

**SECESSION  
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**NOTES FOR PHILOSOPHY 13**

In our time, secessionist aspirations and movements abound. How should we respond? Most Kurds today living in Turkey, Iraq, and Iran want to secede and form an independent sovereign Turkish state. Is this a just demand? Is there a fundamental moral right to secede, and if so who has such a right, and under what conditions?

In today's course readings, Allen Buchanan and Christopher Wellman offer opposed views on these questions. Below, I summarize their positions. My own critical comments are enclosed in square brackets, like this—[Buchanan and Wellman are full of beans.]

A secession struggle is the attempt by a group of people, living under a government, to sever their connection to that government and form a separate independent state, taking a portion of the territory of the initial state.

**ALLEN BUCHANAN'S VIEWS**

Allen Buchanan distinguishes two questions we could be addressing: (1) is there a basic moral right to secede (setting aside issues of institutional implementation), and (2) is there a moral right to secede that should be recognized "as a matter of international institutional morality, including a morally defensible system of international law." He focuses on the latter question, which he takes to be more significant.

**[Comment.]** There is a gap between holding there is a right to X and holding that we should implement this right in law and social practices in a given setting at a given time. For example, one might consistently hold that there is a moral right to voluntary physician-assisted suicide (PAS), but that there should not be a legal right to PAS in the U.S. today, because enacting PAS in law would give rise to misconduct on the part of some physicians and relatives of very ill persons leading to wrongful killings of these ill persons. But the gap is not so great. If we think there is a moral right to PAS, we should strive swiftly to bring about conditions in which it can be implemented without undue cost to other moral values. A serious moral right is hardly ever an idle wheel. Moreover, if there is a serious moral right to something, that right weighs heavily in the scales and counts for a lot when there is practical conflict with other values. If we think there is a serious right to free speech, we won't favor banning political demonstrations on the ground that they cause extra litter. So noting as Buchanan does that there is a gap between asserting a right and asserting it should be implemented in some particular way does not deny the importance for practical choice of policy of deciding what people's moral rights are.]

**[Comment.]** Anyway, given there is a gap between a right and the best means of implementing it, why suppose the key or sole issue is how the right would or not fit within currently recognized international morality and international law? One might think current international morality is in a pretty crude and undeveloped state and current international law is little more than agreed rhetoric and deal-making among the world's big powers.]

Buchanan notes that a special right to secede might arise from contract, promise, or special relationship. We are interested in the shape of a general right to secede, one a group would have independently of contract, promise, or special relationship.

Buchanan divides theories asserting a general right of secession into categories, *Primary Right Theories* and *Remedial Right Only Theories*. The difference is that the latter hold that a group has a right to secede only if it suffers violations of its rights other than the alleged right of secession itself. The right to secede on this approach always rides piggy-back on other rights violations. In contrast, according to Primary Right Theories, under appropriate circumstances a group can have the right to secede from a nation even if the group is suffering no violations of its rights other than the right to secede itself. Buchanan distinguishes two varieties of Primary Right Theories, Ascriptive and Associative. According to the former, a group must have some specified special characteristics in order to acquire a primary right to secede. For example, one might hold that nations and only nations have a right of self-determination that includes a right to secede, and stipulate that a nation is a group of people united by common language, shared history and culture, and perhaps more. According to Associative Primary Right Theories, there is no requirement that a group, to have the right to secede, must have any special characteristics. Any collection of people could form a group that has the right to secede. What confers a right to secede on a group is rather the voluntary choice of its members or sufficiently many of its members to secede and form a separate and independent nation. Perhaps other conditions must be met as well, but these further conditions do not involve the characteristics of the group. As Buchanan puts it, "Any group, however heterogeneous, can qualify for the right to secede." The extra conditions rather involve questions such as whether the group whose members voluntarily choose to secede is capable of forming an independent state and whether it would form a state that enforces the basic rights of its members and whether its departure leaves the members of the rump left behind in an unfairly precarious position. (The Remedial Right Only (RRA) Theory can add similar extra conditions; the key difference is that for the RRA theorist, a just claim to secession by a group must appeal to violations of the group's rights other than the alleged right of secession itself.)

Buchanan proposes four criteria for evaluating proposals for an international legal right to secede: 1. *Minimal realism*. A proposal must be morally progressive (would improve overall rights fulfillment if implemented) but also be minimally realistic, meaning the proposal must have "a significant prospect of actually being adopted in the foreseeable future, through the processes by which international law is actually made" (p. 42). 2. *Consistency with well-entrenched, morally progressive features of current international law*. 3. *Absence of perverse incentives*. A proposal, if implemented under reasonably favorable incentives, should not encourage bad behavior, behavior that leads to bad consequences, especially lesser overall fulfillment of people's important basic moral rights. 4. *Moral accessibility*. "A proposal for reforming international law should be morally accessible to a broad international audience. It should not require acceptance of a particular religious ethic or of ethical principles that are not shared by a wide range of secular and religious viewpoints" (p. 44). Buchanan proceeds to argue that the Remedial right Only Theories he favors score better on these four criteria than the Primary Right Theories of the right of secession.

