiance of the princely state and the religious practices of its people. Similarly, the constitution for the society of states in the twentieth century forbade the annexation of territory by conquest; provided for a process of decolonization; determined how the League of Nations and the Permanent International Court of Justice, or their successors, the United Nations and the World Court, are to interact with the society of nation-states; fixed what territorial polities are entitled to recognition within that society; determined what rules govern treaty succession; and, finally and most importantly, set the rules for the self-determination of national peoples'. Bobbitt (n 29) 484-485.

97 UN Charter, Article 2.4.

self-determination of peoples ...'.⁹⁸ Besides, the UN states in Resolution 637 A (VII) that 'the right of peoples and nations to self-determination is a prerequisite to the full enjoyment of all fundamental human rights', and 'the State Members of the United Nations shall uphold the principle of self-determination of all peoples and nations'.⁹⁹ In 2007, the General Assembly recognized indigenous peoples as the right-holder of national self-determination.¹⁰⁰ Regional international legal documents also affirm the right to self-determination of all peoples.¹⁰¹

A. The Two Faces of National Self-Determination

The 20th-century commitment to both the principle of national self-determination and that of territoriality can be explained by the nature of national self-determination. Indeed, national self-determination is a protean concept. It supports both separation and aggregation.¹⁰² On the one hand, the principle of national self-determination was the dominant justification for secession in the 20th century. Many nations separated from large, multinational states in order to make their communities sovereign in the form of independent statehood. Thus, national self-determination challenged to existing states that failed to express national identity.

On the other hand, national self-determination has a centripetal dimension. It supports aggregation of populations and territories at a number of levels. At the first level, national self-determination can legitimize existing states' independence and support state patriotism. A state, while containing multiple nations or ethnic groups, now declares itself to be a unified nation.¹⁰³ It endeavors to remake itself according to the nationalist vision; a political community is thereby nationalized.¹⁰⁴ That project can in fact be traced back to Lincolnian nationalism: the construction of a national consciousness within a given state.¹⁰⁵

98 Chapter 1 Article 1 para 2.

99 GA Res 637A (VII) (16 Dec 1952).

100 United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/61/295 (13 Sept 2007), 46 ILM 1013.

101 Final Act of the Conference on Security and Cooperation in Europe, 1 Aug 1975, 14 ILM 1292 (Helsinki Declaration); African Charter on Human and Peoples' Rights, 27 June 1981, 1520 UNTS 217, 245; 21 ILM 58, 59.

102 G Simpson, 'The Diffusion of Sovereignty: Self-Determination in the Post-Colonial Age', (1996) 32 *Stanford Journal of International Law* 255, 262 ('[S]elf-determination has adopted expansionist and disintegrative forms throughout history. It has been used as an imperial doctrine to justify the expansion of the United States through "manifest destiny", the conquests of Napoleonic France and, most notoriously, Hitler's quest for a greater Germany through irredentism. Conversely, its disintegrative forms have been dedicated to the dismantling of Empire into smaller national groupings (eg, the period of Decolonization and the Treaty of Versailles). Often, these two forms co-exist in the same historical moment').

103 Grewe (n 38) 653 ('Former colonial countries ... after acquiring political independence, sought to build a "nation" out of highly heterogeneous populations within the borders left behind by the colonial powers').

104 Anderson (n 30) 114 ('in the [20th-century] 'nation-building' policies of the new states one sees both a genuine, popular nationalist enthusiasm and a systematic, even Machiavellian, instilling of nationalist ideology through the mass media, the educational system, administrative regulations, and so forth').

105 SM Grant ('How a Free People Conduct a Long War: Sustaining Opposition to Secession in the American Civil War', in Doyle (ed), *Secession as an International Phenomenon* 145 (University of George Press 2010) ('[T]he sacrifice, the suffering, and the loss of life were both necessary and divinely ordained' and 'war was a test of American faith, a path to American nationality').

At the second level, national self-determination has an expansionist face. If a nation can integrate diverse ethnic communities, it can also incorporate communities within contiguous states or even those states themselves. Consider irredentism, which aims at 'the retrieval of ethnically kindred people and, their territory across an international boundary, joining them and it to the retrieving state'.¹⁰⁶ National self-determination can become 'national determinism': a national government determines to which nation-state a people or ethnic group belongs, disregarding the apparent will of that people or group.¹⁰⁷ For example, Nazi Germany announced that the people in Alsace-Lorraine were part of the German people and therefore should join Germany; it claimed that both uniting Austria with Germany and acquiring Sudetenland from Czechoslovakia realized the German people's right of national self-determination.¹⁰⁸ Similarly, post-decolonization Morocco denied any attempts for a referendum of self-determination in the Western Sahara, because it believed that the Western Sahara belonged to what it called 'One Moroccan Nation'.¹⁰⁹ A state strives to build a unified nation from within and to incorporate populations and territories from without. Centralizing nationalism includes both integration and incorporation.¹¹⁰

At the third level, national self-determination even has a transnational variant. The idea of national self-determination had been linked to transnational or even supranational visions early in the century: for Wilson, international liberalism; for Lenin, world socialism. National self-determination is akin to transnational ideologies for at least two reasons. First, these global ideologies helped a state to build a unified nation out of local, ethnic communities. Liberalism, for example, helped build the French nation based on the equal rights and liberties of individual citizens. Communism, in spite of its cosmopolitan vision, facilitated the interaction of many non-Western states by downplaying intrastate ethnic divisions — the link binding multiple ethnic groups was the brotherhood of the proletariat. Second, national self-determination serves not only as a new theoretical point of legitimacy, but also as a principle of international politics with strategic potential. This is the reason why secession is always accompanied by aggregation. National self-determination functions as a pathway to transnational unions. Nations leave old empires and join new ones: the Soviet Union and its Eastern Bloc, NATO, and now the European Union, which incorporated former Soviet satellite states after the Cold War.

Behind the centrifugal and centripetal faces of national self-determination are two opposing theories of the modern political community.¹¹¹ Both notions bear upon the relationship between nation and state. One defines the nation as the state. It assumes the state is an artificial community composed of individuals who are linked by law.¹¹² Before the state — in the state of nature — there is no authentic community that could take a political form. This view is redolent of the Hobbesian conception of political society — the Leviathan as 'artificial man'.¹¹³ The implication is that the state can integrate sub-state com-

106 Horowitz (n 89) 183.

107 RB Neuberger, *National Self-determination in Post-Colonial Africa* (Lynne Rienner 1986) 14.

108 *ibid.*

109 *ibid.*

110 Interestingly, this aggregating process involves a disaggregating effort: the expanding state is to subtract part of the people and territory from an adjacent state and add them to itself. It actually utilizes the centrifugal aspect of national self-determination.

