

PEOPLES AND POLITICAL OBLIGATION

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Secession makes questions that are usually considered little more than matters for academic debate into quite practical and serious issues.¹ In particular, it seems to throw into question the whole issue of political obligation: a set of political ties has been denied in breaking away from the state of which these people were formerly a part, and that in turn can bring into question the obligations of the people they take with them as part of the new seceding state.

Examples of this sort of thing are not hard to find. Virginia set about seceding from the Union of States in America, and West Virginia seceded from Virginia.² In Eastern Europe in recent times, the breaking up or secession of the various states of the former USSR was accompanied by a further fragmentation of some of those states as ethnic groups within them claimed a right to self-determination. Secession is a practical demonstration that it is possible to raise questions about whether people, either as groups or as individuals, really are bound to obey the political authorities under which they find themselves. In this paper I am concerned to consider some of the implications the issue of secession raises for political obligation, and to consider, in the context of secession, the relationship between justice (often claimed to be the primary virtue in politics) and loyalty. This will involve me in considering what it is that constitutes a people (the self that claims a right to self-determination) and what might concern somebody who has to decide whether or not to go with the secessionists.

II

Writers on secession, and especially writers in favour of secession, often assume a principle of self-determination and derive from that a right to secede. Kai Nielsen, for example, begins by saying that we must

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¹ Any really fundamental political change that brings into question the former bases of political obligation can raise this sort of issue. Compare, for example, some of the early consequences of the introduction of multi-racial democracy in South Africa. There were demands from Chief Buthelezi (claiming to speak for Zulus) and from the Afrikaner Volksfront (claiming to speak for the Afrikaner people) for separate homelands. (This was reported in 'Zulu Autonomy call', *The Australian* (Sydney), 22 August, 1995, 8.)

² See, eg, Peter Parish, *The American Civil War* (1975) 115-18.

accept the right of persons who are extensively predominant in a distinct territory to determine their common destiny provided they do not violate the civil liberties of others, including, of course, minorities who live in the same territory. They have the right, that is, to determine how they wish to live including very fundamentally how they wish to govern their lives together. . . . That such people have such a right is one of our bedrock moral judgments.³

Allen Buchanan takes a similar, though somewhat weaker, line about a right to secede. Once a *prima facie* right to secede has been granted, the problem that seems to remain is one about territory. In relation to territory, Buchanan's line is somewhat stronger than Nielsen's. Buchanan sees the problem of taking what is somebody else's as sufficient to put the onus of justification on the seceding group,⁴ whereas Nielsen sees it as no great problem. He imagines somebody who might object that 'we should always work with an assumption of the territorial integrity of the state. ... We cannot rightly divide up territories that the state has a right to.' But Nielsen rejects this line as nothing more than 'another form of property worship' and is content to require only a fair division of assets at the secession.⁵ Disagreements about what constitutes a fair division, as between Biafra and the rest of Nigeria over who should have the oil, can lead to quite enough bloodshed to suggest that a notable problem still remains at that stage.

Even though Nielsen deals very quickly with the issue of property, he gives it more time than he does the issue of minorities, and he gives no time at all to the position of dissident members of the ethnic group that wants to secede, or to the sort of decision that faced Generals Robert E. Lee and Winfield Scott when they had to decide whether to go with the Union or to go with Virginia:

Secession, of course, creates new political minorities and these minorities must be treated fairly. But, as the world is, there will always be minorities. Francophones are a minority in Canada and Anglophones would be a minority in Sovereign Quebec. There is no reason, because of this, to opt for keeping the status quo or for changing it. The crucial thing, whether the minorities are old or new, is that the minorities have their civil liberties protected.⁶

³ Kai Nielsen, 'Secession: The Case of Quebec' (1993) 10 *Journal of Applied Philosophy* 29, 29. If it really were one of our bedrock judgements, then it seems to follow that no substantial number of people would disapprove of secession in relevant cases. That leaves a question about how there comes to be enough disagreement about secession to generate the recent discussion. One suspects, in fact, that it is one of Nielsen's bedrock judgements not shared by everyone else.

⁴ Allen Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (1991) 106-14.

⁵ Nielsen, above n 3, 36.

⁶ Ibid 37. Note that it is a lot easier to refer to the maintenance of civil liberties in general terms than to determine what those civil liberties are. This is especially so if the adjoining groups are peoples of greatly different and rather war-like religions or simply have very different practices with respect to the treatment of women or animals. It is even more so if they have significantly different political beliefs about the status and role of citizens as would be the case if one group were a Western democracy and the other was a theocracy.

