

# SECESSION RECONSIDERED

Robert W. McGee

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No people and no part of a people shall be held against its will in a political association that it does not want.<sup>1</sup>

The idea of secession has been around ever since there have been governments. It is an especially relevant topic today, as the emerging democracies in Eastern and Central Europe attempt to form new, stable political and economic units. The idea of secession, however, should not be limited to new and emerging democracies. The idea has relevance wherever a substantial portion of the population is dissatisfied with its current political arrangement. The theory can be applied to the portion of Northern California that wants to secede from California, or to the Southern portion of New Jersey, which wants to break away from New Jersey, or to Staten Island, which wants to secede from New York City. Theoretically, the theory can be applied to a single individual or household. In principle, there are no lower limits, although Mises would say there are technical considerations that preclude secession at the individual level.

Part I of this paper analyzes some arguments for and against secession. Parts II and III apply the Kendall and Louw model of secession to the case of emerging democracies and to some political units in the U.S.

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<sup>1</sup> Ludwig von Mises, *Nation, State, and Economy* (New York: New York University Press, 1983), p. 34. This book originally appeared in German as *Nation, Staat, und Wirtschaft* in 1919.

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Robert W. McGee teaches at Seton Hall University.

Part I of this paper analyzes some arguments for and against secession. Parts II and III apply the Kendall and Louw model of secession to the case of emerging democracies and to some political units in the U.S. The Kendall and Louw model, however, can be applied to any government where citizens have the power to make political decisions.

### 1. SECESSION: PRO AND CON

Over the centuries, political theorists have given a number of reasons why political entities should or should not be allowed to secede. Consider first some arguments against secession.

#### *The Case Against*

Harry Beran, a twentieth-century political theorist, poses the issue this way:

According to democratic theory the people have sovereignty. Is this sovereignty a collective attribute of all citizens of an existing state or can some of them exercise their share of sovereignty by setting themselves up as an independent state? Majority rule is claimed to be an essential part of democracy. But is majority rule morally legitimate if a territorially concentrated minority does not acknowledge the unity of the state? According to liberalism, freedom is the greatest political good. Does this imply a freedom to secede? . . . Under what conditions, if any, is secession morally justified? Under what conditions, if any, is the forceful prevention of secession morally justified? Is there a moral right to secession? If there is, who are candidates for such a right: member nations of multi-national states, member states of federations, any group within a state with a suitable territory and the will to secede?<sup>2</sup>

Beran argues that secession should be prohibited if the group wishing to secede:

- (1) is too small to assume the basic responsibilities of an independent state;
- (2) is not prepared to permit sub-groups within itself to secede although such secession is morally and practically possible;

<sup>2</sup> Harry Beran, "A Liberal Theory of Secession," *Political Studies* (1984): 21-31, esp. p. 22.

- (3) seeks to exploit or oppress a sub-group within itself that cannot secede in turn because of territorial dispersal or other reasons;
- (4) occupies an area fully enclosed by the borders of the existing state;
- (5) occupies an area that is culturally, economically, or militarily essential to the existing state;
- (6) occupies an area that has a disproportionately high share of the economic resources of the existing states.<sup>3</sup>

These limits on secession do not hold up under analysis. His first case, regarding minimum size, is not only incorrect but is totally beside the point. It is incorrect because there appears to be no size that is too small. Many independent nations are smaller than New York City, yet are viable: Consider Andorra, Antigua and Barbuda, Bahrain, Barbados, Dominica, Grenada, the Republic of Kiribati, Liechtenstein, the Republic of Maldives, Malta, Monaco, the Republic of Nauru, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, the Republic of Seychelles, Tonga, Tuvalu, and Vatican City. Two nations, Monaco and Vatican City, are actually smaller than New York City's Central Park. Another nation, Hong Kong, is one of the world's economic giants, and is only slightly larger than New York City.<sup>4</sup> Furthermore, the argument is beside the point, since it should be up to those who want to secede to decide whether they form a sufficiently large political unit. Certainly, the decision should not be made by the political entity from which they want to secede.

<sup>3</sup> *Ibid.*, pp. 30–31. Beran is not the only one who advances these arguments to limit secession. Similar views have been expressed by numerous political philosophers over the years. See, for example, Allen Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder, Colo.: Westview Press, 1991), and Lee C. Buchheit, *Secession: The Legitimacy of Self-Determination* (New Haven: Yale University Press, 1978).

<sup>4</sup> New York City is 301 square miles in size, according to *The World Almanac & Book of Facts 1991*. By comparison, Andorra measures 185 square miles, Barbados 166, Liechtenstein 62, Malta 122, Monaco 0.7, San Marino 24, and Vatican City 0.17. New York's Central Park is 840 acres, or 1.3 square miles. Hong Kong is 375 square miles, including part of the mainland and outer islands. The Island of Hong Kong itself is actually much smaller than New York City.

The next claim, that the seceding entity may not be prepared to permit sub-groups within itself to secede, is also unconvincing. If a group does not support its present government, it has the right to break away and form a government that is more to its liking. The fact that it will not allow a sub-group to exercise this same right is unfortunate, but does not alter its basic right to secede. The third argument, that the seceding entity may want to exploit or oppress a sub-group which cannot secede in turn because of territorial dispersal or other reasons, suffers from the same weakness as the second argument. While it is unfortunate if the break-away group wants to exploit or oppress another group that cannot itself secede, this is totally unrelated to the question of whether a group of individuals should ever be prevented from having the government of their choice, no matter how bad that government might be.

