
Examining Normative and Applicable Aspects of the Plebiscitary Theory of Secession

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Abstract

In this article, I rely on the reflective equilibrium methodology in providing a critical overview of the strongest and weakest arguments through which prominent proponents of plebiscitary secession theories defend the right to (unilateral) secession from internationally recognised states; a right that should – in their opinion – be achieved via referendums. By doing so, I demonstrate that the said right – although conceivable in the realm of normative theory – is rarely applicable in practice in a meaningful/justified manner. Instead, more often than not, it is prone to being (mis)used as an excuse for validating interest driven and unethical political conduct, either by separatist/irredentist nationalists or by regional/global powers that support such secessionist causes (as a part of their own geopolitical strategies). In fulfilling the main aim, I therefore argue that plebiscitary theories of secession do not provide answers to questions concerning the likelihood of just implementation of the said right in real-world cases, while their theoretical arguments come across as incomplete when dealing with the relationship between individual and collective rights, but also with issues concerning the nature and motives of contemporary secession movements.

Keywords: secession, ethics, plebiscitary theory, territory

Examining Normative and Applicable Aspects of the Plebiscitary Theory of Secession

Contemporary political philosophers have developed three theories concerning the right to (unilateral) secession from internationally recognised states. Remedial theories argue that the right to secession does not override the political obligation towards a just state, except in exceptional cases (Buchanan, 1991. pp. 152–157). Ascriptive theories claim that only peoples (as pre-political communities) have the right to reclaim political authority and territorial sovereignty that they delegated to the state (Miller, pp. 81–90). Supporters of plebiscitary (or plenary/associative/choice) theories argue that any group of individuals has the right to reclaim complete political jurisdiction over the area that they reside in and the land that they own (Beran, 1984, pp. 23–25). This position – which corresponds to the contractualist view that the state of nature ended with the signing of the social contract – is justified through following arguments.

The last group of the aforementioned theorists refer to the freedom of association, thus opposing the assumption that the obligation towards modern states is more important than this freedom. They do this in two ways, both of which can be described as radically democratic. Plebiscitary theorists who rely on contractualist arguments believe that there is no sufficiently valid reason to remain in a political community just because your ancestors decided to be a part of it. The existing state (which – among other things – encompasses the current constitution and the international borders within which this constitution is implemented) can be viewed as legitimate only if the current generation consents to reside in it, while consent can be active or passive in nature. Therefore, the state can be understood as being legitimate if no citizen calls its constituent components into question (Beran, 1984, p. 25).

However, if individual citizens express dissatisfaction with the current political system, they (like their ancestors, the founding fathers of the existing country) have the right to change that system, and a referendum on secession

is one of many justified instruments for implementing such a decision. Such a position is consistent with the liberal-democratic claim that freedom is one of the most important values, that freely associated individuals are the source of state sovereignty and that political decisions should be made on the basis of a majority vote. In other words, just as the citizens of all democratic countries have the opportunity to replace the old government and elect a new one, a group of freely associated individuals – claim the proponents of plebiscitary theories – also has the right to democratically choose to form a new state on the territory of an existing one, if they believe that secession will allow them to create a political community that better suits their interests. Beran (1984, p. 23), for example, believes that sincere democrats do not have a strong enough reason not to view the possibility of forming a new state as just another issue that should be resolved by voting.

Although most representatives of associative theory develop their normative claims by referring to the right of associated individuals to decide on how they want to organise their own political communities, some authors argue for the right to secession by challenging the legitimacy of existing countries, claiming that they essentially lack political (democratic) legitimacy, but also that they cannot justify the reach of their own sovereign power, that is, the position of international borders within which they operate. Unlike their colleagues who rely on the social contract theory, they argue that modern states and their borders are the product of historical circumstances, such as wars and conquests, which consequently makes them unjust. Their citizens must therefore have the right to form new countries, those which would be legitimate from the moment of their creation.

However, no proponent of the plebiscitary school of thought argues for unconditional secession, because it is clear that the right to secede must be limited if undesired consequences are to be avoided. Some of the basic conditions in this regard refer to the fact that the seceding community must be numerous and territorially concentrated. Although advocates of associative theory have yet to devote more attention to precisely defining the conditions

that make secession a just act, it is clear that they argue that newly created states must be functional and fair democracies, while their creation must not endanger the political or economic stability of the countries from which they are breaking away (Wellman, 2005, p. ii). They also believe that the emerging state must guarantee the right to secession to all groups that want to leave it, because the initial act of territorial separation cannot otherwise be morally just (Beran, 1984, p. 30).

