Book Review. Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec by Allen Buchanan

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banking and nonbanking activities abroad and also relax the requirements that foreign banks must satisfy in order to engage in banking activities in the United States. Fortunately, there are very few differences between the proposed Regulation K and the regulation finally adopted. Nevertheless, prudence dictates that the final regulation be checked after referencing the relevant sections of the book.

Finally, the surprisingly detailed descriptions of banking regulations in France, Germany, the United Kingdom, Canada, and Japan are very useful.

In sum, this book is one of the best reference tools in this area currently available in the market. As such, it is a necessary addition for the libraries of attorneys advising foreign banks on their U.S. activities. Of course, given the rapidly changing nature of the subject matter, any conclusions of law drawn from the book should be checked to ensure that they are current prior to implementing any proposal based thereon.

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Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec


The Bosnians are currently fighting to secede from Yugoslavia. In doing so, they join a long list of groups that have sought to secede in the last two years. Professor Buchanan’s book could not, therefore, be more timely. In it he argues that groups have a limited, moral right to secede as a basic tenet of the political philosophy of liberalism. The book adds to the evidence provided by recent world events that we should rethink the international law governing secession, which until now has not encompassed a right of secession outside the colonial context.

This book is not, however, directly concerned with international law. Rather, it is part of the new debate between liberals and communitarians over the type of rights domestic societies should embrace. Buchanan is a liberal who believes that group rights, such as the right of secession, can be encompassed within liberalism, despite liberalism’s traditional focus on individualism. Buchanan aims to show that communitarianism is not the only philosophy of group rights: “More specifically, the views on secession advanced in this book will both illuminate the
foundations of liberalism in surprising ways and provide a strong case for revising liberal doctrine's apparent refusal to recognize group rights as fundamental moral or constitutional rights." (p. 7)

Buchanan's argument may be important for contemporary political philosophy and may be a useful contribution to the liberal/communitarian debate. The book is less likely to be important for international lawyers, but could provide some direction to writers who will, no doubt, begin to reconsider the right of secession in light of recent events.¹

These events, which have occurred and are occurring in the Soviet Union, Ethiopia, Iraq, Yugoslavia, Somalia, and elsewhere, have moved the subject of secession to center stage for international law. Governments appear to be changing their approach to secession from just a few years ago.² The law may therefore be in flux, and policymakers and international lawyers could use a thoughtful treatment of the moral issues of secession to guide them in rethinking the law. Buchanan's book is a beginning in this regard, but has limitations for international lawyers. Buchanan does not show that his moral theory is suited to international law and the international community, or that it takes into account the real complexity of secession. He barely considers the most important moral question for international law in this area—when is it moral to use force during secession?³

The book is probably more concerned with liberalism than secession. The preface and parts of chapters 1 and 2 criticize the failure of liberalism to take group rights, like the right of secession, into account, arguing that liberalism should encompass such rights. Buchanan acknowledges that liberalism is usually concerned with the individual's relationship to government, and that liberalism holds that individuals have rights protecting them from the power of government. But he argues that groups have rights protecting them from government, too, and these can equally be considered liberal rights (pp. 74–81). Groups have, in his view, the right to secede when governments go too far in actions against the group, and, therefore, such a right protects people from government just as do the rights of free speech, religious freedom, free assembly, and other protective liberal rights.

1. Buchanan himself does not claim to be doing any more with the book than starting debate: "I console myself with the hope that this volume will be classified—and judged—as an early work on the moral theory of secession" (p. ix).

2. Until recently governments generally did not recognize break-away groups until they had achieved de facto independence. The German Government recently recognized, and convinced EC members to recognize, Croatia before Croatia had established de facto independence. The United States resisted recognizing Croatia for some time after EC recognition, but in the end probably recognized Croatia earlier than has been typical in recent years.

3. International law has an extensive literature on secession and related topics such as self-determination and civil war. See, e.g., LEE BUCHHEIT, SECESSION, THE LEGITIMACY OF SELF-DETERMINATION (1978); HURST HANNUM, AUTONOMY, SOVEREIGNTY AND SELF-DETERMINATION: THE ACCOMMODATION OF CONFLICTING RIGHTS (1990).

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Buchanan believes groups have a moral right to secede in the following circumstances:

Among the strongest arguments and most widely applicable arguments for a right to secede are the argument from rectificatory justice and the argument from discriminatory redistribution. Under extreme conditions, secession may also be justified on grounds of self-defense and, perhaps more controversially, in some cases where it is necessary for the preservation of a culture. (p. 74)

By rectificatory justice, Buchanan is referring to such cases as the Baltics, where groups were forcibly annexed (p. 67). Discriminatory redistribution can refer to a variety of economic measures, including, he believes, unfair tax policies (p. 40). Self-defense refers to defense against genocide and other human rights abuse (p. 66). From an international lawyer's perspective, it is very hard to understand how unfair taxes could lead to a stronger moral right to secede than abuse of human rights. Indeed, the book's consistent emphasis and concern with personal property rights moves it away from the central concerns of international law.

