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Secession and Political Capacity

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Secession and Political Capacity

We argue that plebiscitary theories of secession have more permissive implications than has thus far been recognized, by proponents and critics alike. The plebiscitary theory aims to devise a principle for the moral right to secede. This principle implies, we claim, that the view under many circumstances is unable to distinguish between secession of collectives and individuals. Thus, not only large groups like the Catalans and the Scots, but also various much smaller groups, and even individuals, may have a right to secede. The result is an extremely permissive theory. For some, having the plebiscitary theory's full implications clarified, may only strengthen their opposition to it. However, we argue that a significant upside to the plebiscitary theory's permissive stance on secession is the toleration and respect it implies for an array of small-scale ways of organizing oneself politically.

Keywords: Andrew Altman; plebiscitary (primary right) theories; political capacity; secession; Christopher Heath Wellman

Introduction

Secession is again a hot political topic. Consider the recent events in Spain. In an illegal referendum (in October 2017), amid large-scale demonstrations and violent interventions by the Spanish police, a majority of Catalans voted to transform their regional government into a fully sovereign one. Given the firm and stable opposition in the rest of Spain, however, from across the political spectrum, it is clear that Catalanian secession is a political non-starter, at least for the time being. What is much less clear is whether people like the Catalans have a *moral right* to secede.

In the debate on the morality of secession, three main perspectives have become dominant (Buchanan, 2017, 1997). According to the most restrictive perspective, a right to secede exists as a Remedial Right Only. Secession is here a rightful response to persistent and serious violations of basic human rights or other injustices (Buchanan, 2004, 1991; Costa, 2003; Norman, 1998; Patten, 2014; Seymour, 2007). This perspective rules out a Catalanian right to secede. The two alternative perspectives are more permissive. In addition to remedial rights of secession, they both recognize a group's Primary Right to secede even without prior

unjust treatment. According to Nationalist Primary Right theories, any group with certain ascriptive characteristics – typically those associated with nationality – has a right to secede, as long as their secession will result in two ‘viable’ polities (Miller, 1995, pp. 112–118).¹ As they presumably fulfil the ascriptive characteristics, the Catalans have a Nationalist Primary Right to secede (assuming that Catalonia and Spain will both be ‘viable,’ which seems reasonable). The second version of Primary Right theories – which will be our focus here – imposes no requirement of shared ascriptive characteristics. According to Plebiscitary Primary Right theories (or ‘plebiscitary theories’ for short), any collection of *willing* individuals, with the *ability* to perform certain political functions – to protect and respect human rights – has a collective moral right to secede, provided one or more further criteria are met. According to Altman and Wellman, the sole further criterion is that a secession must not leave the remainder state without similar political capacity (Altman & Wellman, 2009; see also Beran 1984; Gauthier, 1994; and Lefkowitz, 2008, p. 494).² Both Beran (1984) and Gauthier (1994) propose fairness constraints that are more demanding than just securing a sufficient political capacity. We agree, and will return to this issue below.

For present purposes, our focus is the plebiscitary theory’s ‘ability’-criterion: that the claimant (and the remainder state) will have *political capacity*. We therefore assume that the claimant fulfils the theory’s ‘willingness’-criterion: that a majority of its members does support secession. Throughout we shall mention imaginary cases as well as real world ones, such as that of Catalonia. The purpose is solely to illustrate what the plebiscitary theory would imply, on the assumption that those cases do indeed have the requisite majorities in place. This means that we bracket various empirical matters, such as the stability of secessionist majorities, voter turnout, etc., which might cast doubt on whether the willingness-criterion actually holds.³

Plebiscitary theories grant Catalonia a right to secede, because a future Catalanian state will have the relevant political capacity, as will the rest of Spain. The same goes for secession of Scotland from the UK, of Wallonia from Belgium, and so on. It is also worth noting that political capacity makes it easier to meet further moral constraints, such as fairness. The reason is simply that securing fairness within a polity requires (sufficient) political capacity. These permissive implications for rightful secession from well-functioning states have made plebiscitary theories controversial. A common objection claims that the theory is deficient because the realization of its permissive stance on secession will be overall undesirable. Implementing the plebiscitary theory's principles in international law risks destabilizing the international state system, decreasing security, and creating 'perverse' incentives for states to centralize government and to suppress intra-state minorities (Buchanan, 2017, 1997). (Below we return to – and reject – this objection to plebiscitary theories.)

In this paper, we argue that the full implications of the plebiscitary theories of secession have yet to be acknowledged. We show that the plebiscitary view has even more permissive implications than has so far been spelled out, by proponents and critics alike. When we understand the plebiscitary theory in the most plausible way – the one ostensibly intended by its proponents – it aims to devise a principle for pro tanto moral rights of secession. This implies that the view is unable to distinguish between secession of collectives and individuals: the political capacity-criterion can in many cases be expected to be fulfilled, not only by large groups like the Catalans and the Scots, but also by various much smaller collections of individuals. The latter ranges from indigenous groups of various sizes, all the way down to individual landowners. The result is an extremely permissive theory.⁴

If the plebiscitary theory of secession does imply moral rights to secede for individuals, it comes (extremely) close to a Lockean *voluntarist* theory of political obligation

and territorial rights (see e.g. Steiner, 1996). This is interesting because proponents of the plebiscitary theory typically reject such voluntarism. As Altman and Wellman write:

a legitimate state is a nonconsensual form of association, and so one cannot simply say – as many liberals are prone to do – that the self-determination of a legitimate state just is the self-determination of each individual through his or her consent to the rule of the state (2009, pp. 4-5).

