

Chapter 6

Towards a Convergence of the Ethics of Tax Evasion and Secession

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Introduction

Tax evasion and secession usually receive different treatments. Secession is perceived as a distinguished argument in ethics. It is at stake in numerous philosophical debates and very often embedded within the mainstream democratic theory for defending minority rights. On the contrary, if we consider the number of occurrences in philosophical debates, tax evasion appears to be a far less significant argument. With the exception of a minority of libertarian scholars (who in every way perceive the State as immoral), mainstream philosophers discard tax evasion as unethical. In any event, it is important to note that most scholars who seem disposed to grant secession rights to minorities disagree on the morality of tax evasion. Why do these theories of secession and tax evasion remain separated? Is there a logical obstacle to their association? These are precisely the questions that this chapter aims at addressing.

The pertinence of this study lies in the fact that our very simple intuitions suggest important similarities between secession and tax evasion. All secessionists are tax evaders at least in respect to the State from which they are seceding, and all tax evaders are secessionist in the sense that they are at odds with the institutional framework of the State where they were making profits. Insofar as secession is not a constitutional provision, both tax evaders and secessionists are illegal. Nevertheless their illegality, secession and tax evasion might altogether be morally acceptable if they are carried out against illegitimate governments. At any rate, if the act of seceding is morally acceptable, then ipso facto tax evasion is also morally acceptable and vice versa.

This chapter precisely plans to demonstrate the theoretical validity of these intuitions. It does not simply aim at assessing the morality of tax evasion but rather

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at arguing that whenever secession is considered moral, so should tax evasion. The current argumentation will be displayed through a systematic and step-by-step inquiry into the alleged differences between these theories. We will begin with the core of the secessionist argument (the territorial claim) in order to show that it is shared by both secession and tax evasion theories. Second, we discuss the commonly assumed opposition between secession (lying on a collective territorial claim) and tax evasion (lying on an individual territorial claim) in order to show that there are more connections than differences between these two theories. Third, we will argue that both theories have a common normative structure. Therefore, the justification of secession must imply *ceteris paribus*, a justification of tax evasion.

Territorial Claim

Secession is built upon a strong claim, which we may call the *territorial claim* following Brilmayer's seminal study on this topic. "When individuals seek to secede, they are making a claim to territory. They wish a piece of land for their future, a piece of land on which they will be able to make their own claims of integrity of territorial borders. Their claim is typically centred on a piece of land that they possessed in the past, and upon which they claim territorial integrity" (Brilmayer 1991: 201). The territorial claim underlines the fact that some scarce resources such as land have particular characteristics in the sense that they cannot be transported. It is precisely in this sense that the right to secession is designed to complement the right to emigration. When a person takes advantage of the right to emigrate, there remain some resources in her property, such as land and real estate, which cannot be transported. Hence, the territorial claim upgrades the right to the free movement of persons and property by taking into account the claims on immutable goods (Brilmayer 1991: 187).

However, the territorial claim is not only at the core of the theory of secession but also central to the theory of tax evasion. Just like secessionists, tax evaders want to keep control of their movable and immovable property instead of emigrating (which implies leaving or selling their land and real estate). Tax evaders and secessionists assume their property rights on land and thus feel legitimate to continue to live on the respective territory. Furthermore, by evading taxes, a person demonstrates her aversion for the public budget. Hence, not only the action of seceding but also the action of evading taxes is directed against the State. While the former consists in rejecting the whole institutional framework of the State, the latter is set up to keep one's revenues away from the State. Consequently, both the secessionist and the tax evader formulate altogether an implicit claim for redistributing the taxes according to their own preferences: either by creating a different political entity (as secessionists do) or by simply separating private and public budgets (as tax evaders do). Even though their aims might differ – political for secessionists and personal for tax evaders – both kinds of territorial claims contest the authority of a given coercive political arrangement over the respective territory in raising taxes. In a nutshell, in

spite of their different forms of action, a secessionist and a tax evader altogether formulate a territorial claim.

Since the territorial claim is at the core of both theories, it becomes important to grasp its justifications. Who is entitled to formulate a territorial claim? When does a territorial claim become morally acceptable? While the answer to the former question will be discussed in the next section, let us now focus on the latter one. In a nutshell, we have to understand how to discern a legitimate territorial claim from an illegitimate moral claim. Two arguments converge in justifying secession: the *pre-existence* of an ethnically homogenous group of individuals on a given territory and the *permanent occupation* of the respective territory by the respective group. These justifications are discussed one after another, and we demonstrate their convergence with the arguments in favor of tax evasion.

