

CAN A DECISION TO SECEDE BE MADE DEMOCRATICALLY?

Abdikadir D. Askar

Abstract: Secession is a landmark moment that defines not only the destiny of the seceding state but also for the parent state that is torn apart. With its focus on the era when secessionist struggles are getting more momentum across the world since the end of the Cold War, this paper will argue that secession cannot be made democratically despite the democratic nature of the process. In the beginning, the paper looks at the three theories of the morality of secession, namely, national self-determination theories, choices theories, and 'just-cause' theories to build a conceptual framework with which to highlight if secession decision is democratic or not. Each theory is further illustrated by a contemporary case of secessions such as the cases of Somaliland and Kosovo while examining the 'marriage' of the two political themes, secession and democracy. Furthermore, the paper examines the arguments for and against separation being democratic though the conclusion is based on the conception that the secession decision cannot democratically be made because it is logistically challenging, legally uncontroversial and democratically uncertain.

Keywords: *Secession, Democracy*

I. Introduction

The dramatic political fragmentations in Africa, Asia, Latin America and East and Central Europe is a clear testimony of why the secession narrative is more attention-grabbing at the moment than over two decades ago. Since the 1990s the issue of secession got grave importance particularly at the time when the former Soviet Union fall apart into numerous multinational states along ethnonational lines exerting a profound domino effect across the world (Bereketeab, 2015; Chandhoke, 2002). Except for the case of Bangladesh, there were fundamentally no popular secession movements in the entire period from 1949 up until 1989, and the world relished a period of stable territorial boundaries for a half century (Brilmayer, 1991). From 1989 there have been at least a dozen secessionist attempts and more than a twenty-five new states have been formed out of ruins of old ones (Buchanan, 2003). At present there are ongoing secessionist struggles: in the developed world (Northern Ireland, Catalonia, Quebec) and the developing world (Somaliland, Kashmir and Punjab, and the Kurdish regions of Iraq and Turkey) making the boundaries much less sure and there could be a possibility that the secession waves can get more momentum in the long-run.

Most of the above historical events are occurring in the name of 'self-determination'. Therefore a light should be shed on the principle of self-determination and its determinants regarding the notion of secession. The issue of the people and the significant territorial unit in which they should exercise self-determination are thus fundamental to the secession decision. In his thesis, *'Moral and Political Legitimacy of Secession: A theoretical and Comparative Analysis'*, Calvet (2013) argues that the principle of self-determination appeared reasonable on the surface when people decide their fate; however, it is problematic because people cannot decide until somebody agrees who the people are. In this case, two distinct views describe who 'the people' are, which have prevailed in international law in the different

historical periods-the concept of 'ethnicity' and political independence of 'ethnic groups' (Khaw, 2014).

Secession is not a new phenomenon; however the subject is complicated in the language of international law. This is because, as in so many other disciplines, opposing themes run throughout the academic discourse, one upholding a right of secession and the other rejecting it (Brilmayer, 1991). One theme, for instance, supports the principle of self-determination claiming that every 'people' has right to its state hence provide justifications to the secessionist movements, as the other theme defends the law of territorial integrity of existing state (Christiano, 1995). Therefore international law does not, arguably, provide an adequate explanation of the issues of state breakings or state makings as their response falls with the background of politics (Chandhoke, 2016). Most often secessionists pursue their agenda claiming that their people require to have a nation-state of their own; this means the existing territorial boundaries would be redrawn violating the territorial integrity of the existing state (Buchanan, 2003). If the notion of territorial integrity takes upper hand for example, then minority groups within the parent state will be deprived of their cherished claims to independence (Brilmayer, 1991). Thus one of the opposing principles must be compromised in the secession context.