Beran's enclave argument is also unsatisfactory. Every island nation is an enclave of sorts. The only difference between an island nation and the enclave Beran envisions is that an island nation is surrounded by water, whereas an enclave is surrounded by land that belongs to another nation. Would it have been any more difficult for Hawaii to become the 50th state if it were surrounded by land rather than water? Hawaii is thousands of miles away from the continental United States, yet it is fully integrated into the United States. As long as there is free movement of persons and goods, it should not matter whether one nation is totally surrounded by another. Vatican City, which is totally surrounded by Rome, may serve as an example.

The argument that an entity should not be able to secede because it occupies an area that is culturally, economically, or militarily essential to the existing state raises a number of problems. For starters, culture belongs to the people, not the nation. It is fair to assume that culture will not suffer if part of an existing country decides to go its own way; culture may actually be improved. In fact, one reason why a group typically wants to secede is to preserve a cultural identity, which might have been suppressed by the country of which it is presently a part. Soviet suppression of the Lithuanian and Ukrainian cultures are only two of many examples. Furthermore, forbidding a group from having the government of its choice for economic reasons smacks of exploitation. Should a group be denied its freedom so that the government can exploit the assets of some of its citizens? Just because the section that wishes to secede might include a major city or abundant natural resources is not a sufficient reason to deny the basic right of self-determination. In a free society, all assets

are ultimately owned by individuals, not governments, and any attempt to deny owners access to their property is a basic violation of their rights.

The military argument presents additional problems. Should people be deprived of their basic right to the government of their choice just because they live in an area that is militarily important to someone else? Should Germany or the Soviet Union be able to control the geographic area we now call Poland just because it is needed as a buffer zone? Should France or Germany be able to control Belgium for the same reason? How about Israel's control of Gaza and the West Bank? Should the individuals who live in these areas not be able to have the government of their choice? Why must the interests of the actual residents be subordinate to those of foreigners?

Beran's last case, that the seceding territory has a disproportionate share of economic resources of the existing state, also crumbles under analysis. In a free society, assets are owned by individuals, not governments. Individuals have the only legitimate claim to assets and the country in which those assets are located should be determined by the owners of the assets, not by someone else. Furthermore, the abundance of natural resources has little to do with a country's standard of living. The standard of living a country enjoys depends on its economic system, not the amount of natural wealth within its borders. Japan, for example, must import more than 99% of its oil and has no natural resources of any consequence. It cannot even grow enough food to feed itself. Yet it is one of the most economically powerful countries in the world. Hong Kong is another example. Brazil and the former Soviet Union, on the other hand, possess abundant natural resources and yet have crippled economies. This is because Japan and Hong Kong have market economies and respect for property rights. What they do not possess within their borders, they can get through trade. Brazil and the former Soviet Union have mercantilist economies. They have resources but cannot utilize them effectively.<sup>5</sup>

Others over the years have said that secession should never be allowed. Lincoln, for example, said in his first inaugural speech:

<sup>5</sup> In a market economy, individuals can do with their property as they see fit. In a mercantilist economy, government permission is needed for everything. The Brazilian and Soviet economies are mercantilist, as are most third world countries. This point has been made by many economists, including Hernando de Soto, *The Other Path: The Invisible Revolution in the Third World* (New York: Harper & Row, 1989), originally published in Spanish under the title *El Otro Sendero* (1989).

I hold that, in contemplation of universal law and of the Constitution, the Union of these States is perpetual. Perpetuity is implied, if not expressed, in the fundamental law of all national governments. It is safe to assert that no government proper ever had a provision in its organic law for its own termination. Continue to execute all the express provisions of our National Constitution, and the Union will endure forever—it being impossible to destroy it except by some action not provided for in the instrument itself.<sup>6</sup>

Lincoln's argument is a variation of social contract theory. Once a people have entered into an agreement to recognize government, they can never withdraw their consent.<sup>7</sup>

This position has several weaknesses. First, there never was any social contract. There is no historical evidence to show that any group of individuals ever got together and entered into a contract to bind themselves and future generations irrevocably. Second, even if such a group did once enter into such a contract, unanimously, this still would not bind future generations. Under the legal principle of *rebus sic stantibus*, the terms of a contract are subject to modification or outright negation if circumstances change.<sup>8</sup> Lysander Spooner said the following in 1869 regarding the idea of a social contract:

The Constitution has no inherent authority or obligation. It has no authority or obligation at all, unless as a contract between man and man. And it does not so much as even purport to be a contract between persons now existing. It purports, at most, to be only a contract between persons living eighty years ago. And it can be supposed to have been a contract then only between persons who had already come to years of discretion, so as to be competent to make reasonable and obligatory contracts. Furthermore, we know, historically, that only a small portion even of the people then existing were consulted on the subject, or asked or permitted to express either their consent or dissent in any formal manner. Those persons, if any, who

<sup>6</sup> Carl Sandburg, ed., *Abraham Lincoln: The War Years* (New York: Harcourt, Brace & Co., 1939), p. 128. It should be noted that Lincoln's view on secession was not consistent, as is shown below.

<sup>7</sup> For analysis of the social contract approach see Buchheit, *Secession: The Legitimacy of Self-Determination*, p. 21.

