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FROM SECESSION TO SUBMISSION: AN ETHICAL FRAMEWORK FOR NON-TERRITORIAL AUTONOMY

ABSTRACT
The purpose of the paper is to ascertain when non-territorial autonomy (NTA) arrangements are a morally appropriate response by states to various minority claims, given possible alternatives. As such, it is not about the relationships between minorities and majorities, but minorities and the state. The two main questions are: (1) What are the criteria of moral appropriateness? (2) When are any of the alternatives morally appropriate? Methodologically speaking, it makes sense to start from the most difficult of the alternatives to justify secession because it represents the most extreme possible claim of a minority towards a state, or even against a state. Once such a criterion or set of criteria is established, the criteria for other alternatives can only be reasonably lower, and the criteria for secession will be indicative of what these lower criteria could be.

KEYWORDS
ethical framework, moral appropriateness, NTA, secession, states, minorities.

1. Introduction

In his interpretation of St. Augustine's views on the relationship between Church and state the famous American international relations scholar John Lewis Gaddis writes that "[...] not all ends are legitimate; not all means are appropriate. Augustine seeks, therefore, to guide choice by respecting choice" (Gaddis 2018: 100). In the present international order, at least as it is presented in its relevant documents, such as the Charter of the United Nations, one of the legitimate ends which can be pursued by peoples is their self-determination. That self-determination is considered a primary right. A group may, however, choose to assert that right in various ways, and existing states might choose to react to those assertions in different ways as well. The main purpose of the paper is to ask when non-territorial autonomy (NTA) arrangements are a morally appropriate response by states to various minority claims, given possible alternatives. As such, it is not about the relationships between minorities and majorities, but minorities and the state.

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When theorizing about possible normative frameworks for NTA, we usually speak of legal or even constitutional arrangements, but the legitimacy of these frameworks can also be developed from an ethical point of view. Legal histories and international law written in Serbo-Croatian are also full of such historical examples, since ancient, medieval and early modern age jurists were philosophers at least as often as they were anything else. Therefore, when mentioning a normative framework, the paper will focus on moral philosophy.

The goal is aligned with the broader goals of the European Non-Territorial Autonomy Network (ENTAN) which are to discuss possibilities and make academic breakthroughs in the field of NTA as an alternative to separatist movements and tendencies which can result in more extreme or robust expressions of minority self-determination, such as territorial autonomy or even secession. The claim of the present paper is that in theorizing about NTA, there remains an intellectual obligation to place them in a larger framework of options or alternatives, from a complete lack of state-minority arrangements to secession. Because of this, one's broader normative framework for NTA does not have to present a simple binary option - either NTA or separatism, but rather needs to be placed in a spectrum of possible alternatives for the relationship between the state and its minority or minorities.

The possible alternatives within the relationship being explored, when it comes to minority rights claims, seem to be:

(1) Secession or revolution
(2) Territorial Autonomy (TA) arrangements
(3) *Non-Territorial autonomy (NTA) arrangements*
(4) Minority arrangements with the state less than NTA[1]
(5) Lack of any arrangement between minorities and the state

The two main questions are:

1. What are the criteria of moral appropriateness? (methodology)
2. When are any of the alternatives morally appropriate? (a typology based on the above mentioned methodological criteria)

Methodologically speaking, it makes sense to start from the most difficult of the alternatives to justify - secession - because it represents the most extreme possible claim of a minority towards a state, or perhaps rather against a state. Once such a criterion or set of criteria is established, the criteria for other alternatives can only be reasonably lower, and the criteria for secession will be indicative of what these lower criteria could be. Following this line of reasoning, the first part of the paper describes the existing mainstream theories

1 This alternative is speculative and is merely meant to enable the conceptualization of situations in which states recognize the existence of minorities at some level but have barely visible or existent NTA arrangements.

about the moral right to secession. After that, the second part of the paper focuses on the lower alternatives, ranging from territorial autonomy to a complete lack of arrangements between minorities and the state.