**[Comment.** As noted already, we have to decide what we *should be for* before we can sensibly address the question, how best to implement what we *should be for*. Buchanan mixes up these discussions in an odd way. We need to decide whether there is a right to secede and if so, of what strength, before we can decide whether trying to establish such a right in international law is a good idea. Also, implementing might take a form other than implementation-by-incorporation-in-international-law. Compare: There surely was a time in world history when trying to get a right against enslavement enacted in (what passed

for) international law would have been a waste of time or counterproductive. From this it does not follow that there is not a right against enslavement or that the right does not have strong weight in determining what we should do even in circumstances when trying to get such a right enacted in international law would be a bad idea. Leaving this point aside, one might argue that Buchanan exaggerates the practical difficulties in building a right to secession into international law in the foreseeable future. We could do this; the real question is, should we do so—is there such a moral right in the first place?]

### **CHRISTOPHER WELLMAN'S VIEWS**

In “A Defense of Secession and Political Self-Determination” Christopher Wellman points out that a secession struggle involves a claim to jurisdiction over territory as well as over people. A secession struggle involves an attempt to redraw the boundaries of an existing state. The secession movement aims to withdraw people and territory from the jurisdiction of the current state. (Note—to claim jurisdiction over territory is to claim that one legitimately makes and enforces law on the territory one claims. This need not be a claim involving ownership of the land.) So we need to understand when an existing state has a legitimate right to jurisdiction over the territory it rules and when a secession movement has the right to sever an existing state, taking jurisdiction over some of the territory the existing state rules. Wellman contrasts two traditional accounts of state legitimacy, which he calls the “consent” account and the “teleological” or functional account. These two accounts are perhaps mixed together in Locke’s discussion. Wellman rejects both accounts and proposes a hybrid account.

The consent account holds that a state rules territory legitimately only to the extent that the individuals residing on the territory voluntarily consent to its rule. Wellman holds that if this account were taken seriously, we would have to accept the implication that existing states have not gained such consent and are not legitimate. Also, if individuals were not actually to consent in future, the state would not rule those individuals legitimately. These implications are hard to swallow. Worse, the consent account implies that a single individual has a right to secede and set up a tiny one-person state or a state with just a few members. This is hard to accept. Third, Wellman notes that most consent accounts if examined closely really turn out to retreat to a different type of account—hypothetical not actual consent. But if the state legitimately rules over people if it would be rational for them to consent (whether or not they actually do), we are really moving to a teleological position. The reasons it would be rational to consent, specifically, the degree to which the state protects basic rights, are what confer legitimacy on the hypothetical consent account. Finally, Wellman asks, if you suddenly had state power, would you believe it would be wrong for you to rule unless and until you secured the voluntary consent of all those you rule? He thinks we should answer NO, which involves rejecting the consent account.

The teleological or functional account holds that the state legitimately rules the territory it claims just in case the state efficiently carries out appropriate state functions, namely, the protection of people’s basic moral rights. This account implies that a secession movement is legitimate if and only if its success results in more efficient fulfillment of appropriate state functions. However, the account turns out to be too permissive, in Wellman’s view. The teleological account implies that if Canada attempts to annex Mexico, this attempt is morally legitimate if the legitimate state function of protecting people’s rights would be better fulfilled if Mexico came under the control of the Canadian state. Wellman thinks we should accept that in this scenario the Mexicans have a right to political self-determination, which rules out justified Canadian annexation.

Objection: The teleological account can say that if an existing state fulfills legitimate state functions of protecting rights to an adequate extent, it has the right to exist, and not be swallowed up by annexation. Wellman: This restriction would be arbitrary. The teleological account is inherently a maximizing account: whatever works out to fulfill best the legitimate state functions is morally legitimate.

Wellman thinks we can pick out what is most attractive in the consent and teleological accounts and affirm the resulting hybrid position. The basic idea of the hybrid model is to limit the consent account by a teleological/functional condition. According to Wellman, individuals have a right to autonomy or individual self-determination, but no right to political self-determination, because an individual alone cannot form a well functioning state. But individuals banded together in a like-minded group do have a right to political self-determination including a right to secede, withdrawing themselves and territory (their per capita share?) from the jurisdiction of the existing state that rules them, provided two conditions are met. The conditions are that both the seceding group and the remainder group must be able to form a state that “performs its political function of protecting rights” (p. 161).