<sup>8</sup> *Ibid.*, p. 22.

did give their consent formally, are all dead now. Most of them have been dead forty, fifty, sixty, or seventy years. And *the Constitution, so far as it was their contract, died with them*. They had no natural power or right to make it obligatory upon their children. It is not only plainly impossible, in the nature of things, that they *could* bind their posterity, but they did not even attempt to bind them. That is to say, the instrument does not purport to be an agreement between any body but "the people" *then* existing; nor does it, either expressly or impliedly, assert any right, power, or disposition, on their part, to bind anybody but themselves.<sup>9</sup>

Thomas Jefferson would likely have agreed with this assessment. Jefferson believed that no generation had the right to bind another, and that contracts die with those who made them—generally after nineteen years, based on life expectancy at the time Jefferson made his observation:

The question whether one generation of men has a right to bind another, seems never to have been started either on this or our side of the water. Yet it is a question of such consequences as not only to merit decision, but place, also, among the fundamental principles of every government. . . . I set out on this ground which I suppose to be self evident, "*that the earth belongs in usufruct to the living*"; that the dead have neither powers nor rights over it.<sup>10</sup>

The earth belongs to the living, not to the dead. The will and the power of man expire with his life, by nature's law. . . . We may consider each generation as a distinct nation, with a right, by the will of its majority, to bind themselves, but none to bind the succeeding generation, more than the inhabitants of another country. . . . At nineteen years then from the date of a contract, the majority of the contractors are dead, and their contract with them.<sup>11</sup>

<sup>9</sup> Lysander Spooner, *No Treason: The Constitution of No Authority* (Boston: self-published, 1870; reprinted, Colorado Springs: R. Myles, 1973), p. 11.

<sup>10</sup> Jefferson to James Madison, September 6, 1789, in *Thomas Jefferson: Writings* (New York: Library of America, 1984), p. 959.

<sup>11</sup> Jefferson to John Wayles Eppes, June 24, 1813, *ibid.*, pp. 1280–1281. This passage has special relevance today regarding the huge deficit the federal government is amassing. In another passage of Jefferson's letter to Eppes, he points out that one generation should not spend on government projects what another generation will have to pay for. It is fair to assume that Jefferson, were he alive today, would favor repudiating the massive debt burden that various politicians have accumulated over the years, or at least the portion that is more than nineteen years old, and that he would support the idea of periodic repudiation.

*The Case for Secession*

One of the strongest arguments in favor of secession is in the U.S. 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 unalienable rights; and that among these, are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, to effect their safety and happiness.

In others words, governments that do not have the support of the people may be altered or abolished and replaced with a new government that more closely corresponds to their wishes. The Founding Fathers stopped just short of approving the possibility of anarchy, by abolishing government and not replacing it. The Declaration goes on to say: "When a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security." The Founding Fathers thus apparently did not condone secession except after a long series of abuses leading to absolute despotism. This view receives support in another section of the document: "Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes; and, accordingly, all experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed." This passage applies the rule of reason to the possibility of secession. People should not secede and form new governments on the basis of whim. Sometimes it is better to keep the existing government and try to reform it internally, than to abolish it for less than grave reasons, because the new government might be no better than the one abolished.

However, there is no clearly defined cut-off point. The only legitimate functions of government in a liberal state are those that protect the life, liberty, and property of the people within the state. Any state that goes beyond that is illegitimate to a certain extent. Frédéric Bastiat, the nine-

teenth-century French political philosopher and economist, attempted to define the cut-off point separating legitimate from illegitimate government action: "See if the law takes from some persons what belongs to them, and gives it to other persons to whom it does not belong. See if the law benefits one citizen at the expense of another by doing what the citizen himself cannot do without committing a crime."<sup>12</sup>

A number of government actions could thus be seen as illegitimate: taxing people who work and giving the proceeds to people who do not work; taxing all the people to pay for the construction of a bridge in one state (a number of pork-barrel projects fall under this genre); taxing all the people and using the proceeds to fund scholarships for persons of a certain race; preventing landlords from charging the market rate for their apartments (rent control laws); and so on. The list can go on and on, especially in welfare states, which hold redistribution of wealth to be one of the highest goals.<sup>13</sup> At what point does it become worthwhile to secede from such government? The answer is highly subjective. Many individuals would not want to secede from such a government described above because they regard these government functions as legitimate and desirable. Others would object to some functions and approve others.

Since all states are illegitimate to a certain extent, theoretically, they can all be justly abolished. But that would be impractical, so the individuals who comprise the state must decide how much injustice they are willing to put up with. The issue is complicated by the fact that many individuals who live in a welfare state do not even realize that the state is acting unjustly (according to the Bastiat definition).

Many over the years have supported also the right to secede. Abraham Lincoln, at one point in his career, also believed in such a right:

Any people anywhere being inclined and having the power have the right to rise up and shake off the existing government, and form a new one which suits them better. This is a most valuable, a most sacred right—a right which we hope and believe is to liberate the world. Nor is this right confined to cases in which the whole people of an existing government may choose to exercise it. Any portion

<sup>12</sup> Frédéric Bastiat, *The Law* (Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1950), p. 21.