Within this spectrum, the most important first choice in the first part of the paper is that of an appropriate theory of the moral right to secession. This is because some of these normative theories maintain that it is a primary moral right of certain groups to make a strong self-determining claim to secede from their existing states and create new ones, thus taking away territory from the former. While it might be clear that self-determination is itself a primary right of peoples, it is not clear that asserting that right with a secessionist claim can be regarded in the same way.

As for the second part of the paper, while it questions for possible options, its main focus revolves around placing NTA into its proper place within the spectrum of possible alternatives. Because of this, it is important to define from the outset what kinds of institutions can NTA include. The various types of NTA can, thus, include the following institutions (Goemans 2023: 86):

a) "some kind of language regime, possibly a language right,
b) proportionality in the public administration,
c) a national council that autonomously decides on cultural and educational matters, and
d) some minimal powers, possibly only advisory powers, on matters that are not cultural or educational."

All of these can find moral and political justification in the principles of equality, cultural preservation and group rights, as argued by Goemans (2023). However, while that is informative of what NTA arrangements can entail and how their existence and implementation is justified, it does not place them within a broader spectrum of possibilities for minority self-determination. That is why the paper attempts to place them within a broader framework which takes into account possibilities ranging from secession to a complete lack of autonomy arrangement, aiming to ascertain what the relevant criteria would be for choosing the morally appropriate course of action.

2. Criteria for the Moral Permissibility of Secession

Normative theoretical approaches of the moral right to secede can roughly be divided into two categories (Mladić, Buzar 2015: 229; Buchanan 2007). As put forth by Allan Buchanan (Buchanan 2004, 2007), they fall can be categorized as *Remedial Rights Only Theories* and *Primary Rights Theories*. Since the paper ultimately settles on the remedial rights approach, a short treatment of the primary rights approaches will be provided first, followed by a treatment and arguments in favor of the remedial rights approach.

2.1. Primary Rights Theories

Primary rights theories can be subdivided into ascriptivist or nationalist theories (e.g. Miller 1999, Miller 2003), and plebiscitary theories of the right to secede (e.g. Wellman 2005,Beran 1984).

Ascriptivist or nationalist theorists claim that certain types of groups, because of their common cultural features, i.e. national minorities, have a primary moral right to protect their culture, language, and other defining characteristics, by seceding from their existing states. Most authors, for example Miller, offer relatively strict conditions under which this can occur, but nevertheless maintain that the right to secede is a primary one, meaning that it doesn't have much to do with the treatment a minority is receiving by a state (in terms of NTA or lack thereof).

Ascriptivist theories, as has been stated, are a subgrouping of the theories of the primary right to secession. This means that they do not consider the right to secession to be justified *only* in cases of serious violations of human rights and legally valid contracts between states and minorities, but rather consider certain groups to have the right to secession as a fundamental right to their own self-determination. At the same time, at least in most cases, it is about the right of nations to achieve their own self-determination through their own nation-state. Ascriptivist theories of the primary right to secession are therefore often called nationalist theories.

One of the most famous representatives of this tradition is David Miller. The claim that Miller advocates is "[...] each nation should have its own set of political institutions which allow it to decide collectively those matters that are the primary concern of its members" (Miller 1995: 81). For Miller, a nation is a group of people who perceive themselves as members of a community who have special duties towards each other, and who strive for political autonomy in that community. These special duties and common aspirations are the result of characteristics that the members of a community believe they share, such as a common history, attachment to a certain geographic area, and a culture that distinguishes them from the culture of their neighbors (Miller 2003: 65). Of course, Miller's approach is far more complex than simply attributing the right to secession to any national group in any part of the world. He even concedes to Buchanan that the normative nationalist principle that any group, once proliferating into a nation, should have the right to secede is a recipe for continued political fragmentation (Miller 2003: 62). However, the conditions under which a nation could have the right to secession are not so general that every nation could easily satisfy them or take them lightly. In order for a nation to have the prerequisites for secession, it would have to be a territorially compact majority on a part of the territory of a state ruled by another nation. A more serious analysis of the world map and the national minorities we find on it would show, according to Miller, that we find such cases less often than we would think.

