

The Nation of China

The emergence of the principle of self-determination in international law is informed by liberalism and nationalism.¹ Liberal theory, as expressed in American and French revolutions, concerns individual freedom and places political legitimacy of a lawful government upon the consent of the governed,² while nationalism represents the demand of “nations” to legitimately establish their own states.³ Both doctrines emerged in the seventeenth and eighteenth centuries,⁴ and their interaction with international law “has defined the context in which self-determination has developed”.⁵

Although the doctrine of nationalism was asserted to disintegrate “artificial” multinational empires in Europe,⁶ it was, and still is, employed to justify that China is the state for the Chinese nation. Faced with challenges posed by foreign forces, Chinese political elites chose nationalism as the foundation for building an independent modern Chinese state since the late Qing era. Yu Ying-Shih has noted that nationalism is the driving force behind the changes

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- 1 David Raic, *Statehood and the Law of Self-determination* (Kulwer Law International, 2002), pp. 172–177; James Summers, *Peoples and International Law (2nd Edition)* (Martinus Nijhoff Publishers, 2014), pp. 13–36.
 - 2 John Locke (Ian Shapiro ed), *Two Treatises of Government and A Letter Concerning Toleration, Book II*, (Yale University Press, 2003), pp.101–106, 111–121, 133–157; Jack Rakove (ed), *The Annotated U.S. Constitution and Declaration of Independence* (The Belknap Press, 2009), pp. 77,79; Philip Dwyer and Peter McPhee (eds), *The French Revolution and Napoleon: the Sourcebook* (Routledge, 2002), pp. 26–28.
 - 3 Many scholars have written on the subject and this book will not attempt to retrace their path. See, e.g. Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Revised Edition) (Verso, 1991); John Breuilly, *Nationalism and the State* (Manchester University Press, 1993); Alfred Cobban, *The National State and National Self-determination* (Collins, The Fontana Library, 1969); Rupert Emerson, *From Empire to Nation: the Rise of Self-assertion of Asian and African Peoples* (Harvard University Press, 1962); Ernest Gellner, *Nations and Nationalism* (Basil Blackwell, 1983); E.J. Hobsbawm, *Nations and Nationalism Since 1780: Programme, Myth, Reality (2nd Edition)* (Cambridge University Press, 1992); Anthony Smith, *The Ethnic Origins of Nations* (Blackwell Publishing, 1986); Hugh Seton-Watson, *Nations and States: An Enquiry into the Origins of Nations and the Politics of Nationalism* (Methuen London, 1977); Rodolfo Stavenhagen, *Ethnic Conflicts and the Nation-state* (The Macmillan Press, 1996).
 - 4 David Raic, *supra* note 1, pp. 175–176; James Summers, *supra* note 1, p. 133.
 - 5 James Summers, *ibid*, p. 132.
 - 6 David Raic, *supra* note 1, pp. 176, 181; Hurst Hannum, “Rethinking Self-determination”, 34:1 *Virginia Journal of International Law* (1993), p. 3.

of China over the last hundred years.⁷ Indeed, the familial metaphor of the nation as claimed by the nationalists,⁸ to a certain extent, corresponds with traditional Confucian norms and values.⁹ The history of multi-ethnic Chinese empires also leaves a legacy to define the Chinese nation through historical, territorial, and racial ties.¹⁰ Despite the fact that the Soviet ideology has been adopted by the Communist Party to build the “new” state, as Hobsbawm rightly points out, China has tended “to become national not only in form but in substance”.¹¹ Since nationalism concerns the interests and values of a nation,¹² the understanding of the Chinese nation is central to Chinese nationalism and therefore defines the proposed Chinese state.

Self-determination as a right is defined by the features of the people who exercise it. Similarly, the minorities and their rights are commonly defined by the relation with a majority culture. China’s sense of nationhood and the Han-minority relation rest on a civilisation that stretches back thousands of years. Chinese civilisation not only provides the basis for the invention of the Chinese

7 Yu Ying-Shih, *Qianmu yu Zhongguo Wenhua [Qian Mu and Chinese Culture]* (Shanghai Yu-andong Chubanshe, 1994), p. 203.

8 Anthony Smith, *Myths and Memories of Modern Nations* (Oxford University Press, 1999), p. 190.

9 According to Confucianism, family has a significant role in Chinese society. Social and familial interactions are guided by the principle of Filial Piety, which tends to emphasise the role of a man not only as an individual but also as a member of family and society. Further, Confucians rely upon an analogy between family and state. A man, therefore, owes loyalty both to his family and to his country. Craig Williams, “International Human Rights and Confucianism”, 7:1 *Asia-Pacific Journal on Human Rights and the Law* (2006), pp. 48–49; C.W. Chan, “Human Rights and Democracy with Chinese Characteristics?”, 13:4 *Human Rights Law Review* (2013), p. 649; David Y.F. Ho, “Chapter 11 Filial Piety and its Psychological Consequences”, in Michael H. Bond (ed), *The Handbook of Chinese Psychology* (Oxford University Press, 1996), pp. 155–165; Reginald F. Johnston, *Confucianism and Modern China* (Victor Gollancz Ltd, 1934), pp. 42–46; Stephen Angle, *Human Rights and Chinese Thoughts: a Cross-cultural Inquiry* (Cambridge University Press, 2002), p. 236. See also *infra* note 21.

10 Various definitions of nation have been proposed. Gellner defines nation by will and culture; Smith argues that nation could be understood from territorial and ethnic aspects; a nation, according to Seton-Watson, “is a community of people, whose members are bound together by a sense of solidarity, a common culture, a national consciousness”; and Anderson considers nation as “an imagined political community”. Ernest Gellner, *supra* note 3, pp. 1–7, 53–62; Anthony Smith, *supra* note 3, pp. 134–138; Hugh Seton-Watson, *supra* note 3, p. 1; Benedict Anderson, *supra* note 3, pp. 6–7.

11 Eric Hobsbawm, as cited in Benedict Anderson, *ibid.*, p. 2.

12 John Breuilly, *supra* note 3, p. 2; Anthony Smith, *Nationalism: Theory, Ideology, History* (Polity Press, 2001), p. 9; Robert Tombs, “Introduction”, in Robert Tombs (ed), *Nationhood and Nationalism in France: From Boulangism to the Great War 1889–1918* (HarperCollins Academic, 1991), pp. 3–7 at p. 3.