111 Here I draw on Koskenniemi (n 35) 249-251.

112 *ibid* 249.

113 T Hobbes, *Leviathan* (first published 1652, Richard Tuck ed, CUP 1996).

munities into political life by granting individuals equal rights and liberties — the process of nation building.¹¹⁴ This notion can be called the 'statist notion of political community'. National self-determination, under this notion, becomes a state's right of self-determination in the external sense, and citizens' constitutional rights to equal participation in national politics in the internal sense.¹¹⁵

The other notion builds upon a romantic, Rousseauian conception of political community, as best articulated by the German philosopher von Herder.¹¹⁶ It takes nationality as an element more fundamental, central, and primary than the formal institutions of the state.¹¹⁷ The authentic national community must be recovered, having been lost in the formal, artificial, and even spiritless state apparatus.¹¹⁸ A state that cannot express the authentic identity of a nation is, therefore, unacceptable and illegitimate. This notion can breed a keen interest in secessionist movements.

The two notions of political community correspond with the distinction between civic and ethnic nationalism.¹¹⁹ In the literature of nationalism, civic nationalism means a belief in common citizenship of a state with defined territory and common allegiance to the law and institutions of that state.¹²⁰ Ethnic nationalism, on the other hand, tends to put at the center of national identity a myth of common biological origins, language, and folklore.¹²¹ Historically, ethnic nationalism began with ethnography in the second half of the 19th century; it built nations, rather than the other way around.¹²² Ethnic nationalism exalts pre-political, authentic, communal identity — based on ethnicity and language — that exists before, beyond, and beneath the state. While civic nationalism tends to unify multiple groups or ethnicities, ethnic nationalism often engenders separatism.

114 Koskenniemi (n 35) 249.

115 TH Marshall, *Citizenship and Social Class* (CUP 1950); J Shklar, *American Citizenship: the Quest for Inclusion* (HUP 1991).

116 JG von Herder, *Reflections on the Philosophy of the History of Mankind* 84 (University of Chicago Press 1968) 84 ('In all the civil establishments from China to Rome, in all the varieties of their political constitutions, in every one of their inventions, whether of peace or war, and even in all the faults and barbarities that nations have committed, we discern the grand law of nature: let man be man; let him mould his condition according as to himself shall seem best Thus we everywhere find mankind possessing and exercising the right of forming themselves to a kind of humanity, as soon as they have discerned it').

117 Koskenniemi (n 35) 250.

118 *ibid.*

119 A Smith, Civic and Ethnic Nationalism, in Spence and Vollman (eds), *Nations and Nationalism: A Reader* (Rutgers University Press 2005) 177-183.

120 M Ignatieff, *Blood and Belonging: Journeys into the New Nationalism* (Farrar, Straus and Giroux 1993) 7 ('According to the civic nationalist creed, what holds a society together is not common roots but law').

121 A Roshwald, *Ethnic Nationalism and the Fall of Empires: Central Europe, the Middle East and Russia, 1914-23* (Routledge 2001) 5 ('Modern ethnic nationalism originated among intellectual elites in nineteenth-century Central and Eastern Europe, who were alienated from imperial states that lagged behind the West European pace of political and economic modernization, and that could not or would not accommodate new elites' aspiration to political empowerment. In the multiethnic empires, populations were culturally and linguistically so diverse that any assertion of the modern notion of popular (as opposed to dynastic) sovereignty was likely to unleash centrifugal rather than integrative forces').

122 E Gallner, *Conditions of Liberty* (Viking 1994) 116 ('Nationalism began with ethnography, half descriptive half normative, a kind of salvage operation and cultural engineering combined. If the eventual units were to be compact and reasonably homogeneous, more had to be done: many, many people had to be assimilated, or expelled or killed. All these methods were eventually employed in the course of implementing the nationalist political principle, and they continued to be in use').

Neither of the two notions of nationalism has been able fully to overpower the other. The romantic notion challenges the statist notion but it does not replace it as the foundation of the state system. The statist notion grounds the anti-secession instinct of existing states, but it cannot eliminate the seeds of secessionism. National self-determination, accordingly, remains the Achilles' heel of the nation-state because of the uneasy and uncertain relationship between nation and state.

B. Secession, Territoriality, and Nationalism

Interestingly, in both views, the ideal is the match between state and nation: either to make a nation a state or to make a state a nation. Within the political imagination of the nation-state, a state wants to be a nation and a nation wants to be a state.¹²³ The effort in either direction can generate political problems. In the first direction, unsuccessful nation building produces the problems of minority oppression — violating minority rights, or even exclusion and expulsion.¹²⁴ In the second, a nation's desire to live as a state leads to secession and perhaps civil wars.

Secessionists can appeal to an ideal of national self-determination. They are resisted not just by a counter theory, but also by the central role of territoriality in the contemporary international order.¹²⁵ In principle, territorial integrity is enshrined. In practice, territorial change has become highly difficult and rare.¹²⁶ The Louisiana Purchase or the transference of Alaska would have been unimaginable in the 20th century. The 20th-century international law and state practice, therefore, generally deny secessionary national self-determination outside the context of decolonization because it imperils territorial, state sovereignty.¹²⁷

This strong commitment to territoriality has much to do with the nature and development of self-determination, which springs from modern nationalism.¹²⁸ The statist sense of national self-determination is deeply related to territoriality. If the right of self-determination is that of a larger community that is the state, then the boundaries of that community are the borders of the state. Wilsonian nationalism assumed that the nation pre-

123 Simpson (n 102) 260 ('National self-determination contains an internal conflict between state rights to self-determination, and the rights of minorities within states to dismember or challenge the state in the name of another competing norm of self-determination').

124 A Chua, *World on Fire: How Exporting Free Market Democracy Breeds Ethnic Hatred and Global Instability* (Doubleday 2001); D Horowitz, *Ethnic Groups in Conflict* (University of California Press 1985).

125 Mayall (n 39) 485 ('[T]erritory had triumphed over the social composition of the population in determining both statehood and sovereignty').