Moving on now to consider how the process of secession takes place. Throughout the paper, analysis will be made on whether the secession process is decided via democratic way or, on the contrary, whether the secession phenomenon is politically volatile and the state dissolution is the ultimate objective for secessionists. In a sense, the definition of secession will not be rich per se without first exploring the issue of self-determination which can be looked at it from two distinct but related, angles (Caney, 1998). The first angle closely looks at the various normative theories of secession, which explain the primary conditions in which a right to self-determination, including a right to secession, may be justified; while the second angle examines the claims of self-determination from the nationalist perspectives, and how the causes of secession waves (Buchanan, 1997). The first view, according to Copp (1997), assesses how the liberal values such as personal independence relate with the issue of secession, while the second aspect measures the phenomena of nationalism solidly, and the extent to which granting self-determination is consistent with fundamental rights such as equal respect for minorities.

The remaining part of the paper proceeds as follows: Part II discusses the meaning of the key terms used (i.e. secession and democracy). Part III attempts to build a theoretical framework enlightening the nexus between secession and democracy. Part IV explains the justifications of secession with examples from contemporary state breakings such as Somaliland, South Sudan and Kosovo. More so, this part deals with the question more specifically, looking at both sides of the coin while I argue that secession cannot be made democratically despite the distinctive nature of secession as a democratic issue. Part VI concludes. #

II. Secession and Democracy: meanings

Key to answering the question is, first of all, to define what is meant by 'secession' and 'democracy'. In broad use of the term, secession is sometimes equated with 'the withdrawal of a group from a larger entity, especially a political entity' (Buchanan, 2003). The meaning of this term has changed somewhat from its original definition, 'secession is a withdrawal of a territory and its inhabitants from the existing political system and the jurisdiction of the existing governmental institutions.' (Pavkovic & Radan, 2007; Bereketeab, 2015;). As per the above definition, independence from colonial power is not considered secession in this context. The issue of withdrawal is linked to the fact that a secessionist state is formed not at the time of independence, but later when the country gains its independence. Therefore, the independence of Somaliland (formerly known as British Somaliland) from Britain is not considered as secession in this sense, but Somaliland's separation from Somalia in 1991 (where both united under the umbrella of the Somali Republic in July 1st, 1960) is regarded as secession (Drysdale, 1997; Carroll & Rajagopal 1993).

Having defined what is meant by secession, I will now move on to discuss about democracy. There is vast scholarly literature on democracy; however, the definition that best fits the purpose for this paper is the one that labels as democratic 'all regimes that hold elections in which the opposition has some chance of winning and taking office' (Antonio, et al., 1996; Issacharoff, 2008). The implied meaning of this definition is that all citizens enjoy an equal opportunity of making their choices and decision on the matters concerning their state. In their book, '*Democracy and Democratization in Comparative Perspective: Conceptions, Conjunctures, Causes and Consequences*' Jørgen Møller & Skaaning (2013) hold the same view as the above suggesting that a democratic state must have opposing parties, and holding election as such does not make a state democratic unless there is competition where each party has equal chances of winning. As in the words of Khaw (2014), 'democracy is one that *de facto* and *de jure* enables its citizens to have self-determinacy, along whatever terms that they so choose.'

III. Conceptualising secession and democracy

Constructing a theoretical framework between the political subjects-the enthusiasm for democracy and the upsurge of secessionist struggles- is not as easy as it may seem on the surface. There is high affinity that the modern scholars of the morality of secession bring the two concepts together (Dion, 2013). Secession is often perceived with negative misconception; while the desire for democratisation is virtually universal (Moore, 2003). Secessionist struggles and the state's resistance are opposing facts while the results could usually be widespread human right violations and severe economic upsets. Most of the times, however, the ethnic minorities emerge out as winners who would very likely have extreme impacts on their minorities within the new state (Buchanan, 2003). As such, democracy and secession are intimately related at least at a superficial level as both of them are cases of self-determination.