Rather, international lawyers will be most sympathetic to the arguments that people who are suffering human rights abuse or who have been forcibly annexed should have the right to secede. International law is arguably based not on liberalism, but on the legal/political philosophy of positivism with an overlay of moral norms probably adopted from the most commonly held norms of the members of the international community. Buchanan does not relate liberalism and its moral hierarchy to international law's normative hierarchy, nor does he help resolve the difficult question confronting international law today: When should the norm of peace in international law be preserved at the expense of international law's human rights norms?4

This is very much the central normative issue in the secession context. Should groups have the right to take up arms to achieve secession? Should outside parties have the right to forcibly intervene to help them secede? International lawyers are interested in these questions. Whether people have the moral right to peaceably agitate to secede because they are being taxed unfairly is far from our current concerns.

In the remainder of chapter 1, Buchanan seeks to clarify what secession is. He does so by listing abstract categories of secession, rather than describing actual secessions. This approach diverts the author from some of the most serious issues of secession for international law. For example, the book contains a section entitled "Group Versus Individual Secession" (p. 13). This is not a topic of interest to international lawyers since there has probably never been a seriously regarded attempt at individual secession (p. 13). The author also includes a

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4. Ironically, Buchanan mentions that international lawyers working on the law of secession have failed to knit together moral arguments with legal analysis (p. xi). Buchanan does not do this either.
section titled "Secession by the Better Off Versus Secession by the Worse Off" (p. 16). This section includes, as examples of "better offs" seeking secession, the Katangese, Biafrans, and Basques. None of these people, however, sought secession simply because they were better off. Far more importantly, they have a different sense of identity from the larger state. Their different sense of identity may coincide with concerns over how they and their resources are treated by the larger state. However, mere enhanced wealth in an otherwise homogenous state has probably never led to a secessionist movement. Indeed, one of Buchanan's odder examples involves an argument that the Home Counties of England might secede from the rest of the United Kingdom because they are better off (p. 20). He argues that better offs may in some cases have the moral right to secede. But this abstract possibility is not one international lawyers are ever likely to encounter.

In chapters 2 and 3, Buchanan reviews the arguments for and against a right of secession. As with the typology of secession, these chapters tend to focus on abstract rather than real reasons groups offer for attempting secession or opposing it. Buchanan includes such arguments as "furthering diversity" and "preserving liberal purity" as possibly establishing moral justifications to secede. He gives no actual examples of these two arguments in particular and surely they have never been made.

Buchanan does include a brief discussion of the argument international lawyers give for the right of secession: to fulfill the right of self-determination. Buchanan says that international law has arbitrarily limited self-determination to the colonial context (p. 20). Yet governments have actually struggled with the concept of self-determination and the need both to support that right and to limit secession. As Doswald-Beck argues, at least until recently, governments have concluded that the right of self-determination in most cases means groups should have the right to have a voice in the government that rules them, not that groups are free to secede. Nevertheless, international law also holds that when secession succeeds, third states are free to recognize the newly independent state. In a sense, therefore, international law has had an inchoate right of secession that becomes an actual right upon success.

Now, however, with the breakup of the Soviet Union, the community of states seems willing to recognize secessionist groups even before de facto independence, as long as the new government is democratic and promises to protect human rights. These developments may result in a new legal right of secession. The content of the right, however, will need refinement in light of various practical and moral considerations. For example, the traditional rules were developed to protect states that emerged out of colonialism. The leaders of these newly independent countries took the view that they had achieved self-determination by freeing themselves from colonial domination. To allow unlim-

ited secession could undermine the self-determination they had won. It is not surprising that the clearest codification of the rule against secession is found in article III of the Charter of the Organization of African Unity.

Buchanan, however, focuses on the self-determination of the break-away group. He does not consider the sense of identity of the larger state, which arguably is what really compels governments to resist secession. He acknowledges that the North fought the South in the U.S. Civil War in order to keep America's experiment in democracy going (p. 97), but he decides this was not a morally appropriate justification for war. He believes that the larger group can resist secession where, for example, the smaller group would deprive the larger one of wealth (pp. 115–24). But this example again distinguishes international law from Buchanan's liberalism. International law rules regarding secession seek to preserve self-determination and self-identity, not necessarily wealth. The rules may change, but are likely to continue to reflect the desire for self-determination, both by the existing state community and by groups seeking to break away. Perhaps Buchanan's focus on the break-away groups rather than on the state as a whole is due to the fact that liberalism is a philosophy of rights against the government. Communitarians might have more to say about when communities should be preserved and, therefore, the rights of the smaller community should give way to those of the larger one. The book's final chapter, chapter 4, discusses constitutional provisions to protect the right of secession. In international law such provisions have, again, limited importance, because whether or not people have a constitutionally guaranteed right to secede, they may still have the right to secede under international law.

Buchanan writes that this is an early work on the subject, and as such it has merit. Those with both an understanding of international law and philosophy will hopefully build on Buchanan's beginning and provide the basis for a revised law of secession, incorporating an examination of international law's normative principles.

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Law and Political Authority in South Korea


Despite the upswing of interest in Asian law among Western legal scholars and practitioners in the last decade, there is still a dearth of Korean legal scholarship