

# Secession, states and international society

HUDSON MEADWELL

**Abstract.** This article traces the evolution of the political meaning of secession from an action taken by a state within a compact or union, to an action available to a nation within a state. It is argued that this evolution, often forgotten in the customary attention given to national self-determination in international law and international relations theory, is associated not only with the modern emergence of nations and of states, but also with the emerging importance of the United States in international affairs at the turn of the twentieth century. The article puts the phenomenon of secession, currently dominated by attention to the Balkans, in a broader context by examining features of four cases: the American South, the Irish Free State, Bangladesh and Quebec.

## **Introduction**

Secession was once associated with states as a state's right. It is now associated with nations or peoples, and it is often defended as a right of self-determination. The purpose of this article is to examine this historical shift from the state to the nation and its consequences in international society.

I do not discuss those cases of new state-formation via imperial collapse and ethnic war in the Soviet bloc that have dominated our recent attention. Indeed I want to draw attention to other features of secession that are likely to be missed if our focus is only the Balkans, for example. The following analysis focuses on four cases. The first case is the secession of the American South. The American case is an appropriate place to begin because it is here that secession took on the political connotations associated with state's rights. Further, it was American leadership in particular that contributed to the entrenchment of the principle of national self-determination in customary international law after World War II. The second case that is examined is the formation of the Irish Free State. Here, I look at how Lloyd George and Eamon de Valera used the emergent political conventions associated with the concept of secession to defend their respective positions. The third case is the formation of Bangladesh, a case of importance because it has been described as the only pure instance of secession since 1945. And the fourth case is Quebec, where a nationalist justification for new state-formation—the principle of national self-determination—has political appeal, in part, because Quebec is already an embryonic state. The territorial decentralization of Canada is so deep, in other words, that it encourages Québécois nationalists to argue that Canada is no more than a union—which is the form of political association presupposed by state's rights.

In all four of these cases, the languages of justification varied. The American South introduced an interpretation of secession, tied to a compact theory of union, that had lasting effects. Amongst Irish republicans, this interpretation of secession was joined to a different description of the political status of Ireland. Bangladesh was probably the most prominent of the cases of secession that, unlike earlier cases such as Ireland, could be discussed within the framework of customary international law. In Quebec, a compact theory has been joined to the principle of national self-determination in order to justify the secession of Quebec. Canada is a federal state, and a compact theory still has an affinity with federal states. The right of self-determination is used to supplement a compact theory. To invoke the right of self-determination of peoples is to set the issue of Quebec secession more squarely within current customary international law. In drawing on this justification, nationalists broaden the scope of their appeals, so much so that aboriginal populations within Quebec have been able to hoist the nationalists by their own argument.<sup>1</sup> A compact theory could not be used by aboriginal groups in this way, but a compact theory can lose its salience the greater the historical distance from the founding moment of the political association in question. The right of self-determination, in contrast, has greater immediacy and potentially greater scope, but this is also why it can be taken up by aboriginals.

In these cases, along with differences in vocabularies of justification, secession varies with patterns of state rationalization—that is with how order is supplied over geographic areas. If my focus is not the breakup of the Soviet Union, nor of Yugoslavia, I do wish to pick up one thread of current work on this part of the world by situating secession within the context of issues relating to security. The realist core of conventional theories of state-formation, which are based on the distinction between domestic hierarchy and interstate anarchy, has been extended to the analysis of inter-ethnic relations in the context of the collapse of the USSR. Ethnic anarchy, it is argued, contributes to strategic dilemmas (information failures and problems of credible commitment) which, when not resolved, cause security dilemmas.<sup>2</sup> States in anarchy are dependent on self-help for their security and may choose to go to war now, if they fear defeat in the future—that is, if they see an advantage in the preemptive use of force. By analogy, a security dilemma produced by state collapse makes the use of force between ethnic groups more likely, first of all, and, second, induces these groups to become states.

The four cases that form the focus of the paper are, for the most part, subject to different dynamics. Thus, these cases are examined from two points of view. First, how are the political conventions surrounding the concept of secession used by political actors, particularly in the cases of the American South and Ireland? Second, is the likelihood of secession influenced by patterns of state rationalization, more particularly by the degree of hierarchy built into earlier moments of state-building and consolidation?

<sup>1</sup> See *Sovereign Injustice. Forcible Inclusion of the James Bay Cree and Cree Territory into a Sovereign Québec* (Nemaska, Quebec: Grand Council of the Crees, 1995).

<sup>2</sup> See David A. Lake and Donald Rothchild (ed.) *Ethnic Fears and Global Engagement: The International Spread and Management of Ethnic Conflict* (Princeton, NJ: Princeton University Press, 1998).

## The United States and the Civil War

The concept of secession was used extensively within the South in the run-up to the Civil War.<sup>3</sup> The arguments that were used to underpin this right had a longer history in American politics, however.<sup>4</sup> Vermont and Kentucky had threatened to separate from the Confederation, and establish independent governments or make alliances with foreign powers.<sup>5</sup> This was one kind of forerunner to the secessionist movement in the South. Another was the Kentucky and Virginia Resolutions, written by Jefferson and Madison respectively in 1798. In these documents, the authors viewed the constitution as a compact among states that had been violated by federal legislation (the Alien and Sedition Acts).<sup>6</sup> The Resolutions were invoked in the nullification debates around the issue of tariffs in 1828 and 1832 in South Carolina,<sup>7</sup> and a new edition of the Resolutions was published in 1859. Whether justifiable or not, particularly in the case of Madison, the Resolutions were used in elaborating the constitutional doctrine—states rights—because of the compact theory of the Union that both Madison and Jefferson propounded in them.<sup>8</sup> The New England Federalists also had considered separation as a way of avoiding Democratic domination after the election of 1801.<sup>9</sup> Other states in the North, moreover, had used nullification to contest the Slavery Act.<sup>10</sup> The American state was still in formation. Its boundaries were fluid and changing as it expanded. The political recourse to withdrawal, or the threat of it at times after partisan defeat, was consistent with the early history of the Republic and was the consequence of a political society that in its origins was anti-statist.

