

Constitutionalizing Secession in Federalized States: A Procedural Approach, by Miodrag Jovanovic. Utrecht, the Netherlands: Eleven International Publishing, 2007, 233 pp., \$114 hardcover.

Defunct Federalisms: Critical Perspectives on Federal Failure, edited by Emilian Kavalski and Magdalena Zolkos. Hampshire, England: Ashgate, 2008, 206 pp., £55 hardcover.

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One might be tempted to draw a causal link between books titled *Constitutionalizing Secession in Federalized States* and *Defunct Federalisms*. Despite their shared focus on multi-ethnic and multi-national states, they address two sets of federal polities immersed in quite different temporal and institutional contexts. In the former, Miodrag Jovanovic presents an argument for the constitutional enshrinement of secession in stable federal states that have met the procedural and substantive criteria of liberal democracy. In the latter, Kavalski and Zolkos *et al.* explore the collapse of federations in the immediate wake of decolonization and democratic transition. The authors argue, albeit in very different ways, that demands for secession are neither the primary cause nor the inescapable by-product of defunct federations. Rather the four factors, outlined by Kavalski and Zolkos, that are necessary to avoid federal failure—democratization, the creation of a “complex identity,” maintaining “re-constitutive flexibility,” and the creation of a federal “myth”—sow the seeds for Jovanovic’s model of the legitimate constitutionalization of secession.

Democratization, Political Prudence, and Secession

In Chapter 1 of *Defunct Federalisms (DF)*, Kavalski and Zolkos outline three hypotheses of federal failure that are then tested on a case by case basis by the volume’s contributing authors. The first hypothesis contends that the failure to entrench democracy is a necessary condition for federal failure. The second and third hypotheses suggest, respectively, that federalism fails if it “does not provide a just institutional setting for the accommodation of identity” (*DF*, p. 9) and if it is imposed “either externally or domestically” (*DF*, p. 10). While the authors contend that the latter two hypotheses ultimately provide limited explanatory leverage, the democratization hypothesis does seem to have some value. They argue that democracy and federalism are linked by their mutual enshrinement of “. . . representation, tolerance, pluralism, reciprocity, mutuality, etc.” (*DF*, p. 8) and thus the failure of democratic states to entrench these values “would suggest the failure of federalism” (*ibid.*). In their conclusion (Chapter 12), the authors temper the correlation between the failure of democracy and the failure of federalism. However the “coincidence” (*DF*, p. 159) between these two variables is evident in the chapters that cover instances of decolonization.

In Chapter 2 (Sives), it is argued that the failure of the Federation of the West Indies was due, in part, to the adoption of a minimalist federal constitution that sought to draw in leaders of the more autocratic Barbados, Dominica, St. Kitts and St. Vincent, and Antigua and that failed to reflect the developed democratic practices of Jamaica and Trinidad. Similar

conclusions are drawn in Chapters 3 (Goumenos) and 4 (King) regarding the breakup of the Ethiopian federation and the collapse of the federation of Rhodesia and Nyasaland. The disparity between degrees of democracy in Ethiopia and (the more democratic) Eritrea laid the ground for the latter's eventual secession. Likewise, the unfulfilled promise of democratization and a "multiracial partnership" between the Black majority and the autocratic White minority in Rhodesia is viewed as one of the primary causes of the state's collapse.

Kavalski and Zolkos' hypothesis on the correlation between liberal democracy and federal failure is rather blunt and perhaps it is this bluntness that explains why the relationship is viewed as "coincidence." The hypothesis fails to capture that, at least in these three cases, democracy in periods of decolonization does not seem to be pervasively entrenched. Rather pockets of democratic institutions and practice do exist. One of the causes of federal failure seems to lie in the difficulty in reconciling on the national level the differing degrees of democratic practice across the constituent units of a federation. However, the pervasive entrenchment of democracy alone does not seem to be sufficient to ensure the long-term survival of a federal polity.

