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**Freedom, Peace, and Secession**  
New Dimensions of Democracy

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## Preface<sup>1</sup>

This book (prepared for production in December 2019) resumes and elaborates on arguments I have put forth in Wehner (2019)<sup>2</sup> and other books and essays over the last 30 years. At first appearance, this book deals with the shortcomings of traditional policies toward separatism and related phenomena and, more generally, with the shortcomings of political self-determination as provided for in international law. But closer scrutiny of these shortcomings reveals that they cannot be blamed on specific policies, governments, politicians and legal provisions. These shortcomings are symptoms of a much broader and more fundamental failure of present-day democracy.

In the early nineties, when I published a number of books outlining a more capable and promising political order, conventional ideals of democracy were considered to be ageless and unimprovable despite a dynamic social evolution. But now, as it is dawning on a growing public that this optimism was tragically mistaken, the interest in alternative, more progressive political orders is gradually rising—however long a venture the implementation of such a new order may be.

I have used different terms to describe my proposed alternative political order, from *multi-track-democracy* to (somewhat more recently) *neocracy*. A question that may immediately come to mind is how is neocracy different from, or an improvement of, democracy? The answer is that *neocracy* denotes a broad range of related progressive state orders which amplify democratic processes and representation in ways far more sophisticated than current conventional practice will permit. Or put more precisely, present day democracy is a poorly developed predecessor of neocratic orders, characterized by monarchist and autocratic remnants and highly susceptible to relapses.

Not all propositions of this book are outcomes of a neocratic understanding of the state, but the neocratic perspective opens unconsidered new perspectives on peacemaking, peacekeeping, and political self-determination. This is an important implication of neocratic reasoning, but not *the* most important. The neocratic political order opens new dimensions in other major policy areas as well including the policies of redistribution, defense, climate, and population, and even monetary policy. I argue the ensuing transformations from this new

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<sup>1</sup> I am obliged to Aaron Medlin for his both meticulous and creative editing of the manuscript.

<sup>2</sup> Wehner B (2019) *Die politische Logik der Sezession. Zu einem neuen Paradigma der Friedenspolitik*. SpringerVS, Wiesbaden.

order would eventually make conventional political parties obsolete, and, more importantly, undermine the political ideologies pervading the contemporary political discourse. Of the latter, the present book tries to give an example.

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## **Chapter 1**

# **The Deficits of Democracy and the Need for a New Utopia – An Introduction**

### **1.1. The Global Power Structure – Ominous Scenarios**

A central topic of this book is on the phenomenon of secessions, giving birth to a new nation by the division of another or shifting borders between neighboring countries. At first thought, one may view such events as an almost marginal problem in global politics. A truly thorough study of secession movements, however, inevitably leads to more fundamental questions.

How do citizens develop solidarity as a nation? What holds nations together and what divides them? Who decides who belongs to a nation? How freely are these decisions made and how freely should they be made in the future by the citizens? And to what extent do these issues raise questions about the current world order, namely how free and open, or authoritarian, the world order should be? In this matter, secession movements are a litmus test. A world order can only be free insofar as citizens are free to decide on their belonging as a people, and thus on possible secession concerns.

More recently, predictions of the future of the world order have been debated on the premise of the evolution of antagonism between conventional Western-liberal and authoritarian models backed by the United States and China, respectively. Considering the global power relations, this implies that the future world order will ultimately be decided on in the dispute between the respective ideologies.

For the future of the world order, three possible basic scenarios evolve from this antagonism. The most optimistic scenario from the Western point of view is that the United States will maintain and strengthen its leading role in world politics and ensure the global

implementation of Western liberal ideas of order. This scenario assumes that the United States not only desires but is able to continue to play this demanding role. However, this scenario is increasingly losing plausibility in face of China's impending economic and military dominance.

Recent political developments in the Western world also suggest scenarios in which western liberal democracies are increasingly eroding from within. One alleged cause of this is a gradual erosion of democratic processes attributable to the concentration of economic power.<sup>1</sup> Even more threatening, however, is the scenario of an increasingly authoritarian governance arising from established democratic processes.<sup>2</sup> One of many possible reasons for this can be an increasing fear that only authoritarian democracies can assert themselves when confronted with an increasingly powerful authoritarian China.

This grim scenario of rising global authoritarianism is definitely realistic, as authoritarian rule is increasingly attractive for other reasons as well. In a world ever more difficult to comprehend and to explain also in political terms, it becomes ever more tempting for many citizens to succumb to the populist illusion of political simplicity and clarity. To these citizens, such presumed simplicity and clarity can most comfortably be attained by unreflected subordination.

The promise of clarity in the populist message is usually combined with the promise of a new emotional experience of politics. In this message, the state is not a product of enlightened reason, but rather an entity appealing to emotions. These emotional political needs may include a sense of homeland, belonging, solidarity, and cultural pride, or even a drive for meaningful militant conflict. The authoritarian-populist message promises that citizens can spare the troubles of demanding professional and moral reflection and can follow spontaneous impulses and lower instincts in politics without remorse. In elaborating on the secession topic, this essay argues that the success of such messages is attributable not only to the seductive skills of populists, but a systemic failure of the existing state and world order.

Needless to say, emotional needs are not only fulfilled when citizens follow instincts incited by populists. At least in part they can be fulfilled in a perfectly civilized manner. Civilized emotional experiences in politics can be conveyed, for example, by monarchs in parliamentary monarchies. The civilized emotional appearance of such monarchs can distract

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<sup>1</sup> See e.g. Crouch C (2004).

<sup>2</sup> Kagan R (2018) develops this scenario while expecting that the US will adopt or resume the role of a global warrantor of liberal democracy. For an Eastern European perspective on the issue see Krastev/Holmes (2019).

citizens from irritating and straining overcomplex politics. Authoritarian populists, on the other hand, appeal to citizens on a lower emotional level. They do not promise distraction from political overcomplexity, but they promise to overcome it. They promise that under their leadership, politics can succeed in a complex world following simple instincts. The growing impact of such promises has severely shaken the belief in a triumphant Western liberal democracy which has dominated for decades. Meanwhile, limiting the further spread of populist authoritarianism at least in the Western world is considered an ambitious goal ever more difficult to attain.

From this perspective, only one tolerable scenario for the development of the world order remains plausible: a non-violent coexistence of populist-authoritarian states on the one hand, and democratic-liberal states on the other—with China and the United States being the guarantors of non-violence in this constellation, respectively.

However, the notion that these two ideological antagonists will recognize each other as equals in the long term, i.e., the global clash of systems and the associated struggle for influence and power could be postponed virtually forever, is, of course, simple-minded. One should consider this scenario not as a consensual coexistence of systems, but rather as a stalemate or a frozen conflict, of which either side knows that it cannot win by force.<sup>3</sup>

This stalemate may deceptively appear like an acceptable scenario at first glance, but it describes a fragile and threatening transitional state for a number of reasons. First, this condition is fragile because the US and its allies have not succeeded in pacifying the world with their established methods and, therefore, no better outcome can be expected from them in the future. Second, it would not change anything on the penchant to authoritarianism in the democratic world. Third, the Chinese model of authoritarianism can easily converge to and connect with the rising authoritarianism in the democratic world. This is a likely outcome because China's authoritarian regime, with its communist roots, is premised on a cold logic akin to liberal Western democracy. So even in China, if growth and prosperity alone no longer fulfill the needs for political meaning and shared identity, a spontaneous desire for a more emotional political experience can quickly spread. From "left-wing" authoritarianism to Western-conservative "right-wing" (populist) authoritarianism is only a small step—as former socialist countries such as Hungary have already shown.

If China developed in this direction, however, a geopolitical stalemate between the democratic-liberal and the populist-authoritarian parts of the world would come to an end. In

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<sup>3</sup> For such a scenario see Mahbubani K (2018).

geopolitics, liberal democracy would be put on the defensive, paralyzing cooperation, and hindering the ability of the world to solve pressing problems. Thus, the populist promise of simplicity and clarity in politics would lead the world into fatal crises.

Scenarios of this kind have only an indirect connection with the secession issue which plays a central role in this essay, but they demonstrate that any forward projection of present geopolitical scenarios, in which existing left-wing authoritarian, right-wing authoritarian and conventional democratic forms of government continue to prevail, evokes dystopian conditions. The question to be asked, therefore, is not how much better the world would be if it were oriented more to the liberal Western than to the left or right-wing authoritarian model. But, rather, what new alternative model could open more promising options?

In this essay, starting from the problem of separatism, an alternative political order is outlined that opens new global perspectives for peace policy and other policy branches. The concept of this alternative order also considers that any sustainable future polities must provide openings for the creation of political meaning in keeping with the times; better openings, that is, than those provided by conventional nation states and conventional supranational institutions.

The need for an alternative political order arises from the deficits of traditional democracy. Once these deficits are acknowledged, it becomes obvious that the usage of the term democracy also needs thorough reconsideration. In the prevailing political discourse, this term is not only about method, but also about value. This usage assumes that the democratic method warrants superior political outcomes by itself. But this is obviously not the case. The political outcomes of the democratic method are not necessarily, neither in moral nor in any other terms, superior to alternative methods.

This essay is mainly about problems which conventional democracy is unable to solve. In what follows, the term democracy plays rather a minor role and is mostly value-neutral. This is one of the reasons why some of the terminology used in this essay may need some getting used to.

To be clear, this is not an essay in defense of democracy in its conventional meaning. Instead, this essay is intended to promote and defend new methods that best serve the values of freedom, peace, self-determination, dignity, fairness, meaningfulness, and sustainability in politics—values for which, I will show, conventional democracy cannot deliver.

## 1.2. Separatism – an Unresolved Global Problem

The world of nation states is in disorder. For the last half a century, ever new regional wars and civil conflicts have unfolded, accompanied by growing challenges due to climate change, scarcity of resources, overpopulation, terrorism, impending mass migration, and epochal changes in the global power structure. At the national level, political reality has for decades been characterized by upheavals and fragmentation in party landscapes due to the erosion of guiding political concepts, by waning enthusiasm for institutions such as the European Union and the United Nations, and by persistent disenchantment with politics and politicians. Established political ideologies derive remaining credibility mostly from distancing themselves from populist and autocratic practices and from sham democracies.<sup>4</sup> Thus, the relative stability of established democracies and their established parties can be explained only by the weakness of their competitors. ‘Look,’ it is argued, ‘we, the established moderate parties, are still better than all the others who continue to fall back on old formulas of the political right or left.’ From such condition, if unquestioned, at best intellectual stagnation can emerge.

The above diagnosis is, of course, disputed. Countries with established democracies and political parties still dominate the political discourse, and this is supported by the relative economic stability in these countries. Average citizens of Western democracies, who do not look too far ahead into the future, can still come to terms with the political conditions comfortably. It is no surprise, then, that the curiosity about fundamentally new concepts in politics remains reticent.

This intellectual stagnation is also due to persisting prejudices against any kind of utopian thinking. These prejudices—directed not only against tragically failed real utopias of the Soviet Marxian type, but also against utopias in the original positive sense<sup>5</sup>—suggest that policy changes for the better could only be achieved through successive small steps in a

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<sup>4</sup> Formally, of course, all states with parliaments formed in elections are democracies; accordingly, almost all existing states claim they actually are democracies. Sham democracies, then, are those states in which there is substantive reason to doubt elections to be free and fair—obvious cases of such countries include Russia, Egypt, and many others. But it may be argued that elections are not entirely free in many traditional established democracies either due to a plutocratic bias in nomination and election procedures. In this narrow sense, "true" as opposed to "sham" democracies account for a small percentage of existing states.

<sup>5</sup> Which includes the original Marxian utopia.

piecemeal reform process, with new political concepts developing similarly. Such entrenchment thwarts any inspiration from courageous alternative concepts.

Against the political background of the past century, this reticence regarding fundamental reforms was easy to understand. But it can be all the more dangerous when politics faces unprecedented challenges, and in fact the more dangerous, the faster these new challenges arise. At such times, piecemeal reformism can not only inhibit political progress, it can also pave the way for political disasters. This is the very risk scenario that policy is heading for in the 21st century. Piecemeal reformism is not adequate to face these political challenges.

But how can we inspire a willingness for truly fundamental, courageous and far-sighted political reforms? A fundamental prerequisite for this to happen is reliable peace. Only in a world unencumbered and undistracted by international and domestic conflicts can great political reform be appropriately prioritized. The purpose of this essay is nothing less than drafting a new global formula for peace and freedom that could create the conditions for fundamental political reform.

What global formula, then, is needed for peace and freedom? Such a thing may sound too naive and utopian to be taken seriously, but that is what this essay is about: an alternative order that opens new perspectives for dealing with novel political challenges. In other words, it proposes radical reforms that could help pave the way to a new kind of utopia. The question of whether such a utopian alternative is indeed tangible will not only be posited here, it will be answered with a definitive 'yes'. All that is required for our global polity to achieve greater peace and freedom is a single turn of political thought, opening new dimensions of political meaning—a precondition for a peaceful and stable order. Now to be clear, what I am proposing is not a panacea, but I believe it leads to a formula that promises substantially *more* global peace and freedom.

The fact that political thought has fallen dramatically behind the political challenges of our time is explained here by the problems of separatism and secession. At first glance, separatism may seem like a minor subject of world politics, but this is deceptive. Separatism in the broadest sense is the main cause of most militant, and even many non-militant, conflicts in the world. Therefore, solving the problems of separatism could save the world from most warlike conflicts of recent kinds. A formula for solving these problems would be a potent global peace formula.

Moreover, such a formula would be an equally powerful freedom formula. Separatist movements are generally freedom movements since separatists claim a particular dimension

of freedom for themselves and their adherents. Secessionists, generally, claim the freedom to break away from their state to adopt a new nationality, and possibly to found a new state of their own. Only when this freedom is denied does separatism give rise to serious conflict. If, however, separatist claims could be fulfilled without dispute, there would not only be more peace in the world but also more freedom. Therefore, a formula that would help solve the problem of separatism would also be a powerful global freedom formula.

For the most part, separatism is still widely perceived as a peace-threatening phenomenon. For this there are plausible historical reasons. The history of separatism is, in fact, largely a history of violence, terror, and civil war. Separatism, however, is not violent per se, and does not always originate from violence. Separatist inclinations emerge from a discomfort with one's nationality that seems remediable only by collective detachment from the state concerned. Such discomfort may relate to the belonging to a single state or even a supranational organization. For example, the exit of the UK and aspirations in other states to withdraw from the European Union are also part of the history of separatism. A general formula to deal with separatism should also suggest how to deal with the discomfort of belonging to organizations such as the EU; only then could it be considered a truly universal peace formula.

Secessions are rather rare political events. On that ground alone, the political logic of separatism and secession, which will be explored below, may seem to have little political relevance at least in global terms. That secessions are so rare is, however, not because redrawing national boundaries is unwarranted, but rather due to the overwhelming established resistance to such changes.

The fact that secessions have remained exceptional events has in turn strongly influenced the awareness to such issues. It is inherent to exceptional events that they do not follow a general common logic; as a result, there seemed to be no urgency in understanding the factors driving the separatist phenomenon generally, and, therefore, no desire to find a general solution to it. Thus, general solution formulas for dealing with separatism and secession concerns have hardly been actively sought for and could, therefore, not be developed.<sup>6</sup>

This lack of attention to the secession issue is highly negligent. Successful secessions may still be conceived as singular events, but to understand the importance of the issue in global politics, one must examine separatist movements, their tendencies, aspirations, and actions, as well as the origin of their grievances. From a comprehensive view of history, one finds

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<sup>6</sup> For exceptions see Wehner (1991, 1992, 1999, 2006, 2019), Wellmann (2005), and Dietrich (2010).

separatist phenomena are neither exceptional nor secondary to world politics, and this, in turn, suggests that secessions may well be based on a general political logic. And if there is indeed such a general logic, then general rules can most likely be derived for dealing with separatist concerns, including general rules for corrections of the political map.

Such rules are needed more urgently than ever, not only to prevent wars and civil wars, but also to open new dimensions of domestic and national policymaking. Issues of separatism and secession may again and again give way to more topical issues in public attention, but nonetheless, in the long term they have gained increasing importance. Separatist concerns have for decades been pursued with growing self-confidence, as demonstrated recently by Catalans, Kurds, Scots and others. This makes it increasingly difficult for the affected states and the international community to ignore and suppress separatism as they did in previous times. The times when separatism could be condescendingly dismissed as an annoying, but manageable factor in a supposedly well-ordered world of states are definitely gone.

Of course, the more widely the terms secession and separatism are interpreted, the more political weight must be attributed to the topic. In a broader sense, also limited claims e.g. to partial autonomy or exit from a monetary union are to be regarded as separatism. It is in such a broader meaning at the latest that the political logic of secession becomes an outstanding and explosive global issue.

To explore this logic without prejudice, the concepts of separatism and secession have first to be freed from the negative connotations still associated with them, above all the connotations of violence and illegitimacy. Separatist movements have indeed often demonstrated premature readiness to use violence, but in most cases such violence has been a predictable desperate reaction to the disregard for peaceful separatist concerns.

From the point of view of separatists, such disregard is an illegitimate affront. Seeking secession is essentially a request to change the nationality and to change state boundaries according to the will of the citizens. If policies do not respond to such a request or react to it with repression, this will of course evoke indignant and militant reactions. Where separatists are bound to fail from the start, separatist militancy cannot generally be considered illegitimate.

Since separatist-minded citizens usually make up a minor part of the total population of a state, democratic elections can hardly bring them closer to their goal. Existing international law and national law also do not open up possibilities for enforcing separatist goals in conformity with established rules. In contrast, an established state can usually ward off the

concerns of separatist minorities with clearly legal means. This asymmetry of power does not justify separatist violence or terror, but it does explain separatist militancy from the futility of non-militant means.

Even if separatism became militant, states, parties, and media have in the past long prevented separatist concerns from being treated equally in politics; this has increasingly been the case over time. Democratic constitutions follow in the footsteps of monarchist and autocratic orders, to which nothing was more alien than legitimizing separatist aspirations. Much of the historical burden of these old orders has not been eradicated even after centuries of democratic tradition. Rather, the treatment of separatist concerns has shown that even in the democratic world of states, certain civic freedoms are still restricted in an outright autocratic spirit. Consequently, separatism, no matter in what country and continent it emerges, is always part of a universal struggle for a denied dimension of civic liberty.

The defamation of separatist aspirations was until recently so successful in the democratic world that separatism was perceived at best as a kind of quixotic project, a deluded struggle for backward-looking goals. However, the increasing self-awareness with which separatists struggle for and promote their concerns increasingly refutes this interpretation. The notion, then, that separatism could be eradicated or at least permanently contained is becoming ever more obsolete.

Separatist movements will also need to move beyond antiquated methods and backward justifications to gain legitimacy and change the world for the better. Separatists' concerns will not be taken seriously until they take the counterarguments put forward against them seriously. In particular, separatist movements need to address the concern that every single secession may set a precedent with unforeseeable consequences for the stability of the international community. The effects of such precedents could, in terms of time and space, indeed be indefinite. There is no evidence that the history of separatism will ever end. For future secessionist movements, therefore, it can no longer simply be about drawing a new boundary on the political map, but about finding new ways to deal with an otherwise never-ending problem. Therefore, separatists can only hope for the consent of the international community if they do not blindly struggle against the state that they no longer want to belong to, but also consider the fears of the international community of losing control over state borders. At best, separatists would invoke yet unwritten, but nonetheless concrete new rules that the international community need not fear.

However, the current separatist movements of this world are far from realizing what needs to be done. This blindness is evidenced by the populist character of many separatist movements, by the tendency, that is, to sum up separatist concerns in formulas as simple and as emotional as possible. Separatism at this level ignores the multiple side effects of secessions that are to be considered in the world as it is, and thus unintentionally confirms its opponents in their rejection. An enlightened separatism would instead aspire to champion the struggle for a new dimension of democratic self-determination; this would make the mobilization for separatist concerns more challenging, but, in the long run, all the more promising.

For the time being, however, the centuries-old problem of separatism and secession has not even begun to be resolved, not by the international community, not by autocratic states and not by democratic states. This fact points to a much wider complex of problems, namely a general overburdening of polities and politics that is not limited to the separatist problem. Separatism and secession, while a complex and demanding issue, are by no means the most difficult issue that politics must deal with. And if by this issue alone politics is overextended far beyond its capacity, then the same is to be assumed for all political tasks of similar or higher difficulty. Then the unresolved problem of separatism is only part of a general deficit of competency in democracy. Then first, in order to solve the separatist problem, democracy will have to be thoroughly reformed so as to fundamentally improve its problem-solving capacity—while a long detour to solve the issues of separatism, by all appearances an indispensable one.

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## Chapter 2

# Fragile World Order and a Creeping World War III

## 2.1 Africa, Europe, America

Democratic states have developed rules on how to create political power within their borders. The basic principle is that power is bestowed by the majority of citizens. But, which citizens get to decide (i.e., within which state borders majorities are to be determined, and thus power bestowed) is not subject to democratic decisions. State borders are treated as historically fixed and, generally, only modified in the course of revolution or war (between and within countries), or by the arbitrary acts of autocrats. There are no provisions, not even in democracies, for modifying borders without conflict or dispute.

Separatist sentiment rarely succumbs completely even in times of political normalcy. Instead, separatists continuously assert the claims to freedom and self-determination denied them by prevailing dogmas and political practice. The resulting conflicts reveal separatism to be a symptom of a fundamental crisis of political ideology. In dealing with separatism, therefore, nothing less is at stake than the fate of the so-called liberal world of states. Thus, it is time to accept separatism not as an inevitable and deplorable, but as a potentially fruitful challenge to political thought.

Such a constructive understanding of separatism will not easily prevail given its violent history. Although a certain amount of violence has always been deployed on both sides of separatist conflicts, such violence is still generally blamed on the separatists in the political discourse. Even when separatists fought for their goal by legal means, they were usually characterized as the villains of the political drama. Under such conditions, it seemed justified to judge separatism merely in legal categories and denounce separatists as lawbreakers.

Even though many individual separatist conflicts have been thoroughly explored, documented, and commented on, separatism itself has been given little attention as a fundamental problem in political theory. When separatist movements have made spectacular appearances, public interest often flared up reflexively, but faded quickly when the situation had calmed and seemed clarified. In most such cases, clarification meant defeat or exhaustion of the separatists.

In the public consciousness, the impression has persisted that separatism, although perhaps ineradicable, would remain manageable by combatting its symptoms in the same old ways (usually some form of oppression). Yet under such circumstances, separatism could not be perceived as a cause for questioning old political beliefs and developing new ones.

How fundamentally wrong this assessment is becomes apparent when separatism is examined across space and time. Then it becomes clear how widespread, durably, and sustainably separatism keeps parts of the world in suspense. While the last half century has been marked by a subsiding political conscience of the horrors of two great wars and colonialism, separatism has shown itself to be a lasting phenomenon; managing only to accelerate since the collapse of the Soviet Union as conflicts arose across the globe.

Not all related conflicts can be associated with this drama right from the beginning since separatist concerns often overlap with other conflicts of interest. Indeed, many conflicts in which a quest to define a new nationality plays a prominent role have been, and continue to be, misinterpreted primarily as conflicts over economic interests or as mere proxy wars, as in the case of the recent wars in the Middle East. These interpretations obscure what was and is really happening here: an unending global war. A multitude of widely scattered, intermittent and, in aggregate, centuries-long wars that follow a common internal logic.

Speaking of a world war in this context may seem exaggerated. But if this world war differs greatly from the two past ones, it is not with regard to the extent of the disaster, the suffering, and the destruction. The main difference lies in its dimension of time. The past world wars appeared like singular catastrophic events happening over a relatively short period of a few years. They were compact military, political, and humanitarian dramas. At the same time, these wars were mental dramas that stirred up and changed political consciousness within a short period; the ongoing world war is a drama of consciousness as well, but a gradual one. It is a true world war not only because it has claimed many millions of victims, it is also a world war in its geographical spread. Therefore, at least in the very long term, this war will also change political thought and action worldwide.

The true beginnings of this ongoing global war date back to far before the past world wars to the nascent stages of our current system of nation states. The American Revolutionary War can certainly be ascribed to the previous history of the ongoing global war. Even more so, the American Civil War was a secessionist war in the modern sense, and in the light of the theory presented here it requires a far more differentiated assessment than hitherto. Such a

differentiated assessment suggests that the many hundreds of thousands of victims of this war were ultimately victims of an overly simple ideology.

The antecedents of the unending global war also include attempts to expel and annihilate populations for fear of an eventual separatist rebellion. Such evictions and genocides often do not lead to separatist war or civil war only due to the weakness of the victims. An example that could be interpreted in this sense is the Armenian Genocide which occurred between 1914 and 1923. Another, more recent, example is the Rohingya, who were expelled from Myanmar by the hundreds of thousands in 2017. In a broader sense, such events must also be associated with the ongoing global war.

As to this global war in the narrower sense, there are good reasons to take the war of independence in Biafra in southern Nigeria in the late sixties as its beginning. According to various estimates, this war and its consequences alone killed one to three million people, and the number of refugees and displaced persons was also in the millions. This war, too, was an outbreak of a long smoldering conflict that can be ascribed to the antecedents of the ongoing global war.

The cause of most major wars in history can be attributed to conflict over state borders. This is no different with the separatist wars in the context of the ongoing global war. The individual wars in this context are of a different kind than almost all previous ones. Earlier wars were usually waged by states, and their leaders, who felt powerful enough to forcibly change or proactively secure state borders to their advantage, be it in their neighborhoods or elsewhere in the world. In the ongoing global war, in contrast, it is mostly not aggressive rulers or governments who want to bring about the change, but citizens. Citizens, to be more precise, who are not voluntarily citizens of the state in which they live.

For thousands of years, the geographical map was largely divided into empires, which fought each other repeatedly for territory, resources, and dominance. Nations rose, declined, divided, and crumbled, scrambling their borders in the process. Most subjugated citizens rarely dared question their sense of belonging to these states as it was not up to them. The two world wars, the retreat of colonialism and, finally, the downfall of the Soviet empire have gradually created the preconditions for ever more citizens to question their nationality and national borders with increasing self-confidence. All of this was predictable, yet powers that be were nonetheless unprepared for it.

