

ON THE MORAL JUSTIFICATION OF SECESSION Critical remarks to mainstream theories

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Abstract

The following article explores an until-recently forgotten topic in political philosophy: the morality of secession. The normative theories of just secession will be explored in the text. The political conception of Allen Buchanan is explored in the case of just-cause theories, David Miller's approach for the case of national self-determination theories, and, finally, Harry Beran's suggestions for plebiscitary theories. Then, I analyze the advantages and disadvantages of all mainstream theories of secession. My conclusion is that for the contemporary liberal democratic states, the most justified approach is the one which combines the good sides of plebiscitary and national self-determination theories. I favor primary right secession because most of the contemporary state borders were drawn during undemocratic conditions and should be open to changes under democratic conditions if the majority desires them. However, I discovered that the theories of secession avoided paying attention to the third world countries where secessionist potential is far higher.

Key words: morality of secession, remedial right, primary right, just-cause theories, national self-determination theories, plebiscitary theories, Allen Buchanan, David Miller, Harry Beran

Introduction

The complete lack of debates on secession in moral philosophy until the 1980s' is surprising. The theory was constantly overlooked by the greater thinkers in the West including Plato, Aristotle, Hobbes, Locke, Rousseau, Hegel, Marx or Rawls (Buchanan 1991: 325, 323). In the 1980's the first two argumentations appeared: Harry Barans' plebiscitary approach to rightful secession (Baran 1984, 1988) and Lea Brilmayer's territorialist interpretation justifying secession only if the territory had been unjustly taken from secessionists in the past (Brilmayer 1989). In 1991, Allen Buchanan launched a debate on the morality of secession, publishing the first comprehensive theoretical framework on the issue (Buchanan 1991, 1991a; Moore 2003 [1998]: 1-13). In the following decades, the morality of secession became one of the major topics of political philosophy.

The first goal of this article is to present and compare the three major theories of secession (Moore 2003 [1998]: 1-5, Norman 2003 [1998] 35-43, Miller 2003: 267)¹ which appeared in the 1990s' and were further developed by social scientists:

- The just-cause theories, also called remedial right only theories (Allen Buchanan).
- National self-determination theories or ascriptive right theories (David Miller).
- Plebiscitary right theories or the choice theories (Harry Beran).

¹ However, Percy B. Lehning introduced three alternative general approaches to the theory of secession: the anti-secessionists, pro-secessionists, and those who support or oppress secession in dependence (Lehning 2005 [1998]).

The second goal of the text is to compare all the three major theories of secession and seek their weak and strong points. Thirdly, in conclusion, I will suggest that for liberal democracies, the comprehensive approach based on good sides of national self-determination theories and plebiscitary right theories should be considered as legitimate. However, for the former third world countries, these two theories should be further explored in order to be regarded as applicable.

The just-cause theories

The just-cause theories, also called *remedial* right only theories, assert the right for secession with previous harm, which is not the case of plebiscitary or ascriptive theories.

Allen Buchanan is considered to be a major contributor to remedial right only theories (Norman 2003 [1998]: 41-42). For him, the issue of secession extends the liberal-communitarian debates of the 1970s' and 1980s' (Buchanan 1991: 324) and belongs to a larger theory of opposition to political authority which also covers the theories of revolution, of civil disobedience, and of emigration (Buchanan 1991: 323, 342).

Buchanan collected and critically examined all existing types of reasoning, backing secession based on (Buchanan 1991a: 29-71): (a) liberty (e. g. in the falling USSR); (b) diversity (promoting an inter-state arena from James Stuart Mill); (c) preserving liberal purity (the liberal paradox could cause a rise of illiberal groups within the framework of a tolerant political system and "the possibility of secession could undercut the justification of revolution") (Buchanan 1991a: 34-35); (d) limited goals of political association (group "to withdraw itself from the political union, at least if it was an autonomous or sovereign political entity at the time it entered into the union"); (e) making entry easier (e. g. entering the EU in case of potential secession guaranteed by the contract); (f) escaping discriminatory redistribution; (g) enhancing efficiency; (h) the right of pure self-determination or nationalist argument; (i) preserving cultures; (j) self-defense; (k) rectifying past injustices; (l) consent.

