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Edited by Albert Breton, Gianluigi Galeotti, Pierre Salmon and Ronald Wintrobe

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CHAPTER 1

Rights, rationality, and nationality*James S. Coleman*

The post communist conflicts among various ethnic and national groups in the former Soviet Union came as a surprise to many social scientists.¹ What I want to do in this paper is to lay out a conceptual framework that, if used as a lens for viewing the postcommunist period, would have made the emergence of conflict less surprising. Further, this conceptual framework should help more generally to account for the rise and fall of nationalist conflicts in various places of the world.

Intrinsic to this conceptual framework is the idea of “rights.” The concept of rights, in the form of property rights, underlies much of economic theory, though property rights are often taken for granted and ignored in theoretical work. But it is also true that much of what is exchanged in economic markets consists of rights, with new markets constantly emerging as new rights are defined: common stock, preferred stock, bonds, futures, options, to name a few of the most common. Much of social exchange as well can be conceived as an exchange of rights. In other parts of social theory, concepts such as legitimacy and authority have the concept of “right” as part of their definition. To begin an examination of these matters, an example will help.

An example²

In a small village in the Basque region of Spain, there was, on one Saturday evening in July 1990, an elaborate performance by a set of

¹ See Kuran (1991) for a discussion of reasons why the downfall of communism was itself such a surprise.

² The description here is a minor modification of the example given in Coleman (1993).

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professional dramatists in the town square. The performance was putatively for the children of the village, but a large fraction of the adults of the village were there as well. Draped on buildings around the square were banners demanding amnesty for those Basque men held prisoner in Spanish jails.

The drama had the following plot: A structure representing a castle, with a bull's head as the pinnacle, was inhabited by four players, three men and a woman. From the far corner of the square came another structure on wheels, but designed to represent a ship. It was manned by three tough-looking, somewhat unsavory characters, one wearing a beret. The three invading men attacked the castle, and a fierce fight ensued. One managed to climb the tower and bring down the bull's head. He and a second sailor carried the bull's head to the ship and placed it atop the cabin, while the third held off the remaining resistance from the castle. The ship with its three sailors began to pull away from the castle, as the last of the castle's inhabitants was subdued. Then came two huge creatures (actors shouldering hooded structures to make them larger than life) with fireworks spouting from their extended fingertips. They attacked the ship, in an effort to recapture the head of the bull. Spouting fire, as if from guns, they attacked again and again, only to be repulsed by the rifles of the three members of the ship's crew. Finally they sank to the earth, and the ship escaped with its trophy. The children shouted with glee, the adults clapped, and there was noise and tumult as the performance ended. The banners calling for amnesty flapped in the wind.

What did all this mean? The performers did not explain the symbolic significance of the play, but it clearly had the character of a medieval morality play. Like a medieval morality play, this performance had normative content; it was not morally neutral.

A plausible interpretation of the performance is consistent with the banners waving in the background. The castle was Spain, and the head of the bull the prized symbol of Spanish rule. The three toughs on the ship, one with a Basque beret, symbolized the Basques. Their victory in capturing the head of the bull and their successful defense against the military force brought in to subdue them, symbolized the victory of the Basques against Spain.

This performance occurred on Spanish territory. Who or what gave the performers the right to carry out an anti-Spanish morality play? The first simple answer is that in most authority systems there exists a right, embodied in law as a legal right, or in common consensus as a norm, for freedom of expression. The right is especially strong when the expression is veiled in artistic symbolism, and cannot be construed

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as breaking a law. It is a right that has existed to various degrees even in despotic regimes.