Nielsen assumes that the relevant groups of persons (and what are to count as their territories) are neatly and easily marked off. He does not consider the problem faced by those who have to work out or choose *of which people they are members*. And yet it seems clear, not only that the position of minorities and 'dissidents' in the secessionist territory is a more significant problem (morally, whether or not in terms of the practicalities of taking over the territory) than is the problem of territory as Nielsen and Buchanan see it.⁷

Certainly, territory matters: a group must have a territory to set the geographical boundaries (though they need not be very sharp) of its rule if it is to be self-governing. (Gypsies have no land, and that makes it impossible for them to be a self-governing people; the law governing the territory they are in will be imposed on them.) Perhaps the group need not be a majority in the particular territory to which it lays claim, but a territory must be found for the group if it is to rule itself. The idea that Jews needed a homeland in which they could rule themselves if they were to be safe from persecution was not one that depended on their being a majority in any particular territory, but the moving of Jews from a lot of different lands to establish Israel as a Jewish homeland is, in a lot of ways, comparable with secession⁸ It involves members of an identified people leaving political units in which they had previously lived, and doing so in order to protect their people against injustice or even extinction, to protect their culture, and so on. But the territory does not matter directly for its own sake so much as it matters because territory is necessary if the people are to be self-governing. If they are to be self-governing, they must be self-governing *somewhere*. This is not to deny that historical connection with an area of land might be psychologically important in self-identification as a people; it might be important in that way even to people who had never been to that area of land.⁹

The point that I want to make about the importance of the people can, perhaps, be made quickly by considering very briefly New Australia, a Utopian colony set up in

⁷ Note that Nielsen gives no serious consideration of how to sort out what is the appropriate territory; that **the** territory in which the relevant persons constitute a majority. If it is the territory of the state from which they want to secede, then they do not constitute a majority. But why pick the territory with *these* boundaries as the relevant territory if it contains what now become new minorities? Why does Nielsen take it that the existence of these new minorities is not a problem as long as their civil rights are not infringed? Why have they not the same right to secede at will as the larger group? And if they *do* have that right, what stops the issue from being taken further until we get to the secession of family homes and eventually to the complete breakdown of political society? The impracticality of such a right is clear enough, but that suggests problems in asserting such a right even in the larger cases. If rights are to be recognised on the ground Nielsen provides, then there seems no reason for the rights not to be possessed by these smaller units. If there are no rights in the smaller units, on what ground can the larger minorities claim the right that Nielsen allocates to them?

⁸ Jews, at least arguably, had a historical claim to what is now Israel. Nevertheless, the same points would apply had the Jewish homeland been established elsewhere; for example, in Kenya or in Western Australia. It is possible that rather similar political problems would have arisen, too, as is suggested by, for example, the history of Mau Mau in Kenya.

⁹ See Anthony D Smith, *National Identity* (1991) 14. Smith suggests that the idea of a shared historical territory is one of the fundamental constructions of a nation even though the connection with the territory might have a 'mythical and subjective quality' (22).

Paraguay by people from Australia.¹⁰ Those who went to set up and be a part of New Australia were not an ethnic group in the sense in which we think of an ethnic group as one that might want to secede. They were not a group sharing a common ethnicity that differed from that of the other people amongst whom they lived in Australia. Nevertheless, they were a group whom we might reasonably treat as usefully comparable with a seceding group. They wanted something as near as they could get to self-determination so that they could have and protect their own desired way of life. That is, their motivation was one that fairly commonly lies behind a desire that an ethnic group might have for secession: the desire to protect its culture. And they got the land they wanted without taking any land from the political unit from which they wanted to 'secede'. They made peaceful arrangements for access to land in Paraguay. That being so, the sort of problem Buchanan raises about the possible or even likely injustice of taking land from the group from which one secedes does not arise in this case. So, if we consider this as a case of secession, it is a case about which just about everybody is likely to feel quite happy.

But notice the importance of something that is assumed in the story: those who went to New Australia all chose to do so.¹¹ Let us consider then, on the other hand, the more standard case of secession, where a group breaks away and takes with it land to which it thinks it has some claim, and land which it needs if it is to survive as a political unit. In such a case, not only will new groups take on the status of minorities, but other people who want no part of the secession will be carried along with it willy-nilly because they are tied there by family connections or by their emotional attachment to that land or by the state of their commercial investment in activities that require that they stay there, or by a religious connection with geographical features of the terrain, or by something else altogether. We should certainly think very differently indeed of the case of New Australia if the people involved in that project had kidnapped others who wanted no part of it and forced them to go along, but that, in effect, is what secessionists do. The primary problem is not, *pace* Buchanan, the taking of the land, but the taking of unwilling people who go along with it. The idea of political obligation and the standard theories dealing with that are not adequate to the task of handling this basic problem of political philosophy: What constitutes a people?

III

Dissolution of a federation into constituent states is a special case. In such a case, we already have the structure that makes the seceding body a state and creates political relations between the people in that area. Roughly, the political relations between the people will remain as they were, but the relations between the states constituting the federation will change. Otherwise, we seem to be faced with the problem that seceding merely plunges the people of the seceding area into what Hobbes would describe as their natural condition. Hobbes was not alone in thinking of it that way. Lincoln

¹⁰ See also Gavin Souter, *A Peculiar People - William Lane's Australian Utopians in Paraguay* (3rd ed, 1991).

