

HOW DO STATES RESPOND TO SECESSION? THE DYNAMICS OF STATE RECOGNITION

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The leaders of independence movements often imagine a smooth transition to a new regime and political community. Noting irreconcilable differences with the existing government, they argue that they have exhausted the potential remedies to their grievances within the normal political system. Convinced that justice and self-determination are best served by creating a newly independent country whose political boundaries align with those of their nation, they assert that a popular referendum or a more representative regional body's vote will vindicate their claim to authority and convince the rest of the country to concede. In recent years, a so-called "velvet divorce", similar to Czechoslovakia's disintegration, approximates their ideal scenario. Unfortunately, the reality facing these movements is rarely so straightforward, uncontested, non-violent, or contained.

In secession, difficult matters of democracy and political community are at stake.¹ Is a referendum on independence that includes only those within the territory hoping to secede truly democratic? Why shouldn't the rest of the country be invited to decide whether its political community is irreparably broken? How should the choice be put before the population? Is it true that the secessionist minority has been without the opportunity to exercise greater self-governance? Are other, similar groups afforded greater or fewer special rights, more or less autonomy? What is the bar for a remedial right to independence? How extreme must the government's oppression be? Or does democracy's purest form require letting go of any regional sub-group that does not wish to remain? Should there be a waiting period or viability test attendant to an independence demand? What if the region's independence imperils the economy or security of those remaining behind or that of its neighbours? None of these questions have easy answers. This is, in part, why so few countries have established a right of secession or outlined its procedures as a matter of domestic law.

Most governments will not consider secession, or even referendums on independence, unless they are legally bound to do so.² Today, only around a dozen countries (out of approximately 194) have a potential legal means to secession – at least for particular groups, peoples, or regions.³ Most have "constitutionalised" secession this way

1. Just a couple of terrific, comprehensive volumes engaging with these normative and political questions include Stephen Macedo and Allen Buchanan's 2003 edited volume, *Secession and Self-Determination* and Aleksandar Pavkovic and Peter Radan's 2011 edited volume *The Ashgate Research Companion to Secession*.
2. The Canadian government, in response to the provincial referendum on Quebecois independence in October 1995, is believed to be the first democratic country to test the legal terms of its own dissolution in advance. <http://www.nytimes.com/1998/08/21/world/canadian-court-rules-quebec-can-not-secede-on-its-own.html>.
3. Not all have formally legalised secession by making it a part of their countries' constitutions. Some have agreed to it as a matter of law as a result of post-war bargains or made informal arrangements with particular separatist groups. For a list of laws within constitutions see <https://www.constituteproject.org>.

as a response to the country's history of violent subjugation of particular groups, providing them with an exit clause as a security guarantee to assure their continued allegiance to the polity. In those places where a clear, constitutionalised right to independence exists, the standard for popular support is set high. For example, the Ukrainian constitution's Article 73 requires that all alterations to its territory be resolved by an "all-Ukrainian referendum".⁴ In another handful of cases where governments have been willing to entertain non-binding votes on independence, the ultimate process by which secession might occur often remains unspecified. Emblematically, the Canadian Supreme Court ruled in 1998 that a "clear majority" on a "clear question" was prerequisite to the rest of Canada's sincere consideration of Quebec's independence. The government has not provided explicit standards or steps by which the province's ultimate independence might be won.⁵ In still other countries, rights to independence on paper either cannot be meaningfully realised in practice, as was the case in the former Soviet Union, or they are outlawed entirely, as is the case for Taiwan in the People's Republic of China.⁶

It is normatively sub-optimal if only those countries with legal permission have the potential to win external legitimacy and new statehood. Those countries most willing to allow their citizens to vote on independence and ultimately permit it are those where secession as a remedy to truly abhorrent governance is hardly necessary. The nations that could successfully pursue independence would be restricted to those who, globally speaking, do not need it (at least insofar as their basic national survival and popular health and well-being are concerned). But in any case, even the vast majority of law-bound, democratic countries have no such laws. Encouragingly, in the absence of domestic law, when a solution short of independence or an amicable divorce can be negotiated between secessionists and their government, the international community rarely objects.⁷

When secessionist challenges cannot be handled peacefully within the contested state, they become more complex and the international community becomes more influential. This is the modal secession in the 20th century. For many countries, the potential loss of people, territory, resources, status, or other advantages coincident with independence makes it an unfathomable political outcome. Leaders deem their territories to be indivisible, contest independence, and routinely repress secessionists and the wider population from which their support is drawn.