Buchanan immediately denied arguments based on consent and national self-determination. He gave only limited legitimacy to preserving cultures (Buchanan 1991: 342) and to a political association described in case (d). On the contrary, both past injustice and discriminatory redistribution deserve the strongest support (also see in Buchanan 1991: 342) and, under certain conditions, the self-defense argument could also be justified. Buchanan admitted that "a variety of considerations taken together make a strong case for a moral right to secede under certain circumstances (Buchanan 1991a: 74).

Most importantly, Buchanan grounded his own moral theory of secession on, firstly, moral wrongs which must be perpetrated against the group which wants to claim a just cause for secession (see condition 1 or 2) or, alternatively, on *special* rights (see 3), which Buchanan later added to his moral theory. Additionally, he also formulated just conditions for the seceding group (see all 4-6):

- "Violations of human rights (Buchanan 1997: 55), which appear if the physical survival of the group's members is threatened by actions of the state" (e. g. Kurds in Iraq during Saddam Hussein) (Buchanan 1997: 37),

- “Unjust conquest of a sovereign state” (Buchanan 1997: 55), which could apply for the Baltic Republics (Buchanan 1997: 37).
- Under certain circumstances, the *special* right to secede exists if:
 - the state grants a right to secede (e. g. Norway from Sweden in 1905),
 - the constitution of the state mentions the right to secede (Constitution of Ethiopia in 1993),
 - the state was formed from originally independent political units and the founding agreement implicitly or explicitly includes an option for future secession (Buchanan 1997: 36; Buchanan 2003 [1998]: 29).
- Requirements of the seceding group must be recognized “in international law or international political practice” (Buchanan 2003 [1998]: 37).
- Secessionists' resources must be appropriate and consistent with distributive justice (Buchanan 1997: 37 dle Self-determination; also Buchanan 2003 [1998]: 29)
- Secession does not deprive children and later descendants of the secessionists of their fundamental rights and liberties (Buchanan 1991: 342), which he applies also for minority groups in territory taken by secessionists. The new state must simply recognize human rights for all its citizens (Buchanan 1997: 37 dle Self-determination; also Buchanan 2003 [1998]: 29).

Buchanan strongly condemns secession from a rights-respecting state if performing “perfect justice to all citizens and perfect security for all prevail” (Buchanan 1997: 56; Buchanan 2003 [1998]: 29). His concern against secessionism based on plebiscitary or national self-determination arguments stem from the reasoning that if such a liberal provision was a part of international law, it would encourage even just states to activate unjust behavior. In order to protect territorial integrity, states could act violently in order to prevent any groups from formulating a right to secede (Buchanan 1997: 52). Another argument against secession based on plebiscitary majority is based on his favorable position towards the values of consensual democracy that could be defected (Buchanan 2003 [1998]: 21) if secession would not be considered the last resort. On a similar basis, Buchanan raises objections against the ethnically based right to secede. Advocates of such a solution support the value of secession instead of supporting ethnic and cultural pluralism within the borders of an existing state (Buchanan 1997: 55). In this context, he warns that the majority of secessions in the world resulted in a large-scale violence with significant violation of human rights and massive destruction of resources (Buchanan 1997: 44-45). Secession worsened ethnic conflicts as most of the secessionist groups had an ethnic origin and, after the secession, other ethnic groups often became the oppressed minority in a new born state. Moreover, some of the members of the seceding ethnic group remain located on the territory of the former state and are even more vulnerable to discrimination than before the secession.

Buchanan favors a *morally legitimate interest* of states in maintaining their territorial integrity. And he holds that opinion in the name of liberalism and *morally legitimate interests* of individuals and groups. Recognition and protection of the territorial integrity of states in international law serves to protect and support individual values. Effective and *just* states are able to (a) enforce a functional legal order, (b) protect the physical security of individuals or groups, (c) preserve their rights, and (d) enable citizens' rights to political participation (Buchanan 1997: 45-47, 49). Moreover, only secession based on just causes is in accordance with

the standards of international law and does not pose a threat to the territorial integrity of the states (Buchanan 1997: 44-45).