¹¹ Assuming that parents exercise choices for children, which might not always be a fair assumption.

suggested pretty much the same point in a discussion of the seceding states during the American Civil War, showing that he recognised the importance of the artificial personality of a seceding unit:

Our States have neither more, nor less power, than that reserved to them, in the Union, by the Constitution - no one of them ever having been a State *out* of the Union. The original ones passed into the Union even *before* they cast off their British colonial dependence; and the new ones came into the Union directly from a condition of dependence, excepting Texas. And even Texas, in its temporary independence, was never designated a State.¹²

Lincoln's claim might seem odd, given that the entities to which he refers were capable of fighting so prolonged and violent a war, but his point was about the status of those entities: they could *properly* exist, he claimed, only in the context of the Union, and therefore could have no rights outside that context and could not have a *right* to secede. The way in which West Virginia broke away from Virginia, for example, shows that these were not all clearly peoples apart from their status as states in the Union.

The first step in departing our natural condition, according to Hobbes, requires unanimity. Before we can move to majority vote or any other way of making decisions, we have to know who the people in the relevant group to be ruled are, and those people are picked out by their *unanimous* agreement at the first step in instituting a sovereign.¹³ The requirement of unanimity does not mean that those who disagree are forced to fit in; it means that those who disagree are not players in this game of instituting a sovereign and have no obligations to the citizens as well as having no rights against them.¹⁴ Genuine unanimity (rather than merely agreement between *nearly* all the people involved, or between all the articulate ones or all of those with access to the public media for dissemination of information) in a case of secession would avoid the problem that I am raising. But complete unanimity, I think, would be very rare.

Lee and Scott were, in relevant respects, like the persons in the Hobbesian model. They chose Virginia and the Union respectively in a context in which no particular state or people could properly be assumed as part of the background. An important part of their problem was deciding with which people to align themselves. When they had to choose between the two, as they had not had to do before, were they members of the people of the Union or members of the people of Virginia? They did not have the relatively stable context that most of us have and that seems to be assumed in a great

Abraham Lincoln, 'Message to Congress in Special Session', United States of America Congress, 4 July 1861, as cited in Andrew Delbanco (ed), *The Portable Abraham Lincoln* (1992) 218-9.

¹³ See, eg, the opening sentence in Thomas Hobbes, *Leviathan* (1651) ch 18.

¹⁴ This might be a little misleading, since the dissenters would be in their natural condition with respect to the others, who could therefore treat them as seemed necessary to their own preservation. Freedom of the dissenters from coercion would therefore depend on their behaving as citizens did. They would not be more favourably placed than citizens.

deal of modern political philosophy. What, then, could play the role in secession of making the dissenters in the relevant territory into players in the game of instituting the new sovereign, and thus making them members of the people that was seceding rather than members of the people seceded from? What can we, as secessionists, do to show a waverer that she is really one of *us* and should secede with us? The answer might, of course, be that there is nothing we can do.

The interesting thing is that a number of answers, including the most popular answers, appear to be ruled out. If there is some justification for making the dissident fit in, for counting her as one of the seceding people rather than as one of the others, or some reason that imposes upon her an obligation to fit in, then the story cannot be one of her consenting, since she plainly has not consented and in fact disapproves of the proposed arrangements or has not made up her mind about them. It cannot be a story of her having contracted, for the same reason. The question she faces is why and whether she should consent to this arrangement, or why and whether she should contract with these people rather than with those, so consent and contract could hardly be called on to provide the answer.

The main function of a nation is usually regarded as being defence of its members and, not really paradoxically, if it is to provide its members with that security then it must be the sort of thing that its members are prepared to die for:

[T]he great wars of this century are extraordinary not so much in the unprecedented scale on which they permitted people to kill, as in the colossal numbers persuaded to lay down their lives. Is it not certain that the numbers of those killed vastly exceeded those who killed?

Dying for one's country, which usually one does not choose, assumes a moral grandeur which dying for the Labor Party, the American Medical Association, or perhaps even Amnesty International can not rival, for these are all bodies that one can join or leave easily.¹⁵

Nations do involve that sort of emotional attachment, and in explaining nations we need to provide something that can give due place to such an attachment. '[I]n themselves, market-zones, 'natural'-geographic or politico-administrative, do not create attachments. Who will willingly die for Comecon or the EEC?'¹⁶ And we need an account that allows us to see why people should think that common membership of a nation or a people should give them claims on one another. We also need to sort out whether there really are any claims and, if there are, what their basis is.

The story cannot be one of contract, or even modelled on one of contract. The issue raised by secession is which of these two groups I am to go with. The traditional role of consent or contract is to constitute the people rather than merely to provide a state

¹⁵ Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, first published 1983, 2nd revised ed, 1991) 144.

