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0521849152 - A Theory of Secession: The Case for Political Self-Determination

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## 1

## Introduction

This book aims to supply a thorough and unapologetic defense of the right to secede. In particular, it argues that any group has a moral right to secede as long as its political divorce will leave it and the remainder state in a position to perform the requisite political functions.

To call this thesis a minority position is an understatement. Though the twin doctrines of state sovereignty and territorial integrity are currently undergoing a dramatic reassessment, and though most theorists now acknowledge that a group may have a remedial right to secede when it has suffered severe and long-standing injustices at the hands of its state, it remains highly controversial to suggest that a group might have a right to separate even when its state has in no way treated it unjustly. Moreover, the majority of those who champion a primary right to secede presume that such political self-determination must come under a nationalist banner. Thus, my view is doubly controversial: Not only does it allow for the unilateral division of perfectly legitimate states, it does not mandate that the separatists be a culturally distinct minority group.

It would not be surprising for an anarchist to be so open to state breaking, but I defend secessionist rights despite being a statist. As I shall argue, there is nothing contradictory or otherwise problematic about valuing legitimate states, on the one hand, and permitting their division on the other. Once one recognizes that political states are valuable because of the functions (e.g., securing a just peace) that they are uniquely suited to perform, it becomes apparent that the territorial boundaries of existing states might permissibly be redrawn as long as neither the process nor the result of this reconfiguration interrupts the production of the crucial political benefits. In short, there is nothing about insisting upon the

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importance of states that requires us to preserve existing states in their present forms. And, once one concedes that states might permissibly be reconfigured, this raises the question of why the territorial boundaries of current states may not be redrawn in accordance with the wishes of their inhabitants. Admittedly, there is no chance that we can redo political boundaries in a way that pleases everyone, but this in no way implies that we must refrain from making changes that leave a greater percentage of people happy. The bottom line is that, if one values self-determination, then one has good reasons to conclude that people have a right to determine their political boundaries. These reasons are subject to being outweighed, of course, but I will argue that they are typically not outweighed whenever political boundaries can be redrawn without jeopardizing the requisite political functions.

Before summarizing the chapters to follow, let me explicitly acknowledge two features of my position. First, my argument is conditional: I suggest that *if* self-determination is valuable, then there is a primary right to secede from legitimate states. Those who come to this book skeptical of the importance of self-determination will not find a full defense of it here. Rather, I assume without argument that, other things being equal, people should be left free to be the authors of their own lives. The purpose of this book is to argue from this modest assumption to some striking conclusions regarding the morality of state breaking. Thus, my argument will admittedly have no purchase with those who do not share my view that this initial assumption is both modest and plausible.

Second, let me emphasize that I here defend the *right to secede* rather than *secession* itself. I stress this distinction because I am emphatically *not* a fan of secession. Although there are clearly some cases in which many lives could be dramatically improved by the division of existing states, I do not yearn for a world populated by countless tiny, more homogenous political units. On the contrary, I suspect that lives would more likely be improved if states continued to form more extensive international unions (if not outright mergers) that minimize the significance of political borders for the purposes of travel, trade, immigration, economic redistribution, and even culture. Still, just as one might defend the right to no-fault divorce for married couples even though one believes adamantly that people too often wrongly choose to separate, I defend the right to secede despite being no fan of state breaking. Put simply, whether it is wise for one to do X and whether one has a moral right to do X are separate issues. We are often morally entitled to act in ways that are not in our best interests, and here I defend the right to secede without offering any assurances that

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separatist parties would exercise this right only in cases of which I (and others) would approve.

In Chapter 2, “The Case for Statism,” I show that one cannot merely appeal to freedom of association to ground secessionist rights. There are good reasons to allow people to choose their associates, but an unqualified defense of freedom of association is a recipe for anarchism. Statism is inconsistent with unrestricted freedom of association because states must be territorially contiguous in order to perform their crucial functions, and this contiguity would not be possible if states coerced only those subjects who freely consented. In the end, then, we must choose between viable political states and unqualified freedom of association. Anarcho-libertarians suggest that this choice shows why all existing states are illegitimate, but I argue that the converse is true. I propose that the legitimacy of territorially defined states implies that freedom of association must be qualified in the political context and that, as a consequence, it is implausible to posit unlimited rights to secede based upon an absolute right to freedom of association.

