

# The right to secede

Shouldn't Crimeans have the freedom to determine their destiny?

BY [ROBERT J. BARRO](#) / NEW YORK DAILY NEWS  
TUESDAY, MARCH 18, 2014, 1:38 PM



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The potential switch of Crimea and parts of Eastern Ukraine to Russia raises the more general issue of the right of secession. Many individual freedoms — for example, of speech, the press and religion — are viewed as central elements of liberal constitutions, but the right to secede is seldom viewed this way.

This omission is surprising. For unions such as the United States that resulted from voluntary choices of sovereign states, the prohibition of secession means that groups can join the club but can never leave in a peaceable way. And for unions that reflect involuntary takeovers, it seems even more illiberal to preclude secession.

According to the Comparative Constitutions Project, among 184 countries, 11 (small places) specify some rights of secession, 26 (mostly small, and including the Ukraine) preclude secession, and 147 (including the United States) do not directly discuss the matter. The irony for the Ukraine is that its independence in 1991

took the form of a proclamation of secession from the Soviet Union. This procedure was even legal, because the various Soviet constitutions, including the version of 1977, explicitly condoned secession, although this right was thought to be irrelevant until the breakup of the USSR in 1991.

In pushing for a new constitution to replace the Articles of Confederation, Alexander Hamilton and James Madison in “The Federalist Papers” were particularly concerned about the weakness of the central government under the existing system. Hence, they would have opposed a right to secession because it would have diminished the power of the central authority over the states.

The only reference to secession rights that I found in “The Federalist Papers” occurs in Hamilton’s Number 58, where he weighs against a requirement of super-majorities for passing legislation: “. . . it would facilitate and foster the baneful practice of secessions; a practice which has shown itself even in States where a majority only is required; a practice subversive of all the principles of order and regular government; a practice which leads more directly to public convulsions, and the ruin of popular governments, than any other which has yet been displayed among us.”

I usually put a lot of weight on Hamilton’s opinion, but the times have changed greatly since the 1780s. Hamilton might now be more concerned about the excessive expansion of central authority than with the lack of powers to govern effectively in areas such as taxation, national defense and regulations.

In more recent U.S. history, opinions about secession are shaped particularly by the Civil War. Although the legal arguments about the South’s secession are ambiguous, the North surely established by force of arms that the union was to be maintained. As to the desirability of this outcome, one might argue that the abolition of the disgraceful practice of slavery was worth the steep price.

More generally, one should look at legal secession as part of the process of generating the optimal sizes and compositions of countries. Although it may be an unpleasant commentary on human nature, a central driving force in defining a state is the desire to have a reasonably homogeneous population within its borders. There are cases in which governments have dealt more or less successfully with sharp ethnic diversities, such as Switzerland, the United States and Belgium, but the problems are much easier to pinpoint than the triumphs.

And if one examines where separations have occurred or been sought — such as the former Yugoslavia and Soviet Union, or Spain and Canada and the United Kingdom — it is clear that ethnic identity is the key matter. Iraq is another case where division into three parts may well have been a good idea.

No doubt a problem with secession is that it is often accompanied by violence. But the source of the violence tends to be the underlying cleavages combined with the preclusion of legal and peaceful means of changing the borders. In this respect, the peaceful breakup of Czechoslovakia in 1993 stands out as an enlightened example.

If I were able to design a constitution from scratch, I’m sure I would include provisions for peaceful secession. The procedure would have to define the underlying sub-regions, such as U.S. states, designate a voting mechanism for residents of a potentially departing region, and might require a super-majority, such as 75%, of

the voters. This structure would provide a useful check on central authority, make country borders align better with underlying population characteristics and minimize conflict.

Perhaps, instead of arguing that the Crimea has no right to secede, the acting president of the Ukraine ought to speak favorably about a procedure of this kind. It hardly seems democratic to say to a well-defined region such as the Crimea that its citizens have no right to leave. It is, however, awkward that my views on the Crimea accord with those of President Vladimir Putin. But Putin would be more impressive if he applied similar logic to Kosovo and Chechnya.

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