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## IS THERE A LIBERAL RIGHT TO SECEDE FROM A LIBERAL STATE?

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**Abstract.** This paper explores the question of whether there can be a right to secede from a liberal state by examining the concept of a liberal state and the different forms of liberalism that may be appealed to in order to justify secession. It argues that where the foundations of the state's legitimacy are conceived in terms of a non-derivative right to self-determination, then secession from a liberal state may be a justified form of action for different types of groups including 'illiberal' ones. If, however, a broader definition of political legitimacy is adopted – one that is predicated upon the liberal notions of individual moral autonomy and equality – then the right to independent statehood will generally *not* include a right to secede from a state that already upholds these principles. Consequently, liberal theorists of secession are forced to choose between particularizing a right of independent statehood to groups trapped in illiberal states, or acknowledging that the right to secede includes a right to establish an 'illiberal' state that bestows upon its citizens unequal rights and entitlements other than a right of exit.

**Keywords:** secession, liberalism, plebiscitary, tolerance, autonomy, equality

### 1. Introduction

A defining feature of the international political landscape over the last fifty years has been the enormous growth in calls by national minorities and other groups for increased territorial autonomy, including the right to secede and create their own, independent state. In addition to raising important strategic, socio-political and legal issues, this phenomenon of political fragmentation has also raised fundamental philosophical questions concerning the justice of existing international boundaries and the right to political self-determination. Consequently a popular topic of scholarly debate has in recent years been the question of how liberalism should respond to demands by groups for a right to secede and establish their own state. An arguably less popular, but perhaps more perplexing, question is how liberalism should respond to demands to secede from a state that is a

functioning liberal democracy. What liberal reasons might a group have for seceding from a liberal state? The issue is further complicated still when we consider that the secessionist group might itself not be liberal and intend to create an illiberal state. The purpose of this paper is to consider these questions by examining the notion of a liberal state and the rights that individuals have within such a state to disrupt its territorial integrity.

## 2. A liberal right to secede

### 2.1. *The nature of plebiscitary right theories*

Put simply, secession is a refusal to acknowledge the legitimacy of the state's claim to authority. It is a bid for independence from the state through the appropriation of the state's territory. However, the secessionist need not deny the state's authority as such – only its authority over him/her, the members of his/her group, and the territory that they occupy (Buchanan 1991:10). In most cases demands for secession are demands for both independence from the existing state, *and* sovereignty for the new state that the secessionists intend to create. However, secession, *ex hypothesi*, need not mean the creation of a new state, as the secessionists may wish to leave one state in order to become a part of another state – so-called irredentism.

Numerous theorists have advanced a variety of different theories which stipulate what types of groups – if any – possess a normative right to secede, in what circumstances and why. One type of theory – Nationalist theories – grant a right of secession to groups which qualify as nations (e.g. Miller 1988, 1993, 1994, 1995, 1998, Nielsen 1993, 1998) while so-called 'just-cause' theories grant a right of secession to groups that are the victim of a specified injustice for which secession is deemed to be an appropriate remedy of last resort (e.g. Birch 1984, Buchanan 1991, 1992, 1993, 1995, 1997). In contrast, this paper focuses upon the claim that liberalism includes a moral right of secession by examining what are termed liberal-democratic, or plebiscitary right, theories of secession.

A plebiscitary right of secession grants a right to "...a majority in any portion of the territory of a state to form its own independent state if it so chooses, even if the majority of the state as a whole opposes their bid for independence" (Buchanan 1998:15). The most prominent advocates of this type of theory are Harry Beran and Christopher Wellman. Beran argues that all individuals have the right to determine their own political relationships – a right which he claims to be both consistent with, and required by, liberal democratic theory (Beran 1984, 1987, 1988, 1998). Indeed, two defining features of liberalism are its individualistic moral ontology (Barry 1996:432) and a commitment to a strict thesis of *moral egalitarianism* where all individuals are of equal moral worth and thus possess equal rights and entitlements (Kymlicka 1989:140). Beran claims that if we accept this characterization of the individual as a self-governing chooser, then we must

also accept that each individual enjoys moral dominion regarding themselves such that only their *consent* is sufficient to determine membership of any association, including political associations such as the state. Because states have no enforceable moral claims against their subjects other than those to which their subjects have freely consented, individuals have the right to associate politically with whomever they choose to associate with and, *a fortiori*, the only just political divisions are those which reflect the willingness of people to live together (Beran 1984:26). Thus, claims Beran, if the majority of a group wish to secede then they *prima facie* should be permitted to do so, as any attempt to halt their departure would be contrary to the requirement that all associations be voluntary (Beran 1984:24–25).