Chapter 3, “Valuing Self-Determination,” is the pivotal chapter of the book. Here I argue that a commitment to statism does not force us to turn our backs on the importance of self-determination. It is true that one cannot consistently affirm political states and endorse unlimited secessionist rights, but this does not imply that there can be no primary rights to secede. Drawing upon the account of political legitimacy advanced in chapter 2, I suggest that we must allow those secessions that would not interfere with the production of essential political benefits. Thus, I propose that all separatist groups that can adequately perform the requisite political functions (and would leave their remainder states politically viable) have a primary right to secede. The central point is that, even if the benefits of political stability are important enough to outweigh conflicting claims to freedom of association, self-determination remains valuable and should be accommodated in those cases in which doing so does not conflict with the procurement of those political benefits. In short, our choices are not limited to either enduring anarchic chaos or retaining our existing states in their present form; statists who value self-determination can and should point toward a third option: reconfiguring the territorial boundaries of existing states according to the preferences of constituents whenever this reordering will not interrupt the benefits of political stability.

In Chapter 4, “Lincoln on Secession,” I examine my permissive stance on unilateral state breaking in light of Abraham Lincoln’s objections to

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the Confederacy's bid to secede. Discussing this case is instructive not only because it illustrates how my theory of secession would address an actual secessionist conflict, but also because it forces me to counter Lincoln's objections to state breaking, some of which remain popular today. After explaining the ten objections Lincoln raised against the South's separatist movement, I argue that none of them is cogent. I ultimately conclude that, though Lincoln's arguments did not themselves suffice, my account points the way toward an alternative argument that better explains why the Union was justified in resisting the political divorce.

In Chapter 5, "The Truth in Nationalism," I argue that a group need not be a cultural nation in order to qualify for the right to secede. Traditionally, the most vociferous advocates of political self-determination have been nationalists who propose that every nation has a right to form its own state. I acknowledge that national groups typically have the greatest interest in political self-determination, but I argue that cultural features are not central to secessionist conflicts. In my view, political abilities are paramount, and a group's status as a nation can at most play a secondary role in qualifying it for the right to secede, chiefly in cases where the group's cultural capital buttresses its capacity to perform the requisite political functions.

In Chapter 6, "Political Coercion and Exploitation," I address the worry that institutionally recognizing the right to secede will corrupt democratic decision making by allowing minority groups to hold their compatriots hostage. The basic worry here is that, by threatening to secede unless their demands are met, groups will be able to coerce and/or exploit their fellow citizens out of more than their fair share of the benefits of political cooperation. In response, I acknowledge that the dynamics of political decision making might well change, and that groups may occasionally capitalize on their ability to exit, but (after offering an analysis of the morality of coercion and exploitation) I suggest that my theory of secession does not permit a group to *impermissibly* exploit or coerce its compatriots. Moreover, I regard these changes largely as providing reasons *in favor* of constitutionally recognizing the right to secede. In my view, democracies are currently corrupt and stand to be improved by extending groups the political leverage that would likely accompany an effective right to exit.

In Chapter 7, "Secession and International Law," I explore whether the best international legal system would institutionally recognize and enforce the moral right to secede. I argue both that the moral rights to secede place the argumentative burden of proof on those who would

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deny political self-determination and that there are reasons to doubt that the skeptics can defeat this presumption in favor of political liberty. In the end, I concede that this is not a question best answered solely by moral philosophers; international lawyers, sociologists, and theorists of international relations are among those better equipped to answer some of the empirical questions that must be asked en route to settling this matter. However, even if it turns out that it would be imprudent or even irresponsible to institutionalize the right to secede in the international law at this juncture, this implies neither that the moral right does not currently exist nor that we should not work to reform the immoral international actors who currently make it inadvisable to institutionalize the ideal of political self-determination.

Finally, in Chapter 8, "The Velvet Transformation," I offer an optimistic prediction: We are not far from the day when political theorists and international actors respect the importance of political self-determination, and when that day arrives, groups will not vote in favor of secession. My hope and expectation is that as the continued emergence of international cooperation, international law, democracy, human rights, group rights, and self-determination gradually transforms the international landscape, we will witness corresponding decreases in injustice, group grievances, separatist passion, and, most significantly, the importance of state sovereignty. If so, there is every reason to expect that the charged tension of secessionist conflicts will ease as states offer less resistance to separatist movements and the motivations to achieve independent statehood correspondingly diminish.

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## 2

## The Case for Statism

At first blush, it would not seem terribly difficult to construct a compelling argument in defense of unlimited, unilateral rights to secede: One need only appeal to the right to freedom of association. Think, for instance, of how we regard marital and religious self-determination. Freedom of association is paramount in marital relations; we insist that a marriage should take place only between consenting partners. I may not be forced against my will to marry anyone, and I likewise have no right to force an unwilling partner to marry me. Not only do we have the right to determine whom we would like to marry, each of us has the discretion to decide whether or not to marry at all, and those of us who are married have the right to unilateral divorce. In short, any law requiring us to marry by a certain age, specifying whom we may or may not marry, or prohibiting divorce would impermissibly restrict our freedom of association.

