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RECONSIDERING CONTESTED
SECESSIONS:
UNFEASIBILITY AND INDETERMINACY

BY VALENTINA GENTILE

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Reconsidering *Contested Secessions*: Unfeasibility and Indeterminacy

Valentina Gentile

Writing about secession is not an easy task for a political philosopher. It is significant that leading political philosophers of the past, from Plato to Marx and Hegel, did not pay any systematic attention to the issue of secession.¹ The absence of a theory of secession is even more remarkable if we consider traditional liberal theory, from Locke and Mill to Rawls. Though liberalism places great emphasis on values such as liberty and autonomy, and while some liberal scholars have elaborated interesting theories on the idea of civil disobedience and the right to rebellion, very little consideration has been given to the idea of secession within liberal political philosophy, at least until the last two decades.²

Three main reasons might explain this gap in traditional political philosophy and, in particular, within liberalism. First, conceptually the notion of secession has a double dimension, namely a domestic and an international one and this complicates our ability to subject it to a direct and straightforward analysis. As a domestic matter, secession is manifested in a refusal of the state's

¹ Allen Buchanan, "Toward a Theory of Secession," *Ethics* 101 (1991): 322-42, at 323.

² *Ibid.*, 324. See also Christopher H. Wellman, "The Morality of Secession," in Don H. Doyle (ed.), *Secession as International Phenomenon, From America's Civil War to Contemporary Separatist Movements*, (Athens, Georgia: University of Georgia Press, 2010), 19.

political authority by a portion of its citizens. From an international perspective, succession is conceived as a sort of right, itself derived from/dependent on a certain interpretation of the right to self-determination, which entitles a particular group of people, whether culturally defined or not, to separate from an established state.³ It is therefore not clear how claims linked to these two dimensions can be accommodated in one general theory. Second, a consistent part of liberal theory, in particular contractualism, has been concerned primarily with social unity and the stability of the political authority: an alleged right to secession would undermine the very basis of the consent on the common justification of the coercive power. Third, from an international perspective, both advocates of and those opposed to (a right of) secession tend to remain confined within the limits of either a statist or a nationalist paradigm. The traditional and entrenched doctrine of state sovereignty and territorial integrity is confronted with new nationalist or statist claims to territory.⁴ As a consequence, many attempts to theorize secession from an international point of view reflect and are constrained by this incapacity to overcome the statist paradigm.⁵

Writing about secession in India raises further practical and theoretical problems. Under the provision of the Article 248(aa) of the Indian Constitution, in 1967 the Parliament passed the Unlawful Activities (Prevention) Act, which states that any action

³ Margaret Moore, "The Ethics of Secession and a Normative Theory of Nationalism," *Canadian Journal of Law and Jurisprudence* XIII (2000): 225-250; "On National Self-determination," *Political Studies* XLV (1997): 900-913; Christopher H. Wellman, "A Defense of Secession and Political Self-Determination," *Philosophy and Public Affairs* 24 (1995): 142-171.

⁴ C. H. Wellman, "A Defense of Secession and Political Self-Determination," 144.

⁵ Allen Buchanan, *Justice, Legitimacy, and Self-Determination. Moral Foundations for International Law* (Oxford: Oxford University Press 2004), 7.

or intention, including words “either spoken or written,” that may support a claim of secession is punishable with imprisonment.⁶ Beyond these legal provisions, a major political concern in India today is whether it is possible to balance and accommodate the need for a shared political institutional framework with the necessity of giving voice and proper representation to the multiple sub-national communities that populate the country. As I have argued elsewhere, however, constitutional and legislative provisions on minorities have not prevented the emergence of new forms of religious fundamentalism, such as Hindutva or Islamic fundamentalism, and have not reduced the distance between local traditional communities and central state structures. In addition, violence makes this political impasse even more complex since in many regions—like in Kashmir—it easily translates into violent conflicts and ethnic cleansing.⁷

The incredible task of professor Chandhoke’s new book, *Contested Secessions*, is thus to provide a restatement of a liberal theory of secession, understood as a *remedial* right theory, which is still compatible with situations of contested secessions, such as those occurring in many post-colonial societies and, in particular, in contemporary India.⁸ Chandhoke faces both these challenges with intellectual courage and great acumen. As a political philosopher with a liberal orientation, she re-conceptualizes a right to secession from the vantage point of post-colonial societies. From a theoretical point of view, this implies acknowledging the risks of two distinct forms of relativism,

⁶ Patrick Hoening, “Contesting Secession,” *Economic & Political Weekly* XLVII (2012) 44-46, at 44.

