

# **SELF-DETERMINATION AND SECESSION**

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## Abstract

This paper looks at the phenomenon of self-determination and secession. More specifically, it answers the question: Does a right to self-determination entail a right to secession? I hold that a right to self-determination generates a right to secession, but a defeasible one. The self-determining group has to meet a number of other criteria: it has to show that a majority of the group supports the claim, it has to have a morally eligible claim, it has to be willing to negotiate, it has to be mindful of the possibility of large-scale violence. The debate around secession is between the self-determination camp which holds that the group has a primary right to secession and the remedialists who hold that groups are eligible for secession only in cases of grave injustices. I propose an intermediary approach centered around the political negotiation process. I do not draw clear lines between the cases that qualify for secession and those that don't. Instead, I defend a broad right to self-determination based on the concept of political legitimacy, but hold that such a right has to be reviewed throughout the negotiation process. A grievance generates a stronger claim to secession, but when a clear majority is in favor of secession, we should not dismiss this claim as illegitimate either. Change is a constant in internal relations. Borders have changed and will continue to change. We should accept this as a natural aspect of the system. Instead of creating theoretical frameworks that categorize cases a priori, we should be more flexible as new cases arise.

**Keywords:** self-determination, secession, remedial theory, justice, legitimacy

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## Introduction

If one looks at a world map every 50 years or so, one sees how fluid borders are. From the monarchical states of the Middle Ages to the colonial empires of the 18th century, to the national states of the 19th century, to the communist federations of the post WWII, to the EU, people keep experimenting with different political borders. Ideas move people and people change borders. What legitimates borders theoretically? When can a group rightfully join or secede from another state? This paper looks at the second question: when does a group have a claim to secession? Secession refers to the withdrawing of a group of people from an existing political entity, redrawing in this way the borders of this political entity. Self-determination, the other frequently used term of this paper, means the political claim of a group for self-governance.

In line with previous historical developments, the borders of today keep changing and keep being challenged. From 1947 until 1991, there was only one successful attempt at secession, Bangladesh (More, 1998). From 1991, the world map has seen many changes resulting from the disintegration of the Soviet Union, Yugoslavia, and Ethiopia (More, 1998). Many other open cases such as Quebec, Catalonia, Palestine, Kashmir, Crimea, Nagorno-Karabakh, South Ossetia are still being negotiated or fought over (More, 1998). The secession movements of the 90s as well as ongoing struggles for secession have recently sparked the interest of normative thinkers on secession (More, 1998; Buchanan, 2021). On one hand, there is a group that feels sympathetic towards national groups that fight for self-government (Brubaker, 1998). On the other hand, there is a group who warns of the havoc that such movements can create (Brubaker, 1998).

When it comes to this issue, international law does not seem to have a clear answer either. The UN Charter, for example, in Article 1 states that one of the missions of the UN is “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”. However, this right does not necessarily entail secession (Buchanan, 2003; Horowitz, 1998). Article 1 is qualified by other articles of the Charter that uphold territorial integrity and speak against interference in internal matters of a state (Moore, 1997). Generally, there is a strong preference for maintaining borders (Horowitz, 1998). The international system is a state-centered system (Horowitz, 1998). In fact, being a member of the UN means that your territorial integrity is acknowledged by all (Horowitz, 1998). There is only one type of secession that international law acknowledges, that of a former colony breaking tie with its colonizer (Buchanan, 2003). Two other types of secessions could be justified under international law, unjust annexation and a racial system, but with more difficulty (Buchanan, 2003). Even in such cases, the principle of *uti possidetis*, of keeping borders as they were historically drawn, takes precedence (Buchanan, 2003). But then, many states who have been recognised as new states and accepted in the UN, do not fit under any of these categories (Horowitz, 1998). The inconsistency of the application of already ambiguous laws has made the matter even more ambiguous (Horowitz, 1998).

But how should we normatively think about secession? When is it permissible for a group of people to secede? The answers to the question can be divided into two big camps: the remedial theory camp and the primary rights camp. The remedialists hold that a group has a right to secession only in case of a grievance. The primary right proponents say that a group has a right to secession if they show a clear will in favor of this solution, without any further requirement.

In this paper, I propose an intermediary approach centered around the political negotiation process. I do not draw clear lines between the cases that qualify for secession and those that don't. Instead, I defend a broad right to self-determination based on the concept of political legitimacy but hold that such a right must be reviewed throughout the negotiation process. A grievance generates a stronger claim to secession, but when a clear majority is in favor of secession, we should not dismiss this claim as illegitimate either. A claim to self-determination does not automatically entail secession. The self-determining group must meet several other criteria: it has to show that a majority of the group supports the claim, it has to have a morally eligible claim, it has to be willing to negotiate, it has to be mindful of the possibility of large-scale violence.

There are two main aspects to my theory. First, I put the emphasis on the political process, rather than any perfectly delineated theoretical criteria. I do so because I believe secession will ultimately be handled politically, regardless of whether the seceding state meets the criteria or not. Secession claims affect several parties; a successful and peaceful secession is only possible through a political agreement. A good theory should lay out principles that will guide this negotiating process rather than categorizing what can and can't be negotiated. I also put the emphasis on the political process because I believe that fundamentally, a self-determining group wants to fix a problem. By providing them a platform to do so, we could solve the problem without violence. Otherwise, the sides might choose more radical ways. Through a negotiating process, both groups can come to an acceptable middle group. The other aspect of my theory is that I start by acknowledging a broad claim to self-determination. I do so for two reasons. One, I think it is an inherent right of any group to govern themselves as they best see fit. Second, I do not want to leave out claims a priori. Every case deserves a

hearing. By doing so, I also acknowledge that a group has the right to secession even when it lacks a demonstrable grievance. However, I maintain that a right to secession is defeasible in light of other considerations.

For easy navigation, I will give a brief outline of the paper. The first part scans the literature on secession. It looks at the three main theories, the remedial, national self-determination and plebiscitary theory, as well as the criticism surrounding the national self-determination view as a violent and dangerous view. Even though the criticism deals specifically with national self-determination, I expound on that criticism because I think it applies more broadly to unilateral secession. As such, it should be taken into account when defending a right to unilateral secession. The second part grounds the right to self-determination on the concept of political legitimacy and freedom. Here I explain that a state is legitimate to its citizens insofar as the citizens subjectively feel co-authors of that state. It is not sufficient for people to be beneficiaries of state justice; they have to be makers of it. Only in this way, do they exercise full freedom within their social reality. The third part specifies who the self-determining group is. I define the self-determining group as the politically organized group, not bound to any existing territory or nationality. They might be bound to a territory or nationality, but they need not be so. The fourth part reviews the considerations that motivate some thinkers to see secession as a last-resort tool for extreme cases. I challenge the claim of the remedial theory that a conservativeness regarding secession decreases violence. I suggest that if we monitor self-determination claims early and start a negotiating process to accommodate such claims, we might avoid violence. I also challenge the view that secession should be limited to the cases that the law currently allows. I think theory should inform legislation, not the other way around. The final part looks at when a right to self-determination generates a right to secession. I first acknowledge a right to secession, but I qualify it by further criteria.