The political goal of the American founding was to institute a new political regime without a state. Its institutional arrangements have been described as the ‘Philadelphian system’<sup>11</sup> to mark off its differences from European states that emerged from the Westphalian system. One of the relevant consequences of this

<sup>3</sup> See Dwight Lowell Dumond, *The Secession Movement 1800–1861* (New York: Macmillan, 1931) *passim*; and David M. Potter, *Lincoln and His Party in the Secession Crisis* (New Haven, CT: Yale University Press, 1942), pp. 1–19.

<sup>4</sup> For an overview, see Calvin R. Massey, ‘The Locus of Sovereignty: Judicial Review, Legislative Supremacy, and Federalism in the Constitutional Traditions of Canada and the United States’, *Duke Law Journal*, 40 (1990), pp. 1242–56.

<sup>5</sup> Fletcher M. Green, ‘Right of Secession’, *Dictionary of American History* (New York: Charles Scribner’s Sons, 1976[1940]), p. 250.

<sup>6</sup> Stanley Elkins and Eric McKittrick, *The Age of Federalism: The Early American Republic, 1788–1800* (New York: Oxford University Press, 1993), p. 719.

<sup>7</sup> William W. Freehling, *Prelude to Civil War: The Nullification Controversy in South Carolina, 1816–1836* (New York: Oxford University Press, 1992 [1966]).

<sup>8</sup> Merrill D. Peterson, *The Jeffersonian Image in the American Mind* (New York: Oxford University Press, 1960), p. 213. For the Virginia Resolutions, see James Madison, *The Papers of James Madison* (Charlottesville, VA: University Press of Virginia, 1991), vol. 17, pp. 188–90; Thomas Jefferson, ‘Draft of the Kentucky Resolutions’, *Thomas Jefferson: Writings* (New York: Literary Classics of the United States, 1984), pp. 449–56.

<sup>9</sup> Green, ‘Right of Secession’, p. 250.

<sup>10</sup> Lawrence Tyndale Lowery, ‘Northern Opinion of Approaching Secession, October, 1859–November, 1860’, *Smith College Studies in History*, 3 ([4, 1918] 1918), p. 193; Kenneth M. Stamp, *And the War Came. The North and the Secession Crisis, 1860–1861* (Baton Rouge, LA: Louisiana State University Press, 1950), pp. 4–5.

<sup>11</sup> See Daniel H. Deudney, ‘The Philadelphian System: Sovereignty, Arms Control, and Balance of Power in the American States-union, circa 1787–1861’, *International Organization*, 49 (Spring, 1995), pp. 191–228.

difference was aptly described in the late 1850s by a French-Canadian observer, who was considering the political arrangements that a union of British North America might take and who, not surprisingly, was preoccupied with the American model. In commenting on the federal structure of the American union, he argued, 'Any state constituted on the principle of the United States of America would, in Europe, be annihilated more easily than Poland, or would be, as the states of the Germanic Confederation now are, alternately the property of one or the other of the Great Powers in which that principle of unity forms an essential component . . .'<sup>12</sup>

In making this point, Cauchon was pointing to the implications of domestic structure for security dilemmas and *vice versa*. He was also implicitly holding size constant. The United States was not only more decentralized than the modal European state, it was also larger. In terms of size, the relevant comparison would have been between the United States and European empires. He was really arguing two points. The first point was that the modal European state had to be unitary. Second, a unit in Europe as large territorially as the United States would have to be an empire or be broken down into a larger number of smaller unitary states. An extensive republic would have been unstable, and either evolved into an imperial unit organized around a hegemonic core, or into a larger number of Westphalian states. The American regime had been explicitly designed in order to mark off a distinctive institutional path. Republican arrangements could be more easily instantiated in its institutions than in Europe because the United States was not immediately hemmed in by the imperatives of industrialization or military competition from technologically comparable societies.

The Revolution in the colonies, moreover, was not nationalist. 'The dissident colonists had come to look on the British monarchy and aristocracy as "foreigners", not because they were British; rather, because they were monarchic and aristocratic'.<sup>13</sup> Nor did secession in the American case depend on nationalism, even if Jefferson Davis tried to infuse the war between the states, once it was underway, with a nationalist rationale.<sup>14</sup>

National self-determination did not need to be invented. Rather, states-rights provided a constitutional justification for the self-government of a household economy. Slavery was essential in a true republic, it was argued, a republic governed by relations between masters and dependents, including not only slaves, but poor white men, and women as well. The southern revolution was made by South Carolina patriarchs who needed disunion in order to preserve paternalistic governance,<sup>15</sup> once the ability of Southern representatives and leaders to control majoritarian institutions was weakened through partisan realignment, who used the doctrine of states-rights to make their constitutional case, and who engineered a strategy of sequential withdrawal from the Union, a strategy that forced other

<sup>12</sup> Joseph Cauchon, *The Union of British North America* (Quebec: Hunter Rose 1865), p. 36.

<sup>13</sup> Samuel H. Beer, *To Make A Nation. The Rediscovery of American Federalism* (Cambridge, MA: Belknap Press of Harvard University Press, 1993), p. 135.

<sup>14</sup> Paul D. Escott, *After Secession: Jefferson Davis and the Failure of Confederate Nationalism* (Baton Rouge, LA: Louisiana State University Press, 1978). See also John McCardwell, *The Idea of a Southern Nation: Southern Nationalists and Southern Nationalism, 1830–1860* (New York: Norton, 1979).

<sup>15</sup> William W. Freehling, *The Reintegration of American History* (New York: Oxford University Press, 1994), p. 136.

southerners to decide, not whether to support secession, but whether to fire at fellow Southerners.<sup>16</sup>

The understanding of secession as a state's right has been modified by two important trends in international society, associated respectively with nations and states. One was the emergence of the modern concept of nation, and the later development of the principle of political legitimacy of national self-determination after Versailles. National self-determination was not simply an emergent property of European political development. It was crystallized as a political principle from outside Europe by Wilson. The normative principle of self-determination subsequently passed into customary international law through Roosevelt's Four Freedoms speech of 1941 and the Atlantic Charter of the same year, which was appended to the 1942 Declaration of the United Nations.<sup>17</sup>