The conditions which Miller considers essential for the justification of the secessionist demands of nations are the following (Miller 1995: 113–114; Rosůlek 2011: 123–124):

- "The national identity of A is clearly distinct from the national identity of B, and the national identity of A cannot be developed and protected within the framework of the limited autonomy provided by B.
- The territory claimed by A cannot be inhabited by a third group C, whose identity is so incompatible with A that this would result in discriminatory action on the part of A.
- The part of minority group A that remains within group B's new territory after secession must not therefore be vulnerable to attacks by group B.
- Group A must have good arguments for taking a piece of territory from group B, i.e. there must be a clear connection between group A's historical identity and the territory they want to take over.
- Finally, the secessionist group A and the majority group B must have enough resources left after secession so that both new states are able to implement distributive justice in their territories."

Furthermore, Miller strongly emphasizes the distinction between a nation and an ethnic group, insisting that not all ethnic groups are nations and that a strong right to self-determination cannot be accorded uniformly to every cultural and ethnic group in the world. Finally, precisely because of the problems that secessionist movements often cause, Miller himself suggests that the self-determination of nations can often be achieved within the framework of other democratic options, such as federal arrangements, etc. (Rosůlek 2011: 124).

Here, of course, our task is not to evaluate which of the mentioned normative approaches to the issue of secession would be the best solution. However, although the reality of secession is as complex and destabilizing as Buchanan tells us, and we tend to accept the right to secession mainly as a remedial right, one thing should be clear. Namely, if Miller's definition of the nation is at all correct and if the very essence of the nation includes the common aspiration for political autonomy, then any attempt to deprive a nation of its right to that autonomy is, in a sense, unnatural. Such attempts are at least as destabilizing as secession itself.

Plebiscitary theories go further, as their proponents such as Christopher Wellman and Harry Beran believe that secession from a liberal-democratic state is a matter of plebiscite, and not even connected to groups *as* ethnic or national groups. Any group of people, if they are a majority in a part of a state's territory, have a primary moral right to secede if they choose to do so. There are of course some fundamental and technical conditions that need to be met, but the main point is that secession is a primary right.

Like ascriptivist theories, plebiscitary theories also belong to the category of theories of the primary right to secession. However, their proponents believe that secession is legitimate simply if the majority population of a territory has a desire for secession. There are no other conditions, such as violation of human rights or unjustly confiscated territory, that this majority group would have to satisfy, and the secessionist group does not have to be culturally

defined, nor does it have to have a special historical connection with the territory or any other type of argument for the territory which they wish to claim for themselves (Norman 2003: 37).

In other words, the plebiscite theory promotes the position that any group of people, with a place of residence in a certain part of the territory of a state, has the right to secession without a special agreement with the state from which it wants to secede. In other words, secession is morally justified and without any legal basis for such an act in the constitution of the country from which they want to secede, and no country, including their home country, has the right to interfere and prevent their attempt to create a new (legitimate and recognized) country on part of the old territory. The only condition that must be met is the gathering of a sufficient number of votes for secession. If a sufficient number of votes are collected, then the right to secession for the group in question is a primary right and should not be denied (Norman 2003: 37).

The plebiscitary approach seems intuitively in line with democratic values such as freedom of decision making and the power of the majority vote. It seems to us that the recognition of this theory in international law would allow a sufficient amount of freedom for people to decide their own political destinies. Plebiscitary theories are based on the notion of a liberal state and a liberal society, which focus on the rights of the individual, which in the liberal tradition represents the highest value, and any violation of individual rights belongs to the category of the highest violations of the moral and legal order that we can imagine. Therefore, the restrictions that the state can place on an individual or a group of individuals who agree on a principle or on a decision are really minimal. Any critique of this view would have to be addressed either to the liberal concept of the state, or it should show that the liberal concept of the state does not support plebiscitary theories of secession (Mladić, Buzar 2015: 223).