<sup>13</sup> For an ethical analysis of redistribution, see Bertrand de Jouvenel, *The Ethics of Redistribution* (Indianapolis: LibertyClassics, 1990).

of such people that can may revolutionize and make their own so much of the territory as they inhabit.<sup>14</sup>

Obviously, Lincoln's view on secession changed as the Civil War approached. Lenin also supported the right to secede: "[S]ocialism must necessarily establish a full democracy and, consequently, not only introduce full equality of nations but also realize the right of the oppressed nations to self-determination, i.e., the right to free political separation. . . . [F]ree union is a false phrase without the right to secede."<sup>15</sup>

Some theorists have recognized a partial right to secede. Anthony Birch states that one of the following prior conditions must be present for secession to be justified:

- (1) the seceding region was included in the state by force and its people have displayed a continuing refusal to give full consent to the union;
- (2) the national government has failed in a serious way to protect the basic rights and security of the citizens of the region;
- (3) the democratic system has failed to safeguard the legitimate political and economic interests of the region, either because the representative process is biased against the region or because the executive authorities contrive to ignore the results of that process; or
- (4) the national government has ignored or rejected an explicit or implicit bargain between sections that was entered into as a way of preserving the essential interests of a section that might find itself outvoted by a national majority.<sup>16</sup>

Even Stalin considered secession legitimate, with certain qualifications:

A nation has the right freely to determine its own destiny. It has the right to arrange its life as it sees fit, without, of course,

<sup>14</sup> This excerpt is taken from Lincoln's "If You Can Secede You May" (Mexico) speech, cited in Rupert Emerson, *From Empire to Nation* (Cambridge, Mass.: Harvard University Press, 1967), p. 450.

<sup>15</sup> V. I. Lenin, in *Collected Works* (Moscow: Progress Publishers, 1964), vol. 22, p. 143.

<sup>16</sup> Anthony H. Birch, "Another Liberal Theory of Secession," *Political Studies* 32 (1984): 596-602.

stamping on the rights of other nations. That is beyond dispute. . . . It even has the right to secede. But this does not mean that it should do so under all circumstances, that autonomy, or separation, will everywhere and always be advantageous for a nation.<sup>17</sup>

### *The Justice of Secession*

When is secession justified? In a word—always. There is no legitimate reason for preventing people from having the government of their choice, even if their choice is a poor one. Government is legitimate only to the extent that it exists by the consent of the governed. To argue against secession is to argue against the right of individuals to have the government of their choice. Although secession is always justified on theoretical grounds, there are technical problems that must be resolved. How, exactly, is secession to be achieved? Should it be unilateral or must all parties agree, those leaving as well as those who are being left? What unit is appropriate? A state? A portion of a state? A county? A village? A household? An individual?

Ludwig von Mises has the following opinion:

The right of self-determination in regard to the question of membership in a state thus means: Whenever the inhabitants of a particular territory, whether it be a single village, a whole district, or a series of adjacent districts, make it known, by a freely conducted plebiscite, that they no longer wish to remain united to the state to which they belong at the time, but wish either to form an independent state or to attach themselves to some other state, their wishes are to be respected and complied with. This is the only feasible and effective way of preventing revolutions and civil and international wars.

However, the right of self-determination of which we speak is not the right of self-determination of nations, but rather the right of self-determination of the inhabitants of every territory large enough to form an independent administrative unit. If it were in any way possible to grant this right of self-determination to every individual person, it would have to be done. This is impracticable only because of compelling technical considerations, which make it necessary that a region be governed as a single administrative unit and that the

<sup>17</sup> Josef Stalin, *Marxism and the National and Colonial Question* (London: Lawrence and Wishart, 1936), p. 20.

right of self-determination be restricted to the will of the majority of the inhabitants of areas large enough to count as territorial units in the administration of the country.<sup>18</sup>

Mises approaches, but does not cross, the fine line separating archy from anarchy. While acknowledging that individuals have the right to live under the government of their choice, Mises stops short, for technical reasons, of recognizing the right of every individual to secede. Murray Rothbard would go beyond the Misesian line and into anarchy.

Would a laissez-fairist recognize the right of a region of a country to secede from that country? Is it legitimate for West Ruritania to secede from Ruritania? If not, why not? And if so, then how can there be a logical stopping point to the secession? May not a small district secede, and then a city, then a borough of that city, and then a block, and then finally a particular individual? Once admit *any* right of secession whatever, and there is no logical stopping-point short of the right of *individual* secession, which logically entails anarchism, since then individuals may secede and patronize their own defense agencies, and the state has crumbled.<sup>19</sup>

## II. THE KENDALL AND LOUW SOLUTION

Once one concludes that secession is a legitimate remedy for righting wrongs, the next question is one of mechanics: Who should be able to secede, and how should secession be accomplished? Frances Kendall and Leon Louw provide a workable solution.<sup>20</sup> While the Kendall and Louw model is designed for South Africa, it could easily be used by the national and sub-national governments of any country that allows its citizens a voice in the government. Their solution is especially appropriate for emerging democracies, since these countries are trying to determine the form their new governments will take.

<sup>18</sup> Ludwig von Mises, *Liberalism*, third edition (Irvington-on-Hudson, N.Y., Foundation for Economic Education, and San Francisco: Cobden Press, 1985), pp. 109-10.

<sup>19</sup> Murray N. Rothbard, *Ethics of Liberty* (Atlantic Highlands, N.J.: Humanities Press, 1982), p. 181.

<sup>20</sup> Frances Kendall and Leon Louw, *After Apartheid: The Solution for South Africa* (San Francisco: Institute for Contemporary Studies, 1987).