When the Americans entered the War, Wilson sought to construct a foreign policy that would not be based on the tradition of *realpolitik*, and that would express the exceptionalism of America. 'The history of the United States', he wrote, 'is modern history in broad and open analysis, stripped of a thousand elements which, upon the European stage, confuse the eye and lead the judgement astray'.<sup>18</sup> If in 1897, Wilson had commented that the nation was 'unfinished, unharmonized, waiting still to have its parts adjusted',<sup>19</sup> he wrote four years later that '[a] nation hitherto wholly devoted to domestic development now finds its first task roughly finished and turns about to look curiously into the tasks of the great world at large, seeking its special part and place of power'.<sup>20</sup> The principle of the self-determination of peoples was intended to contribute to this distinctive basis for American leadership and foreign policy. In questioning the balance of power, and its presupposition of interstate anarchy and self-help, Wilson used the principle of self-determination to support the position that interstate war was associated with the distribution of types of domestic political regimes. His liberalism was closely tied to the belief that American power had a special character. This distinguished his interest in self-determination from the support given by English liberals, gathered around the journal *The New Europe*, who were influential in British planning for the peace. The 'New Europe' group believed that national states would be more durable and cohesive, and this would make it easier for Britain to fulfill its role in the European balance of power. National states could still be security threats.<sup>21</sup>

As carried forward by Wilson, the principle of national self-determination had its origins in American political culture—through a reworking of the tradition of state-rights, a tradition which had roots in Wilson's Virginia background.<sup>22</sup> Wilson had conceded that the commonwealths of 1774 were states, and states they remained

<sup>16</sup> Dwight Lowell Dumond, *The Secession Movement*, pp. 134–5; Freehling, *The Reintegration*, p. 116.

<sup>17</sup> Edward A. Laing, 'The Norm of Self-determination, 1941–1991', *California Western International Law Journal*, 22 (1992), pp. 209–307.

<sup>18</sup> 'The Significance of American History', *The Papers of Woodrow Wilson* (Princeton, NJ: Princeton University Press, 1966), vol. 12, p. 180.

<sup>19</sup> Woodrow Wilson, 'The Making of the Nation', *Atlantic Monthly* LXXX (1897), p. 10.

<sup>20</sup> 'The Significance of American History', p. 184.

<sup>21</sup> Erik Goldstein, *Winning the Peace: British Diplomatic Strategy, Peace Planning, and the Paris Peace Conference, 1916–1920*. (Oxford: Clarendon Press, 1991), pp. 125–6.

<sup>22</sup> John Patrick Diggins, *Max Weber: Politics and the Spirit of Tragedy*, (New York: Basic Books, 1996), p. 201. See also Woodrow Wilson, 'State Rights', *Cambridge Modern History* (London: Macmillan, 1903), vol. 7, pp. 405–42.

after they entered the union of 1789.<sup>23</sup> He further allowed that ‘... the right of secession may have existed (theoretically) at the first’ (i.e. the first years of the century).<sup>24</sup> But, he further argued, the right of secession ‘did not exist at the time the South sought to exercise it.’ This right had ‘ceased to exist by reason of the growth of national sentiment’.<sup>25</sup> The principle for which the South fought was retrograde, and ‘protected a belated order of society’. The victory of the North freed the American nation from internal contradictions,<sup>26</sup> and preserved the territorial integrity of the American Union. The secession of the South could not, in this view, be justified by a principle of national self-determination. The refusal of the national government to accept the withdrawal of the South, and the decision to protect the integrity of the Union, were quite consistent with a principle of national self-determination. Self-determination established internal sovereignty. National self-determination in America thus was associated with the extension and consolidation of liberal republicanism. There was no contradiction in nineteenth century America between national self-determination and territorial integrity. National self-determination trumped territorial integrity only in specific contexts: when peoples were enslaved by autocratic rulers. Territorial integrity and self-determination were separated, and potentially in conflict, outside America—particularly in the old world because of the continuing importance of imperial relations and autocratic rule within it.

The second important change in international society was the consolidation of the state as the dominant form of political organization. Self-determination has come to be associated with statehood. It is typically assumed that secession and nationalism are intrinsically connected on the assumption that secession is caused by nationalism and that secession is the purest expression of nationalism.<sup>27</sup> Secession is not thought to arise only within unions or federations. The structure of international society became simpler. Federative and incorporating unions became states.<sup>28</sup> There is no presumption in customary international law that a right to self-determination entails a right to secede. The extension of the state system instead has made presumptive the territorial integrity of the state. The resistance to secession in international society can be seen in the declarations of the United Nations in the 1960s and the 1970s, and in the hostility toward Katanga and Biafra in the 1960s.

## **Ireland**

One place where the political use of the concept of secession continued to be influenced by the conventions of the antebellum debate and the association of

<sup>23</sup> Woodrow Wilson, ‘A Review of *A System of Political Science and Constitutional Law*’, *Atlantic Monthly* LXVII (1891), p. 698.

<sup>24</sup> Letter to William Henry Bartlett [draft], May 3, 1893. *The Papers of Woodrow Wilson*, vol. 8, p. 206.

<sup>25</sup> *Ibid.*, p. 206.

<sup>26</sup> Wilson, ‘State Rights’, p. 442.

<sup>27</sup> For a clear statement see the discussion in James Mayall, *Nationalism and International Society* (Cambridge and New York: Cambridge University Press 1990), pp. 61–3.

<sup>28</sup> On unions, see John Robertson, ‘Empire and Union: Two Concepts of the Early Modern European Political Order’, in John Robertson (ed.), *A Union For Empire. Political Thought and the British Union of 1707* (Cambridge: Cambridge University Press, 1995).

secession with state rights, was Ireland, another was Western Australia.<sup>29</sup> In the latter case, Australian federal institutions provided the linkage back to the compact theory of secession. Ireland was the more important case because it turned also on an argument about colonialism, modifying the (to this point) conventional usage of the concept of secession. In this case, secession was used to describe only a part of the process of withdrawal from the United Kingdom, in order to mark off the status of Ireland before the Anglo-Irish Treaty of 1921.

The Irish case is important because of Ireland's status as both 'kingdom and colony',<sup>30</sup> as a part of the British metropole that retained quasi-colonial arrangements, a form of political integration that gave it representation in the House of Commons after the Act of Union of 1801, while maintaining at the same time a colonial relationship more characteristic of Britain's relations with its overseas colonies than with the rest of its metropole. In the 1920s, Great Britain without Ireland was imaginable to the English precisely because Ireland could be seen as a colony, rather than as a constitutive part of the metropole.<sup>31</sup> Recall also that Ireland was the one part of the 'Celtic fringe'<sup>32</sup> that fit the model of internal colonialism.

