Self-determination and the Falklands

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‘The sticking point for us is the right of self-determination.’ Mrs Thatcher thus described the issue at the height of the Falklands crisis, speaking on the BBC Panorama programme on 26 April 1982. She went on to give some elucidation of the meaning of self-determination:

The Falklanders’ loyalty to Britain is fantastic. If they wish to stay British we must stand by them. Democratic nations believe in the right of self-determination. . . . The people who live there are of British stock. They have been for generations, and their wishes are the most important thing of all. Democracy is about the wishes of the people.

Speaking in the House of Commons, Mrs Thatcher did not use the word self-determination, but was clearly affirming the same general position: ‘The people of the Falkland Islands . . . have the right to determine their own allegiance’ (3 April 1982). Referring to ‘the efforts we are making for a diplomatic solution’, she said ‘That solution must safeguard the principle that the wishes of the islanders shall remain paramount. . . . We have a long and proud history of recognizing the right of others to determine their own destiny’ (14 April 1982).

Not everyone in the House, even on the government side, took exactly this position. Mr Edward Heath, while generally giving the government full support for its policy on the Falkland Islands, took, or implied, a different line over self-determination:

Can one imagine an islander settling down in the Falklands in the future, and not asking himself, ‘Will I at any moment again be invaded?’ From that point of view, the situation can never be the same again. Therefore, in confirming these negotiations, the Foreign Secretary is right to say that the wishes of those in the Falkland Islands must be given full consideration, but not to resume our previous position, which was certainly adopted by the Government of 1970 to 1974, that they could veto any solution that was put forward.

Mr Ivor Stanbrook:

Would my right honourable friend say that the principle of self-determination, which is one of the major principles of the United Nations Charter, should not apply to the Falklands?

Mr Nicholas Winterton:

That is exactly what he is saying.

Mr Heath:

Yes, we have said that before.

It has to be recognized, then, that not everyone, even at home, appreciates the axiomatic force of Mrs Thatcher’s position. Abroad, the non-aligned countries who constitute the great majority at the United Nations have long recognized and

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recently (in March 1983 at the non-aligned summit meeting in Delhi) reaffirmed their support for Argentina's claim to sovereignty over the Falklands. Our closest allies press us, at least with their votes, to 'negotiate'. It is not, then, superfluous to consider whether Mrs Thatcher's or Mr Heath's position—or perhaps an alternative—is the soundest one to stand on.

At some risk of over-simplifying, Mrs Thatcher's position, in so far as it involves an appeal to self-determination, may be presented as resting on the following points:

1. Self-determination is universally approved as an imperative, not least in many solemn documents and declarations of the United Nations.
2. Self-determination means 'Let the people decide their destiny'.
3. The people means the inhabitants.
4. The inhabitants of the Falkland Islands have declared their firm wish to remain under British sovereignty.
5. Therefore the world, and in particular the United Nations, must approve the maintenance of British sovereignty over the Islands.

The fourth and fifth points may stand on their own. At least for domestic purposes it may be sufficient to assert and stand by these points, and for some it may seem to smack of disloyalty even to suggest that this position may need justification.

Nevertheless internationally we have at least in part rested our case on something like the first three points. Sir Nicholas Henderson effectively invoked self-determination in his television appearances in the United States. Some examination of the strength and implications of this appeal is worth attempting. I shall first mention some reasons for thinking that none of these three points is so clearly established as one might at first suppose. From this, I would like to proceed to offering a profile of the main rival views of self-determination (principally at the United Nations) and then consider whether any wider consensus of what it means is in sight, and whether this might have a bearing on the Falkland Islands issue.

The first point concerns the scope of self-determination, the second and third its meaning.

The first point—that self-determination is universally approved and universally applicable—is certainly lodged in Anglo-Saxon minds, even if its significance is not very clearly apprehended. However, so far from being universally approved, self-determination has inspired strong reservations even at the height of its success. President Wilson, the first and foremost exponent of the concept, and one who as arbiter of many destinies had unique opportunities for applying it in several continents at the end of the First World War, enunciated it thus in his Mount Vernon speech of 4 July 1918:

What we seek is the rule of law, based upon the consent of the governed and sustained by the organized opinion of mankind. Peoples are not to be bartered from sovereignty to sovereignty—as if they were mere chattels and pawns of a game. Every territorial settlement involved in this War must be made in the interest and for the benefit of the population concerned. Self-determination... is an imperative principle of action.