In contrast, Wellman (2005) argues that acceptance of a harm/benefit principle will on occasion both override individual consent and place limits upon freedom of association, with the result that a plebiscitary right to secede can be predicated upon neither. Consequently, Wellman instead defends a deontological, non-derivative conception of self-determination as the premise of a right to secede by arguing that the consequences of rejecting it might on occasion require one to endorse actions such as non-exploitative colonization or annexation that would conflict with our pre-theoretic moral intuitions. Exercise of the right is, however, restricted to those groups that would not create a less just or democratic state (2005:79) and which are capable of performing the requisite political functions of a state.

## 2.2. *The challenge for plebiscitary right theories*

To premise a right of secession upon liberal principles of individual autonomy, consent and a right of dis/association raises fundamental questions about these principles and their justification within liberal theory. The approach adopted by plebiscitary rights theorists has generally been to invoke a single principle such as individual consent and then argue that a commitment to this principle *a fortiori* entails a commitment to a plebiscitary right of secession. Thus, whereas Gauthier (1994:360–61) and Beran appeal to a right of consensual dis/association, Philpott (1995:355–57) prefers a Kantian understanding of individual moral autonomy, while Wellman employs a principle of self-determination subject to a harm/benefit principle (2005:11–25). In each case the principle being appealed to is held to be consistent with, and required by, liberal-democratic theory. However, showing that a certain value is prioritized by liberalism is not the same thing as demonstrating that that same value is capable of grounding a liberal right to secede. This is because liberalism consists in a complex plurality of often conflicting principles including, but not limited to, those employed by plebiscitary right theorists.

For example, not all of the duties that we owe to others are self-assumed. Parental duties to dependent minors and the duty of care that a doctor has to a patient are examples of obligations that are grounded, not in individual consent, but in other countervailing principles. A parent cannot rescind their obligations to

their child simply by withdrawing their consent to act as a responsible care-giver. Rather, the interests of the child as a moral agent trump the value of consent. Similarly, the obligation that a doctor has to consider the best interests of his/her patient is grounded, not in the consent of the doctor to do so, but in the status of the patient as a moral agent in a dependent and vulnerable position. Thus, Beran may be correct to claim that liberal-democratic theory apports a high degree of importance to the ability of individuals to determine their own relationships and duties owed to others. However, this is not the same thing as showing that the principle of individual consent is indefeasible or applicable to *all* relationships, including one's relationship to the state.

Similarly, to (*pace* Wellman) assign the value of self-determination a non-derivative importance based upon the moral-counter-intuitiveness of the consequences of not doing so, raises the question of why under liberalism our moral intuitions matter. Moreover, even if we grant that our moral intuitions are important, we must then inquire as to the source of the moral counter-intuitiveness of colonization and annexation. The answer, presumably, is that their counter-intuitiveness turns on the fact that they violate the principle of self-determination. However, this returns us once more to the original question of why self-determination matters by assuming the importance of the principle – i.e. self-determination – that Wellman seeks to justify. If, on the other hand, Wellman were to reply that colonization and annexation are wrong – or, conversely, that self-determination is right – simply because our moral intuition tells us so, then this would fail to accord the principle of self-determination the intrinsic importance that Wellman believes it deserves. Rather, it would mean that as our moral intuitions changed then so too may the importance that we attach to self-determination and other similar values.