¹⁶ *Ibid* 53.

for an already existing people.¹⁷ Contract theory and consent theory can really play no useful part until we know who the potential contracting parties are or who it is with whom we are deciding whether or not to consent. The question faced by Lee was not with whom he had contracted, but with whom he should contract or form some consensual relationship. The decision for which contract or consent might be the model was yet to be made. Contract theory might serve as a model of Lee's relationships with other Virginians *after he has placed himself as a Virginian rather than as a supporter of the Union*, but before he made this decision, it was of no great help to him in deciding which way to go. It was not a decision that he made in terms of contract, and we would not really expect it to have been so:

Now we are in a state of war which will yield to nothing. The whole South is in a state of revolution, into which Virginia, after a long struggle, has been drawn; and though I recognize no necessity for this state of things, and would have forborne and pleaded to the end for redress of grievances, real or supposed, yet in my own person I had to meet the question whether I should take part against my native State.

With all my devotion to the Union, and the feeling of loyalty and duty of an American citizen, I have not been able to make up my mind to raise my hand against my relatives, my children, my home. I have, therefore, resigned my commission in the Army, and save in defense of my native State (with the sincere hope that my poor services may never be needed) I hope I may never be called upon to draw my sword.¹⁸

Here we can see one of the difficult aspects of such cases of secession, one of the aspects that makes it of great conceptual interest. The issue is not one of calculation, self-interested or otherwise. In the first instance, it is not at all as if one is deciding whether to stick with the Allies or to go to the Axis powers when they look like winning and one wants to protect one's children. Citizenship can, of course, be changed. Nationality can also be changed,¹⁹ but this is a more complicated matter. Each of us is brought up in a social setting, and changing our nationality is, to an important extent, changing part of what we are. Lee did not so much *decide* that he was a Virginian, in the first instance, as reflect within himself and *discover* something

¹⁷ This is clearly its role in, say, Hobbes. It might seem that the claim does not hold of Locke, but that is not so. It is clear that relatively sociable individuals manage to live in proximity to each other on his account; that they live what we might well describe as a sociable life, but they do not form societies. The picture Locke paints in the state of nature is one of individualism, dealing with groupings no smaller than the species. All of us are equally servants of God, and the law of nature is addressed to each and everyone of us. There are people here, no doubt, but there is no suggestion that there are peoples. See John Locke, *The Second Treatise of Civil Government* (first published 1690, 1764 ed) ch 2.

Letter from Robert E Lee to his sister, Mrs Anne Marshall, 20 April 1861, as cited in Clifford Dowdey (ed), *The Wartime Papers of R E Lee* (1961) 9-10.

¹⁹ Cf Anderson, above n 15, 145. Consider also that family membership can be changed. This is not merely a matter of adults divorcing and re-marrying, but of children being adopted out or simply moving to become members of new families or even to live individualistic lives on the streets or elsewhere. The change can be made, but it is not a simple one. Part of the mover's identity is likely to derive from that earlier family membership and to go with him or her. Consider also the great importance that many people attach to their names.

about himself. He discovered something so fundamental about himself that he gave up the source of his income for the previous 36 years and, because of its location, gave up his family home and plantation at Arlington, risking great suffering for his family. He was then prepared, if necessary, to risk his life for Virginia. Discovering that he was Virginian, then, despite his love of the Union, had great ramifications. But it was his attachment to Virginia, not a contract, that made him part of the relevant group. And, in relevantly similar circumstances, Scott decided in favour of the Union.

For Lee, the question of obligation to a political authority was a real question. Discussions of political obligation in modern political philosophy usually assume that the person in question is a member of this state or nation or a member of that state or nation; that issue is taken to be settled before the discussion starts. That is, such discussions do not treat the problem as a serious matter or as one that will have important practical effects. For Lee it really *was* a problem, not simply a matter of hunting around for a justification for a position already taken up, and the issues faced by somebody in Lee's position bring out important parts of the problem.

Suppose that, when making our attempt to secede, we want a particular person on our side. Perhaps we want the best general in case war follows, or something of that sort. If our claim is that she should be with us because she is one of us and not merely because she is a very good mercenary soldier and we pay best, then we need some *existing* basis on which to say that she is ours. At the start, if she falters about whether to commit herself to the seceding group, we cannot put to her as a ground that she has consented or contracted. What we are trying to do at this stage is to explain to her why we think she *should* contract with us: because she is one of us. So we need some prior account of what makes us a group of a relevant sort. And we need to remember that there are different sorts of claims that people can make on each other. Perhaps, at the time of secession, no person can make claims of justice on all the other relevant people that they go along with the secession. That does not mean that other claims, such as claims of loyalty, cannot be made. Indeed, if we must choose in terms of peoples, rather than of people, when the contract question comes up, if we cannot actually choose one by one among all the people in the world, then that suggests that loyalty is in some ways a more basic part of the social glue than is any contractual calculation. Justice might be the first virtue of our institutions, but loyalty might well be the basis of our status as a people.