It is worth noting that Wilson spoke of the interest, not of the wishes, of the population.

Wilson's Secretary of State, Robert Lansing, wrote thus in his diary:
The more I think about the President's declaration as to the right of 'self-determination' the more convinced I am of the danger of putting such ideas into the minds of certain races. It is bound to be the basis of impossible demands at the Peace Congress and create trouble in many lands. The phrase is simply loaded with dynamite. . . . What a calamity that the phrase was ever uttered!

While Lansing was conscious of the practical difficulties, there were also theoretical objectors, of whom perhaps the pithiest was the British constitutional authority Ivor Jennings, who commented thus on the 'doctrine' of self-determination: 'On the surface it sounded reasonable: let the people decide. In fact it was ridiculous because the people cannot decide until somebody decides who are the people'. ¹ A more recent relevant reservation about self-determination was expressed in the historic resolution of the Organization for African Unity at its first Assembly at Cairo in July 1964 (with the significant dissenting voice of Somalia) affirming the maintenance of African frontiers as at the date of independence. This was in effect a decision not to allow self-determination to apply to Africa.

The above reservations of very different kinds about the applicability of self-determination were not made in a United Nations context. I shall consider below some other reservations which a majority at the United Nations have recognized. For the present these examples may suffice to show that self-determination is not universally accepted as an imperative in all cases.

The second leg of the argument was that self-determination means 'let the people decide'. There are various more sophisticated definitions of self-determination; but this is the essence of the matter. The dictionary definition, 'the independent determination by a state or community of its own policy' (OED), omits perhaps, by referring only to 'policy', the prior determination of the community whether to establish itself as an independent entity or throw in its lot with others. But this is not very different. The rapporteur of the relevant committee of the San Francisco Conference where the Charter was drafted in 1945 recorded that it was there made clear that an essential element of the principle of self-determination 'is a free and genuine expression of the will of the people'.

This definition—'let the people decide'—does not take one very far. It says nothing about the matters to be decided or the decision-making process—whether it has to be democratic or not—and the word 'let' cloaks the fact that someone outside the people in question, however delimited, has, as Ivor Jennings pointed out, to make positive prior arrangements. But it has the essential point.

The third part of the argument was the proposition that 'the people' means 'the inhabitants'. Here various distinctions must be drawn. Several United Nations texts (including the 1960 Declaration on a Granting of Independence to Colonial Countries and Peoples, and the International Covenants on Human Rights) affirm that 'all peoples have the right to self-determination'. In this sense self-determination is to be exercised by 'a people' meaning a considerable population who could contemplate constituting an independent state. Very small countries have certainly been given independence but it is doubtful if the inhabitants of the Falkland Islands would be considered to be 'a people' in this sense.

Even in cases where the population in question is fairly clearly 'a people' it is not necessarily co-extensive with the inhabitants. Two examples may illustrate the difficulties. In the case of the Western Sahara, does 'the people' include the descendants of those who during the period of Spanish rule moved out, under whatever pressures, into adjacent Morocco? And given that the population is largely nomadic, with a high proportion at any given moment outside the area of the Western Sahara, shepherding their herds perhaps a thousand miles away across the desert, how many of these are to be included? Depending on how the criteria are chosen, the population whose self-determination is in question may be estimated at anywhere from 70,000 to at least 700,000. Another case was that of Djibouti where the outcome of any vote on its future largely depended on the period of prior residence to be required as a qualification for voting—were all the Somalis who had moved in quite recently to be admitted or not?