⁷ Valentina Gentile, “Secularism in Contemporary India,” in P. Losonczi and W. Van Herck (eds.), *Secularism, Religion, and Politics: Concepts and Context in India and Europe* (New Delhi: Routledge 2014).

⁸ Neera Chandhoke, *Contested Secessions. Rights, Self-determination, Democracy and Kashmir* (New Delhi: Oxford University Press 2012).

namely the post-colonial critique of “western-centrism,” on the one hand, and the liberal presumption of superiority of the West, on the other.⁹ Both forms of relativism fail to recognize that historical dissimilarities do not produce significant changes in the “conceptual framework of inquiry” that concerns justice.¹⁰ Chandhoke therefore tracks a third way: she employs the idea of ‘contextualization’ understood as an encounter between western theorizing about secession and the experience of post-colonial societies. In this respect, she argues that “theorists should search for cases that are especially challenging to his or her theoretical position [...] to rework their assumptions and presuppositions and introduce greater complexity in arguments.”¹¹

The book starts by asking what sort of right is the “right to secede.” In responding to this, Chandhoke outlines three ways to justify this right, corresponding to three liberal approaches—namely, national self-determination, consent and just cause.¹² For her, only the just cause approach, and especially the version presented by Buchanan, satisfies the moral requirements of a right of this sort. Following Buchanan’s Remedial Right Theory, she believes that a right to secede can be justified only as a remedial right, that is, as a way to redress “institutionalized injustices.”¹³ However, the case of contested secessions shows that it is highly problematic to make this *remedial* right to secession an effective one, especially when weak democratic governments have to negotiate with secessionist groups, which are often illiberal and violent, and mixed to oppressed minorities.

⁹ N. Chandhoke, *Contested Secessions*, 34.

¹⁰ *Ibid.*

¹¹ *Ibid.*, 35.

¹² *Ibid.*, 64-87.

¹³ A. Buchanan, “Toward a Theory of Secession”; “Theories of Secession.” *Philosophy and Public Affairs* 26 (1996): 31-61; *Justice, Legitimacy, and Self-Determination*.

The case of India and Kashmir is for Chandhoke a plain example of this practical and theoretical deficiency in liberal theory. In India, disputes about secession are in fact characterized in three specific ways: first, although the state is a formal and legitimate democracy, it has subjected a group of people in Kashmir to institutionalized injustice; second, secessionist movements in this territory are often illiberal and their actions involve the use of violence; finally, any solution in Kashmir between the State and secessionist groups should not override the rights of other ethno-religious minorities settled in the same part of the territory.¹⁴ To disentangle this complex reality, Chandhoke seems to follow Buchanan's strategy to "isolate and proliferate."¹⁵ She thus places great emphasis on possible ways to accommodate pluralism and guarantee a degree of autonomy within the democratic framework of post-colonial societies.

Although Chandhoke is very influenced by Buchanan's seminal work, her strategy seems to differ from his in some crucial aspects. In particular, Chandhoke does not seem to disregard the role of collective identities in enabling individual autonomy and, for this reason, an important section of her book is devoted to spelling out an account on pluralism's intrinsic value. In the following sections, I will focus on two distinct yet related sections of Chandhoke's theory: her distinctive version of remedial theory, and her emphasis on a form of comprehensive pluralist liberalism. I argue that this approach might result in inconsistency due to the conflicting demands of these two approaches. If we take seriously Chandhoke's political claim in favor of the legitimacy of what she calls "formal" democracy,

¹⁴ N. Chandhoke, *Contested Secessions*, 114.

¹⁵ A. Buchanan, *Justice, Legitimacy, and Self-Determination*, 344.

further clarifications are needed with respect to the account of pluralism she proposes.¹⁶

I

Liberal Approaches to Secession: Mapping the Debate

Two broad distinctions concerning the complex nexus of territory/self-determination/political legitimacy emerge in the contemporary literature on secession. Interconnections between these two give rise to three different normative approaches, namely: ascriptive/nationalist theories, associative/plebiscitary theories, and remedial right theories. (See, table 1).

