

The “Who”: Is it Possible to Democratically Determine the Demos Entitled to Secession?

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Abstract

Democratic theories of secession claim that when a group of people expresses a preference for secession, such willingness (with some practical restrictions) suffices to ground a democratic right to secede – so not only nations, or encompassing cultural groups, are entitled to secede. Democratic theories of secession, it is claimed, provide a democratic way to deal not only with secession itself, but also to identify which groups are eligible to secede, namely those people who express the will to be independent. This paper is devoted to show that the democratic arguments invoked to identify which groups are eligible to secede, despite their initial appeal, are flawed. I argue that this is ultimately due to the inability of these theories to democratically determine the demos entitled to secession. This critique to democratic theories of secession, though explicitly mentioned by a few authors, has not been previously developed by anyone. This is the aim of this article. My conclusion will be that a group’s willingness to secede, while normatively relevant, does not guarantee a unilateral right to secede.

Keywords: Secession. Determination of the Demos. Democratic Theory.

0. Introduction

With some exaggeration, we could say that nowadays, calls for political secession are pervasive in Western liberal democracies. New cases like Scotland, Catalonia – and in some sense, also Brexit – have followed the “old” group of secessionist movements including Quebec, Ireland, and the Basque Country. But secession is not only politically hard to deal with; it also presents many theoretical and philosophical challenges.

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Theorizing about secession seems to involve (at least) two key questions –which groups have the right to secede, i.e. the “Who”, and what is the correct procedure for deciding whether to secede, i.e. the “How”¹.

In this article, I will assume that the correct way to decide in favor or against secession in a particular case necessarily involves democratic procedures, namely some sort of referendum, and so I will not dispute the “How” of secession. Rather, this article is mainly devoted to the “Who” question, concerning which groups have a right to secede².

Theories that address that latter question can be roughly classified into two types. According to the first type of theory, only those groups whose members share a national identity, or some cultural traits, have a right to secede³. Another prominent type of theory claims that the members of a group need not share any national or cultural identity in order for that group to be eligible for secession; rather, a group is entitled to secede whenever its members express the will to form a new state⁴.

Whereas the former theories invoke non-democratic criteria to determine who the relevant groups are⁵, the latter theories appeal to democratic considerations. Accordingly, I will call the former *non-democratic theories* of the “Who”, and the latter *democratic theories* of the “Who”⁶. In this article I will focus on democratic theories of the “Who”, and I will say almost nothing, positive or negative, about non-democratic theories of the “Who”. One last terminological clarification: throughout this article, when I say “democratic theories of secession”, I mean those theories according to which both the “How” question and the “Who” question ought to have democratic answers⁷.

¹ There seems to be a hidden third question here: who has the right to participate in the decision of secession? It is usually assumed that the answer to this question amounts to the answer to the first question, that is, those who have the right to participate in the decision are those entitled to secede. Some of my arguments here will dispute this assumption.

² By a right to secede I mean a non-remedial right to secede. So I will not consider here remedial-right theories of secession, like Buchanan’s (see Buchanan1991). However, some of my arguments here are similar to his criticisms of what I call democratic theories of the “Who” (see Buchanan 1998).

³ Margalit and Raz 1990; Nielsen 1998; Miller 1997: chap. 4.

⁴ Philpott 1995; Wellman 2005; Beran 1984, 1988; Copp 1997.

⁵ According to Margalit and Raz 1990: 455, who advocate theories of this sort, «that question [i.e. the “Who”] cannot be democratically decided, at least not entirely so».

⁶ Some would claim that democratic theories of secession only concern the “How”; that is, they answer that the right procedure for deciding any case of secession is a plebiscite. So it might be disputed that such theories have anything to say, qua *democratic* theories of secession, regarding which groups are eligible to secede. I think they actually do – and so they intend to be democratic all the way down. I will deal with this in the next section.

⁷ By combining the “Who” and the “How” with the democratic or non-democratic nature of a theory, there is logical space for four cases. 1) A democratic theory about the “Who” but not about the “How”; 2) A democratic theory about the “How” but not about the “Who”; 3) A non-democratic theory about both the “Who” and the “How”; and 4) A democratic theory about both the “How” and the “Who”.

I will try to show that democratic theories of secession are flawed when it comes to determining which groups are entitled to secede. For it is not possible to democratically determine who the relevant group is for a democratic secession. As I will explain later, I take this to be a consequence of the so-called boundary problem⁸.

I will proceed as follows. In the first section, I will show why the boundary problem intuitively makes trouble for democratic theories of the “Who”. Sections two, three, and four are devoted to analyzing and ultimately rejecting three different democratic responses to the boundary problem. Finally, I will summarize my argument and deal with some of its consequences in the conclusion.