In contrast, the approach adopted here is to take the justificatory principle of each theory as given and within the wider framework of liberal theory pose two questions of it. The first question asks what liberal reason there might be for seceding from a state that already prioritizes the justificatory principle and other associated liberal principles. Or, to put it another way: what liberal reason can there be for seceding from a liberal state? One response to this question is, of course, simply to object that *any* state that does not allow a sub-group to secede is, by definition, illiberal. However, the objection fails because it presupposes the justifiability of the act of secession in liberal thought. If the purpose of a plebiscitary right theory is to determine in what circumstances liberalism supports a right to secede, then it cannot begin by taking a liberal right of secession as given and then argue that states have a duty to respect that right.

One may, however, question exactly what constitutes a liberal state. Clearly, such a state must be one that does more than simply prioritize the principle appealed to by a plebiscitary right theory. A state could, for example, allow its citizens the right to dis/associate with one another as they choose but still not be liberal because, for example, it denied its citizens (or a sub-group within them) the right to vote, to appeal legal decisions or to own property. Consequently, I propose to broadly define a liberal state as a functioning democracy governed by a system

of law that: (a) is premised upon principles of the sort appealed to by plebiscitary right theorists; and (b) grants to its citizens equal political, civil and cultural rights, or liberties, within which they may pursue their own ends but which do not presuppose the rightness or betterness of those ends (Kukathas 1995: 230-31). The problem, thus stated, is therefore to specify what liberal reason a group might have for seceding from a liberal state that offered its members no fewer rights or opportunities to pursue their own ends than they would possess as members of an alternative state created by their own secession.

The question of what constitutes a liberal state leads to the second question of whether liberalism supports a right for an illiberal group that does not attach any importance to values such as individual moral autonomy to secede from a liberal state that does. In other words, should a plebiscitary right of secession founded upon the precepts of liberalism include the right to secede and create a state in which individuals possess *fewer* rights or opportunities to pursue their own ends than they currently possess in their existing state? The issue derives from a long-recognized concern within liberalism regarding the difficulty of whether liberal rights include the right to alienate one's liberal rights and, thus, whether one can autonomously consent to a position that restricts one's autonomy. The question is important because if we restrict a right of secession to only those groups that adhere to liberal maxims of individual moral autonomy and equality, then the right will apply to relatively few groups over time and therefore fail to satisfy the key *desideratum* of a plebiscitary right theory, i.e. the maximization of the number of individuals in mutually desired association. This is because, separatists in Quebec and Europe notwithstanding, many secessionist movements are more traditional and conservative than liberal, and seek the autonomy and security that independent statehood offers in order to preserve an identity, or way of life, that is far-removed from liberalism's individualist moral ontology. For example, Tamils in Sri Lanka, Kurds in Turkey/Iraq and Achinese in Indonesia place little value upon individual self-authorship and often discriminate against minorities such as women, apostates and homosexuals. Consequently, not only would a theory of secession based upon liberal notions of individual autonomy and equality not be applicable to many of these groups, but they would also likely reject it out of a fear that its acceptance would require them to revise the collectivist, illiberal beliefs and practices that provide the reason for them wanting to secede in the first place.

### **3. The cultural pre-conditions of individual choice**

#### *3.1. Secession as a means of expanding individual freedoms*

Above it was noted that liberalism is a complex package of often conflicting rights, principles and values including, but not limited, to those employed by plebiscitary right theorists. Moreover, different accounts of liberalism may offer divergent understandings of these principles while also attributing different weightings to them with the result that each understanding may confer dissimilar

rights to different types of groups for different reasons. Therefore, in examining whether or not there can be a right to secede from a liberal state, or to establish a non-liberal state, we need first to specify the type of liberalism being appealed to.

One common form of liberalism is that premised upon the prioritization of certain ideals of equality and individual autonomy of the kind favored by Kant, Mill and Rawls under which there are two preconditions for leading a good life. First, individuals must be free to lead their lives 'from the inside', i.e. in accordance with *their own* beliefs about what gives value to life. Second, individuals must be free to question these beliefs and to revise them if they prove unworthy of continued allegiance by obtaining knowledge of other, alternative conceptions which, after an appropriate period of critical reflection, they may adopt if they so wish (Kymlicka 1995:80–81). These precepts then give rise to certain individual rights such as freedom of association and expression that override other, opposing considerations.

