

## Globalisation and New Political Rights. The Challenges of the Rights to Inclusion, Self-Determination and Secession

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### Purpose and research problem

Recent years have witnessed an increasing emphasis of political rights in international law and global political norms (Franck 1992; Rich 2001; Slaughter 2002). A new legal world order is arguably emerging that challenges the traditional nation-state centred understanding of political rights, as well as the legal discretion of the nation-state with respect to vital political rights (Kymlicka 2007). In membership policy, various NGO's and international organisations push for political inclusion of permanent resident non-citizens in contention with the established nation-state centred understanding of political equality. In minority policy, there is a similar trend in several states towards recognition of self-determination for indigenous peoples in discord with the traditional central political authority of nation-states. In international politics, finally, the recent recognition of the independence of Kosovo by a large number of Western states puts pressure on other states to accept a right to secession that has the po-

tential of threatening the sovereignty and territorial integrity of virtually every nation state. If these trends are further reinforced, we may actually be witnessing the nascence of new rights to inclusion, self-determination and secession. At stake here is primarily the norm that nation-states should have far-reaching discretion in interpreting and institutionalizing political rights. Indirectly, however, the trend also further erodes the *de facto* autonomy of the nation-state, which is already under strain by other forces of globalisation.

The *purpose* of this project is to investigate—empirically as well as normatively—the afforcement of the rights to inclusion, self-determination and secession.

Two research questions will structure the study. The first is descriptive and concerns the extent to which a new set of political rights have been institutionalized politically and legally by contemporary nation-states. States seem variously (un)willing to recognise them, both historically and globally, and the difference between states is in itself an important object of inquiry. To which categories of non-residents are membership rights granted? And to which minorities are the rights to self-determination and secession accorded? And which categories are not recognised as legitimate rights-claimers?

The second question is normative and concerns if and when rights to inclusion, self-determination and secession ought to be recognised. Is there a right to political inclusion in the first place, and to who should it in that case be granted? Are there any rights to self-determination and secession, and do all minorities in that case have them? These questions primarily address dominant conceptions of political equality and political rights in political theory, but they also aim to evaluate various empirical cases where these new polit-

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ical rights have been either recognised or rejected.

### The research field

The project is situated within the field of research on globalization in political theory, which can be divided into three major fields. The first is concerned with the consequences for national democratic institutions of increasing economic globalisation, and the main question here is to what extent national governments are still able to assert themselves as independent actors when free flowing capital puts pressure for adaptation (e.g. Held 1995). The second field is primarily concerned with the new forms of governance that emerge in a context of globalisation where supranational organizations become increasingly important for national governments. Studies of this kind include, for instance, the exploration of changes in the relative power of parliaments and governments, and the opportunities for accountability of international organizations (Dahl 1999; Barry and Pogge 2005). The third field concerns the challenge posed by globalization to traditional understandings of justice, sovereignty, political equality and human rights. The impetus among scholars engaged in this field has been either to explore new possibilities for global or trans-national forms of democracy, or to defend new conceptions of traditional state-centred conceptions of democracy (e.g. Nagel 2002; Risse 2000).

The research project presented here adds a fourth field of research on globalization by focusing the implications for the nation-state of new political rights, i.e. the rights to inclusion, self-determination and secession. Rather than being an extension of democracy that recaptures autonomy for the citizenry at a supranational level,

the political rights attended to here restrict the freedom of action of the citizenry by according prerogatives that are not directly tied to citizenship to individuals and groups. The project does not aim to present a comprehensive analysis of the globalization of political rights. It is rather concerned with a restricted number of political rights that are presumed to be vital to the new challenge.

There is a specific field of research for each of the project's three kinds of rights. The first is the research on membership rights. The citizen is the typical bearer of the right to vote in democratic countries. Yet, in times of global migration the intimate connections between citizenship and political rights is increasingly problematic. Millions of non-citizens are either permanent or temporary residents of democratic countries and are, as a result, denied the right to take part in democratic elections to national assemblies. Suffrage restrictions are ubiquitous, and a particularly prominent example is the systematic exclusion of non-citizens from the vote (Bauböck 2007; Benhabib 2001, 2004). Thus, the 'citizen gap' has attracted increasing attention (Smyth 2006; Brysk and Shafir 2002).