1. Democratic Theories of Secession Meet the Boundary Problem

A democratic method can be roughly understood as a method of collective decision-making characterized by the equality of the participants in the collective decision. Some will find this definition unsatisfactory, but it will not be necessary to specify which kind of democracy I am referring to here, since the boundary problem affects all forms of democratic theory⁹.

Thus, any kind of democratic theory «must face the logically prior and in some ways more fundamental question of the appropriate constitution of the *people* or unit within which democratic governance is to be practiced»¹⁰. This is usually called the boundary problem, or the problem of «constituting the demos»¹¹. The core of the problem for democratic theories is that if we try to democratically specify who is to make the collective decisions, an infinite regress results: democracy is a method of collective decision-making that cannot determine who the relevant decision-making group is¹².

Some solutions have been proposed to block this infinite regress. One prevailing answer to the boundary problem – especially in the past, though it remains important – has been a nationalistic one: the nation, understood as some sort of contingent, pre-political entity, properly constitutes the demos¹³.

This article is devoted to discrediting theories of the last sort (although my arguments, if valid, would in principle also discredit theories of the first sort).

⁸ I want to make clear that this article is about secession, not about the boundary problem. Thus, I think that I do not need to exhaustively treat the literature on the boundary problem for my argument is circumscribed to the effects of the boundary problem on democratic theories of secession. Besides, as I will implicitly suggest later, the contemporary solutions to the boundary problem cannot help democratic answers to the “Who” question (on the contrary, they would rather count against democratic theories of secession).

⁹ Whelan 1983: 15.

¹⁰ Whelan 1983: 13, italics in the original.

¹¹ Goodin 2007: 40.

¹² Schumpeter 1983: 40.

¹³ Miller 1997; Walzer 1983, as cited in Song 2012: 40.

It is precisely because of this aforementioned contingency that some authors seem to consider this answer to the boundary problem to be somehow arbitrary and thus unsatisfactory. Alternative non-contingent answers to the boundary problem have accordingly been provided. Some rely on the principle of affected interests¹⁴, according to which anyone whose interests are affected by a decision should be part of the demos making the decision; whereas others embrace what they call the coercion principle¹⁵, according to which those subject to the coercive force of an executive and legislative power should have a say in how such coercive force is exercised.

The debate is ongoing, but notice that all these proposed solutions, presented very roughly here, seem to assume the very same claim, namely, that how the demos is composed cannot be decided within democracy.

It was perhaps W. Ivor Jennings who first connected this worry (albeit without explicitly labeling it as the boundary problem) to the “Who” question of secession: «On the surface (self-determination) seemed reasonable: let the people decide. It was in fact ridiculous because the people cannot decide until somebody decides who are the people»¹⁶.

Nevertheless, who the relevant demos is, is «itself a matter of political decision, actually or potentially [...] Democratic Theory cannot simply take the matter for granted»¹⁷. This is precisely what the democratic theorists of the “Who” try to decide; they do not take the matter for granted.

However, some would object that it is misleading to characterize democratic theories of secession as providing criteria to select the relevant group for secession. This, supposedly, is because democratic theories of secession are not concerned with the “Who”, but rather only with the “How”. So the boundary problem as it arises here – who is the relevant demos for secession – is beyond the scope of democratic theories of secession. If this were true, my claim would indeed be misleading. But to the extent that proponents of democratic theories actually claim that non-democratic theories of secession are wrong to restrict the right to secede to nations and encompassing cultures, they thereby address the question of which groups are entitled to secede – and so the boundary problem shows up.

Perhaps some would respond that, even if I am right, it would be a mistake to claim that such authors provide criteria for identifying the group entitled to secede, qua *democratic* theorists. Regarding the “Who”, democratic theorists of secession have remained – and cannot but remain – silent; if they hold any opinion regarding

¹⁴ Goodin 2007; Shapiro 1999; Young 2000. In fact I will later appeal to a close cousin of this principle to criticise one of the democratic answers to the “Who”.

¹⁵ Abizadeh 2008.

¹⁶ Jennings 1956: 56.

¹⁷ Whelan 1983: 16.

the “Who”, they do so not in their capacity as democratic theorists, but rather as something else.

Well, it is a fact that some democratic theorists of secession – at least the ones that I take into account in this article – have not remained silent regarding which groups are entitled to secede. And this is not hard to understand; not only because, as Whelan claims, how we delimit the relevant demos is one of the most fundamental political issues, but also because some ways to determine who is the relevant group are *more democratic* than others. Suppose there is a group G that inhabits a delimited territory within state S, and is formed from members of races A and B. Now suppose that only the A’s were to decide whether G should secede from S. If you are sensitive to democratic considerations then you would probably not remain silent if the B’s were excluded from the relevant demos, since there is an alternative, more democratic way to delimit the demos, namely by including the B’s. In sum, democratic theorists, qua *democratic* theorists, do not remain silent on such points, because they intend to be democratic all the way down – democratic values permeate their answer not only to the “How” question, but also to the “Who” question.

