

Livingston, Donald, ed. *Rethinking the American Union for the Twenty-First Century*. Gretna, LA: Pelican Publishing Company, 2012.

A rather taboo topic in American political discourse—secession—is the theme of a fascinating anthology edited by Donald Livingston, professor emeritus of philosophy at Emory University. The contributors are varied in background. Kent Brown is an attorney; Marshall DeRosa a political science professor; Thomas DiLorenzo and Yuri Maltsev economics professors; author Kirkpatrick Sale director of the Middlebury Institute “for the study of separation, secession and self-determination”; and Rob Williams a communications professor.

The contributors, who hail from both sides of the political spectrum, are united in their feeling that the American federal government has become too large, unwieldy, and oppressive. Most of them offer numerous illustrations of this, from the recent attempt to centralize (if not outright nationalize) the country’s health-care system, to the spiraling national debt, to runaway regulatory agencies, to what some of them view as our imperialistic foreign policy.

But while many of them might agree that the federal government has indeed become too domineering, and agree that measures are needed in order to decentralize its powers and shrink its size, the contributors to this collection defend the radical proposition that secession is both legal and proper as a tool for accomplishing this reform. Accordingly, the main focus of these essays is on the legitimacy of and reason for supporting secession by American states. Their arguments center on the themes that there is an optimal size of a polity beyond which it will be ill-governed and that the U.S. Constitution is a contract which can be nullified if one of the parties breaks it.

The contributions vary in quality. Most closely reasoned are those by Livingston, Brown, DiLorenzo, and DeRosa. Since no one skeptical of secession (at least in the American context) appears to have been invited, allow me to put forth several skeptical queries as I review this work.

Livingston’s contributions introduce the core questions, such as the optimal size for a democracy and the constitutional view of secession. On the former score, he repeatedly quotes Aristotle, who held that there is a limit to the size of a democracy “beyond or below which it becomes dysfunctional” (p. 16). But then, Aristotle also condoned slavery and denial of female suffrage, so it is not clear that his authority is definitive.

Sale’s essay—one of the weakest in the book—also cites Aristotle with approval:

It is because, firstly, he [Aristotle] *did* know that there are limits: “Experience shows that a very populous city can rarely, if ever, be well governed; since all cities which have a reputation for good government have a limit of population. We may argue on grounds of reason, and the same result will follow: for law is order, and good law is good order; but a very great multitude cannot be orderly.” And it doesn’t matter if that city is 1 million or 36 million—political entities at such sizes could certainly not be democratic in any sense, could not possibly function with anything approaching efficiency, and could only exist with great inequalities of wealth and material comfort. (p. 167)

Even putting aside the implicit circular reasoning in the latter part of the quotation from Aristotle’s *Politics*, this passage is puzzling. It occurs right after Sale himself notes that the Athens of Aristotle had around 160,000 residents, while present-day Tokyo has 36 million. Is Tokyo not a successfully or efficiently governed city? That hardly seems obviously true. And why would the mere existence of disparities in wealth be a sign of an ill-governed state?

Sale does attempt to argue for the Aristotelian view that there is an optimal number of citizens for a state. He notes, for example, that of the wealthiest countries in terms of GDP per capita, all but one of the top ten is under five million in population. But the point is unconvincing: The U.S. has a large population (310 million, which is over 1,900 times the size of Aristotle’s Athens), yet is in the top ten for GDP per capita, while four of the small countries in the top ten are rich mainly because of their oil (Brunei, Kuwait, Norway, and Qatar) and four of the top ten are authoritarian regimes of various sorts.

This highlights the first major problem with the collection: it only looks at optimal size from the perspective of geography or demography. Much more reasonable would be to do as a number of recent economists have done, namely, search for optimal size of *government* (as measured by percentage of GDP spent). A few years ago, for example, economists at the Institute for Market Economics surveyed economic performance across a large number of states, and concluded that the optimal size of government lies between 17% and 30% of GDP.¹ In addition, Antonio Afonso and Joao Toval Jalles, economists at the European Central Bank, published a sophisticated statistical study of data for 108 countries over forty years that shows that it is the amount of resources consumed by a government and its institutional quality

¹ Dimitar Chobanov and Adriana Mladenova, “What Is the Optimum Size of Government?” Institute for Market Economics, August 2009, accessed online at: http://ime.bg/uploads/335309_OptimalSizeOfGovernment.pdf.