The state borders imposed by the victorious allied powers of World War II, and retreating colonial powers did create nations that fewer citizens felt involuntarily associated to than

before, but nevertheless, many of these borders were still drawn far too arbitrarily, hastily and ill-considered to ensure lasting peace in the countries concerned. The political protagonists involved in the process, especially those of the West, could not have been completely unaware of this. Nonetheless, they naively reassured themselves and the world that the newly formed state peoples would overcome the lacking sense of community and shared identity and eventually emerge as stable nations. But as Yugoslavia, and many other examples, have demonstrated, this expectation only reveals the extent of lingering imperial thinking.

In phases of the past decades, it may have appeared that overall, a world with stable and universally recognized state borders had been created and that the political map had thus largely come to rest. But it only takes a passing look at the developments of the global political map to come to an opposite conclusion. The very fact that the number of recognized independent states has almost doubled after the Second World War in just five decades (even though this was largely due to the retreat of the colonial powers) testifies to a persistent volatility of the world of states. Of course, this proliferation of states has largely corresponded to the will of the citizens concerned and reduced intra-state and inter-state conflict. It has also contributed to the fact that changes in national borders are increasingly considered as ordinary operations. Consequently, we have entered a new phase of an ever-changing political landscape.

If a part of a state's people does not feel attached to its state, if it does not identify with its policy, its governments, or its political order, and if it does not feel solidarity with the rest of the people, this need not yet provoke a state crisis or separatist activities. In mild form, such civic discomfort may be part of political normality. Nevertheless, it is mostly an indication that state borders should not be taken for granted. Crises of national identity across the globe have been fueled by aggravations of such discomfort. The only exception is the North American continent, where, since the American Civil War, the Quebec sovereignty movement has remained the most concrete separatist stirrings.

For Europe, on the other hand, the disintegration of Yugoslavia has been the most dramatic separatist event of recent times, which exemplifies how tragically a state can fail when its people are not inspired by a will to common national citizenship. Within its existing borders, such a state can in the long-run be held together only by the iron fist of an autocrat.

Accordingly, after the fall of Tito's socialist dictatorship, the Socialist Federal Republic of Yugoslavia inevitably collapsed within a short time. At the state of consciousness then prevailing, this could not be accomplished otherwise than with war and civil war. In these

wars it became clear once more that citizens, the state, and the entire international community were in no way prepared for such a process.

More shocking is the fact that the international community has not yet learned any fundamental lessons from the Balkanization of Yugoslavia, even in Europe, and has not moved towards a new and mature set of rules for dealing with such cases. Although some militant conflicts and civil wars, as in the Basque Country, in South Tyrol, and Northern Ireland, were effectively defused by negotiation, no fundamental conclusions were reached. The handling of more recent conflicts, such as those about eastern Ukraine and Crimea, was characterized by unaltered old reflexes and dogmas, although the parallels to the Yugoslav case were obvious. The state borders of Ukraine had been drawn as arbitrarily as those of Yugoslavia and many former colonies. For most citizens in its eastern regions and in Crimea, Ukraine had not become a political homeland. Instead, a spontaneous aversion to the Ukrainian state prevailed. Thus, the population within the old Ukrainian borders was not destined to live permanently in a common state.

From today's perspective the case of Yugoslavia may be regarded as a unique case that could happen in Europe only after the unique event of the collapse of communism. It is true that separatist goals were nowhere else in Europe fought for so violently and have nowhere else claimed so many victims. Although separatists in Western Europe have not always shied away from violence and terror (e.g., Basque Country, Northern Ireland, and South Tyrol), separatist concerns in the Western world have been largely persecuted non-violently, as such examples as Scotland and Catalonia show. However, even these cases are apparently not resolved. Even if they do not escalate militantly, there is still considerable potential for political crisis.

This leaves Europe pervaded by frozen separatist conflicts, with the more critical ones being in eastern regions, in particular in eastern Ukraine, the Caucasus, Transnistria, Cyprus, Bosnia-Herzegovina, and Kosovo. If any in Eastern Europe, only the crisis in Crimea can be considered successfully resolved. In the Crimean case, the political map was largely corrected in accordance with the will of the citizens and virtually non-violently, thereby preventing a possible later secessionist civil war. This case also showed how fundamentally citizens' will and international law can contradict each other.

But even and by far more dramatic and explosive is the problem of state borders in Africa. So far, no African conflict has reached the extent of the Biafra war with its millions of victims again, but the case of Sudan has taken hardly less a tragic course.

The state of Sudan was one of the sinister legacies of colonialism. After a long violent history, Sudan's borders were drawn with the ruler onto the African map by European politicians in the mid-20<sup>th</sup> Century. Since the outset, Sudan has been haunted by grave internal conflicts. The predominantly Christian south waged a decades-long secessionist war against the dominant Arab-Muslim north, in which many hundreds of thousands died and millions were expelled. In 2011, the southern part of the country finally succeeded in holding a referendum on its independence. As might be expected, an overwhelming majority supported the founding of a new state. The vote, more than half a century after the foundation and after decades of infinitely painful violent conflicts, finally divided a state that had been misconstrued from the beginning. The millions displaced, expelled, injured, starved, and killed in this conflict must also be included in the victims of the ongoing global war.

South Sudan's war of secession was, to a certain extent, also marked by the state of political civilization of its political actors. And in a country like Sudan, the political propensity for violence was much higher than in Western Europe after World War II. In its underlying logic, however, this war hardly differs from intra-European separatist conflicts of the recent past, e.g., from cases such as Cyprus, Yugoslavia, and subsequent ones.

But Sudan and Yugoslavia have something else in common. For both, the problems of political togetherness were by no means solved by a singular balkanization of national territory. Particularly in Kosovo and Bosnia-Herzegovina, minority conflicts continued to flare that could only be frozen by a military occupation regime. The events in Sudan took a similar course. The new border dividing North from South Sudan was drawn largely arbitrarily, overruling the will of a large part of the citizenry. The region of Darfur, whose inhabitants had fought long and hard for their independence together with those of the South, was against its will assigned to the territory of North Sudan. In Darfur, therefore, the civil war never really ended. Even more dramatic and conflictual was the course of events in South Sudan. Despite winning their independence, the constituent groups of the resulting new nation of South Sudan proved to be incompatible. The Dinka and the Nuer, two ethnic groups that had always felt foreign to each other, managed to defuse the conflict between them only temporarily through truce agreements and improvised divisions of power by the tribal leaders. But nothing was ever resolved. The subsequent conflict resulted in more than a third of the population of South Sudan becoming refugees in their own newly birthed country.

Following similar patterns, wars and civil wars were also waged in countries east of southern Sudan, including the Eritrean independence war and the fierce civil war in Somalia, which

caused severe famines and claimed hundreds of thousands of lives. In the Somalian war as well, who wanted to be a part of a common state with whom and within which borders that state would exist, were central questions.

Many more civil wars and terrorist scenarios have developed in other regions of Africa, including Nigeria, Mali, Ethiopia, Kenya, Burundi, Chad, the Central African Republic, and the Congo; this apart from more limited militant conflicts such as in Cameroon, where the Anglophone minority had long been in latent struggle with the francophone majority. In almost all these cases, questions of which tribes, religions, and languages would continue to define a common state were present. Again and again, the finding was that distinct communities, which had long cohabited in colonies and dictatorships, were drifting apart with gradual democratization and liberalization. A particularly worrisome case is Nigeria, Africa's most populous country. Inhabited by diverse ethnic groups, languages and religions, Nigeria's national unity has been eroding particularly in Muslim majority regions with separatist tendencies. More violence is expected should increasing efforts for autonomy and secession be made.

Since the beginning of the unending global war of secession, the actions of the West have been proved to be a disaster. This was most obvious in the West's involvement in Nigeria's war to stop the breakaway of Biafra in the late sixties. Nigeria's government had led this war with approval, along with military and financial support, of several Western countries committed in Africa. Of course, the West had been unwilling to admit any responsibility for the situation in drawing Nigerian state borders, within which peaceful cohabitation of all citizens would in the long run be impossible. All the more reason Western countries wanted to keep the illusion of globally stable state borders from faltering—in Africa of all places—even at the cost of African blood to maintain the illusion.

It was no surprise, then, that even in the following decades there were no advances in political consciousness that would have spared Africa further tragedies of this kind; including the genocide in Rwanda in 1994, which killed nearly one million people. Although the Rwanda genocide resulted more from of a social than an ethnic conflict, here too, involuntary citizenship in a common state played an important role.

In the wake of the Rwandan civil war, large parts of the Rwandan population fled to the Congo, which hasn't been at peace since as bloody civil wars have flared up—the cause, again, being involuntary togetherness in the common state. These civil wars, and the fallout

from them, may have claimed well over a million lives, and yet the Congo has come no closer to peace or resolution to the underlying conflicts.

## **2.2. The Arab World**

The turmoil in Africa is among the most tragic of the global war of secession, but greater international attention was aroused by the conflicts in the Middle East and the Arab countries. The conflicts in this region are of the same kind and in similar ways misinterpreted, repressed, and—deliberately or unintentionally—fueled by Western and other foreign powers including Saudi Arabia, Iran, Russia, and Turkey.

Since 9/11, 2001, and the subsequent invasion of Afghanistan and Iraq, Western governments, particularly the US, have clung to the illusion that modernization, following Western patterns and imitating Western institutions, would, if not in Africa, succeed in the Arab world. When mass protests against the ruling regimes started in several Arab countries at the beginning of 2011, it was hailed as an "Arab Spring" and initially interpreted as the awakening desire for modernization via true political democratization. Arab citizens, it was hoped, would now overthrow their despots with unprecedented determination, if necessary with the military help of the West, and thereby pave the way for regular democratic constitutions. And it was believed that future Arab governments and their citizens would respect existing state borders as a matter of course. Democracy would bring peace within states, and the respect for existing borders would safeguard peace among Arabs—so the Arab world would follow a similar path as Europe in the latter half of the twentieth century.

The West could not have been more fundamentally wrong. The fact that the Arab countries had not experienced a single decade without war in the recent past, not a single ongoing phase of peace, should have disabused the West of its naiveté. The multiple suppressed conflicts smoldering just under the surface would not be pacified by Western style democratization and liberalization. And perhaps in the Arab world more than anywhere else, the origins of the underlying conflicts lie in arbitrary state borders constituting state peoples who were not voluntary communities. Thus, the so-called "Arab Spring" became the starting point of an appalling tragedy. Here as well, Western powers had been involved in establishing arbitrary state borders, still attempting to preserve them at all costs by supporting one warring faction over others. Therefore, the West bears a great share of responsibility for the perpetual turmoil of the region.

### *Libya*

In the Arab world, the unending global war followed the same pattern as it had in Europe in the Yugoslav wars. Where a dictatorship has held an involuntarily cohabiting state people together by ruthless force, the weakening or overthrowing of that dictatorship makes the people spontaneously strive for separation. And because there were no rules established for such separation processes, they resulted in chaotic wars and civil wars and the disintegration of states. The fall of Libya also followed this pattern. At the beginning of 2011, after more than 40 years of Gaddafi rule and with the covert support of western governments, protests emerged from the eastern part of the country that quickly spread to become a strong rebel movement. Air forces from several NATO states supported the rebels with tens of thousands of bombings, expecting, of course, thereby to enforce the transition to an orderly democratic future.

The Western military intervention led to the overthrow and murder of Gaddafi, but thereafter the country fell into bloody anarchy.<sup>1</sup> Instead of becoming a flourishing democracy, Libya became an internally torn, powerless, and disorderly failed state. It soon became clear that none of the conflicting parties of the post-Gaddafi era were seriously committed to Western values and rules. The Western states involved in Libya had the military know-how to help overthrow a Gaddafi, but they lacked any political know-how to make a functioning new state arise on the rubble of the Gaddafi regime. Nor could they prevent what Gaddafi and others had predicted in the case of his overthrow: that Libya, under future weak and divided successor regimes, would become a transit area for many millions of Africans illegally making their way to Europe.

Since Western intervention, Libya has become a failed state and proxy war zone in which rival regional groups, and their armies and militias, fight each other backed by foreign powers such as France, Italy, Russia, Egypt, and the United Arab Emirates supporting their preferred parties to the conflict.

### *Syria*

Libya is part of the tragedy of the ongoing global war, but even larger tragedies occurred in Syria and Iraq. Syria and Iraq were also states whose citizens could only be held together as commonly oppressed subjects in dictatorship. These states were, therefore, doomed to

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<sup>1</sup> There are no reliable calculations of the number of lives claimed by the Western intervention in Libya, and neither are there reliable estimates of the number of lives claimed by the Gaddafi terror. But it is a fair estimate that more lives were claimed by the Western intervention and its fallout.

disintegration when their autocrats, Saddam Hussein and Bashar al-Assad, could no longer exercise their crushing power. In these countries as well, parts of the population no longer wanted to share a national identity or territory. In Syria in particular, the multi-factional civil war has engendered greater violence and destruction than in most such conflicts. Many hundreds of thousands were killed, and almost half the population have fled the country to escape terror and war.

As in the case of Libya, the uprising against Assad was initially interpreted as the uprising of a politically maturing people against its oppressor, i.e., as an uprising that would soon turn Syria into a functioning democracy within its existing borders. In the ensuing civil war, however, it became clear that the rebellion in Syria was anything but the uprising of a people unified in resistance. The country fell apart into a region with a mostly regime-loyal population and regions where other warring factions fought bitterly for power and supremacy against the regime, against each other, or both, almost all of them with covert or open support from Western states, Arab states, Iran, or Turkey. If and how new borders could be drawn on Syrian territory that would enable a peaceful future remains obscure, and only more so since Russia intervened to stabilize the Assad regime. This episode of the ongoing global war could, therefore, only result in another frozen conflict. The only certainty is that a Syrian people, ready to be peacefully united on the former Syrian territory, does not exist.

In a case like Yugoslavia, it was foreseeable along which borders the successor states would be delineated; therefore, the wars for the dissolution of Yugoslavia were comparatively short and limited in extent. In the case of Syria, however, the perceptions regarding possible dividing lines of the state territory were much more confused. This became apparent in—for foreign observers—seemingly inscrutable processes of religious and ethnic cleansing, with Arabs and Kurds, Sunnis and Shiites, Alawites, Yazidis, Christians, and other ethnic and denominational groups being involved both as perpetrators and victims. When the present civil war comes to a preliminary end, Syria will, therefore, remain a war-weary powder keg in which the ongoing global war will continue to smolder.

#### *Iraq and Turkey*

The tragedy of disintegrating Iraq followed almost the same internal logic as the tragedy of Syria. It exhibited similar atrocities and it claimed a similar number of victims. In addition, it overlapped geographically with the collapse of Syria, even if it had started quite differently. After the end of the US-British occupation of Iraq in 2011, Iraq was formally a democracy expected to stabilize according to Western terms. However, in Iraq too, citizens lacked the

common will to share a common nationality. Separation has been the dominant sentiment, no matter how fiercely it might have to be fought for. The divisions between Arabs and Kurds, Sunni and Shiite Muslims, and even between different Sunni groups are deep and potentially irreconcilable. The Kurds in particular have never desired to be part of Iraq.

Divisions in Iraq were long suppressed by a near constant history of war during the dictatorship of Saddam Hussein, war with Iran, with Kuwait, the US invasion, and later civil war instigated by the rise of the Islamic State. The invasion of the Islamic State in particular has thrust questions of national identity at a time when political tensions are high between Sunnis and Shiites.

Certainly, the civil war in Iraq was not always about the question of which state borders and nationalities citizens desired for the future. Legitimate causes of national identity and demarcation mingled with economic interests and with power interests of foreign and domestic governments, along with archaic religious intolerance, and violent and vengeful instincts. Nevertheless, the Iraqi drama can only be understood properly as part of the global war of secession, as its course and duration are closely linked to the issue of who could voluntarily live with whom in a common state. Had the state borders in the Middle East corresponded better to the will of the citizens from the outset, a tragedy of such magnitude, such a collapse of order and civilization, such impoverishment and uprooting, and such spread of misery to neighboring states and to Europe could not have occurred.

The events in Syria and Iraq are among the worst eruptions of the unending global war, but this war affects other states in the Middle East as well and has made its way to Yemen. The present civil war in Yemen is often characterized as a mere proxy war instigated by Iran and Saudi Arabia. However, Yemeni citizens have not been inspired by a common sense of national identity and will to togetherness. Although the Houthi rebels in Yemen may have been instrumentalized by Iran for its regional power interests, essentially, they do not fight for Iran, they are fighting for a separatist cause of self-determination and independence.

Moreover, the potential for conflict over national togetherness and self-determination in the Middle East spreads much further. Most Kurds are citizens against their will in Iraq, but also in Iran, and Syria, and, above all, in Turkey. The long-smoldering, never completely suppressed civil war of the Kurds against the Turkish state must, therefore, also be seen as part of the ongoing global war. Thus, also in this part of the world an end to this war is not in sight, even if the weapons should fall silent on Syrian and Iraqi territory for some time.

The most recent history in the Middle East might have taken a less tragic course if the foreign powers involved—particularly the US, Russia, Great Britain, and France as well as regional powers such as Iran, Saudi Arabia, Turkey, and not least Israel—had not been so determined to preserve the state borders—imposed by prior colonial powers—at any cost. These borders, it was believed, had lasted for almost a century and thus long enough to cultivate cohesion and a sense of national identity among the citizenry. But even a century has proved to be insufficient to produce a stable nation state. Even after long periods of relative peace, divisive political motives—be they ethnic, denominational, cultural, ideological, linguistic, or otherwise—may emerge, or reemerge, and tear a country apart.

It is a lesson of history the West should be familiar with given the borders of present-day Europe were drawn and redrawn with much blood over the centuries. The same process is happening in the Middle East. Yet false boundaries are still defended with force and blood, and so long as this continues, new boundaries, ones that ensure peace, cannot be drawn without bloodshed. In this region as well, the ongoing global war is bringing forth new and dangerous provisional arrangements that will be political hotbeds of the future.

The current state of affairs in the Middle East is unlikely to change until the West realizes that the democracy that will bring peace to the region is not the democracy of Western states. Western countries will only be able to successfully contribute to peace in the Middle East once they learn how to help build a democracy other than their own.

### **2.3. Asia**

Relative to the catastrophes of the Middle East, one could be forgiven for thinking Asia exempt from the ongoing global war. However, Asia has also recently experienced strong rebellions against arbitrary state borders and involuntary nationality. Examples include, inter alia, the endless conflict over Kashmir, between India and Pakistan, the long civil war (1983-2009) of the Tamil Tigers against the Sri Lankan government, recurring militant separatist clashes in Indonesia and the Philippines, and the expulsion of Rohingya from Myanmar. All of which provide a glimpse of further conflicts over nationality that could break out in Asia in the coming decades.

At least in the very long run, even the largest and most powerful states in Asia will be affected by this problem. For example, it is by no means a matter of course that Russia in its present-

day borders will forever be acknowledged as the political homeland for all its population. Separatist sentiment could become particularly virulent among the more than 20 million Muslims in Russia's southern regions. Even China's borders are questionable—also drawn arbitrarily with little regard for culture or language. At least 100 million citizens of today's China, including Uighurs, Tibetans, and others, including the majority of citizens in Hongkong, belong to groups whose sense of solidarity with the People's Republic of China is questionable. Even ethnic Chinese speak different languages, albeit their written language is the same. Should additional dividing motives evolve, e.g., ideological or social divides, it should not be taken for granted that all these communities maintain a common sense of national identity. In the event of hasty democratization, at least in peripheral regions separatist forces could become strong enough to considerably change the political geography of present-day China.

Taiwan is another contentious issue that continues to create friction in the People's Republic. The state of Taiwan is denied recognition by China's one-China policy which proclaims there may be no other state within China's historical borders. China vehemently enforces this policy as a precondition for all international relations, to which most countries have capitulated. This is another conflict of national identity, one in which the apparent will of the Taiwanese people continues to be denied recognition by the international community.

If an eventual future democratization would undermine the cohesion of China, one is bound to wonder why this has not happened long ago in democratically governed India. India's state borders are by no means undisputed. India has fought four wars over its state borders, three of them with Pakistan and one with China, and it has struck down several separatist movements in different parts of the country.

Nevertheless, the global war of secession has yet to envelope India to the same degree as other parts of Asia. Certainly the potential is there, given that in terms of ethnicity, language, and religion, India is no less heterogeneous than the European continent. It is remarkable, therefore, that the country maintains as strong a central government over its territories. One might suspect if national borders and identity were truly up for discussion and alteration, India would certainly not be defined by its present-day configuration.

The fact that so far only a few severe conflicts have emerged could be a result of cultural conditioning—perhaps a spirit of subservience rooted in pre-democratic history. However, as prosperity and education levels rise, civic self-assurance will continue to grow, and the question of who wants to live with whom in a common state will be entertained with more

confident seriousness. As a result, militant conflicts are bound to emerge, and India's present border demarcation will—in the very long run—change in due course.

These examples show that even in Asia there is a wide spanning long-term scenario of potential separatist conflicts. Not all these conflicts will escalate to violence, but they certainly cannot be expected to disappear by themselves. They must be expected to linger until the world has learned a new way of dealing with problems of this kind. Until then, secessionist aspirations will continue to be perceived by many existing states, by supra-state organizations, and by the community of states as threats, if not to their very existence, then to their rules and values.

The past course of the ongoing global war bears every indication that separatism and secessionism will be a century-long challenge. It simply cannot be otherwise because any real solution to the problem that compromises border integrity will be opposed by entrenched political dogmas and emotions. In the 20<sup>th</sup> century, it took two world wars, countless regional wars and, finally, the collapse of the Soviet empire to overcome or at least mitigate some of the most disastrous political thought patterns of that time. In the 21<sup>st</sup> century, there is a need for even more profound evolution in political beliefs and sentiments, perhaps most of all in matters of nationality and state borders. Thus, it is not surprising that a long global war is needed to make these mental adaptations possible. So far, this war has, at best, initiated the incubation of a new political consciousness.

The first big step in this process of consciousness could be an unprejudiced reassessment of the role of the parties to conflicts over borders and nationalities. It should be recognized that the driving forces behind these conflicts are legitimate citizens' movements claiming a fundamental civic liberty, that secessionist movements are freedom movements, and thus the ongoing global war is a war of liberation.

In the conventional view, it is argued a country should not be divided just because some of its citizens want their passport to be issued by a different authority. Switzerland is often invoked as an example where several language communities have lived for a long time in undisputed accord in a common state. Why can't this be, with no more than some good will, an applicable model for other parts of the world? Reference can also be made to the European Union in which old nationalities seemed to have lost significance relative to a supranational European identity. This is meant to demonstrate that history will eventually move beyond the separatist problem.

These would be weighty arguments if citizens could indeed be convinced of the insignificance and futility of separatist endeavor. For this, there is not the slightest evidence. Separatist aspirations often flare up anew, even where demoralized former generations of separatists had given up. It has become evident even at the supranational level that unresolved issues of nationality are deeply rooted in citizens' sentiments. By its very nature, the withdrawal of a country from the EU is an act of secession. But in the EU treaty, at least a basic provision has been made for secessions to be initiated legally (Article 50).

The world would be a better place if only a simple basic rule similar to Article 50 of the Treaty on the European Union were established for secessions from nation states and recognized by international law. However, the phrasing and eventual recognition of the necessary pertinent regulatory framework will be one of the most vital political challenges of this century and beyond.

## Chapter 3

# The State as a Forced Community – Burdens from the Past in the Conception of Statehood

### 3.1 Separatism, International Law, and the European Union

A state is a community of citizen interests. This—even though somewhat clunky—definition may aptly describe what states, or state-like constructs, are and should be.

The term "community of citizen interests" may, however, seem somewhat technocratic in this context. A state, one might object, should not only be about interests, it should also be about emotions, in particular meaningfulness, for example, as a community of identification. But this would only be a semantic dissent, which can be easily resolved by including meaningfulness in the interests of citizens. In what follows, the term the state will be understood as a community of interests in this wider sense. This definition makes the notion of the state neither arbitrary nor exposes it to easy abuse, for at least the most ominous understanding of the state is hereby excluded—that is the nationalist understanding as a community of shared destiny.

A community of citizens can serve its purpose best if citizens agree on this purpose, i.e. if all citizens have common interests. Citizens who pursue divergent interests are a burden to such a community. By keeping such dissenting, and perhaps renegade minded, people in their midst against their will, the community is harming itself. Therefore, it should be ready to let such different-minded citizens and their settlement areas be separated from its state.

Whether states were in the past really communities of interest in exactly this sense and whether they have ever parted in this same spirit from territories with renegade citizens is not relevant. The state as a community of citizen interests in this sense is still a useful reference model even if, for various reasons, states rarely come close to it in the real world. For example, the more powerful a state and a state leadership, the more dominant other motives in dealing with renegade-minded regions are likely to be.

Among these other motives are, on the one hand, such well-considered ones as the fear that renegade regions might associate with rival or hostile powers. But there are, on the other hand, also unreflective motives such as a diffuse discomfort at the abandonment of state territory. This motive may be the strongest among autocrats, who may virtually regard the territory of their state as their own, and thus regard a secession as a personal loss. But autocrats not only lose land through secessions, they also lose citizens (i.e., subjects) from whom they can extort levies and services for their own benefit and the benefit of supporters and loyalists. Therefore, autocrats who are sure of their power tend to be the least accessible to separatist concerns. However, if their power appears insufficient to reliably suppress separatist uprisings, autocrats may be tempted to rid themselves of seditious minorities by expulsion or even genocide—events in the formerly Yugoslav territory being just the latest example in Europe.

Oppression and expulsion are basically autocratic practices, but democratic states, of course, are capable of these practices as well. In a democracy, an unscrupulous majority of citizens can take action against troublesome minorities just as autocrats do, using state power with autocratic determination, rigor, and violence against separatist aspirations, even up to ethnic cleansing. Such occurrences have been observed in the ongoing global war. Democratization alone is an insufficient condition to ensure separatist aspirations are handled civilly and peacefully.

Even in the democratic world, the notion of separatism never raised positive sentiments. Separatists want to shift state borders, and the lesson of history was that this is mostly associated with violence and bloodshed. Not even constitutional (i.e., rule of law) democracies were prepared for an orderly handling of such separatist concerns. In these democracies, separatists had to be prepared to break the rules of their state in order to work toward their goals. For policymakers, it was inconceivable that such rule-breaking violence is not the result of the illegitimacy of separatists' aspirations, but the illegitimacy of established rules of the democratic state.

In the democratic world, the opinion that has prevailed is that separatists should be considered threats to peace, and that, accordingly, any separatist-motivated changes in the political map should be prevented—even by force. Exceptions should only be tolerated with the consent of the state affected. This dogma of territorial integrity has remained largely consensual in the international community, especially so since it is established in international law. According

to Article 2(4) of the United Nations Charter<sup>1</sup>, no state may use or threaten to use power in support of separatist aspirations in other countries, which effectively permits all countries to indiscriminately suppress separatist aspirations in their own territory.