When we try to claim our proficient soldier, therefore, the appeal we make to her might be emotional rather than rational. The appeal in question is an appeal to persuade her that she is one of us; given that we succeed in persuading her of that, there is a quite separate issue of what she does about it. Reason will, or should, play a crucial role in her determination of whether to go along with our plans, or whether the future of our people needs to be protected against us and our crackpottery, and so on. But the *first* question is whether she is one of us, and that question might not be answered by rational calculation. The answer to that first question, and the emotional ties involved, affect the later calculations too, because they affect what we place values on and how much value we place where.

IV

What is it that constitutes a people or a nation? Common history and culture are often referred to as doing that job, but it is not entirely clear how they could: my neighbour and I have different grandparents and different events in our lives, so we can see that we have a common history only because we identify ourselves in terms of a group the history of which we then take ourselves to share. 'We gave the world the box kite and the pavlova and came of age at Gallipoli,' Australians might say, even though those speaking might not know the principles on which a box kite works, might have no idea how to prepare a pavlova, and might not have been born when Anzacs went ashore at Gallipoli.²⁰ We identify the commonness of the history or the culture of the several people by recognising that they are part of *a* people and that the relevant history is the history of that people, not by considering the individual histories of those individual persons and discovering that they are common. To say that the sharing of a common history makes them one people is actually circular.

Anthony Smith says that a nation is a type of political community, which implies some common institutions and a single code of rights and duties for all members of the community, as well as suggesting a bounded territory with which the people identify.²¹ The need for some territory is clear. Some territory, even if it is a territory that moves as the group moves through the seasons over the land from which it takes its food, is necessary as the area that allows the group to live. Within that area, though its boundaries might not be sharply marked off, the writ of the group must run. Smith believes, though, that more than this is needed in the way of land:

[T]he earth in question cannot be just anywhere; it is not any stretch of land. It is, and must be, the 'historic' land, the 'homeland', the 'cradle' of our people, even where, as with the Turks, it is not the land of ultimate origin. A 'historic land' is one where terrain and people have exerted mutual, and beneficial, influence over several generations. The homeland becomes a repository of historic memories and associations, the place where 'our' sages, saints, and heroes lived, worked, prayed and fought. All this makes the homeland unique.²²

And a nation, he says, has common values and traditions.²³ This point might be harder to accept in contemporary societies which are more pluralistic and societies in which the state probably carries a lot of the weight that was carried elsewhere in the community in other times and places. Pluralistic societies of the sort we know now might be impossible without formal states taking over from the less formal glue that used to hold nations together. A more *impersonal* coercion now keeps people in line and might, to the extent that it takes us away from subjection to purely personal power, provide us with an increase in our liberty. Legal rights now carry the weight otherwise

²⁰ Oddly enough, people who will readily make claims of this sort to show their superiority in various respects will often deny that they can have any responsibility for, or liability to pay compensation for improper behaviour in the past.

²¹ Smith, above n 9, 9.

²² Ibid.

²³ Ibid 11.

carried by traditional or moral rights, and the importance of shared political institutions has become greater as widely shared values have become fewer.

Smith distinguishes between a Western conception of a nation, in which, though one must belong to some nation, one can choose it, and a non-Western conception, in which, though one might leave the land in which one was born and abandon the people amongst whom one lived one's early life, one still remains a member of the community of one's birth.²⁴ The distinction is not, perhaps, as sharp as he suggests. The possibility of a person becoming a member of a nation (in Western nations, especially) is likely to depend on the willingness of a government to allow that person to enter its territory and live amongst the its people as well as on the willingness of those people to accept the new person for herself. Membership of a nation in the West is not entirely a matter of one's own choice but is very much a matter of what choice one is *allowed* by the rulers of the nation of which one is presently a member and the nation of which one wants to become a member. If the people of the nation one wants to join do not welcome outsiders then one cannot simply choose to join them. If an Iron Curtain has been dropped, then I may be unable to leave the state in which I presently live. That being so, my becoming a member of many other nations is precluded. Even if I may leave the country in which I live, denial of a visa may prevent me from joining the people with whom I want to live. Even if I am given a visa, I might find that I am rejected by those I choose to live amongst on the ground of their belief that I am taking away their jobs or threatening their culture.

The same sorts of limitations apply in non-Western nations. It might be that non-Western nations were traditionally harsher about allowing the changes in question, but what prevented a change of nationality was the exercise of will, whether through a state or not, by the nations concerned. It was exactly the same sort of limitation, whether or not differing in degree, as applied in the case of Western nations. This is exactly what we should expect, given the 'invented' or conventional nature of nations as Smith accounts for them. Who is a member and who is not is a matter of human will.

Choice cannot really be the basic thing if Smith is right about the role of the land in the life of a nation.²⁵ If each of us simply chose *de novo* in which nation we would live, then what is, in the relevant way, *our* land could not be *my* land. What gives us the historic connection with the land is that we have a connection with it going back through generations; such a connection is one into which I am *born*. We can make choices to move from one nation to another only if the norm is for the connection with the land to be established by people who do not make such choices. We see this maintenance of origins in hyphenated nationalities, as when people describe themselves as Greek-Australians or Irish-Americans, and Westerners over the years have shown a willingness to talk of Welsh or French blood (especially when it is spilt

²⁴ Ibid.