The second field of research of importance to this project is the literature on the right to self-determination, where the most important and elaborated contributions are found in the contemporary debate on indigenous rights. This debate can be divided into a legal and a political-theoretical debate. In the legal debate the status of and development in international law is in focus: what conventions or treaties are applicable to indigenous peoples? Closely intertwined with this approach is the discussion of the existing norms within international law, what they actually mean or ought to mean, especially the

foundational principle of self-determination (Anaya 2004; Thornberry 2002; Minde 2008). This normative dimension of the rights of indigenous peoples is elaborated further within the political-theoretical debate, since the core of that debate evolves around the question of why indigenous peoples ought to have a specific set of rights, and how self-determination can be justified (Kymlicka 1995). Could, for instance, 'indigenous peoples participate in the modern world' without losing 'their claim to self-determination' (Kymlicka 2001:126)? Another decisive topic within this debate is how the distinction between indigenous peoples and national minorities is explained and justified (Gagnon & Tully 2001). Why do indigenous peoples have an inherent right to self-determination, but not national minorities?

The third field is the debate on the right to secession. To a large extent this debate can be seen as a reaction to the dissolution processes in Yugoslavia, Czechoslovakia and the Soviet Union the last twenty years (Buchanan 1991). Up until now the debate has mostly revolved around whether a right to secession can be justified in the first place, as well as around the conditions that must be fulfilled for the right to be valid. There seems to be considerable agreement in the debate that there is a right to secession. At the same time there is also profound disagreement on the conditions that must be fulfilled, as on the relative weight of the different conditions (Lehning 1998). Three alternative grounds for secession have crystallized in the debate. The first anchors the right to secession in choice, i.e. the autonomous choice of a people on a defined territory, preferably expressed in a referendum. Here the seceding nation is regarded in analogy to the individual in liberal theory and the choice of this entity is considered

equally legitimating (Philpott 2001). The second grounds secession in the principle of nationality, more specifically in the presumption of this principle that cultural and political borders ought to coincide (Miller 1998). The third founds the right to secession in justice and considers secession legitimate if it is necessary to correct an injustice, i.e. occupation, tyranny, ethnic cleansing, etc (Buchanan 2004; Norman 2006). Here the right to secession is seen in analogy to John Locke's right of rebellion (Locke 2002).

### **The project: Outline, theory and methods**

The project will be carried through in two steps that follow from the two research questions presented above: The first is a descriptive analysis of the standing of the rights to membership, self-determination and secession in the international community and in individual nation-states. Methodologically, this calls for a comparative approach used in all studies in the inquiry of the relationship between international law and the policies of individual states with respect to membership, secession and self-determination (Ragin 2007).

The second is a normative evaluation of these rights. This investigation will be carried out by applying normative theory to actual legal norms and policies in each of the separate studies. The point here is not primarily to evaluate empirical cases, although that will be done as well. The principal point is, rather, to make use of empirical cases for theoretical reflection and development. In all the normative investigations a constructive approach (i.e. as used in Swedish political science) will be applied (Lundquist 1993; Rothstein 1994). By using this methodological approach, the project has the ambition to contribute

to the recent international debate about the relationship between empirical and normative research (Shapiro 2002; Shapiro & Macedo 2000; Leopold & Stears 2008).

A more specific presentation of the research approach of each of the three parts of the project follows below.

The first part of the project studies the right to vote of resident non-citizens. There is a general agreement that universal and equal suffrage is everywhere in place (IDEA 2004; Vanhanen 2003; Coppedge and Reinicke 1991). However, there is much evidence that this represents an over-simplification of the true state of voting rights among democracies (Beckman 2009; Massicotte et al, 2004; Katz 1996). The literature is ripe with empirical as well as theoretical investigations of the fate of non-citizens in democracies; much less attention has been devoted to the importance of residence criteria for political rights. Long-term residence is usually required for political rights and temporary non-residence is in many places enough to disqualify a person for political rights. Why is this the case? A recent and significant contribution to this field is Joshua Carens' exploration of the right to vote of seasonal workers (Carens 2008). But the extension of residence criteria among democracies, the rationale for residence as a criterion for the right to vote, and the extent to which current norms of residence can be justified remain a forgotten field of research. Arguably, the significance of exclusions of temporary residents is greater now than ever before. The processes of globalization have radically increased mobility within and between countries (Nayyar 2002). Near 30 percent of the global world population live outside their country of birth, twice as many

as in 1970 (International Organization for Migration 2005), and global flows of refugees and asylum seekers remain important (UN Migration Report 2008). Together, these processes make temporary residence a frequent phenomenon in the world. At the same time, the conditions stipulated for participation in democratic elections largely remain identical since the time of birth of modern democracy. Political participation is the privilege of citizens and permanent residents. As a result, an increasing number of people are denied access to democratic elections in the country of residence.

The empirical task for this part of the project is, thus, to provide a systematic analysis of residence criteria among contemporary democracies. The idea is to identify the 'models of residence' by which various electoral regulations can be understood. The normative task is to explore the reasons for and against residence as a condition for political participation and how they can be justified in terms of political equality (e.g. Beitz 1989). Is the right to vote premised on obsolete conceptions of democratic participation?