Furthermore, since a certain number of individuals will always remain within the state that they do not wish to reside in (be it the newly seceded state or the old one), philosophers who defend plebiscitary theory – such as Daniel Philpott (1995, p. 356) – argue that seceding states must guarantee rights identical to those that their citizens possessed within the previous political system, but also additional rights (where such rights are necessary). Most of them also argue that seceding groups must not begin the process of territorial separation before it becomes evident that the old state will be able/willing to provide its citizens with a level of rights equal to the one they currently enjoy. Daryl Glaser (2003, p. 372) represents an exception in this regard, as he argues that secession is justified if there is an overall net increase in the level of democracy in both the old and the new state. Nevertheless, despite some disagreements on certain issues, all proponents of plebiscitary theories agree that the will to secede is best expressed through referendums, as indicated by the name of theories that they advocate. The text that follows relies on the reflective equilibrium methodology in fulfilling the main aim; that is, in providing a critical overview of the strongest and weakest arguments through which prominent proponents of plebiscitary secession theories defend the argument that (unilateral) secession from internationally recognised states should be achieved through referendums.

Advantages of Plebiscitary Theory of Secession

The presented arguments, through which representatives of plenary theories favour individual freedom over political obligation towards the state

– that is, arguments through which they derive the right of secession from – point to several advantages that the plebiscitary approach achieves when compared to the opposing normative theories of secession. First of all, by relying on the claim that only individuals are capable of making independent decisions, proponents of plebiscitary theories avoid some of the theoretical and epistemological difficulties encountered by ascriptivists (but also many remedialists) when presenting their own arguments. For example, they – unlike ascriptivists – do not have to demonstrate that groups also possess (collective) rights, just like individuals. All they must do is take the simple position that secession represents an individual right, the application of which is initiated by individuals through political association, and not a collective right that is possessed by the community that those individuals belong to. Even those advocates of plebiscitary theories who believe that secession must be understood as a collective right (because of its evident communitarian characteristics), do not think that renouncing the individualistic logical apparatus is necessary in this respect. On the contrary, they are of the opinion that political rights of individuals are projected onto communities (if individuals are unable to consume them alone), but not owned by those communities (Wellman, 2005, pp. 41–42).

Proponents of plebiscitary theories thus argue that the opposing theories of secession unjustifiably limit the right to external territorial self-determination of some individuals, either by supporting the most prominent ascriptive criterion (according to which only politically formed nations have the right to independence) or by supporting the basic remedial ultimatum (according to which only communities that have suffered injustice have the right to separate from the existing state). They argue that plebiscitary theories fare better in comparison to the two other normative approaches, because – for example – the latter school of thought unjustifiably favours certain individuals over others, by ignoring the fact that not all people belong to nations, at least not in the full/classical sense. While plenary theories abide by the principle of equality (by taking the position that every person

has the freedom of association with the aim to secede), ascriptive theories seem to disqualify cosmopolitans, because of their distinctly supranational and non-territorial identity.

On the other hand, in the eyes of their advocates, advantages of plebiscitary theories – when compared to the remedial approach – are multiple. First, advocates of plebiscitary theories claim that remedialists place groups that were not discriminated against in an unequal position, by granting the right to secession only to those communities that suffered injustices. By doing so, remedial theories seem to motivate peaceful groups to commit strategic violence with the aim of provoking retaliation from central authorities of their states (in order to fulfil the condition of 'injustice suffered'), therefore establishing 'group suffering' as political currency that can be useful and profitable in practice, thus calling into question the validity of their normative and ethical assumptions and conclusions.

Secondly, since citizens of modern democracies are free and capable of choosing persons whom they want to marry, whom they want to form a business with or establish any other union (and leave it when they wish to do so), supporters of plebiscitary theories claim that there is no reason for the state to be an exception in this regard. In comparing the right of secession to the right of divorce, they conclude that forcing individuals to remain in any country against their will is as immoral as obliging a married person to remain married despite his or her intention to file for divorce. It follows that one of the main advantages of choice theories lies in the fact that they base their argumentation on the justified assumption that adult relationships must be based on mutual and voluntary consent; an assumption that leads to the conclusion that secession is a right that autonomous individuals possess by their very nature.