If our present analysis is correct, however, Altman and Wellman’s plebiscitary theory of secession is in strong tension with such non-voluntarism. (We return to this significant implication of our analysis later.)

For some, having the plebiscitary theory’s full implications clarified, will only strengthen their opposition to it. However, rather than regarding the findings of our analysis as a *reductio* of the plebiscitary view, we end by giving some reasons for why the view should not be dismissed so easily. Most importantly, we argue that a significant benefit of the plebiscitary theory’s permissive stance on secession is the way in which it (pro tanto) protects and promotes individual and collective autonomy and self-determination.

The Plebiscitary Theory of Secession

In this paper, we understand the plebiscitary theory along the lines endorsed by Andrew Altman and Christopher Heath Wellman (2009). Their account is prominent in the literature and constitutes, we believe, a compelling (and typical) version of the theory. However, we expect (and intend) our analysis to apply to plebiscitary theories of secession generally.⁵

According to the plebiscitary theory, any claimant has a moral right to secede if it is willing and able to ‘adequately protect the human rights of its constituents and to respect the

rights of all others' (Altman & Wellman, 2009, p. 3). The only provision is that the secession must not deprive the remainder state of the ability to do the same vis-à-vis its members. When a group is 'sufficiently large, wealthy, politically organized, and territorially contiguous so that it can secure for all individuals in the territory the essential benefits of political association, it has a right to secede [...], as long as it can do so without jeopardizing the functioning of the state it leaves behind' (Altman & Wellman, 2009, pp. 46–47).

Altman and Wellman do not elaborate much on what the phrase 'the essential benefits of political association' refers to. They typically understand these benefits as protection of human rights: '[T]he crucial question is whether a population [...] can establish resilient institutions of governance that reliably protect rights' (Altman & Wellman, 2009, p. 199, n. 2). Many might envisage modern large-scale polities as the typical protectors of human rights, and thus as the typical holders of plebiscitary rights of secession. However, as we will argue, the plebiscitary theory must grant a right to secede also to much smaller entities. Altman and Wellman write that 'any group can constitute a state' as long as 'the group is willing and able to establish and maintain institutions that perform the requisite political functions' (Altman & Wellman, 2009, p. 5). We believe that this statement fails to account for the full implications of their theory. To have a plebiscitary right to secede, a claimant does not have to be a *group*. Even *one-person* polities may have plebiscitary rights of secession.

On Moral Rights and Action-Guidance

Before discussing the implications of the plebiscitary theory, it will be useful to comment on the noted 'adverse consequences of realization'-objection. In our view, this objection fails to grasp the aim of the plebiscitary theory (see Altman & Wellman, 2009). The plebiscitary theory is concerned with exploring *whether there exists a moral right to secede*. This is different from answering the question of *what we should do, all things considered*, in order to

realize such a right – for example by reforming international law. The existence of a moral right is one moral desideratum among others, which informs our analysis of what we should do here and now, all things considered. The value of international peace and stability, for example, and the importance of protecting human rights, provide other weighty moral desiderata. As Altman and Wellman claim, if the moral right to secede cannot be realized without jeopardizing global peace and human rights, the former ‘ought to give way’ (Altman & Wellman, 2009, p. 56). That, however, does not imply that the moral right does not exist. It merely means that it is ‘justifiably sacrificed to peace and human rights’ when all relevant considerations are taken into account (Altman & Wellman, 2009, p. 56).

So, the plebiscitary theory is concerned with establishing the existence of a moral right, not with fully justifying its realization – either for this or that particular claimant, or in general (through incorporation of the plebiscitary principle in international law). The theory is meant to provide a moral standard that holds regardless of whether the realization of that standard is desirable overall – both here and now and in the future.

Because our aim is to bring out the full implications of the plebiscitary theory’s standard, not to assess its overall plausibility (although the new understanding of its implications might of course influence this), we take the standard itself for granted. In line with this, we bracket various objections to the plebiscitary view. Most importantly, we set aside the question of how the theory may solve ‘the particularity problem:’ how it can identify the particular boundaries of the territory that the claimant may rightfully secede.⁶ The importance of this challenge notwithstanding, because it will apply to the plebiscitary view regardless of the truth of our thesis, it is immaterial to our present analysis. For similar reasons, we also leave aside discussions about the consequences a permissive plebiscitary view might have for the use of majority rule, the permissibility of civil disobedience, and the

stability of borders, to name a few. These are important issues, but taking them into account will inevitably lead too far in the present context.

How Permissive? No ‘Hyper-Balkanization’

Altman and Wellman claim that the plebiscitary theory will stop short of allowing pockets of sovereign units to form within the territory of an encompassing state – what they call *hyper-balkanization* (Altman & Wellman, 2009, p. 50). The (alleged) reason is that such small-scale polities will not satisfy the political capacity proviso. However, they do not explicate why such small units will be unable to protect the human rights of its constituents. Their statement thus remains a mere assertion, and the reader is left wondering whether an enclave arrangement will necessarily lack political capacity; or whether it will only do so under certain circumstances (if so, which, and why). In the following sections, we address these questions.

It is worth noting that Altman and Wellman do not clarify what makes a unit small, or ‘hyper-balkanized.’ Presumably, this refers to smallness in its number of inhabitants, its geographical size, or both. It could also refer to geographical shape, targeting enclaves in particular or only, for example. For present purposes, however, we need not make a choice. As will become clear, our thesis will apply regardless of whether we define ‘small’ in terms of inhabitants, geographical size or shape, or a combination.