126 *ibid* 501 ('Modern government ... has been given over to "sophists, calculators and economists", but the territory over which they preside — and the popular emotions that are identified with it — remains stubbornly beyond their control. In this context, pre-existing title is a major asset, if not in every case a prerequisite, for entry into international society').

127 D Philpott, 'Self-Determination in Practice', in Moore (ed), *National Self-Determination and Secession* 86 (OUP 1998) ('In international legal consensus and state practice, there is no "right" to self-determination (outside the colonial context) strong enough to elicit outside recognition for a people seeking federal autonomy or independence from a state. Self-determination has long lingered in the shadow of state sovereignty').

128 The strong commitment to territoriality is realistic too. All geographical space of the earth has been claimed by states, except for the polar regions. Almost every individual is now linked to a territorial nation-state, while stateless people are seeking to find one.

cedes the state; the project is to align territory with nation.¹²⁹ Postwar decolonization was not about aligning a pre-political nation with the territory. Quite the contrary, the nation was to be built out of a community of individuals within a border.¹³⁰ Territory defines a nation.

Territorial sovereignty in the contemporary world bears many meanings. No doubt, territory enables the lives of the people living on it by providing space, resources, and security, serving as the material basis for the nation that has its state; its geographical extent signifies the scale of power of a nation-state. Territory, more importantly, takes on meanings of national identity.¹³¹ It is an integral component of nationhood.¹³² In 'Home-land or Death!' we find the expression of the modern nationalist notion of the hyphenated 'identity of *state-nation-territory*'.¹³³ Think about also the patriotic song of 'God Bless America': 'From the mountains, to the prairies, to the ocean, white with foam, God bless America, my home sweet home.' In these lines, one fuses with the colossal, romantic, national body politic of territory.

Modern nationalism, which grounds the concept of self-determination, breeds a strict notion of territoriality. The identity of 'state-nation-territory' was a product of the modern popular revolutions that unleashed nationalism. It contains both the nationalist vision of state politics and the politicized national discourse.¹³⁴ Both significantly changed the meanings of territoriality. Before the advent of nationalism, territoriality in dynastic states took on different forms and meanings: it belonged to the sovereign king as his estate and could be transferred as a patrimony.¹³⁵ When the invisible popular sovereign — the nation — replaced the king's visible body, the land became the visible symbol of the state.¹³⁶ No lon-

129 Just as Paul Kahn writes, 'The modern state of popular sovereignty is the nation-state — a term that has generated considerable confusion. Too often, it is read with the emphasis on the word "nation". On this reading, it refers to the principle that every nation should gain political institutionalization as a state. If so, the nation precedes the state, and the state is a means for the realization of this national identity. This Wilsonian reading has increased currency in the contemporary period, despite the fact that it continues to generate the same practical conundrums that have always attended it: there are far more nations than there are possible states. The nightmare of a Wilsonian world of nation-states is global chaos as existing states fracture into smaller and smaller geographical units that map national identity'. P Kahn, *Putting Liberalism in its Place* (Princeton University Press 2005) 260.

130 *ibid* ('The Wilsonian conception of the nation-state is actually the opposite of the distinctive, modern experience of the nation-state. That experience put the emphasis on the second term, "state". The idea was that a nation could be created out of a state, not that the state must track the preexistent nation. The political self-formation of a state would itself create a nation, quite independently of a prepolitical, ethnic nation').

131 D Ivison, 'Property, Territory and Sovereignty: Justifying Political Boundaries', in Hunter and Sauters (eds), *Natural Law and Civil Sovereignty* (Palgrave Macmillan 2002) 221 ('If ethnicity or religious belief no longer provided the key properties for common identification, states still needed to link their territory with some unifying conception of identity').

132 F Hertz, *Nationality in History and Politics: A Psychology and Sociology of National Sentiment and Nationalism* (OUP 1944) 150-151 ('Every nation regards its country as an inalienable sacred heritage, and its independence, integrity, and homogeneity appear bound up with national security, independence, and honour').

133 M Anderson, *Frontiers: Territory and State Formation in the Modern World* (Polity 1997) 19.

134 B Yack, 'Popular Sovereignty and Nationalism' (2001) 29 *Political Theory* 4.

135 LB Packard, *Age of Louis XIV* (Henry Holt 1929) 10 ('The King had owned and controlled their original fiefs as personal property, and now that these had expanded into kingdoms, they regarded both lands and subjects as belonging to the royal dynasty, subject as absolutely to royal authority as a private estate and slave are subject to an owner').

136 P Sahllins, *Boundaries: The Making of France and Spain in the Pyrenees* (University of California Press 1991) 3 ('In the late nineteenth and twentieth centuries, territories and boundaries became political symbols over which nations went to war and for which citizens fought and died').

ger merely the patrimony of the sovereign king, territory became both the material and spiritual foundations of the state.¹³⁷ To cede even a small parcel of territory is a huge national humiliation; many states would engage in destructive wars to fight for a tract of useless land.¹³⁸

Even where secessionary nationalism persisted into post-colonial context, it was bound up with territoriality. To secede, a nation has to redefine itself in the image of territory: the seceding people must be territorially concentrated; they must be defined by existing administrative lines within the host state. To support secession, the national image must shift from homeland, which is defined by *place* (cities, towns, and landscapes), to territory, which is an exclusively delimited *space*. Absent that shift, the agenda remains political representation and economic fairness toward the individual members of a group within the host state — internal self-determination.¹³⁹

A comparison between the separationist movement in Québec and the Civil Rights Movement in the United States in the 1960s is instructive. The secessionist movement of the Québécois has a geographical basis: the Province of Québec. In contrast, territorial separatism was never been on the agenda of civil rights movements. The Communist International once proposed to establish a separate 'Negro state' in North America under the principle of national self-determination, but that proposal received little support.¹⁴⁰ 'The territorial segregation of ghettos in plural societies ... actually eliminates the classic perspective of self-determination by the formation of territorial states ...'.¹⁴¹ Blacks, after desegregation, were 'insular and discrete minorities',¹⁴² 'an archipelago of small islands rather than a coherent land-mass'.¹⁴³

20th-century self-determination unfolds as the dialectic of the modern nation-state, historically and conceptually. Historically, secessionary self-determination started the new form of the state — the nation-state — in the post-WWI collapse of dynastic empires and the post-WWII territorial dismantling of colonial empires. New states *wanted* to be ruled by co-nationals; alien rule was regarded as inherently unjust.¹⁴⁴ Yet the new states generally opposed subsequent secessions.¹⁴⁵ Secessionary self-determination was only legi-

137 Anderson (n 133) 3 ('Emotions aroused by state frontiers became more widely shared and obsessive with the sacralization of homelands by nineteenth-century nationalism. Frontiers became associated with powerful images, symbols and (sometimes invented) traditions').