²⁵ Ibid 9.

in a war) in a way that suggests that blood, or descent, is a significant part of their idea of what constitutes a nation.

Perhaps what Smith's point about choice amounts to is that Western nations have shown more of an inclination to develop into states. So we are not concerned in this case with a nation from which I take part of my identity, but rather with an impersonal state to which I stand in only external relations. Insofar as the governments concerned leave it up to me, the conditions under which I live will not seem to be forced on me (as, say, religious belief, or other beliefs, seem not to be matters of my will), but something that is a matter of my choice. But then our concern will be more with what Smith terms the ethnic or non-Western conception of a nation, because what wants to secede is not a nation that has already turned into a state. Perhaps it wants to turn into a state, but if it were a state now then it would have nothing from which to secede.

Nations are, indeed, often understood in terms of families and connections through generations. The easiest way for persons to think of themselves as a people will be in terms of families (that is, 'natural' ties) or membership of present or past political units.²⁶ The idea of family carries the weight for Maori, for example, who identify their tribal units in terms of blood descent from the crews of the canoes in which (as the story is told) the original Maori settlers voyaged to Aotearoa.²⁷ Robert E Lee referred to his family as much as to Virginia when explaining why he chose as he did at the beginning of the American Civil War.²⁸ He saw his native state very much as something of which his family was a part. A significant aspect of the horror of that war was the way in which families were divided, men seeing the claims of their families and the claims of their states as being sufficiently similar to clash terribly and to allow them the possibility of choosing either way:

In nationalist language 'unity' signifies social cohesion, the brotherhood of all nationals in the nation, what the French *patriots* called *fraternité* during the Revolution. The family metaphor underlying the genealogical concept of the nation reappears here in secular, political guise: as the union of fraternal citizens, symbolized in David's celebrated *Oath of the Horatii*, the three brothers who swore on their father's sword to conquer or die (*vaincre ou mourir*) for their *patria* or fatherland.²⁹

²⁶ Religions, given the way in which they govern people's lives, can count as political units for these purposes. Even if they did not so count, and even if the adherents of the religion were not persecuted in such a way as to make them co-operate to cast off the persecution, if membership of the religion were enough to make those people think of themselves as *a* people then it would make them a people, even if it did not make them a people in any way that gave them soundly based claims on each other.

²⁷ See, eg, Te Rangi Hiroa (Sir Peter Buck), *The Coming of the Maori* (first published 1949, 3rd ed, 1987) [book 3](#) ch 1.

²⁸ See Anderson, above n 15.

²⁹ Smith, above n 9, 76.

Not everybody feels that way about a nation, but without such feeling there can be no nation even though there might be a state:

[P]erhaps the most fundamental sentiments evoked by nationalism were, paradoxically, those of family - paradoxically because real families can constitute an obstacle to the ideal of a homogeneous nation wherever nationalism embraces the ideal in that extreme form. That too was part of David's message in the *Oath of the Horatii* . . . ; the women on the right of the picture grieve for the loss of their loved ones and the imminent destruction of their family ties. At the same time the metaphor of family is indispensable to nationalism. The nation is depicted as one great family, the members as brothers and sisters of the motherland or fatherland, speaking their mother tongue. In this way the family of the nation overrides and replaces the individual's family but evokes similarly strong loyalties and vivid attachments.³⁰

A nation is a matter of sentiment and imagination; it calls on sentiment in the same way that a family does (and each of them allows for exceptions). We see why family and nation can produce such harshly clashing loyalties. And we see how the ethics of nationality might well be the more personal ethics of the family rather than the impersonal ethic of rights and duties that applies more readily in the case of a state.

V

The main interest that families have had for moral philosophers is as examples of institutions, the ethics of which do not centre around impersonal duties, but are based instead on affection. It might be a sense of paternal duty that constrains one's choice of action when awakened yet again by the baby at 4:00 a.m., and a spouse might feel unjustly treated on discovering that the other partner to the marriage has cleaned out the joint bank account and spent it on a solo holiday in some luxurious place. There is no denying that justice and duty sometimes come into play in families. It might even be that one reason families manage to avoid questions of justice and duty as much as they do is that members of families, facing each other day to day and having to live with each other, have enough sense, by and large, not to tread too heavily on the rights of other family members. We usually know to whom each bedroom and toothbrush belongs and act appropriately in the light of that knowledge. Compensation for infringement of rights is not an issue if the rights are usually not infringed. But it is certainly also the case that, within a family, there is often a loving toleration such that one person will let another run when the other is infringing rights. In affectionate relations one is less concerned to insist that one gets what one deserves and more willing to share without a great deal of conscious thought about the matter. Families are not all like this, but, insofar as family members need to insist on their rights all the time, we would usually regard the family as falling short of the ideal.