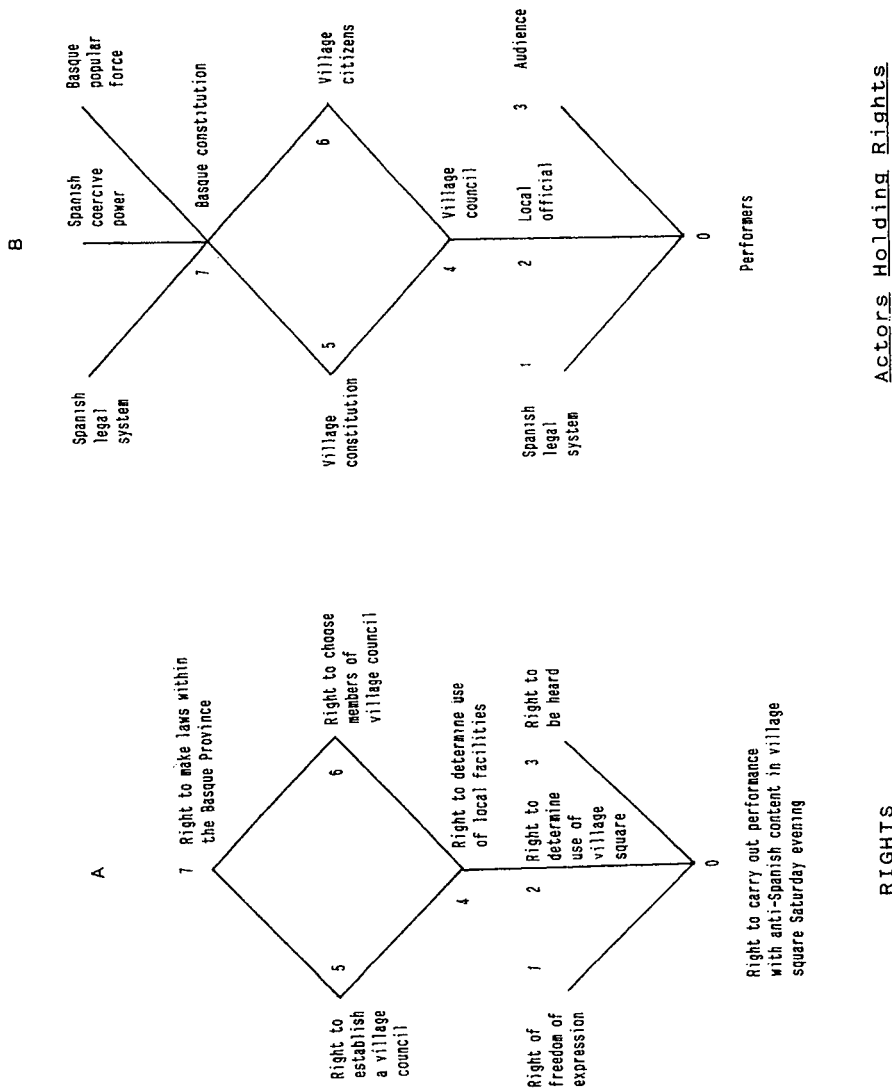
But the answer is more complicated than this. The performance was carried out not only on Spanish territory, but also in the Basque region, and in a village in which sentiment for Basque autonomy is strong. In order to carry out the performance at that time and place, the troupe needed not only the right that was (implicitly) granted by the Spanish authorities, but also the right, at the explicit disposal of the local authorities, to perform in the village square that Saturday evening. If the general symbolism of the play was known to the local authorities, then their granting of that right (a right more specific than the right to freedom of expression, because it included occupying village property at an important time, and probably some payment of fees for performance) was very likely contingent on their agreement with the normative content of the play.

Finally, we can ask about an even more intangible right, a right under the control of the audience: the right to be heard. That the audience controls this right is evident from numerous examples, in which performers have been booed off stage, or speakers on college campuses have been prevented from speaking by vocal student groups who oppose their views. Suppose that in this case the troupe had transmitted the opposite moral with their morality play, with the Basque sailors chased off or killed by the Spanish. The audience might well have withdrawn the right they had granted to the troupe to perform, and shouted them off the village square.

This explanation thus derives the right to perform this play jointly from three other rights. But if these three rights necessary for the performance are under the control of Spanish central authorities, local village authorities, and the audience, then where does each of these actors get those rights?