There is another way in which it is a mistake to speak as if 'the people' means the same as 'the inhabitants'. Even if they are co-extensive, we are referring to different things in the two expressions. 'The people' refers, or may refer, to a group. 'The inhabitants' refers to a set of individuals. The importance of the distinction emerges if we were to imagine the Falklands either incorporated into Argentina with the islanders—assuming that democracy was then functioning in Argentina—enjoying the vote in Argentine elections, or alternatively incorporated into the United Kingdom and enjoying the vote in British elections. If under these conditions decisions about the future of the islands were taken by the Argentine, or the British, parliament, one might judge that the islanders as individuals were enjoying about as much participation in the decision of their future as the size of modern states allows. The inhabitants might be said to be enjoying democratic rights. But 'the people' would not be enjoying self-determination. (This incidentally illustrates the need for care in speaking as if democracy and self-determination coincided).

The three points, then, on which I presented the standard position as resting are on inspection an imperfect structure. Self-determination is on all sides subject to reservations and limitations. Its meaning is fairly enough given as 'let the people decide', but this does not get one far when so much obscurity surrounds who 'the people' are, and in particular the identification of 'the people' with the inhabitants is dubious. One might conclude that self-determination is best left on one side, and that Mrs Thatcher was well advised not to refer to it explicitly when speaking in the House of Commons. But we can hardly leave the matter there. The reservations about the scope of self-determination which I have cited so far were not voiced in a United Nations context. To the extent that we regard that forum as the main focus of world opinion, it is important to establish to what extent doctrine and practice at the United Nations would regard self-determination as applicable to the Falklands.

The Charter mentions self-determination twice, first in Chapter I (Purpose and Principles) which in Article 1 declares that the purposes of the United Nations are:

1. To maintain international peace and security.
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.

The other reference is in Chapter IX (International Economic and Social Co-operation) which begins:
With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: (a) higher standards of living, full employment . . . (Article 55).

In the vast acreage of documents produced by the United Nations in the following years on the general principle (or 'right') of self-determination, the following landmarks may be identified:

1. The Declaration on the Granting of Independence to Colonial Countries and Peoples. This is the key text.
2. The Covenants on Human Rights.

I shall concentrate on the first, making only incidental reference to the other two.

The Declaration on the Granting of Independence to Colonial Countries and Peoples was adopted without a dissenting vote on 14 December 1960 (Resolution 1514(XV)). Two paragraphs may be singled out:

2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
6. Any attempt 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.

1960 was the year in which seventeen new members, all but one from Africa, were admitted to the United Nations. One of these countries, the Congo, now Zaire, was the scene of a tragedy which dramatized the issues confronting the newly independent African states. That these countries should wish to use the United Nations as a vehicle for their aspirations was anticipated not least by the Soviet Union, which sought to put itself at the front of this movement by proposing a text calling for the ending of all colonialism by 1962. However, the members of the Afro-Asian bloc were not prepared to have the ball taken away from them and it was their text which emerged as the Declaration cited above, while the Soviet proposal was not adopted.

Six issues

While the Declaration was accepted without a single opposing vote, the abstention of the United Kingdom and other administering powers reflected various reservations which they had expressed over similar wording during the previous years, for example in the discussions of the various drafts of the Covenant or Covenants on Human Rights. The points on which the main administering powers were generally agreed (as conveniently summarized for example in the report on the Third Committee discussions in the United Nations Yearbook for 1952) were:

1. The right of self-determination must be subordinate to the maintenance of world peace.
2. There was discrimination against certain states, i.e. the administering powers, in the text proposed.
3. Obligations were imposed which were not laid down in the Charter.
4. The Charter, while imposing a ‘sacred trust’ on administering powers, recognized the need to take into account a people’s capacity for full government, i.e. for gradual advance.
5. The administration of non-self-governing territory fell within the domestic jurisdiction of the state responsible.
6. No definition had been established of such terms as ‘peoples’, ‘nations’ and ‘the right of self determination’.

Some comment on each of these may clarify the nature of the general confrontation between the positions of what one may for convenience call the administering powers and the anti-colonialists.

