Secession, International Law, and Human Rights

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Is secession a human rights issue, and if so, what principles should the international community adopt to address secessionist movements? It is clear that human rights issues often arise in connection with secessionist movements. Consider, for example, the human rights abuses that have occurred in Darfur and South Sudan as a result of secessionist movements in those regions. These of course contrast sharply with the peaceful 2014 vote on Scottish secession. A peaceful vote on the issue, I will argue, is a human rights success. Human rights issues arise as a result of secessionist movements that yield violence, and human rights issues arise as a question about the conditions under which a group of persons may justifiably seek to secede from an existing political unit.

While statements and official documents of international organizations such as the United Nations have expressed support for human rights and national self-determination, international law does not recognize a right of secession from states. This is unsurprising, as states have

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a clear interest in resisting any principle that supports a right of secession by groups of people within their borders. However, the lack of international legal support for secession places the interests of states over interests represented by widely-accepted understandings of human rights.

The collapse of the former Soviet Union and other communist states, such as Yugoslavia, involved secessionist movements that met with broad international support. Some are models of peaceful secessionist actions, while others received international support as a result of human rights abuses. Some of these are small states that are not in a position to vindicate their own interests against other states or in international organizations without international support. I relate secessionist movements to well-established principles of human rights and argue that such principles support the development of a principle of secession in international law.

"Secession is a demand for formal withdrawal from a central political authority by a member unit or units on the basis of a claim to independent sovereign status" (Hechter 1992). This distinguishes secession from separatist movements, which do not necessarily seek a separate and sovereign political, from colonial independence movements, and from irridentist movements, which seek to join themselves and their territory to another state (Hechter 1992). My discussion focuses on secession movements, and I seek to suggest a principle that should govern the international community's response to secessionist movements thus defined.

In the next section I consider the state of international law on the issue of secession. On the one hand, international law is not friendly to secession except under specific, narrow circumstances, primarily due to the centrality of sovereignty and territorial integrity in international law. In the remaining sections of the paper I assess three approaches to secession based on national self-determination, voluntarism, and a remedial approach that considers secession as a means of addressing unjust behavior by states. The voluntarist approach, I argue, is the most sound and defensible and captures more in the way of democratic and liberal values than the other two.

National Sovereignty and Secession

International law has not yet developed a principled approach to secession. On one hand, the International Court of Justice has held that there is no rule of international law that prohibits unilateral declarations of independence (*Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* (Advisory Opinion) [2010] ICJ Rep 403; Jacobs 2011), but the Canadian Supreme Court held that international law did not support such actions outside the context of colonial and foreign-occupied territories (*Reference Re Secession of Quebec*, [1998] 2 SCR 217; Walters 1999). International law has not developed an approach to issues involving secession outside of these contexts. (Sterio 2015). International law has at its core the principle the sovereignty and territorial integrity of states. The principle of *uti possedetis*, which involves the authority of states over their claimed territory, is thoroughly embedded in international law, though this principle may apply to people seeking independence from larger territorial units (Peters 2014, citing *Frontier Dispute Case* [1986] ICJ Rep 554). The United Nations rests on the sovereignty of its members, and Article 2(7) of its Charter expressly forbids it from interfering in the domestic affairs of its members. Significantly, the UN has begun to take cognizance of the often endangered rights of minorities within nation states. Thus, for example, General Assembly Resolution 2625 (1970) provides that

> Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples…and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed, or colour.

But as fundamental as this principle is, it is not absolute. For example, the Responsibility to Protect (R2P) Principle imposes a duty on states to protect their populations from four specific crimes: "genocide, war crimes, ethnic cleansing, and crimes against humanity" (UN 2005, para.

138). In addition, the principle provides that the international community, through Chapters VI and VIII of the United Nations Charter, may intervene if states fail to protect their populations against these offenses (UN 2005, para. 139). This principle has been criticized and resisted by states as a dangerous principle and a violation of national sovereignty and, alternatively, as a meaningless gesture not backed by serious intention (Bellamy 2010, 144; Kuperman 2008). Nevertheless, the R2P principle has been relied upon in several international crises since 2007, including, for example, Sudan, Kenya, and Gaza, though in other instances where crimes covered by R2P were being committed, such as in Somalia, Iraq, Afghanistan, and Syria, R2P has not played a role in addressing them (Pavone 2014).