Currently, there is no right to self-determination that separatists could conclusively invoke in dealing with their government that is codified in international law. Article 1(2) of the UN Charter formulates the objective of "developing friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples." Article 1(1) of the International Covenant on Civil and Political Rights of 1966 states, "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." However, the mere right of peoples to self-determination would not legitimize separatist concerns. Thus, a right to separation from an existing state could only be derived from the most expansionist, not to mention controversial, of interpretations of international law. In particular, separatists could not successfully invoke this clause unless they could identify themselves as a distinct people recognized by the international community. As long as this recognition is generally denied, separatists are generally not recognized under international law as legal entities with a right to self-determination in the sense of a right to secession.

While separatist concerns may be morally compelling, they cannot refer to formal law. Therefore, when separatists struggle for their goals, they do so without valid legal grounds. And where legal grounds are lacking, there is also a lack of orientation for political action.

Under these circumstances it is no surprise that separatists rarely or never have an elaborate implementation concept. This often makes separatist action seem arbitrary or chaotic, which is detrimental to their political assertiveness. For example, the recent independence referendums by the Kurds in Iraq and the Catalans in Spain, both held in 2017, were a civilized attempt to voice their concerns with vigor and legitimacy. But not only were these referendums illegal, they were also conceived too hastily to show a path to independence without conflict. Such referendums may document the fundamental legitimacy of a secessionist cause, but they leave crucial practical and moral questions unanswered, including the question of precisely how the secession area could be demarcated to allow implementation with the least possible internal conflicts.

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<sup>1</sup> Article 2(4) of the UN Charter states, "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

The prevailing dogmas concerning state borders and separatism have shaped not only international but also national law. Possible consequences of this have recently been demonstrated to the world in the Spanish-Catalan conflict. Late in 2017, Catalan politicians who had arranged for the first Catalan independence referendum were arrested by the Spanish judiciary and charged with rebellion, thereby threatened with a sentence of up to 30 years imprisonment. This shows how ruthlessly national law can interpret doubtlessly peaceful pursuit of secessionist goals as a serious crime.

The Catalan separatists were hoping for affirmative reactions from the European Union to their plight, but this only showed that they were misinterpreting the political essence of the EU. Instead, the EU and its Member States gave tacit support to the Spanish government against the Catalan. But why you might ask? Because an institution such as the EU has a natural self-interest in keeping its structures stable; a secession would be a highly unwelcome complication. The purpose of European integration was not to broaden freedom of choice in terms of separatism, secession, or rectifying borders, but the opposite.

The EU was conceived as a political entity that, while expanding by taking in new members, should, apart from that, maintain its internal and external borders. From the EU's point of view, the United Kingdom's referendum on leaving the EU, often referred to as "Brexit," was some kind of political accident. Although the EU provided an exit clause, the largely indignant reactions to the Brexit referendum by other EU members revealed they never expected it to be used.

Even more so than the exit of a Member State, secession from a Member State would be perceived by the EU as a threat to hard-won compromises on common rules and structures, this was also reflected in the reactions to the separatist efforts in Scotland and Catalonia. Instead of maintaining neutrality or recognizing the legitimacy of aspirations to independence, the EU threatened to deny membership to any new states that might emerge from secessions in EU territory. Accordingly, regions aspiring independence from EU Member States had to be prepared that, once they achieved their goal, free movement of persons, goods, and capital to and from EU countries would come to end. In view of such threats, a truly free decision on secession and independence is hardly imaginable.

Instead of threatening in such a way, a politically matured EU should have asked itself how a secession aspired to by the citizens could be realized in an orderly and universally legitimate process. Instead, the EU only asked: How can we prevent that?

Such examples show what powerful phalanx of established interests inhibits peaceful separatist concerns. Nearly all states, national law, international law, the United Nations, and the EU are part of this phalanx. It is all the more remarkable how separatist movements again and again defy these adversities, renew themselves, and reemerge. This testifies to the sincerity of secessionist concerns and to the futility of any hopes that the separatist problem will fade out by itself.

### 3.2. Tabooing

Separatism is long-lasting, but this is also true for the dogmas opposing it. The fact is that existing state borders in Europe and other parts of the world largely have a long history of violence. Therefore, the claim that these borders are to be respected once and for all does not originate only from established interests and habits. It is also based on the fear that any future shifts of borders will bear the risk of new violence, terror, or war. If state borders were to be debated freely, it is feared that the world, or at least parts of it, would be at risk of a civilizational relapse; and once Pandora's Box is opened, it cannot be closed. Even where border conflicts could eventually be resolved peacefully, borders should remain fixed so as not to give an example to separatists elsewhere.

The taboo on the state-border issue bears a facade of a peacekeeping necessity. The taboo enforcers boast of being peace-loving and thoughtful, while separatists are blamed as frivolous taboo-breakers. Even the most liberal thinkers have been trapped in this taboo dogma. One such enforcer of the taboo was Ralf Dahrendorf. When in 1989, the Caucasus state-border issue was raised anew by Armenians and others, Dahrendorf vehemently held that no population group may claim to live among "their peers", arguing that this claim ultimately leads to the expulsion or repression of minorities. Dahrendorf went so far as to describe the right of peoples to self-determination as a "barbarous instrument". For him it was a "fact...that the right to self-determination is an instrument of decivilization and barbarization, a testimony of the inability to practice freedom in diversity. It is time that it disappears from the vocabulary of international politics."<sup>2</sup> What he meant by "right to self-determination" included the right to secession.

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<sup>2</sup> Dahrendorf (1989). In German, "*Tatsache ..., daß das Selbstbestimmungsrecht ein Instrument der Entzivilisierung und Barbarisierung ist, ein Zeugnis der Unfähigkeit zur Freiheit in Vielfalt. Es wird Zeit, daß es aus dem Wortschatz der internationalen Politik verschwindet.*"

Such an argumentation is indicative of a then and still widespread consciousness that was, after the most barbaric half century of world history, believed to be the most enlightened, progressive, and civilized possible. But it has always been assumed that a comprehensive right to self-determination would inevitably lead to violent conflicts.

Such a line of reasoning overlooks something crucial: the aspiration of a population group to live among "their peers," or more accurately, among citizens who largely agree on the purpose of their state, is a political fact undeniable by any seemingly rational argument. This is even more the case since such aspirations are often rooted in historical experiences of being suppressed or expelled by their own countrymen. But if such aspirations cannot be resolved by legitimate and peaceful means, then, of course, all conceivable political means should be applied to peacefully comply with such aspirations. Then, sooner or later, an appropriate pertinent set of political rules should be created, a set of rules, that is, that does not risk decivilization and barbarization as feared by Dahrendorf but achieves exactly the opposite. The categorical denial of such a right to self-determination is itself potentially barbaric, inasmuch as this right, if denied, may ultimately be fought for with barbaric means.

A right to separatist self-determination is demanded more militantly, the more the separatist-minded population group was previously affected by repression. A right to self-determined secession would serve the legitimate purpose of ending such repression and preventing its recurrence. To reject such a right as being barbaric is, therefore, a denial of morally unquestionable concerns. Worse, it impedes the search for new solutions, i.e. for new and peaceful ways out of oppression.

In its existing form, the right of peoples to self-determination does not open the way to such alternatives. A right of peoples to self-determination could become truly authoritative only if there were a consensual definition of the term people. Of course, this was never the case and it is less so than ever. If, for example, Dahrendorf paraphrased the term "people" as "their peers", that, too, was not an enlightening, but rather an exacerbating contribution to the debate.

Dahrendorf apparently worried that the right of peoples to self-determination could instigate assaults on fellow citizens who are not considered parts of the own people. This concern is not entirely unwarranted. But the answer cannot be to flatly reject the right of peoples to self-determination, thus denying citizens a formally existing right, however imperfect it may be. The right thing to do would be to expand the conventional right of peoples to self-determination into a plausible, and novel, universal right.

The fears as those articulated by Dahrendorf will be a considerably obstruction to the expansion of the right of self-determination. However, these fears are often greatly exaggerated. In fact, whenever state borders were modified in such a way that thereafter more citizens live among their "peers" than before, this would tend to make the world safer and more peaceful. The explanation for this is simple. Where, according to the will of its majority, a region becomes independent or joins another state, there may thereafter be a new minority problem in this region, but usually this will be a less dramatic one. The minority in such a region will in most cases make up a small enough proportion of the population not to be seriously perceived as threatening. The inimical reflexes directed against this minority would be accordingly moderate. Thus, such adjustments of state borders tend to reduce the aggregate potential for conflict and make peace more secure.

Such pacifying effects would occur, for example, if a predominantly Kurdish-populated region of Turkey became independent. From a Turkish point of view, the Kurds of this region are a strong, menacingly and violently combating minority. If this region became independent, the Turks remaining in this region could be expected to be a small enough minority not to appear truly threatening to the Kurdish majority. This could transform a civil war region within Turkey into an independent Kurdish state that treats its Turkish minority in a comparatively civilized manner.

The same effect would, of course, be achieved if the secession area did not become independent but joined another state. In such a case, a new minority problem can arise in the secession area, but this also would affect a proportionately smaller and therefore better respected minority.

Such examples suggest the enormous potential of a right to secession for enhancing peace, even if it was derived from the traditional right to self-determination of peoples. Thus, despite all its imperfection and possible abuses, this traditional right does allow for secessions favorable to both peace and freedom.

### **3.3 The Dogmas are Crumbling**

Legislation cannot simply ignore prevailing political awareness and sense of justice, and accordingly, it cannot ignore the right to political self-determination. As current recognized law increasingly jeopardizes peace and freedom, then, at least in the longer term, this can

change the pertinent sense of justice on the part of citizens, parties, and politicians. In consequence, change could also happen with regard to the separatist question. Here, nothing less is at stake than the curbing of an unending global war and the resolution of numerous frozen conflicts whose resurgence is only deferred by domestic or foreign oppression.

The fact that nationalities, national boundaries, and membership in supra-state institutions such as the EU are increasingly being questioned by citizens increases the potential for conflict. Despite that, politics, national law, and international law still give the same inadequate answers to this as they have done for generations.

From a historical retrospective, the Yugoslav wars of the nineties could prove to be the first events that seriously undermined the persuasiveness of the old dogmas in matters of national borders and nationality. On the former Yugoslav territory, the political map was the cause of violent conflict for more than a decade, but in dealing with these conflicts, no principle of morality or international law was proven as peacekeeping and freedom-enhancing. The existing right of peoples to self-determination and the principle of territorial integrity proved to be too vague and contradictory to provide political guidance. Reminiscent of this are residual frozen conflicts and a continuing occupation regime on former Yugoslav territory in Bosnia-Herzegovina and Kosovo.<sup>3</sup> Therefore, there has been no renewal and no refining of political consciousness as they may be expected after such exhausting wars. These wars have not resulted in a change of consciousness that could prevent similar conflicts in the future or make them more easily solvable.

One impact of the disintegration of Yugoslavia on political consciousness does, however, persist: The lack of principles of Western interventions in this conflict has seriously damaged the credibility of the dogma of territorial integrity. In that sense, the Yugoslav conflict might after all prove to have been the starting point for a slow dissociation from this dogma—also marking the beginning of a process at the end of which citizens can decide as freely as possible on state boundaries and nationality.

However, even an event as dramatic as the collapse of Yugoslavia can be no more than an initial impulse for such a process. The traditional prejudices against separatism remain strong, and international law, national law, established political institutions and parties, and the rules and values of the EU are also major obstacles. Last but not least, concepts that have been familiar for centuries stand in the way of a new understanding of the problem. As long as old

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<sup>3</sup> In Bosnia-Herzegovina the government is supervised by a UN high commissioner. 1000 EU forces help keep the fragile peace. A NATO-led international peacekeeping force (KFOR) still operates in Kosovo.

concepts such as territorial integrity and narrow interpretations of the right of peoples to self-determination prevail, the ideological renewal can make at best slow progress.

Of course, such a renewal is especially painful if, in retrospect, it identifies as wrong what was long believed to be right and as mistakes what was long believed to be successes; thereby evoking feelings of blame and guilt. So, for example, in retrospect, some states—including the US, France, Britain, Russia, and their allies, but also NATO and other alliances—would have to ask themselves: What wars and civil wars that we have waged and supported in the past to defend existing state borders, and what sanctions and retaliatory measures that we imposed for this purpose were unjustified? Could we have known better? And what are we to blame for? Where and to what extent are we morally obliged to provide reparations?

There is no consensus to be had on such contentious and morally challenging questions. Such disputes could divide nations and alienate generations from each other. It can create isolated communication communities in the media, in science, in social networks, and in political parties, immunizing their political views against doubts and contradictions from outside. In this course, the political party landscape could also be divided into camps irreconcilably opposed to one another in their attitude towards dogmas such as the right of peoples to self-determination and territorial integrity. Thereby, the debate over separatism, secession, and independence movements will continue to be a relentless struggle.

In the very long run, dogmas that deny citizens such an elementary right as full self-determination can hardly maintain credibility. The current ideology will only be overcome when those who feel restricted by these old dogmas are too many, and the willingness to overcome them is too far developed. Two decades after the wars in Yugoslavia, new secessionist tendencies are being pursued with unprecedented self-assurance in and around Europe. It would have been unthinkable a few decades ago for the Scots and Catalans, and East Ukrainians, as well as the Kurds in the Middle East, to be able to successfully contend for—or even hold on their own for that matter—referendums on independence, all of them with clear, or very near, majorities for secession.

However, these referendums were carried out—unsurprisingly from a historical perspective—spontaneously without any real long-term strategy or thought given to the transition to independence and beyond. If secessions had actually been implemented under such conditions, there likely would have been many unforeseen complications such as new conflicts of interests, temporary economic decline, and fiscal crises. Nevertheless, these

secession projects should not be considered failures, but rather opportunities, namely as preparation for better thought-out and thus more successful attempts for the future.

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## Chapter 4

### **Separatism and Self-Determination – Newly Interpreted and Newly Defined**

Separatist aspirations arise less from intellectual reflection than from spontaneous emotions. This means that anti-separatist dogmas don't respect citizens' emotions.

For the political ideology of the present, this is not a subordinate problem but an elementary one. Where anti-separatist dogmas are still predominant, growing separatist self-confidence shatters the plausibility of current political ideology. Where established political parties deny respect to legitimate separatist concerns, it raises doubts of the legitimacy of party elites, party systems, and ultimately the state itself. Insofar as the European Union insists on the dogma of fixed borders on EU territory, respect for the idea of an integrated Europe may be undermined and citizens may be more reluctant to identify with supra-state institutions. As the European identity weakens, the more appealing the separatist movements may become.

After two world wars and the collapse of the Soviet-led communist states, the Western world was convinced that the established principles of international law guaranteed peace and stability in the best way possible. But these principles have not stabilized the world in a sustainable way. The notion that after the tragedies of the 20th century growing prosperity, free elections, fixed borders, and an ever-stronger role of supra-state organizations would suffice to secure democratic states lasting legitimacy, was just too simple.

But what could citizens feel deprived of, what could they miss, what more could they wish for, once general prosperity, existing state borders and free elections appear secured?

Objectively, it was thought, nothing. The question whether state borders have been drawn correctly, it seemed needed, if at all, to be discussed only in rational economic terms (i.e. in terms of general prosperity).

From a narrow economic point of view, the question of state borders may mainly be about optimizing government efficiency; about whether an existing state is too big or too small to carry out its executive tasks as efficiently as desired; whether, inter alia, it could maintain

armed forces more efficient in warranting external security, whether the burden of taxation could be somewhat lesser or public benefits be somewhat improved if the state were larger or smaller.<sup>1</sup>

Some economists may analyze separatism mainly in these categories, but this is a minor aspect of the issue of state borders and nationality. Where citizens want to break away from their present state and found or join another one, they do not do so just because, for example, the tax burden might thereafter become somewhat lower. The efficiency of public services plays a far lesser role, of course, than identity, culture, and other non-economic criteria. This may be dismissed as irrational, but it is political reality.

Governments cannot ignore the emotional political needs of its population in a world of increasing globalization guided by the logic of efficiency. These needs are diverse, but among them identity, meaningfulness, and solidarity are paramount. The more technocratic, uniform, and anonymous politics and society become, the more citizens feel powerless and ignored. The combination of unresponsive politics and crushing global competition may drive segments of the population, particularly those already inclined to separatism, to desire not just a new government, but a new state and thus a new politics.

Unresponsive politics may also induce political nostalgia for a bygone era, for some, even when that era was under an autocratic form of government. The feeling of nostalgia may be strong enough in some cases that it gives people the illusion that they would be better off reverting back to that form of government.

Such nostalgic reflexes can be directed against the state, particularly against the backdrop of an unfettered market economy—which is organized by the state—prone to meaningless outcomes. In this way, it is precisely the technocratic perfection of democracy and capitalist economy that can undermine their acceptance among citizens. This, in turn, may create new, or reinforce long-standing, emotional demands on politics, which, if not otherwise gratified, may seek fulfillment in separatism.

This is a plausible explanation for separatist aspirations in parts of the world, but of course, the motives for separatism can also be exactly the opposite. Separatism may have the objective to secede from a backward-looking state that refuses, indefinitely defers, or seems unable to cope with political or economic modernization. Separatism can, therefore, be

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<sup>1</sup> Potential disruptions in interregional distribution of wealth may, of course, be an important issue in separatist conflicts as well. This will be discussed in chapter 8.2.

retrospectively nostalgic, forward-looking modernist, or both. Thus, it cannot be explained in categories such as progressive, modern, conservative, national, liberal, or even right and left.

A general characteristic of separatist concerns, on the other hand, is the claim to self-determination. The fact that international law, states, and the international community have such difficulties with this claim is partly because it has for so long been narrowed to a claim of peoples and thus linked to an ethnic or nationalist understanding of the state. It is correct that separatists have in many cases understood themselves as a national or ethnic community, but the possible motives for secessionist movements are, as mentioned, far more diverse. These movements may even originate from the aspiration to free oneself from the narrowness of a political system biased toward nationalist or ethnic dogmas. Thus, a secession may split a backward-looking political entity into two of the same kind, or into a largely progressive-minded new state and a remaining backward-looking one. Not all such incidents would make the world at large substantially better, but they would in any case be progress for self-determination, freedom, and peace.

An early example of a state being split into two states, one conservative backward-looking and the other more progressive—that is, with different political civilizations—was the secession of the South of the United States. The American Civil War demonstrated that ethnic and linguistic differences are not necessary prerequisites for secessions. The essential divide can also lie in differences in civilization and modernization, or desire to modernize, in terms of economic and political social structures and values. This characterization may also apply to a number of secessions of recent history, although ethnic and linguistic differences mostly played a more important role. However, especially in most recent times, political awareness and political civilization have drifted so far apart within states and supranational communities that this alone can give rise to strong new separatist motives. It can result in secessions of particularly backward-looking as well as particularly progressively inclined regions.

Even such secessions would be nothing other than the exercise of self-determination rights. There is nothing to suggest that use of force against such secessions could produce clear benefits for citizens. In retrospect, this is even true for the American Civil War. This war could only be waged because the northern states denied the southern states political self-determination. Although a post hoc justification in the later stages of the conflict, the northern states fought also for the cessation of slavery.<sup>2</sup> However, it could be argued that slavery could

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<sup>2</sup> Abraham Lincoln's election to the presidency was particularly threatening to the South given his views on the institution of slavery. Nonetheless, at the start of the conflict, President Lincoln was more committed to keeping the Union together than ending slavery. But once the South had seceded, that removed a major obstacle for

have ended, even if much less quickly, in a less violent manner with much less bloodshed. From this perspective, the American Civil War was less a war for moral principles than a war for the anti-separatist dogma of state unity. It is, at least, more than doubtful that this brutal and sacrificial war was a humanitarian necessity.<sup>3</sup>

What would have happened if the Southern States' right to self-determination had been respected (i.e., if their secession had been tolerated by the states of the North)? It may be expected that at least in the longer run, the Northern States would have exhausted the non-military means to work towards the abolition of slavery in the South. But apart from that, the following scenario may appear plausible: The United States of the North would have modernized even faster, its economy and its military would have become even stronger, and internal loyalty and solidarity would also have been strengthened. In this way, a united North American state would have emerged that could have developed even faster and more credibly into a strong internationally recognized model state. At the same time, the Southern states would have been spared a centuries-long bitterness over the defeat in the bloody civil war. Therefore, it appears to be a plausible scenario that after a tolerated secession, sooner or later the Southern states would have wanted to reunite with an eminently more successful and better renowned North. Thus, a peaceful secession might have made America—and possibly the world at large—a significantly better place. It might have become a precedent demonstrating how democracies should respect the right to self-determination over nationality and thus the right of citizens to peacefully correct the political map. Instead, the American Civil War has strengthened the opposite ideology.

This shapes political thinking and political action up to the present, especially, of course, in the United States and with its allies. Their readiness to help defend and secure existing state borders worldwide with war, threats of war, and sanctions, regardless of the will of citizens, might have developed less strongly without the historic precedent of the American Civil War. The fact that the one-China policy is observed by most of the international community is in accordance with this line of ideology. That Taiwan, which resulted from a de facto self-

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abolitionists to pressure the President and the Congress towards emancipation in the South, and later the 13th Amendment which ended the institution in the United States.

<sup>3</sup> One may object that the slaves would have had a different opinion on that. But the following thought experiment may be helpful in this context: If the slaves had been asked whether they wanted a long war to be fought for the immediate abolition of slavery—a war in which far more than half a million soldiers, black and white, would be killed, not to mention those injured and traumatized—how many of the slaves would have answered "yes"? Nobody knows. But this thought experiment helps us to be wary of simple judgements on a difficult political and moral issue in history.

determined secession, is recognized internationally by only a few small states is a testament to the powerful threats by China to maintain territorial integrity.

It may be debatable whether the secession of the American Southern states was a dispassionately conceived rational project or rather an emotional one. It can be considered rational at least insofar as emotional motives such as ethnic, linguistic, and religious affinity played no role here. Insofar, the warfare of the North against this secession cannot be credibly justified as a war against an irrational, emotionally misguided policy of the South. It was at least partly guided by interest and ideology.

But it is precisely such irrationality that separatists have up to the present again and again been blamed for. Separatist aspirations are, of course, often highly emotional, and this can make anti-secessionists believe they alone stand on the side of reason. But if separatist aspirations are emotional and not founded exclusively on reason, it doesn't mean they are irrational. What is irrational is a policy that bluntly dismisses emotional needs of separatists for shared tradition, culture, solidarity, mentality, and meaningfulness in their political community.

These emotional needs mostly include a need for identity. In some countries, this need still manifests itself in strong identification with a constitutional monarchy. Constitutional monarchies are anachronistic, but their survival testifies to their contribution in fulfilling vibrant political needs. For elected heads of state, it is difficult to meet these needs to the same extent. Evidence to this is not only given by the continuance of constitutional monarchies, but also by the instinctively royal demeanor of many elected heads of state in mostly former monarchic countries.

Another indication of this is the widespread emotional weariness with democracy. This can partly be explained by the fact that democratic heads of state are elected primarily as prospective stakeholders and problem solvers rather than as figures to identify with emotionally. If, in democracy, heads of state nonetheless stand out as identification figures, this is no more than a welcome coincidence. As long as constitutional monarchs are superior to elected politicians in their identification role, the abolition of constitutional monarchies would be neither progressive nor legitimate. It could only be legitimate if alternative identificational authorities were created that would be recognized as equivalent by the citizens. However, this would require a fundamental reform of democracy.<sup>4</sup>

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<sup>4</sup> The neocratic model of *divisional democracy* (also called *branch democracy* or *multi-track democracy*) provides for the institution of an independent identificatory authority elected in procedures specifically designed

As important and useful as the function of constitutional monarchs is in some countries, and as much as they still contribute to social cohesion, they are unlikely to prevent separatist aspirations for long. They may even encourage the opposite. It may happen that the population of a particular region no longer feels represented by their constitutional monarch and wishes to turn away from his dynasty. In such a region, separatist tendencies could originate from the identificational issue itself. For example, the Catalans, Scots, and Flemish may reject their respective monarchical institutions in hopes of creating a new institution that serves the same purpose. Such aspirations may be dismissed as irrational, but they are indeed politically legitimate and should be taken seriously.

Separatist concerns are sometimes dismissed as irrational also on the grounds that the separatist-minded region is already granted far-reaching autonomy, and that an aspired secession would be little more than formalism. This argument has been brought forward in cases like Catalonia, Scotland, South Tyrol, Flanders, and Quebec. However, this not only reveals a paternalistic attitude towards separatists, but the argument also refutes itself. If a region were in fact so autonomous that little would be changed for it by formal secession, then the same would apply to the state this region is still part of. If this were the case, then nothing would change for the other regions of the state either. Therefore, it would be irrational for this state to refuse the requested secession.

This is another example of the weakness of common arguments against separatism and secession. It would be highly careless to base the future handling of separatism only on such considerations, i.e. on past experience and prevailing ideology. Separatist concerns are as much subject to change as the social and political conditions in which they arise, and this change will always produce new challenges in dealing with separatism. As suggested above, a new variant of separatism could arise if a region tried to extricate itself from a state on the grounds that the government is ruled either by excessively cool rationalists or by naïve nostalgic populists. For example, if a region in which a progressively liberal, solidary, ecological, rule of law understanding of the state prevails could be split off from territories with a predominant autocratic understanding of the state, then such secession could even be necessary to prevent a civilizational relapse of the respective state at large.

This hypothetical shows how multifaceted the motives and effects of separatism could be, and how past historical experience may not be an appropriate guide. Therefore, to assess the full

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for this application. For this proposal see Wehner (1991) and numerous other publications of the author (for an overview see <http://www.reformforum-neopolis.de/reformforum/demokratie.html>).

potential of future separatism and secessions, they should be analyzed independently of their historical context. Only then can the terms separatism and secession be defined so generally that, in addition to their past manifestations and motives, the conceivable future ones are also considered.

In a broad sense, separatism is about a simple *who-with-whom* question: who wants to live with whom in a common state? Who wants to be with whom subject to common rules and a common government?

Citizens may ask themselves these question at any time in any state. Any citizen may try to find like-minded people who answer these questions in the same way and then to associate with these people politically. In this way, theoretically, at any time and in any country, regional majorities could be formed that agree on the goal of creating a new state together, with a new government and laws. And they will say, "we want to secede".

