

Prologue – National Unity and Secession in the Symbolism of Power

I

It is perhaps the most impressive representation of state power in the world: the imperial palace in Beijing. The palace complex dates back to the fifteenth century. A straight road several kilometers long starts in the south far outside the palace and passes by ever more elaborate buildings to the center of the empire and of power, the imperial throne. Just as the layout is constructed around the emperor as the center, in the Chinese view, the whole empire, even the whole world, is oriented toward the palace complex.¹

Imperial China belongs to the past. But the complex lives on; only today, a transformation is inscribed in it. Since 1977, the mausoleum of Mao Zedong stands in front of the palace, placed exactly on the axis of the long road. The mausoleum intersects this line and at the same time dominates it. Here, the symbolism shows the founding of a new state that simultaneously made itself the heir and successor of the old state. Mao, as the founder, arrests the flow on the path to the center. Yet he does not divert it, but rather makes himself the master over it. In the end, the symbolism emphasizes the unity and the continuity of the state, as the palace and the entire complex had already served to do in the past. China's history of the last two millennia can be read as a succession of dynasties. Each dynasty fell after a shorter or longer period and left behind a splintered empire, which was then re-united under a new dynasty.

Mao's mausoleum marks one such change and even emphasizes it. Yet, it does so not by simply appropriating the symbolism of power, but also by overwriting it. The founding of the new state, which at the same time

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Cambridge University Press

978-1-107-03796-0 - The Right of Self-Determination of Peoples: The Domestication of an Illusion

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FIGURE 1. Beijing. In the center, the mausoleum of Mao Zedong, with the “Forbidden City” and the sequence of pavilions of the Imperial Palace in the background.

Source: Ullsteinbild/Sinopictures – Wenxiao.

signified the reconstitution of the old state, becomes the central commemorated event. This is manifested even in the type of presentation today: Although visitors can freely enter the mostly empty palace and even the throne room and wander about as they please, in the mausoleum the crowd is led past Mao’s body in a disciplined order. The empire is history, to which one can have a distanced attitude, whereas Mao is the living present that dominates the viewer – so seems to be the message.

II

The symbolism of power in the United States capital is hardly less impressive, but substantially more complex and appropriate for the state structure and division of powers. The city was, after all, designed with this in mind. In Washington, there is also a concentration on a long, straight line, The Mall, which stretches from the Potomac River to a hill on which stands the Capitol, the seat of Congress, in a dominating position. But this building cannot, like the throne hall in Beijing, form the sole midpoint of

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the state. The separation of powers necessitates a more complex representation. The legislative branch is the strongest of the powers, and this is manifested in the overriding significance of the Mall. The legislative branch faces or rather intersects the executive branch, embodied by the president. The executive power stands at a right angle to the Mall and emanates from the White House, the seat of office of the president. Thus the absolute midpoint of the state arises at the point of intersection of the line from the White House and The Mall. In Beijing, the midpoint is the site of the throne; in Washington it remains empty, and must remain so, because no power can stand at the center on its own. In principle, the sovereignty of the people ought to be embodied here. But it cannot be represented. The point of intersection is in fact not simply empty. Only slightly displaced from the intersection in the direction of the Capitol stands the monument to the most important of the Founding Fathers, George Washington. But he is not actually honored as a person because here there is no statue or mausoleum, but rather a giant obelisk.² The Founding Father becomes, in contrast to Mao, an abstract figure. Washington did not restore the state, but rather founded it in the first place. Therefore, he is more closely connected to it than a later refounder.