The first point was that the exercise of the right of self-determination must be subordinated to the maintenance of world peace. The text of the Charter would seem to support this view, but it did not prevail. The Articles of the Charter quoted above clearly place self-determination in the context of contributing to peaceful and friendly relations among nations. But the United Nations was to see a dramatic reinterpretation of this. The majority swung to Krishna Menon’s doctrine that ‘colonialism constitutes permanent aggression’ (the Indian case for the occupation of Goa). Firstly, various resolutions (e.g. 2621XXV) ‘reaffirmed’ that ‘all peoples have the right to self-determination and independence and that the subjection of peoples to alien domination constitutes a serious impediment to the maintenance of international peace and security’. Peoples under colonial domination were therefore entitled to restore the right of self-determination to themselves ‘by any means at their disposal’ (2949XXV). This was specified as authorizing, for example, the supply of arms from abroad to ‘freedom fighters’.

Another corollary was to approve the claim of prisoner-of-war status for any captured freedom fighters (Resolution VIII of the 1968 Conference at Tehran to review the progress made in twenty years on the universal Declaration of Human Rights). Along the same road was the resolution condemning France for ‘aggression’ in organizing a referendum in one of the Comoros Islands, Mayotte, in which its inhabitants voted overwhelmingly to remain attached to France rather than throw in their lot with the other Comoros Islands which had asserted their independence.

On the subordination of self-determination to the maintenance of world peace, the administering powers may thus be thought to have lost the argument in the 1950s and 1960s. But one result of the 1982 Falklands episode may be to show that even non-aligned countries who had supported Argentina’s claim to sovereignty over the Falklands were made nervous by Argentina’s resort to force. They were not prepared to take the line that ‘colonialism is permanent aggression’ and any action against it is therefore self-defence. The pendulum has swung back, but not, it is worth noting, exactly to the original position of the administering powers. It is no longer a question of weighing self-determination against world peace, but of de-colonization against world peace, and it is appreciated that in cases like the Falklands the causes of self-determination and decolonization are not at all the same thing. I shall return to this point below.

The second of the reservations of the administering powers referred to their complaint of being discriminated against by the text originally proposed (in the
recommendations of the Commission on Human Rights on international respect for the self-determination of peoples)—a discrimination which an amendment proposed by Mrs Roosevelt would have corrected, but her proposal was rejected.

It is a larger question than can be dealt with here how the force of the anti-colonialist drive, dressed in the language of self-determination, came to be directed almost exclusively at the already half-dismantled empires of European powers, and not at other, no less—many would say far more—suitable targets. My comments are confined to drawing attention to some United Nations texts exhibiting how what was known in Whitehall as the Salt Water Fallacy was quietly adopted. The Salt Water Fallacy was the doctrine that to control territory from which you are separated by salt water is wrong; otherwise it is all right.

The key text to which all appealed was the ‘domestic jurisdiction’ clause, Article 2.7 of the Charter: ‘Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state . . .’ This was firmly invoked by the Soviet Union to prevent discussion of matters internal to its frontiers and, less successfully, in various degrees by the administering powers to restrict discussion of their non-self-governing territories.

United Kingdom spokesmen did, of course, draw attention to the apparent Soviet inconsistency. Mr Godber for example, as he then was, as Minister of State, pointed out to the Assembly in 1961 that the Soviet Union since the Second World War had seized 200,000 square miles of territory in which they had established bases and held the population in subjection by armed force. He mentioned that they had submitted no information about the Kurile Islands which they annexed in 1945. In the following year Sir Patrick Dean also pointed out in Plenary Assembly that ‘in 1815 the whole of Ceylon came under British rule, at the same time as Azerbaijan was being occupied by Russia. Ceylon achieved independence in 1947: when, may one ask, can we hope to see Azerbaijan independent?’

Nevertheless, majority opinion in the United Nations agreed with the Iraqi delegate who in the 1952 Assembly expressed the view that Article 2.7 of the Charter could not be applied in respect of territories geographically removed from the sovereign state responsible for their administration. The convenient converse of this was that this article can be invoked in cases where territories are not geographically removed from the states responsible for their administration. Perhaps the Iraqi delegate had the Kurds in mind.

Paragraph 6 of the 1960 Declaration, already cited, may at first sight seem equally innocuous: ‘Any attempt at the partial or total disruption of the national unity and territorial integrity of a country is incompatible with the purposes and principles of the United Nations.’ It will be necessary to come back to this key passage in connexion with territorial integrity, but it may be seen in the present context as a subtle affirmation of the Salt Water Fallacy in so far as it implies a vision of a world of homogeneous geographically cohesive states.