The former argument “is based on a claim to indigenoussness. Many groups in all parts of the world claim to be indigenous” (Moore 2001: 184). According to this line of argumentation, the territorial claim is justified when secessionists can attest the anteriority of their presence on the respective territory with regard to other groups of individuals or to the State from which they intend to secede. “The claim to territory which flows from indigenoussness is primarily a claim to prior, rightful ownership, based on first occupancy. Since the indigenous people are rightful owners of the land, the later arrivals were engaged in ‘theft’. This is the suggestion behind the title of a recent book on American history, *Stolen Continents: The ‘New World’ Through Indian Eyes* and it has intuitive plausibility in so far as everyone can understand the idea that I have a right to evict unwelcomed guests from my home, or to set the terms under which guests can stay” (Moore 2001: 184).

This justification of the territorial claim consists in formulating property rights on land on the model of the Lockean homesteading principle. “Whatsoever, then, he removes out of the state that Nature hath provided and left it in, he hath mixed his labour with it, and joined to it something that is his own, and thereby makes it his property” (Locke 1980: 111–12). The homesteading principle maintains that a person is the rightful owner of a resource if she was the first one to occupy it. If two persons contend the same piece of land, the earliest one arrived on that land is morally entitled to own it. This type of justification is mainly brought into play when an indigenous secessionist demand is at stake but also when the current State has obviously been more recently created than the secessionist part. For instance, it may uphold the Basque call for secession in Spain.

From this point of view, the structure of the justification in favor of secession bears a salient resemblance to the argument in favor of tax evasion. Inasmuch as we refer to freely produced and/or acquired resources, tax evasion (just like secession) is morally acceptable from the point of view of the Lockean homesteading theory. Tax evaders and secessionists assume their property rights on land and feel legitimate to continue to live on the respective territory. In spite of their different forms of action, a secessionist and a tax evader ground their territorial claim on the fact that they are legitimate successors (i.e., they legitimately inherited from their ancestors the respective piece of land).

Yet, the interpretation of land inheritance provided by most of the scholars defending secession remains superficial. Following this rationale, the Basques would have the right to secede from Spain because their ethnic group was there before the Castilians. This type of moral argument would grant ownership right only to the most ancient civilizations, cultures, ethnical groups, etc. The preexistence argument does not take into account the possibility that the *most ancient* ethnic group we know today might not be the *first come* ethnic group and that it might have wrongfully occupied the respective territory. From this point of view, one can neither sell nor rent a piece of land, nor can she associate with other groups. These are important insufficiencies of this interpretation of inheritance and they can be found at the origin of important territorial disputes. Indeed, there are secessionist conflicts, such as ex-Yugoslavia, where both sides justify their territorial claim by their earlier presence (Transchel 2006). Moreover, there are territorial claims where the preexistence on the respective territory may be questionable as it is in the case of Padania (Agnew 2002: 178).

However, these limits of the interpretation of inheritance within the mainstream theory of secession can be overcome if we add to the Lockean homesteading a provision regarding the morality of property title transfer. From this point of view, the ethics of tax evasion may shed a new light on this issue. While indigenes refer to ethnical, cultural, or linguistic footprints, tax evaders refer to a variant of the natural law which anchors ownership rights on voluntary transaction. It is precisely in the merit of this difference that we can better explain why it is more difficult for secessionists than it is for tax evaders to prove their preexistence. For determining who came first, it is far easier to investigate the voluntary character of each past transaction on land than it is to identify the origins of a homogenous culture, language, or ethnic group. Undoubtedly, the voluntary character of a transaction might also be questionable and/or difficult to determine. However, comparatively, it must be easier to assess if the land was acquired through a voluntary transaction than it is to say if the land was first occupied by a given ethnic group.

As to the second justification of the territorial claim, secessionists are entitled to secede provided that they were permanently occupying the respective territory. “The people who inhabit a certain territory form a political community. Though custom and practice as well as by explicit political decision they create laws, establish individual or collective property rights, engage in public works, shape the physical appearance of the territory. Over time this takes on symbolic significance as they bury their dead in certain places, establish shrines or secular monuments and so forth. All these activities give them an attachment to the land that cannot be matched by any rival claimants. This in turn justifies their claim to exercise continuing political authority over that territory. It trumps the purely historical claim of a rival group who argue that their ancestors once ruled the land in question” (Miller 1998: 68).

Contrary to the previous type of justification referring to the preexistence of the secessionist group, this justification grounded on the continuous presence of the respective secessionist group is more comprehensive. It suits not only the Basques in Spain but also the political communities derived from compact immigration such as the Quebecois in Canada. In this case, it should be far easier to attest the presence

of secessionists than to prove their preexistence. It is maybe for this reason that most separatist demands are justified on the grounds of a permanent continuity on the respective territory. However, this type of justification often engenders incompatible secessionist demands. The territorial claims formulated by Quebecois in Canada concur with the territorial claims formulated by the English-speaking community. It goes the same for most of the secessionist demands. Based on their continuous presence, why should the Catalans or the Flemish be more entitled to formulate their territorial claims than the Spaniards or the Belgians? In all these cases, additional justification is required to discern which territorial claim is moral.