In a sense, what democratic theorists of secession seem to claim is that if we see democracy as purely procedural, the infinite regress will arise and the boundary problem will thus be plainly unsolvable. If, instead, democracy is understood to also involve a set of normative values and moral considerations that underlie those procedures, then in contrast there would seem to be a democratic way to deal with the secessionist “Who”¹⁸.

The problem, as I will argue in the following sections, is that, notwithstanding their initial appeal, the democratic criteria provided by these theories to decide which groups are eligible to secede lead to a dead end. Democratic theories of secession cannot satisfactorily answer the boundary problem and, as a result, cannot be democratic all the way down.

In the next three sections I will assess several attempts, based on democratic values, to overcome the boundary problem for secession. Following Allen Buchanan’s presentation of democratic theories of secession¹⁹, I explore the idea that the values that justify democracy also justify why some groups have the right to secede. It is in that sense that democratic values would allegedly help us to determine the “Who”²⁰.

¹⁸ For a similar strategy to overcome the boundary problem, albeit proposed in a somewhat different dialectical context (see Song 2012).

¹⁹ Buchanan 1998.

²⁰ If you prefer to say three *liberal* attempts to solve the boundary problem, I will not object. I am interested in the values that justify democracy, and – as we will see in the following sections – the values invoked to support a democratic right to secede are usually embraced by political liberals.

2. In the Name of Autonomy

According to Daniel Philpott, «any group of individuals within a defined territory which desires to govern itself more independently enjoys a prima facie right to self-determination – a legal arrangement which gives it independent statehood or greater autonomy within a federal state»²¹. For Philpott, self-determination is grounded in individual moral autonomy and democracy is «the activity of governing oneself, of exercising one’s autonomy in the political realm»²². Self-determination is a legal arrangement which «promotes participation and representation, the political activities of an autonomous person»²³. Self-determination, therefore, promotes democracy for a group whose members «claim to share an identity for political purposes»²⁴. This latter point is important. To share an identity for political purposes does not mean that the identity in question is the only identity that members of the group may embrace. Those who favor secession can differ in their religion, race, or other cultural preferences – or even along traditional political dimensions such as left-right or liberal-conservative. It is in virtue of their shared political identity, that is, the fact they want to govern themselves within a delimited territory, that such a group is eligible to secede²⁵.

Consider the present Catalan secessionist movement. Imagine that the relevant demos that ought to decide whether Catalonia should become a new state are all the citizens of Spain. Additionally, assume that Catalans want Catalonia to become a new state. If it were up to all Spaniards to vote on Catalonia’s secession, this would violate the Catalan people’s autonomy, making it a non-democratic decision. According to Philpott, whether Catalonia becomes a new state is up to the Catalan people, since «one does not have the autonomy to restrict another’s autonomy simply because she wants to govern the other (...). A right to decide whether another self can enjoy self-determination would make a mockery of the concept»²⁶. To allow all Spanish citizens to take part in deciding whether Catalonia secedes would be to diminish the autonomy of every Catalan.

One might wonder whether such an argument actually responds to the boundary problem, since the «another self» of which Philpott speaks seems to be already delimited when he attributes autonomy to it. But, according to Philpott, to identify such a self is problematic only if we aspire to determine the demos by means of

²¹ Philpott 1995: 353. Philpott’s argument concerns not only secession but also self-determination, that is, improving self-governance without creating a new state, for example within a federal structure. For the sake of simplicity, from now on I will use both “self-determination” and “secession” to denote the creation of a new state.

²² Philpott 1995: 356 and 357.

²³ Philpott 1995: 358.

²⁴ Philpott 1995: 358.

²⁵ Philpott 1995: 359.

²⁶ Philpott 1995: 362-363.

what he calls «objective criteria». Philpott, like Buchanan²⁷, considers that «tests for identifying a people – linguistic, historical, religious, ethnic, racial, cultural – are virtually impossible to construct non-arbitrarily»²⁸. The alternative, for Philpott (though not for Buchanan), is simply to give up the search for objective criteria: «(I) t simply does not matter which traits define a seceding group; we know one when it announces, campaigns, or takes up arms for its dream of self-determination»²⁹. The criterion for identifying an eligible group is subjective – those who express their preference for secession constitute an eligible group.

But, as Alan Patten points out, Philpott's argument here would only make sense in a scenario in which, to take the Catalan example, the Catalans' preference for secession is unanimous³⁰. Meanwhile, given that, in Catalonia, citizens in favor of secession are in fact territorially intermingled with other citizens who oppose it, it will be impossible to respect everyone's autonomy, since allowing secession would be to disrespect anti-secessionist Catalans' autonomy; while conversely, denying secession would be to disrespect secessionist Catalans' autonomy.