Christopher Wellman's plebiscitary theory, for example, considers that for every group in a liberal-democratic state there is a primary plebiscitary moral right to secession "[...] as long as its political divorce will leave it and the remainder state in a position to perform the requisite political functions" (Wellman 2005: 1). Another condition is that the newly created state should not be less liberal in its constitution than the state from which it seceded (Wellman 2005: 1). Although any realistic conditions for the aforementioned necessary political functions would be a matter of great debate and the arguments would often be manipulated in one way by the secessionists, and in another by the state that claims the piece of territory in question,

Beran's starting point for the defense of the plebiscitary theory is the following: if it is just to kill a tyrant in a revolution, then an attempt at secession from a tyrant should also be considered just. However, a group that needs or wants to carry out secession does not have to be characterized by a national character, nor by any other ascribed character. It is enough that the group in question wants to secede. According to him, "[...] any territorially concentrated group is a potential candidate for permissible secession" (Beran 1984: 29). Namely, if peoples in democratic countries have the right to such radical

moves as changes to the constitution and basic laws of a country, then they also have the right to change that character in a territorial sense, i.e. by attempting secession. Therefore, there does not have to be a national body on a piece of territory that is different from other national bodies on the rest of the state's territory, and there is no need for wrongdoing that would have to serve as a basis for the remedial right to secession. Likewise, we can easily imagine secession in its plebiscitary form at smaller federal and local levels, and ultimately even at the individual level.

> The theory can be applied to the part of Northern California that wants to secede from California, or to a southern portion of New Jersey, which wants to break away from New Jersey, or to Staten Island, which wants to secede from New York City. Theoretically, the theory can be applied to a single individual or household. In principle, there are no lower limits, although [one] would say there are technical considerations that preclude secession at the individual level. (McGee 1994: 11)

According to Beran:

> [...] the people have sovereignty. Is this sovereignty a collective attribute of all the citizens of an existing state or can some of them exercise their share of sovereignty by setting themselves up as an independent state? Majority rule is claimed to be an essential part of democracy. But is majority rule morally legitimate if a territorially concentrated minority does not acknowledge the unity of the state?' According to liberalism, freedom is the greatest political good. Does this imply a freedom to secede? (1984: 22)

From the standpoint of remedial rights only theory and ascriptivist theory, the answer is no. Beran's answer is that, based on the belief that a plebiscitary approach to secession belongs to the essence of democracy as a form of popular majority rule, a concentrated territorial majority, meaning a minority with respect to the entire state's territory, but a majority on a disputed piece of territory, has the right to all forms of self-determination, including the most radical.

2.2. Remedial Rights Only Theories

Neither of the primary rights approaches seems appropriate as a starting point for a framework within which NTA could play a significant theoretical or practical role. With nationalist theories as a theoretical starting point, NTA would be more of a milestone in a minority group's *cursus honorum*, a building block for future growth towards stronger separatist claims. With plebiscitary theories there is no relevant connection, since groups which could not identify certain common traits in the way national minorities do, would never consider, need, or be able to make use of NTA.

The theorists of the remedial right to secession, and here with the emphasis on Buchanan, stand out among the moral theorists of secession as the group least willing to grant any group the right to secession, and they emphasize morally

the legitimate interest states to maintain their territorial integrity (Rosůlek 2011: 122). These interests, Buchanan believes, ultimately serve individuals and support their basic freedoms as individuals, because the recognition and protection of the territorial integrity of states in international law exists precisely in order to provide for the protection and support of individuals. Behind this is the belief that the territorial stability of the state is essential for the general stability that provides individuals with security and an environment in which they can develop their freedoms. Territorial instability would render states ineffective in protecting their populations. Namely, effective and just states are able to (a) implement a functional legal system, (b) protect the physical security of both individuals and groups, (c) protect their rights, and (d) enable citizens the right to active participation in political processes (Rosůlek 2011: 122). This is precisely why theorists of the remedial right to secession emphasize the importance of respecting the territorial integrity of existing states.

