

**Secession as a Human Right**  
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## **I. Introduction**

Human rights are advanced as way of promoting the claims that persons can make against the power of governments. The broadest claim that persons might make against the power of a government is that the government has no legitimate power over them, because they have a right to secede and wish to exercise that right. If a right to secede is recognized, then the harm that governments can cause to persons is limited to the costs of severing the ties of common citizenship between those persons and the rest of the society represented by that government. While these costs can be considerable, they are often far less than the costs that abusive governments impose on their citizens. This paper explores the logic of the argument that people have a right to secede.

My argument for a right to secede is based on two premises:

1. Every person has a right to himself or herself;
2. All persons have equal rights to natural opportunities.

These are the premises of a philosophical tradition that has acquired the name "left-libertarianism." Vallentyne and Steiner trace the roots of left-libertarianism to Grotius and Pufendorf in the 17th century. Thomas Paine's *Agrarian Justice* and Henry George's *Progress and Poverty* contributed strongly to the left-libertarian tradition. A number of modern writers work in a left-libertarian framework, but they differ widely among themselves as to how the basic premises of the framework are to be understood. Therefore, while recognizing my debt to the left-libertarian tradition, I ask that my argument be evaluated on its own terms.

My argument for secession, in brief, is as follows. A right to oneself includes the right to do a variety of things that others might disapprove of. The rights of the majority to themselves include the right to form nations that prohibit actions to which individuals have rights, by virtue of their rights to themselves. The conflict between the rights of individuals to themselves and the rights of majorities to impose standards of conduct can be resolved if and only if those who wish to reject standards that majorities wish to impose have rights to form their own sovereign nations.

## **II. The Right to Oneself**

At the level of logical argument, the right to oneself is an axiom, not susceptible to examination. Yet there is evidence that can be adduced to support the idea that

a "right to oneself" is an important foundation of our shared ideas of personhood. There are the words of the Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.

That is one version of a right to oneself.

During the cold war, one of the characteristics of Russia that made it clearest that that nation did not accord its citizens the rights they ought to have was its refusal to allow all who wished to emigrate to do so. The same characteristic colors our views of Cuba and North Korea today. Whatever else it may be, a right to oneself is a right to cease associating with fellow citizens who insist on a form of society that one rejects, particularly when there is some other nation that will permit the objectors to join them.

Our record in this regard is not perfect. During the Viet Nam war, there was a half-hearted effort to prevent draft-age American men from moving to Canada. But the tension between this action and our basic beliefs was strong enough that we could not bring ourselves to worry much about preventing men from sneaking out.

A military draft itself is a denial of a person's right to himself. The greatly diminished role that the draft plays in American life today is to some extent a consequence of the conflict between a draft and the American understanding of a person's right to himself.

One view of a right to oneself can be constructed from the various rights enumerated in the Bill of Rights in the U.S. Constitution and similar documents: freedom of association, freedom of speech, freedom of religion, freedom of the press, and so on. But this is more like a list of places where tensions have arisen in the past and been resolved in favor of freedom. The most fundamental aspect of a right to oneself is the right to decide, moment by moment, what we will do with our lives.

### **III. The Limit on the Right to Oneself**

There is a standard limit on the right to oneself. We are not allowed to interfere with one another. My right to extent my hand is limited by the proximity of your face. While this may seem obvious, the generalization is not always clear. If I regard the sound of a power lawnmower as an assault on my eardrums, can I prevent my neighbor from ever using one? The impossibility of a world in which no one has any effect on anyone else makes it necessary to establish conventions regarding the effects on one another that will and will not count as assaults. And because most of the effects that people have on one another are attenuated by

distance, most such conventions need not be global. If local conventions suffice, then they can vary from place to place. There can be places where the sound of a lawnmower on a Sunday morning is an assault on one's neighbors, and other places where it is not; places where nudity is expected in public, places where it is tolerated, and places where it is prohibited. Each person's right to him or herself is limited by the established conventions, applying to all persons, that protect the rights of others to themselves.