Though it is certainly true that unanimity within a given territory is logically and empirically possible, in the actual history of secessionist movements, as in the Catalan case, those in favor and those against are usually intermingled within the relevant territory³¹.

Philpott admits that when unanimity does not obtain, his theory of secession could be in trouble³². But he proposes a way to solve this problem. He begins by defining what counts as a candidate territory for secession: «a candidate territory is that region which the proclaimers of self-determination desire to place under a new (or more local) government»³³. And when there is no unanimity within the candidate territory, «the operative principle must be majoritarianism. Guaranteeing everyone's right to live in the state of his choice is impossible; a next-best alternative must be adopted»³⁴. Thus, if it is not possible to guarantee everyone's preference within the relevant territory with respect to living in their desired state, what should count, in virtue of the majoritarian principle, is the majority's preference.

Similarly, Christopher Wellman, arguing that majoritarianism within the secessionist territory should rule when unanimity does not obtain, claims that such an

²⁷ Buchanan 1991: 49.

²⁸ Philpott 1995: 364.

²⁹ Philpott 1995: 365.

³⁰ Patten 2014: 259.

³¹ One possible exception is the secession of colonies. But nowadays it seems that the most striking, controversial cases of potential secession occur in Western societies (Quebec, Scotland, the Basque Country, or Catalonia itself). In these latter cases supporters and opponents of secession are usually intermingled within the relevant territory.

³² Philpott 1995: 365.

³³ Philpott 1995: 379.

³⁴ Philpott 1995: 379.

arrangement would allow for the satisfaction of 51 percent of the population's autonomy (i.e. their preferences regarding which state they would prefer to live in) while leaving the other 49 percent's autonomy unsatisfied. In contrast, «denying unilateral secession could allow 1 percent to force an unhappy 99 percent to remain in their current state»³⁵.

It seems, therefore, that with Wellman's or Philpott's arrangement we would respect the autonomy of more people. The more individual preferences are satisfied, the better. Thus, if we believe in individual autonomy we should be persuaded by their solution – or perhaps we should not.

Notice that Wellman is speaking here about percentages within the secessionist territory, that is, the territory described by the secessionists as the relevant one.

Consider the Catalan case again. Suppose that, within the Catalan territory, 51 percent are in favor of secession and 49 percent are against it. If we accept the majoritarian principle, according to which the best-case scenario is that in which more preferences are satisfied, then secession should be allowed. But, alternatively, one could do the math within the territory of the established Spanish state. Consider, then, the case in which 90 percent of Spanish people – including some Catalans – oppose Catalan secession, whereas 10 percent are in favor. Thus, depending on what the relevant demos is, taking into account the preferences of the majority may adjudicate in one direction or another. Or, to put it differently, we cannot know which is the relevant majority until we know which is the relevant boundary.

Yet, Philpott would probably claim that, given that autonomy cannot be used to limit the autonomy of others, we already know which is the relevant boundary here – the Catalan demos. Regarding some group's secession, why should the preferences of some *other* group be relevant? Why should Spaniards' preferences be the relevant ones regarding Catalonia's secession, given that Spaniards constitute a different group from Catalans? Would that not make a mockery of the concept of autonomy?

The problem with this response is that it begs the question, since precisely what is at stake here is whether Spain and Catalonia are two different groups. And the hypothesized response would seem to just assume that this is the case³⁶. Philpott's argument from autonomy does not provide an operative criterion for differentiating Catalonia and Spain. It simply presupposes that they are somehow different, and only when this is the case is his argument operative.

And since Philpott denies that ethnicity or any other objective trait should be the criterion of identification of groups (1995: 366), we are apparently left, at least within his theoretical framework, with no criterion to solve the "Who" question of secession.

³⁵ Wellman 2005: 61.

³⁶ The same would happen if we spoke of "territories" instead of "groups". What is at issue here is whether Spain and Catalonia are two different political territories. So it cannot be taken for granted that they are.

Perhaps the only possible way out for theories of this kind, as I said, depends on the occurrence of a highly unlikely fact – unanimity within secessionist territories. But most of the territories claimed by current secessionist movements, at least in Western societies, are inhabited by both opponents and sympathizers of secession. So the ideal version of a theory like Philpott’s or Wellman’s would offer no useful normative guidance to deal with secession in our real-world scenarios – though it would apply perfectly well in a far-fetched possible world where there is unanimity in all secessionist territories.

3. Societies and Equal Respect

According to David Copp, «territorial-political societies have the right to constitute themselves as states»³⁷. Neither encompassing groups nor nations are eligible to secede, because if they were, this would disrespect other members of society who occupy the territory claimed by secessionists, since they would be excluded from a decision that affects them³⁸. Copp claims that «authority over political decisions is divided equally among the (competent) adult citizens», and that by this democratic principle, «if the members of such a society have a stable desire for statehood, it would show a lack of respect for them and for their judgment if they were not given the authority to make a decision about statehood. Democracy requires that the members of the society be given equal authority over the decision»³⁹.