# Literature Review

## The Remedial Theory

The remedial theory of secession states that secession is only allowed in cases of grave injustice towards the seceding group (Buchanan, 2003). Remedialists keep a conservative approach towards secession, because of the potentially dangerous consequences it could have (Buchanan, 2003). They say that like revolutions, secession can only be used as a last resort tool to be freed from oppression (Buchanan, 2003). They do not acknowledge that a group, especially a national group, by virtue of being a distinct group has any right to secession (Buchanan, 2003). They do not remove the national aspect from consideration entirely; in fact, Buchanan (2003) acknowledges that it might be national groups that suffer oppression. However, the group does not have a right to secede prior to an injustice happening to it (Buchanan, 2003). Different theorists differ on the level of injustice they're willing to accept as justifiable (Buchanan, 2021). Allen Buchanan (2003) lays out three possible reasons for secession: in case of mass violations or genocide, unjust annexation and the breach of an autonomy agreement. The first two are clear cases of injustice. Buchanan (2003) chooses to add a further category, that of autonomy breaches, because he finds that many cases of secession could be prevented if states respected the intra-state autonomy agreements to which they had previously committed.

The remedial theory of secession is based on the justice theory of territorial rights (Buchanan, 2003). Under this theory, a state enjoys legitimacy over its territory if the state is just toward its citizens; therefore, a state ceases to have legitimacy if it violates the rights of its citizens (Buchanan, 2003). In such cases, these citizens who are being treated unjustly, are morally justified in attempting to break from the state (Buchanan, 2003). However, secession remains



a last resort and whenever possible, alternative arrangements are preferred (Buchanan, 2003). Furthermore, under the justice theory espoused by Buchanan, a successful and legitimate secession would not also entail a right to be recognised by the international community (Buchanan, 2003). For that, the seceding group would have to prove that it will be just with its citizens through its constitutional and institutional design (Buchanan, 2003). A good theory, for Buchanan, is one that demonstrates the principle of progressive conservatism, that it is a theory that improves the biggest defects of the system, while still upholding its important values; a theory that incurs the least social costs; a theory that has a clear claim to territory; a theory that creates the right incentives and that is in line with other widely accepted moral principles (Buchanan, 2003). He thinks that the remedial theory does very well on all these aspects.

The Primary Right theories of secession hold that a group has the right to secession if the group chooses so, without the group having to resort to any further reasoning (Buchanan, 2021). There are two branches within this camp, the National Self-Determination branch and the Plebiscitary branch (Buchanan, 2021). They differ in the answer to the question: Who is the group that has this right? National Self-Determination theorists believe that the group that is entitled to this right is the nation (Buchanan, 2021). Plebiscitary theorists think that the group is the majority within a given territory who makes its will known through a referendum (Buchanan, 2021).

### **The National Self-Determination Theory**

Margaret Moore, the most prominent defender of the National Self-Determination concept, believes that a national group, in virtue of being a distinct people, holds a primary right to self-determination (Moore, 1997). Whereas the Remedial theory bases itself on the justice

conception of territorial legitimacy, the National Self Determination theory grounds its legitimacy on the autonomy concept (Moore, 1997). It holds that just as humans are born autonomous with the power to choose over their own lives, so should groups have the right to decide how they govern themselves (Moore, 1997). A nation is not necessarily defined as an ethnic group, but as a group of people who subjectively see themselves as sharing certain cultural traits that make them different from other groups (Moore, 1997). It is not necessary to try to give objective characteristics to distinguish such groups, because it is usually clear who the self-determining group is (Moore, 1997). In fact, when we resort to this thinking, we favor the oppressor who will try to deny that the group has any binding characteristics (Moore, 1997). It is impossible to have a culture-free state (Moore, 1997). All states have to make decisions about the official language they use, the symbols of the state, official holidays etc (Moore, 1997). That's why it is important for the people of these states to feel that they belong to the larger narrative. (Moore, 1997) The theory embraces a healthy form of nationalism rather than an aggrandising form; nations ought to acknowledge the rights of each other to have a state rather than oppress it (Moore, 1997). The theory also claims to have the best solution to the territorial problem (Moore, 1997). A new state is created where the self-determining group resides (Moore, 1997). When we are talking about a group with a concentrated population, then it is easy to draw borders (Moore, 1997). Moore is against a territorial conception of self-determination (Moore, 1998). She sees that as a quick fix with potentially disastrous consequences in the future (Moore, 1998). However, Moore (1998) acknowledges that secession is not always the best option. There are cases where populations are intermixed in such a way that it would only worsen the situation to create new states (Moore, 1998). In such cases, alternative solutions have to be discussed: autonomy agreements, minority rights, constitutional changes (Moore, 1998). So, the primary right to self-determination does not necessarily mean the right to secede (Moore, 1998).

## **The Plebiscitary Theory**

The Plebiscitary theories share with National Self Determination theories the belief that self-determination is a primary right (Buchanan, 2021). Any group who feels that they want to govern themselves should be allowed to do so (Buchanan, 2021). But they differ from each other in two important ways. First, the plebiscitary theories start from a territorial conception of self-determination (Buchanan, 2021). It is not where the national group resides that defines the territory; it is existing borders that are taken as starting blocks (Buchanan, 2021). Second, it is not the national group that has the right to self-determination, but the majority group within the existing territory (Buchanan, 2021). Christopher Wellman, the most prominent defender of this view, holds that a group has a right to secede if a majority decides so and if this majority can create a viable state, while also preserving the viability of the state the group secedes from (Buchanan, 2021). He bases his theory on a functionalist understanding of state legitimacy (Buchanan, 2021). A state has territorial legitimacy if it fulfils its political and economic functions (Buchanan, 2021). If a group believes that they can better carry out these functions on their own, then they are on their right to secede (Buchanan, 2021).

## **Criticism of the Self-Determination Theory**

The National Self-Determination theories of secession are strongly criticized because of their perceived danger. There is a tendency among theorists who hold this view to think that states based on nations solve the national problem (Buchanan, 2003; Holowitz, 1998; Brubaker, 1998); Brubaker (1998) calls this the architectonic illusion. In fact, their opponents suggest, this only exacerbates the problem of violence. That's because of the nature of a nation-state as well as the reality of ethnic intermingling in modern states (Buchanan, 2003; Holowitz,

1998). A nation-state has a nation-building program which puts the emphasis on the majority nation, disregarding or discriminating minority groups (Buchanan, 2003). This has been one of the main causes of ethnic conflict in the past (Buchanan, 2003). If people see themselves not as citizens of a state but as members of a nation, instead of using democratic means, they're more likely to resort to violence (Holowitz, 2003; Brubaker, 1998). Finally, states will defend their territory at any cost, often by the use of force (Horowitz, 1998).