The United Kingdom and other Western powers abstained in the vote on the 1960 Declaration. Perhaps for this reason various states required an additional ‘safeguard’ when it came to what might be called the tidying-up exercise of the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States. This safeguard clause, tabled by the United Kingdom2

(and the feats of draftsmanship involved are considerable) played a vital part in enabling this Declaration to be adopted without dissent. It reads: 'States enjoying full sovereignty and independence and possessed of a representative government, effectively functioning as such with respect to all distinct peoples within their territory, shall be considered to be conducting themselves in conformity with this principle (i.e. self-determination) as regards these peoples.' Perhaps one can cling to the reference to representative government and claim that thereby the game was not quite given away, but this text must be taken to seal away the prospect of invoking the principle of self-determination against aspects of the Soviet system.

To sum up on this point, one can say that the administering powers were discriminated against, but perhaps now that so little remains of their empires the issue is on the way to being obsolete. The Soviet presence in Afghanistan has been a reminder that the decolonization drive might have other objects worthy of its continued attention. The Helsinki agreements included references to 'self-determination for all peoples' and mark a shift away from the implication of some of the United Nations texts that only those living under colonial or racist regimes were intended to benefit from it. The pendulum has moved perceptibly back.

The third point of the administering powers was that obligations were being imposed which were not laid down in the Charter. There is little point in labouring this issue at this stage. There were several weaknesses in the position. The administering powers had themselves initiated changes in the structure envisaged by the Charter—for example, the experience of the Soviet veto in the Security Council had prompted the Uniting for Peace resolution which allowed the General Assembly to approve action to deal with threats to the peace and thus contributed to a progressive (though at times halted or even reversed) decline in the Security Council's authority.

The anti-colonial group sought over the years to establish the view that the various United Nations resolutions and declarations on self-determination themselves added new positive obligations to existing international law and in particular to the Charter. While this did not impress the legal advisers of the administering powers, it elicited from the Office of Legal Affairs of the UN Secretariat the opinion that the various UN declarations 'may by custom become recognised as laying down rules binding upon States' (Memorandum of 2 April 1962). Some Western authorities of some weight were also inclined to recognize the legal content of the principle of self-determination.3

The administering powers' fourth point was that the Charter emphasized the 'sacred trust' resting with administrative powers to lead their dependent territories to self-government, thereby recognizing that there had to be stages to the achievement of self-government. On this issue, the opposite positions were miles apart. The United Kingdom, claiming credit for a broadly successful management of the transformation of its empire into independent states, felt that its experience demonstrated the need for stages: for the progressive construction of institutions able to bear the weight before independence was conferred. If this had proved the justified course even in countries as advanced as India, how much more so in, let us say, New Guinea or other places which had yet to learn about the wheel? In shaking their heads over the events in the Congo from 1960 onwards, many were

apt to put the blame on Belgium for failing to go through the necessary stages of preparation for independence.

The anti-colonialists, on the contrary, blamed precisely the imperialist presence for the relative backwardness of dependent territories: the first condition of progress was to remove that presence. This line was laced with the Marxist analysis of 'imperialism as the final stage of capitalism' which claimed that that exploitation of dependent territories, principally by harnessing their economies to the requirements of the industrialized world, was what had kept capitalism going, and that terminating this dependence would therefore have two beneficial results; first, the restoration of the natural growth of these territories' economies, and secondly the acceleration of the general crisis of capitalism.

There was little meeting of minds on this issue. The majority in the United Nations took the second view and expressed it in the third point of the Declaration: 'Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.' Subsequently, however, there has been increased appreciation that it is not necessary to insist on full independence even for small and remote Pacific Islands. At one time a UN sub-committee recommended that Britain should give independence to Pitcairn Island with its eighty-seven inhabitants. More recently—beginning perhaps with the acceptance of the voluntary association of the Cook Islands with New Zealand in 1965—there has been general acquiescence in the attachment of such small territories to larger entities. In other words, some recognition has crept back of the need for 'viability', a concept at variance with the doctrine of the Declaration of 1960.