Further, and more generally, the crimes international law addresses—genocide, war crimes, ethnic cleansing, and crimes against humanity—are crimes that are often associated with efforts by governments to defeat secession movements. A norm that favors democratic processes to resolve questions about secession is a means of helping governments to protect their citizens from these kinds of crimes. A more favorable view by the international community toward secession movements is a way to give effect to the purposes of international human rights law.

International criminal law does, under some circumstances, involve a limitation on national sovereignty. A norm that encourages addressing large-scale secession movements by means of referenda and negotiation along the lines of those votes taken in Quebec and Scotland advances democratic values set forth, for example, in Article 21 of the Universal Declaration of Human Rights and does so in a way that is less intrusive on the sovereignty of states than the enforcement of international criminal law. While national sovereignty is a fundamental principle of international law, it is not an absolute rule but is in fact a limited one. An international norm that adopts a more favorable view of secession movements does not involve a dramatic invasion of national sovereignty greater than existing principles of human rights and international criminal law.

Developing an international norm regarding secession may relate to international human rights law in a third, indirect way. An international norm favoring a democratic process for secession could tend to

discourage, and even delegitimize, violent secessionist movements. If secessionist movements were to be backed by threats of force by the international community, as Walzer (1977) argued would be acceptable for truly representative secession movements, this might encourage repression by states (Farer 2003). But it is simply not required that such a norm be supported by threats of force. While this is necessarily speculative, consider the following. Suppose it is true, as it arguably may have been in the Balkan conflicts of the 1990s (Kuperman 2008) that groups wishing to secede might use violence to provoke a violent reaction that would draw humanitarian assistance from the international community or a military alliance such as NATO. Governments might, under some conditions, defuse support for violent secessionist movements via votes that fail to offer them support. Governments, while they govern, are in a position to sweeten the prospect of union by offering regional autonomy, subsidies, economic opportunities, symbolic benefits, and the like to regions that refuse to secede.

If there were an expectation on the part of the international community that governments will offer a democratic process for deciding secession issues, this would raise the cost of employing violent repression against such movements. Where, as now, there is no expectation on the part of the international community that governments will offer opportunities to decide secession issues democratically, the cost of using violence to put down such movements is lower than it otherwise would be. From the perspective of secessionist movements, an international norm favoring the democratic resolution of secession issues would legitimize peaceful political movements seeking secession and would delegitimize secessionist movements that employ violence from the outset. Broad-based movements would tend to be favored and more likely to succeed in their aims, whereas smaller, less popular, and violent movements would be disfavored. In this, albeit indirect way, an international norm regarding secession would in some cases support the values advanced by international human rights law by advancing democratic values and discouraging political violence.

The reaction of the international community to secession movements is important for international affairs. The Supreme Court of Canada's 1998 decision regarding Quebec secession considered, among

other things, the question whether Quebec had a right to secede from Canada under international law. While the Court held there was no such general right under international law, its ultimate decision allowed for a referendum in Quebec on the question of independence which, if successful, would be followed by negotiations with the rest of Canada, represented by its national government. This requirement reflected a balance between the interests of the Quebec population if the secession referendum prevailed, on one hand, and the population of the remainder of the Canadian population, on the other, as an effort to recognize the interests of both in democratic resolution of the issue (Leslie 1999). One justification the Court offered for requiring negotiation with the remainder of Canada in the event of a successful secession vote was to support the legitimacy of the resulting state and its recognition by the international community, which would be necessary for the new state to function effectively (Aronovitch 2006, 548–49).

One reason the international community's reaction, or lack thereof, to a secession is important is that it likely will impact the legitimacy of the new government. International recognition, particularly by the Great Powers in world politics, is an important predictor of the success of secession movements in establishing lasting governments (Coggins 2011). One way the international community can promote the interests of the individuals living in the new state is to recognize its government and thus support its legitimacy. Another, and related, question is that the international community's reaction to a secession can affect the actions taken by the remainder state. Thus, for example, the United States' and British negative reaction to the secession of Croatia and Slovenia from the Yugoslav may have encouraged Serbian violence against Slovenes and Croats there.