The second problem which is likely to cause violence is that secessions almost never create 'clean breaks' according to Holowitz (1998). In fact, in 9 out of 10 cases, a new minority will emerge in the new state (Horowitz, 1998). Cases are abundant. The USSR disintegrated into several states, but many states today have considerable Russian minorities within their territories, sometimes living in concentrated regions around the border with Russia, which has the potential for future conflict (Horowitz, 1998). The problem of minorities increases the chance of irredentist movements in the future, further destabilizing existing borders (Horowitz, 1998). Then there is the problem of the frozen conflicts of Nagorno-Karabakh, Transnistria, Crimea or Chechnya (Horowitz, 1998). Buchanan (2003) states: "Every state includes more than one nation and there is not a ghost of a chance for changing this without genocide or ethnic cleansing (p. 46)." Holowitz adds that not even methods such as ethnic cleansing or population exchange guarantee ethnic purity as the cases of Bosnia and Croatia demonstrate (Horowitz, 1998). Even though the Serbs committed genocide in Bosnia and the Croats and Serbs in Croatia tried to cleanse each other, these countries still have mixed populations today (Horowitz, 1998). Finally, in the case of a successful secession, we have a new problem, that of two neighbouring enemy states that might start a conflict anytime (Horowitz, 1998).

The other issue with acknowledging a right to national secession is that it could have a domino effect, encouraging all national groups harbouring that hope to choose that solution (Buchanan, 2003; Horowitz, 1998). For example, the Biafra self-determination movement inspired the Ivory Coast while the case of Bangladesh inspired the Baluch of Pakistan and the Tamils of Sri Lanka (Horowitz, 1998). It was the recognition of USSR's successor states that gave an extra assurance to Yugoslav seceding states that they too would be recognised (Horowitz, 1998). As things currently stand with almost all states having minority or national groups, this could mean a total fragmentation of the international system (Horowitz, 1998). Furthermore, nationality is an elusive concept (Horowitz, 1998; Brubaker, 1998). What seems homogenous today may turn out different when we have a new state (Horowitz, 1998). Horowitz (1998) points out that ethnicities have their subethnic cleavages as well. During the Eritrean war for Independence, the Muslim Eritreans never stopped fighting Christian Eritreans (Horowitz, 1998). Brubaker (1998) notes the cyclic nature of nationalist passions with moments of mass mobilization and long episodes of inactivity. He also reminds us that everyday life and everyday people often live a parallel life to the nationalism of public life and media (Brubaker, 1998). Sometimes, these people are more cosmopolitan than we think, choosing for example to watch MTV rather than their national TV as in the case of Hungarians in Romania (Brubaker, 1998).

National Self Determination theorists acknowledge that, because of the aforementioned issues, a right to national self-determination does not always entail a right to secession (Moore, 1998; Miller, 1998). Moore (1998) qualifies the right to secession only in cases when the national group is mobilised, is the predominant group, but not in cases when two different national groups are territorially mixed. To illustrate her point, she uses the examples of Slovenia and Bosnia. Slovenia had a stronger case for secession because 90% of the

population was Slovene and the other 10% were Croats, Serbs, Yugoslav who were not territorially concentrated (Moore, 1998). In this case, an independent state which accommodates minority rights would have been the right solution (Moore, 1998). The case of Bosnia was more complicated. The population was 44% Bosniak, 31% Serb, 17% Croat and the rest considered themselves Yugoslavs (Moore, 1998). Each group had different goals: the Serbian and the Croatian populations wanted to join their respective countries whereas the Bosniaks wanted their own independent country (Moore, 1998). However, they were utterly mixed, and it was impossible to draw clear lines (Moore, 1998). In this case, Moore (1998) says, secession would have exacerbated the situation. The ideal solution would be some form of confederal state that recognised all national groups (Moore, 1998).

David Miller (1998) also suggests a contextual approach to self-determination that considers various elements: the distinctives of national groups, minority rights and the potential for alternative arrangements such as autonomy. He compares the cases of the Kurds in Turkey to the Catalans in Spain (Miller, 1998). Whereas the Kurds feel a completely different cultural identity to the Turks and have a long history of conflict with them, the Catalans have a double identity, feeling both Catalan and Spanish and do not have extreme hostility towards the Spanish (Miller, 1998). The two cases are qualitatively different and make different claims for independence (Miller, 1998). Other considerations that should be taken into account are how likely are secessionist states to protect minority rights in the new state and how is the secession going to affect the distribution of the resources within the state (Miller, 1998). These considerations again ought to be looked at contextually, rather than through a comprehensive theory (Miller, 1998).

## Freedom and Self-Determination

On what value can we base a right to self-determination? All Western political philosophy accepts at the core a concept of human freedom. However, there are slightly different views on the best realization of freedom. Here, I endorse the view that the individual best realizes his freedom within a state of his own moral choosing. When we speak of freedom, we usually think about freedom as personal autonomy, as the ability of the individual to live a life of his own choosing (Swift, 2001). Individual freedom should be our starting but not our ending point, because there is one more fact to be taken into account. The individual, from birth, finds himself in a community. Therefore, the realization of individual freedom always has to be reconciled with the concept of the collective. Unbounded freedom can't be accepted in a society that seeks to be prosperous and peaceful. Therefore, state authority has to be instituted. But state authority with its power to coerce is inherently a freedom- limiter. So, how can the claims of the state and of the individual be reconciled with one another? The individual is free through political participation. The individual becomes a participant of his state both as a way to protect his personal freedom and to feel like a co-author of his own institutions. In this way, he doesn't experience the coercing authority of the state as unbearably coercive, because he is himself the coercer or agrees with the rules of coercion. The first aspect to political participation is that the individual enters the state because she sees her freedom and overall well-being improved by it. She forgoes negative freedom for positive freedom and other important values like prosperity and peace. Because the people come out of this arrangement better off, they consent to the coercing power of the state.

It has often been noted that this consent that subjects are supposed to show is not historical or empirical. We can neither point to a moment in time when citizens signed, nor can we prove

at the present that citizens are consenting to the rule of their state. While it is true that most citizens obey laws, doing otherwise would be very costly; therefore, this can't constitute real consent. But consent should not be understood as a historical moment where everyone signed to enter the contract, but rather as a way of relating to the state. The relationship individual-state holds as long as the state works according to the priorities of its people; when this ceases to be so, people can change the existing system. In this way, the concept of consent is both descriptive, because we do have a say over our governments e.g. through elections or a referendum, and normative, because it guides our thinking about how we should relate to our governments in order to achieve our freedom.