National self-determination theories

Unlike Buchanan, David Miller values the self-determination of nations, the value of a nation or nation-state over the issue of current international order grounded in an established state-system. Miller seeks an answer to the question “when might national groupings presently included in a large multinational state or empire legitimately secede and found a state of its own (Miller 1995: 2)?” Miller brings the idea, borrowed from Kymlicka, that culture is a vehicle for individual autonomy. To Miller, democracy and even social justice are inseparable from the value of a nation (Miller 2003:269).

According to Miller, there are three reasons for which the national self-determination deserves support:

- National self-determination could well express *collective autonomy* (Miller 1995: 88-89). For Miller, many activities within a state require the voluntary co-operation of citizens. This condition could be accomplished if citizens trust their state and one another. National self-determination expressed in statehood fits best into the condition for a “viable political community” (Miller 1995: 90:91). He considers a nation “as a source of personal identity and as an obligation-generating community (Miller 1995: 82).”
- Protection of national cultures. When there is a state exerting its authority over more nationalities, dominant groups are tempted to use their superiority to assimilate minority cultures (Miller 1995: 85).
- When a single state includes two or more nationalities, Miller suggests that the state could organize itself as a federation, so that each constituent nationality could exhibit its distributive justice and social practices rather independently. This would make distributive justice more effective and, more importantly, the state would gain the legitimacy of its citizens.

But back to the key question: when is such a secession a just cause? Without any other conditions, Miller acknowledges the *claim* to self-determination of national groups, but he does not provide them with the *right* to do so without some additional notes (Miller 2003 [1998]: 62). Miller suggests the following conditions (Miller 1995: 113-114):

- The national identity of G is clearly distinct from national identity of S and the national identity of G could not be protected and developed in the framework of limited autonomy granted by S.
- The territory demanded by secessionist group G cannot be inhabited by a minority group X with a culture strongly incompatible with G so as to prevent discriminatory situations between G and X, which might have occurred previously.
- Another minority group G in the remaining state could become even more vulnerable to hostilities from the majority S.
- Seceding group G must be able to argue well enough over the territory which the group wants (Miller 2003 [1998]: 69). There must be a clear link between the historical identities of nations and their territories.

- Miller further stresses the importance of political authority, the rights of minorities, and also economic justice after secession (Miller 2003 [1998]:64). It means that both the seceding group and the group in the remaining state must have sufficient resources for viability of both states and execute a policy of distributive justice within their territories. Taking into account the ethnic heterogeneity of most states in the world, national majorities in both states must avoid executing discriminatory policy towards minorities (Miller 2003 [1998]:70-75).

Moreover, it should not be forgotten that Miller's approval of national self-determination need not to be understood as being in favor of *all* secessionist claims raised by nationally defined groups to be satisfied (Miller 2003 [1998]:62).

Firstly, Miller stressed the importance of differences between *ethnicities* and *nationalities* which “historically developed out of prior ethnic identities” (Miller 1995: 113) in order to “avoid the error of thinking that the principle of national self-determination requires every cultural group to have its own state” (Miller 1995: 113).

Secondly, Miller is aware that secession often leads to conflicts and new ethno-cleavages being formed within new born states – particularly post-colonial Africa. Therefore the principle of self-determination does not last and human rights and equality should be embraced into the concept of just secession. He does not allow secession only because it favors national majority on a clearly defined territory (Miller 2003 [1998]:72). Miller suggests that before making a decision, other democratic options such as autonomy or federalism should also be carefully examined (Miller 2003 [1998]:69). In other words, Miller's ideal political system can be achieved within the borders coinciding with national boundaries (Miller 1995: 86).