The continuous presence of an ethnic cultural or linguistic group remains a highly unsatisfactory criterion for discerning the moral acceptability of a territorial claim. The *de facto* presence of a given group cannot say much about who ought to occupy the respective territory. The fact that a person has been sitting on a chair for several hours does not inform the observer regarding the identity of the owner of the chair. Deleting the distinction between effective control and legitimate ownership would create even greater confusion regarding the morality of territorial claims. Therefore, at least for the sake of clarity, the scholars who justify the secession right should consider improving the argument of continuous presence with a more consistent moral argument. The ideas of homesteading and voluntary exchange usually used for legitimizing tax evasion would perfectly suit this purpose. It would be far more unambiguous to settle territorial disputes by assigning moral rights on a given piece of land to specific persons, instead of letting different groups of persons formulate incompatible territorial claims on the same piece of land.

Up to now, we showed that beyond their different justifications, secession and tax evasion formulate altogether the same territorial claim. This is to say that, whatever the reason – preexistence or continuous presence – if the territorial claim is morally acceptable it works for secession but also for tax evasion. As to the justification's rationale, we added that the moral argument usually engaged in support of tax evasion is suitable to augment the mainstream secessionist arguments. Notwithstanding this demonstration, most scholars who uphold secession are still reluctant when it comes to defending tax evasion. They usually distinguish collective and individual rights on land and in the meantime dismiss individual territorial claims as immoral. Since the territorial claim that a tax evader formulates is more akin to individual property rights, there must be no logical obligation to derive the morality of tax evasion from the morality of secession. Let us now take a step further and address this issue in the next section.

Individual Versus Collective Territorial Claim

Our most basic intuitions lead us to think that it is morally permissible for a slave to evade or for a citizen to emigrate. Most scholars sharing the same intuitions consider that these rights, derived from the right to self-ownership, must be assigned individually to each person *qua* person. However, when it comes to secession, the same right to self-ownership – accounting for the morality of slave resistance and

emigration – is renamed as a right to self-determination and is assigned collectively to some groups of people, based on the fact that these people speak the same language, have the same ethnic background or a common culture. Indeed, the mainstream defense of secession insists on its collective character and contrasts it with individual rights such as the right to free-speech and to emigration. From this point of view, the secessionists' collective territorial claim appears to be at the opposite of individual territorial claims formulated by tax evaders. This section plans to explain why this opposition is superficial.

At the outset, it is important to note that the collective territorial claim formulated by secessionists differs from Locke's homesteading principle (Locke 1980: 111–12) and is more akin to the Hobbesian right to "live in." Hobbes lists the "live in" right among the rights that individuals retain while they are supposed to adhere to the social contract. "As it was necessary that a man should not retain his right to every thing, so also was it that he should retain his right to some things: to his own body (for example) the right of defending, whereof he could not transfer to the use of fire, water, free air, and place to live in, and to all things necessary for life" (Hobbes 2004: 61). This Hobbesian right has two essential features: it *can be assigned collectively* and it *is enforceable against the State*. "[The Hobbes's right to 'live in'] is not, indeed, to a particular place, but it is enforceable against the State, which exists to protect it; the State's claim to territorial jurisdiction derives ultimately from this individual right to place. Hence the right has a collective as well an individual form, and these two come into conflict" (Walzer 1983: 43). The conflict mentioned by Walzer is actually a conflict between the two types of territorial claims which can be both enforceable against the State: an individual one (grounded on the Lockean principle of "homesteading") and a collective one (grounded on the Hobbesian right to "live in").

Yet, none of these features (the collective assignment and enforceability against the State) suffices to distinguish secession from tax evasion. On the contrary, they denote a significant convergence between these theories. Just like a secessionist, a tax evader believes that her rights are enforceable against the State and that she may associate with others in order to claim her rights collectively. This is the case because the territorial claim formulated by secessionists and tax evaders is grounded on *moral rights* and not on the *legal rights* established by the State itself. Indeed, it would be absurd to justify a separation from the State on the ground of the legal rights assigned by the State.

Although, it is not entirely inconceivable to make the moral right to secede a legal right by inserting it explicitly in a constitution (McGee 1992), it is much more difficult to imagine a constitution explicitly granting the right to tax evasion. If secession and tax evasion are morally acceptable, it is precisely because their territorial claims have a moral foundation which is independent from the State's institution of private property. "If every person has a right to defend – even by force – his person, his liberty, and his property, then it follows that a group of men have the right to organize and support a common force to protect these rights constantly. The law is the organization of the natural right of lawful defense. It is the substitution of a common force for individual forces. And this common force is to do only

what the individual forces have a natural and lawful right to do: to protect persons, liberties, and properties; to maintain the right of each, and to cause *justice* to reign over us all” (Bastiat 1950: 6–7). Tax evaders share with secessionists the aim to “break the compulsory ties with a government which they no longer accept” (Hülsmann 2003: 410).