For Copp, only territorial-political societies have the right to secede⁴⁰. «Societies are characterized by what I call a “social network”. People come to associate with members of the society in which they live, to find their friends in that society, their mates, and their coworkers, and their children find their friends there, and their mates, and so on»⁴¹. These societies are political in the sense that they express a preference to form a new state, and are territorial in the sense that they occupy a territory in which a state can be formed⁴².

³⁷ Copp 1997: 278, 290.

³⁸ Copp 1997: 291-292. Copp admits that non-democratic theories could be amended so as to become democratic theories, by including in the relevant demos not only members of the nation or encompassing group, but also all inhabitants of the territory claimed by secessionists. He says that while this would be correct, it would amount to giving up on non-democratic theories (see Copp 1997: 287).

³⁹ Copp 1997: 292.

⁴⁰ Actually Copp says “right to self-determination”, but given that he takes “self-determination” to involve forming a new state, I will assume that the “right to self-determination” is equivalent, in his terminology, to the right to secede.

⁴¹ Copp 1997: 294.

⁴² More precisely, «a “territory” is a region of land or a sum of regions of land within which people can (in principle) move about, meet with other people, form significant social relationships, and otherwise live their lives; a territory is a region within which a state could feasibly be formed», Copp 1997: 294.

There is a sense in which equal respect determines the relevant boundary for Copp. In his account, equal respect calls for a more inclusive boundary than is drawn by non-democratic theories of secession. On the grounds of equal respect, Copp suggests we should take into account not only the preferences of secessionists, but also the preferences of non-secessionists who live in the territory claimed by secessionists.

But one could wonder, if democracy requires citizens to have the authority to decide key political questions⁴³, why, in virtue of equal respect, are not all citizens of Spain entitled to decide whether Catalonia becomes a new state?⁴⁴ Not allowing all Spaniards to participate is to fail to show them equal respect, because this amounts to denying them the authority to decide a key political question that clearly affects them – i.e. where the legal boundaries of their state are drawn.

So it seems that on Copp's view, somewhat paradoxically, if we use the equal-respect principle to delimit the relevant demos, there will be a right to secede but very few secessions would actually take place. Why? Well, if applying equal respect means involving all those people affected by a key political decision, then all citizens of the established state would have a voice in all secessionist processes. And, given how unlikely the citizens of a state are to vote in favor of giving up part of its territory, a secession in this format is improbable⁴⁵.

It is improbable, but not impossible. There can be cases in which the group seeking to secede is a net consumer of resources from the state from which it wants to secede. Unless such a group has a very strong national or cultural identity that overrides any other kind of consideration, it would be irrational for such a group to seek secession. Yet this remains a possibility; indeed, such irrationality does not always count against any crucial decision in real life. In this kind of case, it is not obvious that, if all the citizens of the state have a say in the decision, they would vote against secession.

However, it is not easy to find real instances of this scenario, at least in Western liberal democracies. It would probably be easier to find such instances among colo-

⁴³ Copp 1997: 285.

⁴⁴ Indeed, Buchanan claims that, by Copp's standards, there should be a «world-wide referendum on boundaries, so that all people can be treated with equal concern and respect regarding the disposition of this «key political decision», Buchanan 1998: 20.

⁴⁵ Similar reasoning would lead us to extend the relevant demos even beyond administrative boundaries. If, following Goodin 2007: 64), we take the "all affected interests" principle to be the best way to constitute the relevant demos, then, since every citizen whose interests are affected must have a say, the relevant demos in cases of secession would include not only citizens of the state whose territory includes the so-called secessionist region, but also, at least, citizens of neighboring states. But the extension of the demos could be even wider – if we interpret "all affected interests" as "all *possible* affected interests" then, in a world as interconnected as ours, virtually everyone would have a say in virtually any referendum of secession. At the end of the day, as Goodin 2007: 68 puts it, we would all make decisions together within a single demos.

nies of European countries, especially in past centuries. In those cases, Copp's strategy would intuitively authorize more than a few secessions even when all citizens of the State participate in the decision. But my impression is that the main target of Copp's theory is not that kind of case. He seems to be thinking more of liberal democracies like Spain and Canada. And regarding states of this kind, Copp's view – if it implies that all citizens of the State would have a say in the decision – would license very few, if any, cases of secession.

Would Copp accept something like this? My guess is that Copp would insist that every territorial-political society is eligible to have its own state. Catalonia and Spain, according to Copp's stipulative definition of «territorial-political society», are different territorial-political societies, so each of them has a right to its own state.

Could a view like Copp's avoid implying that secession ought to be decided by all Spaniards? Recall that according to Copp, a group should satisfy three conditions in order to become a territorial-political society:

- (a) The group inhabits a delimited territory.
- (b) The group expresses the desire to form a new state.
- (c) The group forms a social network.