First, secession should be built into the constitution, and second, secession should be unilateral. The group wishing to secede should not need the permission of the political entity it wants to secede from. Had this provision been clearly present in the U.S. Constitution,<sup>21</sup> it could have prevented more than a half million needless deaths.<sup>22</sup> Third, the method by which secession can be achieved should be clearly spelled out.

The Kendall and Louw approach combines all these features. Article XVI of their proposed Bill of Rights, for example, provides that "[e]very canton has the right to secede from the country upon a declaration of secession being approved by not less than 80 percent of its registered voters, whereupon it shall become a sovereign independent state in accordance with international law."<sup>23</sup> There is an immediate problem with this wording, however: Kendall and Louw suggest that secession can take place only in the event that at least 80 percent of all registered voters approve it. Were such a high percentage included in the U.S. Constitution, it is doubtful that the South would have voted to secede in the 1860s, since a large percentage of Americans choose not to vote and many Southerners

<sup>21</sup> Some commentators maintain the right to secede was taken as self-evident by the framers of the U.S. Constitution, and hence a provision providing for secession was not included. See Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence, Kans.: University Press of Kansas, 1985), p. 281; and Gottfried Dietze, *The Federalist: A Classic of Federalism and Free Government* (Baltimore: Johns Hopkins Press, 1960), p. 283. There is also the argument, prevalent before the Civil War, that the right to secede is guaranteed by the Tenth Amendment. "The right of secession is not something . . . outside of and antagonistic to the Constitution. . . . So far from being against the Constitution or incompatible with it, we contend that, if the right to secede is not prohibited to the States, and no power to prevent it expressly delegated to the United States, it remains as reserved to the States or the people, from whom all the powers of the General Government were derived." Jefferson Davis, *The Rise and Fall of the Confederate Government*, cited in H. Newcomb Morse, "The Foundations and Meaning of Secession," *Stetson Law Review* 15 (1986): p. 424.

<sup>22</sup> 610,222 American lives were lost in the American Civil War (the term "War Between the States" might be more appropriate, assuming the states had the right to secede), compared to 126,000 in World War I, and 408,300 in World War II. As a proportion of the population, U.S. Civil War deaths were even higher: 17,093 per million of the U.S. population, compared with 1,313 for World War I and 3,141 for World War II. See Theda Skocpol, *Protecting Soldiers and Mothers* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1992), p. 570. Thus, failure to include a secession provision in a constitution can be very costly.

<sup>23</sup> Kendall and Louw, *After Apartheid*, p. 217.

were opposed to secession. A more realistic provision might be to reduce the needed percentage to 70 or two-thirds and to make the relevant population that of total votes cast rather than eligible voters.

Article XVII of the Kendall and Louw Bill of Rights states that "[e]very canton and every part of a canton may, by referendum, as provided in the Constitution, break away from or amalgamate with any other canton." The referendum provision is contained in Article IV. The relevant section states:

No canton boundary may be changed, including splitting from or amalgamating with another canton, unless approved by a majority of all the registered voters directly affected thereby. If part of a canton wishes to split from an existing canton, the citizens in the remainder shall not have a vote in the referendum. But if that part is to amalgamate with or be incorporated into another canton, all the citizens of the latter shall be entitled to vote in a separate referendum.<sup>24</sup>

If the citizens thus want to form their own canton or merge with another canton, a smaller-percentage approval is needed than if they desire a total separation to form a new country. Also, the vote for a breakaway is unilateral; the canton that stands to lose population has no say in the matter. If a group of citizens wants to join an existing canton, though, both groups must approve the change. This requirement seems fair, since both groups stand to be affected by the change.

Once the right to secede is admitted, there is no logical stopping point. If a defined group such as a canton, district, or village has the right to secede, so do individuals within those political units. Neither groups nor individuals should have a government forced upon them. Government derives its authority from the consent of the governed and any government that does not have that consent is illegitimate. This view implies that no government is completely legitimate unless 100 percent of its citizens consent to be governed by it, which is extremely unlikely. Kendall and Louw offer an approach that partially gets around this dilemma. Article VI(iv) of their proposed Bill of Rights states that "[a]ny landowner or group of landowners whose land is on a boundary between cantons may opt at any time for the boundary to be adjusted so as to place such land under the jurisdiction of a neighboring canton, subject to the agree-

<sup>24</sup> *Ibid.*, pp. 218 and 215.

ment of that canton."<sup>25</sup> Individuals, then, while not being able to secede to form their own country, can secede to become part of a neighboring canton. This provision, while not going all the way to fully legitimate government, at least gives individuals a choice if they happen to live on the boundary.

While it may seem that this provision would have only a marginal effect on the behavior of government, it could be quite important. Consider, for example, the state governments of Massachusetts and New Hampshire. Taxes in Massachusetts are among the highest in the U.S. New Hampshire, on the other hand, has no individual income tax. Businesses and individuals have been moving out of Massachusetts for years because they feel they are being exploited by the government's taxing authority. What would happen if the citizens of these two states, which are contiguous, were allowed to secede along the lines of that suggested by Kendall and Louw?

In all likelihood, at least some of the individuals who live on the Massachusetts side of the border would opt to become part of New Hampshire. It is quite plausible that the New Hampshire-Massachusetts border would start moving south. But that is not the end of the matter, since Vermont, New York, Rhode Island, and Connecticut also share a border with Massachusetts. If the government officials of Massachusetts were to continue to tax their citizens excessively, the borders of Massachusetts could shrink in all directions, such that Massachusetts would cease to exist. That very possibility would place enormous pressure on the government of Massachusetts to lower its taxes. If every state had such a secession provision, it might be the case that each state cuts its taxes in the hope of attracting citizens from neighboring states, and preventing its existing citizens from entertaining thoughts of leaving.