Many theorists who support this form of liberalism also favor the state as an institution capable of creating an environment in which individuals may more effectively realize the liberal goal of self-authorship, although they often disagree as to how far the state should go in fulfilling this role. However, acknowledging that the state *may* provide an environment which, from a liberal perspective, is superior to that which would obtain in a state of nature is not to say that all existing states do so, or that they do so equally well. Indeed, there are numerous contemporary examples of downright pernicious states that not only fail to assist their citizens in the attainment of the liberal ideal by protecting their rights, but which also deliberately violate these same rights (e.g. North Korea and Burma). In such cases a Rawlsian understanding of liberalism might support a group's bid for political independence if their secession would result in the members of that group enjoying greater opportunities to live their lives from the inside. The question remains, however, what liberal reason one might have for seceding from a liberal state that *does* respect and uphold its citizens' rights to freedom of association and so forth.

The important thing under this form of liberalism is that individuals are the authors of their own lives and that they have the freedom to acquire knowledge about a range of different life-plans and, where necessary, adjust their current way of life to match these. Assuming that, through the enforcement of the individual rights that these precepts give rise to, the state is capable of enhancing the ability of individuals to live their lives from the inside, why, from a liberal point of view, should it matter *who* governs us or *what* state we live in, so long as that state is a liberal one? The claim that the state has a duty to provide an environment which maximizes individual choice will clearly place constraints on what the state can legitimately do but will not, of itself, provide an account of what the legitimate territorial boundaries of the state should be (Dowding: 88). Rather, in the just liberal state there can be no just reason for a group to secede other than social injustice which, by definition, does not occur in the just liberal state (Dowding: 71–72, Barry 1983:128).

This would not be a difficulty if plebiscitary right theorists were content to restrict a right of secession to those groups unfortunate enough to find themselves trapped in an illiberal state. However, theorists like Beran and Wellman *do* argue for a right to secede from liberal States. What matters to these theorists is not the character of the state from which the group wishes to secede, but that a majority favor secession. Thus, the difficulty is to show why, from a liberal perspective, it matters not only how rulers govern but who those rulers are (Caney: 153–54).

One possible response is to claim that an individual's ability to live their life from the inside and make choices between alternative conceptions of the good life is – at least to some degree – determined by, and dependent upon, the character and laws of the (liberal) state within which they reside. Thus, because different individual life plans will require different environments in which to flourish, not all liberal states will be equal in terms of providing an environment in which one may truly be the author of one's own life. An example of this type of argument is that of Will Kymlicka who believes that while a key component of liberalism is the freedom of individuals to choose between alternative life plans, our culture of birth and upbringing – what Kymlicka terms our *societal culture* – not only provides these alternatives, but also makes them meaningful to us (Kymlicka 1995:83). Consequently, Kymlicka attempts to make a liberal case for special, group-specific rights by claiming that freedom of choice has certain cultural pre-conditions, thus forging a connection between: (a) the ability of the individual to achieve the liberal ideal of self-authorship; and (b) the policies, institutions and symbolism of that individual's parent state.

Moreover, argues Kymlicka, a policy of *common citizenship* – or so-called *benign neglect* – where the state neither opposes the freedom of its citizens to express their cultural allegiances nor nurtures such expression, is flawed. Rather, because the dominant societal culture's identity is instantiated within the state's official institutions and practices, this gives the majority a 'head-start' in ensuring the continued vitality of their culture, while at the same time placing minority societal cultures within that state at a disadvantage (Kymlicka 1995:152). Kymlicka's solution to the disadvantage suffered by minority societal cultures is to grant them special, group-specific rights of territorial autonomy (i.e. limited self-government) and special (political) representation. Thus, while Kymlicka is prepared to grant national minorities limited rights of self-government, he is not prepared to grant them independent statehood, preferring instead to concentrate on what he regards as the root causes of secessionist tendencies – i.e. the ineffectiveness of modern states in accommodating national minorities (Kymlicka 2001:91–93). Moreover, the primary bearers of these limited rights are also restricted by Kymlicka to primarily indigenous peoples who were forcibly incorporated into a wider society dominated by a foreign societal culture through a process of often violent colonization over which they exercised little control (Kymlicka 1995: 95–96, 1989:186–89).