While comparing plebiscitary theory with other secession theories is important in terms of outlining its strengths, it is important to consider some of its advantages that are more general in their nature. For example, Wellman (2005, p. 2) believes that the most significant advantage of the named

ethical standpoint lies in the fact that it strives to enable the largest possible number of people to choose the country that they want to live in. Although an international order that would guarantee an independent country to every group desiring complete political independence is unthinkable, there is no reason not to strive for the establishment of a world order that would support peaceful secession in cases where independence is practically achievable. As the aforementioned author points out, allowing for a plebiscitary right to secession would not motivate groups to start seceding from countries that they belong to for no reason. Rational individuals are aware of the fact that establishing a new state is a difficult task and will not choose to endanger the existing political and economic order without a valid reason. It follows that secession, as a right that citizens invoke only when there is a strong need for its application, should not be limited by requirements other than the minimal requirements put forth by plebiscitary theories (i.e., territorial concentration of seceding groups).

Accepting the minimally conditioned right to secession would also solve the 'tyranny of the majority' problem, because a territorially concentrated minority – whose interests are not taken into account, that is, which is constantly outvoted and left out of the decision-making process – could form its own country. Consequently, states would have a greater responsibility and motivation to be just and tolerant, as well as to strengthen their democratic capacities (especially in the domain of minority rights), in order to avoid separatism (Glaser, 2003, p. 376). Improvement of democracy could be expected even in cases in which minority communities decide to secede after all, because creating a smaller state would reduce the gap between elected officials and citizens. It follows that the right to secession guarantees (at least in theory) that all political systems within which it is accepted will be further democratised, regardless of whether the said right is implemented or not.

Shortcomings of Plebiscitary Theory of Secession

Of course, things are somewhat different in practice, because the

phenomenon of secession is more often associated with violent conflicts than with justified methods of creating new states or democratizing existing ones (Stančević, 2015, p. 62). Therefore, the main weakness of the plebiscitary argument is reflected in its cognitive distancing from the real processes that cause and shape secessionist endeavours. Although collective rights can be based on individual freedoms (especially if we accept the standard starting points of liberal philosophy), basing the specific right of secession on the presumptions of liberal individualism inevitably produces an abstract theory that ignores key motives of real-world secession movements.

Namely, independence is – in practice – almost never declared by groups of freely associated individuals, but rather by nations. The primary cause of secession in most cases is not the aspiration to establish a better democratic government within the new socio-political system. It is difficult to imagine that the citizens of stable democracies (such as the citizens of the United Kingdom or Spain) would be ready to engage in the not-so-easy process of forming a new state just for the sake of establishing a somewhat more efficient political system, especially not if we perceive them as rational and primarily interest-driven individuals, as proponents of plebiscitary theory and individualistic liberal philosophy do. The desire to secede should, therefore, be sought elsewhere, and the discourse of separatist campaigns best demonstrates that it often rests in the (sometimes politically and economically irrational) desire for national self-determination and/or unification. Thus, it can be concluded that plebiscitary theories unjustifiably equate the struggle for national self-determination with the struggle for greater political freedoms of individual citizens.

Further shortcomings of plebiscitary theories can be divided into three groups. The first set of shortcomings is theoretical in nature, as it questions whether collective rights – such as the right to secede – can be derived from the freedom of association, being that it is primarily an individual freedom. The second criticism of plebiscitary theories is related to their rather unconventional understanding of the state. Finally, the third group

of shortcomings is reflected in certain procedures proposed by proponents of plebiscitary theories when discussing potential institutional mechanisms through which the right to secede should be implemented.

When it comes to the theoretical shortcomings of the plebiscitary ethics of secession, the unsustainability of the arguments through which proponents of the given normative approach try to establish the collective right to territorial separation must be emphasised. In their attempt to avoid recognising communities and groups as moral agents (by establishing individuals as the only holders of the right to secession), proponents of plebiscitary theories falsely equate participation in the democratic process (i.e., such as voting) with the act of sovereign decision-making. Consequently, they come to the unfounded conclusion that citizens can be (that is, that they actually are) perfectly autonomous political actors; a conclusion from which they infer that individual freedom of association is not limited in any way, not even by the need preserve the territorial integrity of existing states.