In order for any new country to gain membership of the international community – every secessionist movement's ultimate goal – it must secure the recognition of an overwhelming majority of its peers and, especially, the powerful and influential among them.⁸ But international law is largely silent when it comes to secession when new independence does not concern former colonial or non-self-governing territories.⁹ As a result, the existing members of the international community are without legal guidance about whether and when to grant formal recognition to a new peer (and revoke it from the embattled government) in contested cases. They must use other logics and norms and somehow coordinate their responses in order to minimise disruption among the members of the wider international community.¹⁰

4. Constitution of Ukraine (1996) https://www.constituteproject.org/constitution/Ukraine_2014?lang=en.
5. Canadian Supreme Court ruling (August 20, 1998) <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do>.
6. According to Hu Jintao's Presidential Decree #34, and adopted by the Third Session of the Tenth National People's Congress in 2005. The Anti-Secession Law also explicitly threatens "non-peaceful means" should an independence demand be made. The full text of the law can be found at the PRC's American Embassy website here: <http://www.china-embassy.org/eng/zt/999999999/t187406.htm>. It is also generally agreed that a state's unilateral secession from the United States is illegal due to legal precedents including the US Supreme Court's decision in *Texas v. White*, 74 U.S. 700 (1869).
7. Though rare, this did occur when South Africa attempted to create "independence" for its Bantu homelands under the apartheid system. No countries other than South Africa recognised them as legitimate states.
8. The strongest states in the international system, currently the United States, United Kingdom, France, China, and Russia, are bellwethers of the community norms and serve as focal points around which other countries can coordinate their recognition. These countries' institutional role as permanent members of the United Nations Security Council makes them particularly influential.
9. For the United Nations list of current and previous non-self-governing territories see: <http://www.un.org/en/decolonization/nonselfgovterritories.shtml>.
10. Territories with overlapping claims to sovereignty including Kashmir and Palestine have been historical flashpoints for international wars. And everything from high finance to physical border crossings is made more difficult when sovereign authority is ambiguous.

Given this conundrum, it might be surprising that new countries emerge following unilateral demands for independence at all. But in fact, between 1931 and 2002, approximately two-thirds of those demanding independence ultimately achieved it.¹¹ It was not simple, of course. Those successes were often hard won, evolving tactically, advancing in fits and starts, inspiring large social movements, usually violence, and often enduring for years before winning independence. Yet the standard for external recognition was also not usually so high that it required full de facto control and authority first. Some secessionist movements did “win” their independence by fighting a war and decisively defeating their governments on the battlefield. More often, though, new statehood was won through some combination of domestic violence and international politics and persuasion short of full-scale war.¹²

So what *does* influence external recognition? First, the intrinsic characteristics of the secessionist region often matter to the international community. For example, independence is less likely to be recognised when the proposed territory crosses the boundaries of several countries or when the territory does not already exist as an organised territorial unit. It would be more likely that Texas be recognised as independent than a disorganised region such as “the west coast” in the US case. This is probably because externalising internal borders seems to offer the promise of a less disruptive break. Unfortunately, this principle, known as *uti possidetis*, has most recently been used when an entire country dissolves into its constituent parts, as in the former Soviet Union and former Yugoslavia. Additionally, some historical unit characteristics that once influenced external support are unlikely to do so in the future. Claims to independence along the boundaries of a former colonial unit once made recognition more likely, but because formal colonialism is unlikely to return, this will not be the case going forward.

International politics are usually a more important determinant of external recognition, and better explain recognition’s timing, than do unit characteristics. Specifically, when other countries are convinced that a new state will improve their lot, then its admission into the exclusive international fraternity of states is much more likely. When states believe that a new state will weaken their enemies, strengthen themselves and their friends, or otherwise generate positive security consequences, they will more likely prefer its independence. When influential states have their own challengers or potential challengers at home, even if they are quite strong, they are unlikely to offer their overt support for fear of signalling support for secession to their own domestic audience. These considerations have been particularly important to Russia and China in recent years. And when the strongest states in the system are concerned that their peers will ostracise them or otherwise oppose their support for any new member, they often defer to the status quo to assure international stability. For every potential factor influencing a given country’s preference for or against a secessionist movement, the critical factor influencing whether membership and legitimacy are ultimately granted is coordination among strong states. When they align in favour or against a given secessionist movement, their position is decisive. Only when the powerful cannot agree do the politics on the ground within the contested country decide.

11. Coggins, Bridget. 2011. “Friends in High Places: International Politics and the Emergence of States from Secessionism” *International Organization*. 65:3, 438.

12. Coggins, Bridget. 2014. *Power Politics and State Formation in the Twentieth Century: The Dynamics of Recognition*. Cambridge: Cambridge University Press.

Normative arguments about justice, human rights, or self-determination are not entirely unimportant, but they matter because the leaders of powerful countries think that they ought to. Further, it is practically difficult to disentangle whether the United States favours a given secessionist movement because it is firmly committed to democratic principles of government (norm) or because it is demanding independence from a security challenger that happens to be authoritarian (interest). On balance, though, outside states' responses to crises of secession have more to do with their own politics than they do laws, norms, or the good of the people within the contested country.

In sum, the outcome of any unilateral bid for secession is difficult to know with any certainty in advance. But looking to influential states' parochial preferences and their preference alignment vis-à-vis the others will usually be instructive. Furthermore, external politics are dynamic. Outside states' interests can change, and with those changes so does the potential for recognition. Regimes with different preferences may rise or fall. Home governments can and do fall too, changing their relationships with the outside world. Secessionist leaders gain and lose support or are sometimes replaced, killed, or die during the struggle. This too may change a movement's fortunes as their tactics or strategy change or as new relationships across international boundaries are forged. Finally, both secessionists and their governments can actively lobby outsiders and sometimes do convince them to come around to their way of thinking regarding independence.