Political Capacity and the Moral Insignificance of Third-Party Behavior

Consider a very straightforward scenario under which the political capacity proviso seems to prevent hyper-balkanization. In the world as we know it, there is an ever present potential for unjust warfare and human rights-violations following in its wake. In order to protect the human (and other) rights of its constituents, a state therefore needs a certain military strength

or at least military security to resist or deter unjust aggressors. On the assumption that only relatively large states can muster such military strength, the political capacity proviso seems to reserve the right to secede for somewhat sizable states.⁷ Put differently, the political capacity criterion ostensibly rules out hyper-balkanization in circumstances where we cannot expect moral agents in general to act justly.

This appeal to the need for military strength, however, will not work. The reason is that an agent's ability to tackle the unjust behavior of third parties (for example, by racking up its military strength) is irrelevant for determining the agent's political capacity to protect the human rights of its constituents. Hence, it is also irrelevant for determining the existence of the agent's moral right of self-determination/secession. The idea is that whenever an agent *lacks political capacity because of the unjust behavior of others*, this does not dissolve the agent's right of self-determination and secession.

Altman and Wellman are clearly committed to this idea: 'a political community that is willing and able to constitute a legitimate state but is denied the opportunity by the force of another power has had its right of self-determination violated' (Altman & Wellman, 2009, p. 15). Presumably, if a claimant's right is 'violated' by the unjust aggression of a militarily superior third party, this means that the right has not dissolved. Although the third party's unjust military aggression has removed the claimant's political capacity, the latter retains its right to self-determination/secession. When faced with an unjust war, it makes no difference whether a claimant is able to protect the rights of its constituents or not. The claimant's moral right of self-determination/secession persists anyway.⁸

This response to the example of *unjust wars*, strongly suggests that the unjust behavior of third parties does not influence the moral assessment of a claimant's political capacity, and hence does not influence the existence of the claimant's moral right to secede. This is also apparent in how the theory responds to cases of *colonialism*. Altman and Wellman explicitly

deny that a colonial state can dissolve the colony's right to secede by simply holding back the economic resources the colony needs to demonstrate political capacity (Altman & Wellman, 2009, pp. 13–15).

In other words, third parties may wage unjust wars against, or wrongfully colonize, other groups, and thereby remove their victims' political capacity. Yet this removal fails to sway the plebiscitary theory's assessment of the victims' moral right to secede. That right survives the onslaught of injustice.

As we have seen, Altman and Wellman carefully underline that the plebiscitary theory's assessment of whether a claimant possesses the requisite political capacity is insensitive to the claimant's falling prey to unjust colonization and war. Moreover, without this assumption, the plebiscitary theory would give an implausible veto right to the remainder state, A, who could deny claimant B's secession by threatening to destroy A's own ability to protect the human rights of its constituents (e.g. by poisoning their drinking water). Because the plebiscitary theory forbids secession whenever it fails to leave two viable states, A's doing so would cancel B's moral right to secede. We take it that these examples suffice to establish that the plebiscitary theory of secession is correct to disregard the unjust behavior of third parties (like A) when assessing whether a claimant (like B) has the moral right to secede.

The Political Capacity of Seceding States

Bracketing the moral relevance of third-party aggression, it becomes very hard to see how the plebiscitary theory's political capacity proviso can stop hyper-balkanization. *Pace* Altman and Wellman, the theory's principles are compatible with a proliferation of small enclave states with moral rights to secede. The plebiscitary theory does not require military strength, for example. What, more specifically, must a claimant have, as a minimum, in order to demonstrate political capacity? Recall Altman and Wellman's wording of the political

capacity proviso: a claimant must be able to ‘adequately protect the human rights of its constituents and to respect the rights of all others’ (Altman & Wellman, 2009, p. 3). There are thus two components here: one external and one internal. Externally, the claimant must be able to respect the collective rights of self-determination held by other legitimate states. Because all legitimate states will act (minimally) rightfully and (thus) leave each other alone, a claimant respects the rights of other self-determining collectives simply by observing a *negative* duty of noninterference.⁹ However, as Altman and Wellman make clear, the phrase ‘the rights of all others’ refers not only to the collective right of self-determination held by legitimate states, but also to ‘the human rights of everyone else’ (Altman & Wellman, 2009, p. 148). Respecting those rights will involve *positive* duties. For present purposes, however, where our aim is to determine whether a world of legitimate states may contain hyper-balkanized units, we can focus on what it takes for a single state to fulfill the political capacity-proviso vis-à-vis its own members without (morally required) third party aid (if any).

According to the internal component of the proviso, a claimant must be able to protect the human rights of its own constituents. What does this entail? The precise requirements will depend on the list of human rights that political collectives must respect. We cannot here discuss different human rights accounts in detail, and will therefore go along with Altman and Wellman’s own brief conception, according to which human rights consist of the rights set out in Articles 3-20 and 25-26 of the *Universal Declaration* (Altman & Wellman, 2009, p. 3). (Altman & Wellman explicitly leave out Article 21, concerning rights related to democratic government, because they reject democracy as a human right.) It is important to note that fulfillment of the list of human rights is a proxy for what really matters, namely, to enable persons generally ‘to have sufficient prospects for a decent life’ (Altman & Wellman, 2009, p. 3).