The fifth point of the administering powers (the invocation of Article 2.7 exempting 'matters within the domestic jurisdiction of states' from United Nations intervention) has already been touched on in the context of the Salt Water Fallacy. The question has become largely irrelevant. As mentioned below, the Western powers have accepted the description of self-determination as a right, for example in the International Covenants on Human Rights and in the Declaration on Principles of 1970. To the extent that it has been accepted in that context that one state may concern itself with the performance of another state in human rights matters, it is difficult, now that we have accepted that self-determination is a kind of human right, to invoke the domestic jurisdiction clause of the UN Charter against external attention to the measure of self-determination operative within territory for which a state is responsible.

**The definition of self-determination**

The sixth and final criticism of the administering powers was that the right of self-determination could hardly be asserted as a positive legal obligation when no definition had been established of such terms as 'people', 'nation', and 'the right to self-determination'. In 1958 the United States had managed to secure approval in the Economic and Social Council for a proposal to establish an ad hoc commission to conduct a thorough survey of the concept of self-determination. But this proposal was rejected when it came before the Third Committee. Various grounds were given by the anti-colonialists for rejecting this proposed study, for instance that it would serve only to delay still further the active exercise of the right to self-determination.

A more subtle objection was voiced by the Pakistani representative and constitutes a continuing strand in anti-colonialist thought:
The international community has reached a sufficient degree of maturity to be able to distinguish between genuine self-determination and self-determination used as a cloak for secession. In the last analysis could it not be said that the expressions 'people' and 'nations' are purely legal concepts independent of political, social and economic factors? Could it be said that any attempt at definition might prove dangerous to subject peoples by providing those who govern them with pretexts for denying them self-determination?

Thus the anti-colonialists wished to reserve it for the 'mature' judgement of the international community, whether in any particular case a group is to be recognized as a people entitled to self-determination. Before dismissing this as transparently placing in the driving seat the 'non-aligned' majority at the United Nations in the guise of the 'international community' we might recall that the numerous academic efforts to define 'people' and 'nation' have been inconclusive. None of the suggested criteria of language, race, culture or common history has more than limited validity, and one is left with the circular statement that a people is a group which considers itself to be a people.

In one way the administering powers were quite reasonable in saying that, while 'principles' can be expressed in general terms, before you make something into a legal 'right' you should define its terms. But if they implied that an agreed definition of 'people' and 'nation' might be reached by further study, they were perhaps over-optimistic. One must also distinguish the problem of defining the term 'a people' from identifying and defining a people in a concrete case. No doubt an answer to the first problem would be helpful in dealing with the second. But not perhaps indispensable. An elephant may be difficult to define but fairly easy to recognize.

Ivor Jennings suggested that self-determination was 'ridiculous' because somebody has to decide who the people are. It is true that in many cases this may be a difficult decision (as for example in the instances of the Western Sahara and Djibouti which I have mentioned) and that someone outside the population that is to exercise self-determination has to set the scene. These are limitations which should give pause to any who exalt self-determination into an absolute value, but they do not make it ridiculous or unimportant. To put it at its lowest, the technique of plebiscites has worked in providing accepted solutions in what might have remained very difficult situations (e.g. in the Saar and again in 1961 in the British trust territory of the Cameroons, whereby the Northern Region of that territory joined Nigeria and the Southern Region joined the Republic of Cameroon).

There is much else that could be said about the definition of self-determination, but in so far as the lack of a definition was a bone of contention, one might say that there is little reason for it to be so still. It was a divisive issue at one stage because the anti-colonialists regarded it as important to their cause, that the grant of self-determination should be made legally obligatory for administering powers, and the latter resisted this on the ground that while self-determination was clear enough in principle, it could not be made a legal right unless it was more accurately specified. The heat has gone out of the issue for many reasons, including the fact that the

United Kingdom and other Western powers have accepted the description of self-determination as a 'right' (e.g. in the International Covenants on Human Rights).

On all six of the old divisive issues, therefore, the scene has changed and the grounds for disagreement have been reduced.