However, beyond the agreement on the fact that the territorial claim must be morally enforceable against the State, most scholars defending secession insist on the fact that secession is essentially a collective claim. “Group rights are ascribed to collections of individuals and can only be exercised collectively or at least on behalf of the collective, usually through some mechanism of political representation. The right to secede, as we have been understanding it, is a group right” (Buchanan 1991: 74–75). Whatever a collective right may be, its main characteristic is that it is assigned collectively to a group of individuals *qua* group by virtue of their group identity.

Unlike an individual right, which considers the single individual as the basic moral unit, a collective right takes a specific group of individuals – apparently homogenous from one or more points of view (religion, language, ethnicity, etc.) – to be the basic moral unit. Yet, there should be no disagreement between scholars maintaining the morality of tax evasion and secession based on the fact that the territorial claim may be formulated collectively. There is no logical obstacle to conceive tax evaders formulating a collective territorial claim. Also, the collective territorial claim formulated by secessionists includes a collection of independent individual claims or shares of individual territorial claims. “There is no theoretical reason why the size of the seceding group cannot be as small as a single individual, although there may be some technical difficulties involved when the entity seceding is this small” (McGee 2004: 137).

In order to better assess the pertinence of this idea of a collective territorial claim, let us turn back to the question that was left aside in the previous section: Who is entitled to formulate a territorial claim? Supposing that the territorial claim is justified (either by the preexistence or by continuous presence), we still need to formulate a criterion for identifying those who may legitimately formulate territorial claims. In case we admit that only groups *qua* groups are eligible to secede, we still have to specify who these groups are. Is any group of people entitled to secede provided that their ancestors were preexistent or that they have ancestors who marked their continuous presence on the respective territory? Which are the pertinent criteria for assigning collective territorial claims?

At the outset, it is important to note that for identifying groups *qua* groups, we must select highly homogenous groups. Yet the very idea of a homogenous ethnic group is notoriously fuzzy (O’Reilly 2001). There is no general agreement on the essential properties that might define it (Brubaker 1998: 238). The idea of homogenous ethnicity must be confronted with increasing mixed marriages and multilingualism (Brubaker 1998: 256). Immigration, exchanges, and mass tourism are also important challenges for the durability of a compact ethnic group. Inasmuch as the justification of secession depends upon the particular definition of ethnicity, nation, and culture, a disagreement with one of these conceptions would suffice for refuting the right to secede to a particular group of persons. For example, it would suffice to

assert that the fact of speaking the same language does not account for a strong ethnic tie in order to deny the right to secession of the Quebecois. Most of the scholars agree that it is “hopelessly unrealistic to assume that the only means of political organisation available is one in which territorially sovereign bounded states must mirror the location of cultural and national groups as they themselves adapt and change” (Bishai 1998: 104).

Furthermore, even if we might identify a homogenous ethnic group, it should be very difficult to consider it to be a genuine ethnic group especially if we take into account the multiplicity of allegiances (Balibar and Wallerstein 1991). For instance, within an ethnic group, there may be individuals having original religious beliefs or cultural practices. The difficulty of identifying a genuine homogenous group (i.e., preexistent or independent of the State’s action) becomes even more patent, especially if we agree with Kymlicka that “the idea of State’s ethnocultural neutrality is simply a myth” (Kymlicka 2002: 19). Indeed, one can simply argue that what we might consider today as a homogenous ethnic group is actually the implicit result of a previous State’s policies of assimilation or segregation (Cook 2003). On top of these difficulties in identifying a homogenous ethnic group, we must add that it is practically impossible to separate ethnic territorial claims from their economic motivations (Wallerstein 1961: 88).

A group of persons planning to separate from a larger political arrangement might call the attention on the fact that they have similar economic interests. “These triggering mechanisms have existed throughout history. One example is from the beginning of recorded history: the secession of the ten northern tribes of Israel was economic in nature: it was triggered by the coming to power of Rehoboam, son of Solomon (in 930 BC), who increased taxes upon taking power. The population, dissatisfied with the high rates of taxation that they were forced to pay, declared their secession” (Bookman 1993: 170). In order to better grasp this argument, it is important to note that any secessionist group is obviously composed of definite individuals. It is not the group as such who is economically disadvantaged but the concrete particular persons. Individuals might be disadvantaged in virtue of their belonging to an ethnic group or a social class but there is no such thing as an abstract collective territorial claim (Burg 2004). For all these reasons, it must be difficult to circumscribe a group *qua* group on an ethnic criterion in order to grant it a moral right to secede.

