Rights of Secession

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Should there be a right of secession? Yes, I shall argue, for territorial-based groups with historical-cultural identities. But I want to approach the question with some initial reflections about any view of secession. Even normative theories leaning on venerable intellectual traditions need to arrive at a “reflective equilibrium” between general theoretical considerations and intuitions about particular cases. With normative theories of secession, where debate has been relatively new, intuitions about particular cases are bound to loom large.

One recent case—Chechnya—should serve as a guidepost to thinking about this issue. Here a group with all the attributes of a distinct ethnic identity—language, culture, religion, history—marking it off from the majority of the Russian state in which it found itself, and which formed the preponderant group on its traditional territory of residence, demanded political independence, yet was subjected to a military campaign costing fifty thousand lives. The international response was typified by then Secretary of State Warren Christopher’s statement, “We hope that Russia can bring the conflict swiftly to an end.” In this, Christopher echoed then British Foreign Secretary Douglas Hurd’s repeated admonition that lifting the arms embargo on the Bosnian government, then facing a genocidal war by Serbian militias, would “prolong the conflict” in the former Yugoslav republic. Decidedly, Western statesmen and diplomats prefer their secessionary wars short.

It is no use arguing, though, that the problem in Chechnya and elsewhere was the method of suppression rather than the lack of international support for Chechnya’s right of self-determination. To be sure, denial of a right of secession is not a license for the dominant state to commit genocide. It is, however, virtually a license for it to use force. Under the present sovereign state system, the “territorial integrity” of a “sovereign” state means precisely the right of the state to impose its laws on the entire territory. States, Weber famously recognized, claim a monopoly of legitimate force on a given territory. If Chechnya is by right part of Russia, it behooves Russia to put the grave matter of its monopoly to the test, without outside interference. Such means as blockades might be tried, but if they are ineffective (and hunger is not necessarily kinder), brute force will surely follow. Denial of Chechnya’s right of self-determination, therefore, was tantamount to an international invitation to Russia to use force.

One argument for a right of secession, then, is simply to bring international pressure to bear in dissuading remainder states from resorting to force. Secessions per se do not cause war; almost invariably, unificationist attempts to crush them do. Contrary to headline-induced impressions, there have been several peaceful secessions: Norway from Sweden (1905), Iceland from Denmark (1944), Senegal from Mali (1960), Singapore from the Malaysian Federation (1965), Slovakia from Czechoslovakia (1993), and
indeed most Soviet republics from the Soviet Union. Secession gets a bad press in book jacket blurbs and prefaces, with vague references to “wars of secession around the globe.” Properly speaking, we might do better to worry how to prevent anti-secessionary wars. True, if secessionists all dropped their demands the casus belli would disappear; so, too, if anti-secessionists dropped theirs. Arguably, there is a better chance of getting the latter to comply than the former.

A preliminary point, then, about a normative theory of secession: while law cannot be identical to morality, a moral theory of secession, if of any value, ought to lay the basis for changing international law and norms with respect to cases such as Chechnya. Domestic law, for good reason, does not encompass the entire moral domain: we do not want the coercive arm of the state intruding into every private immoral act; the right to autonomy is too important, and as Mill said, “the strongest of all the arguments” against interference “with purely personal conduct is that, when it does interfere, the odds are that it interferes wrongly, and in the wrong place.” It is the last argument which can and often has been invoked in international contexts: intervention in distant lands against internecine fighting is fraught with risk, we do not really know the conditions or understand the culture or motives of the parties to the conflict.

There is of course much truth to this, and reason enough to be cautious. But the record shows that in cases of secession, if anything, we tend to manufacture misunderstanding (“Balkan ethnic hatred”) in order to rationalize our non-intervention, until finally forced to step in anyway, in far worse circumstances. Time and again, in breakaway bids from Bangladesh to Biafra to Bosnia, we wait until hundreds of thousands have died and our commitments to the 1949 Geneva Protocols cry out to us to stop unificationist genocide. Here, clearly, Mill’s words need to be reversed: in contested cases of secession, when we do not interfere, “the odds are” the results will be catastrophic.

This merely dispels the myth that it is a more permissive right of self-determination that we need most fear. We must consider how permissive it should be, that is, who should have it. Some philosophers think that liberal principles, summed up by John Rawls’ formula that liberal society should come “as close as a society can to being a voluntary scheme.” requires an unrestricted libertarian right of secession. After all, liberals believe all relationships—marital, work, political—should be voluntary. We choose our marriage partners, employers, and legislators, and can revoke the relationships by divorce, quitting, and voting out governments. Why should the “voluntariness of human relationships” not be applied to “the unity of the state itself,” as one writer put it. Any territorial majority expressing its wish to secede should be permitted to do so. And to avoid hypocrisy, the principle should be recursive: minorities in the newly seceded states should have the same liberal right of secession, and so on.

International relations scholars and jurists think there is a place for such theories, and that place is graduate philosophy seminars or other venues of idle schoolroom chatter. But rather than dwell on the chaotic Russian doll consequences an unbounded recursive right could have, it is at the level of theory itself that the real failure of this view is revealed, and instructively so. With no criterion to identify either groups or territories (other than being a territorial majority wishing independence) there cannot be any determinate result at all.

The sheer indeterminacy of an unrestricted right of secession—its inability to adjudicate between inevitable competing claims—necessitates the stipulation of limitations. Without them, what was intended as a strong permissive claim-right deteriorates into a liberty right which is sometimes an invitation to armed conflict and other times prevents the most intuitively strong candidates from exercising their right. It is reminiscent of Hobbes’ state of nature where all men have the right to everything: the results are predictable. Nor can one simply assume, as do several writers (Philpott, Gauthier, Wellman, Pogge) that claimants to the right will naturally restrict themselves to groups with discrete identities. Neither logic nor experience provides assurances this will be so. An unrestricted libertarian view is one more empty formalism offered up by a philosophical culture perpetually tempted by procedural solutions for “thinly” described people.

To overcome this problem, there is no choice but to introduce restrictions. These can be of two kinds: pertaining to attributes of groups, and to attributes of territories. In fact, I shall suggest we need both. I shall say a bit about territories at the end, but the main argument will necessarily be about groups, for if there is a qualified right of secession, its ground will be about the nature of its possible candidates. More precisely, the task of a normative theory is to show why some kinds of groups are particularly affected by the way international borders are drawn, and can particularly benefit by having an option of redrawing them. And because the task requires an adequate understanding of both state institutions and groups, social theory is indispensable.