Miller's approach referring to the value of a nation is not compatible with Buchanan's one. Miller rejects Buchanan's criteria for right secession completely: Firstly, secession would never be a complete remedy for unjust behavior in the past. Secondly, could secession be justified if the violently annexed state was not legitimate prior to secession? The third objection is raised towards “consensual secession”; he gives the examples of the separation of Norway from Sweden and of Czechoslovakia for a break-up directed only by political elites (Miller: 267-268).

Miller also condemns the pure plebiscitary theory of secession arguing that the issue cannot be resolved by counting the majority or qualified majority on territories not properly defined by the seceding community (Miller 2003 [1998]:64).

The plebiscitary theories

Plebiscitary theories belong to *primary* theories of secession like the theories favoring national self-determination. They assume that secession is legitimate if the majority in a region has a desire to leave the state. There are no additional requirements for an unjustly taken territory or human rights abuse. The seceding group does not have to be defined culturally nor to use some historically legitimate arguments for a territory they occupy (Norman 2003 [1998]: 37).

As early as 1984, Beran acknowledged the majority rule as an essential part of democracy but he calls for conditions on the morality of secession. At the same time, he rejects the idea that such rights should be reserved only to groups claiming *national* self-determination or on the ground

of oppression (Beran 1984: 28). Beran backed this claim by referring to Althusius who suggested the possibility of secession against tyranny without mentioning the rights of nations (Beran 1984: 23).

Beran compared secession to divorce and considers it permissible for a “territorially concentrated group” within a state if it is desired and “is morally or practically possible” (Beran 1984: 23). How did he reach the conclusion that “any territorially concentrated group is a potential candidate for permissible secession?” (Beran 1984: 29).

Beran stresses that for basic values of liberal democracy, and for secession to be morally justified, three related arguments must be taken into account (Beran 1984: 23; Beran 1988: 317): freedom, sovereignty and majority rule.

Freedom. A liberal-democratic state could be considered instrumentally for a maximalization of citizens' freedom. Relations between individual adult citizens and the state are voluntary as citizens could emigrate or change their nationality. Beran further argued for a reformulation of liberal theory which has avoided the question of unity of the state (Beran 1984: 25). Why should voluntary membership be irrevocable in the Lockean state? In a liberal democracy there must be a freedom of opting for a social contract to be canceled or dissolved after reaching consensual unity (Beran 1984: 25).

Sovereignty. Liberal democracy is committed to granting peoples' sovereignty grounded on the moral rights of individuals free to decide about their emigration or nationality. A liberal state must also grant territorially concentrated groups the right to exert their sovereignty through secession (Beran 1984: 26).

Majority rule. Beran disagrees with Lincoln's version of despotism that every seceding minority rejects the majoritarian principle and secession results in anarchy or despotism pointing to the domino theory of secession (Beran 1984: 27). Beran presents the separation of British India into India and Pakistan as not fitting into Lincoln's scheme. He further points out the successful and peaceful divorce between Norway and Sweden in 1905 and Iceland from Denmark in 1944 without triggering any further secessionist domino effect.

Beran's assumptions are formulated on the ground of the liberal democratic theory and on an optimistic belief in human nature (Beran 2005 [1998]: 33). The right to self-determination belongs to *any* community (e. g. village) under the following considerations, requirements and principles (Beran 2005 [1998]: 38, 40; Beran 1984: 30):

- Any citizen has a right to personal self-determination and freedom of political association.
- The seceding group must be able to create an economically and politically viable unit, but secessionists could not occupy a territory with a high share of vital economic resources of the existing state.
- The secessionists do not occupy an area which is indispensable for the original state culturally, economically or militarily.
- The territorial community which gained a territory rightfully has a right for habitation.

- Smaller units are permissible on the principle of voluntary association (revisited version from Beran 1984: 30).
- A decision must be made based on the principle of majority in referendum. If some of the groups do not want to be part of a new state, they could vote for being independent or for remaining in the previous state (Beran 2005 [1998]: 35).
- The secession must be accompanied by a just division of debts and assets.
- The likelihood of severe injustice to a sub-group which is not able to secede – e. g. for being territorially scattered.
- The occupied territory is not within the borders of the existing state (secession would result in the formation of an enclave).