Adopting such a provision in the U.S. Constitution seems highly unlikely, since most citizens believe the Civil War decided the issue of secession once and for all. Of course, a number of powerful special interests would be against such a proposal as well. The emerging democracies of Eastern and Central Europe, Africa, Asia, and Latin America have no such mental handicap, however. They could very easily adopt the Kendall and Louw provisions, which would be especially enticing in countries with diverse ethnic, racial, or religious populations, such as South

<sup>25</sup> *Ibid.*, p. 216.

Africa, India, Yugoslavia, and the former Soviet Union. Such a provision could prevent civil war and thousands of needless deaths.

### III. SOME PROBLEMS OF IMPLEMENTATION

Secession presents a number of practical concerns. For example, this paper advances the position that individuals have the right to secede, unilaterally, any time they want for any reason they want. Having the right to secede does not mean that it can be exercised peacefully, however. In the U.S., of course, the attempted exercise of this right in 1861 led to the deaths of more than a half-million people. Thousands were killed during the partitioning of India and Pakistan, and the secession of Croatia and Slovenia from the former Yugoslavia is also proving costly in loss of life and destruction of property. If the state from which a group is seceding does not consent, secession can be both costly and unsuccessful. There is no easy solution to this problem. The United Nations can bring diplomatic pressure to bear.<sup>26</sup> Individual nations or groups of nations can also bring political and economic pressure, through such measures as trade sanctions.<sup>27</sup> But measures such as these only serve to punish all sides to the dispute without bringing the problem to a successful resolution. There is also the problem that some nations will support the seceding faction and others will support the state being seceded from, which could serve to prolong the dispute and widen it into a regional (or worldwide) conflict.<sup>28</sup>

Part of the difficulty in applying the theory of secession is that most states do not accept the general principle that those who are dissatisfied

<sup>26</sup> U.N. actions have usually proven to be ineffective. Bangladesh is a case in point. See Buchheit, *Secession: The Legitimacy of Self-Determination*, p. 209. Besides, there is no assurance that the U.N. would side with the seceding group.

<sup>27</sup> President Bush and the European Economic Community, for example, threatened economic sanctions if Yugoslavia split up. The U.S., France, and Britain also warned that they would not recognize the Slovenian and Croatian secessions, while Germany and Austria were less adamant. Bush was also slow to support the right of the various Soviet republics to self-determination.

<sup>28</sup> In the Bangladesh secession, for example, the Soviet Union supplied arms to India while China provided support to Bangladesh. The U.S. supplied arms to both sides for a while, which enabled the combatants to carry on the struggle a bit longer than would otherwise have been the case. Buchheit, *Secession: The Legitimacy of Self-Determination*, p. 209.

with the present regime have the right to abandon it. Indeed, governments typically feel threatened when a faction in one country attempts to secede, fearing that the sentiment could spread to a portion of their own population. Even constitutional protection of the right to secede may not be sufficient. The Soviet Constitution permitted secession, yet Gorbachev sent troops to several Soviet Republics to prevent the citizens from exercising this constitutional right. If the right to secede is violated in a state that guarantees the right in its constitution, how much more difficult would it be to exercise the right in a state that does not guarantee the right?<sup>29</sup>

Another problem is how to protect the rights of groups that become minorities in the newly created states. Hindus who remain in Pakistan or Bangladesh, Moslems who remain in India, the Russian minority that remains in Lithuania, Latvia, Estonia, and other former Soviet republics, Croats who remain in Serbia, Serbs who remain in Croatia—all have less protection against the majority after secession.<sup>30</sup> A substantial minority before the secession, they are a much smaller and weaker minority after secession. The new state that is formed after secession may decide to oppress such a minority. But this is not a secession problem per se, but a human rights violation. The oppression of a minority may exist before the secession as well—that is often why a group decides to secede in the first place. Secession alone does not result in the oppression of a minority, although it may make things worse for those who stay behind. Although these remaining minority group members might actually become more oppressed after secession, it does not follow that the right to secede should be denied to those who want it. These are two separate issues.

Another concern, as Mises pointed out, is that the seceding group must be large enough to form an independent administrative unit.<sup>31</sup> But only

<sup>29</sup> Curiously, the U.S. eventually recognized the right of the Soviet republics to secede, although a previous U.S. regime (Lincoln's) denied the right to its own citizens, a fact that the Soviet leader Gorbachev pointed out on several occasions.

<sup>30</sup> One reason Serbia fought Croatia's attempt to secede is the fear that the 600,000 Serbs living in Croatia (11% of Croatia's population) will suffer discrimination. Also, Serbia does not want to lose the wealth that is in Slovenia and Croatia. One reason Slovenia and Croatia want to secede is because of the perception that their finances are being eroded by the Serb-dominated bureaucracy.

<sup>31</sup> Mises, *Liberalism*, pp. 109–10.

that group can decide what the size of this unit should be. Allowing outsiders to decide whether some group should be permitted to secede would violate the group's rights, since certain individuals might, under some circumstances, be forced to live under a regime they find abhorrent. Furthermore, the concept of an independent administrative unit assumes that a governing body must be a certain size in order to supply the services that governments should provide. But what services should a government provide? Some people want government to provide a comprehensive set of services, including cradle-to-grave welfare, free education for all, old age pensions, health care, and so forth. A government that provides comprehensive services such as these must be fairly large in order to spread the cost over a large population. The administrative unit could be much smaller if those wishing to secede do not want to carry the burden of a large administrative state. If they are content with a minimal state that protects only life, liberty, and property, the unit could be very small indeed.

