

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



THE INTERNATIONAL DIMENSION
OF THE PROBLEM OF
CONTESTED SECESSIONS

BY ALLEN E. BUCHANAN

[THIS PAGE INTENTIONALLY LEFT BLANK]

The International Dimension of the Problem of Contested Secessions

Allen E. Buchanan

Attempts to secede and expressions of desires to secede are at an all-time high. Hence Professor Neera Chandhoke's book is timely. It is also seriously argued, balanced, and informed by history and the relevant facts about a number of current cases, including, preeminently the case of Kashmir.

I

Secession in the Post-Colonial Context

The most important contribution of *Contested Secessions* is to focus attention on the most morally perplexing cases of contested secessions, taking Kashmir as an exemplar of this genre. Here is how Chandhoke herself describes what she takes to be the most distinctively valuable aspect of her work.

The objective of this work is to build into liberal theories of secession the experience of the Post-colonial world so that the 'right' questions can be asked of these cases as well. Therefore, additional factors that mediate the

context and our texts need to be registered, the moral implications of these factors noted, and theories adjusted.¹

But what exactly are the distinctive features of secession in the post-colonial context—that is, cases of secession that occur in states whose peoples were previously subjected to colonial rule? It cannot be that they are contested, because most secessions, wherever they occur are contested. It cannot be that they involve minorities who do not wish to secede, since that is true in almost every case of secession, regardless of whether the context is post-colonial. Instead, Chandhoke apparently thinks that what is distinctive of the post-colonial context of contested secession—and what requires revision of liberal theories of secession—is that one more of these factors is present: (1) The secessionists are using or are prepared to use excessive or premature force, (2) the new state the secessionist strive to create will not be liberal, or (3) the state from which they wish to secede is not fully democratic. But of course these factors are not peculiar to the post-colonial context. All three were present in the case of the secession of the Southern states in America in 1861 and in the case of at least some of the secessions from Yugoslavia and from the Soviet Union in the early Nineteen Nineties. So, Chandhoke has not succeeded in identifying a morally relevant distinctive feature of contested secession in post-colonial contexts.

Has she succeeded, nonetheless, in showing that liberal theories of secession require revision? The answer here is not so clear. The most distinctive feature of her normative account of secession is her insistence that where the state is a “formal” democracy, the right to secede is overridden. Her idea is that in a “formal” democracy, there is the possibility of a peaceful redress of the “institutionalized injustices” which, on her account,

¹ Neera Chandhoke, *Contested Secessions. Rights, Self-determination, Democracy, and Kashmir* (Oxford University Press, 2012), 86.

generate the right to secede. Unfortunately, she does not say enough about what ‘formal democracy’ means; but she apparently means a form of government that has most of the distinctive features of democracy, though they are imperfectly realized. She appears to think that even where a territorially-concentrated group suffers “institutionalized injustices” they have the right to secede only as a last resort and that where there is a “formal democracy” the last resort condition is not satisfied.

It is plausible to hold that, in some sense, unilateral (that is, nonconsensual) secession should be a last resort, given the stakes. But here, as in just war theory, spelling out a plausible ‘last resort’ proviso is notoriously difficult. Be that as it may, relying on the notion of ‘formal democracy’ does not seem to do the job. On any reasonable interpretation of ‘formal democracy’—let us say a characterization that includes majoritarian voting procedures for selecting legislative representatives, separation of powers, entrenched individual civil and political rights, and an independent judiciary—one can imagine circumstances in which the government did not respond adequately to the legitimate grievances of secessionists. One case in which this might occur is where the state has acceded to a group’s demand for some measure of intrastate autonomy (limited self-determination), but then reneged on its promise, as Chandhoke notes has occurred in the case of Kashmir. In such a case, what is relevant is whether the pledge to accord intrastate autonomy has been broken, not whether the state is a formal democracy.

Nonetheless, she has suggested something very important, namely, that democratic states—even imperfectly democratic ones—*in principle* have more resources for addressing the legitimate grievances of secessionists without granting them full independence. This is not a new point in the secession literature, but it is one well-worth emphasizing. One implication of this

point—and this is something that I think Chandhoke would heartily endorse—is that when democratic institutions are present, dissatisfied territorially concentrated groups have a moral obligation to seek redress for their grievances through democratic means before resorting to unilateral secession. The difficult issue, of course, is what is the scope of this obligation? How long must the group keep attempting to achieve redress before they resort to unilateral secession? Chandhoke does not address this question, but, so far as I can determine, no one else has either.

II

The Double Assurance Problem in Contested Secessions

In her nuanced and well-informed analysis of the case of Kashmir, Chandhoke argues that the “institutionalized” injustice that creates a *prima facie* right of secession is India’s defaulting on its promise to accord that region considerable autonomy within the Indian State. As she notes, I have argued previously that the state’s defaulting on an intrastate autonomy agreement can justify unilateral secession.²

She advances this argument in the context of her attempt to show that in general the best solution to legitimate demands for self-determination by territorially-concentrated groups with the state is some form of intrastate autonomy, not full independence. However, in my judgment she overlooks the fact that in many cases, including perhaps that of Kashmir, judgments of fault with respect to the breaching of intrastate autonomy agreements are contested and in some cases difficult to ascertain. She fails to

² Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2003).

consider that in some cases, the state may plausibly claim that the group to which it granted some form of intrastate autonomy has abused its powers of self-government—for example, by discriminating against members of the group that is a majority in the state as a whole but a minority in the autonomous territory. The Serbian government claimed that this was true in the case of Kosovo, for example. More generally, Chandhoke does not consider the fact that in some cases—and again, Kashmir may be one of them—it may be reasonable for the state to refuse to grant intrastate autonomy or to carry through on its grant of it when doing so would contribute to inter-ethnic violence or institutionalized discrimination. Or, the state may simply conclude, not unreasonably, that political fragmentation with a serious potential for violence makes it infeasible—and irresponsible—to turn over important governmental functions to the local level.