The concept of consent, at first sight, addresses one concern, that of preserving personal freedom and guarding against tyranny. The citizens have an interest in checking the state because otherwise, the coercive power of the state might step on private freedoms. Stilz (2019) calls this the 'taker' stance. A citizen with a 'taker' stance is satisfied with a state that grants basic freedoms: the acknowledgement and protection of the right to life and property for example (Stilz, 2019). The contract would hold, and citizens would go about their daily business. But Stilz points out that this can't be enough. We can imagine a colonizer upholding these basic freedoms in a colony. But we wouldn't say that the colonized people are free. People who have lived through colonization speak of a 'radical sense of powerlessness and a loss of orientation and control' (Stilz, 2021, p.19). This points to a deeper meaning of freedom as political participation, that of collective self-determination. In order for citizens to be free, they need to feel 'at home in one's social world' (Stilz, 2021, p.19). They will never feel completely free as passive receivers of state justice, but rather as 'makers' of it. They alone should be the authors of their institutions and those institutions



ought to reflect their values. Therefore, the ultimate realization of personal freedom is to be able to create and participate in the political institutions of your community.

Critics point out that to fulfil personal autonomy, it is sufficient to have a state that allows this freedom to its people. Do people actually care to choose their own state if they are given this personal autonomy? Let's imagine a modern case scenario. The world today includes a number of states with different democratic credentials from fully developed democracies to hybrid regimes to authoritarian regimes to totalitarian regimes. Let's take country A, a fully developed democracy and country B, a hybrid regime. Citizens of country B are tired of their government: the government is corrupted, it rigs elections and does not genuinely represent the people, it does not provide public services to the people etc. Citizens of country B, especially the younger people, do not feel like they have a future in their country because everything is run by the party in power. There is no meritocracy and economic well-being which harms the ability of these citizens to live a life of their own choosing. Country A monitors what's going on in Country B and, in good faith, says: 'We are now going to export our model to Country B. We have the expertise, the money and the time to do it. Citizens won't have to worry about their government anymore; they will just enjoy their personal autonomy.' Would the tired citizens of Country B accept this arrangement? The natural intuition is that they won't. They might be utterly dissatisfied with their government, but not with their state. They would rather try to fix their issues through the democratic process in their country than export another government that could objectively fix their problems.

In the German Idealist tradition, a distinction is made between objective and subjective freedom (Neuhouser, 2009). Objective freedom is the structure that is set in place for individuals to achieve their freedom (Neuhouser, 2009). Subjective freedom is how

individuals relate to this structure (Neuhouser, 2009). In order for people to feel fully free, the state should be perceived as both an objective and subjective guarantor of freedom. Without the subjective aspect, the objective does not matter as much.

This thought experiment shows several things. One, justice is a necessary but not sufficient condition for legitimacy. By justice, I mean some minimal state justice that grants basic rights, such as the right to life. A perfectly just state may not be a legitimate state, whereas an unjust state may be a legitimate state. While justice concerns (objective freedom) are important for the citizens, state legitimacy (subjective freedom) will take primacy if they are given a choice. A just state is insufficient if the state is not also legitimate. Justice concerns come in after legitimacy is established. Second, there is a difference between being dissatisfied with your government and being dissatisfied with your state. When citizens are dissatisfied with their government, they are still willing to engage with the state. The state is of their choosing, but the government is not living up to their expectations. They will want to fix this through the procedure that is in place for such cases. When citizens are dissatisfied with their state, they will not be willing to engage in any process within that state. In this case, the state loses legitimacy, and the people will want to self-determine.

Both democratic and non-democratic states can be legitimate. This is yet another example that proves that legitimacy is separable from justice. Democracy is the most just system of government; nonetheless, states are perceived as legitimate even when they don't engage in democracy. Although it is easier to know the preferences of the people in democratic states, because of regular elections and the possibility of referendums, it is still possible to know the will of the people in non-democratic settings through other tools, for example through consultations.

I use Stilz's framework of a self-determining group, which also has implications for the kind of regimes that demonstrate authorship. A self-determining group is characterized by three things: 1. Members cooperate willingly by playing their part and obeying rules, 2. Members share the core commitments of the group and 3. Members have a procedure by which they settle claims and revoke authorization in case of a commitment shift. Shared commitments do not mean that everyone's personal preferences are satisfied. In fact, commitments are often higher order bargains among different preferences, bargains that are accepted upon further reasoning as generating common well-being. Shared commitments are compatible with disagreements and minority views, as long as people are still willing to associate with one another. A self-determining group then is a cooperative effort in which people engage willingly because they see a value in it, get meaning or well-being out of it. Due to the third requirement, which demands that people have a fair and genuine procedure to settle claims or change their leadership, regimes which cannot guarantee this, such as dictatorships, would not be considered self-determining. Regimes that have a genuine election process, even though tilted in favour of the governing party in case of hybrid regimes, would still be considered self-determining.

Because human freedom can only be realized through political institutions in which the people are co-authors, then a state only receives legitimacy if it is built on this foundation. Legitimacy is the state's moral authority to make laws and use coercion on its people (Stilz, 2019). Justice views of territorial sovereignty hold that a state has legitimate authority over its people if it is a reasonably just state. But as explained above this is not the whole purpose of the state. Even when a political authority provides basic justice, the group would legitimately disregard that authority which was imposed on the group rather than accepted by

the group. An imposed will disregards the moral autonomy of individuals (Stilz, 2019). Moral autonomy means the ability of an individual to live her life according to her own values which she derives from an individual reasoning process (Stilz, 2019). Therefore, a state can only be legitimate if it is an act of collective self-determination, a shared and accepted will. On this basis then, a group that does not feel that their state is an act of shared will has the right to its own self-determination.

So far, I have shown why people have a moral interest in choosing their own state. In order for a state to be able to coerce its citizens, the state ought to have legitimacy over its people. A state is legitimate if it reflects the will of the people. How does this extend to borders? Modern states are delineated by borders. The legitimate use of force is possible only within borders. Any other use of force would be considered an infringement on the sovereignty of the people. For that reason, internal autonomy arrangements can't be enough sometimes, because coercion from a foreign authority would still be possible. Second, only within borders, are the people able to pass the laws that they want without interference. Again, internal autonomy arrangements may not be enough as the central state would still have veto powers over some matters. Third, only within borders can the people use their territorial resources to their own ends, not for the ends of a foreign authority. Even autonomy arrangements that allow the people to directly use these resources, would indirectly reap some of the profits through taxation. For a political authority to be fully self-determining, it needs its own borders.

## Who can engage in Self-Determination?

The question of who has the right to self-determination is the most debated. In the literature review, I outlined three positions. The proponents of National Self-Determination think that nations are the legitimate group. Nations are defined subjectively, not ethnically; however, it is important that the group shares a common perceived national culture. The strongest argument in their favour is that it is indeed nations who mostly seek the right to self-determination. The Plebiscitary proponents hold that we should open up the opportunities to self-determination to those groups that don't identify as a national group, who can make their will known through a referendum. The Remedial theory doesn't specify a group of people but has a strong preference for secession based on existing borders. Therefore, the self-determining group here would be the group living within existing borders. I go with the broadest and more tolerant definition of the self-determining group as the politically organized group, a view laid out by Anna Stilz.