#### **IV. What Beings have Rights to Themselves?**

The range of beings with rights to themselves, that I am concerned with in this paper, is competent human adults. Children, often enough, are inclined to make choices that, they later realize, have consequences that are adverse to their true interests. This suggests that it is reasonable to restrict to some extent the exercise of what would otherwise be their rights to themselves. The extent of appropriate restrictions on children is a complex question that is outside the scope of this paper. The paper also does not address the issue of mentally incompetent adults.

One might ask whether non-human sentient beings have rights to themselves. My answer is that they may well have rights, but it will not work to treat them as having the same kinds of rights that humans have, because we cannot talk with them. We cannot explain to them what is expected to protect the rights that others have to themselves. If humans ever establish a level of communication with one or more non-human species that permits confirmation that other species accept the rights of others and seek equal rights for themselves, and if such species give no evidence of making choices that are adverse to their true interests, then I know of no basis on which they might be denied equal rights. The issue of what rights should be accorded to species with whom we cannot converse will be addressed briefly later.

#### **V. Equal Rights to Natural Opportunities**

Most claims of exclusive access to land or other natural opportunities originate in conquest of peoples who previously conquered other peoples. To regard such actions as generating respectable claims is to condemn ourselves to a world of continual war, as people seek to become the latest conquerors. Sometimes the claim is "we were here first." This too is an adequate justification for excluding others. Apart from the fact that virtually no one anywhere in the world can demonstrate that there were no violently dispossessed prior claimants to "their" territory, there is no writ from heaven establishing that those who come first have rights to whatever they can grab.

The proper form of a nation's claim to territory is, "We need to live somewhere, we have been living here lately, and what we claim is no more than our share." If a nation does claim more than its share, then it owes compensation to those who thereby have less than their shares.

When territorial claims are made in this way, those who wish to secede can properly say, "The claim that justifies excluding others from the territory that we jointly occupy is the combination of your claim and ours. Some of us, being dissatisfied with the prospect of a future as your fellow citizens, desire to separate our claim to territory from yours. Give us exclusive control over our share of what has been jointly yours and ours."

## **VI. The Argument for a Right to Secession**

The fundamental argument for permitting secession is that individuals may find it impossible to agree on standards of conduct for being citizens of the same nation, and there is no basis for identifying who is right in such disagreements.

We have often succeeded in resolving disagreements that might have led to secession. We have agreed not to object to one another's religions. We have agreed not to object to what one another say and print, subject to some possible reservations about pornography. We have agreed to confine nudity to specified places. All of this agreement is wonderful. We have a better world when people can find a basis for getting along and tolerating the differences that they have with one another.

Nevertheless, a right to oneself entails both a right to extreme liberty and a right to intolerance of that liberty in one's fellow citizens. There is no magic formula for determining what must be tolerated and what may be prohibited.

Consider some examples. We have laws against polygamy. I can understand how people might want to have polygamous relationships as an expression of their rights to themselves. I can understand how people might want to live in nations that outlawed polygamy. The argument for a right to secession is that those who wish to live in polygamous relationships do not have a right to insist that their fellow citizens tolerate such behavior. Nor do those who wish to prohibit polygamy have a right to prohibit it throughout the world. Those who wish to prohibit polygamy do have a right, when they are politically dominant, to say, "Not in our nation. If you want to do such a thing, form your own nation." But they must then permit the polygamists to actually form their own nation.

We have laws against consuming marijuana. I can understand how people might want to consume marijuana as an expression of their rights to themselves. I can understand how people might want to live in nations that outlawed consuming marijuana. If the two groups cannot reach an accommodation, then those who do and do not wish to live in a nation where marijuana is consumed should have the opportunity to satisfy their wishes.