Freedom of religion is in many ways more complicated, but most of us feel similarly about religious affiliation: Whether, how, and with whom I attend to my humanity is up to me as an individual. If I elect to explore my religious nature in community with others, I have no duty to do so with anyone in particular and no right to demand that others allow me to join them in worship. This freedom of association explains why it would be objectionable for my parents or my country to force me, as an adult, to attend my family church or the official church of the state.

Against this backdrop, it is easy to see what is potentially worrisome about a political state requiring its citizens to remain in the union. If I have the right to choose my marital and religious partners, why may I not also choose my political partners? As David Gauthier explains: “Just

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as secession may be compared to divorce, so political association may be compared to marriage. I may have the right to marry the woman of my choice who also chooses me, but not the woman of my choice who rejects me.”<sup>1</sup> Moreover, invoking the analogies of marriage and religious self-determination highlights how dissatisfying it would be to allege that political self-determination allows one merely to secede from a country that treats one unjustly. Certainly, groups victimized by their states have a right to secede, but it is wrong to think that this remedial claim exhausts our rights to political self-determination. Imagine, for instance, if we required children to marry spouses chosen by their parents. Would we claim that these children had freedom of association if they were allowed to divorce only when their spouses mistreated them? Presumably not. Similarly, no one would label it religious self-determination if one were allowed to leave the church into which one was born just in case that church treated one unjustly. On the contrary, we recognize that freedom of association gives one much more than a right to leave an abusive arranged marriage, and that religious self-determination gives one greater discretion than merely to break from a church that mistreats one. As Margaret Moore emphasizes, freedom of association includes freedom of dissociation: “Freedom of association involves the ability to associate with other freely consenting individuals, and to dissociate from some others. If dissociation is implicit in a freedom of association principle, freedom of association cannot imply a right to associate with others against their will.”<sup>2</sup> Given this, it is clear that an account of political self-determination inspired by freedom of association would give citizens much more than simply a right to secede from a country that treated them unjustly. Rather, each citizen would have the unilateral right to secede at any point in order either to form a new political alliance with others or even to withdraw and live in a state of nature, without any political association at all.

It does not take long to recognize that respecting freedom of association in the political context would be a recipe for anarchy. Just as freedom of association in personal relationships has led to a dramatic increase in the number of divorces and religious self-determination has weakened many organized religions, respecting unfettered political self-determination would be disastrous for existing states. If everyone were given the opportunity freely to withdraw from their countries,

<sup>1</sup> David Gauthier, “Breaking Up: An Essay on Secession,” pp. 360–361.

<sup>2</sup> Margaret Moore, *The Ethics of Nationalism*, p. 170.

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the institutions that remained would be so diminished in population and fragmented in territory that they would no longer merit the title of states. Most importantly, these territorially porous, voluntary associations would not be able satisfactorily to perform the functions of a modern state. If existing states were forced to draw upon only those who freely remained, the peace and security present in modern liberal democracies would be a thing of the past. Put bluntly, the price of unqualified freedom of association would be anarchy.

Of course, while some of those who champion the importance of freedom of association do not flinch at its anarchical implications, most deny that it has such radical consequences.<sup>3</sup> In particular, it has been common to suggest either (1) that we have all freely consented to our states or (2) that if given the opportunity, the vast majority would do so. Either option would allow advocates of freedom of association to avoid anarchism, because (1) explains how, despite our initial freedom, we are not currently at liberty to secede from our existing states, and (2) suggests that allowing unlimited secession would not in fact greatly diminish existing states, let alone result in anarchy. Upon closer examination, however, neither option satisfactorily reconciles unbridled freedom of association with statism.

The obvious problem with positing consent is that it seems baldly historically inaccurate. Other than naturalized citizens, very few of us have even been asked for, let alone given, our consent to be governed. In response to this difficulty, many have followed Locke in suggesting that citizens have *tacitly* consented to their state's imposition. This is not the place to address each of the various accounts on offer, but let me briefly explain why I think that even the most promising attempt to show the citizens' consent fails. In particular, consider why even those who vote for the winning side in a democratic election are not morally bound as if they had consented.<sup>4</sup>

The problem with this approach is that voting on political options in existing democracies is significantly disanalogous to (morally valid) acts of tacit consent in other arenas because the voter is never given the most important option of whether or not there will be a government. Instead, she is given only a (typically negligible) voice in what particular

<sup>3</sup> For instance, Harry Beran and David Gauthier are two prominent advocates of secession grounded in consent/freedom of association, and neither advocates anarchy.