In at least as strong measure as in Beijing, the complex in Washington is overwritten with an additional message, which also refers to a kind of later refounding of the state, even if with less revolutionary character than in China under Mao. A massive equestrian statue of Ulysses S. Grant stands in front of the Capitol, in a dominating and triumphal posture. Here it is not the rather unremarkable president from 1869 to 1877 who is honored, but rather the commander in chief of the Union forces in the Civil War, who ended the secession and forced the rebel states back in to the Union literally with fire and sword. The statue stands, like Mao's mausoleum, exactly on the central axis. But unlike Mao's mausoleum, it does not disrupt it, but fits completely within it, in the sense of continuity. Whereas in Beijing the new foundation of a revolutionary state is displayed, even if the continuity with the empire persists, in Washington the restoration is emphasized. Its significance is strengthened by a further figure. Grant looks out down the Mall, and his gaze falls on the enormous memorial with a seated sculpture of Abraham Lincoln, situated far behind the Washington monument. President from 1861 to 1865, Lincoln's declared (and achieved) major aim was not the emancipation of the slaves, but rather the overcoming of the secession of the Southern states. The central event that overlays the symbolism of the complex is thus the American Civil War.

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FIGURE 2. Washington, DC. The Mall. In the foreground the Lincoln Memorial, in the center the Washington Monument, and in the background the Capitol with the equestrian statue of Grant. To the left of the horizontal axis, outside the picture, is the White House.

Source: U.S. Navy photo, Johnny Bivera.

In this way, the political symbolism in Washington receives a kind of second layer. Although the original plans expressed the founding of the state and the principle of the separation of powers, the overlay accentuates the securing, preservation, and restoration of the state and political unity. The restorer of the unity, Lincoln, does not, however, obstruct in a challenging manner the Founding Father as Mao does with the Chinese Emperor. Rather, he takes a respectful distance from the Founding Father and sits at the end of the Mall. In this way the Civil War becomes in the political symbolism of Washington the central event of U.S. history, a kind of refounding of the state. And this second founding act is connected in a much more direct fashion with individual, visible persons.

Here the limits of such symbolism are shown. The symbolism has to be simple to remain understandable. Too many overlays damage or hide the representation. Thus the third power, the judiciary, is not reflected in the historical symbolism. This makes it all the more noticeable that the problem of the secession plays such a central role. With the exception of the Revolutionary War, no other war found a reflection in even a remotely comparable way in the symbolism of the Washington ensemble,

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and even the Revolutionary War is not central in the same way as the Civil War. The message of the Washington ensemble is clear and applies up to the present day. For the securing of the unity of the nation, all means are permitted, and secession must be countered, if necessary with fire and sword.³

III

When the great powers reordered Europe in 1814–1815, Switzerland adopted the constitution of a loose federation of states. In the decades that followed, the economically upcoming liberal, predominantly urban, and Protestant cantons increasingly found this order to be an obstacle and attempted to create a more close-knit confederation, while the conservative, predominantly rural, and Catholic cantons regarded this as a threat to their independence. Fearing such a threat, they founded the Separatist League of 1847, the *Sonderbund*, which was tantamount to secession. The consequence was a civil war, although not years-long massive carnage as in America, but rather a conflict that lasted only 26 days with a death toll of 104 and 376 wounded.⁴ The superior power of the Separatist League's opponents was so great that a demonstration of that power, which only would have conjured up the peril of an intervention by the great powers, was not necessary.

The liberals' victory paved the way to the modern Swiss federal state, which in its basic features still exists today. Switzerland does not have any symbolism of power in the style of Washington or Beijing. But the victor in the civil war, who overcame the secession, is one of the few political figures to be honored nationwide. The commander in chief of the anti-Separatist League troops, General Guillaume-Henri Dufour, did not use fire and sword, but rather deployed his forces as mildly as possible. An equestrian statue of Dufour stands in his native city of Geneva. Numerous streets throughout the country and the highest mountain in the country bear his name.⁵ Nowhere, however, is Dufour represented as the victor over the Separatist League, or as the refounder or even founder of the state. And this very state maintains thereby a special continuity.

IV

What do these cases have in common? They all show the great weight that national unity carries for many, if not all, states. The central symbolism of power, if present at all, is oriented toward this unity. The unity is always

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already presupposed therein, and those who attain this unity, restore it, or at least contribute to its attainment, are especially honored and even become key figures in the history of the state concerned: Mao, Washington, Grant, Lincoln, Dufour. In most states, the founders and restorers stand generally high above the other rulers, statesmen, and generals as symbols of the nation. In Italy, for example, the streets, even in the smallest villages, are predominantly named after the central figures of the Risorgimento: King Victor Emmanuel II, Garibaldi, and Cavour. In the Soviet Union Lenin was held in unparalleled reverence.