The second part studies the right to self-determination, and especially the right of indigenous peoples. In September 2007, after more than 20 years of negotiations, the UN General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples. The resolution states, among other things, that "[i]ndigenous peoples have the right to self-determination", and that "the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures [...] ought to be recognized (art 3, 26). Thus, in capacity of being indigenous some peoples

have inherent rights, like the right to self-determination. However, the actual meaning of the right to self-determination is contested in many ways (Aikio & Schenin 2000; Castellino & Walsh 2005; Ghana & Xanthaki 2005): first, there is a difference in recognising the right of indigenous peoples' to self-determination, there are, for instance, only twenty countries that have ratified the 1989 ILO Convention No. 169 *Concerning Indigenous and Tribal Peoples in Independent Countries* (ILOLEX, International Labour Organisation 2009); secondly, in countries where the right to self-determination is recognised, there are differences in the interpretation of the meaning of self-determination, for instance, in what societal spheres—the political, economical, social or cultural—this right ought to be applied; and, thirdly, there are differences in the institutional designs in how to accommodate indigenous peoples' right to self-determination.

The empirical task for this part of the project is to provide a systematic analysis of the right to self-determination for indigenous peoples in the areas of contestation mentioned above. The idea is to identify different 'models' of interpreting the right to self-determination and various institutional arrangements to safeguard this right (see, for instance, Alfredsson 1982, 2003; Josefsen 2003; Kontos 2004; Rangan & Lane 2001). The normative task is to explore the reasons for and against the right to self-determination, and especially the justification of the distinction between indigenous peoples and national minorities. This latter distinction is of great importance, as the right to self-determination can be interpreted as a solution to the classical problem in democratic theory of permanent minorities. Without the right to self-determination, indigenous peoples,

as well as other national minorities, run the risk of being without influence on decisions made by the majority, even when the decisions severely damage the minority's traditional way of life, culture or economic development. Thus, from the perspective of the permanent minority, the democratic legitimacy tends to be undermined (Dahl 1989). Within democratic theory secession is one obvious solution (as will be discussed separately in the part on the right to secession below), often seen as too drastic, but other alternatives to the model of majority rule exist, for instance, deliberative or consensus models of democracy (Benhabib 2002; Young 2000), minority veto-rights (Young 1990), and different models of permanent minority representation (Lijphart 2008). Different ways of institutionalising the right to self-determination is thus part of an ongoing debate on different models of democracy, however, this democratic aspect and its challenge to the nation-state is seldom emphasised.

The third part of the project studies the right to secession. This project will primarily attend to the rights of minorities on seceding territories which is an aspect that has been somewhat overlooked in the debate on secession (Lehning 1998; Moore 1998). This is remarkable since the issue of rights of minorities on seceding territories is a hard case that may undermine the attractiveness of the right to secession as such and make us prone to restrict the right (Brubaker 1996). The tentative point of departure of this project is to critically scrutinize this right. The study will be carried through in two steps. The first step is an empirical investigation of the response of the international community to claims for secession the last twenty years. This investigation will empirically focus the re-

sponses of individual states to secessionist claims and will draw upon recent research on secession and international law (Kohen 2006). The point of this inquiry is to reveal patterns and trends and the question is if there is a pattern as regards the international recognition of secession, and if this pattern reflects some underlying principle that is being consistently applied. In this context, Kosovo is something of a touchstone (Raju 2003). The question raised by this case is whether Kosovo is basically similar to previous cases of secessionist claims, and the wide international recognition of Kosovo therefore is a historical anomaly that signals a paradigm shift in the view on secession, or if this particular case is indeed different from other seemingly similar cases such as Chechnya, Nagorno-Karabakh, and South Ossetia (Chorbajian 2003; Coppeters & Sakwa 2003).

The second part is a normative evaluation of the right to secession. Here a case evaluating approach will be used and theories on the right to secession will be applied in an analysis of the rights of minorities on seceding territories in different cases of secession. These case discussions will have the character of both deductive evaluations of the justifiability of secessionist claims and an inductive evaluation of the adequacy of the theoretical conditions for secession. The normative inquiry will also be linked to the study of the amount of acceptance of the right to secession in international politics (Couture, Nielsen & Seymour 1998). Is it, for instance, justifiable to recognize the independence of Kosovo but not of South Ossetia, and vice versa? The expectation is that a study of the right to secession from this point of view will shed new light on the relative weight of the different conditions for secession proposed in the

theoretical debate (Moore 1998), as well as on whether there are further conditions that must be met for the right to be valid. The working hypothesis is that an application of the conditions for secession on minorities on seceding territories will speak in favour of further conditioning the right to secession, but not of rejecting the right as such.

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