Harry Beran considers the theses of the state holding the rights to territory as conflicting with the liberal democratic theory (Beran 2005 [1998]:36). He turned down the theory of secession based on national-self determination for the following reasons (Beran 2005 [1998]:35):

- Conflict with the democratic principle of consent.
- Cultural distinction matters: it is not clear whether a given group constitutes more than one nation.
- Only considerable size could matter, which is overlooked by self-determination theories. The concept of nation is not applicable to very diverse societies.

Comparison of theories – advantages and disadvantages

Liberalism has been focused primarily on individual liberty and avoided to attack the territorial integrity of established states until the theorists of secession started to question the nature of state borders. Though suggesting different perspectives on moral secession, all three above-mentioned theories of secession originated from liberalism and back its values of individual freedom.

Just-cause theories

Buchanan is not against secession *per se* (Buchanan 1997: 44), but he is strongly against secession from a just-state. Not *any* state, but a *just* state should be considered for its valuable entity rather than secession. Buchanan seems to combine Lincoln's approach in resisting secession from a democratic state with using any options for deepening democracy. From more restrictive attitudes towards secession originally, Buchanan later somewhat liberalized his opinion mainly by adding *special rights* conditions.

However, his condition that secessionism must be in compliance with international law raises more questions than answers. Taking into account the UN Charter, rights of peoples to self-determination were, until the end of the cold war, not understood as rights to secede. In the meantime, more provisions regarding minorities appeared in international law, but, explicitly and implicitly, the territorial integrity of states has been protected and considered of higher value than secession. Another question could be related to the international authority which would make decisions on a just cause. Would it be the UN Security Council or its General Assembly? Or the ad hoc created bodies as was by the EU appointed Badinter Commission for Yugoslavia during its final break-up? More international actors as the EU, UN, USA and some others as was in the case of Kosovo secession? The remedy regarding unjustly taken territories also raises doubts. Is this condition appropriate only if the political regime of the former state

before annexation was not legitimate? And what if the previous territory was formed on a ground which was not just? Could the remedy case related to an unjustly taken territory lead as far back as to the Peace of Westphalia or to prior-to-state tribalism?

National self-determination theories

The case of just secession based on national self-determination seems to be viable in many cases from the end of the First World War. There could be serious doubts related to Buchanan concerning the proliferation of demands for independence by many of the culturally defined groups in the world if this provision became anchored in international law. Some of the cultures have been integrated or assimilated into the larger national body or are disappearing in the time of globalization, while other cultures simply do not claim independence because they are satisfied with autonomy or their status in a federation.

Unlike Buchanan, Miller stresses the value of the nations and nationally defined states with their intrinsic practices. He assumes that citizens wish to share a common identity and to plan together for their own future. Unlike the other theoretical frameworks presented in the text, Miller's theory is more focused on secession *to* rather than on secession *from* (Miller 2003 [1998]: 63). However, in making hierarchical difference between *nations* and *ethnic groups* regarding the rights to secede, Miller suggests the distinction that nations are more prepared to take responsibility over a new-born state. But is it really always the case? Miller also puts forward some other limitations of secession concerning human rights and ethnically homogenous entities. However, there are very few ethnically homogenous states in the world and according to Miller (and similarly by Buchanan), analogously suggested autonomy or federation may sometimes not hinder secession but encourage it (Kymlicka 2005 [1998]).

One of the key arguments for secession formulated by Miller, proper reasoning on the historical link to territory, also needs to be more thoroughly explained. Some nations could easily formulate their claims to territory, particularly if they belong to "old, continuous nations" (Seton-Watson 1977: 6-13).

Nevertheless, "nations by design" (Tilly 1975) or new nations might also claim that they have a rich history and often lapse into defining their own mythological version of their long-lasting historical continuity in which their perennial or primordial past has been often purposely falsified.