Even if the administrative unit can be precisely defined, it is unlikely that everyone within that unit will want to secede. While large majorities of some of the former Soviet republics voted to secede, the vote was not unanimous. Some citizens wanted to remain part of the Soviet Union and would be worse off, in their own subjective view, if the administrative unit where they lived seceded. There is no way to resolve this problem fully. Some of those who voted in the minority can move out, but some cannot, and even those who move must suffer the costs of doing so. It would not be just, however, to prevent a majority from exercising its will to secede just because that majority constituted less than 100 percent of some relevant population. The problem inherent in any democracy is that the minority does not always get everything it wants. In a liberal state, though, minorities have equal rights with the majority.

### *Secession of Political Sub-Units*

Most treatises on secession address the issue at the national level. But secession at lower levels may also be justified on philosophical grounds. Some western counties of Virginia seceded from Virginia during the Civil War and formed a new state, West Virginia. If residents of northern California want to break away from California, or if southern New Jersey wants to break away from New Jersey, there is no reason why they should be prohibited from doing so.

Consider Staten Island, one of the five boroughs of New York City.

Staten Island residents recently felt they were being shortchanged by being part of New York City and many of them wanted to secede and form an independent City of Staten Island. A study showed that an independent City of Staten Island could be fiscally independent, projecting a 3 percent budget surplus in the first year—sufficient to eliminate the corporate and bank taxes presently levied on local businesses by New York City. An independent Staten Island could also reduce the local sales tax by one cent or lower property taxes by 10 percent, or it could hire about 500 extra police, firemen, or teachers.<sup>32</sup> One proposed method to bring about secession was by constitutional amendment:

The New York State Constitution can be amended so as to free Staten Island from New York City by the passage in both houses of the Legislature, at two separately elected legislative sessions, of a proposed constitutional amendment. The New York State Constitution provides that upon such passage, the proposed amendment must be submitted to the people (of the entire state) for approval. (Article XIX§1 New York State Constitution) If approved, such amendment shall become a part of the Constitution on the first day of January next after such approval. This procedure does not require the Governor's approval, nor does it require an act of the City Council or Mayor.<sup>33</sup>

New York State Senator Marchi introduced legislation allowing Staten Island to become an independent city and the Senate actually passed the bill, but it never became law. New York City's mayor opposed the secession move because "New York City has been a five-county federation since 1898. Each borough makes a unique contribution to the development and continued success of the City of New York."<sup>34</sup> This statement

<sup>32</sup> Elizabeth Kilbert, "Staten Island is Voting, but It's Only a Sitcom Secession," *New York Times*, March 11, 1990, p. 22E. According to one poll, 96 percent of Staten Islanders want to secede from New York City. See *Remedies of a Proud Outcast: The Legal Probability and Implications of Restructuring the Government and Boundaries of the City of New York*, New York State Senate Finance Committee Staff Report, July 1983, pp. 3 and 20.

<sup>33</sup> *Remedies of a Proud Outcast*, pp. 19–23. Other methods were state legislative action or a revision of New York City's charter.

<sup>34</sup> Memorandum in Opposition, issued by James Brenner, Legislative Representative, City of New York, Office of the Mayor, March 29, 1989. In other words, Staten Island should not be able to secede because New York City as a whole wants to exploit the resources that Staten Island has to offer.

gives no good reason at all why a dissatisfied segment of a political unit should not be able to leave and form a new political unit that is more to its liking. It is somewhat like a plantation owner telling his slaves they cannot leave because their ancestors have worked his plantation for three generations and they make a unique contribution to the development and continued success of his plantation. If Staten Island wants to secede, it should be able to, and New York City should not be able to prevent or delay the change.<sup>35</sup>

Staten Island is only one of a number of examples in which one political entity wants to secede and either form a new entity or merge with an existing entity. Residents of Greenburgh in Westchester County, New York threatened to secede because they did not want a housing project scheduled to be built for the homeless, while residents of Mount Olive Township, New Jersey wanted to secede from Warren County to protest a landfill scheduled for their town.<sup>36</sup> In another New Jersey case, some residents of Essex County wanted to break away and become part of neighboring Morris County. The desire to secede arose because the welfare system in the city of Newark (located in Essex County) did not have sufficient funds to pay for all the promises made by Newark politicians. A tax increase was needed, so a property tax increase was assessed on the citizens of Essex County, including many affluent homeowners in the suburbs who could not vote in the Newark city elections. In many cases, their annual property taxes increased by more than \$1,000. At least one Essex County politician who advocated the increase was voted out of office at the next election, but the tax increase was not repealed. Had these disgruntled taxpayers been able to join Morris County, they could have avoided being exploited by the Newark politicians who did not represent their interests.

#### *Secession as a Tool to Restrain Government Excesses*

Balanced budget amendments, line-item vetos, and term limits can be used as tools to restrain government excesses. So can the threat of seces-

<sup>35</sup> Admittedly, the analogy of slaves and a plantation owner is not perfect. The plantation owner owns the land, so the slaves would have to vacate the premises, whereas Staten Island residents would not have to move because they already own or rent the land they are on.