To fulfill the relevant list, access to various material resources will be required. Satisfying the right ‘to life, liberty, and security of person’ (in Article 3), for example, will require having a minimum of food, water, shelter, etc. for the claimant’s constituents. It may also require institutions that coordinate individual behavior, such that all members have secure access to the relevant resources they need to live at or above the relevant sufficiency line.¹⁰ Among the rights included in Altman and Wellman’s list, Articles 25-26, concerning provision of health care and education, respectively, are arguably the most difficult to fulfill for small polities, so we shall focus on them. The idea is that, if small-scale claimants may fulfill those rights, the rest of the list will presumably be manageable.

Human Rights to Education and Health Care

The reason why human rights to education and health care presumably present the biggest challenge is quite simple: their fulfillment requires a (much) larger amount of material resources and institutional complexity than the rest, even when we assume that claimants are motivated to do all they can to fulfill those rights. Take the right to education first. According to Article 26.1, ‘[e]ducation [...] in the elementary and fundamental stages [...] shall be [free and] compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.’ For those of us who live in a large-scale modern welfare state, all this is commonplace. Moreover, the quality of the education is typically quite high. However, note that educational systems of significantly differential quality seem capable of fulfilling the letter of Article 26.1. Because Altman and Wellman do not specify any (further) quality requirements, it thus becomes very hard to determine whether small claimants may or may not fulfill the human right to education, and thus whether their ‘hyper-balkanization avoidance’ claim is true.

Obviously, the account we give of ‘high,’ ‘low,’ and, most importantly, ‘sufficient,’ quality will be crucial when assessing whether a range of small-scale claimants will pass the test and deliver education that enables their members to live minimally decent lives. Consider, for example, cases like *Aran*, a small Pyrenees mountain community within Catalonia. Aran consists of roughly 10,000 inhabitants who speak their own language (Aranese) and are opposed to Catalan independence. Imagine now that the Catalans exercise their moral right to secede, which, it seems safe to say, Altman and Wellman’s theory will clearly support (on any plausible account of sufficient educational quality). Will Aran have a right to secede from the new Catalanian state?

Again, this will depend upon our account of the sufficiency-line. Presumably, the small community cannot muster the resources to rival the quality of Catalanian education. Yet, it is not obvious that Aran’s system would necessarily fail whatever plausible account of sufficiency one ends up endorsing. (When we have specified the relevant account, whether Aran passes it of course is ultimately an empirical question that cannot be settled here.) Something similar, we believe, might be said about the human right to health care. Again, the health policies found in modern large-scale welfare states, are arguably the gold standard. However, it is clearly too strong to say that not performing according to the best standard *violates the human right* to health care. It is, in our view, at least debatable whether even a small community like Aran might provide health care services for its inhabitants such that they preserve a minimally decent human life. Again, until we have settled the standard for ‘sufficient’ health care, and gathered the requisite empirical data, we can do little more than speculate here.

Thus, one could criticize Altman and Wellman’s claim about hyper-balkanization avoidance as implausibly indeterminate until they provide a more precise account of sufficiency. However, we believe that a stronger criticism is available. As we will argue, our

rejection of their relevant claim will hold regardless of what the correct standard of sufficiently good educational and health care services turns out to be.

Note first that a claimant's *ability to protect its inhabitants' human rights* (to education and health care) does not rely upon its *number of inhabitants* nor upon its *territorial size* or *shape*. Instead, that ability depends upon the claimant's *economic or other material resources*. Imagine that Jeff Bezos wants to convert one of his enormous warehouses in the US into a small sovereign state, 'Amazonia.' After inviting his willing family and friends, he becomes one of Amazonia's, say, one hundred citizens. Because of his wealth, Bezos can guarantee top-notch education and health care for all Amazonia's inhabitants, simply because he can fly them in a private jet to whatever medical facility around the world that will deliver the requisite services, or transport medical workers and equipment to Amazonia. The same goes for education. Private tutors could be flown into Amazonia, 'Amazonians' could be sent abroad to attend elite educational institutions, or they could simply follow online courses from the warehouse territory, and so on. By securing more than sufficiently good services for its members, Amazonia satisfies Altman and Wellman's political capacity-proviso, and qualifies as a state with a moral right to political self-determination and hence to secession.

For those who think that the case of Amazonia is too fanciful, consider a similar real-world example: Monaco, a sovereign constitutional monarchy, ruled by the House of Grimaldi since 1297. Its population is roughly four times that of Aran, while its territory covers only 1.95 square kilometers (where Aran's is 633.5). Monaco thus counts as a very small community, both in terms of population and geography. Yet no one would doubt Monaco's capacity to provide its inhabitants with sufficiently good education and health care services. Its enormous wealth takes care of that. A state's being small need not undercut its ability to secure a minimally decent life for its members. In fact, Monaco's inhabitants are

presumably much better off in this respect, than are most other people in the world regardless of the size of their states.

So, whatever constraint Altman and Wellman believe that their proviso imposes on hyper-balkanization, it fails in the case of *microstates for the super-rich*. That would, moreover, hold for any account we might give of ‘sufficiently’ good educational and health care services. Strictly speaking, the possibility of super-rich microstates is enough to falsify Altman and Wellman’s claim about their capacity-proviso’s denial of small-scale units.