138 For example, Chile and Argentina once fought a war, known as 'the Beagle Dispute', over several useless islands in the 1970s.

139 Hobsbawm (n 34) 155 ('In a pluri-ethnic or communal society this means essentially bargaining for the group's share of the resources available in the state against other groups, defending the group against discrimination and, in general, maximizing its members' chances and minimizing its disadvantages. Nationalism in the sense of the demand for a separate territorial state or even linguistic autonomy is irrelevant to this, though it may make a diaspora feel good').

140 *ibid* 156.

141 *ibid* 157.

142 *United States v Carolene Prods Co*, 304 US 144, 152 n 4.

143 Hobsbawm (n 34) 157.

144 J Rothschild, *Ethnopolitics: A Conceptual Framework* (Columbia University Press 1981) 14 ('Today most people would rather be governed poorly by their ethnic brethren than well by aliens, occupiers and colonizers... [i]ndeed to be ruled by ethnic strangers is perceived as worse than oppressive').

145 Nigeria, for example, violently denied the right of Biafra to secessionist self-determination in 1970, just ten years after it gained independence from the United Kingdom. See MG Kaladharan Nayar, 'Self-Determination beyond the Colonial Context: Biafra in Retrospect', (1975) 10 *Texas International Law Journal* 321, 346; PL Okoronkwo, 'Self-Determination and the Legality of Biafra's Secession under International Law', (2002-2003) 25 *Loyola Los Angeles of International & Comparative Law Review* 63, 116.

itimate in creating nation-states from empires; it was illegitimate after nation-states had been created. Conceptually, self-determination constitutes both a foundation — legitimizing national independence and territorial integrity — and a challenge — legitimizing secession — to the nation-state. The nation-state is simultaneously susceptible to secession and strongly resistant to it. The duality of self-determination brings out an intractable tension between patriotic self-determination and secessionary self-determination within the nation-state. The next step of the inquiry is to see how international law copes with that tension.

IV. The Exceptionality and Indeterminacy of Self-Determination

Discussions of self-determination usually revolve around the question of whether it is a legal right or only a political principle.¹⁴⁶ Although some deny its suitability to become a right in international law,¹⁴⁷ arguably it has already become a right in the UN system of international law.¹⁴⁸ The UN Charter declared its central purpose to be the establishment of international relations on the principle of self-determination.¹⁴⁹ The General Assembly subsequently recognized self-determination as a 'right' in many resolutions.¹⁵⁰ Both the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights recognize the right to self-determination in their first articles.¹⁵¹ The International Court of Justice, too, has recognized the right to self-determination in several cases.¹⁵²

Codification, however, does not resolve the ambiguity of national self-determination in legal application and particularly regarding secession. Again, both the statist and the secessionary senses of self-determination are in play. Their coexistence has made international law reluctant to establish secession as a right. That reluctance can be demonstrated in the limited scope given to any claimed right of secessionary self-determination. The claim is recognized only in abnormal situations and even then, self-determination law does not favor secession. Moreover, I will show that there are good theoretical reasons for this preferred reluctance. The dual meanings of national self-determination, as well as the inverted nature of national identity make defining the 'nation' or the 'self' a difficult task in law.

A. Secession as an Exception to the Law of Self-Determination

Although it was called 'the law of nations', traditional international law of the 19th and early 20th centuries was emphatically statist. International law arose from state consent;

146 RT DeGeorge, 'The Myth of the Right of Collective Self-Determination' in Twining (ed), *Issues of Self-Determination* (Aberdeen University Press 1990) 1-7.

147 G Fitzmaurice, 'The Future of Public International Law and the International Legal System in the Circumstances of Today', in *Institut De Droit International, Evolution Et Perspectives Du Droit International* 196 (1973) 233.

148 A Cristescu, *The Right to Self-Determination: Historical and Current Development on the Basis of United Nations Instruments* 17-24 (UN 1981) 17-24.

149 UN Charter Art 1 para 2.

150 Perhaps the most important ones are GA Res 1514, 15 UN GAOR Supp (No 16) at 66, UN Doc A/4684 (1960) and GA Res 2625, 25 UN GAOR Supp (No 28) at 121, UN Doc A/8028 (1970).

151 See GA Res 2200, 21 UN GAOR Supp (No 16) at 49, UN Doc A/6316 (1966).

152 *Namibia Case*, 1971 ICJ 16, 31; *Western Sahara Case*, 1975 ICJ 12, 31.

sovereignty was the only source of international legal norms. Nationalism was kept outside of the international law that governed relations among imperial states. John Westlake expressed this ethos in his international law treatise in 1910: 'In fact the indefiniteness and instability of all the characters on which nationalities are based are a conclusive objection to founding international rights on nationality... Nationalities, though often important in politics, must be kept outside international law.'¹⁵³ The politics of international law began and ended with states rather than with national groups. International law did not, and could not, look behind the state.

The rise of an ethos of national self-determination posed a problem to international law. Self-determination claims potentially challenge whoever exercises sovereignty for failing to represent the people or to express group identity. These claims operate within the state, before they become a ground for secession. They do, however, move in that direction. As a consequence, international lawyers then had to deal with problems of nationalism their predecessors had avoided. How could international law, based on state sovereignty, resolve sub-state actors' claims for statehood?

20th-century international lawyers managed the problem by distinguishing the norm from the exception. Secessionary self-determination appeared as a cognizable claim only in abnormal, exceptional situations.¹⁵⁴ In other words, international law pierces the statist veil and looks at nations only when a state's territorial sovereignty is somehow lacking or in question.

The International Commission of Jurists' opinion in the 1920 Aaland Islands case started this tradition. That case, involving a dispute between Finland and Sweden over the Aaland Islands in the wake of World War I, was the first legal discussion of national self-determination.¹⁵⁵ In 1809, Sweden ceded the Aaland Islands as well as Finland to Russia. After the October Revolution in 1917, Finland seceded from the Soviet Union, according to the right of national self-determination recognized by Lenin. The people of the Aaland Islands claimed the same right to national self-determination when they sought to separate from Finland and join Sweden. Sweden supported the secessionist movement, while Finland opposed it on the ground of its territorial sovereignty. In 1920, the people of the Aaland Islands and the Swedish government together brought the case to the newly founded League of Nations. The Council of the League asked the International Commission of Jurists for legal guidance.