I choose Stilz's definition of the self-determining group as the politically organized group. 'Self-determination is a political claim, not a cultural one' (Stilz, 2021, p.3). The self-determining group is a group with political representatives and a clear claim that is backed by the people. I prefer this approach for two reasons. One, it is more inclusive; no group is left out based on ascriptive characteristics. Second, it lives up to the framework of autonomy which I endorse. An agent, in order to be autonomous, thinks for her own and acts for her own. She is an active subject, not a passive receiver. While any attempt to secession will include political organization (without it, nothing would be possible), no other theory explicitly bases its claim on political organization. National Self-Determination theories concentrate on the nation, which is a predetermined fact of the group, not a fact of their

choosing. It is often the identity shaped by being part of a nation which will motivate one to political organization, but in itself ascriptive determinations can't be enough. The group has to show that it wills this new state, and it can organize itself to achieve this goal.

I partly endorse the view that a seceding group should be the group living within existing internal borders. This would mean, for example, that a state like the USSR would separate along the lines of the internal regions that were drawn during the USSR. Sometimes these borders reflect prior historic arrangements or broadly represent the will of the people. Furthermore, at times, the populations living in those borders are so intermixed that a fairer separation could not be found. Or if it could be found, it would lead to conflict. In such cases, borders can define the seceding group. But borders should not be the ultimate consideration. Where it is possible to separate territorially the self-determining group, internal borders should be reviewed and negotiated.

While I agree that most self-determination claims come from nations, I do not think there is any theoretical reason to limit the right to self-determination to nations only. The Czechoslovaks were not very different culturally, but still decided that they wanted to govern their lives separately. A national view of self-determination would exclude such cases. Plebiscitary views solve this problem, by asking that the people make their will known through a referendum regardless of national affiliation. A referendum is the best way for a group to show that it has the majority behind this important decision. A referendum does not have to be a strict requirement of the theory, but it would be the best way for the group to show that it has a clear majority behind its claim.

## Problems with Secession

An inherent right to collective self-determination, which arises from a fundamental right to individual autonomy, however, does not automatically entail a right to secession. Self-determination is a more open category which allows for a multitude of institutional arrangements, whereas secession considers only one alternative, the rearrangement of existing borders and the creation of a new sovereign state. Secession is the final step of self-determination. So, when should self-determination justify secession?

There is generally a conservativeness in the literature regarding secession. Even Stilz, who acknowledges a right to self-determination agrees with Buchanan that secession should be saved for extreme cases of grave human right violations. Moore, who acknowledges a right to national self-determination also points out that this will not always mean secession. The conservativeness applies to unilateral secession only, secession without prior agreement. Consensual secession, a separation that is agreed upon by all sides, is often removed from this analysis, because it is a peaceful event. The conservativeness stems from two considerations. One is that of international law. International law protects the territorial sovereignty of all existing states, except in three cases: overseas colonies, military occupation and apartheid regimes. That does not mean that other types of secessions have not been accepted, but there is no clear legal category for cases falling outside the existing categories. The second consideration is that of violence. This was treated in more detail in the literature review, but the main worry is that states will not easily accept changes to their borders and will react with coercion, which will lead to violence.

## The Legal Challenge

International law recognizes a right to self-determination. Article 1(2) of the UN Charter states that the mission of the UN is to develop friendly relations between nations based on the principle of self-determination. The Declaration of the Principles of International Law, The Vienna Declaration as well as many UN resolutions have emphasized this right again (de Zayas, 2019). De Zayas (2019) states that self-determination is not only a principle, but a jus cogens right, without which the international system could not be imagined. This right is granted to all people, according to Article 1(1) of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (de Zayas, 2019). Article 1(3) adds that bearers of this right are all states, who should not interfere, but in fact, should promote such right (de Zayas, 2019). However, when it comes to secession, self-determination can justify secession only in three cases: colonization, unjust annexation and an apartheid regime (Buchanan). But we shouldn't let existing international norms cloud our moral judgment for several reasons. In fact, it should be the other way around: our moral judgment should inform international legal norms.

First, international law is the agreement between many states with very different viewpoints and interests. The final words of the texts have to be as open-ended as possible, as little controversial as possible. A more lenient formulation of secession would not be accepted by many existing states which harbour groups with secession aspirations. The fact that a right to self-determination is accepted, even though at an abstract level, is a major achievement. Furthermore, even though secession is formally accepted only in a few cases, that does not mean that secession has not succeeded in other forms. The breakup of the USSR and Yugoslavia had no prior precedent, nor did they fit any of the categories; however, the new emerging states were recognized by existing states.



Second, international law is dynamic, not static. It changes based on history and precedent. For example, deciding to limit the right to secession to colonies and apartheid regimes is a historical contingency and not one that was accepted very easily until recently. Colonialism lasted for centuries before the colonizing powers chose to give up on it. The initial independence claims of the colonies were violently oppressed. The recognition of the right to secession for colonies came after many struggles. Legal change comes with a paradigm shift. For this reason, we should not look to law as a perfect and unchangeable entity, but with a view to reform it based on our moral thinking.

Third, it is often claimed that a right to secession based on self-determination goes against another *jus cogens* principle of international law, the right of states to territorial integrity. As de Zayas points out, the principle of territorial integrity applies to interstate relationships, that is no state is allowed to attack or occupy another sovereign state. This does not apply to intra-state rearrangement of borders. The exact phrasing of Article 2(4) of the Charter of the UN is “All members shall refrain from the threat or use of force against the territorial integrity of any state (de Zayas, 2019, p.127).” This view was upheld by the International Court of Justice’s advisory opinion on Kosova’s Independence (de Zayas, 2019).

Choosing to respect existing borders is a pragmatic international approach, but it is not a moral judgment. Modern borders are not always an expression of self-determination. They have been often imposed from the outside, as a result of colonization and occupation. There are countries that have been drawn using rulers without much regard for the people living within those borders. Therefore, because modern borders are a result of domination and occupation, and not always of self-determination, they shouldn’t be taken as a starting basis

for any moral judgment. They should be considered among many other factors when judging secession claims but cannot trump self-determination. Conservativeness then should be seen as a negative peace, rather than a positive peace. Negative peace places peace over freedom; even if there is something fundamentally unjust about the status quo, we should preserve it in order to preserve peace. But negative peace rarely preserves peace, because it fails to address the underlying problem.

## **The Violence Challenge**

The Remedial theory is based on three assumptions which I would like to challenge.

1. Claims to secession cause violence.
2. The Remedial theory, by limiting secession only to cases of grave injustice, avoids in this way the violence associated with secession.
3. A state has territorial rights as long as it does not physically violate its people on a large scale or abrogate their autonomy.