Finally, Miller admits that his approach on morality of secession and collective autonomy is narrowly linked with liberal societies and may not be applicable on social reality in Africa (Miller 2003: 270; Miller 1995: 83, 89). However, most of the nationally or tribally defined secessionist threats usually break out in non-democratic political systems. Does it pose serious limits to the usage of Miller's theory?

The plebiscitarian right theories

In comparison to the national self-determination theory, Beran and Wellman present an even more serious attack to statism, which takes for granted the legitimacy of territorial monopoly of existing states (Wellman 2005: 67-70, 86).

Why should we think about liberal ideas only within the borders of current states? In fact, to certain extent both just-cause theories and national self-determination theories do not go beyond the established state-systems. Only the plebiscitary right theories pose a radical threat to current state borders questioning the legitimacy of their delimitation. Beran's perception of the link between morality of secession and morality of borders is further suggesting how pointless it is to think about *horror vacui* without the contemporary states-system.

Plebiscitary theory is the only one explored in the text which allowed not only the potential secession of Western Australia in 1933 but also the secession of New England from Great Britain though there was no referendum for independence. Here, both cases prove that the seceding community may not necessarily be based on nationality and, in the latter case, the viability of the United States after secession from the Crown. However, both mentioned that non-national cases of secession occur rather rarely. Most of the groups aimed at self-determination and secession were based on a nationally based principle from the Congress of Vienna in 1814-1815. On the other hand, the high density of empires, city states and principalities before the Peace of Westphalia suggests the constructive character of contemporary nations and nation-states.

Therefore the plebiscitary theories contain a certain paradox. Taking into account Harry Beran's definition of secession, which should be "*permitted if it is effectively desired by a territorially concentrated group within a state...*" (Beran, 1984: 23), it would be hardly attainable to find such a territorially compact group based on both national and non-national principles in the contemporary world. Even if such a territorially concentrated voluntary group of secessionists crystallizes, how could territorially scattered citizens in the seceding territory organize a plebiscite for staying within the territory of the original state or for secession? Secondly, what if these, territorially interspersed secessionists share only one mutual goal: secession from secessionists? Would seceding from the secessionists and creating a viable new state work just by sharing feelings of animosity towards the secessionists, and not having a shared history, language, economy and so on?

Conclusion

Is it worthy to protect contemporary international order or to facilitate the conditions for crystallization of other states? If so, should the new states be based on nationality only or on the principle of voluntary associations? In the previous part of the text, I argued that all of the three explored theories of secession offer advantages and disadvantages. I assume that all of them could be considered worthy only in a liberal democratic environment and none of them deserves unchallengeable privilege.

I also argue that contemporary states-systems do not guarantee a value for security and stability. Furthermore, due to the globalization process, state borders lost part of their relevance. In this respect, defending the status quo of state borders expressed by just-cause theories will further lose its significance.

Taking into account mixed successes in granting autonomy and federalism in some democratic and non-democratic states, the states-system would be further modified in the near future in favor of new born states most likely based on national principles.

There are two essentialities in democratic parts of the contemporary world: Nations are mostly of a constructed nature. There is also the deepening process of democratization, decentralization and deliberation within the democratic states. Further decentralization of Belgium could result in the break-up of the country. Where would the Germans *want* to go? The potential case of Scottish independence could result in an anti-plebiscite *initiative* in Shetland or the Orkney Islands. I suggest that a liberal-national milieu should be left for further democratization and, *if necessary*, for secession, along the line of a combination between national self-determination and plebiscitary rights theories. Deepening democracy and decentralization could not avoid questioning the nature of borders if they were set up in an unjust past. However, why should different measures be applied to the societies in post-colonial states? Theories presented in the text do not suggest a clear answer. The opposite is true. All of the above-explored theories only explicitly deal with the liberal-democratic environment and avoid focus on highly interspersed and non-democratic states. Nevertheless, the likelihood of secession is much higher in the former third world states.

Primary right theories should also take into account these post-colonial countries and overcome the fear, if the theories would be applied, that these countries would return to “bad” tribalism.

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