To understand the theoretical link between the two concepts, secession and democracy, theories of secession is explained concerning the question. There are two kinds of normative theories of secession (*Remedial Right Only Theories* and *Primary Right Theories*). Buchanan (1997) explains the term 'right' in his article, *Theories of Secession*, which he meant a general right (one that puts an umbrella over all the individuals of a mother state). '*Remedial Right Only Theories* assert that a group has a general right to secede if and only if it has suffered certain injustices, for which secession' whereas 'the *Primary Right Theories*, in contrast, asserts that certain groups can have a (general) right to secede in the absence of any injustice'. In other words, theories of secession are (i.e. National self-determination, choice and 'just cause'). The first two theories, however, propose an assumption in favour of the secession of nations: *National self-determination* or 'nationalist' theories claim each nation have a right to self-determination, including the right to independent statehood while choice theories permit any group of 'individuals' in a given territory to secede under certain conditions (Buchanan, 1997). The second theories or 'remedial-right theories' emphasise that the basis of secession must have a 'just cause' providing the best descriptions of the secessionist motives (Costa, 2010). According to Copp (1997), *choice theories* encourage a democratic vote to be held among people of the seceding territory, as contrary to members of the seceding nation. In other words, the proponents of choice theories suggest that it is unfair to impose unity on those who seek secession. Just-cause approaches are cautious about the impact of secession and instead assess the time and situation when withdrawal may become feasible (Horowitz, 2003).

According to Moore (1998), if 'democracy is popular sovereignty, government by the people, then secession might be seen merely as the effort of various peoples to govern themselves, to be politically self-determining in the most literal sense, by forming their own states'. This view supports the conception that the same values that justify democracy also support what may be called a *plebiscitary right to secede*, the right of a majority in any part of the territory of a state to establish its independent state if it so decides, even if the majority of the nation as a whole opposes their bid for independence. If this is the correct view of the relationship between democracy and secession, then existing international legal doctrine and practice, which boost democratisation, but not secession, are inconsistent. Buchanan (2003) argues that the right to democratic governance is regarded as universal right for all the groups of individuals within the parent state, whereas the right to secession is understood as a right of resistance, of which seceding groups can openly express their extreme discontent against the mother state. Therefore secession and democracy are, according to Patten (2002), sisters because they have the same origins though different targets as presumed in the first view; while the second notion holds the belief that secession and democracy have different justifications and a commitment to democracy is consistent with a somewhat reserved position on secession.

IV. Secession decision: democratic or non-democratic?

Before taking a side on the argument of whether a decision to secede can be made democratically, a fundamental question to answer is: 'When is the right of secession justified?' One could *justify* secession due to the complicated human circumstances created as a result of economic marginalisation, social injustices and political unfairness inflicted against a single community due to their shared values such as ethnicity, geography, history, faith and so on. Thus people express their demands for equal rights which cannot simply be pleased through national political restructuring within a mother state (Brilmayer, 1991). They rather pursue their aim aggressively to redraw the political boundaries. This is certainly true in the case of Southern Sudan where the dominant ethnic/clan communities in Southern Sudan (linked together by faith) were not equals with other Arab tribes. North Arabs dominated Sudan's political, social and economic aspects and thus the dominant tribes in South Sudan continued their aim of secession (based on Just cause theory) for over a half-century despite the lack of support from the ethnic communities within the same boundaries (Daoud, 2012). Their secession struggle witnessed Africa's most protracted civil war, which engulfed thousands of lives and enormous economic destruction, though the international community was finally engaged and supporting the 2011 referendum of which an overwhelming majority of South voted in favour of independence (Bereketab, 2015; Daoud, 2012). Such secession decision, as argued by Borgen (2011), Al, (2015) and Brown (2013), is logistically challenging, legally controversial and democratically uncertain.

The secession decision cannot be made democratically as it is logistically problematic regarding land and people because the public international law does not limit the number of people that can pursue secession cause and the territorial borders of their new state. Philpott (1995) supports the *personal autonomy* of the citizens, though his stand on secession does not explicitly define how this is related to the secession decision, raising multiple concerns. Does his view justify that a single person can be permitted to secede? What about thousands or millions of people? Besides, the issue of territory is similarly complicated as of the issue of the people. Each state must have defined borders, but in this case, what criteria should the boundaries be based both for the existing state as well as the new state? If the parent state opposes the secession, why should it grant its globally-recognised land to this new secessionist state? However, the right to territory is not problematic as the rejecting territorial secession is equally not democratic. The dialogue on the secession issue— whether it is granted or not – governs how the process is finally shaped. If, for instance, a government of the parent state engages armed forces to keep its country together against the will of secessionist, or vice versa, then the secession decision becomes undemocratic. However, democracies in the world, as explained by Muro & Woertz (2018), has historically been established through violent conflicts and the assumption that violence is not a potential factor in secession decision would be considered unripe. As long as two parties do not engage open talks to sort out their difference regarding the secession decision, it very likely that the

process ultimately becomes undemocratic leading to prolonged human tragedy (Christiano, 1995).

