

SYMPOSIUM
TERRITORY, BELONGING
SECESSION, SELF-DETERMINATION AND TERRITORIAL RIGHTS
IN THE AGE OF IDENTITY POLITICS



A PRÉCIS TO
CONTESTED SECESSIONS
RIGHTS, SELF-DETERMINATION,
DEMOCRACY AND KASHMIR

BY NEERA CHANDOKE

[THIS PAGE INTENTIONALLY LEFT BLANK]

**A Précis to
Contested Secessions
Rights, Self-determination,
Democracy and Kashmir**

Neera Chandhoke

The argument in this work has a two-fold objective: to assess liberal theories of secession from the vantage point of contested and messy separatism in the postcolonial world, and to evaluate such cases by tapping the resources of liberal theory. I suggest in the opening chapter that for a long time western political philosophers have assumed that the territorial borders of the society they prescribe justice for are a given. This particular supposition took a rather hard knock in the period that followed the end of the cold war. The collapse of actually existing socialist societies inaugurated an era of hyper ethno-nationalist movements, especially in the region of the Balkans and the Caucasus. The consequences of the upsurge have been serious. Countries dissolved, federal systems melted away, and a number of new states emerged out of the debris of old ones, often through armed struggle, ethnic cleansing, and genocide.

The pace at which existing states broke and new states were created, was quite unprecedented. And the issue was catapulted

onto the theoretical agendas of political philosophy. This is a welcome development. Though an indispensable precondition for ‘stateness’ is international recognition, international law has seen this issue as a matter for and of politics. There is nothing in international law that tells us whether secession in particular cases is justified, and if so why. This task was now taken up by liberal political philosophers.

They had little option but to deal with territories, with self-determination, and with secession, because state breaking and state making exerted a profound domino effect across the world. Among some examples of secessionist movements are the Kashmiri’s, the Naga’s, and the Bodo’s in India, the Chechens in Russia, separatist movements in Azerbaijan (Nagorno-Karabach) and Moldova (Trans-Dniester), Baluchistan in Pakistan, West Papua in Indonesia, the Oromos and the Somalis in Ethiopia, the Kurds in Turkey, till May 2009 the Tamils in Sri Lanka, and South Ossetia and Abkhazia in Georgia. Regions in Canada, the United Kingdom, and Europe, such as Quebec, Scotland, Catalonia, the Basque country, and Corsica continue to demand independence, admittedly off and on.

Among some of the anxiety ridden questions political philosophers had to deal with are the following: in what circumstances is secession justified? Which sort of group does this right supervene on? What are the moral considerations that bear on this right and that have to be taken into account? What kind of a right is secession, or which category of rights does it fall into? What are the legitimate restrictions on the right? And finally even if the right of secession can be morally justified, should we be defending it politically?

Western political philosophers have been able to develop a normative theory of secession simply because they take as their conceptual referral cases that fall into the category of procedural

secessions, for example, Quebec. But all parent states, and all separatist movements, do not follow a pre-ordained script that has been indelibly etched onto the liberal stone. Most cases of secessions in the Balkans, the Caucasus, and in much of the postcolonial world, provide examples of contested secessions.

The one feature that constitutes secession as a contested political act is the employment of indiscriminate violence by the government and by the leadership of the movement. We have seen that violence tends to breed violence and over time the trajectory of violence outstrips the initial reason for the outbreak of the movement. Violence, in effect, acquires a biography that begins and ends with itself. Since contested secessions are usually stamped with the cloven hoof of extensive violence, it does not take an astrologer to tell us that secessions or even aspirant secession will, in all probability, inflict major harm upon populations who live in the disputed territory, as well as on populations who live outside the territory. And this by itself is troublesome.

There are further troubles in store for liberal political theorists if they perchance happen to address contested secession. This genre of theory hesitates to grant the right of self-determination for groups that are illiberal, if the group is mixed with minorities, if the separation will prove harmful for the parent state, if the group is not prepared to accept the results of a democratically held referendum, and if it is not prepared to negotiate on significant issues ranging from the institutionalisation of liberal democracy, to meeting of debt obligations.