<sup>4</sup> Carole Pateman, in *The Problem of Political Obligation*, and Peter Singer, in *Democracy and Disobedience*, are among those who explore the connection between voting and political obligation.

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form the government will take. Therefore, even if a citizen *could singularly control* the results of a given election, she would not be morally bound by its outcome because she never consented to the restricted options of the election. Unless a voter is given the option of being exempt from the political imposition (i.e., allowed to secede), she cannot be morally bound by the outcome of an election in which she voted.<sup>5</sup> Indeed, to say that citizens are bound to those laws for which they vote (given the practice of current democracies) is morally tantamount to saying that an abductee has consented to being shot if she has expressed a preference that her abductor shoot rather than stab her. One might object that the analogy between having a vote and being abducted is inapt, since one can opt not to vote but cannot choose not to be killed, but this objection misses the point of the comparison. The two positions are importantly analogous, because neither the citizen nor the abductee can choose whether or not she will be coerced. Just as the abductee will be killed no matter how she responds (and even if she does not answer the abductor's question), the citizen will be subjected to coercive laws no matter how she votes (and even if she does not vote).

I believe that other explanations of tacit consent suffer from the same problem as the voting account. If so, most citizens have neither explicitly nor tacitly consented to their state's imposition.<sup>6</sup> As a consequence, a defender of unqualified freedom of association appears committed to insisting that everyone who has not given her morally binding consent (i.e., virtually all of us) must be given the option to secede unilaterally from her existing state. Even so, such a theorist might deny that this implication is a recipe for anarchism on the grounds that few would actually choose to secede. The basic idea here is that because virtually everyone would recognize the benefits of political cooperation, very few would opt out, and there would therefore be no appreciable diminution in existing states' capacities to perform their functions.

<sup>5</sup> It is important to appreciate that it is not enough that citizens be allowed to emigrate; they must be allowed to secede. The state would be entitled to force one to "love it or leave it" only if it had somehow already achieved a position of moral sovereignty over its territory before it had gained the consent of its constituents. Thus consent theorists of this stripe face a dilemma: If (1) the state has no claim to its territory prior to the consent of its citizens, then it has no right to demand that citizens either play by the state's rule or leave, but if (2) the state does have a claim to its territory before it has garnered the consent of its citizens, then it is no longer true that each citizen enjoys a position of privileged dominion over her own affairs until she voluntarily relinquishes it.

<sup>6</sup> The best critique of tacit consent remains John Simmons's treatment of the subject in *Moral Principles and Political Obligations*.

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The view that very few would elect to secede from our existing states is inspired by an appreciation of the profound benefits of political order. Because virtually all of us recognize that life in the absence of political stability would be hazardous, each of us would voluntarily pay our political dues in order to avoid the insecurity of an apolitical environment. Thus, even if we insist that existing states are morally required to give those citizens who have not consented the option to secede (as a consistent advocate of freedom of association must), a proponent of this response would predict that only the most irrational or politically ignorant among us would choose to withdraw. And because it is unduly pessimistic to think that more than a handful of us are that spectacularly irrational or ignorant, we need not worry about the wholesale defections it would take to threaten the functional efficacy of existing states.

This response is inadequate, however, because it is not clear that it would necessarily be irrational to secede. I do not doubt that the benefits of political order are extraordinary, but the irrationality of secession would follow from this only if political withdrawal would cause the feared political instability, and it is implausible to think that an individual's defection would have this effect. The relevant point here is a well-worn one in political theory: Even if a state's capacity to perform its functions depends upon a general level of cooperation, a single individual's participation typically has no discernible effect. As a consequence, it would not be irrational to secede, regardless of what one expected the bulk of others to do. If one expects that most others will not secede, then it might be rational to secede, because one could stop making political sacrifices without worrying about the perils of anarchy. If we expect that most people will secede, on the other hand, it clearly becomes rational to secede oneself rather than sacrifice and still enjoy no benefits of political stability.

In light of this reasoning, one should conclude that, even if we would all be markedly better off if no one seceded, the dominant strategy would be for each individual to secede. Moreover, each of us should presume that others will reason similarly, and thus it seems more accurate to suppose that most of us would (quite reasonably) secede with an expectation that others will do so as well. Of course, this mass defection might build gradually rather than occur all at once, but as the secessions increasingly cause a diminution in the benefits of political cooperation (which in turn inspires further defections, and so on), we should expect the vast majority of citizens to eventually opt out of political states if given the choice.