At any rate, there are obvious technical obstacles for circumscribing territories that are exclusively inhabited by homogenous ethnic groups. Actually, all territorial claims formulated by secessionists also concern people from different ethnic groups. Why should the territorial claim of some ethnic group prevail over another? Even if we admit that the Basques are eligible for secession as a homogenous ethnic group, it must be difficult to identify pieces of land inhabited only by Basques. The map of a hypothetical Basque country would surely have a lot of holes. However, the actual map claimed by Basque secessionists does not overlap the portions exclusively inhabited by Basques but all the parts of a declared historic Basque country. With different words, the collective territorial claim formulated by secessionists does

not simply overlap with the sum of individual property rights formulated by secessionists.

We might think initially that what is at stake here is an aggregate of property rights: I own this plot, you own that, and so all of us together own the territory that we call Britain. If that were the right way to think about the problem, then a secessionist group occupying a compact area would simply have to assert their joint property rights to establish a conclusive claim to the land they want to take with them. But as Buchanan has argued, the relationship between a people and their territory cannot properly be understood in these terms. When we say that Iceland belongs to Icelanders (to take a simple case), we do not mean that they own it as property; we mean that they have a legitimate claim to exercise authority over Iceland, to determine what happens in that island, including what individual property rights there are going to be. This authority is exercised in practice by the state on the people's behalf, but the Icelanders' claim to authority is not reducible to the authority of the Icelandic state, as we can see if (per impossible) we were to imagine a revolutionary upheaval in that country which established an entirely new set of political institutions. The Icelanders' claim to control Iceland would survive such political cataclysm (Miller 1998: 68).

We emphasized this long quotation because it perfectly illustrates the key feature of the alleged specificity of secession with respect to tax evasion: the *political* territorial claim, i.e., a territorial claim that can only be exercised collectively and that can only be used for exercising the authority on the respective land. However, we first have to assess the pertinence of this political territorial claim before using it to distinguish secession from tax evasion.

In line with most scholars defending secession, Miller argues that the secessionist territorial claim does not simply overlap the sum of individual property rights. Yet, why could an ethnic group (whatever its definition might be) be entitled to formulate a territorial claim without *effectively* owning the respective territory? To be sure, the effective ownership must refer to moral property rights and not to the legal property rights defined by the current State. In this case, it would be difficult to see why the political territorial claim formulated by the Flemish over Brabant would be more legitimate than the property rights acquired by Walloons in the region of Brussels. Asserting that past people spoke roughly the same language or had the same customs as the people who assert today their Flemish origins remains highly unconvincing insofar as the Walloons may refer to their Roman ancestors. Secession and tax evasion are properly understood as moral claims as opposed to legal claims.

In a nutshell, the territorial claim formulated by the Basques (or any other secessionist group) must be grounded on *moral* (not legal) and *concrete* property rights. Otherwise, the respective claims would remain just claims and, in addition, various and incompatible territorial claims might be formulated over the same piece of land. If secessionists aim to show that their claimed territory is not randomly chosen, they need to justify within a moral framework that they concretely *own* the land which is claimed. Secessionists may refer for instance to the homesteading principle in order to prove that, individually or collectively, they voluntarily received the land (as present or inheritance) or bought it. Inasmuch as reference is made to moral rights and not to legal rights, these transactions are independent from the State's institutions.

From this point of view, there is no difference between secession and tax evasion. Both actions must refer to *concrete moral rights* over the respective territory. Just like secessionists, tax evaders must effectively own the resources on which they do not pay taxes. Such ownership must necessarily be grounded on *moral* property rights. This is to say that each tax evader must have voluntarily acquired the resources on which she does not pay taxes. By all moral standards, a person cannot claim moral property rights on a stolen commodity. Hence, tax evasion cannot be defended on moral grounds in a case where the goods were stolen. Indeed, the scholars who defend tax evasion associate taxes with theft, so they can justify tax evasion as self-defence against a coercive (and therefore immoral) form of payment. This argument leads us to discuss the core of the convergence between secession and tax evasion: the normative claim.

Normative Claim

When the secessionists formulate a territorial claim, they challenge the ongoing political order and by the same token they plan to substitute it (Brilmayer 1991: 186). Besides various justifications of the territorial claim discussed in the previous sections, it is important to note that secession is unanimously justified when it is directed against a totalitarian regime. Hence, the *normative claim*: secession is legitimate every time it opposes an illegitimate government. This *normative claim* is *a fortiori* applicable to taxation: tax evasion is legitimate every time it opposes an illegitimate government. Taxation is morally unacceptable not only for libertarians who dismiss as immoral any form of nonprovoked violence – and the State in particular – but also for those who dismiss as illegitimate a particular political arrangement (Bagus et al. 2011). Such a fine-tuning should contribute to unveil a neglected line of defence for tax evasion and eventually to fill to gap between the ethics of secession and tax evasion.