Hypothetically, at least, if this can be the will of citizens anytime and anywhere, then the question arises whether that will should be regarded always and everywhere as legitimate. The consequence being, that the political map could be peacefully modified anywhere and anytime in a way that results directly and solely from the will of the citizens.

From a historical perspective, the thought of normalizing secessions may irritate or even appear scary. Had the door to separatism been opened wide prematurely, or in other words, had citizens been granted such an encompassing right at too early a stage of political civilization, it might indeed not have made the world more peaceful. But the same can be said of other civil rights and liberties, of democracy itself, and of the rule of law. For these concepts as well, the awareness had to mature over long epochs until they could successfully assert themselves at least in certain parts of the world.

The same will be true for the basic questions of separatism and secession. Once the freedoms gained by traditional democracy have become a matter of course, the awareness can gradually mature for a new dimension of political freedom: the freedom of choice over who wants to live with whom in a common state. The more firmly the traditional civic liberties are established, the harder it will be to exclude this issue from the political agenda, and the less persuasive people will find the argument that a fundamental right to separatist self-determination would be disastrous.

Citizens who take the existence and benefits of constitutional democracy for granted are unlikely to be susceptible to such concerns. For them, preserving democracy is no longer a demanding and fulfilling political challenge. They experience the common democratic

participation in politics not as a privilege, but as routine. In such state of consciousness, in such sense of routine, it suggests itself to turn to new, more fulfilling, fundamental goals in politics. Freedom of choice over *who-with-whom* in matters of nationality is one such fulfilling goal.

Separatist movements cannot be blamed for having only vague ideas about how to pursue their goals and exactly what political and social conditions they aspire to. Nor can they be blamed for arguing from a backward view, referring to historical injustice once suffered, to wars or civil wars once lost, and to how arbitrary states borders were once established. Such limited imagination on the part of separatists is due not least to the rigidity of prevailing political dogmas. These dogmas can engender separatists' desires to restore conditions as they existed prior to the historical injustice that inspired them in the first place.

Against this background separatists often stir up new forms of nationalism similar to, or even worse than, those of their adversaries. But separatist concerns cannot be rejected on that ground. It would do blatant injustice to separatists to blame them for not exhibiting a level of political consciousness superior to that of their opponents. Although separatists argue at least implicitly against the taboo of discussing illegitimate state borders, they are of course also influenced by the political consciousness of their time and the surrounding culture.

The question of the political consciousness and imagination of separatists can thus for the time being be put aside. It is certain, however, that the alleged Pandora's box of disputed state borders, the question of *who-with-whom* in terms of nationality, is meanwhile more than slightly ajar, and that future separatists will with ever greater self-assurance demand an ever more encompassing right of self-determination. Separatists understand that they may live in greater political liberty than ever, but in one important dimension they still don't. If they can claim this missing dimension of freedom, it may be violating ruling dogmas and law. But it is not them who are morally wrong, but the prevailing dogmas and laws which are. Separatists do not necessarily want state borders to be forcibly changed, but neither do they want them to be preserved against the will of the citizens by oppression, by police, judiciary, and military. Separatists want citizens to freely decide on changes of state borders.

Of course, even modern separatists know that the past denial of this freedom was not completely unfounded, but the historical reasons for this no longer convince them. They ask why this freedom should still be taboo in a fundamentally changed world, and they may suspect that the honest answer is simply: Fear. Fear that society would not be able to cope

with such freedom, or how or by what rules it could be made to work in practice. And above all, fear of endangering peace.

While that might honestly be the case, fear cannot keep us from the progress of freedom, nor does it justify the past or present repression of separatists. The repression of separatism itself can only be temporary.

As awareness of this spreads, the more offensively separatists can advance their concerns, and the more antiseparatism and its dogma of territorial integrity will be put on the defensive. At least in the very long term, states and the international community will have to give in on the separatist issue.

Once self-determination over who lives with whom in a common state can no longer be denied with old arguments, there will be no other way out than helping to give that self-determination concrete shape. Then, ultimately, even former dogmatic antiseparatists will have to engage with the question of how separatist claims can be fulfilled peacefully and in conformity with new rules.

Up to the present, even separatists are not aware of the enormous scope and consequences of this. But at least, separatists could already feel as initiators and accelerators of an impending epochal ideological change. The convergence to the greatest possible freedom of choice in matters of nationality may, in fact, if combined with the pertinent adaptation of the political order, acquire a similar rank in political history as the overcoming of aristocracy, colonialism, or communism.

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## Chapter 5

### Freedom of Political Association – The Basic Concept

The history of secessions is a success story. Secession has again and again created well-developed, competitive and even powerful new states that became an enrichment to their citizens, to their region, and to the international community. This applies to secessions from empires and colonial powers as well as for secessions on lower scale. It applies, for example, to secessionist states created at the beginning of the last century such as Norway, Ireland and Finland, it applies to the Baltic States, the Czech Republic and Slovakia, and to most of the successor states of Yugoslavia. The fact these secessions have been rarely questioned and appear to endure indefinitely is an indication of their success and a testament to the value of secessionism itself.

Secessions are a success story particularly from the point of view of the seceding citizens, but in the long run the truncated mother states also benefit. For many mother states, the formerly rebellious separated area has usually been a burden. Secession is a relief to them no matter how much or long they may have fought against it. Hardly any state in the world is still likely to have a deliberate interest in recovering territories lost through secession. The more time has elapsed after a secession, the easier a rational assessment becomes.

Nevertheless, the reflex to ward off secessionist claims from the start persists. But as has been shown by examples from recent history, this does not originate from deliberate self-interest. What harm would it have done to Italy and the Italians, for example, if they had let the tiny South Tyrol secede (a province that makes up less than two percent of Italy's territory and only about one percent of the population)? In what way would China be worse off if it at least gave up the defiant Tibet (whose population amounts to no more than about two-thousandths of the total)? What harm would it do to Turkey if it granted the Kurds the aspired secession, thereby reducing its population and territory by only 15 percent, and what harm would it do to Iraq if it did the same? Certainly, after each such secession a new minority problem would arise in the seceding region, but these problems could be effectively defused in advance by thorough negotiations on the modalities of secession.

In all such cases, the most immediate effect would be pacification. Such secessions would bring peace also to the remaining truncated state by freeing it from the burden of rebellious separatists. At least rationally, the denial of such secessions cannot be justified, but the irrational motives still prevail.

Evidence abounds of the deep fear of alterations to state borders among politicians and the media. Take, for example, Carl Bildt, a former Swedish Foreign Minister, who had worked in the UN on the Yugoslav conflict. In a newspaper article he wrote on the topic, Bildt said:

*Most of Europe's borders have been drawn with blood over centuries of brutal conflict, ethnic cleansing, and migration. To reopen this closed process would mean opening the door to new bloodshed. Therefore, in the turbulence after the Cold War, a fundamental principle was formulated: the right to independence and self-determination was recognized, but all existing borders had to be respected. Any modification would require approval.*

*This principle was confirmed...by the EU in the Yugoslav crisis.... We insisted on the territorial integrity of Croatia and refused to consider a dissolution of Bosnia. The border between northern Kosovo and southern Serbia should remain.<sup>1</sup>*

Any change of existing state borders, according to Bildt, requires the consent of others. Thereby, as if it were a matter of course, a principle of heteronomy is stipulated in matters of state borders, and self-determination by the citizens is ruled out. If this is not a thoughtless denial of self-determination, then it is the admission of incompetence. Then it means: We have not created rules for peaceful self-determination, and we do not know how this could be done. That is why we, the States that practice power in this conflict, prescribe the state borders that we think are right. The right of peoples to self-determination should apply, but only to the extent that existing borders are not affected. If borders are changed, then only in individual cases that require the consent of other, more influential, i.e. hegemonic, countries. Even for such approval, there were, as was shown in the Yugoslav wars and their aftermath, no established peace-preserving criteria. One reason for this is that the principles of self-determination and territorial integrity contradict each other. How can the right to self-determination justify changes in state boundaries that can be denied on grounds of territorial integrity? The international community has constantly been trapped in this contradiction. The United States, the United Kingdom, France, and Russia, and also the United Nations have,

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<sup>1</sup> Bildt (2014).

when deciding on military interventions or sanctions, mostly invoked either one or the other principle as it served their interests. Take Russia, for example, who supported the separatists in eastern Ukraine and Crimea invoking the right to self-determination, while the West subsequently imposed sanctions on Russia by invoking territorial integrity. In the Yugoslav wars, the roles were partly reversed.

To this dilemma there is only one plausible conclusion: The old dogmas of territorial integrity and the right of peoples to self-determination have failed. They were well intentioned, they were meant to prevent military conflicts, and they may have contributed to this objective temporarily. But they were not able to bring order to the world, nor did they save it from new military catastrophes. Since the middle of the last century, they have been a major cause of the many smoldering and acute militant conflicts that have taken on the dimension of a creeping global war. The established ideologies have provided neither a useful moral nor political orientation. Instead, they have imposed inconsistent rules on the world, bringing about an ominous state of disorder which cannot be overcome without a fundamental conceptual reorientation.

What exactly is it that has made international law such a failure? Of course, the failure is not in the principle of self-determination, but in the way it has been restricted. The fundamental mistake was to entitle “peoples” instead of citizens to the right of self-determination. Peoples are fictitious legal entities that cannot be precisely and consensually demarcated. So vaguely defined, a right of self-determination is inappropriate to give political guidance.

The principle of territorial integrity is a further restriction of self-determination. Its message to separatist-minded citizens is: if you want to change your nationality, you must seek the consent of the states whose boundaries you want to change. It should come as no surprise that such radically restricted self-determination cannot warrant sustainable peace.

A new paradigm that could replace the old dogmas self-determination and of territorial integrity would, therefore, first have to do away with the restrictions to self-determination. A purified right to self-determination should no longer be granted to peoples or other indeterminate legal entities, it would instead have to be granted to real citizens. The citizens themselves would have to be given the greatest possible freedom of choice concerning nationality and state borders. It is only then that limiting clarifications should step by step be developed as might be necessary for pragmatic reasons.

That the right to self-determination over national borders and nationalities should be defined most comprehensively is sufficiently testified to by the perseverance and determination with

which citizens around the world react to restrictions of this freedom. This perseverance also illuminates how these conflicts are about basic civil liberties, fundamental rights, human dignity and collective happiness. If it is beyond doubt that human dignity and the pursuit of happiness are unalienable rights, then this must also be true for the freedom of choice over who lives with whom in a common state.

A new political objective must come into focus, however utopian it may seem for the time being: the basic right of self-determination must find its way into national constitutions and, subsequently, into international law; thus, states would bindingly grant their citizens the widest possible right to secession, and the international community would also recognize this right as a fundamental right, thereby obliging states to respect this right among themselves.

In the broadest sense, the right to secession is the **freedom to choose who shares with whom their nationality**. To facilitate a universal discourse on this issue, however, this right should be given a more unpretentious name. It could be called, for example, a *right of peoples to form their own state*, but then again, the beneficiaries of this right would seem to be peoples, not citizens. Therefore, even in the naming of this right, concepts such as peoples or nations should be avoided as far as possible. In the following, therefore, the slightly less precise, but also less misleading term **freedom of political association** will be applied.<sup>2</sup>

Of course, the concept of *freedom of political association* raises spontaneous objections, of which only a few are briefly discussed here. One of the obvious objections is that the concept would open the door to bizarre changes in the political map, possibly granting every landowner the right to declare their own mini state. Of course, freedom of political association is not meant in this radical sense. Like all other freedoms, freedom of political association cannot be absolute. This freedom, too, has its limits at least insofar as it conflicts with other fundamental rights. And limits to this freedom should also automatically be set by practical considerations. For example, secessions of sectarian micro groups are theoretically possible, but they would not be practicable, at least in the long term. Such curiosities would, therefore, require no attention in the legal framework. This illustrates that freedom of political association would make the constitutional framework of basic rights no less manageable than it is at present.

Moreover, under the conditions of freedom of political association, the world would be a much better one even if in some cases states of bizarre form and size were temporarily created. In addition, a future codified right to freedom of political association would, of

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<sup>2</sup> Taken on from, inter alia, Wehner (2002), p. 89 ff., and Wehner (2006), p. 63.

course, be constantly developed and refined, and therefore it would not have to anticipate all potential undesirable side effects from the beginning.

Therefore, there is every reason to give freedom of political association the formal status of a constitutional fundamental right. If, instead, attempts were made to merely assert parts of this freedom through adjustments in existing national and international law, then this freedom would inevitably remain restricted by established interests and by ideological prejudice. Then neither freedom nor peace would be enhanced to the extent possible, and avoidable violent conflicts over state borders and nationalities would persist and newly emerge. Only if freedom of political association became an independent fundamental right could it no longer be restricted by government action and common law. Only then would its most concrete objective be attainable: a political map that will always represent as precisely as possible who wants to live with whom in a common state.

The further rules needed to successfully practice freedom of political association are manageable in extent, but their implementation would still be a major political challenge. First these rules would have to ensure that changes to the political map could be accomplished much more easily than in the past. Likewise, they would need to make sure that such changes could just as easily be revised, corrected and improved. For such corrections as well, opportunities would have to be open not only in exceptional political situations, but in routine politics.

One can hardly underestimate how fundamentally a formally established freedom of political association would change the political world and the political discourse. Most obviously, it would no longer be separatists who would have to justify their aspirations, but it would be the states denying a secession. These states would have to explain to what extent a secession would violate the fundamental rights of others and that those violations would more than outweigh the violations of rights which separatists revolt against. Spain, for example, would have to demonstrate in what way fundamental rights would be violated in an eventual independent Catalan or Basque territory, Ukraine would have to demonstrate the same for Crimea and for the breakaway territory in the east of the country, and Turkey for its regions with separatist-minded Kurdish majorities. Evidence to such claims could be produced only in exceptional cases. And even if such evidence were produced, this would not justify a complete denial of a secession, but only a change of the terms to be negotiated. The general right of citizens to found an independent state on their own territory or to collectively join another state would remain unaffected.

The contrast to the past and present handling of separatist concerns could hardly be sharper. Time and again it has been shown that states obstinately defying separatist aspirations can fall far behind in political civilization, and this happens even in and around Europe. Recent instances include Turkey in the fight against Kurdish, Russia in the fight against Chechen, and Ukraine in the fight against Russian separatists, and to a certain degree even Spain in the confrontation with Catalan separatists. Such civilizational relapses may turn out to be temporary, but they can bar the way to further progress in political civilization for a very long time.

In the very long run, therefore, there can be no alternative to the recognition of the freedom of political association as a fundamental right. How this right could eventually be formulated in concrete legislation is outlined below. First, a simple variant of this right is formulated that could easily be applied within the framework of existing political orders. Subsequently, an extended freedom of political association is outlined that would be applicable only in higher developed political systems.

## **5.1 Freedom of Political Association in the Constitution**

At first glance, the conflicts over state borders and nationalities may seem too diverse to be subject to a simple universal rule of law. Moreover, in such conflicts, states of the most diverse levels of development and citizens of the most diverse levels of consciousness are involved. This could further aggravate the task of formulating freedom of political association as a universal legal norm.

But the same is, of course, true for all norms in the rank of fundamental rights. Nonetheless, fundamental rights in existing constitutions and treaties are mostly formulated in a straightforward and comprehensible manner, and as such adequately proven. Necessary clarifications to these basic norms could be left to subordinate legislation and jurisdiction. The same would apply to the freedom of political association.

As a legal norm, the freedom of political association would be formulated in a different way in national constitutions than in international treaties, but such differences are not relevant here. In its most general sense, the guiding principle of freedom of political association can be formulated in this way:

(1) *(General freedom of political association)*

**Nationality is voluntary.**

**Citizens can freely associate to form communities of common nationality. Pertinent decisions are made in free, secret, and direct vote.**

This very general wording deliberately points beyond separatism and secession in their familiar manifestations. It recognizes, first, that nationality can be involuntary, and that if avoidable, involuntary nationality is an injustice. A wording as above could serve as guiding principle for further legal norms on freedom of political association.

The second sentence already specifies that, while freedom of political association is in principle a right of individual citizens, in practice it can be claimed only by communities.

The guiding principle (1) can be further specified as follows:

**(2)** (*General Right to Secede*)

**In particular, citizens are free to associate as a community aspiring to found an independent new state or join another state.**

This wording relates the freedom of political association more closely to separatism and secession in their past and present manifestations. In connection with the previous article, this alone places a very high demand on separatist movements. These movements would have to be very precise about who they represent and who they act for. Only very few separatists have lived up to this demand in the past.

Communities formed according to this rule can then be required to demarcate the territory of the aspired secession in an appropriate manner. This demand can be formulated as follows:

**(3)** (*Demarcation of the secession area*)

**The community aspiring to secede is constituted in territorial limits determined by free, secret, and direct vote by a simple majority.**

This clause obliges separatist communities to agree on the boundaries of the planned secession territory. Thus, separatists would not decide on the secession of a region in predetermined boundaries, e.g. the boundaries of an existing province. This decision would be preceded by a clarification process on the territorial demarcation. In this process, it would be necessary to consider which demarcation would best serve the objective of attaining a safe majority for the aspired secession. Only when this process of consideration is completed by democratic vote, the decision on the actual secession could be made.

This could be done according to a rule such as the following:

**(4)** *(Exit decision)*

**The secession is decided on by the community in free, secret, and direct ballot by a simple majority with the votes of at least 40% of the eligible voters and with a voter turnout of at least 50%.**

There is a simple reason why a simple majority must suffice for the exit decision. Any qualified majority would be chosen arbitrarily. Therefore, in the long term, it is hard to imagine that any provision stipulating a qualified majority would endure in democratic processes.

However, a simple majority can only legitimize such a momentous decision if there is a large enough turnout. If, for example, the turnout would be no higher than 50% and there was only a small majority for a secession, i.e. if only about one in four voters voted explicitly in favor, then a secession could, in the end, cause more strife than peace. On the other hand, there would always be tacit proponents of a secession also among the non-voters. Therefore, the explicit approval by 40% of the eligible voters and 50% of the votes should provide sufficient legitimacy. According to this rule, at a turnout of only 50% a majority of more than 80% of the votes would be required for a secession.

Even if the above rules are applied, it could not be ruled out that secession decisions are strongly influenced by temporary political sentiments. This should also be taken account of in the respective rules. Even fervent separatists cannot be interested in a secession that would be in danger of being reversed even after minor shifts in political moods. Therefore, it would be in the general interest to add to the set of rules a provision such as the following.

**(5)** *(Multiple voting)*

**The exit decision is taken in at least two consecutive ballots held at intervals of not less than one year.**

Such a rule ensures that in the secession area, for at least a year intense discussions are held on the pros and cons as well as the modalities of a planned secession.

According to article 3 above, an exit-aspiring community would first decide on the demarcation of the secession area before deciding on the secession. The outstanding importance of this provision becomes clear at the latest in connection with the following necessary addition:

**(6)** *(Reciprocity of the right of secession, subsequent secessions)*

**After a secession the general right to secession is to be guaranteed also in the secession area. Secessions opted for under the terms of this Constitution will be recognized only if these terms are validated and only as long as they are applied also in the secession area.**

By having the right to secession held up in secession territories, it would ensure that any newly created or altered state border could subsequently be corrected again by referendums. In this way, any part of a secession area could at any time be reintegrated in its former state by a local referendum.

This right to correct or remedy secessions by referendum is no less significant than the fundamental right to primary secessions. In practice, however, this right to secondary secessions would rarely be made use of, since the eventuality of such secondary secessions would have been considered already in the decisions on the primary secession. Of course, no citizen or community would willingly aspire to a secession creating new state borders that would not last for long. Separatists would, therefore, not want primary secessions to include areas where the local majority rejects the secession. Thus, under the rules proposed here, most primary secessions would create sustainable, long lasting state borders from the beginning.

A right to secondary secession should be incorporated in constitutions and international law, but it would nonetheless be legitimate for states to require guarantees on a case-by-case basis that this right will be respected after a secession. Therefore, it would also be legitimate to include a clause such as the following in the rulebook on secessions:

*(7) (Security for eventual subsequent secessions)*

**Recognition of a secession may be made subject to the provision of collateral for the continuing validity of the general right to secession in the secession area.**

According to this rule, a state willing to surrender a secession area could reserve the right to impose sanctions in case the freedom of political association will later not be respected in this area. It could, for example, have assets pledged, or it could impose that, for the time being, no armed forces will be stationed in a secession area. With a state newly created by secession, it could also agree on whether, when, and to what extent this new state will maintain its own armed forces. More ambitious agreements could also be concluded whereby the armed forces as existing before the secession remain responsible for the secession area even after the secession. In that case, however, these forces would have to be democratically controlled by the citizens of both states involved.<sup>3</sup> A need for such arrangements would arise in cases

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<sup>3</sup> For further explanations see chapter 6.

where, for historical reasons, confidence in the secessionists' future compliance with the freedom of political association is lacking.

Finally, the basic rules on freedom of political association should be complemented by a clause that allows this freedom to apply not only to nationality but also to affiliations with international and supra-national organizations:

**(8)** *(Affiliation to international organizations)*

**Citizens decide on the membership of their state in international and supra-national organizations in free, secret, and direct ballot.**

According to this clause, the right of direct self-determination over borders and nationality would also apply to institutions such as the European Union. As a result, the citizens of EU countries could at any time enforce referendums on the membership of their country in the EU. Likewise, citizens of candidate countries could at any time enforce referendums on the accession to the EU. Supplementary rules could then at least in part be designed analogous to the rules above.

Finally, a concluding provision such as the following could be added:

**(9) Further matters are regulated by legislation.**

In international treaties such a set of rules could be supplemented analogously to Article 2 (4) of the UN Charter, which obliges Member States to respect territorial integrity. In a similar way, states could be required to respect freedom of secession by a clause such as the following:

**All member states shall refrain in their international relations from the threat or the use of force or sanctions against envisaged or accomplished secessions compliant with the freedom of political association and pertinent national and international rules.**

In total, these rules would correct an obsolete international law that ranks the conservation of existing state borders higher than elementary political rights and peace. Such rules would provide a sound basis for the practical implementation of freedom of political association.

The above constitutional rules would of course require supplementary subordinate regulations. Many practical issues could be settled in individual secession treaties, but at least an electoral law specifically conceived for secessions would be essential to have from the outset. Such a law could, inter alia, stipulate minimum time intervals between referendums on national borders.

Legislation would also be needed on the issue of how freely the borders of prospective secession areas can be drawn. The spirit of freedom of political association suggests imposing the least possible restrictions in this issue. It would be disproportionately restrictive, for example, if secessions could be decided on only within existing provinces or comparable regional entities. More plausible would be a rule demanding that the borders of secession areas follow the borders of existing municipalities. Therefore, as addition to Article 3 above, this could be an appropriate provision:

*The boundaries of territories within which secessions are voted on run along existing state, provincial, county, or municipal boundaries. Exceptions can be contractually agreed.*

Citizens who want to unite for a secession would usually try to do so within an existing political community, but exceptions are easily conceivable. Citizens may want to create new borders that cut even through existing municipalities, large and small. Nonetheless, a rule stipulating that secessions should respect at least existing municipal boundaries appears to be a legitimate restriction if exceptions can be contractually agreed.

The importance of these detailed rules can be easily illustrated by individual cases. If, for example, Catalonia seceded from Spain along its existing borders, then there would most likely be small territories in the border area whose inhabitants regarded their new nationality as involuntary. They, too, would then want to decide freely and directly among themselves about *who-with-whom* in terms of nationality, and in consequence to secede from Catalonia and to retrieve their Spanish nationality. A peaceful secession of Catalonia along its existing inner-Spanish border would, therefore, be followed by an equally peaceful process of subsequent corrections of this border.

Such a scenario may still seem disconcerting, but this is a matter of habituation. The world of states might, if it allowed such scenarios, lose stability, but this stability stands in the way of invaluable political options. Moreover, as mentioned, freedom of political association would make separatists want to create new borders that entail the least possible subsequent correcting secessions. But even if some effects of that freedom continued to irritate in the long-run, this would have little significance compared to the tragedies caused by the denial of this freedom.

## **5.2 Oversophisticated Politics?**

The voluntariness of nationality is a simple concept, but the mere set of rules proposed above faces difficult obstacles to practical implementation. As yet it is hard to imagine that politicians and political parties could ever commit themselves to such rules. It is all the more important, therefore, to have discussions on practical issues of freedom of political association in order to foster the imagination of its practical effects.

In the very long term, freedom of political association will be as undeniable as the fundamental rights already established in existing constitutions and international law. How strong the need for this freedom is can be observed in the ongoing worldwide conflicts over involuntary nationality. Ultimately, resistance against this freedom will be a rearguard effort. The same is true for sanctions against separatists and their supporters, such as those imposed, for example, against Russia for its support of Eastern Ukrainian and Crimean separatists. It is hard to imagine that the freedom of political association will not eventually gain tacit recognition even without being formally proclaimed. In this process, pioneering countries have the potential to pave the way by following the guiding principle of this freedom in dealing with individual separatist concerns.

A further important factor in the approach to freedom of political association could be informal referendums on separatist concerns. Where governments refuse formal referendums on these concerns, informal online referendums will become ever more likely to be held in the future. These referendums will differ ever less from formal referendums in terms of accuracy and completeness, and moreover, they can be ever more easily repeated and thus their results ever more easily reconfirmed. Such referendums will, therefore, develop ever more public persuasiveness and exert ever more pressure to negotiate separatist concerns without prejudice. They will also help to refute the objection that a separatist cause arises just from volatile civic discomfort.

Nevertheless, a set of rules like those above will be exposed to the objection that it requires too high a level of political sophistication. As with any new set of rules, the question of their practical controllability, or more precisely, the questions of when, where, and by whom their application could be mastered, will arise; the question is whether this capacity would be limited to—real or fictitious—states clearly outstanding in political civilization. This question is indeed crucial because the conflicts to be overcome by freedom of political association have their focus in regions where political civilization is moderately developed. From this perspective, freedom of political association would contribute the least to peace where this is most needed.

It is true that, from today's perspective, the practice of freedom of political association would place the highest demands on its actors, and this would only change if this practice gradually became political routine. For this very reason, however, every opportunity should be taken to make such routine develop. Precisely in conflicts over state borders and national affiliations, there is every reason to try political high technology rather than, as in the past, military one. And even if violence continues to be used or threatened with in these conflicts, it would be a tremendous advancement if this were done to assert freedom of political association rather than to protect arbitrary national borders.