The International Court of Justice wrote an advisory opinion at the request of the United Nations General Assembly on the legality of Kosovo Republic's unilateral declaration of independence from Serbia. The Court concluded that Kosovo's action did not violate any principle of international law. This is far from supporting a right of secession, especially a general human right of self-determination and secession. Nevertheless, it is a meaningful step in recognizing that international law does not bar independence movements and secession. Further, states have

historically been biased against secession and independence movements (Oeter 2014, 45). The ICJ's opinion arguably suggests a weakening of that bias.

The Shape of an International Norm Regarding Secession

Self-Determination

The meaning of self-determination shifted during the twentieth century. In the League of Nations and after World War I, the ideal of self-determination inspired by Woodrow Wilson regarded this principle as establishing a right of all identifiable national groups to seek to establish their own nation-state. After World War II, however, the meaning of self-determination began to change with the decay and collapse of European empires. There were many states in the world that had been established without regard to the identities of the people occupying them but instead as the result of colonial conquest and domination, to include competition among the European empires themselves for territorial control of colonies around the world. As former colonies gained their independence from their former empires, self-determination shifted to mean independence for former colonies, rather than independence from the different groups occupying these often multinational states (Iglar 1992). The Cold War backdrop of these events is relevant in connection with this shift. Post-colonial states in the developing world were the field on which the United States and USSR competed for power in proxy wars and generally seeking to establish security relations with these states. Having these states break up into smaller states based upon national, ethnic, or religious lines would not have worked to the advantage of the Western democracies that were concerned with Soviet expansion rather than self-determination in the older Wilsonian sense.

This shift is enshrined in principles articulated by the United Nations during this period. The International Covenant on Civil and Political Rights had declared broadly that "[a]ll 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" (UN 1966), but this principle has not been taken to condition or weaken the sovereignty of states. The 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations addresses both self-determination and the interests of states in territorial integrity. On the one hand, the Declaration states that self-determination is a fundamental human right. On the other hand, the Declaration states that it should not be interpreted to "dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States." After the 1970s, by which so many former colonies had attained their independence, jurists began to understand self-determination as "a right of peoples to take part in decisions affecting their future" and thus is not necessarily associated with independence or secession movements (Klabbers 2006, 189). Self-determination in international law today includes decolonization and rights to participate in domestic political processes (Enonchong 2002). As a legal principle, national self-determination has come to have a rather narrow meaning and is not connected with secession.

From a normative standpoint, one might argue that national identity is a good that can be advanced by giving national groups within a multinational state a degree of self-government so that they can express and protect their particular culture or language within their national group, and that the presence of such limited self-governing institutions defeats a claim the group might otherwise have to secede (Patten 2002). On this kind of argument, regional autonomy in a multinational state treats different identities equally in that a national group that is a minority in the full multinational state can enjoy some autonomy without swamping those within its territory who identify with the larger national identity of the full multinational state. This condition thus appears as a compromise between disregarding national groups in a multinational state and protecting the interests of those within a region's borders that do not identify with the national group of that region. This argument underscores a weakness in having a special group cultural identity as a criterion for secession movements: there are other reasons why a group might wish to secede, and national identity may combine with others or, in principle,

not be a factor at all. Consider a secession movement based on ideology or a differing political vision that is heavily concentrated in a particular region but in which the secessionists do not share a particular cultural or national identity. (Arguably, the apparently substantial secession movement in California fits this description.) Now the results of a secession referendum reflect the political preferences rather than the cultural identity of the majority of the population in the seceding region. The equality consists in the equal counting of votes, as in any referendum or election, and the result is no less fair than in any other election where one side wins and another loses. This reasoning lends itself to the voluntarist approach I outline next.

A Voluntarist Approach

Secessionist movements emerge for a broad range of reasons, and this is a feature of secession that lends itself to a voluntarist approach rather than one based more narrowly on the ideal of national self-determination or a remedy for wrongs committed against distinct national groups.