The very term “authority” begins an unraveling that leads to an answer for the two sets of authorities involved, for the definition of authority is the legitimate exercise of power. In turn, the definition of legitimacy of an action is the recognized *right* to carry out the action. Thus the authorities, by virtue of their official position, have the legal right to grant the right in question. (In the case of the Spanish central authorities, the matter can better be described in different terms, since the right to freedom of expression is contained in law: They have the obligation to protect the performers’ legal right to freedom of expression.) This implies a hierarchy of rights, as shown in Figure 1.1. The hierarchy can be best seen by examining the right granted by local authorities, to perform on Saturday evening in the village square. That

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right was probably granted by a local official, occupying a position to which the right was delegated by the village council. The council in turn gained that right through two sources: The village charter gave that right to the village council, and the citizens of the village elected particular persons as members of the council. The charter in turn derives from the Basque constitution.

All appears to be sweetness and light, a hierarchical system of authority within which rights cascade down from one level to another, with the extent of rights cascading down determined by the legal structure or the authorities at the higher level.

But there is an unsettling note, not directly affecting the rights at issue, but relevant to the question of what rights the people of the Basque region have to establish their own constitution, and how those rights originated. The unsettling note is that the Basque region has certain rights that Cantabria, next to it, and existing under the same Spanish legal system, does not have. For example, the Basque region has the right to have all highway signs in its own language as well as in Spanish. It also has the right to collect all taxes, from which it gives a fraction to the central government of Spain. In Cantabria and other regions, Spanish taxes are collected by an agency of the Spanish government, with a fraction returned to the local province.

Why does the Basque region own these rights, while others do not? Alongside this, we may ask why it does not have another right, a right claimed on the posters and banners that surrounded the village square on the night of the performance. This is the right to have those of its citizens now held in Spanish jails for acts of terrorism transferred to a jail within the Basque region.

These two questions point directly to the ongoing conflict between Spain and the Basques. The allocation of legal rights to the Basque region does not merely result from a legally regulated cascade of rights from central government to local government, but reflects the status of that conflict. The conflict is one between two kinds of power, the control of extensive resources including armed forces (held primarily by the Spanish central government) and the power to mobilize large numbers of people willing to act collectively (held primarily by the Basque activists). The activists in the Basque region have wrested extra rights for the region from the Spanish government through demonstrations, protests, terrorist acts, and threats of secession. This popular force has not had the power to gain all the rights demanded by many Basques, but has had the power to gain certain of these rights. One might say that the set of rights held by the Basque government derives from three forces: the legal system of Spain, the coercive force

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of the Spanish military and police forces, and the power exhibited by political actions (including acts of violence) of Basque activists, supported by Basque citizens. Figure 1.1a shows the partly hierarchical, partly not, structure of rights, and Figure 1.1b shows this same structure, but as a structure of relations between actors holding rights.

This does not, of course, end the regress backward from the right with which we began. It carries this regress back only to the Spanish legal system, to the police force of Spain, and to the popular force of the Basques. Yet by carrying the regress this far, the example indicates something about how legal rights come to be held by one party rather than another.

The right to collect taxes is in the hands of the Basque officials but not in the hands of Cantabria officials, because the balance of power between the central government of Spain and the Basque government and its people is less on the side of the central government than is true for the balance between the central government and Cantabria. The legal right to hold members of its population, convicted in Spanish courts, in jails of its own choosing is not held by the Basque region but by the central government, because the power of the Basques is not sufficiently great to gain this right from the central government. A large number of Basques believe that they have the right, or *ought* to have the right, to have these men held in the Basque region, but this belief is opposed by the Spanish government and indeed by many Spaniards who are not Basques.

The holding of legal rights is in continual flux as the balance of power changes. There are claims of rights by those who do not hold them, such as the claim by Basques to hold convicted Basque terrorists in their own jails. There is a claim by some Spaniards outside the Basque region of the right of the central government to eliminate the teaching of Euskara (the Basque language) from schools in the Basque region, but until this claim is recognized by the legal structure which is backed by police power, the right remains in Basque hands.

The two sources of rights

This example illustrates the two quite different sources of a right. Figure 1.1 shows how the right initially in question derives from the conjunction of three rights. It shows as well the derivation of one of these rights (the right to determine use of the village square) from a more encompassing right, and traces that right all the way up to the right to make laws within the Basque region.