Let's start with the first claim. It is true, as pointed out in the literature review, that cases of violent secession are abundant. For that reason, remedialists hold, secession should be avoided at all costs. But we should not be too fast to conclude that secessions are inherently violent. There are plenty of cases of peaceful secession to make us question such a claim: the USSR break-up, Czechoslovakia, Norway, Iceland, as well as many later colonies. So, while secession may be correlated with violence, it might not be the direct cause of it. Canada did not send armies at the borders of Quebec when Quebec filed for secession. Slovakia was not invaded when it requested secession. Sweden let Norway go with a referendum. The Soviet Union under the leadership of Gorbachev was more open to the claims of the Eastern states for independence, whereas Russia under Putin still doesn't recognize the independence of various neighbouring states. Serbia engaged in genocide in two of its republics: Kosova and

Bosnia Hercegovina to oppress the independence movements there. Remedialists will note that they are only talking about unilateral secession, not consensual secession. Consensual secession is good if it is peaceful and negotiated between the sides. Unilateral secession is the problematic one. But then the right question to ask is what makes a secession consensual and when does it get violent? If it were possible to negotiate, wouldn't all secessions be peaceful? So, what prevents this? In order to find a cure to any disease, one must first correctly diagnose the problem.

Unilateral secession happens, by definition, when secession cannot be negotiated. The two parties are diagonally opposed in their stances, that an agreement is not possible.

How did the two sides reach this point of immutable stances? That's because grievances of the seceding group were not heeded. Neither claims to secession, nor violence emerge abruptly. They are the last resort for people who have a long history of discrimination or oppression in the state, or in more democratic states people who are a persistent minority. It is the denial of self-determination claims which causes more violence than the claim itself.

When they are not listened to, the group might go for unilateral solutions. If the group is given a platform to address their claim, they might be satisfied with autonomy arrangements.

If we want to avoid the violence then, we should listen to the needs of the marginalized groups earlier and accommodate them.

When we use the word violence, we fail to distinguish between the aggressor and the victim. Sometimes, there is no clear aggressor and victim; rather both sides engage in war. However, when it comes to secession, there is usually a clear aggressor. This is usually the central state, which has more to lose, as well as more military and financial resources to use. The seceding group might use violence as well or even engage in an armed liberation struggle, but it is

almost always the central state which will first use force in order to regain control of the seceding territory. Regardless of who the first initiator of aggression is, it is pivotal that we distinguish this in our analysis of violence. Violence can't be prevented without first knowing what's causing it. Because violence requires an aggressor, violence can be stopped if we stop the aggressor.

In order to avoid violence then, it is not secessions that should be rejected *prima facie*. Rather, we need to address two things: the grievances of the group with a secession claim and armed aggression. The first one can be done by monitoring self-determination claims early and establishing a negotiating platform between the sides. Armed aggression should be harshly criticized by the international community. Instead of being seen as a legitimate tool of the state to keep stability, it should be denounced as an unjust interference with the people's right to self-determination. Ultimately, violence might erupt and there is no direct force that the international community can use to prevent this. But secessions too are going to happen regardless of the stance of the international community. To prevent violence, therefore, we should understand and accommodate self-determination claims, not suppress them.

Now that we have more carefully looked at the claim that secession breeds violence, let's turn our attention to the second claim, that the remedial theory best avoids violence. If the causes of violence then are unheeded grievances and the existence of an aggressor state, the way to avoid violence is not to silence the seceding group, but to address these two underlying problems:

4. Monitor situations from their early stages.
5. Denounce any act of aggression by the state.

The Remedialist cannot do any of the above. First, the theory puts a high justice threshold; below that threshold, nothing of importance happens. Second, the theory sees it as natural that a central state might interfere to stop unilateral secession even by force. It certainly does not condone ethnic cleansing or genocide; in fact, in such cases, it recognizes a right to secession. But it does place territorial integrity over self-determination and as such, it accepts certain attempts of the state to maintain territorial control. Instead, if we acknowledged a right to self-determination, we would monitor a situation of injustice within the state from the beginning and would lobby for a peaceful resolution of the emerging conflict according to the people's needs. If the situation is caught in the early stages, people will be satisfied with being granted certain rights, political representation or autonomy. But even if they are interested in secession, a facilitated negotiation will decrease the chances of violence. If we acknowledged a right to self-determination, we would adopt a more just approach to the group that is experiencing the aggression. I find that using force against your people cannot be morally justified. Therefore, it is the aggressor that should be condemned or looked with suspicion rather than the self-determining group. Whereas the Remedialist might justify the state, a Self-Determination proponent would see an armed conflict as an immoral obstacle to the people's natural right to self-determination.

Self-determination has happened and is bound to happen in the future. A correct diagnosis of the causes of violence then should start with this fact. Denying a group the right to self-determination, the driving force behind secession, is not going to prevent any violence, but rather exacerbate it. Understanding and accommodating the group's needs in the early stages of the conflict, as well as denouncing armed aggression would make for a more peaceful and just international response.

Furthermore, Buchanan notes that by setting the threshold for secession too high, he intends to deter future secession claims. There are several issues with this view. First, secessions will happen regardless of what the prevailing dogma is. In fact, most secessions have happened despite the existing dogma. Colonies had to fight their way to independence, before any law recognised their right to do so. The USSR and Yugoslavia's seceding states were accepted as sovereign states even though they didn't fit any of the existing legal categories. People will ask for their right to self-determination regardless of the strength of the deterrent. Second, it assumes a subservient human nature that places safety over freedom. Many people who live under oppression will, however, gladly give up their life for freedom. In fact, sometimes people will want to reach precisely that threshold in order to gain international attention. Some self-determining groups will realize that the only way to get international support is to sacrifice their lives. The Jashari family in Kosova chose to fight against odds with a Serbian military group in order to let the world see what the Serbian regime was capable of. Third, we cannot put a deterrent that is not just simply with the intention of deterring. Limiting secession to cases of grave injustices is simply not just.

Finally, Buchanan's theory has a limited view of justice. He bases his theory on the justice conception of territorial rights, which holds that states have legitimacy over their territory as long as they are just with their people. But he limits secession to two occurrences, that of large-scale violence or the reneging of autonomy. However, there are plenty of injustices that a group can suffer below that threshold: economic marginalization, political disenfranchisement, cultural oppression etc. Equating justice with the lack of large-scale violence leaves out many other important injustices.

## **The case of Kosova**

No theory, on its own, is able to prevent or stir violence. Ultimately, both sides are going to engage in their politics and their actions are going to have certain consequences. But theory matters in two ways. First, it matters because it shapes the thinking of the elites who find themselves in positions where they have to decide over secession claims. Second, it matters because it posits fundamental values and helps us weight claims. I want to look at a historical example and compare how the two approaches, if they were adopted by an international elite, would treat the case. An elite endorsing Buchanan's threshold waits until some major injustice happens, whereas an elite endorsing self-determination reviews the case earlier, in a way that might potentially prevent violence.

Under the Remedial theory, Kosova got the right to secede after it experienced genocide from the Milosevic regime. It is clear at this point that the two groups cannot co-exist within the same political institutions. Buchanan is willing to make one further concession and says that Kosova got its right to secede when Milosevic revoked its autonomy. But I suggest that had the right to self-determination of Kosovars been taken into consideration earlier, the genocide would not have happened.