Remedial rights only theories generally consider that the right to unilateral secession is acquired only by those groups that have experienced and continue to experience constant and severe injustices and violations of basic human rights within the borders of an existing state. This right is analogous to the right to revolution as understood in liberal political theories. Revolution aims to overthrow the government, while secession aims to separate part of the territory from the control of the state which claims that territory. In that case, the basis for the right to secession exists in cases of (Buchanan 2004: 351–352):

(a) genocide and massive violations of fundamental human rights,
(b) unjust annexation of territories, and
(c) constant violation of intrastate treaties on autonomy by the state.

"A more austere Remedial Right Only Theory would recognize only (a), persistent, large-scale violations of basic human rights (in the most extreme case, genocide or other mass killings) as sufficient to justify unilateral secession" (Buchanan 2021).

In short, if a state does not commit the above acts, then we can consider it a just state, or at least a minimally just state. Remedial rights only theorists would not allow secession from such a state. Of course, this does not have to apply only to liberal states with liberal societies. Many may object to Buchanan that his conditions for a just state do not meet the conditions of a just society because there is no mention anywhere of the equal right of all citizens to participate in political processes, the rights of minorities, etc. However, if one considers the importance and weight of the secessionist's territorial claim (Brilmayer 1991), then remedial rights only theorists can suggest to vulnerable groups that there are various forms of self-determination that are not as radical as secession. This refers to the various forms of intrastate autonomy that many provinces in the world possess, which enable them certain freedoms and rights that they would not have without the status of autonomous provinces. Furthermore, if the state within which some group attains a certain level of

autonomy persistently violates the autonomy agreements that have been passed, then according to the remedial rights only theory there is already a moral right to secession. In short, remedial rights only theories are not against secession *per se*, nor are they against the spread of liberal values and the acceptance of liberal constitutions and laws in the countries of the world, but it is very skeptical of secessionist movements within states that do not fall into any of the three categories mentioned above (a, b, c). So, groups that are for any reason (beyond the three reasons mentioned above) dissatisfied with their status in the state in which they abide, are still free to fight for other, less radical forms of self-determination.

It should be pointed out that the philosophical discussion between the primary and remedial rights only theories is not settled, nor does it need to be for the present purpose. The important point for this paper is that if NTA is to be discussed in a broader ethical framework, then it seems to make sense that the discussion takes place in view of the remedial rights only approach, given that both advocates of NTA and remedial rights only theories are skeptical of separatist movements. Alternatively, there are grounds for considering the relationship between nationalist theories and NTA in those situations when Miller's conditions for secession are not met and other modes of self-determination need to be explored. The difference is, however, that nationalist theories seem to view secession as the ideal course of action which, unfortunately, cannot take place unless certain conditions are met, which is often the case. On the other hand, remedial rights only theories do not view secession as an ideal, though often unattainable solution, but as a last resort for peoples who are unable to guarantee for their self-determination in any other way. The two theoretical approaches reflect very differently on NTA, because for nationalists it may be a last resort, while for remedialists it is a first resort. That is why anyone interested in seriously exploring and advocating NTA should take a remedialist-only position to the question about the moral right to secession.

3. Moral Criteria for NTA and Other Forms of Self-determination Short of Secession

Once remedial rights only theories are accepted as providing adequate criteria for morally permissible secession, the moral criteria for less radical types of self-determination can be reasonably lower. In that case, territorial autonomy (TA) arrangements can be viewed as morally appropriate when secession is not warranted according to remedial rights only theories, but when the next alternative (NTA) would not function, given specific minority needs in a specific part of the state's territory.

> Instances of NTA are part of the broader category of autonomy arrangements and, as such, illustrate the logic of power-sharing. [...] The power, which is divided and shared, belongs to the state, the beneficiary of the arrangement is a sub-state actor. [...] Thus, the two main actors of any autonomy arrangement

> are the state, on the one hand, and the autonomous entity, on the other hand. The distribution of state power can be done on [a] territorial or non-territorial basis, which means that the sub-state actor endowed with certain functions otherwise exercised by the state can be a part of the country's territory, a geographical unit equipped with a special status (TA), or an institution resulting from laborious procedures initiated by members of a certain category of the state's population, regardless of their residence (NTA) (Salat 2023: 2–3).