### **5.3 Creative Leeway for New Policies**

To some, the vision of a world in which national and supra-national borders are so directly adapted to the needs of citizens may still seem frightening. The political map, some will argue, has changed in part dramatically in the past century, and a higher level of mutability might have unpredictable negative consequences.

Such an objection, however, misses the essence of freedom of political association. It is not the purpose of this freedom to increase the frequency of changes in the political map. In an initial phase of this new freedom it may be expected that many long-overdue border corrections are implemented in a relatively short period of time. Thereafter, however, freedom of political association could result in an era of political stability of long unknown duration and extent.

In the past, most changes in the political map have occurred in times of political upheaval and after the collapse of regimes or empires—typically in a violent fashion. Many new states and borders have emerged after the collapse of colonial empires and of the Soviet Union. The collapse of the Soviet Union was taken advantage of by, among others, the Baltic States to regain their independence non-violently and by Czechs and Slovaks to dissolve their imposed national unity. However, such events may not be taken as evidence that there already is sufficient scope for changes in the political map. In the world as it is, such opportunities are far too rare for citizens and states to be adequately trained in dealing with them. For example, the collapse of the Franco dictatorship may have been the one historic moment when resolute Catalans could have asserted their independence much more easily than decades later in established democratic Spain. It would, of course, be cynical to refer separatist-minded Catalans to future exceptional situations of a similar nature.

If the problems of involuntary nationality can only be solved in times of political upheaval, it places all involved in a precarious and dangerous position. This state of affairs can lead to smoldering or frozen conflicts which later become all the more violent and painful. Therefore, contested borders and involuntary nationalities should be debated as openly and as early as possible in order to advance the political consciousness on these issues, particularly in times of political normality.

This process will take time. Freedom of political association should not be imposed in isolated acts of national or international lawmaking. The necessary change in consciousness should first be advanced by individual cases in which organizations or states act analogously to the principles of this freedom. Any secession referendum enforced or autonomously held by separatists is such an event, and a small number of such cases could suffice to eventually make the path to freedom of political association in parts of the world irreversible.

Of course, the development towards a transnational regime of such freedom would still be laborious. Even after this freedom were formally established, the rules for dealing with national borders and nationalities would require continuous advancement and reinterpretation in the light of practical experience. All the more reason a debate should be conducted on the rules as soon as possible. A starting point could be the broad notion that citizens should decide directly on *who-with-whom* in terms of nationality. The phrase "nationality is voluntary" is equally comprehensive when applied to the right of secession. Both formulations are also concrete enough to limit the scope for interpretation to subordinate matters. Specifically, they are concrete in the fact that freedom of political association is not about a right of peoples, but about a right to self-determination to be exercised directly by citizens.

It is a further strong argument for direct ballots in this context that questions of nationality are generally about emotional concerns, in particular about a need for political togetherness, which is not connected to political expertise. These questions are, therefore, among the few in politics that must not and should not be delegated to elected experts.

Ultimately, the separatist urge for freedom will be pacified by nothing other than the widest possible freedom of political association, i.e. only by rules such as those proposed above. This is also suggested by the longevity and steadfastness of separatist concerns. Nevertheless, it is still widely believed that the separatist urge for self-determination can be ever more effectively attenuated by appeals to reason and by diplomacy. This belief is partly based on the fact that in some problem regions separatist violence has declined over time and that some

separatist movements have even formally renounced the use of violence. This might also give the impression that the power imbalance between separatists and established states has changed to the detriment of separatists.

But this impression is deceiving. Informal online referendums will—at least in formal democracies—be an ever more effective powerful instrument for separatists that can do entirely without violence. The closer the results of such informal referendums become to those of would be formal ones, the more political leverage informal referendums will gain. With further advances in digitalization, successful informal referendums on secessions will be ever easier to implement, and they will also be ever easier to repeat in different, i.e. adjusted territorial boundaries.

The more separatists make use of these opportunities, the less they will feel urged to become militant. With such informal referendums, they could demonstrate ever more conclusively that the denial of their concerns is based on paternalistic, undemocratic, and illiberal prejudice.

In the new context of freedom of political association, the phenomenon of separatism would not only be ever less of a menace, it would even become a highly enriching political challenge. Freedom of political association is not only a concept for resolving conflicts over state borders, but it opens creative leeway in a much broader political sense. Where this freedom prevails, the handling of state borders can grow and evolve into a creative and most auspicious statecraft. Such a new statecraft, in turn, would in itself open up new dimensions of meaningfulness in politics.

In the past, there would have been no lack of opportunities to test such new statecraft had not constitutions, international law, and old dogmas stood in the way. The case of Catalonia, for example, would have offered such possibilities at least theoretically. In the future there will be ever more ample opportunities to create and explore precedents in the spirit of freedom of political of association.

## **5.4 Against the Rigidity of the Political Order**

Freedom of political association is difficult to reconcile with prevailing ideologies and interests, but it faces another serious obstacle. Existing democratic regimes are in no way prepared for this freedom. Given the genesis and history of democratic orders, who would

expect otherwise. The concepts of present political orders, including the democratic ones, have arisen in times when principles such as freedom of political association far exceeded imagination. For that reason alone, existing political orders could not be made to meet the requirements of this freedom.

States that recognize the freedom of political association would be well advised to closely scrutinize their own political system with regard to the possible consequences. They could, for example, formally commit themselves to subject their constitution to an institutionalized process of revision. To that end, they could add to their constitution, and to international treaties, a maxim that reads as follows:

**The organization of the state must be adapted as it is necessary to ensure the fundamental right under Article xxx (freedom of political association).<sup>4</sup>**

From the logic of law alone, such a maxim may seem unnecessary, for in its capacity as a fundamental right, the freedom of political association would overrule incompatible organizational norms anyhow. That is to say, the political order would ultimately be shaped according to the requirements of freedom of political association, and not vice versa. If parliaments failed to accomplish this, then constitutional courts could enforce the adaptation of organizational norms to freedom of political association.

But it would be unrealistic to rely on this alone. The notion that established democratic orders could be incompatible with fundamental rights is too foreign to legal thought to find its way into jurisprudence for the foreseeable future. Therefore, it would be all the more important to have the above maxim comprised in the concept of freedom of political association from the outset.

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## Chapter 6

### **Extended Freedom of Political Association – The Neocratic "Divisional Democracy"**

It would already be a big step in political civilization if individual states lead the way with decisions in the spirit of freedom of political association. However, there is, of course, no indication yet which states, if any, could possibly play such a pioneering role. Therefore, it may seem outright utopian to address even more sophisticated variants of freedom of political association than outlined above.

On the other hand, it takes only a small step in reasoning to get access to such more sophisticated variants. This step in reasoning is already suggested by the question raised above as to whether a new state arising from secession would have to establish its own armed forces. At least theoretically, it would be conceivable that after a secession, the armed forces of the pre-secession state remained responsible for the security of the secession area.

Such an arrangement would, of course, raise issues of the political legitimacy of such forces in the secession area. Which state would, one might ask, in matters of defense make itself voluntarily dependent on foreign forces on which it would have no political influence?

However, this problem has a simple solution. Conjoint armed forces could be placed under the joint democratic control of all citizens of the pre-secession territory, including, that is, the citizens of the secession area. The citizens of the secession area would then participate in all elections and ballots on matters of defense policy and armed forces. As a result, their newly formed state would not be self-sufficient in terms of defense policy, but they could take part in political decisions on the conjoint—and thus comparatively strong—armed forces and their activities. For the citizens of the secession area, the only alternative would be to take part in democratic decisions on much weaker armed forces of their own.

The solution above may seem simple at first consideration, but the big question is whether and how such democratic control could be realized for an individual policy branch. In existing political orders such an arrangement is not provided for. Such a constellation of competences

would require a new and much more sophisticated model of state organization than so far realized.

The concept of freedom of political association aims to make secessionist concerns the subject of peaceful and rule-based democratic decision-making. The framework for this freedom, as outlined above, assumes rather evident separatist motives. Separatists have an aversion towards their state, and they believe that they would fare better as citizens of another state. Therefore, they want to found a state of their own or join another state.

This aspiration is a plausible response to perceived impositions. But it can also be a deceptively simple reaction to a rather complex discomfort. Although citizens generally look back proudly on hard-won secessions, this does not mean that they feel better off than before the secession in every political respect. Neither does it rule out that in some branches of politics they feel less provided for in their new state than in the old one. In an unbiased retrospective of their secession, many citizens would come to a mixed assessment. In most cases, the most likely conclusion would be that not everything was worse before; in some respects, things should have stayed as they were.

Exempted from this are only secessions that are perceived as relief from a ubiquitous repressive violence in the previous state. Understandably, in such extreme cases, citizens would not be inclined to worry about possible drawbacks of their sorely won secession. However, the more detached the political consciousness, the more differentiated citizens' judgement will be in this matter. And the more likely citizens will be aware of unintended effects of a secession in hindsight.

At best, such considerations would of course not be made only in retrospect, but far in advance. Such foresight could bring secession projects into a hitherto highly unfamiliar perspective. Citizens could ask themselves at an early stage whether—given the rising complexity of political problems—it can still be reasonable to decide on a secession with a simple "yes" or "no". Separatist concerns would still be about who wants to operate with whom in a common state, but the questions asked in this context could be much more differentiated. They would include questions like these: What exactly are the reasons why we no longer want our present nationality? What exactly is it that we reject in our current state? In what respect does this state ignore our needs? In what respect are we poorly governed? But on the other hand, in what way do we benefit as citizens of this state? Would we lose something if we gave up our present nationality? And what would that be?

Citizens asking such questions will no longer take the issue of secession as a simple question of yes or no. They realize at least intuitively that the separatist issue is basically a bundle of distinct individual questions. And they will ask themselves: Should these individual questions really be summed up in a single general question? Can the secession issue really be decided on with a generalized yes or no? Or should we try to explore and deal with these individual questions individually? And if so, exactly what questions would they be? How could the questions be split up?

There is an obvious and basically simple answer to that. The separatist question can be put separately for individual policy areas, i.e. for areas such as defense policy, monetary policy, or the policy of redistribution. If the separatist concern was broken down along these lines, this would entail questions such as the following:

*With whom do we want to share armed forces?*

*With whom a common welfare state?*

*With whom a common education system?*

*With whom a common public cultural sector?*

*With whom a common currency?*

*With whom a common system of domestic security?*

*With whom a common legal system?*

*With whom common national teams, with whom a common flag and a common national anthem?*

*With whom, if applicable, a common constitutional monarchy?*

*With whom, if applicable, a common state religion?*

*And finally: with whom do we want to belong to which supra-state organizations?*

If these questions were asked individually to the citizens, then the answers would rarely if ever be the same in all cases. The conclusion could then be, for example, that the respondents definitely want their own state, but not their own currency and not their own armed forces. In other cases, they may reflect on whether after the secession they will want to have their own representative head of state or whether they wish to retain the constitutional monarch of their present state. Or they might consider whether, at least for the foreseeable future, they want to continue to participate in institutions such as pension and health insurance of their present state.

So far, separatists have hardly ever asked such questions, and, of course, there were good reasons for that. For what could be done if indeed only one or some of these questions were answered in the affirmative by a majority? Theoretically, the secession would then have to be carried out for the policy areas concerned and refrained from in the other areas.

But how should this be implemented in practice? At first glance, it might seem theoretically desirable, but clearly impracticable. The conclusion would then be that such differentiations of citizens' political will must not be seriously considered and dealt with—even more so, since experience seems to suggest that separatists generally aspire to a detachment from their state as a whole. If all this were true, separatist concerns had indeed to continue to be dealt with in the traditional way.

For the time being this would be the easier way, but it would be insufficient in the long run. This procedure forces citizens' will into a rigid singular yes/no scheme, where a much wider variety of political options could be opened. In this rigid scheme, a much longed-for secession project could, for example, fail, only because a majority of citizens have vague misgivings about establishing a currency, armed forces, or customs borders of their own. In addition, such misgivings can easily be intensified by populist manipulation. Populist anti-separatists can, for example, manipulate fears of military weakness in a future independent separatist state, or manipulate fears of the weakness of a future currency of that state. This shows that reducing the separatist issue to a single yes or no does not benefit secessionists claiming freedom of political association. Instead, it benefits governments that intend to deny a secession. Being aware of this, the British government formally stipulated that in the 2014 Scottish independence referendum, voters could express only a generalized yes or no to the secession. The close negative outcome of the referendum confirmed the efficacy of this populist British tactic.

Such an imposition restricts freedom. It restricts, more specifically, the freedom of political association. It limits this freedom to the special case of a secession from the state as a whole. For this dimension of freedom to be fully developed, those wanting to secede may not only be asked whether they want to break away from their state. They need to be asked in which policy areas they want to accomplish this. Citizens would then have a choice, they could vote for the secession for politics as a whole or just for selected areas of politics.

If citizens did the latter, the will thereby expressed should be as easy to implement as possible. For this, however, existing political orders have made no provisions. Therefore, in

order to allow for secessions that correspond to such a differentiated political will, a fundamental reform of present democracy would be required.

How such a reform should be shaped, i.e. which alternative form of democracy might provide for such an extended freedom of political association, can only be treated in a cursory way here. The basic features of such a democracy are outlined below as seems necessary for the understanding of the extended freedom of political association.<sup>1</sup>

## 6.1 The Multilayered Political Map

There is a kind of democracy that would easily allow for extended freedom of political association. I have called it **neocracy** in previous publications.<sup>2</sup> Neocracy is a form of government not only conceived with regard to freedom of political association, but it can be argued for on many other grounds. In the present context, however, its essence is most easily understood from its impact on the political map.

In a world of neocratic states, there would be separate political maps for different branches of government. This would be possible because separate so-called state divisions<sup>3</sup> would be set up for individual policy areas. Each division would have the essential characteristics of an autonomous state, especially a legislature and an executive of their own. Having this institutional autonomy would create the conditions for each state division to have its own distinctly delimited territory. So, for example, the territory of a monetary state division could be different from that of the defense division and the division for redistribution. In this way different political maps can emerge for different policy areas. In total, this would result in a multi-layered structure of political maps.

If state governance were in this way divided into several autonomous divisions, the traditional comprehensive sovereignty (i.e., state governments responsible for all domains of policy) would no longer exist. In this system, no one party, parliament, government, or head of state would be responsible for all areas of governance. Each domain would have its own set of these institutions. Of the former all-competent state only a superordinate political entity

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<sup>1</sup> In German "Neokratie". For more detailed presentations see Wehner (2006) and other publications of the author.

<sup>2</sup> In various publications of the author. See Wehner (2006) and numerous articles at [www.reformforum-neopolis.de](http://www.reformforum-neopolis.de) and affiliated websites, in particular the neocratic draft constitution in <http://www.neokratieverfassung.de>.

<sup>3</sup> In German "Staatssparten" (which can be translated as "state branches" or "state divisions").

would remain that would create the conditions necessary for the proper coordination among a small number of autonomous state divisions.

This divisional model of the state would allow for the extended forms of freedom of political association, but that would not be its primary purpose. There are further and equally compelling reasons to question the traditional model of comprehensive government. In an ever more complex political world, political actors and organizations claiming responsibility for politics as a whole are increasingly overburdened by their task. This finding is obvious, but it has not yet become a dominant topic in politics. For this to happen, all-competent politicians and organizations can still conceal their overburdening too effectively from themselves and from the public.

However, there are natural limits to this capacity, and it is, therefore, not surprising that the conventional model of political all-competence is generating increasing discomfort. One of the many symptoms of this discomfort is the fragmentation of once consolidated constellations of political parties. Where citizens lose the belief that all-competent parties and politicians are still fully up to their task, voting behavior becomes increasingly erratic. Voters turn away from political parties, leaders, and guiding principles of the old kind, while being increasingly disoriented in their search for alternatives.

Nevertheless, charismatic demagogues and new parties still manage to cover up or bypass this discomfort and create the illusion of comprehensive political competence among large parts of the electorate. In reality, there is no indication that the old model of centralized comprehensive state governance could remain viable in the long-term. Such illusions only reflect the nostalgic need to further imagine politics as being as simple as it had appeared in a recent past—or actually had been even earlier.

Ultimately, there is only one possible way out of the overburdening by all-competent politics that could last. The tasks of politicians, parties, and parliaments must be limited to separate intellectually manageable areas of politics; meaning they would have to specialize. Their areas of responsibility would then have to be tailored in such a way that they could, at least with high probability, reach a level of expertise that would allow them to adequately meet the ever-rising professional demands.

The political order tailored precisely to this goal (i.e. to reducing and overcoming individual and collective overburdening in politics) is the so-called **neocratic divisional state**. In this state order, individual policy areas would be independently institutionalized, and parties and politicians would each be active only in one state division, i.e. in one branch of governance.

This restriction of responsibilities would be the key to overcoming the fundamental system failure of traditional democracy.

If state divisions were autonomous in this way, they could also autonomously demarcate and adapt their specific state territories according to their division-specific criteria. In this way different political maps could emerge for different policy areas. All in all, then, a multi-layered political map would emerge that could be adapted independently on each of its layers, i.e. for each autonomous policy branch.

The notion of a multi-layered political map is still unfamiliar, but it is not difficult to grasp by intuition. A helpful illustrative example of this are the so-called Commonwealth Realms, those currently 16 independent states that share the British queen as a common head of state. A specific map of the jurisdictions of heads of state would identify the territories of these 16 otherwise independent states as belonging together. On this layer of the world map, the number of states would be lower than on other layers.

But there are also illustrative examples of opposite effects, and this includes the map of the so-called football nations. On the territory of the United Kingdom there are five so-called football nations, namely England, Scotland, Wales, Northern Ireland, and Gibraltar, each with its own sports association and national teams. The number of all football nations in the world is larger than the number of regular states on the political map.

Of course, that does not mean that neocratic structures already exist in the United Kingdom, but there are at least phenomena that point in that direction. In order to realize first neocratic structures, the football associations of England, Scotland, Wales, Northern Ireland, and Gibraltar needed only to organize themselves entirely independently from the existing state. To this end, they could set up specific "football parliaments", whose members could be elected directly by the citizens. These parliaments could then levy separate taxes to finance themselves, their administrations, and their national teams. In this way England, Scotland, Wales, Northern Ireland, and Gibraltar would each have their own veritable "football state" in the form of a neocratic state division. This simple example helps illustrate that, odd as it may appear at first, the neocratic state model is in fact only a small step of reasoning away from existing conditions.

Another illustrative example of the fact that the political map does not have to be the same for all policy areas is monetary policy. The national territories of most states are also currency areas, but the example of the euro-zone shows the extent to which deviations from this are possible. Although the euro-zone is not organized as an independent state division in the

neocratic sense, it is conceptually near to it. The Eurozone could quite easily be institutionalized in a way that would give it the political and fiscal autonomy of a neocratic state division. This autonomy would then include sovereignty over its territorial borders.

Of course, this raises the question of what other areas of politics similar things could happen in. If citizens are free to share a common currency across existing national borders, they may at some point ask themselves if this may also apply to armed forces, i.e. if they can be free to demarcate an area of common national defense that differs from the existing state territory. Such an area of common defense could—similar to a monetary area—extend far beyond the borders of existing states or other state divisions.

All these examples show, for a start, that the political map could be more complex and thus far more malleable than the existing world of states would suggest. For the future of separatism, this opens inexhaustible creative options. Separatists will no longer just ask themselves what new nation state they want to emerge from their old one, but will also ask which policy territory they want to be a part of in which policy area. Thus, they will have to weigh carefully for which policy areas they want to make use of freedom of political association and for which they do not.

This applies to secessions, but it would also apply to possible mergers of state territories. In view of such events as well, it is important to define the extended freedom of political association as comprehensively as possible. In the broadest sense, this freedom is a freedom of choice not only over *who-with-whom*, but over *who-(does-)**what-with-whom***? Not only with respect to who operates a common state with whom and within which borders, but about who does this with whom in which policy area. In this sense, the extended freedom of political association is a bundle of division-specific individual freedoms.

The practical implementation of this freedom can also be summed up in a relatively simple formula. Citizens can make use of this freedom if they ask themselves division-specific questions such as those mentioned above, i.e. questions such as: *With whom do we want to operate common armed forces, with whom a common currency, with whom common solidary redistribution?* If ballots on these issues produced differing results, citizens would thereby indicate that they do not want identical state borders for the respective state divisions. In that case, different political maps would be formed for different policy areas, and all of them could be separately modified according to the above rules.

This great new freedom would have profound implications for the political consciousness of all citizens, but most directly affected would be separatists. If separatists dealt with the full

range of options opened by the freedom of political association, then the widespread populist and radical variants of separatism would largely lose ground. The complex issues arising from the extended freedom of political association could even make separatists feel a certain humility in view of their ambitious task.

## 6.2 A New System of Government

On order to practice freedom of political association in its simplest form, basically nothing more is needed than the political will. In principle, this freedom could be practiced in the existing state and world order. It would certainly be helpful if principles of this freedom were enshrined in constitutions and international treaties, but not even this would be entirely necessary.

It would be quite different if freedom of political association was to be practiced in its extended form. For this purpose, individual state divisions (e.g. the defense or currency division) would have to negotiate independently on their territorial borders—and then let their citizens decide. These divisions would not only have to be autonomous in political decisions, but also in democratic decision-making. This in turn requires that they have their own division parliaments, which are to be elected separately in special electoral procedures, and that they can hold referendums on issues in their area of politics.<sup>4</sup> Beyond that, in order to be truly autonomous, such state divisions must also be able to generate their own tax revenues. Thus, they will need tax sovereignty of their own.<sup>5</sup>

Only in such an institutional framework could state divisions identify and implement the will of citizen's as to *who-what-with-whom*, i.e. to the demarcation of defense, monetary, and other state communities. Only then would there be a multi-layered political map whose levels could be shaped and developed independently of each other.

It is clear even without going into institutional details that such a state system would be fundamentally different from all existing democracies. From states as they are, no autonomous functional divisions can detach themselves nor could they negotiate territorial borders of their own. In existing democracy, citizens could only have a say on the areas in which their state enters cooperation with other states, and this they can do only very indirectly

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<sup>4</sup> Details of these electoral procedures are described in [www.neokratieverfassung.de](http://www.neokratieverfassung.de).

<sup>5</sup> For the draft of a fiscal system in a neocratic divisional state order see Wehner (1991).

in elections that involve politics as a whole. These opportunities fall far short of the demands of an extended freedom of political association.

Nevertheless, one may ask whether the promises of such a new freedom justify questioning existing democracy; whether freedom of political association should not be adapted to traditional democracy rather than the other way round; or whether one should settle for the simple rather than the extended freedom of political association and thereby eschew a restructuring of the state order.

In fact, there is hardly any political issue that needs more careful consideration. Of crucial importance here is the time horizon considered. The shorter this horizon, i.e. the more ambitious the envisaged time schedule of change, the more important the risks of a transition to an extended freedom of political association will appear. In contrast, the further this horizon, the less weight will be attributed to the conversion problems. The more important the long-term effects of enhancing peace, freedom, and political meaningfulness will appear. Therefore, in order to unconditionally take sides for the extended freedom of political association, one must only adapt the time horizon of one's analysis to the time horizon of the positive effects. This horizon is not limited to decades or generations, but it is virtually infinite.

The extended freedom of political association would still be of little relevance to political discourse if a matching political order were not yet conceived at least in outline. But with the neocratic division state (also called multi-track democracy<sup>6</sup>) there is a concept of order that is tailored exactly to the requirements of this freedom. The salient feature of this form of government is precisely that autonomy of state divisions that allows for individual state borders for separate policy areas. Therefore, the extended freedom of political association should ultimately be judged in the light of the creative potential of the neocratic political order.

However, as mentioned, the concept of the neocratic division state is not primarily aimed at the freedom of political association, but its primary purpose is to overcome the inefficiencies and incapacities of conventional democracy. A transition to a neocratic division state would, therefore, not only create more peace, more freedom, and new political meaning, but it would first and above all increase the level of expertise in all policy areas. Thus, if democracy were

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<sup>6</sup> First in Wehner (1991). Regarding the interrelation between this form of state and the freedom of political association see also Wehner (1992). For more details see also [www.reformforum-neopolis.de/reformforum/demokratie/-staatsgrenzen.html](http://www.reformforum-neopolis.de/reformforum/demokratie/-staatsgrenzen.html).

reformed for the purposes of freedom of political association, this would entail an unprecedented increase in political problem-solving capacity as an added value.

Closer inspection shows that the concept of the neocratic division state is not about a state model or a state order in the traditional sense, but it is about a whole *category* of state orders. This concept does not predetermine how many divisions such a political system consists of, how the policy areas of the individual divisions are defined and in what way the autonomy of the divisions may be restricted. Accordingly, the scope of design of neocratical state orders is virtually inexhaustible. Within this concept, the areas of competence of autonomous state divisions could be delimited and combined in the most variable ways, and these constellations could be permanently developed and refined in an infinite historical process.<sup>7</sup>

The continuous development of a neocratic state order would involve an equally continuous development of the constitution. This would entail unprecedented demands on constitution-making and constitution-makers. It would require constitution-making of a new quality, and this would apply not to a one-time reform process, but to a permanent one. It may not be expected that existing constitutional bodies, in particular lawmakers of conventional democracies, would be up to these requirements. Therefore, the concept of the neocratic division state must incorporate the institution of a so-called *Permanent Constitutional Council* (which will be discussed in chapter 11).<sup>8</sup>

The further one follows these thoughts, the further thoughts move away from the political conditions of the present. Preoccupation with the extended freedom of political association may presuppose a level of consciousness from which traditional democracies are still a very long way off. But after all, the extended freedom of political association could become topical if only one branch of government, e.g. the monetary division, became truly autonomous. From this point of view, even relatively small steps of consciousness could pave the way for first practical experiments with this extended freedom.

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<sup>7</sup> This historical process would, of course, also allow for a retrocession to the conventional model of democracy. For this conventional model is ultimately nothing other than a neocratic state in which the number of state divisions is one.

<sup>8</sup> Specifically, see chapter 11.4. The concept of a Permanent Constitutional Council was developed in Wehner (1993).

For a short version of this essay see [www.reformforum-neopolis.de/files/der\\_staat\\_auf\\_bewaehrung\\_gekuerzte\\_neufassung\\_2001.pdf](http://www.reformforum-neopolis.de/files/der_staat_auf_bewaehrung_gekuerzte_neufassung_2001.pdf).  
For the complete draft of a neocratic constitution see also <http://www.neokratieverfassung.de/>.