The chief legal issue for the Commission was whether the Council had competence to adjudicate the dispute. Finland claimed that the dispute was definitely a domestic one.¹⁵⁶ The Commission responded by distinguishing between normal and exceptional situations. In a normal situation, that is, when the sovereign state is in place, the rules of territorial sovereignty hold.¹⁵⁷ In the abnormal situation, where sovereignty is in question and po-

153 J Westlake, *International Law Part I: Peace* (CUP 1910) 5.

154 Koskenniemi (n 35) 265 ('A distinct international law of self-determination can become applicable when the law's strong preference for statehood must be set aside due to the creation of an "abnormal situation". That law should not, however, be seen as a set of ready-made substantive solutions but in terms of a procedure for bringing about acceptable *ad hoc* adjustments').

155 J Barros, *The Aaland Islands Question: Its Settlement by the League of Nations* (Yale Univ Press 1968).

156 Report of the International Committee of Jurists on the Aaland Islands Question, League of Nations OJ Spec Supp 3 (1920).

157 Report of the International Committee of Jurists on the Aaland Islands Question, League of Nations OJ Spec Supp 5 (1920) ('the right of disposing of territory is essentially an attribute of the sovereignty of every state. ... Generally speaking, the grant or refusal of the right to a portion of its population

sitive legal norms suspended, self-determination applies.¹⁵⁸ For the Commission, the post-WWI upheavals of revolution and territorial change constituted a 'transitional situation', in which normal rules of territorial sovereignty were suspended and 'the principle of the self-determination of peoples may be called into play'.¹⁵⁹ Consequently, the Council of the League had competence to deal with the matter.

The *Aaland Islands* case echoed later in the century. The UN saw decolonization as an exception in which national self-determination could apply.¹⁶⁰ The international norm of state sovereignty was suspended once a colonial empire entered a state of contraction and collapse.¹⁶¹ A similar situation occurred in the post-Cold War period. The Western powers recognized republics seceding from the Soviet Union only after political collapse became inevitable. Before that, the right of self-determination was limited to Eastern European countries exiting from the Soviet sphere.¹⁶² Consider also Yugoslavia. In its opinion on Yugoslavia in 1991, the European Community's Arbitration Commission observed that 'the Socialist Federal Republic of Yugoslavia is in the process of dissolution'.¹⁶³ Accordingly, normal rules of sovereign statehood were set aside; self-determination norms came into play.

UN law generally confines secessionary self-determination to the exceptional context of decolonization. Only in the situations in which a European power dominated an overseas territory with an indigenous population was national self-determination applied as a right to independence. In such situations, any claim of violation of the colonial powers' territorial integrity was rejected. Outside of the exceptional context of decolonization, only in extremely exceptional cases (consider this a 'small exception') did international law recognize secession — and even then only after it became a *fait accompli*.¹⁶⁴ In such cases, secessionary self-determination depended on the external political support of the Great Powers, which had weakened or defeated the parent state.¹⁶⁵

Outside of these exceptional situations, national self-determination as a legal matter was generally transmuted into the human rights of minority groups within existing states. The 1975 Helsinki Final Act, for example, claims both that self-determination should not be interpreted as a right to secede and that territorial integrity should not veil discrimination or oppression against minority groups.¹⁶⁶ Boutros Ghali's 1992 'Agenda for Peace', similarly, argued that external self-determination leads to fragmentation and tumult, while

of determining its own political fate by plebiscite or by some other method, is, exclusively, an attribute of the sovereignty of every State which is definitively constituted').

158 *ibid* ('From the point of view of both domestic and international law, the formation, transformation and dismemberment of States as a result of revolutions and wars create situations of fact which, to a large extent, cannot be met by the application of the normal rules of positive law').

159 Report of the International Committee of Jurists on the *Aaland Islands* Question, League of Nations OJ Spec Supp 6 (1920).

160 J Mayall, *Nationalism and International Society* (CUP 1990) 57.

161 W Ofuatye-Kodjoe, *The Principle of Self-Determination in International Law* (Nellen 1977) 156.

162 Mayall (n 39) 483.

163 31 ILM 1494-1497 (1992).

164 Horowitz (n 89) 190 ('The background to this development is ... a surprising degree of firmness of inherited boundaries, an international law that countenanced no real departures from them, and an insistence by affected states — particularly strong in the Organization of African Unity — that legal doctrine reinforce them by inhospitality to secession. International actors generally took a hard line against secession except in the rarest case (Bangladesh), and then only when it became a *fait accompli*').

165 Sterio (n 14) 146-47.

166 Koskeniemi (n 35) 256.

internal self-determination in the form of human rights protection helps to resolve ethnic conflicts.¹⁶⁷ His argument generally reflected the post-Cold War understanding of national self-determination.

B. National Identity and the Indeterminacy of the 'Self'

All relevant international legal documents claim that all 'peoples' have the right to self-determination.¹⁶⁸ This universal language, however, does not specify how to define a 'people', either in theory or practice. It leaves much room for debate over what constitutes a 'people'; there is no universally agreed definition of a 'people' in international law.¹⁶⁹ Looking at the history of self-determination as an extension of 20th-century nationalism, 'peoples' are usually equated with 'nations'.¹⁷⁰ Nationality, however, is notoriously difficult to define.

Defining a nation usually combines subjective and objective criteria.¹⁷¹ Members of a group must express their (subjective) will to be a distinct community in the form of a state.¹⁷² It is also necessary for the group to bear certain objective, common traits: language, ethnicity, religion, or even a common historical tie to a territory. Indeterminacy, however, emerges at each stage. At first glance, the subjective criterion gives quite a clear answer as to what is required: the will to exist as a nation or to become a nation.¹⁷³ There are two problems with this answer. First, whose will counts? To ascertain the will, the group itself must be presupposed. What is that group? How is it constituted? Second, even if there is a bordered group, how to determine its will? One way is to describe the nationalist movement within the group. It is possible, however, that only some of its members, or even a small number of the elite, are engaged. For instance, there is substantial disagreement in Taiwan over whether to form an independent state, even though that question is the chief subject of debate in elections. Alternatively, one might resort to a referendum or a plebiscite. But that is problematic, too. It is not clear whether the result of a referendum should be taken at face value, particularly since referenda conducted at different times may yield different results.¹⁷⁴ For example, the result of a Québec referendum in 1995 favored remaining in Canada, while the same referendum in 1980, favored secession. Which one should count?