This opens up for a range of further possible secessionist claims. Apart from Amazonia and Monaco-like entities, which rely on financial power not directly derived from their natural resources, the same would hold for any claimant that can muster the economic means through exploiting the natural resources found within its designated territory. Under international law, a state has the right to control any mineral resources found within the continental shelf outside its coast. It is not hard to imagine that this arrangement enables, for example, a small-scale coastal community to generate the requisite economic means through selling licenses for oil production to multinational companies, and hence obtain a right to secede.¹¹

Here is another case that Altman and Wellman’s theory will also have to accept. Consider the inhabitants of Baarle-Hertog/Nassau, an enclave village (consisting of tiny Belgian enclaves within Holland, and even smaller Dutch enclaves within the Belgian ones). Imagine that the enclave inhabitants’ human rights to education and health care would be happily guaranteed by their respective states, even if they wanted to secede and create microstates. This could be done by the enclave inhabitants’ simply crossing the border to attend school or receive medical checks. If so, the enclaves would be able to guarantee the human rights of their inhabitants, and they would thus have moral rights to secede. Moreover,

similar enclave states could form if their inhabitants received the requisite (voluntary) assistance from rich individuals or corporations.¹²

In the case of less wealthy communities like Aran, assuming that they do not receive external assistance (from a willing mother state), it will be more difficult to muster the sufficient capacity. However, even if we find that Aran falls short of fulfilling the proviso, its possibilities might not be exhausted. Even if small communities like Aran are incapable *on their own* to deliver the (full) requisite services, they might pool their resources in an international arrangement with other communities, perhaps where each collaborating community specializes in a certain field within education or health care, such that they together may deliver adequate provision. Smaller units might cooperate either with each other, or (also) with larger units. Achieving such international collaboration is presumably quite straightforward. Just like smaller states successfully seek military alliances in order to defend themselves against external aggression, so small states may enter into ‘political capacity-coalitions’ intended to ensure human rights protection. Small units could then have a *conditional* right to secede, allowing them to divorce given that they enter into suitable international cooperation agreements. Another possibility would be that transnational medical companies offered insurance-based services for inhabitants of small states.

We concede that much of this is empirically contingent. Once we have determined the standard for sufficient quality in education and health care, perhaps Aran and other similarly sized communities tend to fail that standard, regardless of their openness for international collaboration. Even Amazonia’s political capacity depends upon the existence of an international market in education and health care, and of free movement of people and goods across borders. It might thus be tempting to use such empirical contingencies to defend Altman and Wellman’s assertion about hyper-balkanization avoidance. One could, for example, ask what would happen to Amazonia’s capacity if the US closes its borders to the

enclave – forbidding Amazonians to enter and buy necessary services in the US, and perhaps denying Bezos’ private jet entrance to its airspace (if the Amazonians were to try buying services in other countries).

However, it is important to note that the current provision of educational and especially health care services in very many existing states *also* relies on such contingencies. No state is pharmaceutically self-sufficient enough to deliver full-scale health care to its citizens (Management Sciences for Health, 2012, chap. 7), although some, like the US and Japan, come close. Using the prospects of closing down international pharmaceutical trade to deny hyper-balkanization thus risks undercutting the moral rights of self-determination of a large number of existing states. At any rate, insofar as there are other states who are willing to sell the relevant services to Amazonia, the US’s behavior would arguably count as a violation of the moral duty of non-interference. Its actions would then actively preclude Amazonia’s access to international trade, rather than merely amounting to omitting of aid. By interfering with Amazonia’s attempt to exercise its capacity, the US actions might thus relevantly resemble the colonization cases discussed earlier. Again, such interference can thus be set aside in our assessment of Amazonia’s political capacity.¹³

At any rate, Altman and Wellman’s assertion about no-hyper-balkanization may be undermined further still. We shall now consider a final type of claimants where our rejection of the no-hyper-balkanization assertion seems much less empirically contingent. That is the case of *one-person polities*.¹⁴ Consider a (non-wealthy) hermit in the woods. If she wants to withdraw to a hermitage where she bothers no one and has access to the food and water she needs to persist, she would satisfy the political capacity proviso.¹⁵ As long as other polities leave the hermit alone, her polity is able to protect the human rights of its sole constituent: herself. In most cases, she will not be able to establish an educational system capable of transferring a sufficiently diverse range of knowledge. Yet that is no violation of *her* human

right to education. She got her education in her previous state before she decided to move into the woods and secede. Moreover, unless we deny her a widely recognized right – the right of competent adult patients to refuse treatment (of non-communicable diseases) – we must accept that she is entitled to *waive* the human right to health care, whatever that human right entails with regards to service quality. One might of course argue philosophically against an individual right to refuse treatment, but it seems hard for Altman and Wellman to do so while retaining any recognizably liberal credibility. If this is correct, *any hermit state consisting of an already educated adult, who is competent and willing to waive her health care rights*, will satisfy the plebiscitary theory’s political capacity-proviso and hence have a moral right to secede.¹⁶ Whatever a hyper-balkanized unit is meant to be, the hermit state will presumably be the truly extreme representative of it. This again shows the falsity of the no-hyper-balkanization claim.

One might wonder whether this result could be evaded if states only provide education *contingent upon the waiving of any future right to secede*. However, that evasion attempt is unattractive. First, it is arguably morally implausible in itself for a state’s human rights provision to come with strings attached. Moreover, the strategy will be self-defeating. Imagine that Spain, in order to preserve itself as a politically self-determining unit within current territorial borders, decides to grant Catalans the human right ‘to freedom of opinion and expression’ (see the Universal Declaration’s Article 19), only insofar as they renounce any future secessionist bids. In this scenario, the Catalans can simply decline the Spanish ‘offer,’ and wait until the Spanish government follows through. Spain would then violate the human right to freedom of expression of a subset of its citizens, thus failing the political capacity proviso’s internal component, and hence dissolve its own moral right of political self-determination. Catalonia would then be free to establish their own state anyway. We can therefore set this rejoinder aside.