In Chapter 1 of *Constitutionalizing Secession* (CS) Jovanovic argues that the substantive and procedural entrenchment of democracy across a federal state is the starting point for his procedural model of secession. The requirement of "minimum liberal democracy" (CS, p. 5) is needed in order to ensure that if secession is opted for, it is done so not in response to a knee-jerk normative impulse. Rather the constitutionalization of secession should be the product of political "prudence" and it should occur before a federal democracy is confronted with a viable threat of secession (CS, p. 12). "Prudence" allows a federal democracy to overcome "the impasse of ungovernability," to defend itself from "the decisive interference of international actors," and to maintain "political stability" when confronted with the prospect of seceding populations (CS, pp. 13–24). Concomitantly, prudence allows a federal democracy to protect its three core values: the rule of law, the extension of democratic rights, and peace amongst communities (CS, pp. 31–37). A procedural approach to the constitutionalization of secession, under the guise of political prudence, has two potential impacts. First, it can lead to the negotiated break up of the state under the auspices of liberal democratic values. Second, according to Jovanovic, it can assuage secessionist impulses by providing a legitimate institutional path to secession. Secessionist rhetoric is less important if secession is an always present constitutional option. The procedural model ostensibly privileges well thought out substantive claims buttressed by reason and cautiousness. In sum, the pervasive entrenchment of democracy not only opens the possibility of constitutionalized secession, the survival of a federal democracy might also be dependent on effectively anticipating the possibility of effective secessionist mobilization.

Identity as Effect and Cause

Kavalski and Zolkos outline three additional hypotheses in the concluding chapter of *Defunct Federalisms* that bring to light some of the tacit connections between the case studies. The new hypotheses shift the focus from the causes of federal failure to the requirements for federal survival. The first new hypothesis contends that if federalism is to survive it must be capable of "[generating] a new and complex identity" (DF, p. 163) and "federalizing the imagination of the population" (DF, p. 164). This hypothesis recasts the accommodation of identity and the entrenchment of diversity as ends of federalism, rather than as transitory

instruments to ensure its survival. It also reveals a ubiquitous tension between the homogenizing and unitary objectives of political elites and claims for the entrenchment of diversity by ethnic, linguistic, and religious minorities subsequent to the adoption of federalism.

Four cases stand out as examples of federal failure caused by an elite push for unitary politics: the doctrine of Pancasila and elite perceptions of the backwardness of local cultures in Indonesia (Chapter 3, Goumenos), the attempt at “francophonization” in the federal republic of Cameroon (Chapter 5, Fegue), the exclusion of Bengalis from the public bureaucracy and centers of decision-making in Pakistan (Chapter 6, Siddiqi) and the attempts of retreating Chinese elites to establish a base of central control in Taiwan (Chapter 7, Phillips). The inextricable link between federalism and the protection of diversity is echoed in Chapter 2 of *Constitutionalizing Secession*. Jovanovic contends that the choice of exploring the constitutionalization of secession specifically in federal states rests in their inherent ethnoplurality and their concomitant need to “take diversity seriously” (CS, p. 69). He argues that an approach to diversity such as multiculturalism should not be seen as a political program, but instead as a sociological lens capable of capturing the reality of ethnocultural diversity and the salience of ethnoterritorial claims in many federal states. The prudential approach requires that, even if the claims have not yet been advanced, secession should be constitutionalized given the predisposition of federal states to house distinct ethnoterritorial groups. In sum, if “federalizing the imagination of the population” is a way of counteracting the homogenizing impulses of political elites, it can produce at least two distinct results. First, according to Kavalski and Zolkos, it might create a “new and complex identity.” However, seen through Jovanovic’s optics, a federal “imagination” necessitates the acknowledgement that distinct societal cultures with legitimate territorial claims are sometimes if not always present in federal polities.

Federal “Flexibility” and the Revision of Internal Borders

Kavalski and Zolkos’s second new hypothesis suggests that if federations are to survive they must “maintain their re-constitutive flexibility” (DF, p. 164). This entails recognizing the interrelation between the substantive and procedural dimensions of federalism and the need to balance the normative assumptions of federalism with the individual strategic interests of a polity’s constituent units. It implies that the ideas and institutions present at the inception of a federal state must always be open to some degree of revision. Jovanovic explores the need for “revision” in federations by examining the Badinter Commission’s role in the dissolution of the former Yugoslavia in Chapter 3 of *Constitutionalizing Secession*. His version of re-constitutive flexibility recasts federal survival to take into account a federal state’s sovereignty vis-à-vis international actors. He argues that one of the key dimensions of constitutional and federal flexibility requires that federal states open themselves up to the possibility of reexamining internal borders. In the case of the former Yugoslavia, the Badinter Commission operated within a “*uti possidetis*” (CS, p. 95) framework concerning the re-drawing of borders. Thus, not only did the Commission seek to guarantee the survival of existing external Yugoslav borders, they also sought to ensure that the individual republic’s borders would remain intact following the state’s dissolution.