Factors that encourage the emergence of secessionist movements include "regions hav[ing] unique economic specializations and cultural compositions," the existence of social networks that can be conditioned by a number of factors, including geography, religion, language, and other bases for group identification (Hechter 1992). States are more likely to secede if they are wealthy and are populated by ethnic groups that are not highly assimilated into a multinational state (Hale 2000). Hale examined former Soviet republics that seceded from the USSR, and he found that those Soviet republics that had greater wealth, more elite upward mobility, a history of autonomy and of seeking autonomy within the Soviet Union, and a stronger ethnic identity were those that were most likely to secede from the USSR. These results are of interest because they suggest that states are more likely to secede when they are more capable of functioning effectively as independent states. Wealthier states with elite upward mobility have economies that are more likely to make them self-supporting and elites with leadership experience. In

the Soviet case, for example, elite upward mobility was marked by leadership in the Communist Party. A history of regional autonomy within a multinational state is important in this context because it also indicates that the regional unit has a history of self-government to a degree, including a former state of independence. The group identity that Hale notes as a factor in the secession of Soviet republics indicates a national consciousness that tends to be a factor in secessionist movements generally. Giuliano (2006) also found that mass nationalism influenced elites in the Soviet republics with Gorbachev's liberalizing reforms so that seceding states were those where ethnic nationalism was strongest.

Other political factors include the presence of institutions that provide some measure of regional autonomy, such as federalism, or other means of power-sharing with identity groups. The research on this is mixed and there is no consensus on whether regional autonomy or other power-sharing arrangements encourages or discourages secession. What this research does show is that secession is a complex phenomenon that can vary based on the local conditions regarding ethnic politics, the existence of secessionist movements, and successful secession (Lustick et al. 2004). Lustick et al. (2004), for example, find that devolution of power may enhance ethnic politics but may reduce secessionist activity and successful secession movements.

Economic conditions, as well as political and cultural factors, influence the formation of secession movements. Austin (1996) likewise found that economic factors, combined with nationalism, influenced votes to leave the USSR among Soviet republics. The USSR subsidized the republics by manipulating prices to keep them lower than world prices, and these subsidies reduced the cost of consumer and other goods. The per capita subsidy in a republic, combined with the level of Russian population in a non-Russian republic, were strong influences on votes to leave the USSR (Austin 1996).

Secessionist movements from otherwise successful remainder states are rare because, in addition to the social and economic factors that tend to encourage the formation of secessionist movements, the remainder state must consider it not worthwhile, in terms of net costs, to use military force against the secessionist movement (Hechter 1992). Two modern examples of such movements Hechter considers were the secession of

Norway from Sweden in 1905 and the secession of most of Ireland from the United Kingdom in 1922. In each of these cases, the geographic separation and size of the secessionist territories, along with a public distaste for war in the aftermath of World War I in Britain, convinced the remainder states to let the secessionists go. States do not want to lose control of territory and population unless they are willing to fight for them. We return again to the fiction of consent. It is because states' resistance to secession is so often based ultimately upon the willingness to use force that the state's power, based ultimately on force and the threat of force, shows itself.

That there is a range of factors broader than nationalism that encourage secessionist movements is important because there is not just one reason alone that justifies them. Instead, there are several, and these are likely to interact in varied combinations with each other in particular secessionist movements. This fact supports a voluntarist conception of secession that is not linked to national identity, though that remains an important factor in the phenomenon of secession. The freedom of persons to recombine in new states is undergirded by the same values that support liberal democracy itself, and it is for the sake of liberal democratic values that we should view secession as a general right to be defeated only by exceptional reasons and thus as a "presumptive moral right" with the burden on states to show why it should not be allowed in a given instance (Nielsen 1998).

A cogent normative approach to secession involves what Carl Wellman (1995) calls a "hybrid" approach, involving both consent and teleological theories of political justification. I summarize his argument as follows. Consent theories seem generally consistent with political liberalism because they are based on the premise that individuals have a kind of dominion over themselves that lends itself to grounding political obligation in consent. After all, if we have a right of conscience in, for example, religious belief, we should be able to choose what to believe in such matters ourselves. A like right over political obligation renders the state's legitimacy dependent on consent. The chief problem with this is that real states do not derive their authority from the consent of the governed. Even liberal democracies do not actually ask their citizens to

vote whether or not they choose this government, only who will occupy the reins of power.