On the other hand, the secession decision is controversial in the language of democracy. Democracy is often perceived to mean 'majoritarian rule', or with the minority rights is being considered (Christiano, 1995). However, the democratic theorists often ignored the principle question of 'majority of which group of people?' As long as this is not clear, there would be no proper definition as to who are the people who can decide hence we are trapped in a vicious circle (Geoff Andrews & Saward, 2016). The self-declared republic of Somaliland illustrates this point clearly. The Somaliland Republic is a former British Somaliland protectorate, which gained its independence on June 26, 1960 (Gartenstein-Rosh, 2010). Four days later, it voluntarily merged with Italian Somaliland without Act of Union. Somalilanders, the Isaaq clan in particular, quickly regretted the 'marriage' due to the separate and unequal development of Somalia under Siad Barre regime (Mohamed, 2017; Drysdale, 1997). When Isaaq clan's disagreed with the dictatorial regime, their demands were not considered, but they were rather unremittingly ignored. As a result, Isaaq clan founded their guerrilla movement, Somali National Movement (SNM), in search of equal political, social and economic rights with other Somali clans. Unfortunately, Siad Barre's regime violently waged a genocidal attack against Isaaq clan, leaving 50,000 people killed and another 500, 000 people forced to flee to Ethiopia (Carroll & Rajagopal, 1993). This further complicated the humanitarian situation in the Northern Somalia (Somaliland) and the government diverted development investment from the North (Drysdale, 1997). The civil war began in the early 1980s in the Northern districts which finally reached all corners of Somalia bringing the Somali state to total dissolution. As such, Somaliland reclaimed its independence on May 18, 1991, in search of separation from the rest of Somalia and by declaring independence, Somaliland people exercised their right of self-determination (Carroll & Rajagopal, 1993). Since then Somaliland held the referendum in 2001 where an overwhelming majority of more than 90 per cent voted for their cause, yet no international recognition was accorded to them (Mohamed, 2017). Despite Somaliland maintained stable and democratic governance, unlike Somalia, how would their secession be democratic when the weak Federal Government of Somalia is against the will of Somalilanders? Should we consider the majority inhabitants of Somalia (as opposed to Somaliland cause) and ignore the voices of Isaaq who are the dominant clan of Somaliland? (Gundel, 2009). This is arguably why secession decision cannot be made democratically made as long as the parent state does not agree with the breakaway state.

Besides the legality of secession makes the process undemocratic. This is because secessionists pursue the cause with relevant knowledge of the laws and constitution of their parent state and yet they continuously ignore to abide by. Instead, they create new boundaries based on their own set of rules when in fact they can overthrow the government of the mother state (Patten, 2002). Khaw (2014) claims that secession decision is fundamentally undemocratic if the separatist rejects if the constitution of the mother state

of which its principal articles are enshrined with liberal values. Secession decision, however, cannot become democratically successful unless powerful countries intervene the process and recognise the breakaway state despite the rejection of mother state or the disagreement of the UN (Chandhoke, 2016). Many secessionist movements aggressively pursue their motives, knowing that the parent state is so weak to respond militarily to its cause because the powerful states, Western powers, will engage the decision. Today's unequal global order makes many secession decisions more of an external-driven. This is evident in the case of Kosovo where the superpower had openly expressed contradicting views on Kosovo's secession decision. When the Parliament of Kosovo declared their independence in 2008, the powerful states were divided over the case. The Western bloc, namely, the USA, UK, France have made haste to recognise Kosovo as a new state while Russia and its allies resisted it claiming that Kosovo's secession is 'a breach of public international law'. Though secession is purely an issue of domestic law, Resolution 1244 (primarily supported by the Western world) internationalised the case and moved Kosovo from being part of Serbia (Borgen, 2011).

