

Chapter 6

Secession

Introduction

People have rights to themselves. The right to a share of natural opportunities makes the right to oneself operational. It means that there must be some place where one can exercise the right to oneself. But the world is divided into nations. Each nation has its own laws. There is nothing unjust about that. The people of each nation have a right to live under the laws that they choose.

But suppose that some issue comes to divide the people of a nation. It might be the question of whether two people of the same sex are allowed to marry, or whether people will be allowed to ride motorcycles without helmets. Whatever the issue, many people feel so strongly about the issue that they cannot tolerate the thought of being part of a nation that does not accept their view on this issue. But majorities rule, and one group finds itself in the minority. The minority has not prevailed on an issue that they regard to be of paramount importance. The members of the group have a right to move to some nation that they find more congenial, but they may find none congenial. Therefore they may seek to secede, to create a new nation out of part of the territory where they have been living. Do they have a right to do this? And why?

The Right of a Nation to Territory

To address this question, it is useful to first address the question of how a nation acquires a respectable claim to territory. First occupancy might seem to be a logical answer, but history is so replete with conquests that, for most territory, we have no way of knowing who the descendants of the first occupiers are.

There is a better way to defend a nation's claim to territory. The citizens of a nation can say to anyone who questions their right, "We have a right to our share of territory and we have been living here lately. It is not more than our share (or if it is more than our share, we are paying adequate compensation to those who have less than their share). So we should be allowed to continue to occupy it." In this way, the right of a nation to territory is derived from the combination of the principle of equal division, the rights of the citizens of a nation to shares of natural opportunities, and an appeal to continuity in the absence of unfairness.

The Implication for Secession

Now consider the potential claim of those who wish to secede. They can justly say, “We have rights to ourselves. Therefore there must be some place where we can exercise those rights. All the land in the world that might be an interesting place to live is claimed by someone already. The right we have to a share of natural opportunities has previously been used to justify our joint claims with those who have been our fellow citizens. Now we want to separate our claims from the claims of those who have been our fellow citizens. It is reasonable to expect those who have been our fellow citizens to allocate to us a share of the territory whose occupancy in the past has been justified by the combination of their claims and ours. If those who have been our fellow citizens do not wish to allocate full proportional shares to us, they should at least allocate something to us and compensate us for the remainder in cash.”

Why Local Option is Not Sufficient

It might seem that accepting a right of those who are dissatisfied to secede is overkill. Why isn't local option enough? Some U.S. states have at times permitted their counties or municipalities to decide individually whether to permit the sale of alcoholic beverages. This, it might be argued, should be the model for dealing with disagreements about what behaviors should be permitted.

Sometimes local option works well enough. It works for activities such as noise and nudity, where the harm that people feel is attenuated by distance. It doesn't work when people are offended by the thought of being a fellow citizen of someone who wants to express his right to himself in a particular way, offended by the possibility that their nation could permit such a thing to occur. The behaviors most likely to provoke such reactions seem to be associated primarily with sex, violence, religion and intoxication, although there may be some associated with the accumulation of wealth and its transmission to children as well.

While we can urge people to be tolerant and accept local option within a nation, I can find no basis for insisting that they have an obligation to accept local option in all cases. If a majority insists that a particular behavior is utterly unacceptable in their fellow citizens, and the minority insists that they must have the opportunity to express their rights to themselves, then the two groups need to become citizens of different nations.

Why the Possibility of Emigration is Not Sufficient

One traditional way of accommodating differences is to have the dissatisfied minority emigrate. Several American colonies were established by groups whose

religious practices were not tolerated in Britain. In years past, Americans would sometimes say to their communist fellow citizens, "If you don't like it, move to Russia." Today, a person who wants to be free to smoke marijuana can be told to move to Amsterdam or Copenhagen; one who wishes to have multiple wives can be told that he needs to become a citizen of an Islamic nation.

While the possibility of emigration limits the hardship of those who wish to express their rights to themselves in ways to which majorities object, it is not sufficient. A man may want more than the four wives to which Islam limits him. Or he may want an occasional glass of beer along with three wives. A person may find the necessity of learning a new language an insuperable barrier. Or she may find that, while there are nations that would be acceptable to her, they are not willing to allow her to immigrate. There is no basis for saying to people, "The world already has enough nations. Make do with one of those that will accept you."

The right of people to themselves requires that there be a place where they can express that right without needing to be concerned about the objections of their fellow citizens. The only way to accomplish this is to provide that if they and their fellow citizens come to an impasse, then they have the right to form their own nation.