What would be the response of western liberal philosophers if we, situated in the postcolonial world, were to illustrate the complexities of contested secessions? Simply put, whereas the group might be the wrong one, the cause for which it seeks to secede might be the right one. Deny the right of secession and

the group is denied justice. Grant this illiberal group the right of secession and there is very real danger that the state it establishes might be illiberal to a high degree. The issue becomes particularly problematic in democracies such as India.

In the second chapter I illustrate this problem by taking up the issues involved in the demand for secession in the Kashmir Valley in India. The context of the secessionist movement; that is formal democracy, distinguishes the Kashmir case from Bangladesh. The secession of Bangladesh can be traced to the institutionalisation of extreme injustice in erstwhile East Pakistan by the Government of Pakistan. The text; that is the use of violence by the state and by the movement distinguishes Kashmir from Quebec. In effect, Kashmir represents what can be termed an anomaly in democratic theory, the use of violence amidst electoral democracy. And it represents an anomaly in conflict theory insofar as conflict takes place in a democracy. It is this particular mix of contradictions and paradoxes that makes the Kashmir case so difficult to address and yet so fascinating. It may even mount a profound challenge to theories that strive to elicit coherence out of messy situations.

In this chapter I point out that though the Indian state has claims to formal democracy it has subjected the inhabitants of J and K to institutionalised injustice. The roots of institutionalised injustice can be traced to (a) violation of the special status granted to the state by the constitution (b) closing off of democratic space to political contestation, (c) imposition of repressive legislation, and (d) major violations of moral rights of the people. Since 1999, groups of Kashmiri's have resultantly taken to the gun, and demanded a separate state.

Considering the scale of institutionalised injustice in the valley, the right of the Kashmiri Muslims to secede from India can be seen as justified. Rights are not however asserted in a

political vacuum, they invariably involve trade-offs particularly when countervailing rights are asserted. For example, other groups living in the state of Jammu and Kashmir oppose the move altogether. Hindus in Jammu, Shia Muslims in Kargil, Buddhists in Ladkash, the nomadic Gujjar community, the Pahari people, the residents of the Chenab Hill Council, and the Hindus who were exiled from the valley have demanded closer integration with India, and liberation from the Sunni Muslim dominated valley by the grant of autonomous political status. This factor alone tosses the minority issue sharply onto our agenda.

Two, a number of third party agents from outside the country, who speak the language of Jihad have taken up cudgels against the Indian government. Three, violence has become an endemic feature of the Kashmir situation. Whereas the use of violence by the Indian state is condemnable, the separatists have inflicted massive violence on their own people and on minorities in the state and outside.

Further, given democracy in the country, the institutionalisation of checks and balances in the political system, and a vibrant civil society in the country, it is *possible* that the state can be pressed to reverse institutionalised injustice, compensate the victims of injustice, and establish justice for the citizens of the state. The right to secede is thus infinitely complicated.

Traditionally secession has been justified on the plank of national self-determination. In chapter four and in the conclusion I suggest that even if the proposition that nations have a right to their own state carries considerable political weight among secessionists and aspirant secessionists, the connection between nations and secession just does not hold. It is not entirely clear why 'nations' are entitled to their own state. More significantly the concept of the nation is far too problematic. Nations are

conceived, constructed, and constituted through intentional processes that are indisputably political. The political route that leads to the ‘construction’ of a nation, an ideology called nationalism, and the demand for a state of one’s own can rapidly descend into narrow chauvinism, and, often, exclusionary discourses that lay down who belongs, and who does not belong. The whittling down of moral obligations to ones’ own immediate community; and the renunciation of obligation to others to whom we are bound by reasons of a common citizenship if not a common humanity, are intrinsic to the construction of a national self that seeks to attain a distinct political personality, and an independent political status. We can hardly grant and institutionalise a right to secede, when the *status* or even the credibility of the rights holder is itself uncertain. If a case for secession has to be justified, it must be constructed on grounds other than national self-determination, notably institutionalised injustice. The right of secession is not an absolute but a contingent right.

The argument in chapter one suggests that secession is a right that yields to justification only in certain and very specific circumstances, that of institutionalised and irrevocable injustice. Defence of core moral rights begin with the assumption that these rights supervene onto conceptions of what it means to be human. Secession is justified when core moral rights have been conclusively infringed. The right itself can be categorised as either strong or weak keeping in mind that a weak right can become a strong right.