³⁰ Ibid 78-9. There can, of course, be nations without nationalism, and I do not intend to run the two together. Nationalism is a view about the importance of nations and what should be done about them, expressed, perhaps, in the last sentence of the passage quoted. But it is a view about *nations*, and expresses in part what nations *are*.

Hume certainly thought of families in that sort of way, referring to them when he wanted an example in discussing the more benevolent motives to action:

Why should I bind another, by a deed or promise, to do me any good office, when I know that he is already prompted, by the strongest inclination, to seek my happiness, and would, of himself, perform the desired service. ... Why raise land-marks between my neighbour's field and mine, when my heart has made no division between our interests; but shares all his joys and sorrows with the same force and vivacity as if originally my own? Every man, upon this supposition, being a second self to another, would trust all his interests to the discretion of every man; without jealousy, without partition, without distinction. And the whole human race would form only one family ...

In the present disposition of the human heart, it would, perhaps, be difficult to find complete instances of such enlarged affections; but still we may observe, that the case of families approaches towards it; and the stronger the mutual benevolence is among the individuals, the nearer it approaches; till all distinction of property be, in a great measure, lost and confounded among them. Between married persons, the cement of friendship is by the laws so strong as to abolish all division of possessions; and has often, in reality, the force ascribed to it.³¹

Familial relationships usually are based on affection, even if a little coercion is sometimes needed to keep things running smoothly. It is not simply that we are used to the idea of marriage for love; one reason that the family has, for the most part, been a fairly successful institution is that parents do, by and large, care about their children. If it were simply a matter of making parents responsible for their children because they brought them into the world, then it is not clear why any such system should be set up. Biological parents are given the job of caring for children in the first place because they are likely to care most about their own children, and thus to take the best care of them. Parents, of course, have duties with respect to their children; there is no denying that. People operating at such close quarters so much of the time are unlikely to avoid generating rights and duties with respect to each other, and they are unlikely *always* to be in the mood to perform the required action simply from inclination. My point is that they do not usually carry out that duty merely from a sense of duty, but rather because of concern for the child. And it is for that reason that it is efficient to place that duty upon parents rather than upon somebody else. The point does not, I think, need to be laboured further.

Sandel is surely right in his claim that, though families might be an extreme case, there is a continuum of cases in which the family finds its place:

These would include, at various points along the spectrum, tribes, neighbourhoods, cities, towns, universities, trade unions, national liberation elements and established nationalisms, and a wide variety of ethnic, religious, cultural, and linguistic

³¹ David Hume, *Enquiries Concerning the Human Understanding and Concerning the Principles of Morals* (first published 1777, L.A. Selby Bigge (ed) 2nd ed, 1902) 185. The last passage from Hume quoted here is one that Michael Sandel cites in *Liberalism and the Limits of Justice* (1982) 31, in his discussion of the same point.

communities with more or less clearly-defined common identities and shared purposes, precisely those attributes whose presence signifies the relative absence of the circumstances of justice.³²

And Sandel is surely right to include ethnic, cultural, and linguistic communities and nationalisms on this list. We noted earlier the sacrifice that goes with self-conscious membership of a nation, a self-consciousness that is necessary to the nation's existence. Members of a nation, when that nation is threatened, answer the call rather than waiting for the final demand printed in red, even though that call is likely to strike such people as being just as imperative as any final demand. They might recognise a duty to respond when they think about it, but they respond like the parent to the child. They respond because they care, because of affectionate relationships that they have, and those affectionate relationships make the prospective action strike them as something that they *must* do. It would not actually be easy to produce the detail to show that I have a duty to contribute my hard-earned money to pay for the drains of somebody who lives two thousand miles away. Especially given the connections created by trade and tourism, it is not obvious that cold-blooded calculation of who owes what to whom would produce the result that I have greater obligations to somebody in Sydney than I do to somebody in Tokyo. And it is not such calculation of debt and duty that provokes the standard position, which recognises the propriety of various things being funded from taxation because we are, after all, members of the one nation and will therefore share a common fate. We might not know each other, but we are affectionately related through our common identity as nationals. Hence Australians respond much more strongly to the trials and consequent tribulations of Australians found carrying illicit drugs in Asia than they do to the problems of other nationalities in the same circumstances and want to know whether Australians were involved in a plane crash in Britain or an earthquake in the USA. It could not be a sense of duty that moves the ordinary citizen in the nation's affairs. We need a prior story in terms of affectionate relations to pick out the people to whom we might have such a duty.

These affectionate relations constitute a nation or a people that we create for ourselves, based often on myth about what we identify as our common history, our historic land, and so on.³³ Only in those terms can we understand the Italian migrant who finds ancestors in the Pilgrim Fathers.³⁴ This is what creates peoples or nations, but it is no basis for demands one can make against another that he or she perform actions he or she is not willing to perform. If you have promised to do something for me, or have contracted and accepted consideration, then I can properly demand that you perform the action even if you do not now want to do it. But if your affection for me is not such as to provoke you to do something for my good, then the affectionate relationship between us is not such as to base any demand that I can make on you. That any demand should seem necessary is enough to show that the affectionate relationship is not up to the task. Membership of the nation is not determined by right- or obligation-producing relationships, but by affectionate relationships. That does not make it

³² Sandel, above n 32, 31.