'Ostensibly the union was a junction of kingdoms . . . the Act of Union had reduced Ireland to a geographical expression within the United Kingdom. But its separate government system restored it *sub rosa* to provinciality or colonyhood'.<sup>33</sup> The Union had come about for reasons of security; Ireland was the vulnerable flank of the British Isles.<sup>34</sup> The Act of Union was passed three years after the uprising of the United Irishmen and it left untouched the Viceroyalty.<sup>35</sup> Pitt began to give serious consideration to Anglo-Irish Union in June 1798, only days after the Lord Lieutenant in Ireland urgently requested a special convoy of British troops in anticipation of a landing by the French.<sup>36</sup> The Viceroyalty (the office of the Lord Lieutenant) was maintained after Union as the best institutional mechanism, after the abolition of the Irish parliament, with which to police Ireland. Ireland could have been administered by a Secretary of State by the early 1820s, if the country had not been continuously threatened by disorder.<sup>37</sup> However, the Lord-Lieutenant, with discretionary powers including control of the army, could better police Ireland that

<sup>29</sup> Greg A. Craven, *Secession: The Ultimate States Right* (Carlton, Victoria: Melbourne University Press, 1985).

<sup>30</sup> Nicholas Canny, *Kingdom and Colony. Ireland in the Atlantic World, 1560–1800* (Baltimore and London: Johns Hopkins University Press, 1988).

<sup>31</sup> Ian S. Lustick, *Unsettled States, Disputed Lands* (Ithaca, NY: Cornell University Press, 1993).

<sup>32</sup> Michael Hechter, *Internal Colonialism* (Berkeley and Los Angeles: University of California Press, 1972).

<sup>33</sup> Oliver Macdonagh, *States of Mind: Two Centuries of Anglo-Irish Conflict, 1780–1980* (London: Allen and Unwin, 1983), p. 52.

<sup>34</sup> R. B. Macdowell, *Ireland in the Age of Imperialism and Revolution 1760–1801* (Oxford and New York: Oxford University Press, 1979), p. 685.

<sup>35</sup> On the rebellion, see Thomas Pakenham, *The Year of Liberty: The History of the Great Irish Rebellion of 1798*, paperback edn (London: Hodder and Stoughton, 1992 [1969]); Marianne Elliott, *Partners in Revolution: The United Irishmen and France* (New Haven, CN: Yale University Press, 1982). See also Joseph R. Fisher *The End of the Irish Parliament* (London: Edward Arnold, 1911), p. 309.

<sup>36</sup> G. C. Bolton, *The Passing of the Irish Act of Union: A Study in Parliamentary Politics* (Oxford: Oxford University Press, 1966), pp. 53–4.

<sup>37</sup> Alan J. Ward, *The Irish Constitutional Tradition. Responsible Government and Modern Ireland, 1782–1992* (Washington, DC: Catholic University Press, 1994), p. 32.

a Secretary of State operating from London.<sup>38</sup> There was a security rationale from the British point of view for the incorporation of Ireland, yet that same rationale required a continuing quasi-colonial form of administration. Securing this flank of the British Isles required maintaining domestic order in a population that had made common cause with the French. The continuation of the executive also allowed the Anglo-Irish gentry, essentially a colonial oligarchy, to place their sons in public employment in Ireland.<sup>39</sup>

The abolition of the executive was introduced, but abandoned, in 1850 by Lord Russell when it was opposed by the Tories in the House of Lords because of their interest in retaining a Lord Lieutenant with the command of the army. Moves to abolish the executive were also defeated in 1857 and again in 1858. It was not until the 1880s, and Gladstone's support for Home Rule, that a new role was defined for the Lord Lieutenant as the formal head of a responsible Irish executive.<sup>40</sup> Irish governance thus lagged even behind other parts of the British Empire, despite the fact that it was ostensibly part of the British state rather than the Empire, since responsible government was achieved in the colony of Canada in 1841. Irish governance was only fully brought into line, at least with regard to the self-governing Dominions of the Empire, in 1921 when the Anglo-Irish Treaty provided dominion status on the Canadian model, giving Ireland basically the same relationship to the imperial parliament as that of Canada, subject to several reservations regarding naval bases and defence.<sup>41</sup> The Statute of Westminster of 1931 allowed Ireland to make a more complete break with the United Kingdom and the imperial parliament<sup>42</sup> but the circle was not closed on the issue that had divided nationalists and republicans after the Treaty of 1921 until 1949. After the 1916 rising, the republic in Ireland had symbolized the cause of independence.<sup>43</sup> Republicanism, rather than nationalism, was the political project that pulled Ireland out of the United Kingdom and the Commonwealth. Irish republicans consistently demanded more independence than Irish nationalists.

Ireland became a self-governing Dominion in the British Commonwealth in 1921. But de Valera did not think of this change as secession. Instead he thought of secession as the process by which any self-governing Dominion, including the Irish Free State, would withdraw from the Commonwealth. The Anglo-Irish Treaty preserved a place for the Free State within the Empire as a self-governing Dominion. The Treaty was not the outcome of secession, and no right to secede was involved, or could be invoked, in the process that led to the formation of the Irish Free State. When de Valera referred to the right of Ireland to secede, in the exchange of letters

<sup>38</sup> *Ibid.*, p. 33.

<sup>39</sup> *Op. cit.*, p. 34.

<sup>40</sup> Ward, *The Irish Constitutional Tradition*, p. 34. On Irish administration, see also R. B. McDowell, *The Irish Administration, 1801–1914* (London: Routledge and Kegan Paul, 1964); Edward Brynne, *Crown and Castle. British Rule in Ireland, 1800–1830* (Dublin: O'Brien Press, 1978).

<sup>41</sup> David Boyce, *Ireland, 1828–1923: From Ascendancy to Democracy* (Oxford: Blackwell, 1992), p. 103; Erhard Rumpf and A. C. Hepburn, *Nationalism and Socialism in Twentieth Century Ireland* (Liverpool: Liverpool University Press, 1977), p. 29; J. J. Lee, *Ireland, 1912–1985* (Cambridge and New York: Cambridge University Press, 1989), p. 50.