It is also interesting to note that we can extend our analysis of the hermit state's moral right to secede to *collections (in any size) of similarly situated adults*, thus making Altman and Wellman's theory even more permissive.

Could the latter kind of polity be *transgenerational*, or would it collapse after its founder(s) have passed away? We do not see any reason why it cannot persist over time. In principle, such a state could exist indefinitely, if it continuously allows similarly situated adults to *immigrate and settle* in its territory.

To be sure, even the hermit state's moral right to secede is empirically contingent. After all, it relies upon the existence of a *prior* state with political capacity. Without that prior state, the hermit would not receive the requisite education, and would not have the right of secession. However, note that a world without such capable states would be a global State of Nature, a circumstance where no state has the moral right of political self-determination, and where human rights in general would go unfulfilled. In Altman and Wellman's view, that world is ipso facto unjust. Moreover, if our world comes to resemble that state of affairs, Altman and Wellman's theory would imply a moral duty to re-establish states with the requisite political capacities, such that people's human rights, to education and so on, can again be secured. But once this happens, hermit states will again become possible. So, it seems that Altman and Wellman, in that scenario, can either opt for the said global State of Nature, or accept the hyper-balkanization implication.

If correct, our analysis implies that the plebiscitary theory becomes wide open. The political capacity proviso is arguably compatible with a right to secede for a much wider range of claimants than what Altman and Wellman allow. As seen, there will be a plebiscitary right to secede for small groups of privileged individuals, who are rich enough to buy the requisite services (as in the cases of Amazonia and Monaco-style communities), and for tiny enclaves (such as Baarle-Hertog/Nassau) that are supported by capable states. Depending

upon one's favored account of sufficiently good education and health care, the right to secede might also exist for small communities like Aran, especially if such communities are open to pool their resources with others through international collaboration. Perhaps most strikingly, the plebiscitary theory ultimately implies that even a single-person polity would have a right to secede. In fact, the moral right of such a polity would be the hardest one to deny, as it depends less on empirical contingencies than the other cases. By extension, the same goes for any polity, small or large, which consists of educated, competent adults who have waived their health care rights.

We thus conclude that Altman and Wellman's assertion – that hyper-balkanization is ruled out by the political capacity-proviso – is invalidated. Contrary to the beliefs of its proponents, the plebiscitary theory's political capacity proviso will not reserve the moral right to secede for relatively large polities. Hyper-balkanization does indeed follow from a consistent application of the theory's own moral standard.¹⁷

Hyper-Balkanization: Two Further Implications for the Plebiscitary Theory

We have thus far uncovered the extremely permissive implications of the plebiscitary theory of secession. That, we believe, is a significant result in itself. It comes, moreover, with two further notable implications. First, the hyper-balkanization implication falsifies the second of 'the two central theses' in Altman and Wellman's theory of international justice, namely, that 'a legitimate state has a basic moral right of political self-determination that is irreducible to the individual rights of its members' (Altman & Wellman, 2009, p. 7). Because a one-person polity fulfills the political capacity-proviso, it qualifies as a legitimate state with a right of political self-determination. As an individual may thus hold the right of political self-determination, it fails to be 'irreducible' in the required sense.

Second, and perhaps most notably, our analysis effectively collapses Altman and Wellman's *nonconsensual* account of political legitimacy, into a purely *voluntarist* view. If our above analysis is correct, we may collapse the plebiscitary theory of secession into a voluntarist account of political legitimacy by pointing to how any individual who has already received a proper education, and is willing to waive her health care rights, has a moral right to secede. This holds, even if the state where she lives functions flawlessly, and has been formed (let us assume) without any form of injustice. She still has no moral obligation to obey its dictates, and may withdraw her consent to its rule and secede at will. This is a voluntarist account of political legitimacy.¹⁸

A Qualified Defense of Hyper-Balkanization

We now turn to provide a qualified defense of hyper-balkanization. In short, we argue that it is, all else equal, better if people are allowed to be self-determining, regardless of whether they wish to exercise their self-determination in groups that are large, small, or even very small (or in no group at all). First, however, we should note one necessary qualification of Altman and Wellman's view. As we mentioned above, they hold that secession is permissible on the condition that the remaining state retains a *sufficient* level of political capacity. In our view, this requirement is too weak. The reason is that in many circumstances, the requirement can be met even if the secessionist takes a *larger* share of the prior political unit's total amount of fuels for advantage (typically in the form of resource wealth). This does not seem right. It would be odd if members of political collectives at any time could run off with a disproportionate amount of the collectively held resources, perhaps leaving the remaining polity at the merely sufficient level of material wealth. Further, if we allow this, we would open for purely selfish secessions, the sole purpose of which is to gain a disproportionate share of the formerly commonly held resources. Such a requirement would give incentives to

secede for reasons that has very little to do with the wish to form self-determining political entities. All in all, this seems wrong, and contrary to the goal of a liberal ideal of secession.