(i.e., respect for political rights and civil liberties) that are the most important factors in economic performance.²

Thus, the economic research seems to indicate that the optimal size of a polity for economic growth lies not in the number of its citizens or the size of its territory, but in the portion of national wealth consumed by its government at all levels. There seems to be no reason *a priori* why a society could not have a population of any size, even tens of billions, and function well, so long as the government (at all levels combined) consumes less than 20% of the GDP, protects the citizens, and promotes their social good within a strong framework of delineated citizen rights and a federalized structure. In short, this research does not support the notions that America's dysfunctions stem from the size of its population or territory or that the secession of various states is a solution to the supposed "size problem." Curiously, neither of the economist contributors to the collection saw fit even to mention this research, preferring instead to discuss political history.

Of course, the reply might be made that there is more to good governance of a polity than that it have a growing economy. Fair enough—though I suspect most people would agree with Sale's implicit view that the economic prosperity of a polity is an important constituent of its flourishing. But again, there is still no evidence that the size of territory or population has anything to do with good governance as measured in any other way. Suppose, for example, someone views good governance as the protection of civil rights for the citizens.³ Why would a state both geographically and demographically huge be any less able to guarantee civil rights than a small one, especially if it has strong constitutional guarantees of rights and limitations on its power?

The essays by Brown and DiLorenzo focus on the legal case for the right of secession. Brown looks at the British common-law tradition, in which "[i]f two parties enter into a contract . . . and one of the parties fails to perform as promised—or breaches the contract—the other party may seek certain remedies that Anglo-American law has historically provided." These remedies include rescission, that is, the annulment of the contract (pp. 34-35). And Brown and DiLorenzo argue that, historically, the signers of the U.S. Constitution generally held that it was just a "compact"—a contract among the states—from which they could withdraw if the terms were not complied with. The idea that upon signing the Constitution, a perpetual or "indissoluble" union (in the words of Daniel Webster) was created, is an idea that would have been inconceivable to the Signers.

However, this line of argument is problematic for several reasons. Let us start with the claim made by several of the contributors that the Founders would not have understood the notion of "irrevocable covenants,"

² Antonio Afonso and Joao Tovar Jalles, "Economic Performance and Government Size," Working Paper Series No. 1399, European Central Bank, November 2011, accessed online at: <http://www.ecb.europa.eu/pub/pdf/scpwps/ecbwp1399.pdf>.

³ This example was suggested to me in private correspondence by Irfan Khawaja.

that is, agreements to which the parties freely consent, but then thereafter lose the right to leave. But there surely *was* a model of such irrevocable binding agreements with which all of the Founders were familiar: marriage. According to the thinking of the time, people freely enter into marriage, but once in it, cannot “secede” even if one of the partners fails to live up to the marriage vows.

Moreover, none of the contributors even mentions the ancient British legal concept of sovereign immunity, a concept with which the Founders were familiar, all of them having read (among others) Thomas Hobbes. If we agree to something and I feel you have breached the contract, we call upon the sovereign (the government) to adjudicate the matter. After all, the truth about which party (if either) is in breach of contract is not something God writes upon the skies for all to see, but is a matter that has to be adjudicated. However, does it make equal sense for me to judge the sovereign’s very power to judge us?

Putting this point another way, if all citizens have the power unilaterally to decide when the country is not doing what we think it should, and to nullify or secede as they see fit, what government could ever survive? Perhaps this is what Lincoln meant when he made the point (a point that Brown derides) that “[i]t is safe to assert that no government proper, ever had a provision in its organic law for its own termination” (p. 55).

Another problem with this anthology is its coy treatment of slavery, a subject mentioned in less than eight of its 270 pages. The reason secession is not considered a viable option in American political life is that it was tried, and resulted in a civil war that killed more Americans than all other American wars combined. And the core of the dispute was slavery. From the natural rights perspective—upon which much of the argumentation in this book seems based—slavery is, next to murder, the ultimate evil. So in essence, the Southern states were seceding to guarantee their rights to deprive many of their residents *their* rights. This is, to say the least, hardly a compelling example of secession as a tool for protecting or achieving liberty.

The South could have first liberated its *four million* slaves before secession, as was discussed at the time. But that course of action was rejected. So it is hard to take seriously the claim that the states of the Confederacy seceded in order to protect the rights of *all* of their citizens from the usurpation of those rights by the federal government. The Confederate advocates claimed they were protecting rights, but the Union forces made the same claim. This is the ultimate problem with secession: it raises issues that can only be resolved by hideous force. As Hobbes well understood, there is no war like civil war for sounding the depths of destruction.

This book would have been far more interesting had it considered these issues.

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