<sup>42</sup> Deirdre McMahon, *Republicans and Imperialists. Anglo-Irish Relations in the 1930s* (New Haven, CN: Yale University Press 1984).

<sup>43</sup> Nicholas Mansergh, *The Commonwealth Experience* (London: Weidenfeld and Nicolson, 1969), p. 327. See also Arthur Mitchell, *Revolutionary Government in Ireland* (Dublin: Gill and MacMillan, 1995), pp. 14, 327–9.



with Lloyd George that established the negotiations between the Irish and English leading to the Treaty of 1921, he was not referring to the Irish Free State. Rather the right of secession referred to the right of Dominions to withdraw from the Commonwealth.<sup>44</sup> This meant that the right to secede could be invoked only after Dominion status had been achieved. It was not a right that held throughout the Empire because not all units in the Empire were Dominions. Further, it was not a right that could be invoked by any part of the British territorial state because it was inconceivable that any other part of the British state would be given the status of a Dominion that was required for the right to secede to hold. The fact that this status was given to the Irish Free State—indeed conceded by Lloyd George even before the negotiations had begun—confirmed the different arrangements that had governed relations between Ireland and Britain after the Union. To grant Dominion status was to concede that, in the political union with Ireland, Great Britain had not abdicated the colonial relationship. Ireland was never integrated into the United Kingdom in the way that is presupposed by those accounts that see the Treaty of 1921 as the consequence of a process of secession,<sup>45</sup> where secession is associated with withdrawal from a state.

The American experience had the effect of tying the political use of the concept of secession to a particular political context—a union of states. This effect may account for the way in which the concept of secession was used by Irish representatives, a usage that was conceded by the British authorities. Secession was used to refer to the possible withdrawal of the Irish Free State from the Commonwealth. This usage reproduced some features of the American case. The units to which flowed the right to secede from the Commonwealth were already self-governing (i.e. Dominions).

Conventional usage at the time also shaped the ways in which British authorities could employ the concept of secession. To describe the process of withdrawal that produced the Irish Free State as a secession would be to appear to accept that the United Kingdom was not a state. The British gambit was to assert that the United Kingdom was a state, and that there was no right to secede, since such a right presupposed a compact of states. And the Irish wedge into this position was to concede that the United Kingdom was a state, but that Ireland was not a part of it, had never been as fully politically integrated as statehood implied, and continued to be a part of the British empire. In conceding that the United Kingdom was a state, Irish republicans used grounds other than the grounds implied by secession to make their argument for the formation of the Free State.

De Valera thought that secession, if it was pursued and achieved, would complete the process of decolonization that began, in the Irish case, with the Treaty of 1921. But the first part of this process, which culminated in the Treaty, was not secession. Nor was it thought of as secession by the British government. This was underlined in the 1930s, when the government began to negotiate with de Valera about the constitutional status of the Free State,<sup>46</sup> after his election as President of the Free State in 1932. At this historical juncture, the British government had clearly drawn the line with regard to Dominion status and membership in the British

<sup>44</sup> Eamon de Valera to the Right Honourable David Lloyd George, August 10, 1921. *Accounts and Papers, House of Commons*, Session of 15 February–10 November, 1921.

<sup>45</sup> Hechter, 'The Dynamics of Secession'.

<sup>46</sup> McMahan, *Republicans*, p. 131, 135.

Commonwealth of Nations. It was impossible to allow a republican constitution within the British Commonwealth of Nations.<sup>47</sup> A republican constitution signified the final break with the imperial parliament. When Lloyd George responded to the letter from de Valera, he very particularly defined the right to secede. Regarding . . . ‘the claim that we should acknowledge the right of Ireland to secede from her allegiance to the King. No such right can be acknowledged by us’.<sup>48</sup>

The Balfour Report of 1926 had made explicit that the Dominions had the right to remain within or to withdraw from the Commonwealth of Nations.<sup>49</sup> By the time of the Statute of Westminster in 1931 the authorities feared that Dominion status did indeed confer the right to secede from the Empire. And without concessions on the issue of allegiance to the King, withdrawal could be invoked as a necessary step in order to establish a republican constitution. De Valera abolished the oath of allegiance in 1933, but opted for ‘external association’ with Great Britain rather than a republican constitution in 1937. When the Irish republic was finally declared in 1949, the Republic of Ireland withdrew from the Commonwealth.<sup>50</sup>

## Bangladesh

Bangladesh is by most accounts a standard and straightforward case of secession. Mayall (writing in 1990), for example, has called this case the only pure case of successful secession since 1945.<sup>51</sup> This also appears, however, to be a case where original state-formation had still not been completed. Hechter, for example, has argued that Bangladesh’s separation from Pakistan probably does not qualify as a case of pure secession because the Pakistani state cannot be considered to have been highly effective.<sup>52</sup>

The Indian subcontinent was a regional subsystem that had not yet settled out and it was, moreover, a subsystem characterized by high levels of militarized violence. The inability of autocrats to effectively supply security in this subsystem weakened the rationale for the Pakistani state. Security issues had a substantial impact on patterns of state-formation from partition onwards. West Pakistan and East Bengal (East Pakistan after 1956) had substantially different interests in the rivalry with India. Pakistan and India fought two wars over Kashmir, and East Bengalis had little interest in Kashmir. Moreover, in each war, East Bengal was cut off from West Pakistan. The wars, especially in 1965, demonstrated that West Pakistan could not secure East Pakistan.

<sup>47</sup> A. B. Keith, ‘Notes on Imperial Constitutional Law’, *Journal of Comparative Legislation* 16 part 1, 3rd series (1934), pp. 137–138, quoted in *ibid.*, p. 133. See also A. Berridale Keith, *The Sovereignty of the British Dominions* (London: Macmillan, 1929), pp. 181–96.

<sup>48</sup> Right Honourable David Lloyd George to Eamon de Valera, August 21, 1921. *Accounts and Papers House of Commons* Session of February 15, 1921–10 November, 1921.