However, it can easily be proven that the democratic principle of "majority rule" actually excludes the possibility of complete political self-determination of the individual, which makes any attempt of deriving the right to secession from individual freedom of association unfounded (Buchanan, 1998, p. 17). In other words, the argument is that citizens of contemporary democratic states simply cannot be viewed as sovereign political decision makers. On the contrary, they symbolically delegate their political power to others (by voting), as they choose the candidates that they wish to see elected, with the outcome of the election depending on the sum of all votes. It thus follows that it is the entire political community – and not each individual who resides within it – that is truly autonomous in making political decisions. And since the right to secession is territorial in its nature – meaning that it can, consequently, only be exercised by autonomous actors capable of achieving territorial sovereignty (actors such as nations) – the said right must be understood as a collective right, and not as an individual right.

Therefore, the right to secede from the state does not reside in the

individual, not only because the individual is not capable of applying it without joining a group (which is a fact recognised by some members of the plebiscitary school of thought), but also since the individual does not possess neither political nor territorial sovereignty; two essential components of autonomous decision-making from which the right to secede and the capability of drawing new international borders can be derived. Citizens, therefore, can only become independent as members of a group that chooses to leave the existing state, but they cannot be the bearers of the right to secession (as individuals), nor can the justification of the said right arise from their freedom of association. It must not be forgotten that the freedom of socio-political association of individuals (which they certainly possess) is not synonymous to the freedom of disintegrating existing institutions, nor to the freedom of territorial separation from existing states.

The analogy between secession and divorce, on which advocates of the plebiscitary approach often rely, is also questionable. While divorce is carried out according to predetermined laws that are interpreted by authorised courts, the act of secession takes place – at least from the moment in which separatists impose it as a matter of international importance – in a specific type of legal vacuum within which the principle of national self-determination and the principle of territorial integrity are constantly competing for primacy. This is why the outcome of any secession attempt mainly depends on objective power and interests of key international actors. It follows that the right to secession – unlike the right to divorce – is not reciprocal, because the parties concerned (unlike to two people in a marriage) do not enjoy it equally (Aronovitch, 2000, p. 30).

In addition to the already mentioned weaknesses of plebiscitary theories, it is also important to comment on the oversights that some plebiscitary theory proponents make when claiming that secession is justified because states are not the product of voluntary consent, but of historical circumstances. In order to refute this overly permissive attitude towards the act of redrawing borders, two counterclaims can be put forth. First, the fact that modern states

were not formed through explicit consent of (all of) their citizens – and the fact that most of existing countries were indeed created through war and conquest – does not exclude the possibility of their rehabilitation. This argument is especially valid in cases where injustices were committed in the distant past, having little or no direct impact on the current socio-political situation. Building a just and democratic political system requires a painstaking multi-generational effort that cannot simply be nullified by the fact that modern states are unable to justify the source and the scope of their own territorial sovereignty through contractualist rhetoric.

Second, if we assume that existing international borders are unjust, we indirectly call into question the morality of borders as such. The very act of drawing a demarcation line demands – by definition – that ‘the other’ be excluded, which implies that such an act (if viewed strictly from the position of plebiscitary theories, which argue for the necessity of voluntary consent) cannot be moral, due to its exclusive nature, except in cases where the desire for demarcation is mutual, and the geographical position of the international border is agreed upon. And since it is difficult to imagine a scenario in which every international border is accepted by citizens who live on both sides of the demarcation line, it is clear that even the best-conceived redistribution of the territory must ignore the will of some individuals. In order to confront this problem, plebiscitary theorists argue that it is necessary to take the will of the majority into account, which means that borders should be established in line with the aspirations of the largest number of people. However, this conclusion inevitably leads supporters of the plebiscitary normative approach (primarily those who believe that the act of redrawing of international borders is permissible due to the lack of original/democratic legitimacy of existing states) to a whole series of problems, such as – for example – the problem of favouring individuals that belong to large (and therefore more numerous) groups/nations.

Problems (albeit of a different nature) are also encountered by advocates of plenary theories who – when challenging the moral validity of contemporary

states – manage to resist the superficial appeal of majority decision making. Some of them fall into the well-known traps of philosophical anarchism, since – by denying the legitimacy of already established international borders – they inevitably call into question the justification of the state as an institution. On the other hand, others encounter difficulties similar to those faced by radical cosmopolitanism, since their rationale – which argues against demarcation, but not against the state – seems to establish a single global state as an option without an alternative. It therefore seems that plebiscitary normative ethics produce a multitude of issues, those far more problematic than the problems which they initially aim to solve; such as the problems which arise from remedial and ascriptivist theories of secession.