### 3.2. *The limited scope of a right to secede under this form of liberalism*

Suppose, for example, we agree with Kymlicka that both between *and* within different groups there will be a range of divergent conceptions of the good life competing for public recognition and support. Bearing in mind the scarcity of resources and the mutually exclusive nature of some of these conceptions, it is clear that the state will be incapable of fully satisfying the competing demands of *all* the various groups that together make up its citizenry. Thus, perhaps a group of people who share a common life plan but whose state, for whatever reason(s), is unable to offer the understanding and sustenance that that group desires, might be better off in a state of their own whose formal institutions, policies and practices reflect their common beliefs and values while also giving succor to them.

Homosexuals, for example, may flourish to a greater degree in a state whose policies, institutions and symbolism instantiate and reflect the values and priorities that together constitute a homosexual-centric conception of the public good. Such a state might promote homosexual-specific needs and interests by, for example, recognizing marriages between homosexuals, funneling extra money towards AIDS research and prevention, educating people about the evils of homophobia while attaching more rigorous penalties to acts of discrimination against homosexuals and so forth. In contrast, conservative Catholics may do quite well for themselves in a secular state, however they may nonetheless find it easier to flourish in a state which, while being liberal, also encourages religiosity, discourages sexual promiscuity – not to mention birth control and homosexuality – and promulgates the Church's symbolism and teachings through its institutions, policies and official emblems. Indeed, the same could be said of almost *any* type of group which has its own identity and whose identity-specific needs and interests are a constituent component of its members' conception of the good life. Even the disabled might find it easier to flourish in a disabled-centric state with, for example, more wheelchair ramps, a fully government subsidized health system, rehabilitation network and so forth.

On the one hand, then, groups such as, say, homosexuals may benefit if their specific needs and interests were more adequately addressed by changes in public policy of the sort mentioned above. On the other hand, however, this does not mean that the creation of a gay and lesbian State would be an instrumentally effective, nor *the most* instrumentally effective, means of achieving such an outcome. Indeed, the claim that the ability of individuals to live their lives from the inside has certain cultural pre-determinants will in most cases be insufficient to justify a liberal right to secede from a liberal state for the following reasons.

First, secession almost always comes with high attendant costs that often render the option of independent statehood impracticable and undesirable. Even where secession *were* feasible, there may be other, less extreme means of furthering the ability of a group's members to achieve the liberal ideal of self-authorship – means which may, or may not, include group-specific rights of the type proposed by Kymlicka. For example, a quota system might be adopted to combat unofficial



discrimination in employment of certain minorities. Alternatively, existing laws that make the minority's practices illegal may simply be amended or repealed as in the case of homosexual law reform in numerous Western countries.

Second, there is a fundamental difficulty in appealing to notions of group membership in order to identify candidates for a right to secede, when secessionist disputes are themselves frequently a result of conflicting accounts of who qualifies as a separate 'people' or 'nation.' For example, while Kashmiris frequently appeal to a sense of Kashmiri nationalism in an attempt to justify their secession from India, many Indians deny that Kashmir has a right to secede precisely because they see Kashmiris as members of a wider Indian nation. Who, then, is the relevant group – the people of Kashmir *simpliciter*, or the people of India *including* the people of Kashmir? It is difficult to understand how notions of a shared identity, a sense of belonging and cultural commonality might be employed to distinguish between different groups in order to identify candidates for a right of secession, when divergent interpretations of such features are the very reason that many secessionist disputes exist in the first place.

Third, granting a right of independent statehood to groups such as ethnic minorities, women, homosexuals and the disabled presupposes that a society can be neatly divided into such categories and the right successfully individuated to each group. Unfortunately, however, things are not nearly so clear-cut. Rather than possessing singular, separate identities, most individuals' identity and conception of the public good is instead founded upon a complex, inter-related network of group allegiances that are unstable and overlapping. One may, for example, imagine a lesbian of aboriginal descent, a disabled Catholic or, indeed, any number of combinations of these four variables and a great deal of others besides. Not only would granting a right of independent statehood to these groups often fail to further the interests of their members, but it would unfairly force them to prioritize their various identities and chose one identity over all their other identities (Buchanan 1996).