Some Mechanics of Secession

A minority who wish to secede have a right to a share of territorial resources with a value that is proportional to their number (or a smaller amount with compensation for the difference in cash). They do not have a right to fragment their nation in whatever way they choose. The majority have an obligation to provide the minority who wish to secede with territory of appropriate value, or some territory plus compensation. They satisfy this obligation when they provide a combination of territory and compensation with value proportionate to the number of persons who wish to secede, in whatever place is convenient for the majority. While it might seem that it is unfair to those who wish to secede to give them no choice in what territory they receive, it is not possible to guarantee the satisfaction of both the majority and the minority, so one might as well leave the decision with the more numerous group, subject to the requirement that the combination of territory and compensation be adequate. The majority will generally have an incentive to part with the territory that has the least value to themselves, relative to the market, and this will be the territory to which the minority are particularly attached.

There is no minimum or maximum size for a group that has a right to secede. A single person has a right to secede. A nation has a right to secede from a person, if adequate provision is made for that person. One would hope that such an action would not be taken lightly, but it might be appropriate in cases of habitual offenders who cannot be trusted not to reoffend.

Bargaining Subsequent to Recognition of a Right to Secede

If a right to secede were recognized, it would not be exercised nearly as often as it would be used to negotiate different outcomes of conflicts over rights. Consider the issue of use of marijuana. If the millions of Americans who want to make the use of marijuana a regular part of their lives had a recognized right to secede with their share of territory, I expect that some of them would begin to organize a secession, if that were necessary to secure the opportunity to use marijuana without the threat of jail. While I could be wrong, I expect that the majority who oppose the use of marijuana would decide that they would rather permit the use of marijuana in some places under local option than allow the nation to split up over such an issue. People who want to use marijuana could then move to such places, and the jail population could be greatly reduced.

Consider the case of a child molester who cannot be trusted not to reoffend. If we threaten to secede from him, he might volunteer to live under restrictions that would prevent him from reoffending.

Support for poor persons is another issue where bargaining under the possibility of secession could be expected to yield a different result. If the landless poor were accorded the right to secede with a proportionate share of land, then they could be expected to seek to exercise that right unless their continued citizenship provided support or public services equal in value to the rent of their share of land. Thus a guaranteed income for poor persons, equal to a person's share of rent, would be a bargaining outcome that could be predicted from recognition of a right to secede.

Highly talented people could not necessarily expect to strike the same deal. If people are generally offended by great wealth, then they can say to those who become rich because they are highly talented, "Yes, you have a right to leave with your share of land if you want, but we might not mind. Unless you are willing to share a significant part of what your great talent produces, we are not interested in having you as fellow citizens." This provides the possibility of an alternative ending to Robert Nozick's story of Wilt Chamberlain, who becomes rich through his talent in a society that starts with equality.¹

The abortion issue is one where it is not clear that any bargaining solution is possible. It would not surprise me if both sides of that issue feel so strongly about their positions that any proposed resolution would lead one side or the other to seek secession if that were allowed. But if that is true, then the two sides deserve the chance to live in separate nations.

Issues that Secession Does Not Resolve

Some issues are not resolved by the possibility of secession. Abortion may be one of them. Any action that is seen as attack upon beings that ought to be accorded

rights may so enrage the powerful persons in a powerful nation that the nation may try to stop the action by force, even if the actors are citizens of another country. The bombing of Yugoslavia by the U.S. to stop genocide and ethnic cleansing of Albanians from Kosovo is a recent example. Protests by the Yugoslavian government that what they were doing was an internal matter did not answer the American concern. (It might be noted that if the world shared a commitment to the idea that a nation's claim to territory must be proportionate to be respectable, then Serbs would not have been able to get more resources per capita for themselves by driving out and killing the Albanians.)

In a similar way, I can imagine opponents of abortion arguing that it would not be sufficient to eliminate abortion from their nation; they had an obligation to eliminate it from the world. In this event, secession would be of no use to them and possibly counterproductive.

The effort by the confederate states to secede from the U.S. lacked respectability because its central purpose was to perpetuate slavery. If a group sought to secede so that they might abuse their children without interference, the group from whom they sought to secede could reasonably refuse to accede to their request. If the citizens of Rhode Island sought to secede in order to reestablish whaling in defiance of an emerging international consensus that whales are to be protected, the U.S. could reasonably refuse their request. If Alaskans sought to secede, the U.S. might reasonably require reliable guarantees that the oil wealth of that state would be shared with others.

If we are to resolve the conflicts that arise because some people believe that others are trampling the rights of third parties, it will need to be by reaching a consensus on what beings have what rights. The possibility of secession does not resolve such conflicts.

Conclusion

People have rights to themselves. A reasonable conception of a right to oneself includes both the right to do things that others find offensive (while not infringing on the rights of others) and the right to confine one's affiliation to others who do not offend. These apparently conflicting rights can be resolved if and only if people have a right to secede.

¹ Robert Nozick, *Anarchy State and Utopia* (New York: Basic Books, 1974), pp. 160-64.