<sup>49</sup> See the Report of the Inter-Imperial Relations Committee, Imperial Conference of 1926, in Maurice Ollivier (ed.) *The Colonial and Imperial Conferences From 1887 to 1937* (Ottawa: Queen’s Printer, 1954), vol. 3, p. 146.

<sup>50</sup> See Lee, *Ireland*, pp. 299–302. By this time, however, a republican constitution was no longer grounds, from the point of view of the British, for exclusion from the Commonwealth.

<sup>51</sup> Mayall, *Nationalism and International Society*, p. 61.

<sup>52</sup> Michael Hechter, ‘The Dynamics of Secession’, p. 277.

The subsystem that produced Bangladesh had several distinctive features. Interstate violence was one of them. Another was the low level of economic interdependence among the states (and in some cases sub-states) of the region. Armed separatist movements and ethnic conflict have been an endemic feature of the subsystem, although only the armed movement for secession in Bangladesh has been successful and only after intervention by India. Within this subsystem, the peculiar structural position of East Pakistan contributed to the success of the forces supporting independence. East Pakistan was physically isolated, some one thousand miles from West Pakistan and the institutions of the central government.<sup>53</sup> The two economies of Pakistan were never effectively integrated, save for inter-regional state transfers and some state planning. Pakistan, moreover, was divided by hostile territory and one premise on which Bengali Muslims had joined Muslims from Northwest India had been that, together, they might add to each others' security. Yet during the 1965 war, although not a theatre of war, East Pakistan was cut off from West Pakistan. In the negotiating phase that concluded the conflict, Bhutto, Pakistan Foreign Minister, stated that a third country would have to guarantee East Pakistan's safety. 'Mr. Bhutto, Ayub's foreign minister, proudly claimed in the National Assembly that East Pakistan had been protected by China. If that was so, the Bengalis began to argue, why do we not settle our own diplomatic and external relations? Why depend on West Pakistan, which could give no relief to East Pakistan?'<sup>54</sup>

This turn of events weakened the security rationale of the Pakistani state. The end of hostilities was followed in early 1966 by Sheikh Mujibur Rahman's (then secretary-general, soon president of the East Pakistan Awami League) six-point 'charter of survival' program for East Pakistan, which he linked to the problem of security. 'The question of autonomy appears to be more important after the war. Time has come for making East Pakistan self-sufficient in all respects'.<sup>55</sup> Since 1971, there have been no more Bangladeshes, despite the movements for independence in Kashmir, the Punjab and Assam in India, the movement for an independent Sindhudesh in Pakistan, the insurgency of the Chakma tribes, and the civil war in Sri Lanka. The Indo-Pakistani rivalry continues, but without war.

These features of the post-1971 period may well be related.<sup>56</sup> Interstate war, given such territorial problems, would be an opportunity for independence movements to press their claims within exposed, externally-engaged states. In these circumstances, the risks of war are measured by leaders not simply against the capabilities of external rivals, and the likelihood of military defeat, but also against domestic vulnerability. Although the geopolitical position of East Pakistan and the self-help

<sup>53</sup> Horowitz has argued that the distance between East and West Pakistan may have contributed to the durability of the country. Distance may have made complete domination by West Pakistan more difficult, and lessened contact between the groups. Donald Horowitz, *Ethnic Groups in Conflict* (Berkeley and Los Angeles: University of California Press, 1984), p. 242.

<sup>54</sup> G. W. Choudhury, *The Last Days of United Pakistan* (Bloomington and London: Indiana University Press, 1974), p.8. See also Russell Brines, *The Indo-Pakistani Conflict* (London: Pall Mall Press, 1968) at p. 233, '... [F]ear of India served to increase the divisiveness rather than to cement the two sections, for it intensified the Bengali sense of insecurity and inaccessibility. After the Indo-Pakistani conflict, separation returned more strongly to East Pakistan than for many years ...', and the discussion at pp. 351 and 414.

<sup>55</sup> See Talukder Maniruzzaman, 'Radical Politics and the Emergence of Bangladesh', in Paul R. Brass and Marcus F. Frana (eds.), *Radical Politics in South Asia* (Cambridge, MA: MIT Press, 1973), pp. 223–80 at p. 258.

<sup>56</sup> Raju G. C. Thomas, *South Asian Security in the 1990s. Adelphi Paper 278* (July, 1983), pp. 1–86.

system of regional anarchy together contributed to the reordering of the sub-continental state system, this reordering existed only *in potentia*; it cannot be derived just from geopolitics and the imperative of self-help. Someone had to seize the opportunity. The outcome of the 1965 war provided a rationale for independence, and discredited the Pakistani political elite and the military; nonetheless there is nothing in the insecure position of East Pakistan that would predict that it would be the Awami League that would seize the chance, nothing that would predict the substantive detail of Mujib's six points, and nothing that would predict the social composition of the Awami League.

Mujib's proposal, taken together, hardly addressed strategic issues at all. The demands included the reintroduction of parliamentary government and universal adult suffrage, a federal form of government with Defence and Foreign Affairs to be controlled by the central government, separate currencies, tax systems and state banks, independence in international trade and the development of a militia in East Pakistan. It is therefore not surprising that support for the program came from the entrepreneurial class, lawyers, government officials and students. The proposals promised institutional innovations that would strengthen the economic and political positions of individuals in these groups. While the security rationale for Pakistan may have broken down in 1965, change to the territorial structure of the state was no automatic consequence of strategic imperatives. Change was supported by actors who had little direct interest in strategic considerations.

Defeat in 1965, however, had opened the door to popular mobilization against the military regime in Pakistan. In the late 1960s, Pakistan had begun a transition to democracy from the military regime established in 1958. The transition was to be managed by Yahya Khan, to whom power had been handed in 1969 by Ayub Khan. This transfer of power followed the formation of the Pakistani Democratic Movement and the Pakistan People's Party (PPP) in 1967 and demonstrations in urban areas in East and West Pakistan in 1968 and 1969. The success of the transition depended on satisfying three distinctive concerns. First, democratic concessions could not be so substantial that the military and bureaucracy would not agree to them. Second, concessions had to satisfy some of the demands of the Democratic Movement and the PPP. Third, the grievances and demands of East Pakistan had to be addressed.