In democracies like India secession is a weak right for two reasons. One, democracies can prove self-correcting if groups in civil society take up the issue and press the government to reverse injustice. Two as suggested above secession negatively affects the interests of minorities living in that territory. The overwhelming

presence of third parties further weakens the right. We in India have obligations to ensure that our fellow citizens are given justice. If the state does not reverse injustice heaped upon the head of fellow citizens, we might have to defend the right of the affected group to secede. Do we owe anything to jihadis that have come in from outside the valley and who speak a language that cannot be defended, that of the impossibility of two-nations living together in India? The right of a nation to its own state *vide* the principle of self-determination is simply not acceptable to democrats.

There are other reasons that might lead to the conclusion that though we should take secession seriously, there is need to deflect such demands using all resources that our political imaginations and innovations offer us. In chapter three I argue that secession is harmful *even* if it does not result in harm. For this we need to foreground one of the most significant questions asked by political philosophers in every age. What social backgrounds provide the best context for human beings to realise their projects and make their lives worthwhile? I draw upon the ideas of M. K. Gandhi to argue that plurality of perspectives, beliefs, and ideologies enable the making of informed projects; encourage a spirit of toleration, and boost prospects of dialogue. A readiness to acknowledge the right of secession as valid encourages the consolidation of narrow perspectives turned inwards towards the group, and away from other groups.

One way in which minority groups can be given justice is through the institutionalisation of minority rights and ethno-federalism. In chapter four the argument defends the idea that ethno-federalism and minority rights protect minority identities, and enable groups control over their affairs. The grant of minority rights within a democratic political community can serve

to avoid ghettoization as well as encourage interaction between minorities and other groups in the wider political community.

The establishment of institutions that realise self-determination as a constitutive aspect of democracy, rather than that of secession, might help us to negotiate a rather thorny problem. In a world marked by scarce resources and imperfect altruism, rights claims over territory will as a matter of course come into conflict. Notably if group P wishes to appropriate the territory it resides in and establish a state of its own, the assertion of the right of secession conflicts with the rights of group Q, R, and X (a) not to secede from the given state, (b) not to live in a state of another's making, and (c) not to leave their homes and hearths and involuntarily migrate to another place.

We can through considered deliberation make a strong case for the right of group P to exit the existing state. But it will still conflict with another group's freedom to move and settle in any part of the territory within a country. There is nothing in the conceptual repertoire of rights, or the language of rights that either pre-empts such conflict, or tells us how to negotiate it.

In the chapter on rights I suggest that the core moral right of freedom, equality, and justice demands that the rights of one person or group should not be held hostage to the right held by another person or group. Therefore if P's rights conflicts with Q's rights, the rights should be ideally be balanced rather than traded off against each other. But such balancing can only be maintained if the good that P asserts a right to, is scaled down. Correspondingly the demands of other groups should also be scaled down. If regional autonomy is reinstated in the Kashmir valley as per the constitutional mandate, secessionists should in the interests of maintaining the territorial integrity of the state accept this offer. In turn the minorities in the state should likewise scale down their demand for closer integration with India

or autonomous political status that grants them independence from the Sunni Muslim dominated valley. Since there is no consensus re secession among the inhabitants of Jammu and Kashmir, the only option to regional autonomy that permits self-determination along with considerable protection for minorities, is the partition of the state. And this as the partition of India in 1947 shows is ruinous.

Partitions and the constitution of new nation states resolve nothing. At the heart of the issue of rights, self-determination/secession and democracy, which is the sub-title of this work, is a basic question. Democrats must ask themselves a basic question: is it more important that a new nation state, which we cannot assume will be democratic, should be constituted out of the old one? Or is it more important that the existing state accommodates the demands of the secessionists makes way for territorial decentralisation, institutionalisation of minority rights and recognition of the rights of minorities within the rights of minority. This option might deflect secession, and open the way for groups to live together in their homeland.

It is perhaps time we detach the principle of self-determination from that of secession, and conceptualise it as a constitutive principle of democracy. Self-determination is a right, but there is nothing that dictates that this right can only be realised through the establishment of a state of one's own. If the existing state establishes preconditions for self-determination, the option of secession might well become redundant. This is important because a scaled down version of self-determination can help mitigate the conflicts of rights, which is endemic to secession.