In the nineteenth and twentieth centuries, the unique position of the state founder and restorer was strengthened even further. In almost all states formed in the wake of decolonization, those who led the country to independence or regained its independence attained the status of symbolic figures, from Bolivar to Atatürk, from Nehru and Gandhi to Nyerere and Kaunda.

For the United States and Switzerland one can assume that the renegade territories were disposed of against the will of the great majority of the population. If in 1861 a plebiscite among the whites of the Southern states had been held, they would have certainly voted with a large majority for the Confederacy and thus for secession. Some states did in fact hold plebiscites, which yielded clear majorities (see Table 1). Such a result was unlikely among the blacks; however, neither in the North nor in the South were they of any political significance. It is just as indubitable that in 1847 the majority of the population in the separatist cantons supported the Separatist League in Switzerland. The Chinese case is somewhat different. The majority of the population may well have greeted the founding of the Peoples Republic of China in 1949, particularly as it was connected with the securing of peace. Rather, the civil war and the splintering of the country in the previous decades would have to be regarded more as against their will.

While the population initially opposed the territorial changes forced on or withheld from them, they accepted them later with a similarly large majority. Today there would hardly be in any of the fifty states of the United States a substantial majority of the population that would approve of or demand secession, so deep the wounds of the Civil War otherwise might be. In Switzerland a partition into independent states is simply unimaginable, even if individual territorial units desire more autonomy or changes to internal borders.

The first conclusion to be drawn is that the opinions and wishes of populations concerning the status of their territory can change over the

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course of time. The secessionists of yesteryear can become the defenders of national unity of today and vice versa. What was wished for fifty or a hundred years ago and perhaps fought for by all means would be rejected today with similar resolution.

To point out that a population could have decided differently at an earlier or later point in time, and that a different decision probably would have also been to their advantage, is not an argument for withholding from them the possibility to make such decisions. It would not be any less perverse to withdraw voting rights from a population because they do not always vote in the same way, to the benefit of the same parties.

Here we have arrived at the subject of this study: state territorial changes, the changes in the state affiliation of territories from one state to another, but also the partition and new formation of states. Above all, this study will focus on the individual and collective role of the people affected by such processes. Is their consent necessary? Can they in the end decide for themselves to which state their territory should belong, and do they have indeed a right to this? If so, how can such a right be realized? In other words, do the inhabitants of a territory determine their state affiliation, or do others determine this for them – do they possess self-determination, or are they subject to alien determination? And does such a right have validity only in theory, or is it also capable of prevailing in practice?

Introduction – A Concept and Ideal

The right of self-determination of peoples is one of the most successful legal–political watchwords of the twentieth and twenty-first centuries. It is one of only a few slogans that have an exclusively positive connotation. By the same token, it practically necessitates hypocrisy. Even if one is skeptical or has a negative assessment of the matter, one must still lay claim to the concept. Those who publically reject it appear as deniers of a human right. The question is not whether it is an appropriate watchword, but rather whether one can define it in such a way that one is entitled to it oneself. In this respect, it is best comparable to human rights and democracy. But within this group of concepts, it has a privileged position over the others in many respects. This privileged position has, however, only accrued to it in recent decades.

Whereas reference to human self-determination can be traced back to the late eighteenth century and in isolated cases even to the late seventeenth century, the phrase “self-determination of peoples” arose first in the middle of the nineteenth century. Although a right was spoken of, initially it was not a legally actionable right to which a beneficiary – a subject (the people) – was entitled. At best, one could speak of a principle, an axiom, or a demand that peoples could make without the addressee being obligated to grant the demand.