These three concerns could not be simultaneously met. A resolution of the first issue implied pact-making. However, the process of negotiation was to be delayed until democratic forces had expressed themselves so that their representatives could sit down and, with Yahya, work out a transition that met some of the democratic demands, yet protected the key institutional interests of the military and bureaucracy. The election held in 1970 under universal adult suffrage, a process which was to provide these political representatives, while also meeting one of the central demands of the democratic opposition to the military regime, made the settlement of East-West Pakistani relations an even more intractable problem.

The Awami League did not press for the settlement of the six points after Yahya came to power although there were strong demands from other parties to solve this issue before the elections. The compelling conclusion is that this position was motivated by partisan concerns about the upcoming election.<sup>57</sup> The League campaigned

<sup>57</sup> Kalim Siddiqui, *Conflict, Crisis and War in Pakistan* (New York: Praeger, 1972), p. 142.

on the issue of autonomy and refused to enter into a United Front of all parties in East Pakistan who were also campaigning for autonomy. Since for other parties, the issue of autonomy was linked, and sometimes subordinated, to other issues, the Awami League was able to draw from these parties those activists most committed to autonomy.<sup>58</sup> Mujib thus was willing to run on the issue of autonomy, there were incentives to take a position on the issue that would distinguish the League from other parties; that these incentives would be taken up was made much more likely by the changing composition of the League caused by the combination of a single-issue, no-alliance campaign. The League won 160 of 162 seats in East Pakistan in the election, and an absolute majority in the National Assembly.

The League wanted its six points entrenched in some fashion in the constitution. Mujib could not back off this position after the election without alienating League militants, especially in the student wing, the Students League, who had been arguing for an independent socialist Bangladesh and armed rebellion since the 1960's and who had been bolstered by the addition of other militants. The political costs of compromise in East Pakistan were made even higher by the size of the victory, since the League would control the Assembly which, according to the pre-election provisional constitution, was to devise its own voting procedures and produce a constitution within 120 days or be dissolved. A weaker electoral result (say a majority in East Pakistan and strength, but not control, in the National Assembly) would have made compromise on the six points more justifiable because the League would have to look for allies on the issue of autonomy in West or East Pakistan. As it stood, however, the League could claim constitutionally that the Assembly should be convened, they would control it, and they thus could be held to their six points by their constituencies. The League was not only compelled to live up to its six points by its electoral strategy; it could not afford to be seen by its militant supporters to be dragging its heels on the calling of the Assembly.

The size of the victory of the Awami League also meant that political leaders in West Pakistan, especially Bhutto, the military, and Yahya, would want to boycott or delay the convening of the Assembly, preferring extra-Assembly negotiations. The electoral strategy of the League, and the electoral outcome, simultaneously made compromise on the six points by the League and convening of the Assembly difficult. The League could not compromise on their program in order to induce West Pakistan leaders to convene the Assembly; West Pakistan leaders would not convene the Assembly on the expectation that the League would accept compromise in the Assembly because they knew that compromise was not self-enforcing, given the extra-parliamentary pressure that the League would face. The country was thrown back into authoritarianism, but the 'Bengal problem' was now much more volatile. The regime correspondingly notched up its response to it by using military force in East Pakistan, and subsequent events produced civil war, Indian intervention and the formation of Bangladesh.

## Quebec

Most comparative analysis of nationalism argues that separation is difficult in the

<sup>58</sup> Siddiqui, *Conflict, Crisis and War*, p. 144.

developed West. Quebec, however, has advanced farther toward independence than any other case. Political entrepreneurs and nationalist activists in other regions such as Scotland, Wales, Brittany, Catalonia, Flanders, Wallonia or northern Italy have not organized movements that match the success of the independence movement in Quebec. Although independence has not been gained even in Quebec, this case threatens to break the historical mould.

It is relevant to my argument that one of the standard cases of secession (the American South), and the one case in the developed West that is the farthest along the path to independence are located in the North American subsystem. The United States and Canada, moreover, are long-standing federations. Further, the relationship that has been assumed to hold between democratic regimes and war in the literature on the democratic peace is inverted in this subsystem.<sup>59</sup> There appears to be a systematic pattern that produced states that differed from the European pattern. This pattern increased the likelihood of secession at different points in the histories of these states.

States and regimes in Europe were systematically different than state and regime in Canada and the United States. Geopolitical competition was an important determinant of the differences between the political experiences in Europe and North America, even if it cannot explain all of the variation in forms of political association in Europe. Some elements of a supranational constitution have also emerged in Europe. This change is related to the historical importance of the institutional distinction between domestic hierarchy and interstate anarchy in European society. In North American society, where that same distinction has not been as sharply defined, there is no emerging formal supranational constitution. It is not needed. The fundamental animating feature of postwar European integration—a historical record of recurring interstate war—has been less relevant. There has been no problem of interstate military conflict to resolve in North America. In Europe, this resolution has required another level of supranational institution-making because the problem of war created hierarchical states, but these are states, at the same time, that are difficult to trim via institution-making at the supra-state level.

It could also be argued that the greater institutional apparatus of the European Union provides a larger set of feasible alternatives for substate nations and regions in Europe. If true, this should imply that there is at least one substate nation in Europe that is closer to a transition to independence than Quebec. This is not the case, however. The institutional arrangements of the European Union have not so altered the fundamental design of states that the political barriers to exit are lower for substate nations in Europe than in Canada, even if the economic environment of these nations has been modified. Rather, the Canadian state is less hierarchical than the modal member of the European Union, even after European supranational institutions have trimmed the competences of member states.

The Canadian state has been differently designed than other states in the developed West and these differences are the key to the anomalous status of the case of Quebec. The fact that Quebec has advanced so far along the path to independence rests on the pattern of state rationalization in Canada, which blurred

<sup>59</sup> William R. Thompson, 'Democracy and Peace: Putting the Cart before the Horse', *International Organization*, 50 (Winter, 1996), pp. 141–74.

the hard distinction between domestic hierarchy and interstate anarchy via the institutional arrangements of consociational power-sharing and federation, and which did not settle the issue of statehood through civil war, as in the United States. When political accommodation breaks down within consociational federalism, organized groups with territorial power are the legacy. These nations are incipient states. This is why consociational federalism can contribute to challenges to the territorial integrity of the state.