I will start with (c). This desideratum is, to my mind, far too vague. How should we interpret “social network”? If we understand “social network” in its narrowest possible sense, then it seems that only some families and neighborhoods would be societies. But Copp could reply that no families or neighborhoods have expressed a desire to form a new state. They would not be territorial-political societies, and so they would not constitute groups eligible to secede – and besides, they could not perform the usual functions of a state. Most likely this is not the sense that Copp has in mind. On the other hand, assuming a wider sense of “social network” makes it hard to see why Spain, including Catalonia, or Canada, including Quebec, would not be territorial-political societies.

There are two ways to try to defend Copp's ideas. The first is to adopt an intermediate sense of “social network”. Copp uses Quebec and the Basque Country as examples of what he understands to be territorial-political societies. Perhaps we could interpret “social network” in a way that captures the sense in which Quebec and the Basque Country (or Catalonia), as territorial-political societies, differ from Canada and Spain, respectively. In other words, it might seem that between the narrow and the wide senses of “social network” we have already considered, there is room for an intermediate interpretation that allows us to distinguish current relevant cases. Unfortunately, however, Copp does not specify criteria that would allow us to distinguish between Catalonia and Spain (or between the Basque Country and Spain) on the grounds of them being different social networks.

Copp's concept of a “social network” is underdefined. It is not clear that there is any sense of the term that characterizes social relations that exist among Catalans,

and not also among Catalans and Spaniards, making it difficult to distinguish Catalonia and Spain as different territorial-political societies on such grounds.

It seems that the most natural way to distinguish between Spain and Catalonia draws on cultural differences between them. I am not claiming that such traits ground a right to secede, I am just claiming that if we want to differentiate Catalonia and Spain, it seems easier to do it on the grounds of differing cultural features like language. But I guess that Copp would not be happy with such a response, for to concede something like this would be to embrace some sort of non-democratic theory.

In sum, since Copp asserts that in a world of pluralistic societies, the idea that “nations” and some culturally unified groups have a right to secede is antidemocratic⁴⁶, and since his concept of a “social network” is far too vague, it seems that his theory provides no operative way to identify groups eligible to have their own state.

Additionally, condition (b) can be interpreted in two different ways. Is the desire to form a new state to be understood here as *unanimity* or *majority* among those occupying a delimited territory? If the criterion is unanimity then arguably Spain, including Catalonia within its borders, is not a territorial-political society because there is no unanimity – some Catalans do not want to live in Spain. If instead the criterion is majority then Spain, including Catalonia, would be a territorial-political society because a majority of its citizens want to live in a state called Spain. Similarly for Catalonia. According to a criterion of unanimity Catalonia is not a territorial-political society: some Catalans have no sympathy for an independent Catalan state. In contrast, under a majoritarian evaluation, Catalonia is a territorial-political society because a majority of its citizens, by hypothesis, want to live in an independent Catalan state.

What consequences can we extract from this symmetry between Catalonia and Spain? If we require unanimity, neither Catalonia nor Spain are territorial-political societies, and so Copp’s proposal cannot solve the boundary problem. That is, it cannot provide normative guidance for dealing with the issue of political division – of which secession would be a particular instance. Meanwhile, if (b) requires not unanimity but only a majority, Copp’s view is faced with an already familiar problem. Namely, we first need to know what the relevant demos is (or in Copp’s terminology, we first have to identify the territorial-political society), in order to know which is the relevant majority.

Condition (a) – “The group inhabits a delimited territory” – is controversial as well. I will address this issue in the next section.

⁴⁶ Copp 1997: 278.

4. Political Association and the Majoritarian Principle

I will now discuss a third democratic attempt, based on the principle of political association, to determine what makes a group eligible to secede. Once it has been shown that – as with the cases of autonomy and equal respect – this third proposal does not work unless there is unanimity, we will see how the rule of majority has been argued to solve the problem of determining the relevant boundaries for secession.

«Normal adults», Harry Beran claims, «have the human right of freedom of association, including political association, with willing partners»⁴⁷. Although Beran's theory is sophisticated, it will not be necessary to explain it in detail here. It will suffice to say that, for him, what makes a group eligible is that its members express a desire to freely associate with each other in order to form a state⁴⁸. That way we could solve Ivor Jennings's old concern, according to which self-determination is impracticable because the people cannot decide until somebody decides who are the people. Charles Beitz has vividly expressed why the principle of political association would allay Jennings's concern: «the people should decide who the people are. This is made plausible by the analogy with voluntary associations whose memberships are determined simply by including only those willing to accept the terms of membership. For convenience, we can say that, on this view, the groups to which self-determination applies are self-defining»⁴⁹.