There is a deeper, much more important point here. When one advocates intrastate autonomy as the preferred alternative to secession, as both Chandhoke and I do, one must acknowledge that there is a *double assurance problem*. The dissatisfied minority needs assurance that if it forswears the attempt to achieve full independence, the state will carry through on its promise of intrastate autonomy; and the state needs assurance that if it grants intrastate autonomy to the group, this will not lead to secession, to discrimination against some group within the new self-governing unit, to unacceptable levels of violence, or to an egregious failure to provide the basic goods and services for which government is instituted. Because she does not address the double assurance problem, Chandhoke's enthusiastic recommendation of intrastate autonomy as superior alternative to secession will strike both representatives of the state and members of groups seeking self-determination as somewhat facile.

III

Internationalizing Contested Secessions

The lack of attention to the double assurance problem implicates a more basic shortcoming of Chandhoke's approach: She largely regards the problem of contested secessions as a two-party problem—a problem for the state and for the secessionists. She does not consider the possibility that solving the double assurance problem may require third party action. In particular, she does not consider whether it might prove valuable for an international organization to broker and monitor compliance with intrastate autonomy agreements. Without such action, one or both of the assurance problems will not be solved. The state may not be willing to confer intrastate autonomy out of fear that it will lead to secession, and it may not be willing to stick to an agreement if it believes the other party is abusing it. On the other side, third-party involvement could provide the autonomists with assurance that if they act in good faith, the state will not renege on the agreement and that if the state attempts to justify renegeing by falsely claiming that the group has abused the agreement, this ploy will be exposed.

More generally, I think it is fair to say that Chandhoke does not sufficiently emphasize the international dimension of the problem of contested secessions. She endorses the analogy of divorce favored by theorists who are much more permissive about secession than she, such as Harry Barran, Andrew Altman, and Christopher Wellman. The divorce analogy is misleading, however, so far as it overlooks the effects that secession can have on third parties. For example, consider the case of irredentist secession. If a group wants to secede in order to accede to a state

on the borders of the state from which it is seceding, this may greatly alter the balance of power between the two states and create an intolerable security risk. The divorce analogy obscures this fact. Because secession can have serious effects on other states and whole regions, there is all the more reason to take seriously the idea that regional or international organizations could play a constructive role in mediating secessionist conflicts.

Consider another type of case. Suppose that the territorially concentrated group that seeks independent statehood occupies the only part of the state that contains valuable resources and that without access to those resources the “remainder state” will very likely fail and descend into violent chaos. In these circumstances, regional and/or international organizations would have a legitimate interest in pressuring—if not forcing—the state and the secessionists to agree to third party brokering and monitoring of an intrastate autonomy agreement. Because she focuses only on the institutional resources of the state—and in particular whether it is at least a ‘formal’ democracy—Chandhoke overlooks the possibility of enlisting regional or international institutional resources to help achieve morally defensible resolutions of contested secessions.

IV

Sauve Qui Peut Secession

There is at least one case where unilateral secession could be morally justifiable that is not covered by Chandhoke’s list of justifying conditions: What I have referred to elsewhere as *sauve qui peut* secession. Consider the case of the Democratic Republic of the Congo or some other instance that fits one’s definition of a

failed state. Suppose that central authority has completely broken down and that the general condition is Hobbesian: if not a war of all against all, at least a grim arena of multiparty conflict in which physical security and the conditions for a decent life have disappeared. Suppose that no external parties shoulder the task of mediating peace agreements and helping rebuild the country. If a territorially-concentrated group reasonably concludes that its only hope for physical security is to create a new state in their portion of the failed state and if they provide credible pledges that they will not discriminate against minorities within their territory, then they would have a strong case for unilateral secession. This scenario is most likely perhaps in countries like the Democratic Republic of Congo that were previously subject to colonial rule. But in spite of the fact that she says she will direct attention to the post-colonial context of contested secession, Chandhoke does not consider this sort of situation. Of course, she might reply that if it is really a failed state, then this is not secession—that it is the creation of a new state amidst the ruins of a state, not the breaking away of a part of a state. The problem is that there may be no clear boundary to be drawn between secession from a very poorly functioning state and creating a new state in a condition of anarchy. Moreover, from the standpoint of international law, what we call a failed state is still a state and one important task for a moral theory of secession is to determine the conditions under which international law should recognize a right of secession. The more important point, however, is that this scenario is not a fanciful one in the post-colonial context upon which Chandhoke urges us to focus our attention.

In this essay, I have raised several criticisms of Chandhoke's view—and, following the usual practice of critics I have not noted all the points on which I think her analysis is on target. I would like to conclude by emphasizing, however, that she has done the literature on secession two important services: first, she

has provided perhaps the best analysis of the moral issues involved in the secessionist movement in Kashmir; and second, she has urged those who think systematically about secession to focus on the most morally difficult cases of secession, and in particular, those in which neither sides has clean hands.

Duke University

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

Buchanan, Allen E., "The International Dimension of the Problem of Contested Secessions,"
Philosophy and Public Issues (New Series), Vol. 4, No. 1 (2014), 13-21, edited by S. Maffettone, G.
Pellegrino and M. Bocchiola