

Is Secession by Referendum Libertarian?

I have concerns about secession by referendum. Individual secession, of course, is no problem; that's simply libertarianism. Before I get into my reasons, let me stipulate that smaller political jurisdictions are on net preferable to larger ones if for no other reason than the lower cost of exit. That in itself may constrain government impositions. Competition is good, and a race to reduce oppression would obviously be laudable by libertarian standards. But governments of any kind may find ways to collude with one another to minimize the effects of competition. Governments today cooperate with one another to catch tax evaders.

Let me also put on the record my conviction that nation-states have no right to use force to stop any component from seceding. They have no legitimate claim on anyone's allegiance.

However, let's not forget that smaller, more local governments can be oppressive too, possibly more so than larger centralized ones. Many things factor into this. At any rate, Little Nationalism can be as destructive of human flourishing as Big Nationalism.

My concerns about group (not individual) secession are over the *process* of peaceful separation, namely, the referendum. Libertarians have long criticized political democracy — that is, the settling of “public” matters by majority vote either directly or through so-called representatives — as inherently violative of individual rights. By what authority does a majority lord it over a minority?

Well, doesn't this critique apply to referenda on secession? The chance of unanimity is tiny in any particular case, so why should the individuals who constitute a numerical minority be forced to dissociate from a nation-state and be subjugated by a new nation-state simply because the majority decreed it? A dissenting minority might not be concentrated in one area that could easily secede from the newly seceded territory and remain with the original country or form its own country. What then?

True, dissenting individuals would presumably be free to relocate, but why should people have to abandon their homes because of a majority's preference? That hardly seems fair. It sounds like “love it or leave it.”

In the recent referendum in Catalonia, over 177,000 people, nearly 8 percent of the 43 percent of registered voters who cast ballots, voted against secession. A lot of people don't want to split from Spain. Of course, this does not justify the central government's violent interference with the referendum or the separation. There's is nothing sacred about today's nation-states, which were all built from conquest, myth, and historical contingency. But the rights of the members of a minority in a secessionist community still ought not to be

ignored by advocates of individual liberty. Too often libertarian defenders of particular acts of secession talk as if the population unanimously favored the spit. Individualists shouldn't overlook individuals.

The case of the Southern secession from the United States is even clearer than the one in Catalonia. No public referendum was held. Instead, so-called representatives did the voting. But even if a public referendum had been held, slaves would not have been allowed to vote — and they were the reason for the secession in the first place (at least in the lower South). Again, this doesn't justify Lincoln's war, but it certainly cast a shadow over secession as a libertarian act.

Some of the best criticism of democratic decision-making came from the legal scholar Bruno Leoni, whose collection of papers, *Freedom and the Law* (expanded third edition), deserves more attention than it gets. In the final chapter of the expanded edition (but not in the original), "Voting versus the Market," Leoni dissected majority rule in a coercive state context. (I discuss Leoni's analysis in "The Crazy Arithmetic of Voting.")

Leoni took issue with Anthony Downs's famous description of majority rule, in which Downs wrote,

The basic arguments in favor of simple majority rule rest upon the premise that every voter should have equal weight with every other voter. Hence, if disagreement occurs but action cannot be postponed until unanimity is reached, *it is better for more voters to tell fewer what to do than vice versa*. The only practical arrangement to accomplish this is simple majority rule. Any rule requiring more than a simple majority for a passage of an act allows a minority to prevent action by the majority thus giving the vote of each member of the minority *more weight* than the vote of each member of the majority.

To which Leoni responded:

This argument seems to be the same as saying that we must give a one dollar bill to everybody in order to give each one the same purchasing power. But when we consider the analogy at closer quarters, we realize that in assuming that 51 voters out of 100 are "politically" equal to 100 voters, and that the remaining 49 (contrary) voters are "politically" equal to zero (which is exactly what happens when a group decision is made according to majority rule) we give much more "weight" to each voter ranking on the side of the winning 51 than to each voter ranking on the side of the losing 49. It would be more appropriate to compare this situation with that resulting in the market if 51 people having one dollar each combine in buying a gadget which costs 51 dollars, while another 49 people with 1 dollar each have to do without it because there is only one gadget for sale....

The fact that we cannot possibly foresee who will belong to the majority does not change the picture much.

In other words, in a representative or direct democracy, 50 percent plus one equals 100 percent and 50 percent minus one equals zero.

Does this mean we libertarians have no remedy for people who wish not to live under the central government of a large nation-state? Of course we have: anarchism, in which each individual is sovereign and free to contract with market firms for security and dispute resolution. I realize anarchism isn't on the menu today, but there's an idea that may be more acceptable to people: panarchism. Roderick Long explains:

The concept of *panarchy* comes from an 1860 work of that title by the Belgian botanist and political economist Paul Émile de Puydt (1810-1891). The essence of his panarchist proposal is that people should be free to choose the political regime under which they will live without having to relocate to a different territory.

Under panarchism, individuals could in effect secede, but their next-door neighbors need not. Problem solved! This may not satisfy nationalists big and small, but it would protect individuals.

Long notes that advocates of panarchism have had differences over details but adds, "I would resist calling the panarchist's political regimes 'states'; and I have no problem regarding panarchism, at least in its modern form, as a species of anarchism." But we need not settle this now.

The editors of a recent anthology, *Panarchy: Political Theories of Non-Territorial States*, to which Long contributed a chapter, describe the term as "a normative political meta-theory that advocates non-territorial states founded on actual social contracts that are explicitly negotiated and signed between states and their prospective citizens."

"This characterisation, with its call for explicitly signed contracts," Long comments, "is a somewhat narrower use of the term than is common in contemporary anarchist circles, or at least those in which I move. John Zube, who has done more than anyone to popularise the concept, defines it a bit less rigidly as the 'realization of as many different and autonomous communities as are wanted by volunteers for themselves, all non-territorially coexisting ... yet separated from each other by personal laws, administrations and jurisdictions....'"

It sounds like a recipe for peace and social cooperation.

No doubt people will say that overlapping non-territorial governments couldn't possibly work. But an editor of the anthology, Aviezer Tucker, writes that "there have been many historically functioning models of mixed, overlapping, and extra-territorial ... jurisdictions."

I have not taken leave of my senses. I realize that panarchism is not on today's agenda.

But it will never be on it if we never talk about it. With secession and conflict in the news, what could be a better time?