To begin with, we can first note that the justification of secession or tax evasion is very often derived from the justification of revolution. In other words, the occasions in which secession or tax evasion appear to be legitimate are roughly the same as the cases where revolution would be legitimate. Insofar as secession is perceived as a form of self-defence and self-resistance, its justification roughly follows the same pattern of argumentation as the justification of the revolution. As John Locke puts it, “whosoever uses force without right, as every one does in society, who does it without law, puts himself into a state of war with those against whom he so uses it; and in that state all former ties are cancelled, all other rights cease, and every one has a right to defend himself, and to resist the aggressor” (Locke 1980: 202). Just like a revolutionary movement, the acts of seceding or evading taxes appear to be adequate and suitable replies to an illegitimate political arrangement.

However, the drives for opposing an illegitimate political arrangement may be very different. A revolutionary wants to dissolve the political order, while a secessionist wants to reorganize the territory. “He that will with any clearness speak of

the dissolution of government, ought in the first place to distinguish between the dissolution of the society and the dissolution of the government” (Locke 1980: 193). From this point of view, tax evasion is much more akin to secession than it is to revolution. “The object of the exercise of the right to secede is not to overthrow the government, but only to sever the government’s control over that portion of the territory” (Brubaker 1998: 231). *Ceteris paribus*, tax evasion does not depose the government but restricts its control. Given the difficulties of the Italian government in collecting taxes in Sicily (Gambetta 1996: 163), we can observe that tax evasion does not cause the downfall of the Italian government but restrains its control on this specific area.

The normative claim we previously outlined maintains that secession (or tax evasion) is legitimate when these actions oppose an illegitimate government. It is commonly stated that a government loses its legitimacy “when the people suffer prolonged and serious injustices” (Brubaker 1998: 231). At the outset, it is important to see that this expression still does not help us very much in circumscribing illegitimate government and, hence, legitimate secession (tax evasion). Nevertheless, we need to spell out what prolonged and serious injustice exactly means. Still, “what is needed is a coherent set of principles to distinguish legitimate from illegitimate secession” (Buchanan 1997: 303). In order to determine such a theoretical framework, we necessarily need to refer to current theories of justice. Different standards of justice may account for different strategies of legitimating secession (or tax evasion). “So, depending upon which type of theory of justice, libertarian or welfarist, we espouse, the question of whether the secessionists are the better off may make a crucial difference as to whether we judge secession to be justified” (Buchanan 1991: 17). To put it differently, secession might be morally acceptable within a definite normative framework and at the same time morally unacceptable within another normative framework.

The broadest normative view maintains that secession is “one solution to the problem of tyranny” (Freeman 1998: 12). This idea rests on a common presupposition describing tyranny as a political arrangement which violates some basic individual rights such as the right to emigration (Beran 1977: 268). Therefore, according to most authors, secession is legitimate insofar as it is directed against a government denying the right to free movement of persons. Clearly, if secession is legitimate in this situation so should tax evasion be. However, secession can be justified beyond a totalitarian regime. “Even though they live in prosperous liberal states, with firm guarantees of their civil and political rights, the Flemish and Québécois may be moving down to the road to independence. The threat to secession has arisen in both capitalist and communist countries, in both democracies and military dictatorships, in both prosperous and impoverished countries” (Kymlicka 1998: 110). There are territorial claims even in democratic states granting most individuals rights to free-speech and free movement (Höffe 2007 278–81). It is possible to justify secession within a democratic framework precisely because, as we emphasized since the beginning of this chapter, the territorial claim is logically independent from the right to emigrate, although both of them rest on the rhetoric of consent.

However, “the rhetoric of consent obscures the importance of territorial claims. Consent theory seems to suggest that the only important factor is whether an individual chooses to be part of the existing state. The rhetoric does not distinguish, however, between those who may avoid state authority only by leaving and those who may avoid state authority while remaining where they are” (Brilmayer 1991: 189). Although the right to emigrate might be granted, it still does not suffice to ensure the absence of coercion. The citizens of the former state of RDA did not cease to be free only when the Berlin wall was erected. More generally, this assimilation would conceal the very nature of theft and aggression. An aggression is not less an aggression because the aggressor releases her victim. It is precisely the dehomogenization of consent and emigration that makes possible the secessionist’s claim in a democratic state. Although they are free to quit Spain, the inhabitants of the Basque Country still feel coerced by the Spanish democratic political arrangement. The normative claim is a natural complement of the territorial claim.

In the light shed by this idea, the convergence between tax evasion and secession appears more clearly. Tax evasion can thus be justified even in respect to a democratic State granting all basic liberties. The justification of tax evasion in a democracy follows roughly the same pattern as the justification of secession, previously emphasized. The point we want to stress here is that whatever the justification of secession might be, tax evasion can be defended on the same grounds. Therefore, if secession is defended within a democratic framework, so should tax evasion. Furthermore, in light of this idea, we can now see that there should be more than one line of defence for tax evasion. In addition to the classical libertarian justification (Bagus et al. 2011), the case for tax evasion is implicitly defended also by a variety of arguments usually formulated in favor of secession: communitarian, (Gilbert 1998: 220), democratic (Beran 1998: 41), etc.