Neither can an objective index provide consistent and reliable criteria as to what constitutes a 'nation'. Proposed objective factors include language, race, or culture. None can provide a workable index. Language was taken to be the chief mark of a nation by early theorists such as Fichte and Herder. But as Ernst Gellner pointed out, 'the number of lan-

167 B Boutros-Ghali, *An Agenda for Peace* (UN 1995).

168 The Declaration on the Granting of Independence to Colonial Countries and Peoples, GA Res 1513 (XV), 14 Dec 1960; Two Covenants on Human Rights; The Friendly Relations Declaration, GA Res 2625, 24 Oct 1970.

169 R McCorquodale, 'Self-Determination: A Human Rights Approach' (1994) 43 *International and Comparative Law Quarterly* 857, 867.

170 W Connor, 'Nation-Building or Nation-Destroying?' (1972) 24 *World Policy* 319, 331.

171 Ofuatye-Kodjoe (n 161) 36; Cobban (n 22) 108-115.

172 Cobban (n 22) 108 ('The definition of the nation, as the term is used in the theory of self-determination, is essentially political. The nation is a community that is, or wishes to be, a state').

173 *ibid* 107 ('any territorial community, the members of which are conscious of themselves as members of a community, and wish to maintain the identity of their community, is a nation').

174 Brilmayer (n 23) 198.

guages on earth [is] estimated at around 8000', setting aside dialects.¹⁷⁵ Multiple nationalisms can exist within speakers of the same language — think about the Arab world. Conversely, linguistic or dialectic difference does not automatically translate to a separate sense of nationhood — think about the Scottish Highlands within Scotland.¹⁷⁶ 'Racial background may be an identification criterion for Black nationalism in Africa, but it does not appear to function as such in the United States.'¹⁷⁷

Moreover, even if one could settle on certain criteria, the importance of each will vary. For example, in pre-colonial Africa, colonial oppression united multiple ethnic groups into a 'nation'. But when the common enemy was driven out, ethnic differentiation loomed large.¹⁷⁸

These problems cannot be solved because modern nations are what Benedict Anderson calls 'imagined communities'.¹⁷⁹ Nationalism invented 'the nation', rather than the other way around. Many examples of nationalism involved fabrications of national legends, symbols, and vernaculars, by elites seeking to enlist popular support for a movement of political emancipation.¹⁸⁰ As Finland's 19th-century national leader A. I. Arwidsson said, 'We are not Swedish, we do not wish to become Russians, let us then be Finnish'.¹⁸¹ The fabrication of national identity has been a project for nation-building governments as well as for separationists. Separationist nationalism always meets unificatory nationalism; the secessionist 'self' always encounters the statist 'self'.¹⁸² In every case, there is never a single story.

The dilemma of defining the 'self' lies in the particularistic universalism of the right to self-determination. Self-determination is a universal right enjoyed by every nation or people equally, without differentiation or discrimination. Yet it is actually particularistic since in every concrete exercise of the universal right, defining the right-holder requires paying attention to very particular, contingent, political, historical, ethnographical, and cultural factors.¹⁸³ Most would support self-determination as a general right, yet 'the abstract conceptual positions are inadequate to provide a determinative answer to the meaning of the self'.¹⁸⁴

175 E Gellner, *Nations and Nationalism* (Blackwell 1983) 44.

176 *ibid* 47.

177 Koskenniemi (n 35) 261.

178 Brilmayer (n 23) 198.

179 Anderson (n 30) 85.

180 Koskenniemi (n 35) 261.

181 Quoted from Koskenniemi (n 35) 267. Take Chinese nationalism for another example. The Chinese nation, invented by modern political leaders like Sun Yet-Sen, comprises Han, Mongol, Tibetan, Manchu, Hui ethnic groups. The concept of 'Chinese' was unknown to many ordinary people even after the founding of the Republic of China in 1911.

182 Neuberger (n 107) 20 ('The British who opposed Irish independence recognized only one British national self, while the Irish nationalists regarded themselves as a separate nation. Lincoln believed in the unity of one American nation, while the southerners identified as a southern nation. Gandhi's Indian nation included Hindus and Muslims, while Jinnah insisted that the Muslims are a separate nation with a right to a state of their own. The conflicts in Central Europe in the 1930s and after World War II in Cyprus, Vietnam, India/Pakistan, Palestine, Lebanon, Kurdistan, Ireland, and Tibet all had something to do with different definitions of the national self').

183 K Knop, *Diversity and Self-Determination in International Law* (CUP 2002) 134-5 ('European states might concentrate power territorially, but Morocco in effect argued that in its nomadic Western Sahara context, tribal and religious connections should be paramount').

184 N Berman, 'Sovereignty in Abeyance: Self-Determination and International Law' (1988-1989) 7 *Wisconsin International Law Journal* 93-94.

Because of overlapping claims of national identities in conflicting situations, defining the 'self' is a necessarily political task.¹⁸⁵ International law has no capacity to determine whether a state has achieved the goal of nation building or whether a group is an independent nation. No doubt, the principle of national self-determination can generally declare foreign rule illegitimate. But it fails to provide a standard by which 'to judge whether rule is foreign, except in the situation of outright colonial empires. As Bernard Yack puts it, '[i]t declares French rule over Morocco or British rule over India to be illegitimate. Yet it leaves open the question of the legitimacy of the incorporation of the Baltic states into the former Soviet or the Basque and Catalonian regions into Spain'.¹⁸⁶

In each particular case, a situated judgment is required. That judgment is not likely to express a legal conclusion, for lawyers have little to contribute here. Juristic discourse on the right of self-determination or even the right to secede has little consequence in resolving political conflict.¹⁸⁷ At best, the language of rights provides rhetorical weapons for certain sides in secessionary conflicts.¹⁸⁸ Consider the problem of secession after the breakup of Yugoslavia in the 1990s. Self-determination only restated the problem of the struggles within the territories of the former Yugoslavia; it could not provide a solution to that problem when every political actor sought self-determination.¹⁸⁹ The problem went further than just establishing five new states from the former Yugoslavia. The Serbian communities within those new states also proclaimed their rights of national self-determination: in Croatia, the project of establishing an 'Independent Republic of Krajina'; in Bosnia-Herzegovina, that of a 'Republic of the Serbian People'.

