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Book Review

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BOOK REVIEW

SECESSION: THE LEGITIMACY OF SELF-DETERMINATION. Lee C. Buchheit. New Haven: Yale University Press, 1978. Pp. xi, 260. \$17.50. Reviewed by Roy E. Thoman.*

Making use of historical accounts, and principles of international law and politics, Lee C. Buchheit examines one of the most intractable and perplexing problems of this era: self-determination. The author is a *cum laude* graduate of the University of Pennsylvania Law School, where he served as editor of the law review. The recipient of a fellowship to study public international law, Buchheit received a diploma in international law from Cambridge University in 1976. The focus of his book is on the implications for the world community of appeals to the principle of self-determination by secessionist elements within independent states. An effort is made to explore the status within international law of claims to secessionist self-determination and to suggest considerations that might influence a collective international decision regarding the legitimacy of these claims.

The first chapter includes a discussion of historical origins of the problem. Although the concept of self-determination was not entirely neglected in earlier times, it became a very prominent issue during the period of the First World War. Associated with President Woodrow Wilson, the doctrine embraced the principle that the only legitimate form of government was self-government by natural political units, "with its corollary that multinational States or empires, the products of conquest or dynastic union, were ultimately illegitimate political entities." Legitimacy was seen to derive from the consent of the people, buttressed by the realization that government without consent meant an internal disorder that would ultimately threaten international peace.

The author suggests, however, that the doctrine of self-determination incorporated a "lethal weakness," in that it assumed that "nations" would generally be self-evident entities, "and that only

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nations, as history had delimited them, would constitute natural political units having a compelling desire for self-government." The seeds of confusion planted by this weakness did not take long to ripen.

Even before the process of "national" self-determination as undertaken at the Paris Peace Conference of 1919 could be implemented in a satisfactory manner, distinct ethnic groups, such as the Kurds . . . began to invoke the international norm of self-government as a justification for independence from, or at least regional autonomy within, their governing States. The polyethnic States were . . . subjected to the same attack as multinational empires.

Some observers feared that the international community had created a Frankensteinian monster. A grave dilemma thus presented itself: In view of the fact that self-determination had achieved legal legitimacy, how could the international community prevent the almost infinite fragmentation of existing states by innumerable minority groups demanding the right of secession? From the standpoint of legal theory, this question has never been satisfactorily answered. The question was temporarily eclipsed as the principle of self-determination was enlisted to justify the decolonization movement after World War II. As the process of decolonization was accomplished, however, the old problem resurfaced as secessionist groups *within* sovereign entities again attempted to legitimize their claims through the principle of self-determination.

Buchheit discusses an interesting ideological bias reflected in the position taken by the leaders of many ex-colonial, Third World, and Communist states. The United Nations, where these countries have a majority in the General Assembly, has been vociferous in its condemnation of the continuance of any vestiges of traditional colonialism. There has not, however, been any similar enthusiasm for the right of oppressed minorities to secede from states.

. . . One searches in vain . . . for any principled justification of why a colonial people wishing to cast off the domination of its governors has every moral and legal right to do so, but a manifestly distinguishable minority which happens to find itself, pursuant to a paragraph in some medieval territorial settlement or through a fiat of the cartographers, annexed to an independent State must forever remain without the scope of the principle of self-determination.

Chapter Three presents a summary of six case studies involving secessionist disputes. Included, among others, are studies of the Kurds, Biafra, and Bangla Desh. Of the cases surveyed, Bangla Desh provides the only example of a successful secession.

The concluding chapter, "The Standards of Legitimacy," is the most important and original part of the work. The author points out that existing theoretical and legal gaps can lead to situations that endanger international peace and stability. He observes that the international community, by its current inability to distinguish legitimate from illegitimate secession, is severely handicapped in attempts to curb unwarranted third-party intervention in these conflicts. And "the danger of unrestrained intervention inevitably brings in its wake a possibility of escalation and the confrontation of major power blocs." One is left with the melancholy fact that situations involving a potentially serious threat to international peace "remain . . . unfettered by any specific doctrines of international law."

The author develops his own theory of legitimate, secessionist self-determination on the basis of what could be termed pragmatic moderation. He recognizes the secessionist self-determination principle, and yet seeks to minimize threats to international peace and security. He attempts to accomplish this by focusing on criteria for determining legitimate claims. On a case by case basis, this involves "an inquiry into the nature of the group, its situation within its governing State, its prospects for an independent existence, and the effect of its separation on the remaining population and the world community in general." Such considerations could lead to the development of standards by which the international community could determine instances of legitimate claims to secessionist self-determination.

The benefits of this approach could be significant. "These standards, whether specifically incorporated into the jurisprudence of an organization like the United Nations . . ., or whether remaining part of general international law, would constitute a basis for criticizing, and thus regulating, the conduct of outside States in a secessionist conflict."

Buchheit's theoretical approach for determining legitimacy involves balancing what he terms the "internal merits of the claim" against elements contributing to the "disruption factor." The relationship between these two factors is represented in the form of a graph in the book's appendix. In a situation where the disruption factor appears to be high, a group's claim to secession

would have to be supported by very strong evidence. Where the disruption factor seems to be low, standards of group selfhood would not have to be as strict. The author hastens to point out that his approach is not intended to be scientifically quantifiable, but is, rather, "a term of art."

The author concludes that it is both possible and desirable for the international community to adopt an explicit and objective statement of guidelines concerning secessionist questions. As a potential model for such an endeavor, he cites the General Assembly's 1970 *Declaration on Friendly Relations*.

Without question, States will continue to be importuned by separatist movements with or without a rational scheme for determining the legitimacy of these claims. By publishing such a scheme, the world community might hope to impose a reasoned, predictable order upon so dangerous an area of societal and international discord. It is suggested, moreover, that it is in the enlightened self-interest of individual States to further this effort. Surely it is wiser, and in the end safer, to raise secessionist claims above the present "force of arms" test and into a sphere in which rational discussion can illuminate the legitimate interests of all concerned.

This is an excellent book and an important contribution to the literature of international law. The author has creatively proposed a solution to an international problem that has, over the years, resulted in immeasurable loss of life and property.