These features of the institutional design of the Canadian case were related to features of its regional subsystem. State-formation in North America did not occur in the same sort of anarchy as original state-making in Europe. This holds for the United States, as was argued earlier. It holds as well for Canada, although British North American union was also shaped by the process of state rationalization in the United States. In other words, the Canadian path to democratic, advanced capitalism was distinctive, and was shaped by its history as a settler society in this regional subsystem. Thus Canada and Quebec, while cases in this class of the 'developed West', simultaneously stand outside it in important ways. This has worked to make the withdrawal of Quebec from Canada a prominent possible solution to a contemporary constitutional impasse and a more likely outcome than in other cases in the developed West. The institutional design of the Canadian state created opportunities for entrepreneurs and activists in Quebec that were unavailable in other institutional designs in Europe.

This interpretation therefore does not place as much emphasis on the threat of American annexation in explaining Confederation as do standard accounts.<sup>60</sup> Those interpretations of Canadian Confederation that invoke the threat of military conflict with the United States to explain British North American union cannot be completely compelling. A military threat need not predict union; why not an informal alliance among the North American colonies coordinated by the mother country? Union, moreover, did not yield significant military economies of scale, and the military advantage of the United States was so overwhelming that Canada and the Lower Provinces would have been defenceless, whether inside or outside of Confederation,<sup>61</sup> without imperial protection.

These explanations are not completely without merit, however. The key to the security dilemma<sup>62</sup> is uncertainty about the intentions of others and the fear of external predation. In the face of uncertainty about political self-preservation, worst-case reasoning may make cooperation more attractive than doing nothing. The more important point, however, is that the annexation issue was a one-off event. At no subsequent point did the fear of American military conquest provide a basis for anything more than fringe political agitation. British North American union may

<sup>60</sup> Donald G. Creighton, *The Road to Confederation: The Emergence of Canada, 1863–1867* (Toronto: MacMillan, 1964); W. L. Morton, *The Critical Years: The Union of British North America, 1857–1873* (Toronto: McClelland and Stewart, 1964); Peter B. Waite, *The Life and Times of Confederation, 1864–1867: Politics Newspapers and the Union of British North America*. (Toronto: University of Toronto Press, 1962).

<sup>61</sup> These points were made in debates about Confederation, they are not merely the result of hindsight. See Ged Martin, *Britain and the Origins of Canadian Confederation, 1837–1867* (London: Macmillan, 1995), pp. 34–5, 62–5, 74, 184–90.

<sup>62</sup> Robert Jervis, 'The security dilemma', *World Politics* 30 (1976), pp. 167–214.

have been overdetermined at the point of formation<sup>63</sup> but the dominant dynamic of the North American subsystem has been the relationship between economic and political dependence, not the military threat posed by the United States nor interstate military rivalries. The dynamics of North American society did not produce the security dilemmas that might have discouraged further decentralization or power-sharing.

## Conclusions

This article has examined these four cases from two different perspectives: the changing languages of justification of secession in international society, and the relationship of secession to patterns of state rationalization. Ethnic anarchy is not a necessary condition for the formation of new states. Indeed, judging from these cases, the security contexts that have influenced the likelihood of secession have varied considerably. Zones of peace seem as plausible a background condition for the occurrence of secession as do zones of war. Under this background condition, arguments that can legitimate the process of withdrawal have special force precisely because the resolution of the issue of the formation of a new state is expected to be subject, in the first instance, to the rule of law. Rhetorical moves are an integral part of the political game set in motion by a claim to independence, and the languages of justification—including the language of rights—can have causal force. Rights, however, are not trumps in zones of war,<sup>64</sup> as this quotation recorded by Philip Rieff in the fall of 1994 illustrates. ‘First, I was a Yugoslav. Then I was a Bosnian. Now, I’m becoming a Muslim. It’s not my choice. I don’t even believe in God. But, after two hundred thousand dead, what do you want me to do? Everyone has to have a country to which he can belong’.<sup>65</sup> The identity toward which this person is forced is a result of the brutest kind of necessity: physical self-preservation.

The primary basis of justification for secession in international society has been, since 1945, a national right of self-determination. It has replaced the language of state rights. As the one replaced the other, the issue of territorial integrity became more important. There was no presumption of territorial integrity in the putative political unions that were the context of compact theories and of the rights of constituent states. Territorial integrity is the desideratum that has driven a wedge between the right of self-determination and a right to secede in customary international law. The presumptive importance of territorial integrity has come about

<sup>63</sup> Martin, *Britain and the Origins*; Donald F. Warner, *The Idea of Continental Union. Agitation for the Annexation of Canada* (Lexington, KY: University of Kentucky Press, 1960).

<sup>64</sup> Allen Buchanan makes clear that the distinction between withdrawal from an existing state and the creation of a new state under conditions of anarchy makes a moral difference. *Secession. The Morality of Political Divorce From Fort Sumter to Lithuania and Quebec*. (Boulder, CO: Westview, 1991), p. 22. This argument, however, still has a realist underpinning since Buchanan acknowledges only anarchy and sovereign territorial states. More loosely organized forms of political association (unions, confederations and federations) fall into the latter category by default. Whatever morally justifies withdrawal from a union may not justify withdrawal from a state. And as some of the case material makes clear, political justifications for secession are sensitive to different descriptions of the political association from which withdrawal is sought.

<sup>65</sup> Philip Rieff, *Slaughterhouse: Bosnia and the Failure of the West* (New York: Simon and Schuster, 1995), p. 12.



because territorial states became more important sources of political order than unions.<sup>66</sup>

In zones of peace, the likelihood of secession depends on the territorial organization of the state. Resistance to secession has a higher likelihood of being lower in clearly-defined sub-units of states, such as the constituent parts of federations (Quebec), or in asymmetrically administered sub-units (Ireland). A right to self-determination can be invoked in a highly decentralized federation and draw some of its force from the tradition of state rights. In this situation, the federal state might resemble a union and a right of self-determination then can be joined to a compact theory and to a disguised version of state rights, thus challenging the presupposition on which territorial integrity rests—the existence of a state.

<sup>66</sup> Allen Buchanan in *Secession* reworked some of these issues from within liberal theory, rather than customary international law. He argued that secession is justified when it is consistent with liberalism, but that national self-determination is not consistent with liberalism. I do not have the space to consider this argument, nor the work that responded to it.