Furthermore, as individuals change their group allegiances the composition of both the values and practices that distinguish any given group, and the groups that together make up a society, will be in a constant state of flux (Kukathas 2003: 177–78, 199). Voluntary associations, social movements and lifestyle collectivities come and go. Existing groups change or decline as their values cease to permeate their members' conception of the good life and new groups emerge to take their place. A theory of secession premised upon group identity would require that as each new group appeared it was afforded the opportunity of full political independence. Conversely, those groups whose membership had declined to near-negligible levels would presumably lose their political sovereignty in favor of new, more pervasive groups. The result would be political upheaval and turmoil *ad infinitum* as political borders were constantly redrawn to accommodate changing group loyalties.

Fourth, to attempt to justify a sub-group's secession by reference to an overall increase in the ability of individuals to live their lives from the inside, is to invoke

counterfactual reasoning and all the attendant difficulties thereof. While in some cases calculating the consequences produced by a group's secession may be relatively straightforward, in other cases things may not be so clear-cut. Given the inherent risks and uncertainties of secession the prudent course of action may well be to maintain a state's territorial integrity – particularly in cases where a group's political independence is likely to result in only a marginal increase in the ability of individuals to live their lives from the inside.

#### **4. The primacy of a right of exit**

##### *4.1. Secession as the toleration of dissent*

For theorists such as Kymlicka a liberal society is one which is comprised of 'liberal' communities – i.e. communities which uphold certain ideals of equality and individual autonomy. On this understanding a way of life is legitimate if it values individual autonomy with the result that individuals possess certain civil rights that override other, opposing considerations. Consequently, any right to secede must necessarily be explicated in terms of an increase in the ability of individuals to live their life from the inside.

In contrast, an alternative understanding is that a liberal society is distinguished, not by its prioritization of individual autonomy and equality, but by its toleration of dissent and therefore *may* contain 'illiberal' communities that both: (a) place little, if any, value upon individual equality and autonomy; and which also (b) subordinate the interests of the individual to those of the wider community (Kukathas 1992, Shearmur 1996:143ff, Nozick 1974, Menger 1974). Under this version of liberalism a way of life is legitimate if the individuals taking part in it do so willingly and, thus, have a right of exit that takes precedence over all other rights (Kukathas 1995:248–49, 2003:93–103). Consequently, individuals have simply the freedoms allowed them by their community and the only enforceable claim they can make against that community is to be permitted to leave whether by emigration or secession.

It is important to understand what is *not* being claimed here. The claim is not that an illiberal group's secession is justified because only independent statehood can offer the group the degree of control over their own affairs necessary to ensure the survival of their collectivist, group-orientated beliefs. Such an argument would, at the very least, be vulnerable to the same objections discussed above. More importantly, the issue is not whether illiberal practices can be adequately protected in a larger, liberal state by less extreme measures than secession. Rather, the important point is that the entire question of whether or not there can be a liberal reason for seceding from a liberal state only makes sense if we are operating under the assumption that a liberal society is one which is comprised of communities that emphasize values of individual autonomy and equality. If, however, a liberal society may be comprised of illiberal communities that place no emphasis upon individual autonomy and equality, then the claim that there can be

no liberal right to secede from a liberal state will simply not hold. If a society is prepared to tolerate an illiberal community in their midst that engages in practices of discrimination against their own members and so forth, then why wouldn't the society also be prepared to let that community secede?