All these normative frameworks share the presupposition that secession rights ought to be assigned as a solution to a discriminating redistribution of resources between different regions often between a state and its colonies. “But if discriminatory redistribution can justify secession from an imperial state that happens to lie across the sea (as in the case of Belgium or France and their African colonies or, for that matter, as in the case of the thirteen American colonies and Britain), why does it not justify secession from an empire (such as the Soviet Union) whose subject peoples happen to occupy the same landmass as their exploiters” (Buchanan 1997: 312). The discrimination of a specific group of citizens (such as an ethnic or religious minority group) in respect to other groups belonging to the same State legitimizes the secessionist movement of the respective discriminated group. Indeed, “to ignore discriminatory redistribution is to neglect what is probably the most common grievance secessionists raise. Discriminatory redistribution was universally, if not implicitly, recognised as *a* major justification, if not *the* major justification for the legitimacy of that wave of secessionist movements that has received the widest and firmest support from international legal doctrine and institutional practice so far: cases in which peoples severed colonial territory from colonial empires, cast the yoke of colonialism, and established their own independent states” (Buchanan 1997: 312). This is the case, precisely because “a State which encouraged or even

merely turned a blind eye to hostility directed at minority identities would risk undermining its own legitimacy” (Preece 2005: 161).

Yet, wouldn't it be arbitrary to restrict the right to secede only to given ethnic groups? We saw in the previous section the difficulties in pertinently circumscribing genuine and homogenous groups. Since the definition of such groups depends on contingent parameters, the right to secession would be arbitrarily assigned if it were restricted to ethnic communities (Höffe 2007: 278–81). Let aside the rare discriminatory policies such as the special rights constitutionally granted to Muslims under Shariah Law or to Malaysia's Malay majority (Jomo 2004), it should be difficult to justify most of the secessionist claims (Basques, Quebecois, Flemish, etc.). Given the manifest difficulties in distinguishing homogenous groups of net tax payers and net tax receivers, we may reasonably limit to identifying individual net tax payers and grant them the right to secede.

Eventually, inasmuch as it is effectively feasible, they may associate with each other and formulate a collective territorial claim. “A number of government actions could thus be seen as illegitimate: taxing people who work and giving the proceeds to people who do not work; taxing all the people to pay for the construction of a bridge in one state (a number of pork-barrel projects fall under this genre); taxing all the people and using the proceeds to fund scholarships for persons of a certain race; preventing landlords from charging the market rate for their apartments (rent control laws); and so on. The list can go on and on, especially in welfare states, which hold redistribution of wealth to be one of the highest goals” (McGee 1994: 19). In light of this argumentation, secession and tax evasion converge whatever their ethical grounds.

Furthermore, if we agree on the injustice of the discriminatory policy, wouldn't it be discriminatory to reserve the right to secession only to genuinely homogenous ethnic groups? By all moral standards, restricting the access to fundamental rights (such as the right to emigration or free-speech) only to persons belonging to a genuine homogenous group would be unacceptable. Why, then, should we proceed differently when it comes to secession (which for most scholars is also a fundamental right)? If we set aside any personal prejudice against secession and we refer exclusively to the argument's coherence, we must admit that territorial claim should receive the same treatment as the claims to free movement and to free-speech. Either we admit that discriminatory policies are acceptable (and in this case there is scarcely any reason to grant secession rights to any particular group of persons) or we consider that the discriminatory policies are unacceptable (but in this case we can no longer maintain that individual discrimination is acceptable). To put it differently, there is no logical reason to consider collective discrimination unacceptable and at the same time to maintain that individual discrimination is acceptable. By all logical standards, discriminatory policies are not directed against *qua* groups but are targeting individuals as such or as members of a definite ethnic, religious, linguistic, or cultural group.

In line with this argument, if the right to secede is to be assigned on an individualistic basis (i.e., to individuals as such or as member of one or more groups), then there is a perfect convergence with the ethics of tax evasion. “Individuals who were

despised as a result of their race, ethnicity, religion or language for example, would have serious grievances against the state which allowed such (mis)treatment. Why should they pay taxes or serve in the armed forces or in other ways be responsible citizens if that were the case?" (Preece 2005: 161). The State's quintessence is the redistribution of resources among its citizens and, consequently, the unremitting discrimination. By appealing to tax evasion, a citizen demonstrates that she is considering herself to be discriminated against with respect to the other citizens and aims at protecting her revenues while formulating a territorial claim. Although most scholars focus on ethnic, religious, and linguistic groups, it is important to keep in mind that only individuals are the ultimate victims of discriminatory policies. Tax evasion and secession denote complementary territorial claims with a similar normative scaffold.