On this view, a group is eligible to secede when various people, occupying a portion of a territory, express their desire to freely associate with each other in order to form a state. We do not need any nationalistic or external-to-the-group criterion to determine the relevant boundaries. The eligible group is self-defining. If A wants to be politically associated with B, and B wants to be politically associated with C, and C wants to be politically associated with D, and so on (assuming that those people rightfully occupy a determined territory), then together these people form an eligible group.

Let us assume that these conditions are met. Here, again, the proposal seems to work only when there is unanimity among those who inhabit the secessionist territory – i.e. the delimited territory described by secessionists as the territory of the new state. Without unanimity, there will be at least one person that will not be

⁴⁷ Beran 1998: 36.

⁴⁸ I will assume that, as Beran himself claims, «Individuals have the right of free association, including the right to form territorial communities on land they rightfully hold or acquire. Territorial communities have the right to maintain themselves, and for this they need territory» (see Beran, 1998: 37).

⁴⁹ Beitz 1979: 106. According to Robert A. Dahl, however, the principle «"let every people define itself" is nothing more than an aphorism. It may succinctly summarize historical experience, but it provides no grounds for judging whether one claim is better than another or whether the historical outcome should be preserved or overthrown», Dahl 1989: 196. I will make a different argument, consistent with Dahl's criticism.

freely associated with her desired group. A proposal like Beran's or Beitz's, just like Philpott's, Wellman's, or Copp's, would reproduce in the new states just the same structure that the old states have. That is, neither individual autonomy, nor equal respect, nor the principle of political association would be completely satisfied.

The next natural step would be to embrace majoritarianism. But, as we have seen, majoritarianism adjudicates the issue only once the demos has already been selected in a non-majoritarian way. Beran, nevertheless, seems to think that this is not the right way to see the issue. According to him, a recursive use of the majority principle offers a way out:

the majority principle seems to be the only method of resolving such conflicts [i.e. the lack of unanimity within the new states] that is consistent with the voluntary association principle. According to this method, a separatist movement can call for a referendum, within a territory specified by it, to determine whether there should be a change in this territory's political status, e.g. whether it should secede from its state. If there is a majority in the territory as a whole for secession, then the territory's people may exercise its right of self-determination and secede. But there may be people within this territory who do not wish to be part of the newly independent state. They could show, by majority vote within their territory, that this is so, and then become independent in turn, or remain within the state from which the others wish to secede. This use of the majority principle may be continued until it is applied to a single community (i.e. a community which is not composed of a number of communities) to determine its political status⁵⁰.

The final outcome of this recursive use of the majority principle would be a situation in which the principle of political association would be completely satisfied.

Does the recursive approach, then, solve the boundary problem?

Allegedly, at the end of the recursive application of the majoritarian principle, there would remain just one community for every delimited territory⁵¹. Thus we would have a democratic way to establish the relevant boundary. The difference – and this sounds quite iconoclastic given the standard presentation of the boundary problem – is that boundaries would be the outcome of the democratic method, not its precondition.

I will present two sets of considerations that call into question whether the prin-

⁵⁰ Beran 1998: 38-39. Beran 1984: 29 had already made this point a few years earlier.

⁵¹ In addition, Beran, quoting Gauthier 1994: 360, claims that recursively applying the majority principle «maximizes the number of individuals who live in mutually desired political association», Beran 1998: 39. This latter claim is more interesting than saying that secession would increase the number of satisfied people within the secessionist territory – because that would simply presuppose that the relevant boundary is that of the secessionist territory (see section 2 above). Beran's point is that, when there is a majority within a secessionist territory in favor of a new state, to allow secession would increase the total number of people who live in mutually desired political association.

ciple of political association and the principle of majority together provide an adequate response to the boundary problem. I do not pretend that these considerations constitute conclusive arguments against a strategy such as Beran's for solving the boundary problem. I only want to make a *prima facie* case against Beran.

Conflicts between democratic principles. There is no single principle that justifies democracy's status as a good method to make collective decisions. Political association is just one among many; and these democratic principles can be in conflict. One such clash may arise between the principle of political association and the principle of equal respect. Recall that according to the principle of equal respect, citizens have a right to participate, in equal condition, in key political decisions that affect them. For Beran, political association and equal respect compete because – to take the Catalan case – equal respect would require non-Catalan Spaniards to participate in the decision on secession, whereas political association would require them not to participate.

Beran, perhaps, could reply that it is possible to dissolve this apparent conflict by using the majority principle in a recursive fashion, so that at the end of the day equal respect would be satisfied too.

This is a dubious response. To create a new state is not an isolated political decision; it is rather a political decision that entails other key political decisions. Secession implies withdrawing from citizens of the original state their previous capacity to influence key political decisions that affect them. Obviously, not all key political questions in the new state will affect its former partners. But some will – for example, those regarding economical welfare and sovereignty over territorial waters. So it is not true that recursive use of the principle of majority would eventually satisfy the principle of equal respect.