This, as a matter of course, holds good only when there is enough evidence that the state intends to reverse institutionalised injustice, compensate the victims, and institute conditions

favourable for the realisation of core moral rights. That is if violations of core moral rights are not irrevocable, and if formal democracies offer opportunities for reversal of historical wrongs, and for the institutionalization of justice, then this right does not hold.

In cases of contested secession, it is almost impossible to cleanly and unambiguously weigh act A against benefit or dis-benefit B. What is incontrovertible is that ultimately imperfectly just states have to be made fully democratic through a variety of means: institutionalisation of structures of participation and representation, political dialogue, constant watchfulness against transgressions, some anxiety, some trust, a fair degree of distrust of people in power, and mobilisation against injustice and protest. Democracy is a project that is constantly in a state of realization through intentional and purposeful action. When democracies falter, and make mistakes, the responsibility lies upon civil society groups to insistently and resolutely press for a reversal of historical wrongs, and for the institutionalization of justice. The importance of citizen activism and public vigilance, the need for informed public opinion, the presence of a multiplicity of social associations, a free media, and the indispensability of democratic deliberation cannot be stressed enough. It is only a vibrant civil society that can prevent the political elite from lapsing on its commitments and responsibilities.

Secessionist demands need not always mount a challenge to our fondly held beliefs in the sanctity of territorial borders. They can serve as a wake-up call and compel us to respond in politically innovative ways on how the faults and the flaws of a formally democratic, but an imperfectly just order can be addressed and negotiated. Secessionist demands stimulate existing political imaginations, what we make of our existing problems and the remedies that we suggest. If secession is a response to

certain conditions that prevail in a given state, the challenge is to *neutralise* these conditions. The answer to secession is not to hype up immoderate nationalism or bolster the security state. This is brought out in the conclusion to the work where I suggest that the vital issue is not only the sanctity of territorial borders. The issue is whether these borders contain a political community that is organised on principles of democracy and justice.

The concluding chapter holds that secession has to be taken seriously both by leaders of such movements and its defenders, and justified rigorously. Though in much of the literature acts of secession are likened to divorce; the divorce analogy seems to be a rank misfit. Divorce is painful and scars the consciousness of erstwhile partners. But it still does not involve the same scale of dislocations, violence, and major infringements of human rights as secession does. The right of secession can best be likened to the right of euthanasia.

That is secession can be conceived of as a contingent right in precisely the same way as euthanasia is a qualified right. The right to life is inalienable, and no one has the right to take her own life. Yet when the health of persons is so impaired that they live a life below the threshold of what we consider distinctively human, when their future seems to be ridden with nothing but pain and suffering, some states allow the terminally ill to choose to put an end to their misery. But just because a case can be made out for the right to put an end to one's life, or authorise someone else to do so in very special circumstances, it does not mean that we defend euthanasia *per se*, *except in the very last instance*.

What is required is the investment of more energy into finding a solution to the problem, more funds for medical research, and more energy into preventive medicine. Euthanasia might be a last option when everything fails, but easy resort to premeditated and intentional death is best avoided. Similarly, even

though secession might become a necessary course of action; it is best that the invocation of this right is forestalled through imagination and through breaking of boundaries of what is considered permissible.

Finally, it is nigh impossible to arrive at clear cut conceptualisation of the right of secession. Yet, hesitation and the insertion of numerous ifs and buts into an argument is not necessarily a bad thing. Uncertainty and contradictions marks most discussions on rights and harmful consequences of the assertion of this right, from hate speech to pornography. As W.H Auden philosophised:

*Whether conditioned by God, or their neural structures, still
All men have this common creed, account for it as you will:
The Truth is one and incapable of contradiction;
All knowledge that conflicts with itself is Poetic Fiction.*

Contradictions are not only a feature of poetic fiction; they permeate political practices as well as reflections on how to resolve the problems that follow in the wake of these practices. It is in this spirit of accepting contradictions as integral to an activity we call politics, as well as to political theory that seeks to address knotty political dilemma's that this work has been written.

Indian Council of Social Science Research

If you need to cite this article, please use the following format:

Chandoke, Neera, "A *Précis* to Contested Secessions. Rights, Self-determination, Democracy and Kashmir," *Philosophy and Public Issues (New Series)*, Vol. 4, No. 4 (2014), 1-12, edited by S. Maffettone, G. Pellegrino and M. Bocchiola