"Tacit" consent does not fare better. As Wellman argues, this argument is not really an argument based on consent, but rather on the hypothetical consent persons bestow upon the state in return for the benefits they obtain from it. This, in fact, is a type of teleological argument to justify political obligation: we would rationally consent to a state that bestows valuable benefits upon us, such as the protection of our liberty and property, so we are obligated to obey a state that bestows such benefits upon us. This approach has its own problems. The one that most bothers Wellman is that it would seem to justify forceful annexation of territories on the basis that the populations of those annexed territories would obtain tangible benefits thereby. I think there is another problem with this approach, which I detail below.

But these considerations suffice to explain why Wellman opts for a "hybrid" approach that includes features of both consent and teleological approaches. The consent approach is a poor description of how any political system obliges anyone because real states do not seek consent; the difficulties that secessionist movements face show why states do not seek consent from the people they govern. At the same time, a theory of political obligation based on actual consent entails that individuals could secede from political systems, which in principle could render governments unable to bestow benefits upon anyone. Teleological approaches, justifying as they do forcible annexation, do not offer sufficient support for a principle of self-determination. Furthermore, teleological approaches fail to show why anyone has any obligation to any particular state. (Simmons 2016, 110–24). Wellman's "hybrid" approach is one that requires a seceding group to be capable of forming a state that can govern the territory it claims and can enjoy the substantial support of its population. The key constraint on Wellman's hybrid approach is the capacity of the newly-formed state, which must be able to function effectively as a state for those it governs.

Built into Wellman's approach is the requirements that liberal rights, broadly conceived, are respected by the seceding state. Wellman (1995, 161–69) rejects Buchanan's approach that regards secession as a remedy for injustice. This is a result of the voluntarist element of his hybrid

approach: political self-determination has a very weak status indeed as a right if it can be exercised only to avoid injustice. But voluntarism alone is not sufficient for political self-determination for a territory and a large group of people. This is due first to the problematic nature of consent as a basis for political obligation generally, but also because a population could readily consent to arrangements that are very destructive of the liberties and equal treatment of some within the state's territory. Wellman understands this but does not explain how voluntarism or teleological approaches, i.e., rational choice or various other kinds of consequentialism, avoid this kind of problem.

Elsewhere I have argued that in addition to the consent-based and teleological arguments Wellman presents, there is a third independent basis in a "hybrid" theory of secession for deontological arguments, that is, arguments based on moral duties persons owe to one another (Boykin 2018, 1998). A fully specified set of such rights correlative to such duties is beyond the scope of this paper, but these would be the kinds of personal and civil freedoms associated with democratic liberalism. Wellman would not disagree, but he regards these as being supported by the consent-based and teleological approaches he has in mind (1995, 172–80).

Why would this third approach be needed, and why would it be important for international law and human rights? An approach acknowledging human rights must base the state's territorial claims on purported authority over the people living and working in those territories, and it is authority over people, rather than simple control over territory, that can offer normative support to a claim to authority over territory. (Simmons 2016, 9; Simmons 1979, 57–75). As I have noted, there are deficiencies in both consent-based and teleological approaches that may fail to protect human rights. I have previously argued, like Wellman, that a seceding state must be a viable state but also that it must protect fundamental human rights as an independent requirement (Boykin 1998). These are based upon deontological moral obligations that individuals owe to other persons and generate liberal rights. Standing upon all three legs of these approaches, we wind up with

requirements that a seceding state advance self-determination (consent-based), establish a viable state (teleological approach), and protect civil and personal freedoms (deontological approach).

Secessionist movements that do not meet those criteria cannot justify a claim for secession. A secessionist movement might fail the self-determination requirement if it does not reflect the popular will of the population it seeks to remove from the remainder state. The requirement of a viable state is distinct from but still related to the requirement of self-determination. It is distinct from it in that it is based ultimately in rational choice and self-interest, rather than group identity (however defined by a group), and people can be expected to support only a state that is viable and capable of functioning effectively as a state. A seceding state, to have a justifiable claim to secede, must guaranty to its inhabitants fundamental rights and freedom from unjustly discriminatory policies. If liberal rights and non-discrimination policies can be justified as correlating to duties we owe one another, we can expect that any secessionist movement must guaranty them as well if they are to establish an independent state.