	Nationalism	Statism
Primary Right	Ascriptive and Nationalist theories (e.g., Moore) <ul style="list-style-type: none"> • National/cultural group has a legitimate political claim to its territory; • Collective autonomy; • Emphasis on National Self-determination; • Ideal theory 	Associative and Plebiscitary theories (e.g., Wellman): <ul style="list-style-type: none"> • Legitimate states have a moral claim to territory; • Individual autonomy; • Emphasis on Political Self-determination; • Ideal theory
Just Cause		'Remedial right only' theories (e.g., Buchanan) <ul style="list-style-type: none"> • Legitimate states have a moral claim to territory; • A group has the right to secede only if it has been subjected to systematic and enduring injustice. • Non-Ideal and institutional theory

Table 1: Nexus territory/self-determination/political legitimacy

¹⁶ N. Chandhoke, *Contested Secessions*, 90.

The first distinction is articulated across two axes, namely nationalism vis-à-vis statism. It corresponds to two different ways to respond to the question whether a group or association has a legitimate claim to its territory.¹⁷ According to nationalist theories, national or cultural groups that inhabit a certain portion of territory have a legitimate political claim to it. Statist approaches, instead, affirm that only a legitimate state has a moral and political claim to territory.

The notion of self-determination introduces the second distinction wherein lies the philosophical justification for the alleged right of secession. Two different strategies, primary right and just cause, have been pursued to respond to the questions of whether and how the principle of self-determination interacts with both territory and legitimacy. A first group of theories affirms that a (moral) right to secede should be justified in the light of an extensive interpretation of the right of self-determination, and therefore of autonomy (either collective or individual) of peoples or nations. In general, Ascriptive and Nationalist theories as well as Associative and Plebiscitary theories admit a strong presumption in favor of the liberal idea of freedom of political association.¹⁸ However, a major difference arises in respect to the notion of autonomy linked to this freedom.¹⁹ Ascriptive and Nationalist theories insist on an idea of collective autonomy. That is, communities, cultures or nations give a fundamental ethical content to individuals' ways of life, which might naturally bring cultural/national groups to have a shared aspiration to constitute their own political unit, including a

¹⁷ On this distinction see also C. H. Wellman, "The Morality of Secession."

¹⁸ See also A. Buchanan, "Theories of Secession," 38.

¹⁹ Margaret Moore, "The Ethics of Secession and Political mobilization in Quebec," in Don H. Doyle (ed.), *Secession as International Phenomenon, From America's Civil War to Contemporary Separatist Movements* (Athens, Georgia: University of Georgia Press 2010).

legitimate claim to the territory where they live. For the second group, a right of self-determination of “politically *viable* groups within the territory”²⁰ should be justified on the basis of the foundational value of individual autonomy.²¹ According to this assumption, the legitimacy of secession is assured if a “territorially concentrated majority expresses the desire to secede through a referendum or a plebiscite.”²² In this second case, it is the democratic procedure that gives legitimacy to secession rather than the ascriptive character of the seceding group.

The second group of theories provides a more restrictive interpretation of the right to secede, understood as dependent on a ‘just cause.’ Supporters of this approach are generally wary of the incendiary potential that an extensive understanding of a general right of self-determination would have in destabilizing both national and international institutions, so they firmly ground the principle of self-determination in the commitment to protect basic human rights.²³ It is therefore only when a state systematically fails in protecting the basic human rights of its citizens that a right to secession can be invoked as a last-resort ‘remedial right.’

Buchanan’s remedial right only theory—perhaps, the best known of this group of theories—affirms that international law should recognize a ‘remedial right to secede,’ understood as a last-resort response to serious injustice, but it should generally

²⁰ C. H. Wellman, “The Morality of Secession,” 22.

²¹ M. Moore, “The Ethics of Secession and a Normative Theory of Nationalism,” 232.

²² *Ibid.*

²³ A. Buchanan, *Justice, Legitimacy, and Self-Determination*, 332. Buchanan argues that “a moral theory of international law should provide practical guidance for defusing the self-determination bomb, while [...] giving legitimate interests in self-determination they due” (*Ibid.*).

encourage alternatives to secession.²⁴ A distinctive aspect of this approach concerns the kind of theorizing it employs about the international system. Buchanan provides a *nonideal* institutional theory of international law, grounded on the principle of international legitimacy, meant to offer a “principled guidance for how to cope with the problems of noncompliance” in our real world.²⁵ For Buchanan, primary right theories are different insofar as they are concerned with the morality of secession and, therefore, they offer an *ideal* (and not necessarily institutional) theory/mode of theorizing that provides a sense of how a theory of secession should look like under conditions of perfect compliance.²⁶

II

Secession As a *Remedial Right*.