These issues received international legal treatment. In January 1992, Serbia submitted to the European Community's Arbitration the question whether the Serbian communities in Croatia and Bosnia-Herzegovina could exercise the right to national self-determination Commission.¹⁹⁰ The Commission faced a dilemma: giving a negative answer would encourage Croatia's and Bosnia's oppression of the Serbian populations, while issuing an affirmative answer would engender separatist and unificationist extremism among Serbians in future conflicts. Therefore, the Commission did not give a direct answer. Rather, it stated that international law does not set forth the scope of national self-determination. National self-determination seeks nothing more than agreement among

185 M Pomerance, *Self-Determination in Law and Practice* (Martinus Nijhoff 1982) 18-23.

186 B Yack, *Nationalism and the Moral Psychology of Community* (University of Chicago Press 2012) 250.

187 Just as Beiner points out incisively: To formulate one's grievances in the language of rights (what one might call 'the juridification of political claims') is a politically familiar way of saying: 'To hell with you! Give me what I want or I'll sue you. I'll take you to the Supreme Court or the International Tribunal in the Hague if I have to.' The basic point here is that we *can* discuss these matters without waving the banner of rights and therefore making the agents of nationalist secessions (and perhaps their adversaries as well) more truculent and morally self-righteous....In principle, it seems that one could address all the relevant moral-political issues while entirely avoiding reference to national rights; it must not be assumed that one *has* to formulate these issues in the language of rights. Above all, we want an accommodation of conflicting political purposes, and it seems unlikely that the idiom of national or group rights, any more than the idiom of individual rights, will be helpful in the attainment of a reasonable outcome. R Beiner, 'National Self-Determination: Some Cautionary Remarks Concerning the Rhetoric of Rights', in Moore (ed), *National Self-Determination and Secession* (OUP 1998) 164.

188 *ibid* ('Rights talk is a form of political discourse that is intended as the verbal equivalent of shaking one's fist in the direction of those with whom one is in a state of political disagreement').

189 Koskeniemi (n 35) 265.

190 *Opinion No 1 of the Arbitration Commission of the Peace Conference on Yugoslavia*, 31 ILM 1494-1497 (1992).

self-determining actors, following unsystematic procedures. Law cannot judge whether the Serbian people in Croatia and Bosnia constitute a distinct nation capable of secession, because of the invented, conflicting, overlapping (Are the Serbian people in Croatia part of the Serbian nation represented by Serbia?) and because the project of giving a nation a state is inherently political in nature.

V. Conclusion

The hope for a normative theory of a general right to national self-determination fails, practically and conceptually. Practically, claims to such a right produces wars, terrorism, and even ethnic cleansing. Conceptually, the right to national self-determination fails to provide a standard for determining the division of populations and territories.¹⁹¹ That is because no theory can remove the contingency of national identities and the arbitrariness of territorial divisions. Theory cannot tell us whether a seceding group is a true nation, nor can it tell us where group belongs. National boundaries are never congruent with state borders: the places where a nation lives may be shared with other nations, while territorial space is exclusive. No theory can adjudicate the conflicting territorial claims. Notwithstanding the legalization of the notion, secessionary self-determination remained a political practice beyond the regulatory capacity of international law. Conventional wisdom sees the centrifugal effect of national self-determination but overlooks the centripetal one. The conflict between national self-determination and territorial integrity arises from the same origin — the idea of nationalism. Nationalism supports both principles.

At best, national self-determination only states the problem of the 20th-century nation-state: the nationalism which substantiates the state can undermine or disunite it from within. It provides a conceptual framework to describe and understand the problem of secession as an extension of modern nationalism. But it cannot offer a consistent way to justify some secessions over others. National self-determination suggests a combination of democratic consent and state nationality. As appealing as this combination might be, it fails to bring the political phenomenon of secession into the realm of the normative, juridical world. International law cannot do away with the ambiguity and indeterminacy of self-determination if the world cannot bid nationalism a farewell in the 21st century.

References

- B Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso 1991).
- M Anderson, *Frontiers: Territory and State Formation in the Modern World* (Polity 1997).
- H Arendt, *Origins of Totalitarianism* (Harcourt, Brace, Jovanovich 1973).
- H Aronovitch, 'Why Secession is Unlike Divorce' (2000) 14 *Public Affairs Quarterly* 1.
- TA Bailey, *Woodrow Wilson and The Lost Peace* (The Macmillan Company 1944).
- O Bauer, *The Question of Nationalities and Social Democracy* (JO Donnell tr, 2nd edn, University of Minnesota Press 2000) [1924].

191 Yack (n 186) 237 ('The standards by which the right to national self-determination measures and corrects current divisions of population and territory are therefore subjective in nature: the feelings of social friendship that constitute particular national communities and the associations with particular territories that mark these territories as their own').