### 6.3 Towards a New Statecraft

The reorganization of nationalities and state borders is a never-ending political task, and it would remain so in a largely pacified world. Therefore, freedom of political association is much more than a concept for resolving and avoiding militant conflicts over state borders. In its extended form, it also creates the framework for a new statecraft: the high art of continuously adapting the political map to citizens' needs, and doing so separately for the different policy branches, as well as developing the state order so as to comply with this demanding requirement.

With the development of this new statecraft, politicians and citizens would face major new creative challenges. Cleansing of the political map of burdensome legacies would alone be a task for another century, even if it were to be realized in the framework of the simple freedom of political association. Contemporaneously, new challenges would constantly arise in this context. With the continuous changes in external threats including climate change, economic globalization, political solidarity, migratory pressure, and differential political and economic development, preferences regarding *who-with-whom* in matters of nationality will also be continuously subject to change requiring corrections of political maps. Without a sophisticated freedom of political association, these challenges can be mastered at best rudimentarily.

Nonetheless, one should be aware that this freedom has fundamental and potentially disturbing impacts on political processes. This can be illustrated by a simple example. What would happen if the Scots voted in favor of independence from which defense policy and monetary policy are exempted? If the Scots refrained from creating their own political and administrative bodies for these policy branches, i.e. a central bank, a defense ministry, and the related subordinate authorities? And if they settled for an arrangement that allowed them to delegate members to the British Parliament who would have a vote only on monetary and defense policy? Is such a concept hopelessly beyond the actual political imagination, or could it actually increase the chances for a political consensus on the independence issue? Could a partial secession of this kind appear attractive to citizens in the foreseeable future?

The scenario above cannot be completely ruled out. A partial secession could satisfy precisely those separatist concerns that have the greatest emotional impact. Moreover, the proposal to preserve the unity of the British state in the area of national defense would be an important

signal of trust. Only where such trust prevailed could the opportunities of extended freedom of political association be fully exploited.

Once one such partial secession were successfully implemented, this could give political guidance for dealing with many existing and future conflicts. Some states refuse a secession mainly because they fear that the new state arising from the secession could become an unwelcome political competitor or even adversary—preferring then to carry the burden of a rebellious region on their territory, as conflicting as that may be. In such cases, the motive for refusing a secession is fear and mistrust. In the case of a secession from which at least the national defense would be excluded, this motive would be largely eliminated. To such a partial secession, the affected state could, when soberly weighing its own interests, consent much more readily.

Of course, it is unrealistic to expect that all separatist conflicts in the world could be solved according to this comparatively simple model. But the example suggests the immense new potential for conflict resolution that would arise if the extended freedom of political association gained recognition.

#### **6.4 Freedom of Political Association, Immigration Policy, and Direct Democracy**

The rules of freedom of political association proposed here would put decisions on state borders and nationality directly in the hands of the citizens. Although this procedure would give these decisions the highest democratic legitimacy possible, there would nonetheless be strong reservations against it. Matters of nationality and state borders would only be adjudicated in terms of direct democracy. But this also exposes the freedom of political association to the same objections usually raised against direct democracy.

There are in fact good arguments for not having citizens decide directly in most matters of politics. These arguments are ultimately based on the assumption that citizens would be overburdened by such decisions; that is, that elected representatives decide on matters more competently.

One can hardly deny that elected officials have more political expertise than most citizens. Even political representatives are increasingly overburdened by the complexity of political issues, but it would not make things in any way better if political decisions were made by

even more overburdened citizens instead. To a certain degree, the citizens themselves seem to be aware of this potential overburdening. Had it not been for this awareness, they would have tried to struggle for more direct decision-making rights with the political means so far available to them.

Nevertheless, the procedures of representative democracy are more controversial than ever. The reason for this is obvious. Although most citizens consider elected representatives to be more competent than themselves, they are ever more aware of the increasing overburdening of the latter. As a result, confidence in representative democracy is faltering. As this continues, it seems highly reasonable to seriously consider procedures of direct democracy in new applications; to explore the question, that is, in which new applications direct democracy would serve the citizens better than representative democracy.

The issues in which precisely this is to be expected are the issues of *who-with-whom* and *who-what-with-whom* in terms of nationality; in terms, that is, of simple or extended freedom of political association. No one could seriously argue that elected officials would know best, who citizens would want to share citizenship with. And probably no citizens would even consider that they could be overburdened with such a decision.

In the issue of *who-with-whom* and *who-what-with-whom* in matters of nationality, the plebiscitary procedure is clearly superior to representative democracy—more so than in any other application in politics. And this makes sense from an intuitive understanding. For example, it has been largely uncontroversial that political decisions such as those on the independence of Scotland or on the EU-membership of the United Kingdom were not to be made by political delegates, but by the citizens themselves. In contrast, the fact that Spain harshly denied the Catalans a legal independence referendum in 2017 demonstrated that Spanish politics is entrenched in antiquated concepts from the past.

The dispute over whether and for what issues direct democracy is a superior political decision-making process is millennia-old, yet, in the era of modern democracy, direct democracy has barely gained any ground. One objection to direct democracy was made on practical grounds, claiming that referendums were simply too difficult to organize, particularly in large states. But more serious objections have been raised on theoretical grounds. One important objection is that referendums produce instantaneous apodictic yes/no decisions where there is a growing need for an ongoing legislative process. Even more fundamental is the objection that the long-term consequences of political decisions are increasingly difficult to assess in advance for political laypeople. It must also be borne in

mind that referendums provide less legitimacy as interests of the population diverge. High divergence of interests often leads to conflicts that can be better moderated by representative bodies than by apodictic referendums.

One might draw the conclusion from these objections that democracy should develop more in the direction of expert rule, which, in turn, can only happen in some form of representative democracy. But this conclusion would be wrong. The proper path forward would be to develop a novel combination of direct democracy in some fields of governance and professional expertise in political decision-making in others. Therefore, it would be necessary to differentiate more carefully between policy areas requiring direct legitimization by the citizens, and others in which decisions should be placed in the hands of increasingly specialized experts. The political order that fulfills precisely these criteria would be a combination of direct democracy in matters of nationality (i.e. of political association) and of neocratic expertocracy in all other policy domains.

In such a system, however, consideration would also have to be given to the objection that a rule of experts could move too far away from current interests of citizens. But these objections could easily be dispelled if—as is provisioned in the concept of neocracy—specialized lay parliaments were established and if advanced lottery procedures were applied to the selection of representatives of these lay parliaments.<sup>9</sup>

Direct democracy should first and foremost be practiced wherever questions of state borders and nationality are at issue. But questions of *who-with-whom* in matters of nationality are at issue in at least one other policy branch, namely immigration policy. Therefore, if national borders are to be decided on in referendums, this should apply to immigration policy as well. When it comes to immigration, direct democracy should be the practice—with the decision-making power of representative bodies accordingly restricted on the issue.

## References

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<sup>9</sup> See in particular [www.neokratieverfassung.de](http://www.neokratieverfassung.de). In the draft constitution there proposed lay parliaments and lottery play a crucial role. See also Wehner (1995), chapter 6, Wehner (2006), and <http://www.reformforum-neopolis.de/reformforum/demokratie/-politische-ordnung.html>.

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## Chapter 7

### Political and Moral Objections

A concept such as freedom of political association, especially in its extended version, provokes opposition, the conceivable objections being innumerable. Ultimately, however, each counterargument against this concept is an argument against self-determination and thus for heteronomy. But this is given little attention in an interest-driven discourse. In most parts of the world, anyone who questions the unity of the state is still dismissed as not representing legitimate interests. Opponents argue that such utopian concepts are too complicated or too risky; that from a historical view, they regularly fail in practice, and there is no reason to believe this time would be different, even in the case of freedom of political association.

In fact, when implementing new political principles, the devil is in the details, and freedom of political association is no exception to this. For secessions to go well, i.e. peacefully and with minimal negative side effects, it will be necessary not only to have a prudent national and international legal framework, but in most cases also highly complex bilateral agreements. Two examples that bespeak to the necessary complexity of such agreements are the "Draft Agreement on the Withdrawal of the United Kingdom from the European Union" of 2018 (600 pages) and the German Unification Treaty of 1990 (900 pages).

There is no political freedom that cannot be harmfully misused. This is true for freedom of political association as well—including both its simple and more sophisticated variants. But it is also true of democracy. In a democracy, citizens are free to transfer power to political charlatans or villains, thus giving rise to economic decline, civilizational setbacks, corruption, war, civil war, genocide, or anarchy. Examples abound. In some of these unfortunate cases, the very rules of democracy were used against itself to erode or even abolish democratic rule in the country. Even so, we rightly do not blame the democratic principle itself.

Similarly, the possibility of misuse is not a valid argument against freedom of political association. Citizens would have to learn to live up to the promises of this freedom as they have learned—and are still learning—to live up to the promises of democracy. But as little as

the aberrations of democracy testify to a superiority of autocratic government would possible abuses of freedom of political association justify denying this freedom. How would such denial work out in the long run once citizens have become aware of the potential of this freedom? A future civilized world would not renounce a once established freedom of political association, just as present civilized societies would not renounce the standards of the established democracy.

Nevertheless, a rulebook of freedom of political association should, like all national and international law, be continually developed in the light of new experience. The purpose of this freedom is not limited to making the political world a little better than current prevailing principles, which have not prevented the ongoing global war, nor ended the oppression of minorities, nor stabilized Europe as hoped, or stemmed the growing feeling of political meaninglessness. In order to overcome all these evils, even in a legal framework of freedom of political association, political risks would have to be continuously evaluated and mitigated in the process of rulemaking. Some of these risks, real and presumed, are briefly discussed below.

## **7.1 Fragmentation of the Political Map**

An obvious fear that the concept of freedom of political association raises regards changes to the political map. One might object that freedom of political association would lead to a fragmentation of the political map and that this fragmentation could destabilize the regional or global power structure, jeopardizing security and peace in certain parts of the world. These fears apply even more so to the extended freedom of political association in a system of divisional, multi-track democracies.

However, as explained above, such risks can be largely excluded by appropriate subordinate rules. Even the simple pragmatic rules proposed above in chapter 6 could ensure that changes in state borders would not be arbitrarily and imprudently decided on. Rather, secessions would be preceded by a sophisticated and thus reasonably thorough multi-stage decision-making process that would provide for a high degree of foresight. In such a process, issues of security and peacekeeping, among other functions, would be given careful consideration.

Changes in the political map would hardly be predictable under the conditions of freedom of political association, but this is no reason to put up with the past and present rigidity of the

political map. Existing national borders have not been created in the light of future political challenges, and therefore, more of them will become obsolete over time. Rigid dogmas have preserved a political map that has sprung from the logic of power from centuries ago. Only freedom of political association could create the conditions for the political map to follow changes in political needs in a timely and orderly manner.

This can easily be illustrated by the example of security policy. All citizens of the world want to live in a state where external security seems assured. This sense of security depends on factors such as global and regional external threats, on defense capabilities, and also on the internal stability of the respective state. Changes in any of these factors may create a need to change state borders. This may call for an expansion of the state through merger with one or more other states, particularly in case of a heightened sense of insecurity and threat.

Alternatively, state size and borders may be determined with less regard to defense capabilities, reducing the state's size so citizens would then feel emotionally more attached. The more flexible the political map is to changing needs, the safer the citizens could feel and the more comfortable in terms of identification with their state. These adaptations can succeed all the better the more easily and more directly the relevant political decisions can be taken.

Of course, the greatest flexibility in adapting the political map to changing needs would open in a neocratic system in which state borders could be changed separately for individual governmental divisions. Where external threats are growing, the citizens of neocratic states could, for example, have their division of national defense merged with a neighboring one whose population shares their security interests and defense principles. For all other policy areas, the state borders may remain unchanged.

If border changes were decided directly by citizens, they would presumably occur somewhat more frequently than at present. Necessary adjustments would be made timelier and more thoroughly. In some individual cases, changes might still be made too hastily and on insufficient grounds. But this risk is much lower than it might seem at first thought. Most citizens are disinclined towards political adventures, particularly so in matters of national defense, and would likely refrain from premature changes of state borders. But when, for example, the weight of European states and the US appears to ominously diminish in the global power structure, citizens of some European states may develop a strong interest in establishing a transnational joint defense state. In this way, Europe's political map of defense states could be timely adapted to changing security interests of European citizens.

In theory, freedom of political association would actually allow for any conceivable new constellation of the political map. Per se, it restricts neither the establishment of small and micro-states nor the establishment of exclaves and enclaves of any size, and it at any time allows their abolition. But small and micro-states and exclaves and enclaves already exist in the world as it is, and as long as their citizens do not revolt, there is no reason to regard them as a political problem. To the contrary, there are many indications that self-contentment of citizens tends to be higher in small states than in larger ones. Therefore, even if freedom of political association were to increase the number of small and micro-states, enclaves, and exclaves, this would be anything but a misfortune.

However, an excessively fragmented political map is an unlikely scenario in a neocratic context. Any newly conceived independent state would necessarily need to be big enough, or contain the appropriate resources, to ensure an acceptable level of prosperity for its citizens. Very small countries and small exclaves depend on the degree of cooperation with surrounding states. Such entities would, therefore, be established only by mutual international understanding.

But there is an even more important factor that would restrict the frequency of secessions. Where freedom of political association is established, separatist discontent would certainly be easier to ignite, and separatist concerns would be pursued more frequently. In view of the multitude of possible solutions, however, alternatives would be discussed and negotiated all the more intensively. In order to prevent unwanted complete secessions involving all policy areas, states would open themselves to the alternatives offered by the system of the divisional state. They would, if necessary, negotiate with separatists on all imaginable alternatives to a complete secession, and in such negotiations a secession project may ultimately stall. But even in that case, a much livelier and more meaningful experience of politics would have been created than attainable in the conventional order.

## **7.2 Secession as Denial of Solidarity**

Under the conditions of freedom of political association, secessions may occur in which a wealthy region dissociates from the less prosperous residual state. This can be a collateral outcome of a secession that was driven primarily by cultural, ethnic, linguistic, or other motives. But it is also conceivable that the main motive for a secession is a great intra-state

wealth gap and an allegedly excessive resulting intra-state wealth redistribution to the detriment of a wealthier region.

However, such purely economically motivated secessions would occur at most in exceptional cases. At least in states whose citizens feel to some degree as a linguistic, ethnic, and cultural community with a long common history and tradition, they are hardly imaginable. It is not a plausible scenario for a prosperous region to break away from such a state merely to, for example, reduce its citizens' tax burden by some percentage points. Such secessions would, furthermore, be subject to legitimate moral objections by the community of states.

Nevertheless, where the freedom of political association were established, such secessions could not be denied. Wealthy regions cannot be forever obliged to subsidize less wealthy regions in a common state. While a certain degree of interregional redistribution of wealth is common practice in most states, the scope of such redistribution is always politically determined and insofar subject to change, even without a secession. It ultimately depends on the supraregional sense of solidarity of the citizens.

Such solidarity has usually grown historically, but it is, nonetheless, subject to manifold influences. If, for example, the citizens of an affluent region feel that their solidarity is being taken advantage of, this can weaken their spontaneous sense of solidarity with poorer regions. In affluent regions, citizens may also feel that the less affluent regions are leaning back in the role of subsidy recipients and make too little efforts to overcome this role. In the long term, this clash of interests can even lead to differences in political culture and thus to alienation between the regions of a state. Collapse in solidarity can thus become the breeding ground for secessionist inclinations. In recent decades, sentiments of this kind seem to have arisen at least temporarily in the wealthy north of Italy.

Even in a world of freedom of political association, however, such sentiments of alienation would rarely lead to secession. Although the threshold for secession would be lowered, the immediate effect would merely be a change in the bargaining position between the central state and a potentially renegade affluent region. The central government would be under increased pressure to reassess its policy of interregional distribution and the resulting flow of subsidies and to possibly make these subsidies subject to new conditions. To avert a secession, the government could, for example, introduce new incentives to increase the efforts on the part of poorer regions to boost their economies and/or new incentives that would help stop or reverse the exodus of economic high performers from these regions. In this way,

freedom of political association could indirectly help regions and possibly entire states to overcome economic stagnation even without this freedom being made use of.

However, in some cases solidarity between rich and poor regions may ultimately prove too weak to preserve the common state (or, in a neocratic system, the common state division for solidary redistribution). But in such cases, a secession can have a positive effect on the spontaneous solidarity among citizens and thereby ultimately benefit the least affluent parts of the population. If a state, where spontaneous solidarity among the regions is weak, is divided into two smaller states, cohesion would tend to be stronger in these two smaller states than in the previous bigger united one. This strengthened solidary cohesion would not only improve citizens' emotional attachment to their state, it would also work towards a more effective redistribution to the benefit of the neediest. As a result, under the rules of freedom of political association, secessions would by no means make politics at large less solidary.

In this context it is worth considering a possible extreme case of non-solidary divisive secession; the case, namely, that a small region that is extraordinarily rich in subsoil assets declares itself independent in order to exploit these assets to its own exclusive benefit. Of course, the international community would have a legitimate interest in not having such an example set a precedent, with the result that more and more resource-rich small states would be formed, inspired by the example of super-rich Arab Emirates. Insofar as such extreme cases are not precluded by the above-outlined rules of freedom of political association, amendments to these rules might be necessary to curb such excess.

But secessions that serve only the selfish exploitation of such resources could, even if only in the very long term, also be prevented by rule changes in a completely different field, namely the property system. Pertinent motives of behavior could be modified by a global system of property rights that no longer awards ownership of natural resources to the states under whose territory they happen to be located. Such a global system of ownership could be developed analogously to existing national law, which gives the rights to natural resources not to individual landowners, but to the state and thus to all its citizens. Similarly, in a visionary new global legal order, the exploitation rights at least to so far undeveloped natural resources could be transferred to the international community at large. The greater the dependency on imported raw materials worldwide, the more urgently such a regulation would be needed to prevent pertinent international conflicts.

Of course, it is nearly beyond imagination that the international community will ever adopt such a settlement. That said, the greater the mutual dependencies of states in a globally

intertwined world, the greater the economic vulnerability will become. Over time, the pressure will push countries to agree on novel common rules governing resources. Therefore, it cannot be ruled out forever that the international community will give such unprecedented concepts as collective global ownership of natural resources serious consideration.

### **7.3 Erratic Changes of State Boundaries**

The more freely borders of secession territories can be drawn, i.e. the less these borders are predetermined by current or historical borders of states or regions, the harder it becomes to find politically sustainable solutions on these border issues. Accordingly, there is potential risk that newly drawn borders will increasingly be challenged and need to be corrected by further subsequent secessions. This may raise fears that freedom of political association would never let militant conflicts over border issues come to rest.

It is true that freedom of political association would tend to increase the frequency of not only secessions but also of subsequent adjustments of borders. As already mentioned, however, the procedural rules proposed above would ensure that also such subsequent adjustments will be well considered and will, therefore, not occur with undue frequency. The frequency of such adjustments largely depends on how carefully the borders of primary secession areas drawn. If the procedural rules proposed above were adhered to, i.e. if secessions were always preceded by a careful decision-making process on the demarcation of the secession area, this alone would minimize the need for subsequent border corrections. In this decision-making process, thorough consideration would be given to the question whether and where a proposed new border line could later be challenged by local majorities. A subsequent referendum on the boundary line would then give more accurate information on where approval to this line may be lacking. This would provide the opportunity to modify the planned new borderline and thereafter hold a new referendum on it. These preliminary procedures would ensure that final referendums would be held only on secessions whose borders and territories would most likely be sustainable for the foreseeable future.

In addition, under the rules proposed above, a decision to secede would only become valid if confirmed in a later second referendum. This process, comprising a total of at least three referendums, would ensure that secessions would be decided on with the utmost rationality and foresight. This is true for the decision on *if*, on *when*, and also on *how*, and therewith also for the decision on the demarcation of the secession area. In the neocratic context of extended

freedom of political association, similar rules would also apply to decisions on secessions involving only single policy areas (i.e. single state divisions).

The importance of practicing freedom of political association in such a regulatory framework is also confirmed by an event such as the UK's exit from the EU. The outcome of the Brexit referendum on leaving the EU was a short-lived expression of political sentiment, with some regions, particularly in Scotland, voting clearly against leaving the EU. This of course sparked debate on whether the referendum had given the exit decision the necessary legitimacy and whether it should either be repeated or even revoked by the parliament.

It was only after the referendum that serious consideration was given to whether the border between Northern Ireland and the Republic of Ireland, which after Brexit would become an external border of the EU, could in this capacity remain an open border almost as before. The Brexit referendum did not bring any clarity in such matters nor did it settle any political disputes. Instead, it revealed fundamental shortcomings of prevailing political principles and rules. Though it was basically an event in the spirit of freedom of political association, it ultimately only exhibited the confusion inevitably caused by a half-hearted and amateurish engagement in this freedom.

#### **7.4 The Role of Historic Injustice**

State borders can be changed to solve the problem of involuntary nationality. But they can also be questioned and contested for completely different reasons. In this regard, an outstanding role is played by historical injustice.

State borders which embody historical injustice are most evident where members of an ethnic group have in the past been forcibly expelled from their ancestral lands to be occupied by other ethnic groups. If referendums on state borders were carried out in such historically disputed territories, this would have little or no contribution to peace in some case as the results would not be recognized as legitimate by the victims and their descendants of the historical injustice; in their view, recognition of such referendums would amount to an endorsement of the injustice.

One possible conclusion from this would be to combine freedom of political association with a claim for correction of such historical injustice. Such claims, however, could hardly be codified in universally applicable rules. These claims are the more difficult to bindingly

define, the further the injustice to be corrected dates back. The most difficult cases are those in which injustice perpetrated against living generations of one conflict party are weighed against injustice suffered by earlier generations of the other party.

Such historical injustice, unilaterally or mutually inflicted, can shape political consciousness over generations and centuries, holding it in categories of revenge and retribution and even undermining any imagination for peaceful and consensual solutions. In such cases, the conflicts over state borders and nationalities cannot be solved solely in thinking and acting in terms of freedom of political association. Sustainable solutions to such cases would imply serious interference in the living conditions of affected citizens.

Recent examples of this can be found in the Middle East. In cases where millions of people have fled or have been displaced—living in refugee camps or other makeshift shelters far from their homelands, or settled in a new country—waiting to return to their homeland, referendums on future state borders carried out under the above rules would produce questionable results. Under such conditions, it would first be necessary to clarify who should be entitled to participate in such referendums at which location. In many cases, even this clarification could not be achieved without previous relocation of citizens. Even the mere dispute over this issue could provoke new violent conflicts.

But even in conflicts characterized by such historical injustice, there can ultimately be no lasting peace that would not at least be consistent with the spirit of freedom of political association. The path to such peace can only be paved by a profound change in consciousness, and for that reason alone it would be long and laborious. However, as the long tragic history of failed attempts at conflict resolution in the Middle East has shown, any allegedly easier path is bound to fail.

This is true also and particularly for the conflict over Israel and Palestine. In this conflict the mutual claims are marked by so much real and alleged historical injustice, so much thinking and feeling in categories of revenge and retribution and so much hatred and condescension that a sober notion such as freedom of political association alone cannot lead to a solution. Here, too, pacification in the spirit of freedom of political association should be the ultimate goal, but the starting point of realistic peace efforts should be the question who would be entitled to exercise their pertinent rights in what place, and in particular the question in which state refugees, and possibly their immediate descendants, should have the right to vote on state borders.

While the Israeli-Palestinian conflict has much in common with other seemingly indissoluble conflicts over territory, it is, nonetheless, for good reason widely considered unique. So far, all political rhetoric and theory seemed to have missed their objectives in face of this conflict, and correspondingly it appeared too complicated for ordinary politics to solve. At the same time, it seemed that the world and the immediate parties to the conflict (i.e. Israel, the Palestinian organizations and their supporters) had resigned themselves to the insolubility of the problem. Permanent fear of terror, recurring limited wars, permanently failing mediation by other states, and even the mutual indignation of the parties to the conflict became almost routine.

This process also solidified the conflict-driving prejudices. The Israeli side, for example, citing its superior level of civilization, continued to insist that a victim of terror on its side was morally outweighed only by a multitude of victims on the other side. Thus, the parties remained in mutual speechless mistrust and in repressed mutual fear. The will for peace often seemed to rank behind the fear that in a peace process the other side could gain an undeserved advantage. This is another reason why on either side individuals who, if only in theory, intended to explore new peace compromises in this conflict were mostly regarded as traitors. Both conflicting parties, Israelis and Palestinians, claimed that their militancy served only to correct historical injustice suffered by them. Both sides saw mainly themselves in the role of victims, and both wanted to see the higher moral weight of their victimhood recognized by the other side. The Israelis argued that the violently won status quo was at most a moral tie, the Palestinians that the state of Israel would eternally be founded on moral wrongs.

Of course, the historical injustice suffered by both sides is undeniable. But the questions of what significance the claims derived therefrom could play in a peace solution, how these claims might be measured, weighted, and possibly traded off against each other—thereabout the prevailing consciousness allowed no rational dialogue.

In this regard, there seems to be less reason for confidence than ever. Due to demographic developments, the likelihood of peace-supportive changes in consciousness appears to be diminishing. Existing trends indicate that the demographic weight of orthodox fundamentalists will continue to grow on both sides, Israeli and Palestinian, at least in the coming decades. This makes majority support for a moderate, forward-looking rapprochement policy ever more difficult to attain.

This again suggests that the conflict will further be dealt with as though it could be won by one side or the other; as though, that is, military threats, terror, sanctions, and the like could

confer permanent benefits on one side or the other. But only if it were explicitly recognized by citizens and politicians that this conflict cannot be won by either side could realistic chances for peacebuilding policies grow.

Before freedom of political association can play a constructive role in such a conflict, the Gordian knot of multilateral historical injustice would first have to be shattered. In the course of this, Israel's right to exist would have to be recognized in the same reasonable way as the claim of the Palestinians to secure their own state on a reasonably demarcated territory. It would also have to be agreed on that such a well-secured Palestinian state needed a comprehensive and long-term start-up aid provided by Israel and Western countries as compensation for historical injustice.<sup>1</sup> It may still be hard to imagine that Palestinians will ever be willing to trade historically well-founded territorial claims against monetary benefits. Under the threat of mutual annihilation, however, the awareness might ultimately grow that the only alternative would be incessant continuation of the threatening explosive conflict. Moreover, the prospect of freedom of political association would open unforeseen opportunities for a Palestinian state to play a significant role in the peace process.