These too are criteria the international community may expect of a secessionist movement if it is to obtain that community's support. The secessionist movement must reflect the popular will of the population in the territory it seeks to remove from the remainder state. If it cannot do so, it is not advancing the principle of self-determination and thus has no claim on international support. The secessionist movement must claim sufficient territory and resources to establish a viable state. No one, including the international community, can be expected to support a movement to establish a state that lacks the capacity to govern effectively the territory it claims to control. Finally, the secessionist movement must guaranty to the people it will govern fundamental human rights and freedom from unfair discriminatory treatment. The international community should not support a secessionist movement that will abuse the people it governs upon obtaining power.

One great advantage of an associative primary right of secession is that it establishes what lawyers call a "bright line rule." That is, this principle is very clear cut and can be applied with minimal disputes about its application. If a majority within a territory capable of forming

a viable state wishes to do so, there is no just reason to forbid them from doing so, and forcible interference with the choice of these persons is unjust. By contrast, ascriptive theories, resting as they do on claims about identity based upon historical, cultural, or ethnic factors are much muddier indeed and more likely to involve reasonable disputes about their application. National identity is to some extent subjective and constructed by loyalties the objects of which may be opaque and that are subject to change (Smith 2000). The same is true about what Allen Buchanan (1997) calls "special" justifications for secession based upon prior agreements of parts of a nation-state or a special status for regional governments. Buchanan offers as an example of such a situation the secession of Norway from Sweden in 1905 which, in fact, likely rested to a strong degree on the difficulty Sweden would have had in militarily dominating the large territory and distinct population of Norway.

A Remedial Approach

One kind of argument for principles relating to secession is exemplified by Allen Buchanan, who argues that secession should be permitted only as a redress for abuse of the population by an existing government (Buchanan 1991, 1997). The South Sudan, for example, might fairly be regarded as a remedial secession as a result of such abuses by the government of Sudan (Sheeran 2011). Following this line of reasoning, one might argue, as Chandoke (2010) does, that the Kashmiri state in India is not entitled to secede, provided the Indian government affirms and enforces its agreements to allow a special status to Kashmir and Jammu in the Indian federal system of government. Chandoke's is a well-structured argument of this type with application to a contemporary separatist movement in Kashmir and Jammu. His argument is that a group with a common identity may have the right to secede if (a) they have been discriminated against by their government, (b) agreements to provide them with a degree of self-determination via federal arrangements have not been honored, (c) the group lacks an opportunity to remedy their complaints via the political process, or (d) the political process is totally unredeemable.

The reason Chandoke, like Buchanan, considers secession a highly constrained right is that absent a consensus among the population of the seceding territory, some persons will get a new state that they do not want, including persons within the newly independent state and within the remainder state. Thus, he points out, a substantial minority of the population of Jammu and Kashmir is not Muslim, as is the majority. These persons tend to oppose Kashmiri independence from India. This kind of principle for secession is in fact a highly conservative one, having as it does a built-in preference for the status quo. While it is true that secession movements can engender or be accompanied by violent upheaval, this is not necessarily the case, as the Scottish and Quebec cases demonstrate.

There is not an obvious reason why existing states should have such a strong preference over regional majorities within them. The Kashmiri case illustrates why this is so. Indian control over the portions of Jammu and Kashmir it controls today is the result of the Indo-Pakistan War of 1947–48. No question about principles is settled by war, but the highly constrained approach to secession gives great weight to the outcomes of war and threats, which have so often been the historical source of national boundaries. This fact, while in a sense obvious, should give us pause as we consider the kind of argument over secession that has a built-in preference for existing states. It is one thing to give normative weight to the claim that a national state that represents a national group has a claim to represent those people without external or internal interference; it is another altogether to claim that boundaries established by armed force have normative weight that must be respected.