To sum all up, if an individual (or a group of individuals) is entitled to secede, then – for coherence reasons – the same individual (or group of individuals) has a moral right to evade taxes.

Conclusion

This chapter revealed important paths of convergence between the theories of secession and tax evasion. The attentive study of the main arguments in favor of secession showed that there are no important differences with the arguments in favor of tax evasion. Moreover, not only the justifications for secession can also be used for defending tax evasion, but their accuracy may even be improved when they are applied to tax evasion. Based on the previous argumentation, we conclude that secession and tax evasion bear a salient resemblance both from a descriptive and normative perspective. As a final point, we will recapitulate the main points of this convergence and suggest a few directions for future research opened in the merit of this convergence.

Certainly, tax evasion is illegal with regard to the State, but so is secession. Save constitutional specifications (McGee 1992), the seceding region is seen as illegal from the point of view of its former State. Besides their position with respect to the law, secession and tax evasion also have other formal similar characteristics. A State that ceases to collect taxes ceases to be a State. When a State ceases to enforce taxation in a given region, the respective region becomes ipso facto a different entity. An accurate illustration of this idea can be found in all political entities with limited international recognition such as the secessionist parts of the former Soviet Union (Transnistria, Nagorno-Karabakh, Abkhazia, South-Ossetia) (Bremmer 1991: 41). From a formal political point of view, these territories are a part of the former States to which they used to belong. The members of these political entities remain citizens of the former State and they even retain their passports. Yet, de facto the former States ceased to collect taxes in the secessionist regions. This is to say that the former States do not have any effective influence in the respective region and they have only a declarative claim on the respective territory. In descriptive terms, there is no difference between tax evasion and secession.

As we showed in this chapter, this is so because the theories of tax evasion and secession have a common theoretical structure. Tax evasion and secession denote territorial claims which distinguish them from emigration. Even when they are collective, the territorial claims are grounded on concrete individual property rights. There are important obstacles in conceiving a collective territorial claim due to the difficulty of identifying the groups eligible to formulate such a claim. Given the absence of a commonly accepted definition of ethnicity and the difficulties in conceiving an ethnically homogenous group, it must be complicated to justify an indivisible territorial claim. On the contrary, there is no logical obstacle in reducing collective territorial claims to individual property rights or shares of property rights. In a nutshell, when an individual (or group of individuals) concretely secede or evade taxes she aims at separating from a coercive order while remaining on the territory on which she claims moral property rights.

In addition, this chapter demonstrated that these theories are alike even from a normative point of view. Since both claims (secession and tax evasion) are directed against the State, they cannot lay on the legal rights defined by the State's institution of property rights but only on the moral rights defined according to a specific normative background. Why should the territorial claim formulated by Basques prevail over the territorial claim formulated by Castilians? There would be no reason in the absence of a normative background. Although most scholars discussing the issue of secession share the idea that not all forms of secession are legitimate, they are in profound disagreement as to which criterion should be used for distinguishing just and unjust secession (Buchanan 1997: 319). However, whatever the normative background, if some individuals are entitled to secede, they are also entitled to evade taxes.

This is so because of the common argumentative structure of tax evasion and secession. Both theories rest on effective territorial claims, i.e., on territorial claims formulated by concrete individual property rights. These property rights are assigned on the moral basis of voluntary transactions (exchange, endowment, inheritance) and they do not necessarily overlap legal property rights. However, this idea does not say that tax evasion or secession is intrinsically ethical. It is precisely the voluntary chain of past transactions that may help us to categorize them as such. This chapter only argued that the moral acceptability of tax evasion and secession are intrinsically bound.

This argumentation designed to fill the gap between secession and tax evasion should open new research perspectives regarding the strategies of separation. At the outset, this convergence between tax evaders and secessionists should lead to a reconsideration of the moral status of tax evaders and persuade against numerous prejudices regarding this practice. Tax evaders are not merely free-riders externalizing the costs and internalizing the benefits; they are also secessionists. Further research may inquire as to the social role of tax evaders as pacifist and discrete secessionists. From this point of view, tax evasion appears to be a particular type of action situated somewhere between *exit* and *voice* options (Hirschman 1970).

Tax evaders exit the State and, at the same time remain on the relevant territory. Yet, this particular tie that tax evaders have with their land makes them probably the

most important whistleblowers regarding discriminatory policies in the respective state. Just like the “parents who home-school their children, or send them to private schools, have seceded from the government school system. People who charter their businesses in foreign countries are seceding from the American bureaucratic regulatory agencies, and firms that locate plants in Kansas or other right-to-work states do so to avoid politically imposed requirements to allow unionization. Cash markets and barter trade are common ways to secede from state monitoring of retail markets in order to collect taxes. Increasing numbers of Canadian citizens travel to the U.S. for rapid delivery of complex medical treatment, seceding from the Canadian system of socialized medicine” (Benson 1998: 243).

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