Territorial integrity

Over the shoulder of the domestic jurisdiction question, however, the related issue of 'territorial integrity' has even more conspicuously emerged as a central difficulty in dealing with the main colonial problems still confronting the United Kingdom and the United Nations. It is another interesting case of the transformation of a phrase's meaning. The Charter's words (Article 2.4: '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') seem to refer to the existing territorial pattern. Those words are at first sight merely echoed in the Declaration of 1960 (para. 6: 'Any attempt 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') but they have been given a totally different twist. The Argentine Foreign Minister quoted this passage of the Declaration as meaning that 'in certain situations the applicable principle is that of territorial integrity and not that of self-determination'. The doctrine was spelt out in Resolution 2353 (XXII): 'any colonial situation which partially or completely destroys the national unity and territorial integrity of a country is incompatible with the purposes and principles of the Charter.'

Of course one might say that to apply these words as Señor Aguirre Lanari did begs in the first place the question of sovereignty, the question of what the territory is. But again there has been an implied shift in the meaning of 'territorial integrity'. References by various Latin American speakers to the continental shelf and 'facts of geography' suggest that 'territorial integrity' might mean something like 'geographical cohesion'. Señor Aguirre Lanari quoted some cases in which he claimed the General Assembly had 'determined' that the exercise of self-determination 'should yield to other rights which, as is the case with territorial integrity, more adequately respond to the specific problems posed in connection with certain territories which are subject to colonial domination, such as the Malvinas Islands, Gibraltar, Mayotte, the Malagasy Islands and the Islands off the coast of Namibia'.

In the case of Gibraltar it is true that Spain claimed that self-determination did not apply. It is not clear that even the majority in the General Assembly who voted in a pro-Spanish sense recommending negotiations intended to endorse this Spanish position. Mayotte has been mentioned above. The other instances cited by Sr Aguirre Lanari are minor and unresolved, but certainly illustrate his point. Sr Aguirre Lanari did not mention other more considerable cases which might have reminded some among the non-aligned group of issues which had divided them.

The most relevant case is one involving Indonesia. When the United Nations discussed the future of Western New Guinea (West Irian) prior to the Dutch withdrawal in 1963, the main body of Indonesia's supporters (including India, Japan, Malaysia and many Arab countries) took the line that the issue before the Assembly was not one of self-determination but of affirming the national unity and territorial integrity of Indonesia. Nevertheless the resolution eventually adopted did refer to self-determination: the inhabitants were to exercise their right of self-
determination before the end of 1969 and decide whether they wished to remain with Indonesia or sever their ties with it. An ‘act of free choice’ eventually took place. The Secretary-General’s representative reported that ‘with the limitations imposed by the geographical characteristics of the territory and the general political situation in the area, an act of free choice has taken place in West Irian, in accordance with Indonesian practice—in which the representatives of the population have expressed their wish to remain with Indonesia’. He added some serious reservations. A number of African countries expressed their view that the people of West Irian had not exercised their right to self-determination.

Another relevant example is Hong Kong. There was no opposition to the Chinese request that Hong Kong be omitted from the list of territories to which the 1960 Declaration applied. The implication of this was that there should be no question of applying the normal de-colonization processes to Hong Kong: to put it another way, the territorial integrity of China would take absolute priority over any question of self-determination.

There is no point in not recognizing that the United Nations has on occasion allowed precedence over self-determination to other considerations, in particular territorial integrity. It is rather something to be built on. It is in line with a traditional British position, reflected in the Charter’s words, that self-determination may have to be subordinated to the requirements of world peace. It is in line with the position that self-determination is a principle rather than an absolute right. All this can be said objectively without trying to score points or claim posthumous victories in long-past controversies. On this kind of basis it should be possible in due course to construct a revised doctrine of self-determination giving it high but not supreme importance in the scale of social or political values.

Another important point which emerges from the speeches by many Third World countries both during the debates on the Falklands and in earlier debates, for example that on West Irian, is that even in cases where ‘territorial integrity’ is held to prevail over self-determination importance is attached to the expression of the wishes of the population. If this point has embedded itself in world thinking from all the discussions of decolonization and self-determination, it is something to cherish.\(^5\) The problem is to find a proper place for this previous element, without either making it into an absolute imperative or relegating it to insignificance.