What Is New With Chandhoke’s Proposal?

As I mentioned before, Chandhoke seems to agree with many of Buchanan’s conclusions. She shares Buchanan’s wariness of coupling the concepts of self-determination and secession, considering secession as an ultimate danger for autonomy. Like Buchanan, her suggestion is to increase the degree of internal autonomy of minority groups within existing territorial boundaries and argues

instead of focusing on secession we perhaps need to think out alternatives to the nation state, how the aspirations of minorities can be best realized

²⁴ *Ibid.*, 343.

²⁵ *Ibid.*, 55.

²⁶ C.H. Wellman, “The Morality of Secession,” 28-39; A. Buchanan, “Theories of Secession,” 60-61.

within the state and how sovereignty can be diluted through political arrangements within the state.²⁷

Yet, unlike Buchanan, she does not renounce to provide an ideal (moral) theory of ‘substantive democracy’ that incorporates the notion of self-determination as its constitutive aspect.²⁸ Therefore, a distinctive feature of Chandhoke’s theory is that she seems to move back from the nonideal institutional ground of Buchanan’s theory to another version of ideal theory. Such a theory would incorporate the right of self-determination into a broader moral, rather than political, conception of “substantive democracy.” For her then, secession is a weak right in democracies, which does not come into play as long as they can adequately respond to injustice, compensate victims, and accommodate pluralism.

As I said, Buchanan’s theorizing is institutional (and to certain extent realistic) and considers the issue of secession from the perspective of those institutional tools already existing in the international legal framework, which are themselves evaluated in the light of a nonideal ‘moral theory of international law.’ Such a nonideal kind of theorizing presupposes the existence of both states, understood as fundamental political units of the international society, and an emerging international moral and legal framework. Thus, the condition of partial or non-compliance that characterizes contemporary international society sensibly reduces the normative assumptions of the theory of secession, and compels us to rethink those legitimate institutional constraints that might balance competing claims. This approach considers both the domestic and the international dimensions of the problem of secession, and offers solutions which take into account not only seceding groups and parent states but also

²⁷ N. Chandhoke, *Contested Secessions*, 41.

²⁸ *Ibid.*, 158.

international society as a whole, which is in various ways affected by these events.

Chandhoke is engaged in quite a different enterprise. For her the problem of secession is primarily a domestic issue that should be accommodated within the framework of a pluralist liberal theory and this is particularly urgent in weak post-colonial democracies. Although she never refers clearly to the distinction between ideal and nonideal theory, her account of ‘substantive democracy’ seems to constitute an important part of a comprehensive theory of liberalism, one which incorporates a notion of value pluralism at its core. Chandhoke thus resists a right to secession because it would be inconsistent with such an account of value pluralism. Yet, this sort of ideal theorizing is quite different from that offered by supporters of Primary right theories. For while the latter are concerned with providing the ideal conditions for a moral right to secession in a context of full compliance, Chandhoke provides an ideal (moral) theory of liberal democracy that incorporates a notion of value pluralism. This sort of theorizing expects therefore that a denial of the right of secession is shared and endorsed by all citizens.

III

Ideal Theorizing and Comprehensive Pluralism:

Some Theoretical Reflections on Chandhoke’s Approach

If my reading of Chandhoke’s argument is correct, I may have unearthed a problem for her theory. Although she is aware of the discrepancy between the ideal conditions assumed by several liberal theories and the reality of most secessions, in particular those occurring in post-colonial democracies, her theory does not

significantly differ from other liberal theories in setting ideal conditions for the justification of principles of justice. However, in real world, not only national minorities or secessionist groups but also democracies are not perfectly just as her theory seems to assume.