Wellman applies his proposed hybrid account of state legitimacy and justifiable secession to four historical examples: The American revolution of 1776, the American Civil War of 1860-65; the secession of Lithuania from the former Soviet Union, and the movement of Quebecois to secede from Canada.

#### **COMMENTS ON WELLMAN.]**

[1. As stated, Wellman’s account is unclear in its application to cases in which there is disagreement among the people inhabiting a region of an existing state as to whether they will to secede. Buchanan interprets Wellman as adhering to a plebiscitary view of the right to secede: If a majority of people on a territory favor secession and both the state that secession would form and the rump state left behind will be able to carry out effectively what was referred to earlier as the legitimating functions of a state (preeminently the provision of justice and security),” those who seek to secede have a moral right to do so. So consider Wellman so construed.]

[A right of an individual to self-determination is unlike a right of a group to self-determination in that the exercise of the latter right may leave some individuals living in a way they oppose. Suppose 51 per cent of the people on a territory favor secession and 49 per cent of the inhabitants vehemently oppose it. Perhaps the minority will lose more if secession occurs than the majority loses if secession does not occur. A group right to secede in these circumstances is a right of the majority to determine to some degree the life of the minority]

[2. I am not quite sure how the majority rule principle regulating the right to secede is to be applied. Suppose the nation is divided from North to South and a majority in the North votes to secede, then the same nation is split from East to West and a majority in the East votes to secede. What happens to those in the northwest and southeast? Do we keep holding plebiscites in these territories until no one calls for a further vote? But suppose after voting this way, a group proposes voting on a different basis—a snakelike cut is made throughout North, East, West, and South of the nation and a majority of the snake votes for secession. There are regions that end up in the secession zone under the first procedure and not in the second. Then someone else proposes a different division of the nation, cutting it like a doughnut, and the inside of the doughnut

votes for secession. The three divisions between seceding state and rump state, arrived at by the different voting cuts, differ. What should be done? Perhaps Wellman holds that whoever proposes the first voting procedure gets to determine the subsequent sequence of votes. Voting proceeds until no further division and revote of a subdivision will yield a different division of territory and all who do not get their way in the vote are permitted to emigrate to the other side of the line of secession if they wish to do so.]

[3. Suppose that a group in an existing nation claims the right to secede and both it and the rump state left behind will be able to establish and sustain functioning states. This seems to leave it open that people's rights (other than the disputed right to secede) would be better protected under the status quo. There is still a right to secede in these circumstances, according to Wellman. In effect, the teleological or functional condition on justified secession as he construes it is a threshold condition: rights in both seceding and rump states must be secure at least at a good enough threshold level. This allows that some people's rights, perhaps very important rights, would be better secured if the secession does not occur. One might dispute this aspect of Wellman's view.]

[4. On the other hand, one might hold that for the group of would-be seceders, Wellman's teleological condition is too strong and wrongfully takes priority over the right of self-determination. Suppose (before the formation of the present Norway) Norwegians unanimously want to live in a sovereign state whose boundaries are those of present-day Norway, separate and independent of Sweden. Let's stipulate that basic rights other than the right of secession itself would be better secured for Norwegians if they remain part of Sweden. In fact, seceding Norway would be very likely to fall into anarchy or some other scenario that lacks a well-functioning state. But the Norwegians unanimously are willing to bear this risk; they still want independence. If Wellman affirms a strong individual right of self-determination and rejects paternalism, it seems he should accept the right of the Norwegians in this imaginary example to secede and risk anarchy. Another case to consider: The Norwegians want to secede from greater Sweden, and the rump group of Swedes could form a viable state but predictably will not do so. They could but they won't. The Norwegians might say: We still have the right to secede. We aren't depriving you of your right to maintain a viable state. But one might say one has duties to the people in rump Sweden who through no fault or choice of their own would suffer severe rights violations if Norway seceded and Sweden's political stability degenerates.

Implicit in Wellman's account is the idea that one's obligation to support a state and cooperate to see that those affected by one's choices are not deprived of state protections is a Good Samaritan obligation: an obligation to do one's part to see to it that others do not suffer significant violations of their rights. But then it seems Wellman ought to hold people have a right to secede and forego the protections of the state if they voluntarily choose to do so (perhaps steps must be taken to assure no harm to nonconsenting third parties like children). If we deny an individual has such a strong right to individual self-determination as Wellman supposes, the basis for the Wellman version of the right of groups to self-determination is weakened.]

[5. One might hold that there is a right to do whatever one wants so long as one does not thereby wrongfully harm others. This would include a right to engage in trivial actions one does not much care about. Such a right could then be easily overridden. Is the right to secession stronger than this? Wellman clearly wants to defend a right to secession stronger than this, a right with teeth, a serious moral right. On what grounds?]