Jovanovic contends that the Commission’s recommendation to maintain borders as is inadvertently legitimized, at the outset of the Yugoslav wars, the creation of nationally homogenous independent states within existing borders. A more “flexible” view of internal

borders would have ostensibly provided more options for a peaceful resolution of the conflict. Second, he argues that the re-drawing of borders and the constitutionalization of secession should fall under the jurisdiction of the federal state. The mere presence of international actors during a secessionist debate undermines the sovereignty of a federation and “creates a powerful impression” (CS, p. 114) that federal states are inherently more unstable than unitary states. Jovanovic’s procedural model of secession seeks, in one way, to reclaim the *right* of flexibility as a primary tenet of federal sovereignty.

Myth and “Dead Letter” Constitutions

Kavalski and Zolkos’ third new hypothesis argues that federal states must “[mythologize] their creation” (DF, p. 164) in order to survive. In accordance with the previous two hypotheses, this one maintains that the myth of federal creation must reify the concordant notions of diversity, accommodation and flexibility. Federal states with founding myths deeply vested in a single individual or ‘founding father,’ such as Nasser’s attempts at creating a pan-Arab federation (Chapter 8, Zoli) and Tito’s Yugoslavia (Chapter 9, McCulloch and Susnjic), or deeply tied to a “founding party,” such as Czechoslovakia (Chapter 10, Ruzicka and Stullerova) and the USSR (Chapter 11, Gololobov), failed to entrench a strong federal identity. While Jovanovic does not directly address the founding “myths” of federalism, he does take to task the mythic status of constitutions in federal polities. In Chapter 4, he argues that the “common wisdom” view of constitutionality holds that “perpetuity is implied...in the fundamental law of all national governments” (CS, p. 115). However, if a democratic state is faced with a viable secessionist threat, such “common wisdom” would prevent the implementation of a prudential solution that requires some degree of institutional flexibility. Jovanovic argues that a constitution should not be seen as a “dead letter” (p. xiv) and that, particularly within the context of ethnoplural federal states, it should be open to revision. He cites the Good Friday Agreement and the Quebec Secession Reference as instances of openness to constitutional revision that could lay the foundation for the eventual establishment of a procedural model of secession.

Jovanovic completes his procedural model of secession in Chapter 5. The model allows for the secession procedure to be initiated by legislative actors or local ethnocultural majorities or non-territorially concentrated groups. The settlement of the secession debate is to be determined by popular vote at a referendum. The referendum question must be clear and all parties must be guaranteed equal access to the media and campaigning resources. Finally a fixed waiting period is imposed between referenda.

Conclusion

Constitutionalizing Secession provides a good overview of theoretical and legal perspectives relating to secession yet it is ultimately unclear whether consolidated federal states would opt for a procedural model of secession. The model is ostensibly viable across all multinational polities having met the minimum requirements of liberal democracy. However, the model’s empirical foundations are drawn both from a case that fails to meet these minimum requirements, the former Yugoslavia, and from consolidated democratic polities, Canada and the United Kingdom among others. The “decisive interference of outside actors” seems to have been far more relevant in the case of the former Yugoslavia (and perhaps this is why Chapter 3 is entirely devoted to the examination of the Badinter Commission). Seen through a federal failure lens, transitional, and post-colonial federal

states seem far less inured to the interference of retreating colonial and autocratic powers. It might be interesting to ask whether a “prudential” approach to the constitutionalization of secession, in a transitional or post-colonial setting, could help to enshrine “re-constitutive flexibility” and ensure federal sovereignty vis-à-vis international actors. Jovanovic’s model could then be more broadly applied to transitional multi-national and multi-ethnic polities as a potential factor to ensure federal survival. Linking a model of secession to the tenets of procedurally entrenched democracy is key to Jovanovic’s argument, however, it would seem to prevent the application of the model to a broader range of potentially rewarding cases.

Defunct Federalisms provides a good alternative to contemporary studies of federalism by recasting federal failure as the norm and federal survival as an uncommon and tenuous achievement. The book offers good succinct case studies that might benefit from being engaged in a broader comparative framework. The hypotheses advanced by Kavalski and Zolkos regarding federal failure and federal survival can only truly be put to the test by comparing defunct federal states with ostensibly consolidated federal states. Have federal “successes” met the same challenges as federal “failures” and somehow succeeded in overcoming them? Are cases of post-colonial federal survival rarities? What explains post-colonial federal success? Federal failure is the interesting and oft overlooked other side of the federal success, and their comparison could be an interesting next step in the study of federalism. Finally, a broad comparison could also help prevent the validation of “dead letter” federal constitutions by conflating the procedural survival of long-lasting federal states with the substantive impact of the idea of federalism.

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