Ultimately, it will always be the most complex and demanding conflicts that teach the most important lessons for future peace-policy. The Israeli-Palestinian conflict is one of those, but scarcely less difficult are other conflicts in the Middle East region. It is true for most of these conflicts that they were preceded by a misconceived peace and hastily drawn state borders. Especially in the Middle East, even up to the most recent time, conditions were established that ignored later needs for correction of national borders and that thereby created highly fragile peace.

This can only change if, in the resolution of such conflicts, freedom of political association is given consideration at least as guiding principle and long-term goal; in other words, if it is clear that future decisions on contested state borders will truly be made in the spirit of freedom of political association.

## 7.5 Parallel Societies

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<sup>1</sup> A part of such start-up aid – which would have to be granted over decades in diminishing installments – could be paid directly to the citizens of a Palestinian state. For this concept see, inter alia, Wehner (1990), Wehner (1991), Wehner (2019).

Even if state borders were, with the procedures outlined above, adapted to the citizens' will in the best possible way, there could still be minorities who regard their nationality as misfortune. This can be the case especially where antagonistic population groups are strongly mixed in a common region. In such cases, the will to geographic separation cannot be fulfilled by corrections of borders; therefore, separatism in the usual sense cannot solve the problem and increases the threat to lasting internal peace.

A possible consequence of such conditions is that minorities form parallel societies, which try to formally differentiate themselves from the majority, whether for cultural, religious, ethnic, or other motives, without aspiring to a territory of their own. In such cases, the majority society often faces minoritarian parallel societies with mistrust, disrespect, and even hostility. The more self-assured a parallel society presents itself, the more rejection it may experience by the majority who may demand their integration and assimilation.

A drastic example of how difficult it is to solve these problems with conventional political means is the state Bosnia-Herzegovina and the federation of the same name. There, Bosniaks, Serbs, and Croats form de facto separate parallel societies. Their peaceful coexistence is still being safeguarded by a foreign military presence and by the participation of the UN in state authorities. Although Bosnia-Herzegovina is meanwhile uniquely divided into small territories with more or less clear ethnic and denominational majorities, this did not solve the problem of parallel societies. After decades of international commitment, the conflict appears significantly defused, but this has as much to do with migration as with political design.

Such examples suggest a seemingly inconvenient conclusion difficult to reconcile with prevailing political dogmas. They show that in some cases, integration, assimilation, and pacification of minorities cannot be enforced even with the most complex political strategies imaginable and not even under the decade-long surveillance of well-intentioned foreign powers. However, what cannot be enforced by political means should not be attempted to enforce. Each such attempt creates new mistrust and new alienation and in consequence entrenches the respective conflict. In such cases, therefore, for a policy toward minority groups to be promising, it would have to be open to novel solutions in the spirit of freedom of political association.

Freedom of political association is the freedom of citizens to decide with whom they want to jointly operate a state or a state division. The solutions outlined above assume that each state or each state division is responsible for its own demarcated state territory. Under this condition, it is impossible for a territory to be governed by more than one state in any policy

branch. There could, for example, be only one cultural and educational policy on the same territory.

At first thought, this may seem to be a matter of course. But it entails a far-reaching restriction in the free choice of nationality. This freedom of choice would be substantially extended if, at least in certain policy areas, more than one state could have political competencies in the same territory.

Precisely for these options, realistic opportunities would open with the concept of autonomous state divisions. In such a system, on the same national territory different cultural groups could, for example, establish independent state divisions for cultural policy, and these divisions could be financed by separate earmarked culture taxes.<sup>2</sup> Each of these culture divisions would levy its own taxes from its own citizens (i.e. from its own culture group). In this way, minorities could operate a completely autonomous culture and/or education state without having to fight for and establish their own national territory. Different cultural groups could establish themselves in a common national territory as parallel societies organized in separate state divisions, and as such, they could live peacefully alongside one another. It could even be in the well-understood self-interest of a cultural majority group not only to allow and tolerate autonomous parallel societies, but also to, at least temporarily, actively promote them.

The willingness to peacefully share a common national territory in such a way, despite all differences of attitudes, traditions, lifestyles, and values, would depend on conditions that are far from being a matter of course in most of the world. These conditions include an advanced level of political civilization and compliance. Where the relationship between population groups is marked by strong needs for spatial separation and by strong concern over historical injustice, any attempts at such conflict-free coexistence on common territory may be futile. In some such cases, lasting peace could indeed only be achieved if the population groups no longer shared a common territory. But even for such cases, solutions inspired by the freedom of political association are conceivable.

## **7.6 The Role of Voluntary Resettlement**

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<sup>2</sup> For this concept, see Wehner (1992) and Wehner (1995), chap. 11.

In most cases, the problems of involuntary nationality should be completely solvable according to the rules described above. If all opportunities of freedom of political association were exhausted, including the establishment of autonomous parallel societies, then truly insoluble conflicts between population groups would be rare and, at least in terms of global politics, insignificant. Moreover, some of these conflicts may fade in the long run (i.e. in the course of generations and centuries) without significant political intervention. Seemingly maladjusted minorities could shrink by voluntary migration, or they could increasingly integrate or assimilate, and all of that would increase their acceptancy. Nevertheless, in some instances these processes could be far too uncertain, too slow, and too painful to make further search for political solutions dispensable.

A means of overcoming involuntary nationality even in such cases would be voluntary resettlement. If all other possibilities of intra-state pacification are exhausted, an ultimate option would be to spatially separate unreconciled antagonistic groups in a peaceful, consensual way.<sup>3</sup> Such resettlements could in some cases be a necessary complement to self-determined adjustments of state borders and nationalities.

Resettlement policy as a tool of conflict resolution is rather alien to conventional political thinking, and there are good historical reasons for this. Where in the past domestic conflicts resulted in resettlements, these were mostly involuntary via evictions and/or ethnic cleansing. The political challenge in such cases would be to make such resettlements voluntary. The easiest means to achieve this would be monetary, or comparable, incentives. Generously structured incentives could induce a sufficient portion of citizens to voluntarily migrate in one or both directions across the border in question.

Incentivized voluntary migration would help to ensure internal peace even if only part of the entitled citizens took part in it as majority populations tend to be less hostile to disliked minorities when their population is relatively small. The greater the initial mutual hostility of population groups, the stronger this reconciling effect can be. In the practice of freedom of political association, rewarding voluntary migration could be a legitimate ultima ratio.

In some cases, if the conflict-affected states command insufficient resources to provide the necessary incentives for the envisaged cross-border migration, agreements will require financial support from the international community. This will almost certainly be necessary in resolving the conflicts in the Middle East, including the Israeli-Palestinian conflict. However, necessary support of third-party countries would hardly be lacking once rewarded migration

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<sup>3</sup> For a substantiation of this concept, see Wehner (1999).

were accepted as a legitimate means of peacemaking. Wealthy states would also have a self-interest in such solutions, particularly countries of the West willing to compensate for the wrongs committed by them in the long history of such conflicts.

At the present state of consciousness, it would still be easy for populists to denigrate such rewards for migration as an aid to ethnic cleansing. But such criticism misses the point, since the induced change would be doubtlessly voluntary. In some cases, rewarded migration could prove to be the last and only possible means to prevent further war, civil war, terror, expulsions, and possibly subsequent occupation.

## **7.7 Freedom of Association and Freedom of Dissociation**

Separatists are usually a minority in their state, and accordingly, in secessions it is usually a minority that secedes, but exceptions are possible. If nationality is to be generally voluntary, then this must also apply to majorities. Then also a majority of a nation can claim for itself the right to secession. Any rule restricting this right to minorities, thereby denying it to majorities of whatever size, would be arbitrary and illegitimate.

If a majority exercised its right to secession, then this secession would result in the exclusion of a minority. Seen in this way, freedom of political association is also a freedom of political dissociation. It gives majorities the right to dissociate from parts of their state's territory and its population. In some cases, such secessions may affect the prosperity of the "expatriated" minority region. This could happen, for example, if the greater part of Italy seceded from Italy's poorest regions in the extreme south. It could be argued that the eventuality of such effects reveals an ugly aspect of freedom of political association.

It is a legitimate concern that freedom of political association and the pertinent rules may be abused, and one of these abuses would be the intentional exclusion of a territory to the detriment of its citizens. However, events of this kind would still be less calamitous than outcomes of past and present political principles and rules. According to the rules of freedom of political association, any exclusion of a minority would still be a non-violent act based on a democratic vote. This can provoke opposition, it can lead to renegotiations and to subsequent readjustments of borders, but it is hard to imagine that it would set off violence, terror, expulsions, or even civil war. Even though rules of freedom of political association could be applied inconsiderately, this would happen at least in civilized procedures.

Moreover, that a minority region of a state is detached and forced into independence against its own majority will is a very unlikely scenario. It is even more unlikely that prosperity will decline more than marginally in such a detached region. There are few cases where regional prosperity is so highly dependent on domestic redistribution. Accordingly, there would be no urgent need for international or national rules that would prevent such exclusion of minority territories.

## 7.8 Immigration and Integration of Foreign Territory

By far most separatist movements are movements for independence, but of course there are also cases where a secession is intended as accession to another state. In such cases, not only the citizens of the acceding territory would be affected, but also the citizens of the state that incorporates this territory.

In the prospective adopting state, citizens would also be entitled to exercise all rights associated with freedom of political association. Accordingly, they could not be forced against their majority will to share citizenship with inhabitants of an acceding territory. Under the rules of freedom of political association, for example, Crimea could not have acceded to Russia if Russia's citizens had not agreed. Likewise, areas of eastern Ukraine could not accede to Russia without majority consent of Russia's citizens.

However, such examples also show that referendums on state borders would in many cases be just a formality. An overwhelming majority of Russians tacitly agreed to the incorporation of Crimea, and this was too obvious for a referendum to be necessary for more clarity. But not all such cases would be as clear cut; citizens need to be protected by appropriate rules against the accession of new territories against their will. The spirit of freedom of political association would be complied with only if citizens could vote directly on any accession of new territories to their state.

Similarly, as already mentioned, this would also apply to political decisions on immigration. As in the case of accession of territories, immigration policy also deals with issues of *who-with-whom* in matters of nationality; thus, freedom of political association is at stake in this policy as well. The issue calls for state and supra-state regulations allowing citizens to decide on the principles of immigration policy by direct ballot.

## **7.9 The Distribution of Public Resources: National Debt and Other Matters**

The more orderly future secessions are to be settled, the greater the need for relevant rules. In the past, many secessions were carried out in the turmoil after war or the collapse of empires, in more or less chaotic times, that is, when authoritative rules were lacking and compliance was hard to enforce. This was the case with most secessions after the collapse of colonialism and the collapse of the Soviet empire. These secessions raised little dispute over infringement of rules in the aftermath.

In a world in which freedom of political association were acknowledged as a fundamental right, much stricter compliance would, of course, be required. In such a world, in the event of a secession government assets and liabilities would have to be allocated to the states involved by mutual agreement. This applies to tangibles, to land, to financial assets, to claims and liabilities of central banks and of institutions of social security, and to equipment of armed forces and other state bodies. In most cases, this alone would require highly complex agreements.

In the past, separatists hardly ever dealt in advance with these side effects of a secession and with the detailed regulations that would necessarily be involved. This applies to the initiators of Brexit, to the separatists in Catalonia and Scotland, and even more so to the separatists in eastern Ukraine. However, if an advanced set of rules on freedom of political association were established, separatists could not help facing the complexity of their project in advance even in questions of estate settlement. Also in such issues, separatist energies could concentrate on forward-looking detailed negotiations—distracting them from aggressive activism. This would strongly reduce the risk of hasty, ill-considered, and ill-prepared secessions.

With regard to future secessions, it would be helpful or even necessary to set up arbitration boards or an international court that specializes in these disputes. Such institutions could help ensure that secessions will not fail due to seemingly banal unsolved problems such as the allocation of debt and assets.

## **7.10 Further Challenges**

Freedom of political association would create a more peaceful, liberal, and orderly world, but it cannot be ruled out that in individual cases it would even be misused to establish an uncivilized so-called rogue state. This could happen, for example, if a less civilized region seceded from a state with a predominantly more civilized population. In such cases, it would be conceivable that in the secession area minorities will thereafter be exposed to oppression, displacement, and possibly genocide; citizens of oppressed faiths that are denied civic rights may retaliate. The so-called Islamic State was the extreme, albeit short-lived case of such a rogue state created by secession. This could raise fears that under the conditions of freedom of political association, more such rogue states might emerge and that the rules of freedom of political association might inhibit effective countermeasures.

While conceivable in theory, it has no relevance in political practice. No territory desiring independence would want to establish itself according to the rules of freedom of political association unless it had reached a high enough level of civilization to accept these rules. If a less civilized region were to become independent under these rules, it would have to warrant that it would itself abide by these rules after the secession. The lower the level of political civilization, however, the less likely it would be for a state to respect such rules. A newly established uncivilized state would, for example, hardly accept that its future borders could at any time be corrected by subsequent secessions, and even less that it could eventually be split into several autonomous state divisions. Least of all it would want to allow partial secessions of such autonomous state divisions or even accept autonomous internal parallel societies. The rules of freedom of political association would allow for denying such state recognition and applying sanctions to prevent its emergence from the outset.

In the unlikely event that such a rogue state would nonetheless be peacefully formed by rule-compliant secession, it could by no means feel protected by the pertinent rules. Even though the lawfulness of such secession could not be questioned, other states could still act against human rights violations and other injustices committed by such states in the same way and with the same means as under current rules of international law. Where freedom of political association applies, therefore, neither is an increase in the number of uncivilized rogue states to be expected, nor would the capability of the more civilized world in dealing with such states be diminished.

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## Chapter 8

### A Quick Guide to Peaceful Secession – The Case of Catalonia

The separatists of this world do not want to wait for an acknowledged rulebook of freedom of political association to show them orderly ways to secession. Nor should they wait for it. But in their struggle for secession, they should always be prepared to try unfamiliar ways at least in procedural matters.

So far, the history of separatism has produced few such innovations, and this is true also for the most recent separatist projects. The Catalan efforts towards independence have only resulted in an irreconcilable conflict with the Spanish central state, in which none of the parties has exhibited creativity. The separatists pursued their cause passionately, but amateurishly, and the reactions of the Spanish state were no more farsighted. To both sides, the question at issue was merely this: full independence at once, yes or no?

Of course, there were no secession experts on either side. In Catalonia, the secession project had followed spontaneous momentum rather than a deliberate plan. The separatists even let themselves be carried away to hope that the EU would support their cause. While admirable, this expectation alone is a testament to their shattering political naiveté. Nothing was more illusory than hoping the EU would become a pioneer of separatist concerns.

But what was it that Catalan secessionists failed to do? Or more generally, what questions must progressive separatists ask themselves in order to put a secession project on a more promising path?

First of all, secession should not be treated as a simple yes/no-question. Catalan separatists should ask themselves what exactly is so divisive about the Spanish state to aspire to a secession in the first place; in which policy area is the will for separation most urgent, and in which other fields of politics would we fare well enough with a common state?

As soon as answers to these questions emerge, further questions suggest themselves: What would be the right moment? How soon and in what steps should the secession be carried out?

And then more precisely: When and how should this be done in which policy area? When and how should the common welfare state be divided, the common armed forces, the common membership in supra-state institutions? For how much longer should common symbols and identities be shared (e.g. common national teams, constitutional monarchy)? It would be a miracle if the well-considered answers to all these questions were identical; if, that is, the most appropriate time and method for secession were the same in all policy areas.

The concept of extended freedom of a political association implies that secessions could and should be implemented in separate steps for separate policy areas. In such a process, of course, it would be wise not to start with the most difficult and conflicting steps. A multi-stage process of secession should rather begin with measures that neither require major institutional transformations nor cause significant distributional conflicts. This would certainly be the case if the separation were first performed on a symbolic level. For example, separatists could begin by discontinuing the use of common state symbols such as flags and anthems on their territory and by using symbols of their own instead.

Further steps could then follow in the policy of identification. Secessionists could decide no longer to be represented in sports by the former joint national teams, they could call on like-minded athletes no longer to participate in such teams, and they could call upon international sports organizations to recognize national teams of the separatist region. In football, they could easily refer to established precedents such as Scotland, Wales, and Northern Ireland. Thus, recognition of Catalan national teams would avoid bringing disorder to the world of international sports. In the long run, such sports-related secessions could become door-openers for further steps in the secessionist process.

If secession projects began at such a modest level, this would also greatly facilitate the formation and clarification of separatist political will, maturing in the course of a gradual secession process. With each step of a secession, citizens would become more aware of how far they will ultimately want to go with the secession and how fast they want to proceed. They would also see more clearly whether secession is more of a rational project to them conducive to greater prosperity and security, or just an emotional concern. The latter case could be resolved with the creation of its own state symbols and identificational institutions in the secession area.

An identificational authority that could, besides sports, play an important role in the early secession process is constitutional monarchy. Constitutional monarchies vary in significance for the cohesion of states. They can be the last and only unifying bond that preserves the

solidarity of a nation, but the opposite can also be true. A constitutional monarch may for some parts of the population be the highest representative of just that disliked majority, with whom they are forced to share their nationality. In such cases, detachment from the constitutional monarchy may have highest priority on the separatist agenda. Separatist might then want to begin the process of secession with an informal referendum on whether citizens of their region still consider the representative monarch as being their own.

Of course, even for such separatist initiatives favorable historical moments would have to be carefully sought for. In Catalonia, it may have been a favorable moment when King Felipe bluntly denied the Catalan secessionist movement any legitimacy in late 2017, thereby instigating the crackdown of Spanish police and criminal justice on separatist leaders. To this, the Catalans could have responded with a collective declaration: "*Thou art not our King*". At the same time they could have taken steps to informally push the secession in sports matters. In this way, the separatists would have sent a strong signal to their opponents: "*We will be civilized, but we will not be deterred.*" From such a strong and morally superior position, they could then have gradually struggled for concrete, more substantiated steps to independence.

Such an approach would be exemplary for a separatism that rises above the civilizational level of its adversaries. Besides, it could stimulate many other political innovations. It could raise the question of whether a modern constitutional monarchy should continue to be purely hereditary, or, instead, democratically legitimized and thus be transformed into some form of an electoral monarchy. As such it could never take its representative role on the entire traditional territory for granted, and it would be continually challenged to struggle for the support of the entire people.

In non-monarchical forms of government individual regions would have comparable opportunities to withdraw representative and identificational functions from their central state. In such states as well, regions could hold informal referendums on whether they still feel properly represented by their head of state, or which common state symbols they still want to use in their territory. Such rather symbolic secession threats could be directed against an all-competent central state for many reasons. It could be directed, for example, against a state that in the opinion of the secessionist region lacks political civilization, solidarity, or political vision, or against a state that in immigration policy violates the spirit of freedom of political association. Thus, symbolic and identificational secession can be used by separatists as a starting point for a secession process at large.

## Chapter 9

### Model States and Guarantor States

There is hardly a serious political evil in the world that cannot be traced back to a lack of political civilization. A politically civilized world would be more peaceful, free, and fair, and, even more importantly, it would be at least as serious about problems of the future as about problems of the present. If there were a remedy for the deficits of political civilization, it would be almost a political panacea. Of course, this raises the question of the interdependence between freedom of political association and political civilization. It is clear that a world in which freedom of political association prevailed would be much more civilized than the existing one. But would first a higher level of political civilization have to be reached in order to realize freedom of political association, or would it also be possible the other way around? Could freedom of political association be realized first, thereby raising political civilization to a higher level? It would be too simple an answer to confirm the latter.

The civilizational requirements for freedom of political association are clear, but they are also highly demanding. A highly advanced spirit of political compliance (i.e. the rule of law) would be indispensable. But it would be no less important for citizens and politicians to realize that the political rules of law and order must be easily adaptable to changing needs and requirements. An acute awareness would be needed that major political grievances cannot be remedied by merely exchanging political personnel, but only by changing the political order. Ultimately, this implies acute skepticism about a democracy in which citizens delegate political power as a whole to entities and individuals responsible for all policy areas at once. This procedure places low intellectual demands on citizens and accordingly appears highly convenient. But precisely this procedure is the cause of a general overburdening of political actors and thus a breeding ground for political disasters.

Freedom of political association would create new ways of avoiding political disasters in which freedoms and fundamental rights of citizens are at risk; as such, it would help to secure other freedoms and civil rights. While fundamental, freedom of political association would be no ordinary right like many others, but would also act as a security net in the system of fundamental rights. Hence, it does not only follow political civilization, but it can also boost progress in political civilization.

Even where freedom of political association prevailed, citizens would be free to submit to authoritarian leadership and even to have their state organized in a totalitarian way. This could occur as a voluntary or even intentional civilizational setback. And yet, freedom of political association would open unprecedented opportunities for action in such context. Regional groups of citizens wishing to escape civilizational regression would be free to collectively retreat from such authoritarian or totalitarian states by secession. Thus, in relapsing in political civilization, a state may risk losing parts of its territory and the more civilized part of its people, weakening the state concerned and jeopardize its existence. This state could prevent such a secession only by denying freedom of political association. But in doing so, it could no longer claim to be treated as a legitimate constitutional state by the more civilized part of the world community or be spared from eventual sanctions.

In a world of freedom of political association, secession scenarios of this kind could also emerge in failed states, meaning states where the economy, prosperity, public order, or all at once have eroded. From such failed states, regions could secede in which political awareness is sufficiently developed to successfully reorganize the economy, society, and polity. It would be in keeping with the spirit of freedom of political association if other states not only tolerated such secessions but also attended them constructively.

In most cases, the level of political civilization is low in failed states, but even in more advanced democracies, failure of states is by no means excluded. Even in countries such as Italy, parts of the population regard their state as at least partially failed, as a state, that is, from which some region could or should at least temporarily secede. Especially in such cases it seems reasonable to suppose that future generations of separatists would claim freedom of political association only in selected policy areas.

Freedom of political association and political civilization would reinforce each other, but the advancement of political civilization depends, of course, also on other circumstances. In particular, political civilization needs individual states as role models. There will and must always be states, small or big, that lead the way in political civilization, giving orientation to

others. At best, the most civilized states in the world would also be the largest and most powerful; servicing not only as role models, but potential global guarantors of political civilization and freedom of political association.

However, if the most civilized states were indeed the most powerful, this would be no more than a lucky coincidence. Whether such coincidences ever existed is at least doubtful, and if they existed, they did not last. In political civilization, there has always been the danger of global setbacks, and this danger would not be diminished by the mere fact that some highly civilized states followed a concept such as freedom of political association.

Nevertheless, the notion that at some point individual states could emerge as role models in terms of freedom of political association should appear plausible. The development of democracy was also inspired by states that played such an exemplary role, states such as in the 18<sup>th</sup> century the United States and in the fifth century B.C democratic Athens. However, the very history of ancient democracy also reveals how easily a political civilization can perish if it lacks sufficiently powerful guarantors. The ancient Attic democracies have survived little more than two centuries. By contrast, modern democracy still has sufficiently powerful guarantors, above all the United States, to safeguard its role in world history for the time being. But the risk is growing that the current guarantors of the global power structure will fall behind states standing for more authoritarian forms of government, endangering the existence of democracy in its current form. China in its present condition could play the leading part in such a development. China's rise in power could make more and more Westerners believe that, ultimately, they could only assert themselves in the global power structure if their state became more authoritarian as well. If Western democracies had in this way approached China's lower level, it would be highly uncertain whether they could ever resume a pioneering role in terms of political civilization. An equally plausible scenario would be that an increasingly dominant and self-assured China will eventually catch up with stagnating Western democracies not only in economic and military terms, but also in political civilization. Then the relatively short historical role of the US and other Western states as guarantors of political civilization would come to an inglorious end.

A civilization shaped by freedom of political association would be a liberating alternative to the above scenario. However, this civilization would need pioneering role models and powerful guarantors as well, and it is in no way foreseeable which states could ever assume such a role. In the democratic world as it is, established interests would be opposed to freedom of political association, and this is all the more true for the future superpower of

China and later emerging global powers such as India. In their present condition, precisely these powers have every reason to feel threatened by the rules of freedom of political association. Even if smaller states emerged as initiators of freedom of political association, it is unknown how long it would be until new global leaders were ready to become its guarantors.

## Chapter 10

# The Long March to New Freedom

### 10.1 Trapped by Established Interests

One might suspect that the positive effects of freedom of political association are so obvious that at least highly developed democratic states could move towards this freedom more or less by themselves. After all, this freedom is about nothing less than a hitherto withheld fundamental right, about a more meaningful experience of politics, about overcoming a global war, and about the future of political civilization.

How could, one might ask, democratic processes stop this in the long run? And what could prevent this from eventually being reflected in international treaties? What could, in the long-run, keep the vast majority of democratic states from including freedom of political association in the fundamental rights of their constitutions and from introducing this freedom into international treaties as well?

Reality is obviously different. If one were to see the reason for this only in old dogmas and ideologies, this would be a relatively mild finding. Old dogmas can lose their impact as generations pass, and as a result, a concept such as freedom of political association could finally prevail by its mere strength. Such a political paradigm shift, however, would be opposed by the strong institutional inertia already described.

The more advanced the form in which freedom of political association is to be realized, the more fundamentally the political order would have to be adapted. In democracy as it is, political parties would have the key role in such reshaping of the political order. The contradiction is that all political parties will lose competencies, power, and significance due to such a reform. This would be the case at least in the context of extended freedom of political association, which is marked by the highest degree of autonomy of individual policy areas

possible. In such an institutional context, parties would sooner or later lose their role as organizations responsible for all policy areas. A neocratic constitution in the spirit of freedom of political association would stipulate that conventional parties be ultimately replaced by specialized political organizations all of which are active only in one policy area.<sup>1</sup> For political parties, therefore, in a dispute over such a new neocratic constitution, their own survival would be at stake. Consequently, the resistance of political parties against this dimension of freedom will be more than obstinate.

Established parties in established democracies see themselves as guardians of the democratic state order as it is. They do so by tradition, but also because this state order assigns them their leading role in the political process and thus assures their existence and importance. As a result, established parties and their officials and mandate holders are generally opposed to fundamental reforms of democracy.

Moreover, interest in long-term state reforms on the part of parties is prevented by the prevalent democratic election modes. Where the competition for votes, offices, and mandates generally refers to four- or five-year terms, freedom of political association would be far too distant a goal to attract enough attention from citizens. And understandably, if citizens are indifferent or disinclined to a political project, then parties and politicians are not well motivated either to get seriously involved in this project.