Under a version of liberalism of the type favored by Kymlicka, the need to justify a right to secede by demonstrating an instrumental connection between independent statehood and an overall increase in the ability of individuals to live their lives from the inside means that the case for secession must be substantially weakened. Not only may secession fail to produce such an outcome, but less extreme measures that avoid much of the turmoil and disruption of secession may be equally effective in securing an overall increase in individual self-authorship. If, on the other hand, we adopt a type of liberalism that prioritizes tolerance and the voluntariness of human associations, then the most important thing is that, as a liberal society, we tolerate dissent and do not impose our views upon others. This means, first, that a right to secede no longer needs to be explicated in terms of individual autonomy and an increased ability to achieve self-authorship. Second, it also means that where a sub-group wants to secede, then to deny that group the right to secede and maintain the political union by force is to fail to tolerate that group's expression of (political) dissent which, by definition, is an illiberal act. Hence, the mere expression of a desire to secede as an act of dissent to the political *status quo* will itself be sufficient to ground a *prima facie* right of secession and this includes those groups that wish to establish an illiberal state that does not prioritize the value of individual self-authorship. Consequently, this second form of liberalism successfully avoids the problems associated with a Rawlsian form by premising the right to secede, not upon an instrumental connection to an increase in the value of self-authorship, but upon the simple desire to exit. As Kukathas (2003:205) writes:

*In principle, it is sufficient that people wish to secede – to exit collectively – from an existing political community that it be acceptable that they do so. The issue may be complicated in actual cases when the question of whether the seceding group does actually wish to do so [sic]... And, of course, the issue of what lands and other property may be rightly taken will also have to be settled... But the issue which does not arise is the question of the justice of the secessionist cause, the cultural integrity of the new society, or the value of the kind of political society the secessionists would establish.*

Hence, under this form of liberalism the costs of secession do not affect the existence of the right to secede, which is prior to any consideration of the consequences produced by its exercise. Rather, what matters is the voluntariness of a political association, not the degree to which it fosters individual self-authorship or other values. Thus, the key consideration that legitimizes political associations is consent to the maintenance of the *status quo* and the only difficulty is determining when it is withdrawn. Consequently, this form of liberalism would justify a right to both: (a) secede from a liberal state which was a functioning democracy in which individuals enjoyed equal legal rights and protections; and (b)

establish a state which was neither democratic nor respected the principles of individual moral autonomy and equality (but which did allow its members an effective right of exit).

#### 4.2. Some objections considered

It may, however, be claimed that a liberal state has good reason to deny a right of secession to an illiberal group in order to ensure an effective right of exit for the members of that group. Where the illiberal group remains a part of the liberal state then the state is in a strong position to monitor activities within the group and to intervene where necessary to ensure that membership of the group remains voluntary. However, once the group has seceded to create its own sovereign state it will be considerably more difficult to ensure an effective right of exit. Hence, given the importance of a right of exit under this form of liberalism there are good reasons to question whether it would countenance a permissive theory of secession where independent statehood might undermine or make more costly the right of exit.<sup>1</sup>

In response to this objection, suppose we put aside the complex issue of what costs render an agent, or group of agents, unfree to leave an association (Barry 2001:148–62, Kukuthas 2003:107–14). Suppose further, however, that we know, or at least have good reason to suspect, that were a sub-group to secede and create its own state then it would not allow its members the right of exit. In such a situation it is unclear that maintaining the existing association is the only, or the best, way of ensuring a subsequent right of exit for the members of the seceding group. For example, if, *prior* to seceding, there is a recognized concern regarding individuals' right of exit within the nascent state then individuals within the seceding group might opt to remain within the parent state or even secede and create their own, third state. Indeed, a group that failed to offer credible guarantees of a right of exit after it had seceded might find that popular support for its bid for political independence declined to the point where independent statehood was no longer a viable option. In addition, once a group had seceded the parent state and the international community could still exercise considerable influence through economic and diplomatic sanctions to ensure a continued right of exit for individuals.

It is even less clear, however, that an involuntary political association could justifiably be maintained in an attempt to guarantee a future right of exit under this form of liberalism. Where a seceding group (X) contains a sub-group (Y), if Y is also to secede then they must have indicated a preference to exit the existing association with X. To deny X+Y a right to secede out of a fear that X will later do the same to Y is incongruous with the theory of liberalism being discussed here because it would replace the *possibility* of a future injustice with the *certainty* of a contemporary one of greater magnitude. Analogously, I am not justified in stealing

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<sup>1</sup> I am grateful to the anonymous referee for highlighting this objection.

your car in order to prevent your reckless teenage son later doing the same. That the latter action is reprehensible does not render the former any less so. It is instead like robbing Peter *and* Paul to prevent Peter later robbing Paul.