<sup>36</sup> Kilbert, "Staten Island Is Voting."

sion. If politicians know that a portion of their constituency can leave, they will be less likely to neglect their needs. More importantly, citizens will have a choice. They will no longer have to move if they do not like their local, county, or state government. They will be able to change their political affiliation by seceding, just as West Virginia did during the Civil War.<sup>37</sup>

One way to protect this right is by Constitutional amendment. Such an amendment should be clearly worded, so the procedures for secession are clear, and it should be unilateral—the segment of the population seceding should not have to ask anyone's permission. Kendall and Louw have proposed such a solution for post-apartheid South Africa; if a political sub-unit wants to break away and form its own state (canton), it may do so without the permission of the state it plans to leave. But if the political sub-unit of one state wants to become part of another state, both groups must approve.

What is the smallest political unit that can secede? Theoretically, as discussed above, the smallest unit that can secede is an individual. Any other answer results in injustice to anyone who is forced to be part of a political affiliation he does not wish to be a part of. The chances of passing a constitutional amendment allowing for individual secession are of course slim. Kendall and Louw have found a partial solution to this dilemma, by allowing "any landowner or group of landowners whose land is on a boundary" to secede and join the political unit that is across the street.<sup>38</sup> Allowing individuals to secede and join another city, county, or state could lead to some interesting results, by the way. If some businesses on the New York City side of the Hudson River felt they were being overtaxed, they could secede and become part of New Jersey, where taxes are lower. Thus, their property would become within the borders of New Jersey. Once they became part of New Jersey, their neighbor's property would be on the New Jersey border, and the neighbor would have the same option. All the Broadway theaters in New York City could become part of New Jersey in a very short time, since they are all on the west side of New York, just a few blocks from the Hudson

<sup>37</sup> To be precise, the citizens of West Virginia seceded from Virginia not because they felt exploited by Virginia, but because they supported the Union rather than the Confederacy.

<sup>38</sup> Kendall and Louw, *After Apartheid*, p. 216.

River. Theater owners would benefit by the move because their property- and income-tax bills would be cut. The market value of their property also would likely increase, since property that is located in a low property and income tax area is more desirable than property in a high-tax area, all other things equal. But New York residents would also benefit because the theaters would be able to charge (lower) New Jersey sales taxes on the tickets they sell.

#### IV. CONCLUSION

The theory of secession has come alive in recent months with the secession of the former Soviet republics and the break-up of the Soviet Union. Secession, however, while acting as a release valve to relieve political pressure, is not a perfect solution that can be used to resolve all cases where one group does not like its present system of government and cannot change that form through the ballot box. One of the major problems is how to protect the rights of dispersed minorities who are left behind when a concentrated group of their compatriots secedes. Of course, in a liberal state, the rights of all are protected equally regardless of minority or majority status. But not all states are liberal states.

The Kendall and Louw solution makes it possible to carry secession down to very low levels, but this solution only applies to parties who live on the border, doing nothing to resolve the problem of groups that are dispersed. These individuals must either remain content with the present regime or vote with their feet, if they can. By permitting individuals on the border to secede, however, the Kendall and Louw solution also acts as a restraint on the incumbent regime, which cannot get too far out of line with the wants and needs of its citizens without risking the real possibility of having its territory shrink. This solution can be used by any regime with a diverse population. Yugoslavia is one of the best examples, since its population has many of the same political cleavages as Switzerland. Under a Kendall and Louw-type solution, Slovenia, Croatia, Bosnia-Herzegovina, Serbia, Macedonia, Vojvodina, Kosovo, and Montenegro would all start as separate cantons. Any citizen living on a border (or a business establishment on the border) may then decide to join a neighboring canton. This would go a long way toward solving the problem of the disputed territory that Serbia took from Croatia when the federal troops were sent into Croatia. It could also be expanded to include the possibility that individuals on the border of a foreign country

(the former Yugoslavia is bordered by Italy, Austria, Hungary, Rumania, Bulgaria, Greece, and Albania) could elect to secede from their canton and join the foreign country that is across the street.

Yugoslavia has many pockets of concentrated minorities who do not stand to gain much from the Kendall and Louw border option because they are enclaves within one of the Yugoslavian republics. Why should they not be able to become part of another Yugoslav republic, or even of a foreign country that borders Yugoslavia? What difference does it make that they are not on a border? If Hawaii and Alaska can join the U.S., although separated from the contiguous states by many hundreds or even thousands of miles, could an enclave of Albanians not become part of Albania, or an enclave of Bulgarians become part of Bulgaria? As long as there is free movement of people and goods, the fact that the different parts of Albania might be separated by a few miles of Yugoslavia should be no problem at all. That is better than being separated by hundreds of miles of India, which was the case when East and West Pakistan seceded from India.

A number of other problems with secession remain, and some of them are not easily solved. If the state you want to leave does not want you to go, the results can be bloody. The fact that the right to secede might be guaranteed in the constitution does not necessarily mean that the right will be respected. There is also the question of individual secession. Unless there were free and open borders between sovereign nations, the possible trade and tariff barriers that would result from such small states would have an adverse effect on the standard of living. Furthermore, with an administrative unit that consists of a single individual or family, there would be no way to distribute the cost of social problems among other taxpayers. Any individual who decided to secede would have to be self-supporting, because there would be no one to pay for the services they want but themselves.