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This shows one kind of rights source: A right may follow directly from a broader right, above it in a hierarchical structure of rights. Insofar as the broader right obtains, it implies a set of specific rights which are, in effect, contained within it. Most rights have this kind of source: They are, like rights 2, 5, and 6 in Figure 1.1a, directly derivative from a higher-order (“broader” or “more inclusive”) right. Others, like rights 0 and 4 in the figure, gain their existence from the simultaneous existence of two or more higher-order rights.

The second source of rights, however, is quite different. It is illustrated by right 7 in Figure 1.1a, the right to make laws within the Basque region. This right, as shown by Figure 1.1b, does not derive entirely from a higher-order right, but derives in part from the balance of power between a Basque popular force (or Basque “terrorists”) and Spanish coercive power. The right to have road signs in Euskara and the right to collect their own taxes do not derive from a higher-order right, nor from the simultaneous existence of two or more higher-order rights. They result from a negotiated settlement of a claim for greater “Basque rights” on the part of some Basques, and an opposition to that claim by the Spanish government.

It is this latter source of rights which is most closely related to nationalist conflicts within a country. One may look at the matter in the following way: The constitution, implicit or explicit, of a state allocates rights to various actors: to the state itself, to be exercised by agencies of government, to individual citizens (as occurs in a “bill of rights”), and to particular subgroups within the state. The last of these may be defined geographically, as are provinces (the Basque region of Spain, the province of Quebec in Canada), or they may be defined by other characteristics, such as gender (for example, the proposed Equal Rights Amendment in the United States) or age (for example, minor children lack certain rights that adults have) by race (for example, the different rights held until recently by different races in South Africa) or national subgroups recognized by the constitution, or still other characteristics. The rights allocation produced by the constitution determines the specific rights of subgroups within the state – so long as the state has the capacity to enforce the existing rights allocation. It may well be that there is great disagreement within the society on this allocation, but so long as the power of the state is sufficient to enforce its authority, the allocation of rights will be as effective as if there were full consensus on the rights allocation.

Just as in the case of a market in which property rights are well defined and enforced, the actors within the system (individuals and

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corporate actors) will act so as to optimize *given the allocation of rights*. The result will be a system equilibrium resulting from these actions.

The optimizing behavior, however, and the equilibrium to which it leads, is, as in the case of a simple private goods market, specific to the existing rights allocation. If, for whatever reason, this rights allocation can no longer be enforced and the hierarchy of rights it produces crumbles, then the actions that were previously rational are no longer so. Different actions become individually optimal, and a different equilibrium results.

This can be seen most easily at the microlevel, in the case of a natural disaster or other event that results in looting. Looting occurs when property rights can no longer be enforced by the authorities. What was not rational for a person motivated purely by material self-interest before the event, when property rights were enforced, becomes rational when property rights are no longer enforced.

At the level of a state, the same phenomenon can be seen. East Germans, who with rare exceptions did not attempt to escape to West Germany so long as the authority of the East German state, backed by the authority of the Soviet army, was enforced by armed guards. But when Gorbachev was no longer willing to provide this backing, it suddenly became rational for many East Germans to flee to West Germany, through Hungary and Austria. The prospective new equilibrium was one in which East Germany would be denuded of most of its population, and West Germany would be deluged with the bulk of the East German population. It suddenly came to be in the interest of most of the corporate actors in both East and West Germany, including both governments, to immediately bring about reunification, which had seemed a highly unlikely prospect only a few months before.

An example somewhat closer to that of national conflicts when state authority is no longer enforced is the conflict among heirs of an estate after a wealthy man's death. When the will is disputable, rights to the wealth are no longer well defined, as they were before the death, and heirs who were quite compatible before the death suddenly become opponents, each claiming rights over a portion of the wealth that overlaps with others' claims.