#### *4.3. The applicability of the form of liberalism to plebiscitary right theories*

A right to secede predicated upon this understanding of liberalism will resemble that of plebiscitary right theorists such as Wellman and Beran in as much as it will justify a right of secession from all kinds of states including those founded upon the principles of liberal individualism. However, it differs from plebiscitary right theories in that it allows the creation of states which are not founded upon liberal principles of individual autonomy and equality. Indeed, Wellman (2005:79) like Philpott (1998:80) rules out the possibility of a state seceding to create a 'less just' or 'less liberal' state. The question is, of course, wherein does liberalism or justice lie?

The answer for all plebiscitary right theorists, it seems, is in more than a simple right of exit. Beran, for example, states that a secessionist group must not intend to oppress or exploit a subgroup for which secession is not an available option (Beran 1984:30, 1998:54). Similarly, Gauthier (370) expresses a concern for welfare of the Anglophone minority that would be created by the secession of Quebec. Finally, Wellman's discussion of the US civil war and Chechnya (2005: 79, 87, 95) as well as his endorsement of the principle of equal rights for all citizens (2005:145) also indicate a belief that mistreatment of a minority – where mistreatment is defined as more than simply not allowing the minority to exit – voids a group's right to secede. This, however, means that it is not the principle of consent or self-determination that is the key consideration in justifying a group's secession, but instead other values, such as individual autonomy and equality to which self-determination and the voluntariness of associations are subordinate. We are, in other words, returned to a form of liberalism resembling that favored by Kymlicka where a state's legitimacy is defined in terms of its ability to guarantee and promote values other than, and in addition to, the toleration of dissent and a right of exit. The result is a right of independent statehood applicable to relatively few groups over time and which consequently fails to maximize the number of individuals in mutually desired political association.

## **5. Conclusion**

The plebiscitary right theorist is placed on the horns of a dilemma. If the right of secession is to include a unilateral right of exit from functioning liberal-democratic states, then that right cannot be explicated instrumentally in terms of an increase in the seceding members' ability to live their lives from the inside. Such a right would apply to relatively few groups over time and be far removed from the simple plebiscitary right envisioned by theorists such as Beran and

Wellman. It would, instead, provide a relatively weak defense that endorsed a group's right to self-determination only where, and to the extent that, doing so maximized individual self-authorship (Wellman 2005:49–50). Cognizant of these and other difficulties Wellman consequently appeals to a non-derivative right to secede premised, not upon the contribution that full political independence would make to the happiness of the secessionists, but instead to a simple right of self-determination. Other plebiscitary right theorists adopt a similar approach but prefer alternative fundamental values such as consent. The important point in each case, however, is that the right to secede is justified by reference to the position of dominion that a group has over its own affairs, not the consequences produced by the exercise of the right for the welfare of the group and its members.

If, however, a group's post-secession state of affairs is – other than an ongoing right of exit – irrelevant to determination of whether or not a right to secede exists, then we cannot justifiably restrict the right to only those candidates for whom secession would result in a less just state of affairs other than where injustice is defined as a restricted right of exit. Under this understanding a liberal group may, for instance, be justified in seceding from a similarly liberal state that prioritizes individual autonomy and equality even though the group's members might enjoy fewer opportunities to live their lives according to values of their own choosing (e.g. because of the economic and social hardships that independent statehood might impose). Similarly, however, a traditional group may also be justified in seceding to create a fundamentalist state that did not afford its members equal rights and privileges, provided that the members of the group consented to the creation of such a state and retained an effective right of exit. To restrict the right of secession to only those groups that prioritize principles of individual autonomy and equality is to make these principles – not self-determination or voluntariness – the basis of a state's legitimacy and right to maintain its territorial integrity. Consequently, the plebiscitary right theorist is faced with the choice of either: (a) limiting the right to secede to only those groups who are prepared to respect principles of individual autonomy and equality – thereby substantially reducing the number of groups that would qualify for a right to secede over time; or (b) extending the right to groups who wish to secede from a liberal state which respects and upholds these same principles, including those that do not respect the principles of individual autonomy and equality. One cannot, unfortunately, have it both ways.

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