We have laws against driving while drunk. I can understand how people might want to drive while drunk as an expression of their rights to themselves. I can understand how people might want to outlaw drunk driving by their fellow

citizens. If you think it is obvious that drunk driving can justifiably be prohibited, how would you answer the drunk who says, "Everyone takes some risk of harming his fellow citizens when he drives. I only want to drive a mile home drunk from the bar at two a.m. However more likely it is per mile that I will harm someone, I will compensate by driving fewer total miles, so that I am less likely than the average driver to harm others." If we had an obligation to do everything we could to reduce accidents, we would need to reduce the speed of cars to 15 miles an hour, at most.

We have laws against dueling. I can understand how people might want to engage in duels as expression of their rights to themselves. I can understand how people might want to outlaw dueling among their fellow citizens.

The next example is for those readers who had no difficulty justifying liberty in all of the previous examples. Suppose that someone wants to raise money for his family by charging admission to watch him commit suicide. Could you understand how, if there were such a person, he might claim to only be seeing to exercise his right to himself, while his fellow citizens might insist that they wanted a nation that did not permit such a thing? Even San Francisco prohibited unsafe sex in commercial bathhouses, over the objections of some who said that such a prohibition was an unjustifiable infringement on individual liberty.

I find it understandable that people would want to raise armies with which to defend their nations; I also find it understandable that people might believe that a good nation is one that eschews an army.

The argument for a right to secession is that there is no recipe for determining what behavior is properly prohibited and what must be tolerated. A right to oneself includes both the right to individual liberty and the right not to be "assaulted" by the liberty of one's fellow citizens. It is to be hoped that people can work through their differences and find accommodations that all can accept. But when irreconcilable differences arise, protection of the rights of all requires the possibility of secession. To avoid this claim, one would need to assert that for every conflict about rules that might arise, there is a group that is wrong, and it is possible to know which group it is. There is no basis for such an assertion.

## **VII. Why Democratic Process is Not an Answer**

We usually resolve disagreements about rules through democratic process. Through democratic process we determine what we will permit. But democratic process cannot establish what we should permit. The fact that a majority wants a particular outcome does not make that outcome right. If this proposition is not self-evident, then the possibility of majority-rule voting cycles should clarify it. When there are three options among which a choice must be made democratically, A, B, and C, it is possible that those who must make the choice will find that a majority favor A over B, another majority favors B over C, and a third majority

favors C over A. This happens, for example, when there are three voters whose preference rankings are ABC, BCA, and CAB respectively. This possible intransitivity of majority rule establishes that "a majority prefers X to Y" cannot imply that "X is better than Y," since the latter relationship must be transitive. "X is better than Y," and "Y is better than Z," implies that "X is better than Z," but "a majority prefers X to Y" and "a majority prefers Y to Z" can be consistent with the falseness of "a majority prefers X to Z."

Democratic process is a wonderful device for making group decisions. Although we are often able to use this device with great success, it does not establish what is infallibly best. As a matter of logic, one cannot claim, "Because we have decided democratically, we now know the right way to resolve this disagreement. Those of you who lost must accept that course you favored is wrong." We need to say to the losers, "We have heard your arguments, and we have not been convinced. We have decided to do things our way. If you want to do things differently, get your own nation." And then we need to ensure that it is possible for them to do that.

### **VIII. Why Local Option is Not Sufficient**

It might seem that secession is overkill. Why isn't local option enough? Some U.S. states have at times permitted their counties 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.

### **IX. 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 the 1950s, Americans would 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.

## **X. Some Mechanics of Secession**

A minority who wish to secede have a right to a share of territorial resources with a value that is proportionate to their number. They do not have a right to fragment their nation in whatever way they choose. The majority has an obligation to provide the minority who wish to secede with territory of appropriate value. They satisfy this obligation when they provide territory with value proportionate to the number of persons who wish to secede, in whatever place is convenient for the majority.

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. One would hope that such an action would not be taken lightly, but it might be appropriate in cases such as those of habitual child molesters who cannot be trusted not to reoffend.

## **XI. Bargaining Consequent 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.

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.

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.

## **XII. 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 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 Alaska 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.

### **XIII. 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.