Buchanan argues that an international principle legitimating secession in the absence of gross and widespread injustice would give states a disincentive to establish federal systems and regional autonomy for fear that these would become bases from which secessionist movements would emerge and be supported by the international community (Buchanan 1997, 53–54). There are at least three problems with this argument. One is that the research in this area does not clearly establish that regional autonomy promotes secession, even though it may encourage ethnic politics (Lustick et al. 2004). In other words, federalism may defuse rather than encourage secession movements. Another is that federal

systems have tended to be established for historical reasons, such as a union of formerly independent states or ethnic and cultural divisions within a national state, that are well-understood to be bases for secessionist movements and in fact have been many times over. States already have disincentives from the standpoint of territorial integrity to grant regional autonomy to portions of their territory but have often done so to create or preserve a political union that would otherwise fail to materialize or be threatened.

A second problem with Buchanan's argument is that the most recent example of a secession movement that was successful in terms of fairness and procedure, though not successful at secession itself, was the vote for Scottish independence. It is clearly arguable that the movement for Scottish independence was encouraged by devolution in the United Kingdom and by the presence of national independence parties in Scotland (and Wales) that welcomed devolution and regional autonomy. The government of the United Kingdom, a stable democracy, is not going to destroy the regional autonomy that Scotland and other regions within its territory enjoy. The political norms and practical politics that prevail in the United Kingdom render this nearly impossible. There is no perverse incentive in such a regime to clamp down on regional autonomy but rather to make unity more appealing through financial benefits.

One thing for which there is ample evidence is that revolutionary violence and terrorism have often accompanied independence movements that lack an opportunity to seek to obtain their ends through a peaceful political process (Griffiths 2016, 72–80). This is the kind of phenomenon Buchanan rightly associates with secession movements and offers as a reason that they should only be undertaken under the most grave of circumstances. The unsuccessful secession movements in Quebec and Scotland illustrate how democratic political processes are not threatened by authorizing votes on independence but rather are fulfilled through the availability of such opportunities. A very narrow principle, such as that Buchanan recommends, closes off a safety valve against political violence on behalf of secessionists.

Buchanan argues that a primary right of secession would undermine democratic political institutions because it would create disincentives to political engagement and compromise, since political minorities would

realize they could achieve their aims through secession rather than through political competition with their adversaries (Buchanan 1997; see also Sunstein 1991). Buchanan here misses a key reason for a constitutional right of secession: such a right encourages compromise because even popular majorities must recognize that they must keep the minority minimally satisfied to preserve their union (James Buchanan 1995). A constitutional right of secession can operate as a check on the power exercised by a national government and a protector of minority interests. Allen Buchanan seems to recognize this: "in order to subvert democratic processes it is not even necessary that a group actually exit when the majority decision goes against it. All that may be needed is to issue a credible threat of exit, which can serve as a de facto minority veto" (1991, 48). Institutions that empower minorities do not subvert democracy. On the contrary, such institutions are characteristic of stable democracies in diverse societies (Lijphart 2012). While it is true that a right of secession may, under some circumstances, constitute a minority veto, it is by no means antidemocratic because it can function in a countermajoritiarian manner. Indeed, the Supreme Court of Canada, in its 1998 Quebec secession opinion, considered the fact that in a federal system of government such as Canada's, democratic principles have a multilayered context so that there may be majorities that count equally at the national and regional level (Leslie 1999). Buchanan's (1991, 98–99) assumption that democratic processes are subverted by results other than nationwide majorities is not well founded.

Another of Buchanan's arguments is that a primary right of secession threatens the moral basis of the state's claim to territorial integrity. This moral basis, he argues, lies not in the self-interest of the state and its leadership, but rather in the "morally legitimate" interests reflected in maintaining security to preserve individuals' safety and in compelling persons discontented with their political system to compete on the terms offered by the state because they cannot hope to exit collectively (Buchanan 1997, 46–47). This argument is unconvincing. It is true that the state has a morally legitimate interest in safety and security, and this interest is not threatened by opportunities to peacefully and democratically allow people to decide whether their communities would be better served by independence than by union. On the contrary, the violence

that has often accompanied secession movements occurred due to the state's unwillingness to allow such processes to occur. The safety and security of people in Quebec and Scotland, for example, were not threatened due to their independence referenda. Second, it is false that denying people the opportunity to engage in a democratic process to decide their independence advances democratic values. Arguably, democratic values would obligate the remainder state to negotiate with the secessionists in the event of a successful referendum and justify unilateral secession if the remainder state refuses (Pavkovic 2004). The existence of a right of secession, again, is a check on majority power that gives majorities an incentive to engage and compromise with minorities. Pure majoritarian democracy is not the only model that advances democratic values.