Other weaknesses of the plebiscitary normative approach are of a technical nature, as they are related to the way in which advocates of associative theories conceive the democratic procedure of leaving existing states. One of the most conspicuous failures in this regard is that plebiscitary theorists have not clarified whether the secessionist – who fail to realise their ambitions at the first referendum – have the right to strive for a second referendum on secession. Therefore, they also failed to consider the important question of how much time needs to pass between two referendums in order for the latter plebiscite to be justified.

Even those carefully considered plebiscitary theory proposals, such as those of Glaser or Beran, suffer from certain shortcomings. The first of the two mentioned authors (who claims that only those citizens who have resided on the seceding territory for a sufficient amount of time can participate in the secession plebiscite), does not take into account the interests of individuals who, although they do not live within the bounds of the given territory, own real estate and/or companies that operate within its borders. On the other hand, Beran's proposal – although it provides a useful framework for thinking about the procedure of secession – does not go into sufficient detail, as he fails to deliberate on specific mechanisms of achieving independence in a democratic and just manner. Consequently, it remains unclear whether it would be better

to only organise one classic plebiscite or a series of cascade referendums on secession. It is also not made clear whether it is better to stick to the simple majority principle or some other democratic principle (i.e., absolute majority principle).

Finally, the fact that philosophers and political scientists who advocate plebiscitary theories only consider peaceful scenarios of secession represents perhaps the biggest practical weakness of the plebiscitary approach to secession. By considering and developing only those institutional solutions that depend on the political will of the state to allow for a vote on the issue of secession to be held, all procedures that could be useful in resolving secessionist disputes in situations where the state does not accept the possibility of losing territory are overlooked.

Conclusion

Plebiscitary ethical theory consequently remains incomplete, as it does not develop arguments for practical cases of secession, in which the outbreak of violent conflicts is an objective possibility. Thus, following questions remain unanswered: Is the right to form a new state non-existent in situations where the outbreak of violence is a realistic threat? If so, doesn't such a conclusion establish the threat of force and provoking violence as a justified method through which existing states can deny the said right? Isn't such a conclusion directly opposed to other claims made by the proponents of the said school of thought? Consequently, how should the right to secession be implemented in practice in cases in which states oppose its implementation, if avoiding violence is the goal? Are negotiations between the two conflicting parties the best solution and in what format should they be conducted; with intermediaries (and which intermediaries) or without them? Is interventionism justified if negotiations of such kind fail and violence occurs? Also, if negotiations succeed, is international presence justified (with the goal of monitoring the implementation of the agreement achieved between secessionists and central authorities)? In other words, in what form and to what extent is international presence desirable?

As they do not offer answers to the aforementioned and related dilemmas, conclusions put forth by plebiscitary theorists seem rarely applicable in practice. Thus, the implementation of their moral arguments does not seem feasible in the context of contemporary international and interstate relations.

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Razmatranje normativnih i primenjivih aspekata plebiscitne teorije secesije

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Sažetak

U radu koji sledi, oslanjam se na metodu uspostavljanja refleksivne ravnoteže kako bih pružio kritičku evaluaciju najboljih i najslabijih argumenata putem kojih pobornici plebiscitne teorije secesije pravdaju pravo na (unilateralno) otcepljenje od međunarodno priznatih država putem referenduma. Na taj način ukazujem na činjenicu da se pomenuto pravo – iako je njegovo postojanje dokazivo u domenu normativne teorije – u praksi zapravo retko kada može primeniti na smislen i pravedan način. Naime, ono se često koristi/zloupotrebljava kao izgovor kojim se stremi pravdanju neetičkih i interesom vođenih političkih poduhvata, bilo onih koje preduzimaju separatisti/iredentisti ili regionalne/svetske sile koje secesionistima pružaju podršku (radi ostvarivanja sopstvenih geopolitičkih ciljeva). Stoga – u nameri da ostvarim primarni cilj rada – argumentujem da plebiscitna teorija secesije ne daje odgovore na mnoga pitanjima koja se tiču optimalnih načina primene pomenutog prava u praksi, pri čemu i teorijska argumentacija koju razvija ostaje nedorečena u pogledu definisanja odnosa između individualnih i kolektivnih prava, ali i u domenu sagledavanja prirode i motiva savremenih secesionističkih pokreta.

Ključne reči: secesija, individualna prava, kolektivna prava, teritorija