The Kosovar case escapes all existing legal categories of groups who have the right to secede. Even though they were occupied militarily, technically they never had their own state prior to their military occupation. They were a territory within the Ottoman Empire which got occupied by the Serbian forces during the Balkan Wars in 1912-1913 (Malcolm, 2018). Although the territory has a majority Albanian population, due to the occupation, they were not able to join Albania in its declaration of independence in 1912 (Malcolm, 2018). The Ottoman Empire disintegrated after the end of WWI and therefore, they were left with no

state but the Serbian state (Malcolm, 2018). Technically, they're occupied; legally, they're not. From the beginning, they put an armed resistance against the occupying forces, but were crushed (Malcolm, 2018). Throughout the history of Yugoslavia, they contested the regime; they rebelled, protested, got imprisoned until they got some peace when they received their autonomy under Serbia (Malcolm, 2018). Even then, they requested that they be a sovereign state within the federal republic of Yugoslavia, like the other states were, but their requests were not heeded (Malcolm, 2018). Along with Vojvodina, they were the poorest region within Yugoslavia (Malcolm, 2018). Albanian language and teaching were banned for a long time (Malcolm, 2018). They had the highest number of political prisoners in Yugoslavia (Malcolm, 2018). Their right to self-determination was clearly not acknowledged. They were in no way co-authors of their political institutions, subjectively or objectively. When Yugoslavia disintegrated, there was war on all sides. But Croatia, who had been a republic within the federation, experienced it differently. It was both in a position to defend itself and it emerged better off economically. The Kosovars, on the other hand, were caught unprepared by the Milosevic regime. Therefore, the genocide ensued.

Kosova's example is just one among many. Genocide is the last step in a long history of oppression and failed political negotiation. The remedial theory wakes up only at this point. My view is that secession can't be such an extreme request that we ought to accommodate it only when thousands of people are slain. The long history of the Kosovars for self-determination was enough of a reason for secession. The Self-Determination theory wakes up first, acknowledging the claim in its first stages, accommodating it and preventing in this way large-scale violence. Whereas the remedialists wait for the genocide in order to acknowledge the claim.



The Remedial elite might follow (or not) the case of Kosova as it unfolds and decide that the case doesn't currently deserve attention because things have not reached the point of genocide. Then the elite starts paying attention as the situation gets a little more violent, it might issue warnings to both sides to refrain from further action, might meet with the leaders a few times. But on the ground, the situation gets more and more violent. Finally, a UN mission might be sent to keep peace, while political negotiations go on. Once the evidence of genocide becomes clear, then the Remedialists will say: it is clear that these two people can't continue together. The international pressure comes too late. The Self-determination elite starts paying attention as soon as it sees that people are being organized politically. It follows their claim, and it checks that the facts they bring forth are true. It is at this point that it starts pressuring the central state to be more open to the requests of the self-determining group. If there is no response or the discrimination worsens, it imposes sanctions and so on. Such an attitude which captures the problem in its first stages and tries to remedy it, has more chances of reaching an agreement between the sides and avoiding violence than the previous approach.

## When is Secession Allowed?

Self-determination is a right to self-rule. It is a right all groups have. Based on this right alone, the group is eligible for secession. The group might choose to exercise its right to self-rule in other ways as well, for example through internal autonomy, but that is a decision that belongs to the group alone. Secession shouldn't be made dependent on a further condition. Every secession claim should be treated without any a priori filter. By being more permissive and understanding of self-determination movements, we would create a more just and peaceful international order.

My worry is that if we were more restrictive with our theory, this would have implications for how the international community deals with self-determination claims. The international community is not a world state, but rather a network of member states that cooperate, compete and sometimes fight each other. Because there is no one binding legal framework and no one coercion mechanism, the system is dominated by the most powerful states. Under this system, aggressors will carry out their plans because they have the power, whereas the victims have to conform to international law. Having a more permissive framework might not directly change the situation, but gives the groups a theoretical framework on which they can rely. This way, we are more favourable towards the victims.

### Persistent Minorities

A remedialist might object that a remedial theory can do just that by lowering the threshold of injustice. Buchanan's theory puts the threshold too high by allowing secession only in cases of large-scale violence. We can lower the threshold such that any group that experiences persistent discrimination by the central state is eligible for secession. That would be more reasonable, and it would meet the needs of most groups. But it would still leave out one other

group: a group that is a persistent minority within its state. While being fairly represented in the political institutions of the state, it always finds itself overruled on matters of importance to the group, for example in determining how to distribute resources. This kind of group might be less prevalent, and their needs might not cause the same sympathies of the discriminated groups. In fact, they might not even gather the sympathies of the majority of their people. The cases of Catalonia and Quebec are such examples, where their referendums for independence did not pass with a majority vote (Government of Catalonia, 2017; Elections Quebec, 1995). Nonetheless, if a clear majority of these groups was to decide that they wanted secession, on what moral grounds could we stop them?

Every state has minorities. Some minorities are temporary, but others are persistent. Many states try to accommodate the needs of their persistent minority in various ways ranging from minority rights to autonomy arrangements. These minorities may be at times dissatisfied. However, there is a difference between being dissatisfied with a government or a policy and being dissatisfied with a state. In the first case, you are still willing to work for your rights within the system. It is the second case that motivates secession. Considering that they have a right to self-rule, they also ultimately have a right to secede.

Why do they need their own state for that? The law is binding within state borders only. This persistent minority consistently fails to pass the laws that it wants within the existing borders where the majority rules. Therefore, it needs new borders where it can be a majority and where it can dictate legislation. Furthermore, this persistent minority may be unsatisfied with the way resources that come from its territory are being used by the state. For that reason, it would have to redraw borders to have direct control of its resources. I grant that, if these things can be accommodated within existing borders, then there is no need for secession.

There is one more motivation that a group has for secession, being a national minority within a state. Although I did not limit my view of self-determination to national self-determination because this could leave out non-national self-determining groups, I acknowledge that nationality is a powerful driving force of self-determination. National groups should also have the right to secede, not as a remedy against discrimination but simply because they find themselves to be a persistent minority within their state.

## **The Criteria**

The practical implications of this theory would be that the international system institutionalizes the right to self-determination. One way to do this is to set up a special office of the UN that deals with self-determination claims. I believe that while all groups have a pro tanto right to self-determination, the claims are not indefeasible. The claims would still have to be reviewed by this office, while taking into account various elements.

First, the group has to show that it represents a clear majority. Secession is not a tool to please an elite or a minority within the group, but the group itself. The right applies to the group. Therefore, the group has to show that it backs the request. The best way to show this would be through a referendum that asks a clear and honest question and receives a clear majority. Opposition groups can exist, but they should be a minority and they should be consulted. It has to be shown that they too will be accommodated in the new state. Moreover, the referendum should be free. The case of Crimea shows how a referendum can be staged and forced. Voting under the threat of violence impedes the citizens from expressing their real beliefs. A staged or forced referendum should not be taken as proof of a will to self-determination.