Here I suggest drawing something from recent philosophical thought and in particular from Isaiah Berlin’s fruitful distinction between positive and negative liberty.\(^6\) Positive freedom is ‘being one’s own master’ or at least identifying oneself with those exercising mastery. Negative freedom consists in the absence of restrictions, ‘is not being prevented from choosing as I do by other men’. Thus, positive freedom might exist in a community subject to a detailed and rigorous code of rules. Negative freedom might exist in a community subject to an almost totally inactive monarch. Isaiah Berlin identifies self-determination with positive liberty. While he holds the balance fairly even between the two kinds of liberty, he

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5. At the non-aligned summit meeting in Delhi in March 1983 a declaration was adopted backing Argentina’s claim to the Falkland Islands but insisting that the wishes of the islanders should be considered in any negotiation. According to The Times, 10 March 1983, ‘informed sources said that the Argentine delegation had tried to have the provision concerning the islanders’ wishes deleted, but had failed to muster enough support’.

recognizes that the positive conception has lent itself as a matter of history to the splitting of human personality into two, to theories of ‘higher’ or ‘real’ selves (since positive liberty might mean mastery over one’s ‘lower’ self) and hence to various forms of authoritarianism. He clearly prefers negative to positive liberty.

Isaiah Berlin enables us to recognize that self-determination is not identical with every kind of liberty. To the extent that a population identifies itself with its government it may be said to enjoy positive liberty. On many grounds it is unreasonable to imply (as perhaps Mrs Thatcher’s words might suggest) that only countries with democratic institutions in our sense can really know what self-determination is. But furthermore he enables us to appreciate that liberty of this kind is not the one and only valuable quality of a society: another kind of liberty is at least as precious. Self-determination emerges as a valuable but not an absolutely supreme principle.

To come down to earth and back to the Falklands, it may now be easier to arrive at an answer which respects the wishes of the inhabitants as being very important but not necessarily paramount to the extent that no other consideration has any weight against them.

There is no need for Britain to place itself in the position of France in whose constitution there is a provision that no change in French territory (including overseas territory) can be made without the consent of the population. Perhaps France has been haunted by Rousseau-esque doctrines of a general will, which is a version of Isaiah Berlin’s positive liberty. At all events this provision in the constitution has occasioned considerable difficulties for France when disposing of territories like Pondicherry, Djibouti, and now Mayotte.

One can believe the wishes of the population to be very important—important enough to fight and die for—without having to assert that they are absolutely paramount.

One partly imaginary illustration may show how, while men and land may be incommensurable in value, it is not necessarily foolish in making political decisions to allow weight to other factors than the human. At the turn of the century Chile and Argentine referred to the United Kingdom the delimitation of the frontier between the two countries in a part of the very far south of the continent. The British teams went to great lengths to determine for example where the watershed lay. On such geographical considerations, I understand, the adjudication was arrived at. The area in question was virtually uninhabited, although squatters from both Argentina and Chile had lodged themselves in some of the valleys. Would it have been sensible to determine the frontier by asking them which country they wished to belong to?  


8. The geography is very contorted, with rivers at some places drawing their waters from the east-facing slopes of the peaks but flowing round through valleys to discharge into the Pacific, so that balanced judgements had to be made involving the division of some valleys between the two countries.

A similarly disputed stretch of the Andes further north (the Puna de Atacama) was referred by Argentina and Chile at the same time to the adjudication of the American Minister in Buenos Aires: ‘Accordingly Mr Buchanan with two colleagues—who represented Argentine and Chilean interests respectively—evolved a theoretical boundary by the simple process of drawing straight lines on a map from point to point.’ See Col. Sir Thomas Hungerford Holdich, RE, *The countries of the King’s Award* (London: Hurst & Blackett, 1904).
The delegate of Zaire in the General Assembly debate on the Falklands in November 1982 asked whether the question was about people or about land. The answer must be that it is about both, and there is no need to seek to give absolute importance to one or the other. On both aspects the British title is strong, though not at present generally accepted. To gain the wider support for it which we may need over the years, we should avoid taking up extreme positions for which there is no clear case, but seek rather to enlarge the possible area of agreement on the scope and meaning of self-determination, recognizing some limitations on it.