Instead, we propose that here (if not elsewhere), *equality* is the most plausible distributive principle. If so, a secessionist group or person must leave the remaining political community *as well off* in terms of the relevant resources (per capita) as it will become itself.¹⁹ This requirement might also inspire some selfish secessions, to be sure, but only if the secessionists are already relevantly disadvantaged within the current state. It is only if a would-be secessionist has less than an equal share that an equal share will represent an increase.²⁰

With this qualification in mind we can turn to the question of hyper-balkanization. Most basically, we think that it is an attractive feature of the plebiscitary theory that it allows people, whether individually or in groups, to be self-determining in the way that they prefer. Presumably, most people will want to exercise their (collective) self-determination within the boundaries of large (nation) states. However, for some groups and individuals, such self-determination will be unwanted and even coercive. Many groups and individuals around the world belong to political collectives that they simply do not want to be parts of. Rather, they want to organize their (collective) lives in other forms of associations. One might think here of small indigenous groups, collectives sharing some important values, features, or worldviews, or simply hermits who want to opt out of the state. Keeping in mind the requirement that all secessionists must protect the human rights of its members, as well as respecting the rights of outsiders, we think that allowing such groups and individuals the right to secede would, all else equal, be a good thing.

One way of seeing this is to consider, as Altman and Wellman do, why many think it is valuable that *existing* groups are self-determining. To the extent that, say, most Americans, Argentinians and Algerians prefer, in general, to belong to politically self-determining

political units, it seems that this is better than their being ruled, against their will, by others, or than belonging, against their will, to a larger political unit. Similarly, if Catalonia were today a self-determining political unit, and this were in line with the wishes of the Catalans, very few, we assume, would be in favor of Spain's *annexing* Catalonia against the will of the Catalans. In our view, if we abstract from the potential negative consequences of many secessionist moves, the reasons we have against annexation, are quite similar to the reasons we ought to have in favor of secession. If we are against forced marriages, we should also be in favor of the right to divorce. Again, this is not to deny the potential for negative consequences, only to underscore the moral right to secede.

If, moreover, you think that it is a good thing that political groups have self-determination, then it is reasonable to prefer that more people live in voluntary self-determining groups, than fewer. This will give more people autonomy, and reduce the overall level of coercion. If such permissive secessionist practices had no further adverse consequences, moreover, it would be very hard to see on what grounds we should force unwilling groups and individuals to remain parts of political communities from which they want to secede. This is especially pressing if one values self-determination in the first place, for existing political communities. Thus, in and by itself, a permissive approach to secession seems clearly to be for the better. To illustrate, suppose there is a polity consisting of a Majority and a Minority. The polity is self-determining. However, while the Majority prefers the polity to stay as it is, the Minority wants to secede, and establish its own self-determining polity. Let us further assume that both the existing polity and the two potential post-secession polities are perfectly viable political communities, that the Majority is not left worse off than the Minority in the event of a secession, and that both polities will respect human rights internally and externally. In addition, no negative consequences (apart from temporary

frustration among the Majority) will follow. In such a case, we think that if one values self-determination at all, one should think that secession was permissible.

To the extent that some self-determining political collective contains unwilling groups or individuals, it seems clear, then, that it would be better, with regards to self-determination, if these groups and individuals got to exercise their self-determination in their preferred way. If, moreover, such groups are denied the right to secede, this will be wrong for some of the same reasons that annexation is wrong. They will then be coerced to belong to a political collective to which they would rather not belong. And, as noted, this goes against the grain of the very ideal of self-determination. In short, our recognition of hyper-balkanization as pro tanto valuable follows from the same value of collective self-determination that lies at the heart of Altman and Wellman's approach.

A further aspect of this very permissive approach to secession, is that it will facilitate many different ways of organizing political life. While the human rights requirement places very reasonable limits on what can be allowed, there will, if we are correct, still be significant room for political experimentation, and for groups and individuals to try and develop forms of political life that might be valuable and inspirational also to others.²¹ This seems potentially valuable, since there is today limited variation in how modern, rights-respecting states are organized.

Even if practical considerations might compel us to reject many secessionist claims (which, strictly speaking, satisfy the capacity-proviso), we should be clear that there is reason to regret the loss of self-determination involved in such rejections. It is easy to just brush aside what might appear to be frivolous claims for self-determination voiced by small groups and individuals, but to the extent that we value self-determination, we should recognize the moral force of such claims, treat them seriously, and allow as many as we can.

Conclusion

We have shown that the plebiscitary theory of secession, defended by, among others, Altman and Wellman, has very permissive implications for would-be secessionists. At the extreme, these implications include the permissible secession of one-person polities. Even though practical considerations will often override the claims of persons and groups wanting to secede, it is worth keeping in mind that, all else equal, secession will promote autonomy and self-determination, which most people would agree is a good thing. Because this would be a good thing, and since secessionists must respect human rights and the distributive claims of the remaining political collective, such secessionist claims seem morally credible. However, if rampant secessions were to lead to chaos and instability, that is of course a reason to limit secessions (as the plebiscitary theory does). It makes a difference, however, whether we think of these permissive implications as a problem, or even a possible *reductio* of plebiscitary theories, or as a morally plausible result that ought to be promoted, all else equal.

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¹ Note that Patten's theory allows for national groups to secede if they are denied equal recognition within the larger polity. Denying such equal recognition, moreover, amounts to an injustice which, along with human rights violations and other grave wrongs, suffice to ground a right to secede. Patten's theory is thus both remedial and nationalist, but of course not a primary rights theory. Something similar can be said about Seymour's (2007) and Costa's (2003) accounts.

² See also Philpott (1995), who focuses on self-determination rather than secession as such. Philpott, Lefkowitz (2008), and Gauthier (1994), moreover, all ground the right to secession in individual, rather than collective rights.