A minority group can opt for some form of TA only when they are a majority in a certain part of the existing state's territory. Also, such an arrangement should require a plebiscitary decision made by the entire population, not only by members of the minority group, within the part of the territory of the state to which some form of TA would be granted by the state. In states which are federally or co-federally arranged such forms of TA would be available to populations even regardless of minority status, as they generally are available in federal and co-federal states, but the important point here is that such state arrangements allow for high levels of exercising self-determination rights without the need for secession or separatist tendencies altogether. Whether all federal and co-federal arrangements are roughly equally conducive to such exercise of self-determination rights, is an important question, but beside the point of this paper.

TA arrangements can be considered as morally permissible and appropriate when the above conditions are met, but they by no means have to be considered as *a priori* necessary. If a minority group's desired goals of self-determination can be achieved with non-territorial means, then they may (though not necessarily should) be achieved with non-territorial means. Such means involve NTA arrangements, which is the central point of this paper. Also, when the criterion of a minority being a majority in a particular part of the territory is not met, then NTA are again morally permissible and appropriate. Additional reasons for advocating NTA arrangements is that in allowing for the exercise of self-determination rights they relevantly increase the standing of minority rights nationally and internationally (Vizi 2023), and they are a relevant democratization tool (Smith 2023).

Cases where the institutional arrangements between the state and a minority are lesser than NTA or there is a complete lack of any arrangement can be considered as morally appropriate when there are no recognized minorities, either because no one is identifying as a minority or because a democratic state functions based solely on a civic conception of nationality. All other cases would probably imply that the state is suppressing minorities' rights to self-determination in which case a lack of NTA would not be morally appropriate. If this suppression were to include mass violations of basic human rights, then in such cases minorities would be morally justified in attempting more radical forms of self-determination such as TA or secession. In cases in which they did not constitute a majority in a part of such a state's territory, which would prevent them from opting for TA or secession, they would be morally justified in, *ceteris paribus*, attempting a revolution, although one imagines

that it would have to be preceded by a number of attempts to first gain international assistance in bettering their status. Namely, the moral criteria for secession and revolution from a remedial rights only perspective are the same.

4. Conclusion

In conclusion, it should be said that the ethical framework for NTA arrangements, which attempts to view NTA within a broader spectrum of possibilities, ranging from secession to a complete lack of any arrangement, is far from finished in a variety of details. However, the paper does provide a broad preliminary sketch of the possibilities, and by doing so it allows for a moral assessment of NTA from a broader ethical perspective. The paper focused heavily on the theories of the moral right to secession, because secession is the most radical form of self-determination for which a minority population can opt, and as such represents the most difficult of all the options to justify. Viewed from that perspective, NTA seems doubly justified and morally appropriate, both for the reasons stated by authors such as Goemans (2023) and for the reasons explored in this paper. The reason why such a perspective is important is because a large number of minorities worldwide consider secession as their best and only option for self-determination, which might well be the case in a number of non-democratic states, while the paper emphasizes that other types of institutional self-determination, such as NTA, are often times not only more practicable, but more morally justified.

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Stipe Buzar

Od secesije do podčinjenosti: Etički okvir za neteritorijalnu autonomiju

Apstrakt

Svrha ovog rada je da se utvrdi kada je neteritorijalna autonomija (NTA) moralno primeren odgovor država na različite zahteve manjina, s obzirom na moguće alternative. Kao takva, svrha se ne tiče odnosa manjinskih i većinskih populacija, nego manjinskih populacija i države. Dva su osnovna pitanja: (1) Koji su kriteriji moralne primerenosti? (2) Kada je neka od alternativa moralno primerena? Metodološki gledano, ima smisla krenuti od alternative koju je najteže opravdati – secesije – jer ona predstavlja najekstremniji mogući zahtev jedne manjine prema državi, ili pak i protiv države. Nakon što se uspostavi takav kriterijum ili skup kriterijuma, kriterijumi za druge alternative mogu biti samo razumno niži, a kriterijumi za secesiju će biti indikativni za to koji bi ti niži kriteriji mogli biti.

Ključne reči: etički okvir, moralna primerenost, NTA, secesija, države, manjine.