National groups as actors

The above examples of the crumbling of a system of authority – and thus a system of rights allocation – illustrate individual actions toward purely individual goods. The case of nationalist conflicts when overall

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state authority vanishes or weakens involves an additional process. Individuals do not automatically come together along nationalist or ethnic lines when a system of rights collapses. First, there is a free-rider problem. A person defined as a member of a national group can experience the benefits of that group's gaining rights without participating in the conflict which will determine the rights allocation between national groups. Second, "nationality" is only one basis of individuals' self-identification (as Ukrainians, Lithuanians, Azerbaijanis, Russians, Serbs, Czechs, Croats). There are others as well. However, there is one element which may lead groups to claim rights *as* members of the national groups. Just as the claims of heirs to an estate are almost universally claims to portions of the wealth of the estate, the national group claims are almost universally claims to geographic territories. Thus apart from free-rider problems involved in any collective action, there are strong economic reasons for nationality, rather than age, or gender, or race, coming to be the basis of identity around which rights conflicts turn when territory is in dispute.

The main body of individuals in a national group constitutes a resource for those persons whose interests lie in success of the national group's rights claims. The success will ordinarily, in the absence of an authoritative and enforced allocation of rights, depend on the successful use of force.³ But the successful use of force will in turn strengthen the self-identification of the members of the national group. Jews in Palestine, after the British left in 1947 and after their success in the Jewish-Arab war, gained a stronger identity as Jews, once the territory was conquered and the state of Israel was formed. If success in the use of force to win a rights claim is achieved, then the group rights once won constitute a resource with which to bind those who are included in the group to the group. As an almost trivial example, one which does not involve territory, the success of Indian (that is, Native American) leaders in wresting rights from state or federal governments of the United States has led some persons with an almost-forgotten Indian ancestor to claim membership in the group in order to claim the rights.

There is, then, this reciprocal use of resources by leaders of poten-

³ The earliest work I have seen which pointed to differing interests of different members of national or ethnic groups in the acquisition of group rights is in a paper by Albert and Raymond Breton (1980). They showed that among the leaders of the separatist movement in Quebec in the 1960s were especially to be found employees of the French-language division of the Canadian Broadcasting Company. This was a group whose very livelihood depended on the maintenance of a vigorous French-language culture.

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tially viable national groups: The members of the group, whatever their degree of identification with it, constitute resources in the latent struggle against other bases of identity (i.e., race or ethnicity vs geographically defined national identification, as exemplified by the identification as Kurds, whether Iraqi or Turkish, against the identification as Iraqis or Turks, whether Kurdish or not), and the manifest struggle against opposing groups (as exemplified by the struggle of Iraqi Sunnis against Iraqi Kurds). In turn, group rights that have been won become a new resource which can attract to the group identity all those who can claim group membership and for whom the group right is valuable. These rights sometimes include private goods, as, for example, when the resources obtained include land which can be distributed to group members. Such private goods may be made to serve as selective incentives to overcome the free-rider problem, by being made available only to participants in the struggle.

One can easily see how such a mutually reinforcing pair of processes can lead to the strengthening of group identity, whether it be a group defined along national, religious, gender, age, or country lines. What may not come so easily to mind but is equally a consequence of the mutual reinforcement is the extinction of contending group identities that are unsuccessful in the acquisition of group rights. The positive feedback can lead to extinction just as it can lead to intensification.

National groups engaged in common defense

Matters are, however, more complex. Persons who have a potentially common identity may come to have that identity reinforced by being subject to common treatment at the hand of another actor. This is true of a cohort of medical school students who, having had various individual self-identifications, gain a sense of common identity when required to jump over the same academic hurdles at the same time, just as it is of Jews in Germany in the 1930s who, having thought of themselves as Germans, came to gain self-identification as Jews when treated according to this single basis of identity.

This is not always the outcome: Treatment as a member of a particular group can be sufficiently harsh that when combined with the offer of escaping the identity, it can lead to extinguishing the group identity. An example is the case of Jews and Muslims who converted to Christianity in fifteenth-century Spain, when subject to the Inquisition plus the possibility of converting. The general phenomenon seems to be explicable in rational terms, as follows: When persons are treated as a