³³ See generally Smith, above n 9 and Anderson, above n 15.

³⁴ Anderson, above n 15, 145.

morally or otherwise a lesser thing; that sort of affectionate relationship leads people to act for non-duty reasons, and is perhaps more likely than is a sense of duty to move people to sacrifice their lives for the good of others. Loyalty, not justice, is the glue of the nation. Political philosophy needs much more investigation of the notion of loyalty and other related notions that have been largely ignored for so long. In working out what is owed under a contract, I must calculate in terms of the values of the various things involved. Loyalty is not simply a matter of calculating with the established values but is, in part, a matter of what I place value on. Arguments, questions, or metaphors directed at my loyalty will therefore not be the same as those directed at my sense of justice.³⁵

It might be thought that the story about loyalty is simply a story about how societies are formed and that it is still contract theory that deals with political obligation, so that justice is still the primary virtue. My argument, though, has been that political obligation cannot be the basic problem, because it is not a problem that can arise for all. It is only because most don't even think of it that there can be a people in the context of which others *can* raise the problem. And whereas contract theory calls for a weighing up of the things we value, loyalty, in many cases and in relevant ones, determines what values we put on what things. That also means that justice cannot usefully be employed to determine all the proper limits to be placed on loyalty, despite the fact that loyalty can lead to nastiness. It is no part of my claim that this is a simple issue.³⁶

If we are to secede and to explain to those in the relevant territory who disagree with us why they should come along with us, the argument will have to be one depending on a notion such as necessity, unless we can induce a feeling of loyalty. We cannot appeal to loyalty because they do not feel those ties, and we cannot appeal to contract or consent, because they explicitly reject both. And a necessity argument in that broad form would just as readily have applied to the secessionists before their action. If, therefore, the argument is to have more weight than a simple reference to power ('You should recognise yourself as a member of this community and as bound by its laws because we shall beat you up if you don't'), then it will have to be one depending on the removal of an injustice: the secessionists must be able to point to injustice that they suffered before and to ensure that nobody, including those who don't want to secede, suffers after the secession. The ground for the secession, therefore, must be more than merely a desire for national self-determination. It must refer to actual unjust discrimination against that national group.

Only after a people or a nation has been identified this way, picking out the relevant population of which we can ask whether we shall or should contract with them or consent to their arrangements, could questions of political obligation properly arise.

³⁵ It is not always, or even most often, arguments that arouse feelings. References to the heroes in our shared history, and so on, without being presented as premises in any argument, might be what bring loyalty into play.

³⁶ See Robert Ewin, 'Loyalty and Virtues' (1997) 42 *Philosophical Quarterly* 403.

That is to say, the issue of political obligation can be a serious matter for some only because it is not so for most. Most people act from a relatively unquestioning acceptance of their nationality. It is taken as so basic an assumption that it is easy to overlook. The unquestioning acceptance forms a nation in terms of which calculations (moral calculations, not merely self-interested calculations) about whether somebody else should fit in with the arrangements of that nation can be raised.³⁷

My point here is not that one must, or that one should, always retain an unquestioning acceptance of one's nationality or of what one's nation does. One can decide to go elsewhere and to join another nation for many good reasons, including a disapproval of the activities and cultural development of the nation from which one sprang. I certainly do not intend to suggest that everybody should take the attitude so often lampooned as 'My country, right or wrong.' My point is that when I *do* raise the question of political obligation, I do it as an *insider*, not as somebody standing aside from all involvement and making a calculated decision of where my advantage lies and who owes what to whom.

The questions I ask myself will be relevant to loyalty rather than to contract. What is owed under contract is usually fairly precise: you mow my lawn, I pay you \$20. The contract has then been dealt with and it is clear that no further claims remain to be made in its name. What is owed as a matter of loyalty, like what is owed as a matter of gratitude, is not a precise amount in that way, and even as I decide that all debts of loyalty have been paid I might be feeling regret at the severing of ties – they are severed, not by the meeting of the claim as in the contract case, but by my decision not to meet it. I might well decide that my loyalty to this social grouping is worn out or that too much is being asked in its name. I might find that the aspect of my identity that I take from those social ties is in conflict with my vision of myself as a decent person. But when the issue of political obligation arises, the prior question is about the nation, and what we need there is a political psychology to parallel moral psychology.

³⁷

It sometimes seems that governments recognise the point and try to make sure that the nation is organised, and recognises itself, in terms of the government. Hence we see governments concerning themselves with symbols of nationhood as much as with substance. For a discussion of official nationalism see Anderson, above n 15, ch 6.