This general principle then accumulated so much prestige that the preeminent legal–political ideal concept developed, a concept that no one could afford to view negatively. The ideal formulated therein is that every human being has the right to live in the state, or more comprehensively in the politically organized community, of one’s own choice.

Cambridge University Press

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As attractive as the ideal is, its realization seems just as hopeless. For viable political entities to arise, a certain amount of stability and territorial contiguity is necessary. No one can guarantee that the cumulation of the individual wishes of those affected can bring forth such a result. An international order in accordance with individual wishes for political affiliation is not a contradiction in itself; therefore a corresponding promise is hard to rescind. The history of the right of self-determination of peoples thereby becomes the attempt to support this right rhetorically time and again, while in practice to restrict it in accordance with one's own respective needs.

At first it remained just a watchword, in particular in the final phase of the First World War and in the first years afterward. The right of self-determination became the supreme principle of the peace settlement, the only principle that, as it seemed, was able to create a just world order. In the Second World War its significance waned again. A great leap forward followed with the end of the colonial empires after 1945. Since the UN Declaration on the Granting of Independence to Colonial Countries and Peoples in 1960 at the latest, the independence of the colonies was regarded as a step toward the realization of a just world order. The provisionally last gain in importance, which at the same time was the decisive step toward a universal positive concept, was taken in 1966 with the two international human rights Covenants. In the Covenants, at least in their wording, the right of self-determination finally went from being a propaganda slogan to an unrestricted right that the international community was and is obligated to accord every relevant subject, and thus every people. The formula in Article 1, Paragraph 1 of both Covenants states: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."¹

Henceforth this right was emphasized ever more strongly. For those states that have ratified one or both Covenants (as of September 2014, 168 states for the Covenant on civil and political rights and 162 states for the Covenant on economic, social and cultural rights²), the right of self-determination of peoples is not just any right, but rather, in accordance with the titles of both Covenants, a human right, and by virtue of this it already has a special status that secures it a universal validity. Thus, just as every human being without exception has an individual human right, every people has the right of self-determination of peoples. But it is also not just any human right, but a very special one. At least in a formal sense it stands above all others, even above the classic individual rights such as

the right to life or bodily integrity. For it is at the peak of all the human rights, as the sole subject of Article 1, which for its part forms the sole content of Part 1 of the Covenants. It is also the only right that is contained in both Covenants in an identical formulation. From this results a special position, which, although not legally anchored, is at least plausible and emphasized by many interpreters. From its preeminent position it follows that the enjoyment of the right of self-determination (it must be added by a “people”) is the prerequisite for the enjoyment of all other human rights. Without the right of self-determination there can be no human rights.³

This special position gives the right of self-determination a twofold character, which at first seems to weaken it, but in the end strengthens its position even more: It is simultaneously an individual and a collective right. That it is a collective right follows from its formulation, which states that the subjects of this right are peoples. It is more difficult to see here why it should simultaneously be an individual right. On this point a broad consensus has formed since the passage of the Universal Declaration of Human Rights in 1948. Although a people is a collective, membership in it is a question of individual choice – at least that is the claim. But another reason is more plausible and more important. The concept of self-determination originates in the field of the individual. Collective self-determination is only a kind of restricted model of individual self-determination. The latter relates to everything that a human does in life, whereas the former always gives and must give the individuals in the collective leeway for their own action.

The preeminent position of the right of self-determination is secured by a further factor. In increasing measure, international lawyers hold the view and even the conviction that the right of self-determination is *jus cogens*, a peremptory norm of international law. This is a right that is valid always, everywhere, and in every situation; thus it may not be restricted under any circumstances.⁴ It thereby belongs to the core elements of international law. However, this is no legally recognized fact – worldwide there exists no catalog of legal principles that are unquestionably *jus cogens*. But what is important is that in this respect no right has a higher status than the right of self-determination.

Finally, self-determination has an advantage over its perhaps stiffest competitor for the public’s unrestrictedly positive judgment of it, democracy. As popular as democracy is and as much as it meanwhile may appear to be the foundation of every legitimate state order built on popular sovereignty, it has at least from the perspective of international