While the all above arguments are valid, however, there would be theorists who support the view of secession decision being democratic. In his paper, '*In Defense of Self-Determination*', Philpott (1995) have explicitly argued that for a democracy to flourish, there should be recognition for a non-remedial right to secede, which suggests, that any 'people' or 'nation' has the right to secede if their overwhelming majority within a given part of the land of the parent state vote in favour of secession. The right of political participation, according to Copp (1997), is fundamentally a key to the right of secession meaning each individual has a personal autonomy to decide about her future by playing a part in the political decision-making process and thus the right to choose his or her own 'political reality'. Each person has arguably the right to share her political reality with other members of their community with whom she shares similar identity and this ultimately means that she is, as Pavkovic 2003 claims, 'better able to participate, better represented, better able to deliberate and legislate in common, rather than [having] constantly [to] combat or be drowned in dissonance of foreign ways.' This view is also held by Caney (1998) who argues that in any individual or a group of individuals, 'because of their national commonality, the decisions reached by their political institutions express to a greater extent than otherwise the interests of each.' Thus people with a collective identity, in a given territory, who has a desire to improve their political participate has the prima facie right to secede. However, Philpott (1995) takes issue with the contention that individuals are autonomous in a democratic state, not because democratic decision-making produces outcomes that promote autonomy (though this may also be true) but because being independent means being self-governing and democracy is merely the self-government of individuals.

V. Conclusion

In sum, the question of this paper is whether, and if so on what basis, secession decision can be made democratically. The simple answer is that secession result cannot be democratic however the process is democratic in nature. As evident on the above cases, notably Somaliland and Sudan, most of the secession process goes through a violent trajectory. Of the sixty new states created through secession, Siroky (2009) concludes, 87 per cent of seceding states face conflict (of any kind). Therefore the results paint the bigger picture, suggesting that so long secessionists have deep mistrust with the mother states due to the above-mentioned reasons, for example, social injustices, economic marginalisation and poor political participation against a particular community (of shared values) within the parent states (Like Isaaq clans in Somaliland or Non-Arabs in Sudan), the secession decision will ultimately be undemocratic. In his paper, *'When is the Right of Secession Justified?'* Chandhoke (2012) holds the view that 'the refusal of international law to recognize secession serves to push the reasons for, or the justification of, secession under the metaphorical carpet. This does not help anyone to take a principled stand on the issue of secession, for we do not know which side we should be on. The formal position of the UN on secession is, as a matter of course, shaped by the compulsions of 'real' politics.' As far as this Chandhoke's claim is concerned, separatists have no better alternative option than to wage armed struggle against the dominant political structures in their mother states to achieve their secession ambitions making the secession decision very undemocratic.

Nevertheless, the claim for secession decision being democratic is, to some extent, reasonable. If the leadership of the parent state recognises the need to address the grievances of the secessionist, and approach their demands with innovative mindset on how mistakes of an officially democratic, but an imperfectly just, system can create an open platform for dialogue, then it is not justified per se that secession decision takes violently armed path. The main weakness with this explanation is that in the world of real-politick, this notion is idealistic because the opposing intentions of separatists and that of parent states are hard to harmonise unless there is an external force that overrides both parties (Issacharoff, 2008). More so the arguments to demonstrate the same values that justify democracy need a (non-remedial) plebiscitary right to secede are unconvincing; at most there is a delicate assumption that democratic decision-making should encompass to the determination of political boundaries because equal respect for persons requires an equal say in political decisions. It is not clear however that this assumption even counts in favour of the plebiscitary right view since it seems to support the claim that all the citizens of the state, not only those of the would-be secessionist region, ought to have an equal say in the decision that determines boundaries. In keeping the democratic states intact against division, Moore (2003) suggests that secessionists should use 'the threat of secession as a strategic bargaining tool that gives minorities a *de facto* veto over majority decisions' and this exercise would ultimately foster stability for the mother state as well as protect the rights of minorities with secessionist ideology making the democratic governance work well for both parties.

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