Second, the group has to show a willingness to cooperate with all the affected parties. A right to self-determination minimally generates an obligation to dialogue. During these negotiations, it would be decided to what extent the group wants to execute its right to self-determination. Unilateral, unnegotiated actions should weaken a claim to secession.

Third, the claim of the group has to be morally eligible. Claims can be judged based on their morality and not all claims are worthy of respect. Some groups, for example, might want to secede to continue unbothered with an unjust practice. The secession of the southern states of the US from the Union is one such example. While the southern states can be described as a persistent minority that would be overruled on all decisions regarding slavery, their claim was not a moral one. The practice of slavery is an unjust slavery and as such should not be accommodated. Stilz adds a few more examples: fascists, communists, imperialists. She notes that we shouldn't reject independence claims from the colonies because they go against the beliefs and interests of the imperialists within the empire. Nor should we let fascists secede because they want to create a pure nation by exterminating all their ideological enemies. Self-determination is a right that belongs to the group which wants to live out its fundamental right to personal autonomy. If the group is unable to grant its members personal autonomy, then the group cannot claim a right to self-determination.

Finally, I also grant that if it is clear that secession could lead to a large-scale international conflict endangering the lives of countless people, that claim should be put on hold. War clearly disrupts the ability of individuals to live a life of their own choosing. The right of a group to self-determination does not supersede the right of personal autonomy of a large group of people. If in order to grant one group the right to self-determination, we would undermine thousands of other people, that would not be just.

In light of the recent events in Ukraine, it is important to point out one more thing. My account presumes a genuine and free political process of self-determination initiated by the people. It is argued that the independence of Crimea should be recognized because it was a case of self-determination (Katz, 2014). With a Russian majority populating the island, they have the right to join their fellow nation members in the Russian Federation (Katz, 2014). A similar thing is being argued for the Donbass region (DeutscheWelle, 2022). The annexation of Crimea and the Donbass region are clearly examples of military annexation, not of self-determination. Military annexation is rightly prohibited under international law because it is a clear violation of the territorial integrity of a country. Only the people within the territory can make legitimate changes to borders. Foreign powers that try to change borders are simply aggressors. Even if a referendum is held under military rule, it should not be taken into consideration, because it is not clear that it represents the genuine will of the people.

### **No Threshold Needed**

Most historical secession claims are motivated by a grievance of the minority group. The central state fails to grant them some rights that they deem essential, and this causes a rift between the two groups. These are the cases that win the sympathies of both outside observers and members of those groups. Therefore, to settle these claims, it seems sufficient that we grant the right to secession only in cases of a grievance. The discussion then becomes about where we draw the line: what grievance generates a claim to secession? I discussed in this paper Buchanan's threshold for secession. In his view, the group needs to experience a major injustice such as mass violence to qualify for this right. Throughout my paper, I critiqued this threshold as unnecessarily too high. In my view, borders cannot be so important that thousands of people have to be sacrificed in order to change them. The threshold has to be lowered.

Defining the threshold does not have to be the task of a theory of secession. I believe that cases are all peculiar and deserve a hearing on their own. I believe that the best way to approach secession is to acknowledge certain basic principles to guide the negotiating process, but ultimately it is the process that determines the result. By putting a threshold, we might leave out cases that should be heard. A priori, no claim should be rejected. For that reason, even self-determination claims that are not based on a remedial right should be heard. However, during the negotiating process, claims should be weighed, and alternatives should be considered. Previously, I listed four considerations that defeat a right to secession.

In practice, it seems like a movement for self-determination will almost always be motivated by a grievance. In other words, a group will find its state legitimate if it does not step on its essential freedoms. The referendums organized by Quebec, Catalonia and Scotland are telling; none of them passed (Gov.UK, 2014; Elections Quebec, 1995; Government of Catalonia, 2017). All of these regions are examples of economically prosperous and politically represented groups within their states. They don't suffer any obvious discrimination from the central state. Yet, time and again, their politics centers around separatist debates. But when it comes to putting this to a vote, the people show that they do not want independence. Such movements, then, are not endorsed by a majority. They're not endorsed because they do not solve any clear problem of the people. In practice then, legitimacy is tightly connected to justice.

Where I differ from remedialists is that, if a group was to decide through a clear majority that they wanted to secede even though they didn't have any grievance to claim, I think they have the right to do so. I theoretically separate the concept of legitimacy from the concept of

justice, because I think that it is possible to have a just but non legitimate authority. In such cases, legitimacy takes precedence over justice. When a group feels that their political authority is not legitimate, they have a right to secession. Provided that the group also met the other conditions I listed above, that they were willing to negotiate, that their secession would not cause violence and that their claim was morally eligible, on what grounds could we deny them the right to secede?



## Conclusion

Borders have historically been in fluctuation, and they will continue to be so. That's because people are constantly in a state of change. The notion of a people, their understanding of an ideal and representative governance and their interests are in a state of change. As these changes are bound to happen, it is important to approach them with the right theoretical framework, one that is fair to self-determining groups. My understanding of fairness is that we should hear the self-determining group more closely and that we should not limit secession to cases of injustice.

Self-determination is a primary right of peoples. It is a primary right because it is a way for people to actualize their freedom and to feel at home in one's world. A state is legitimate in so far as it reflects the will of the people and as long as people are willing to engage with it and solve their problems through it. For that reason, a right to self-determination generates a right to secession. A right to self-determination, however, does not automatically entail a right to secession. Other types of arrangements might be chosen during the negotiation process. The guiding principle, however, should be the will of the people.

Secession should not be seen as a remedy only for discrimination against a group. Self-determination is a right on its own, independent of other considerations. Discrimination is one of the driving forces behind self-determination, but not the only one. Being part of a national group that sees itself as distinct from other members of the state or being a persistent minority in a democracy are two more motivations. In practice, these motivations often coalesce, but they are conceptually different. In order not to leave out these different

motivations, we shouldn't limit a theory of secession to a remedial right only. A theory of secession based on the right to self-determination is more permissive in this way.

Self-determination generates a right to secession, but a defeasible one. The claim of the group has to be morally eligible. A self-determining group that wants to continue with an unjust practice unbothered by a central state infringes the right of its people to autonomy and has no legitimacy. Such a claim should be dismissed. A claim to secession should be put on hold if it seriously endangers the lives of countless people. The freedom of a group should not infringe the freedom of other groups.

Otherwise, the international community should be more open to border re-arrangements. Modern borders are not always a reflection of self-determination, and they should not be taken as a moral starting basis. Violence concerns are moral concerns and should be heeded. However, violence might be best preserved if we acknowledge a right to self-determination and accommodate it in its early stages. For that, I recommended the UN could establish an office that monitors such emerging situations.

Some groups will decide to join forces like the EU, and some others will prefer to stay small and autonomous like Lichtenstein. As people experiment with different political institutions in an attempt to bring to life their ideal institutions, the legal framework and overall attitude should be more accepting of these natural changes. We shouldn't attempt to stop change, but understand it and accommodate it in a fair and peaceful way.

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