The major problem of ideal (moral) theorizing is the transition from ideal theory to nonideal circumstances that so often demands that we abandon many of our (idealized) assumptions, which reduces the substantive moral claims of the theory.²⁹ This occurs because the ideal conditions of full compliance, necessary to the justification required by ideal theory, presupposes what Rawls, in his *A Theory of Justice*, has called the “congruence” between the principles of justice recognized by the theory and the deep convictions of all members of the ideal “well ordered society” to whom these principles should apply.³⁰ However, the assumption of (reasonable) pluralism causes us to reconsider the ideal conditions of the theory in favor of a non-comprehensive or “freestanding” conception of political authority, as Rawls puts it in his second book.³¹

Chandhoke’s proposal goes in a different direction. She starts from a crucial distinction between empirical and normative pluralism. In defending a sort of intrinsic value of communities, she argues that we should move from an empirical or descriptive

²⁹ A. Buchanan, *Justice, Legitimacy, and Self-Determination*. On this see also Laura Valentini, “On the Apparent Paradox of the Ideal Theory,” *The Journal of Political Philosophy* 17 (2009): 332-355.

³⁰ John Rawls, *A Theory of Justice* (Cambridge (MA): Harvard University Press 1971).

³¹ John Rawls, *Political Liberalism* (New York: Columbia University Press 1993).

understanding of pluralism to a normative one. Inspired by Berlin's idea of value pluralism,³² Chandhoke argues that

though pluralism is a value, it is a value with a difference. Like other normative concepts, such as equality, or freedom or justice it captures the desirability of a certain state of affairs. But unlike most other values, pluralism is a precondition for a plurality of values.³³

These intuitions lead her to develop a comprehensive theory of liberalism based on value pluralism.

In conclusion, I wish consider some of the weaknesses of Chandhoke's normative proposal discussed so far. First, as with other cases of ideal theorizing, her theory of a 'community sensitive' liberal pluralism becomes problematic when we move to real circumstances. Chandhoke argues that in contexts where democratic governments are able to self-correct, secession can be rejected on the basis of moral considerations, e.g. protecting other minorities in the territory, contrasting illiberal and violent movements both in favor and against secession.³⁴ However, when real cases of 'formal' (unjust) democracies dealing with both illiberal secessionists groups and other illiberal minorities are considered, the theory is in fact not able to offer a clear framework of moral prescriptions.

This brings to my second consideration, related to her account of normative pluralism. My intuition is that Chandhoke's very idea to develop a comprehensive pluralist liberalism is

³² See Isaiah Berlin, *Liberty* (Oxford: Oxford University Press 2002). Chandhoke explicitly refers to Berlin in note 2 to the chapter, p. 155.

³³ N. Chandhoke, *Contested Secessions*, 130.

³⁴ *Ibid.*, 212.

inconsistent with her value pluralism premises.³⁵ This is evident when the theory postulates the extension of liberal toleration to both secessionist and minority groups, irrespective of the fact that they might refuse the fundamentals of liberalism. This situation produces two possible outcomes that I call unfeasibility and indeterminacy. First, if we assume that the commitment to value pluralism is dependent on the acceptance of some prior fundamental liberal values, the theory is unfeasible since any governmental attempt to address democratically secessionist and minority claims would find a strong resistance of non-liberal secessionist or minority groups. Second, if we assume that the commitment to value pluralism is independent of liberalism, the theory is indeterminate since it is not able to adjudicate disputes among liberal and other, even non-liberal, claims.

Chandhoke is aware of the risk raised by this second account of value pluralism but, in the attempt to avoid the indeterminacy, she provides a comprehensive liberal theory that risks becoming inconsistently pluralist and, for this reason, unfeasible. The problem here is that her theory implies a strong commitment to some fundamental liberal values that inevitably have priority over nonliberal values.³⁶ In my view, only an account of non-comprehensive liberalism, like the one proposed by Rawls, is compatible with a *thin* or reasonable form of value pluralism.³⁷ Accepting this, when we move from ideal conditions to real circumstances of divided societies characterized by competing unreasonable claims, the pluralist premises of the theory should be interpreted in a narrow sense so that it becomes possible to

³⁵ On this argument see also Robert Talisse, “Can Value Pluralists be Comprehensive Liberals? Galston’s Liberal Pluralism,” *Contemporary Political Theory* 3 (2004): 127-139.

³⁶ *Ibid.*, 136.

³⁷ John Rawls, *Political Liberalism*.

select those institutional and widely accepted political principles that actually set the limits of liberal toleration itself.³⁸

Luis University

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