³ In Catalonia's case, although the result of the 2017-referendum overwhelmingly favored secession (90% yes), it had a low turnout (42%), and was held amidst violent police interventions. Moreover, it is worth noting that, as recently as 2010, the support for secession among Catalans was quite low, at around 20% (Jones, 2019).

⁴ Some writers, including Rothbard (1982) and McGinn (1992), argue directly for an individual right to secession. Such theories of course also allow the secession of larger entities such as Catalonia. For McGinn, moreover, the right to secession for groups and individuals is seemingly unconditional of moral constraints (1992, p. 63). This does not mean that he ignores moral problems that may arise from some forms of secession (oppressing minorities, for instance), but he holds that such problems are distinct from the right to secede. While we will offer a (more guarded and qualified) support for the individual right to secede, our main aim is to point

to the permissive implications of plebiscitary theories and not primarily to defend individualist theories of secession.

⁵ The reason, as indicated above, is that most plebiscitary theories point to roughly the same practical and moral constraints.

⁶ Simmons (2016, pp. 114–115); see also Buchanan (2004, p. 376).

⁷ The degree of required military strength may vary over time in accordance with the level of threat from aggressors.

⁸ This is moreover reasonable, just as it is reasonable not to let women's moral rights to liberation depend on the actual absence of male oppression.

⁹ This is not to deny that some seceding parties might violate this demand (and thus become illegitimate). The point is just that it is relatively easy to observe.

¹⁰ This suggests that it would be easier for a polity to protect the human rights of its constituency in a one-person state than in small-group states, as the latter would need to sustain institutions for coordinating social behavior and for adjudicating conflicting claims among moral agents who want to comply with justice but who reasonably disagree about its contents. We return to this below.

¹¹ Note that fairness considerations might be relevant here. If small secessionist states are rich for morally dubious reasons, this might be problematic in itself, quite apart from any secessionist claims. Regardless, what we say above holds for any sufficiently rich group with secessionist aims, so long as its wealth is not morally problematic.

¹² Recall that, for present purposes, we bracket the question of whether there are positive moral duties to assist claimants who lack political capacity. We shall therefore assume that any form of external aid or assistance in the cases we discuss (from mother states, other states, organizations, firms, or individuals) is offered *voluntarily*. We take it that Altman and Wellman's approach, with its self-professed liberal foundations, will have no quarrel with such consensual transactions. See also note 13 below.

¹³ In general, of course, many secessions (as well as the successful continuation of many existing small states) crucially depends on the non-interference of other (more powerful) states. Regardless of the empirical situation, it seems plausible that all states have a negative duty not to prevent other states from realizing their political capacity. To what extent states also have positive duties to assist other states to realize this capacity is a further and difficult question that falls outside the scope of the present paper.

¹⁴ One could question whether one person can constitute a polity at all. In our view, a polity is a sovereign political unit with jurisdiction over a territory. One-person polities are uncommon, but there is no principled reason why they should not be conceptually possible. One person could set the rules within the territory (constrained by the human rights of visitors and outsiders), and it could be the case that no other political entity has jurisdiction over that territory.

¹⁵ We here assume that the hermit has moral rights of private property in both the hermitage and the said resources.

¹⁶ As indicated above, however, in many cases, the hermit might procure some level of private health care.

¹⁷ Some believe that political theory should not identify ideal principles that human beings, as they are, have little, if any, chance of realizing (Miller, 2013). Perhaps it will be too difficult to convince states, as we know them, to accept the extremely permissive implications that we ascribe to the plebiscitary theory. If so, proponents of the plebiscitary theory might try to avoid the hyper-balkanization implication by claiming that ideal principles must be duly realizable. It is controversial whether ideal principles need to have that feature, and we take no stand on this here. Note, however, that such a response to our analysis presumably requires several other significant changes to the plebiscitary theory. After all, to be relevantly realizable (with this or that probability), the theory must presumably rule out moral rights to secede in various other scenarios, thus becoming much more restrictive than initially intended. A moral right to secede for Catalonia, e.g. – which Altman and Wellman’s theory clearly endorses – will presumably be relevantly unrealizable. As Buchanan puts it, barring a revolution in international politics, it is ‘very unlikely’ that a general right to secede for such claimants will ‘ever [...] be incorporated into a system in which states currently play a major role in determining what the law should be’ (Buchanan, 2004, p. 376). Presumably, such a significant modification of the plebiscitary theory is too much to swallow for its proponents, even for the sake of avoiding the hyper-balkanization implication.

¹⁸ For a related analysis, according to which Altman and Wellman’s plebiscitary theory will be ‘pushed in the direction of a more fully voluntarist theory’ if it is revised to show ‘greater sensitivity to historical wrongs against peoples and persons,’ see Simmons (2016, pp. 115, 110-115). Although related, our analysis departs from Simmons’s, which (ostensibly) imposes a requirement of ‘significant size’ (2016, p. 115) for the groups towards whom ‘greater sensitivity’ is owed. Moreover, if our present analysis is correct, we can push the plebiscitary theory towards a voluntarist view of political legitimacy even without invoking historic injustice.

¹⁹ We are grateful to Göran Duus-Otterström for helpful comments on this issue.

²⁰ As noted above, both Beran (1984) and Gauthier (1994) defend similar fairness-constraints on secession.

²¹ See Nozick (1974, who also thought it valuable to facilitate such political experimentation (though from a libertarian baseline).