Buchanan imposes two criteria on a principled approach to secession I wish to emphasize and consider here: such a principle should be "minimally realistic" and "morally progressive" (Buchanan, 1997, 42). A principle satisfies minimal realism if it is one that has a meaningful prospect of being adopted by the international community as we know it, employing the processes by which international law is made. He does not mean "realism" in the sense that states should be expected to pursue their interests narrowly defined. Rather, he means that such a principle should set a moral "target" that we can reasonably expect to be satisfied. By "morally progressive," Buchanan means a target that "better serve[s] basic values than the status quo" (Buchanan, 1997, 42).

Minimal realism, in the context of international relations, is a conservative criterion indeed. States are, for obvious reasons, unwilling to accept principles that require them to cede portions of their territory. Buchanan's principle of remedial secession is one that does satisfy this principle, but it is not obvious why this should be a criterion for a primary right of secession. In fact, it is a catch-22, because it means that in order to possess a right, a group of people who could form a viable state have this right only if other states would recognize that right. This is of course consistent with the current state of international law as it regards a right of secession. It is not consistent with international law as it regards the possession of human rights. Human rights are possessed by persons because they are persons, and not because they have been conferred upon them by the international community. The international

community, rather than being the creator of rights, is better understood as the guarantor of such rights. This idea does not conflict with Buchanan's argument that rights, including a right of secession, should be regarded as moral targets. The ideal of national self-determination, enshrined in the United Nations' Charter, is in fact an example of a moral target that conflicts with the principle of national sovereignty that is a bedrock principle of the UN and of international law generally. It is true that, insofar as it is states that establish and enforce international law, that the law thus created will protect the interests of states as states. That criterion cannot confer moral legitimacy on the law created thereby.

Buchanan's criterion that a right of secession must be morally progressive is also satisfied by a purely remedial right of secession. If a group of people capable of forming a viable state have been abused by their government, it better serves "basic values" if they are relieved of that abuse. Buchanan is understandably careful to choose uncontroversial requirements for a right of secession, and "basic values" are uncontroversial as far as they are defined. But defining the values that are to be served by any legal and moral principle is fraught with controversy, and it is necessary, for any applicable legal or moral principle, to determine what values are to be advanced. If self-determination is such a value, it is one whether or not it serves the interests of states (and whether or not states ratify that principle), and if democratic legitimation is a value, it is likewise one whether or not states ratify that value. Caution in maintaining that national self-determination or democratic legitimation are values that should be moral targets in international law does not best serve either of these values. Instead, setting these as moral targets is a means of advancing a morally progressive purpose in international law.

Conclusion

I have considered the importance of secession to international affairs and human rights and in the process also considered alternative approaches to formulating principles that could be applied by states and international organizations in addressing particular secessionist movements. The upshot of my argument is that a voluntarist approach that does not limit

secession to identifiable cultural or national groups is preferable because it recognizes the multiple bases that may give rise to secessionist movements and does not privilege one kind of motivation over others that may be harmless yet not arising from national or cultural identity. The models for secession set by Quebec and Scotland show how a vote on secession can proceed peacefully in a democratic society with the vote conducted by the persons in the territory that would secede and the involvement, through negotiation, of the remainder state. The fact that these secession movements failed to obtain the vote needed suggests that the concerns expressed by some authors that the possibility of secession would undermine democratic politics and lead to the rapid unraveling of states are overdone.

The international community can encourage peaceful, democratic means of resolving questions about the secession of territories from national states. In doing so, it will effect further implementation of human rights and international declarations that seek to encourage democratic participation and legitimation of governments. It is important for the international community to develop a principled manner of responding to secession movements, which it currently lacks. Human rights law generally makes clear that sovereignty and territorial integrity are not absolutes when states fail to protect fundamental human rights. Secession, as an expression of human rights, is likewise a limitation of national sovereignty and territorial integrity, but these can be approached in an orderly and peaceful manner, and the international community can advance basic rights without upending core principles of international law.

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