- R Beiner, 'National Self-Determination: Some Cautionary Remarks Concerning the Rhetoric of Rights', in Moore (ed), *National Self-Determination and Secession* (OUP 1998).
- J Berg, 'The Right to Self-Determination' (1991) 5 *Public Affairs Quarterly* 211.
- H Beran, 'A Liberal Theory of Secession', (1984) 32 *Political Studies* 21.
- AH Birch, *Nationalism and National Integration* (Routledge 1989).
- AH Birch, 'Another Liberal Theory of Secession', (1984) 32 *Political Studies* 596.
- P Bobbitt, *The Shield of Achilles: War, Peace, and the Course of History* (Knopf 2002).
- B Boutros-Ghali, *An Agenda for Peace* (UN 1995).
- L Brilmayer, 'Secession and Self-Determination: A Territorial Interpretation' (1991) 16 *Yale Journal of International Law* 177.
- A Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (OUP 2004).
- A Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Westview Press 1991).
- L Buchheit, *Secession: The Legitimacy of Self-determination* (Yale Univ Press, 1978).
- A Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (CUP 1995)
- J Castellino, 'Territorial Integrity and the 'Right' to Self-Determination: An Examination of the Conceptual Tools' (2008) 33 *Brooklyn Journal of International Law* 503.
- JJ Charney, 'Self-Determination: Chechnya, Kosovo, and East Timor' (2001) 34 *Vanderbilt Journal of Transnational Law* 455.
- L Chen, 'Self-Determination as a Human Right' in Reisman & Weston (eds), *Toward World Order and Human Dignity: Essays in Honor of Myres S. McDougal* 198 (The Free Press 1976).
- A Cobban, *The Nation State and National Self-Determination* (Collins 1969).
- J Crawford, *The Creation of States in International Law* (2d edn, OUP 2007).
- A Cristescu, *The Right to Self-Determination: Historical and Current Development on the Basis of United Nations Instruments* (UN 1981).
- RT DeGeorge, 'The Myth of the Right of Collective Self-Determination', in Twining (ed), *Issues of Self-determination* (Aberdeen University Press 1990).
- D Doyle, *Secession as an International Phenomenon* (Don Doyle ed, University of Georgia Press 2010).
- R Emerson, 'Self-Determination' (1971) 65 *American Journal of International Law* 459.
- A Esler, *The Western World: A Narrative History* (2nd edn, Prentice Hall College Division 1997).
- RE Ewin, 'Peoples and Secession' (1994) 11 *Journal of Applied Philosophy* 2.
- E Gellner, *Nations and Nationalism* (Blackwell 1983).
- E Gallner, *Conditions of Liberty* (Viking 1994).
- WG Grewe, *The Epochs of International Law* (Michael Byers tr, De Gruyter 2000).
- F Hertz, *Nationality in History and Politics: A Psychology and Sociology of National Sentiment and Nationalism* (OUP 1944).
- E Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality* (CUP 1992).
- D Horowitz, 'Self-determination: Politics, History, and Law' in Moore (ed), *National Self-Determination and Secession* (OUP 1998).
- D Horowitz, *Ethnic Groups in Conflict* (University of California Press 1985).
- R Howse and K Knop, 'Federalism, Secession, and the Limits of Ethnic Accommodation: A Canadian Perspective' (1993) 1 *New Europe Law Review* 269.
- H Hunnum, 'Rethinking Self-determination' (1993-1994) 34 *Virginia Journal of International Law* 2.
- M Ignatieff, *Blood and Belonging: Journeys into the New Nationalism* (Farrar, Straus and Giroux 1993).
- D Ivison, 'Property, Territory and Sovereignty: Justifying Political Boundaries' in Hunter and Saunders (eds), *Natural Law and Civil Sovereignty* (Palgrave Macmillan 2002).
- P Kahn, *Putting Liberalism in its Place* (Princeton University Press 2005).
- B Kingsbury, 'Reconstructing Self-Determination: A Relational Approach' in Aikio Scheinin (eds), *Operationalizing the Right of Indigenous Peoples to Self-Determination* (Institute for Human Rights, Abo Akademi University 2000).
- K Knop, *Diversity and Self-Determination in International Law* (CUP 2002).
- M Koskeniemi, 'National Self-Determination Today' (1994) 43 *International and Comparative Law Quarterly* 241.

- J Mayall, 'Secession and International Society', in *The Ashgate Research Companion to Secession* (Aleksander Pavkovic & Peter Radan eds., 2012).
- J Mayall, 'Sovereignty, Nationalism, and Self-Determination' (1999) 47 *Political Studies* 474.
- E McWhinney, *Self-Determination of Peoples and Plural-Ethnic States in Contemporary International Law: Failed States, Nation-Building and the Alternative, Federal Option* (Martinus Nijhoff Publishers 2007).
- SC Neff, *Justice in Blue and Gray: A Legal History of the Civil War* (Harvard University Press 2010).
- RB Neuberger, *National Self-determination in Post-Colonial Africa* (Lynne Rienner 1986).
- S Norman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Clarendon 1996).
- W Otuatye-Kodjoe, *The Principle of Self-Determination in International Law* (Nellen 1977).
- A Pavković & P Radan (eds), *Creating New States: Theory and Practice of Secession* (Routledge 2007).
- D Philpott, 'In Defense of Self-Determination' (1995) 105 *Ethics* 2.
- M Pomerance, *Self-Determination in Law and Practice* (Martinus Nijhoff 1982).
- T Hobbes, *Leviathan* (first published 1652, Richard Tuck ed, CUP 1996).
- Premdas, de Samarasinghe and Anderson (eds), *Secessionist Movements in Comparative Perspective* (Continuum International Publishing Group Ltd 1990).
- D Ronen, *The Quest for Self-Determination* (Yale Univ Press 1979).
- A Roshwald, *Ethnic Nationalism and the Fall of Empires: Central Europe, the Middle East and Russia, 1914-23* (Routledge 2001).
- J Rothschild, *Ethnopolitics: A Conceptual Framework* (Columbia University Press 1981).
- AP Rubin, 'Secession and Self-Determination: A Legal, Moral, and Political Analysis' (2000) 36 *Stanford Journal of International Law* 253.
- P Sahlin, *Boundaries: The Making of France and Spain in The Pyrenees* (University of California Press 1991).
- MP Scharf, 'Earned Sovereignty: Judicial Underpinnings' (2003) 31 *Denver Journal of International Law and Policy* 373.
- K Senaratne, 'Beyond the Internal/External Dichotomy of the Principle of Self-Determination' (2013) 43 *Hong Kong Law Journal* 463.
- G Simpson, 'The Diffusion of Sovereignty: Self-determination in the Post-Colonial Age', (1996) 32 *Stanford Journal of International Law* 255.
- A Smith, *Civic and Ethnic Nationalism*, in Spence and Vollman (eds), *Nations and Nationalism: A Reader* (Rutgers University Press 2005).
- M Sterio, 'On the Right to External Self-determination: "Selfistans", Secession, and the Great Powers' Rule' (2010) 19 *Minnesota Journal of International Law* 1.
- J Summers, *Peoples and International Law* (2nd edn, Martinus Nijhoff 2013).
- AR Sureda, *The Evolution of the Right of Self-Determination* (Sijthoff 1973).
- AJ Toynbee, 'Self-Determination' (1925) 484 *Quarterly Review* 317.
- J Westlake, *International Law Part I: Peace* (CUP 1910).
- CH Wellman, *A Theory of Secession* (CUP 2005).
- B Yack, *Nationalism and the Moral Psychology of Community* (University of Chicago Press 2012).
- V Zaslavsky, 'The Evolution of Separatism in Soviet Society Under Gorbachev' in Lapidus, Zaslavsky, and Goldman (eds), *From Union to Commonwealth: Nationalism and Separatism in the Soviet Republics* (CUP 1992).