## 10.2 The Issue of Competency

But even if they did not lack commitment, it is highly uncertain whether parties and politicians in established democracies could ever be equal to the task. The procedures of democracies were not designed to bring about such fundamental reforms, so it should be unsurprising there is no evidence that democracies have ever achieved such reforms.

Nothing else is to be expected for the future. Even if democratic parties included a reform project such as freedom of political association in their agenda, this would always be embedded in a comprehensive political program encompassing all policy areas. In existing democracy, parties and politicians stand for election in all policy areas at once, and therefore

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<sup>1</sup> And also specialized either on national or on local and regional politics. For details see the neocratic draft constitution at [www.neokratieverfassung.de](http://www.neokratieverfassung.de).

they present themselves and act as political generalists. As such, they can only acquire very limited specialized competency in individual policy areas.

The higher and the more specific the expertise that a political project requires, the less likely the competency of generalist politicians will be adequate. Since the project of freedom of political association would place the greatest and most specific demands on politicians imaginable, it is also the project where the danger of political overburdening—and thereby the threat of political failure—would be greatest. Therefore, the presumption that democracy as it is would, after all, if circumstances require, still provide the necessary expertise for such a project, is at least frivolous. It does not even seem desirable for freedom of political association to ever get on the agenda of democratic states as they are. To be equal to the demands of such a project, democracy would first have to reach a more advanced condition.

### **10.3 The Role of Citizens**

But if politicians lack both the motivation and competency necessary to successfully advance freedom of political association, who else could do this if not the citizens themselves? Should not citizens then empower themselves to set the course for this dimension of freedom? Should they not, for example, if they could manage to enforce a formal or informal referendum on a single secession, instead do this right away for a general right to secession? Could not, for example, if in another European country a majority aspired to an exit from the EU, this majority stand up for a general right to direct self-determination on such issues? Could not the citizens of a single European state take a lead in this and set an example for others?

This idea may seem tempting at first, but of course it is not realistic. Citizens cannot and should not feel called upon to make decisions for which politicians lack competency and vision. Even more than politicians, citizens would be overburdened by such a task. To them, a universal freedom of political association could appear to be a risky large-scale political experiment left to other nations to undertake. For good reasons, they would not want to rely on the long-term positive effects of freedom of political association without trustworthy authorities encouraging them. Democracy, however, currently does not provide such trustworthy authorities. Thus, it is not only citizens and politicians, but democracy itself that would have to advance to become equal to the task of establishing freedom of political association.

In this process, it would first be necessary to discuss the risks that freedom of political association actually entails. Especially to citizens, the first impression could be that this freedom would open many promising new options, but at least as many incalculable aberrations; the risks may weigh more heavily than the opportunities.

In the further discussion, however, it would become clear that freedom of political association is also an effective concept for risk reduction. By making it easy to break new ground in terms of state borders and nationality, it also makes it easier to correct future mistakes. The world of freedom of political association would, therefore, be a world in which wrong decisions would continue to be made on state borders and nationalities. But none of these decisions could have such long-lasting painful consequences as in the existing order. The more clearly this risk-minimizing capacity of freedom of political association were acknowledged, the sooner this freedom would become enforceable against ideological and institutional resistance.

One might expect that at least separatists would have few reservations about the concept of freedom of political association, but not even that is self-evident. In most cases, so far, separatists have pursued the goal of enforcing new state borders that should thereafter be as stable as the previous ones. For separatists, the prospect that the rules of freedom of political association could be applied against conditions they have once fought for, may be hard to get used to. Ultimately, a profound change of consciousness would be required.

The likely path to freedom of political association does not lead from an initial formal recognition to gradually increasing practical application. The more realistic course is that individual secessions will occur that are increasingly compatible with the spirit of this freedom. The path to freedom of political association would then be not a path from the establishment of rules to a corresponding practice, but vice versa. More and more advanced individual secession cases will give rise to the will to form pertinent general norms and to establish them as national and, eventually, international law.

Such implicit applications of freedom of political association, which could also inspire international law, are most likely to be conceived in small states. There, in general, institutional structures can be changed and ideological taboos be softened more easily, and, equally important, unsatisfactory experiments can be more easily terminated. Moreover, with regard to small states, the international community would have the fewest reservations about precedents that reach out far beyond current international law. It cannot even be ruled out that at some point small states wanting to set precedents in the spirit of freedom of political association will be promoted in this by the most highly developed larger states.

For the time being, however, a completely different scenario seems more plausible. If no state is capable of implementing such fundamental reform on its own, then eventually non-governmental institutions may want to play an assisting role in this. Financially strong private foundations or individuals may be willing to give a small state generous incentives for pioneering reforms of the political order. They could, for example, offer all citizens of such a small state direct financial rewards for having their state reformed in the spirit of freedom of political association; for having their state be tentatively transformed into a neocratic "divisional democracy".<sup>2</sup>

For such pioneering large-scale experiments, highly civilized small states would be the most appropriate candidates, and almost ideally suited would be a state of the size and development status of, for example, Iceland. However, in Iceland, there are no reasons identifiable for separatism and secession to play a significant role in politics. Alternatively, larger and possibly less developed states would eventually have to be considered for such experiments. Particularly far-reaching insights could be gained if such experiments were made in as complex a case as Bosnia-Herzegovina.

Even if it were super-rich foundations or individuals that provided impulses for such exemplary projects, this should not harm the persuasiveness of the concepts in question. The determination and will to innovation for such initiatives is more likely to be found among private organizations or individuals than states, parliaments, parties, or even international organizations in their existing form. In addition, some elder multi-billionaires concerned about their posthumous fame may indeed have a strong personal motive for political commitments of such great global importance. In most cases, the fame of entrepreneurs fades rapidly, and some of them may be prepared devote the bulk of their fortune to securing themselves a more permanent place in history with a political feat. At least the wealthiest in the world could cover the costs of such a project, if implemented in a sufficiently small state, entirely on their own.

#### **10.4 The Permanent Constitutional Council**

Of course, even such scenarios could come true only in a distant future. This would also require significant advancement in political awareness both on the part of possible super-rich

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<sup>2</sup> For this concept of financial rewards to pioneering states and their citizens see also Wehner (2019), chapter 6.

donors and of potential recipient states. But even if one or a few such privately financed model cases did come true, huge resistance to a broader implementation of freedom of political association would persist. Parties, parliaments, and politicians would still want to prevent reforms that could jeopardize their dominant role in politics and the state. And even if resistance diminished over time, an equally elemental problem would remain unresolved—the question of precisely which state organ should be responsible for implementing the rules of freedom of political association.

The notion that the responsibility for this task should lie with the very organizations that have failed to promote advances in the national and international political order for so long, namely parties and parliaments and other state organs of the conventional kind, raises little confidence. Even if at some point all these actors put their own interests aside and attempted to institutionalize freedom of political association, the outcome could be highly questionable. In existing democracies there are no government bodies that were in any way designed to perform such tasks. There are currently no authorities that could be relied on to develop sufficient competency and trustworthiness for these tasks by their own efforts. Such authorities would have to be created when the time comes.

Since freedom of political association is a fundamental right, developing the rules for this freedom would be a task of constitution-making. Accordingly, the political authority that is to develop a framework of rules for freedom of political association should be a constitutional legislator. However, to be as competent and trustworthy as possible in this area, this authority should be highly specialized in precisely this field. It should be responsible for nothing else but constitution-making and thus for the development of the political order. Moreover, since the shaping of freedom of political association would be a never-ending, permanent task, this authority should itself be designed from the outset as a permanent government body. It should not receive a one-time temporary mandate for the initial establishment of freedom of political association. Instead, it should be a so-called *Permanent Constitutional Council*.<sup>3</sup>

However, even if a specialized Permanent Constitutional Council could ultimately be relied on in neocratic constitution-making, the path to freedom of political association would thereby not be made any easier. The establishment of a Permanent Constitutional Council would be exposed to similar political and ideological opposition as would be the

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<sup>3</sup> As mentioned in chap. 7:

The concept of a Permanent Constitutional Council was developed in Wehner (1993).

For a short version see [http://www.reformforum-neopolis.de/files/der\\_staat\\_auf\\_bewaehrung\\_gekuerzte\\_neufassung\\_2001.pdf](http://www.reformforum-neopolis.de/files/der_staat_auf_bewaehrung_gekuerzte_neufassung_2001.pdf).

establishment of freedom of political association. One of the reasons for this is that almost throughout the world constitutions continue to be regarded as, in essence, permanent artefacts created virtually for eternity. The permanent validity of constitutions is widely regarded as a prerequisite for the stability of state and society. Once created, constitutions are generally questioned and changed most hesitantly, and only in minor details.

For such a restricted development of constitutions, average political competency may well be sufficient. Such a limited task can without great concerns be left to politicians and parliaments who are responsible for all other policies as well and for whom constitutional design is no more than a side issue. For future generations, however, constitutional development could in fact be the most demanding and most important of all political tasks; a task that can cause the worst possible damage or bring the greatest political benefits, establishing the foundations for peace, freedom, prosperity, and political meaning. If constitutional development is fully appreciated in this way, it becomes clear that constitutional policy requires permanent vigilance and above all permanently available expertise on the highest level possible. In the long run, we cannot risk constitutional policy disappearing, not even temporarily, from the political agenda.

If the responsibility for constitutional development were delegated to a Permanent Constitutional Council, it would be withdrawn from the formerly responsible authorities and organizations, namely the parliaments and political parties. However, such partial disempowerment of parliaments and parties would in existing democracies have to be decided on by precisely these parliaments and parties themselves. Of course, it is hardly imaginable that these would voluntarily take such a step, disempowering themselves in such a key function. To be prepared to do so, they would first have to admit to themselves and to the public that in matters of the political order they are not only biased by self-interest, but, as political generalists, also lack competency. Therefore, the existing procedures of representative party democracy don't offer citizens any serious opportunities to make significant changes to the political system. Such changes would be imaginable only in exceptional historical situations. In conventional democracies, such exceptional situations could only emerge if the democratic party state and its party system were thoroughly discredited by continued political failure, stagnation, and loss of confidence. Only then would the political authorities and parties be delegitimized to such an extent that a will to a thorough new beginning in matters of political order could emerge.

The world of democratic states may seem far away from such delegitimization for the time being, but in some established democratic states the disillusionment with the established parties may have progressed so far that the crisis of confidence may soon spill over to the party system. The past upheavals in many democratic party landscapes could be early symptoms of a delegitimization of conventional party democracy. The gradually declining voter turnout in the democratic world also points in this direction. This does not mean that the democratic party state has drawn its last gasp, but it is a warning that even democratic state orders have an expiration date. From this perspective it is by no means too early to bring up for discussion a framework for a political order beyond existing democracy, namely a neocratic framework for freedom of political association and a Permanent Constitutional Council.

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## **Chapter 11**

# **A New Experience of Politics and a New Contest of Political Systems**

### **11.1 New Horizons of Political Consciousness**

Very different conclusions can be drawn from the current symptoms of crisis in democratic states. One might conclude that democracies will soon feel forced to engage in a fundamental renewal as it would be required for freedom of political association. But a contrary conclusion may seem more attractive to a majority—the conclusion that established democracies have indeed experienced internal turbulence, but that the global political condition demands to stabilize democracy as it is. This is an ambitious goal, given the spreading autocratic inclinations in the democratic world. With authoritarian sham democracies on the rise, the rule of law is being undermined, and the political culture of democracy increasingly threatened by multiple forms of populism. Accordingly, a global contest of political cultures may be imminent, in which the pluralistic, liberal, social, rule-of-law democracy of Western states must struggle to assure itself.

In these precarious times, one might argue, it would be out of touch with reality to measure conventional democracy against such a futuristic concept as freedom of political association. In established Western democracies, the ice of political civilization is thinner than is usually admitted, and this should be a warning against experimenting with the political order; in addition, the citizens belonging to the Western democratic high culture represent a shrinking minority of the world's population, and worse, future migratory flows would bring ever more citizens of precarious political consciousness into advanced democratic countries. For this reason, well developed democracies should in the foreseeable future aspire to no more than maintaining the level of political civilization reached so far; otherwise there would be a high

risk that the political civilization of Western democracies will perish as piteously as the democratic culture of Hellenic city-states two and a half millennia ago; finally, particularly when it comes to peace policy, one should in such times not experiment with untried methods.

While the above arguments should not be dismissed lightly, this does not make the question of which alternative principles of order would make for a better state any less urgent. There is no lack of current events that could be interpreted as indications that the time for freedom of political association may be gradually maturing. Had, for example, the Scottish independence referendum in 2014 not narrowly failed, had the Western community recognized the Crimean secession not only *de facto*, but also formally, and had in 2017 the Catalan separatists followed more prudent strategies and had they more patiently restricted themselves to actions conforming to existing law, then such precedents could have seriously shaken existing dogmas. The more events of this kind follow, the less resistance the questioning of national borders and nationalities will encounter. Forward-looking solutions to such events would be greatly facilitated if only separatists were no longer reflexively treated as political adversaries but ever more as advocates of legitimate interests.

A world of freedom of political association would be more peaceful than the present one, but first and foremost, of course, it would be a world of more freedom. In such a world, citizens could decide in free self-determination with whom, in what national borders and for which policy areas they share nationality, share membership, that is, for example, in a common currency area, in an area of common national defense, a common solidary state, a common cultural state, or even in a community of states such as the EU. They could decide on this directly, and they could correct such decisions, including secessions and partial secessions of any kind, on their own. In doing so they can make mistakes, they can bring about secessions, the side effects of which they were not sufficiently aware of, but any such wrong decisions would only be parts of a fruitful process of trial and error.

Freedom of political association creates more peace and new dimensions of freedom, but its effect on the meaningfulness of politics is no less significant. This freedom is always about *who-with-whom*, and it is human nature that finds *who-with-whom* to be meaningful. Most wars in history were directly or indirectly about *who-with-whom* in terms of nationality, and because this issue is always related to meaningfulness, even wars were often perceived by citizens as being meaningful. The same applies to preparations for war and memories of war. They too can create sensations of political meaningfulness.

Even in peacetime, the readiness for conflict in matters of *who-with-whom* does not vanish completely. It is then acted out in rhetoric and in symbolic action, often fueled by populist and extremist parties. This is most likely to happen when established policy has eschewed the meaning-creating questions of *who-with-whom*, or even *who-what-with-whom*, or has turned towards these questions inadequately or belatedly. In a regime of freedom of political association this could not happen. These meaning-creating questions could be solved according to plausible rules without force and conflict, and there would be no cause to ever keep them away from the political agenda.

The meaning-creating effect of freedom of political association would not be limited to asking the questions of *who-with-whom* in a new and more open way. An additional dimension of political meaning would already open up by the mere process of the institutional reforms in support of freedom of political association. This reform process would by itself provide citizens a richer, more diverse, and more meaningful political experience than was possible in the past. In particular, the creation and further development of a Permanent Constitutional Council would in itself be a task with a high long-term potential for meaningfulness. This would be all the more true for a subsequent institutionalization of autonomous state divisions and for their continuous further development.

Finally, if the political *who-with-whom* or *who-what-with-whom* were kept permanently open, issues of political cohesion would always be on the political agenda. In order to safely and permanently maintain the political cohesion of a state, political trust and political commonalities would then have to be constantly advanced, restored, and promoted; it might even become necessary for them to be newly created and reinvented. It is hard to imagine that under these conditions pervasive political indifference could ever spread again for long periods of time. The fact that under the conditions of freedom of political association the respective roles of direct and representative democracy would have to be continuously reconsidered is another meaning-creating side effect. The same would be true for the continuous advancement of a neocratic system of election by both lottery and vote in keeping with the times.<sup>1</sup>

The political meaningfulness emerging from freedom of political association would in historic significance be comparable to the meaningfulness of the struggle for democracy and against autocracy and monarchy. Autocrats and monarchs have long been perceived by citizens as creators of political meaning, with citizens often experiencing the very submission to a

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<sup>1</sup> For the role of lottery in a neocratic political order see the draft constitution at [www.neokratieverfassung.de](http://www.neokratieverfassung.de).

monarch or autocrat as meaningful. Where the citizens emancipated themselves from such a submissive mentality, democracy itself provided new political meaning. But, much like monarchy and autocracy before it, democracy cannot play this role forever. Freedom of political association in a neocratic political order is the large-scale political project that could reverse the depletion of political meaningfulness in modern democracy. It would also contribute to political meaningfulness insofar as a neocratic political order would make the old debates about right or left, liberal or conservative, populist or politically correct, neoliberal or anti-capitalist, etc. irretrievably obsolete.

Freedom of political association alone does not protect from political folly, potential negative side effects are still possible. But where conventional concepts have resulted in discord, subjugation, and deficits in political meaning, freedom of political association has the potential for freedom-enhancing, peace-building, and wealth-preserving solutions beneficial to political civilization. It presupposes advanced political civilization, but it also opens new horizons for it.

Not easy to refute is the argument that freedom of political association would result in an ominous loss of political stability. For many, political stability holds too high a priority for them to be willing to trade it for a possible gain in freedom. However, this objection ignores the fact that political variability as associated with the freedom of political association would always be peaceful and legitimated by the citizens, and it also ignores the importance of variability for political meaningfulness.

One of the features of freedom of political association that deserves further emphasis here is the effect on the efficiency of the state. Freedom of political association would put states under increased pressure to perform. States, and thus politicians and political organizations, would have to convince by performance so as not to risk losing parts of their territory and their population by secession. Likewise, regions would have to struggle not to become too much of a burden to their state in order not to be excluded from it involuntarily. Freedom of political association would thus create novel incentives for states and regions for performance and change, and this in turn would make all those involved in the political process more inventive. This would open up new meaningful political experiences, which are increasingly missing in the established political order.

The road to such new conditions may be troublesome, but it would be exciting and rewarding. It will be difficult to make much advancement in this direction without previous formal or at least informal delegitimization of the existing state order. Such delegitimization could begin

with further disillusionment with political parties—an indication of which would be increasingly lower voter turnout. In this process, virtual constitutional councils could play a significant part. Such virtual constitutional councils would make it their mission to simulate the work of future established Permanent Constitutional Councils. They would update existing drafts of neocratic constitutional norms, and this could bring these drafts up for public discussion long before they play a part in real political decision-making.

One must not be deluded about the conditions of success of such an enormous reform process. It would be illusory to expect something like the simple freedom of political association to be applied by the current generation of politicians, not to mention freedom of political association in its extended forms. Both, the basic and the extended versions of this freedom could be projects of a century in their own right.

This is true, even though the concept of freedom of political association is rather obvious. The ideological and political obstacles are enormous, but the crucial logical step to this concept is all the smaller. That it would be better if nationality were voluntary and citizens could decide on it in direct ballots is easy to understand. Following this, it is not difficult to imagine that such ballots could be carried out separately for individual policy areas (i.e. for single autonomous state divisions). Only this procedure would allow states, regions, and supra-state unions to separate and integrate as it serves the interests of present and future citizens.

It is, of course, a very wide range of topics covered here from the partly archaic separatist civil wars of recent times to an enlightened new world of states committed to freedom of political association. One may indeed wonder whether the connection between such a new world of states and the wars and civil wars of past decades is artificially contrived. It is true that, the less the political consciousness in the respective part of the world is developed, the more utopian the concept of freedom of political association appears. Many generations would pass before present developing countries could follow the course of future states eventually pioneering in freedom of political association.

Even in the highly developed parts of the world, opposition to this concept of freedom will be adamant and long-lived, but not insurmountable. Once well established, freedom of political association would, in the long run, be an arrangement for the benefit of all; so there would be no more well-considered interest in going back behind this concept. For the long term, freedom of political association can be considered a self-stabilizing principle of order.

Any doubts about this project are understandable. In addition to the objections discussed here, many others will have to be considered. But there should be no reasonable doubt about the

following: 21<sup>st</sup> century challenges cannot be adequately met with 18<sup>th</sup> century democracy. In the grand competition of systemic governance, democracy in its traditional form will be increasingly put on the defensive. Without advances towards neocracy and freedom of political association, regression toward an autocratic spirit will become more and more likely, with all the foreseeable consequences for peace, freedom, and political meaningfulness.

## **11.2 A New Political Discourse**

The concept of freedom of political association leads to the concept of the neocratic state and vice versa, with the neocratic state being composed of a small number of specialized autonomous state divisions. These concepts enhance freedom, strengthen peace, and reduce the political overburdening of parties, politicians, and citizens. Scarcely less significant, however, would be the healing effect of a new political order on the political discourse. If the conventional state were split into a small number of politically and fiscally autonomous divisions, then it would soon turn out that there are far less interdependencies and needs for coordination between these autonomous divisions than might be expected. Then it would also become clear that this coordination does not require hierarchical subordination to conventional all-competent authorities such as conventional parliaments, heads of state, and heads of government. In most issues, the coordination among autonomous authorities of equal hierarchical rank would soon prove to be a superior procedure.

Autonomizing individual state divisions, and thereby policy branches, would mean politics would no longer have to be presented, propagated, and justified as a whole. There would no longer be a need for cross-divisional party programs and ideology; thus, there would be no longer a basis for a political discourse representing the whole of politics in simple, generalizing terms and formulas.

The mere idea that such a novel, less generalizing, and all the more concrete discourse would be feasible could significantly accelerate the alienation from the presently prevailing discourse; a discourse forced to cover the ever more complex entirety of politics in constantly simple generalizing terms and formulas, inevitably becomes ever more abstract and irrelevant to political practice. It encourages politicians and citizens to continue to personalize and ideologize political issues, however obsolete this may be given the changing nature of political problems.

As a result, in conventional democracies the competition for votes is increasingly being fought over secondary issues that have little relevance to most fundamental political problems. In addition to personal sympathies, these secondary issues, for example, include private preferences in lifestyle, tradition, and religion. But they also include problems that, on closer examination, cannot really be solved by the means of politics. Such basically apolitical problems have always been present in the political discourse and the democratic competition for votes. The main reason for this is that conventional all-competent political bodies and their representatives, in particular conventional political parties, rarely dare to disclaim the responsibility for problems brought to them, however little they can help to solve them. If citizens had to address their political concerns directly to specialized autonomous state divisions, then problems that are out of reach for any of these divisions would much more readily be acknowledged as being apolitical.

In traditional democracy all political parties tend to claim responsibility for many problems they cannot really solve, but it is mostly the right-wing and left-wing populists who are the least scrupulous—profiting the most in terms of votes—in this respect. Therefore, the neocratic divisional state order accompanied by freedom of political association would be the best prevention imaginable against any kind of populism as well.

### **11.3 A New Role for Global Powers**

The so-called world powers played an ominous role in the history of the 20<sup>th</sup> century. This applies, of course, to the former colonial powers, to Germany, and to the Soviet Union, but also to the United States after World War II. Particularly in the post-war period, the failure of Western civilization is obvious. Western countries should acknowledge and come to terms with this failure and with the guilt associated with it, in a similar way as Germany tried to come to terms with its own guilt in the post-war decades. Without such acknowledgement of historic guilt, global pacification between civilizations and religions will be hard to attain.

It would not be difficult to contrive a fictional history of the post-World War II era in which the world powers intervened consistently in the spirit of freedom of political association. As to real history, it may in some cases be debatable whether real interventions were compatible with the spirit of that freedom, but clearly, almost all interventions since the collapse of the socialist states were contrary to it. None of these interventions has discernibly benefitted global political civilization. This is true for the interventions in Vietnam, the Middle East,

Africa, Afghanistan, Yugoslavia, and elsewhere. Almost all these interventions have, in fact, aggravated the political and moral disorientation. The history of the post-World War II era is, therefore, also a history of moral failure of the Western world.

Consider a thought experiment. What if the real interventions of global powers after World War II were actually contrasted to fictitious interventions in the spirit of freedom of political association? Of course, no consistent alternative course of history could be derived from it. But such a thought experiment could indeed reveal at how many points post-World War II history could have taken a less ominous course.

It then becomes a quandary as to which states would be capable of leading world politics out of the present disorientation, and whether such states even exist. For the foreseeable future, if any, only democratic states of the Western world can be imagined playing such a role, despite all their recent moral failures. These states can still be given credit for a residual, albeit dwindling, civilizational lead. A less ominous future course of history can only be hoped for if countries of the Western world maintain or increase this lead. However, success depends on these countries acquiring internal stability, which would best be achieved by the neocratic reforms as outlined above. It is equally important for leading Western democracies to help less developed countries to be more reliably stable. In addition, mature Western countries should also make provisions that their civilizational standing is not diminished by uncontrolled immigration.

It cannot be taken for granted, of course, that the US will in the future come even near to fulfilling the role of a global power leading the world in political civilization. But for the time being, nothing better can be hoped for.<sup>2</sup> To this, there is only one realistic alternative scenario that could give grounds for modest hope in this respect: smaller Western states taking a lead in matters of political civilization not as global powers, but as compelling role models.

If, in fact, commitment to freedom of political association will be indispensable for a country to be a global leader for peace, freedom, and political civilization, the prospects may indeed appear gloomy. But one must bear in mind that under conditions of freedom of political association, the civilizational role of a world power would be quite different from what it has been in the past. Under these conditions, a future moral world power could rely on more compelling guiding principles than were available to world politics ever before. In essence, such powers would have to be leaders in identifying the will of citizens and in ensuring

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<sup>2</sup> See also the analysis in matters of global leadership in Mahubani (2018).

compliance with that will in matters, above all, of national borders and nationality. Under such conditions it would be much easier to judge the legitimacy of interventions of global powers than in the existing order. It would also be much easier to assess whether such interventions help to sustainably solve problems or whether they just help to defer them. In the past, most interventions of global powers did the latter. They helped to preserve states in which a long-lasting internal peace is impossible to establish.

This also applies to the geographic surroundings of Western Europe, in particular to North Africa and the Middle East. Intervention by prevailing rules and dogmas has created and preserved instabilities that indirectly endanger internal stability also in parts of Europe. These regions cannot be stabilized with measures that would not be at least compatible with the spirit of freedom of political association. From this it follows that a foreign policy in the spirit of freedom of political association would be in the most vital interest of the highly developed European states. Without such a policy, prosperity, peace, and the civilizational lead of European countries would be much harder, of not impossible, to maintain.

Of course, freedom of political association and a neocratic divisional state are not political panaceas. But if world politics continues to operate by conventional rules and dogmas, nothing other than systemic failure is expected. Moreover, it is obvious that the problems to be solved in world politics will further exacerbate both in scope and difficulty. Unless new influential role-model states lead the world to fundamental reforms of the political order, there will be no cause for optimism.

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