Beran might say that I am missing the point here – what is at stake here is what state we belong to and who we are politically associated with; not economical welfare or maritime sovereignty, or anything of that sort. But it is obvious that when deciding on secession, people do not only decide on their political association status – they also decide on key political issues that affect many people *outside* the boundaries of the new state. Therefore, if secession involves making key political decisions, it seems that, in virtue of equal respect, all those people affected by such decisions should have a say in them. But this could be inconsistent with the principle of political association.

I do not know whether democratic theorists think hierarchically about democratic values. But if so, it is not obvious to me that we should give more weight to political association than to equal respect. Imagine that most inhabitants of the richest neighborhood of Barcelona do not want to be politically associated with the other inhabitants of Barcelona. By the principle of political association, there would then be a case for secession. By the principle of equal respect, and given that seces-

sion involves key political issues regarding the economy and welfare of the other inhabitants of Barcelona, it seems that the latter should have a say regarding the possible secession. Some, such as Beran himself, would claim that all such political issues can be settled between the governments of the old state and the new one⁵². But the fact remains that if equal respect justifies democracy, and we want a democratic procedure to adjudicate secession, then it seems that all citizens of Barcelona should be included within the relevant boundary. Similarly, *mutatis mutandis*, for the Catalan case.

I am not claiming that this is the absolute, correct hierarchy of democratic values. I only want to suggest that it is not at all obvious, from a democratic point of view, that we should give more weight to political association than to equal respect. And, in any case, this shows the difficulties involved in determining boundaries in a democratic fashion – because if we decided to maximize equal respect so that everybody is involved in key political questions, there would most likely be very few boundaries.

Territorial concentration. According to Beran and Philpott, territorial concentration of the relevant group is a precondition for its eligibility to secede⁵³.

What I am going to argue is that territorial concentration is not merely a neutral condition for the possibility of secession, but rather a disguised normative consideration, given that territorial concentration is, so to speak, a *manipulable* fact.

Recall that, on Beran's view, the secessionist group can call for a referendum in the territory delimited by them. And if the secessionists win, and within the new state there is another secessionist movement, or a movement that wants to rejoin the old state, and if the members of the latter movement are territorially concentrated, they too can call for a referendum. My point is that whether this second group is territorially concentrated partly depends on what (or where) the relevant boundary is.

Suppose that the Catalan secessionist movement calls for a referendum in a territory that coincides with the actual administrative territory of Catalonia. Let us suppose, too, that secessionism wins the referendum with a majority of 51 percent. And let us suppose now – as would actually be the case – that the pro-Spanish minority in the new Catalan state is not concentrated within a delimited territory of that state, but rather distributed more or less homogeneously over its territory. According to Beran's theory, this pro-Spanish minority could not hold a referendum on whether to rejoin Spain, because it would not be territorially concentrated. However, some members of this group could say: «Well, of course we are territorially concentrated; for there is no territorial discontinuity between what is left of Spain and the terri-

⁵² Perhaps the new state can direct some resources, for a limited period of time, to the old state, and so on. See Beran 1984.

⁵³ Beran 1984: 390 and Philpott 1995: 355. *Contra* Margalit and Raz 1990: 445.

tory we live in right now. We fail to be territorially concentrated only within the territory delimited by the secessionist movement». Accordingly, whether a group is territorially concentrated depends on what the boundaries are, and if we leave the delimitation those boundaries in the hands of the secessionist group, territorial concentration can be used as a normative consideration, and not merely as a condition of possibility, in order to prevent ulterior uses of the principle of the majority.

Recall that Beran's strategy can be interpreted as saying that the relevant boundaries would arise after recursive use of the majority principle. But in those Western societies where there are secessionist movements, there would be no recursive use of the majority principle. And given that, according to Beran, the secessionist movements would decide the territory within which the referendum should take place, it follows that the boundaries would be defined by secessionist movements – and this, once the recursive use of the majority principle has lost its apparent virtues, seems rather arbitrary from a democratic point of view.

5. Conclusion

I have assessed three possible democratic responses to the boundary problem for secession. Each of these responses leads to a dead end because of (at least) one of the following problems. (i) The argument based on individual preferences for secession offers no useful normative guidance for actual cases of secession (at least in the West) due to the lack of unanimity in such cases; and the next best option, i.e. majoritarianism, is flawed because until we know what the relevant boundary is, we cannot know what the relevant majority is. (ii) The strategy based on equal respect would extend the relevant demos to (at least) all inhabitants of the established state, with the likely outcome that the final decision will be against secession. (iii) The promising strategy of recursively using the majority principle is impracticable, because (again, at least in the West) minorities in the new independent states will not be territorially concentrated; and so there would be just one single use of the principle, with the arbitrary consequence that secessionists would *de facto* define the boundaries. (iv) Some democratic principles invoked to identify the relevant demos for secession – i.e. equal respect and political association – clash; and democratic theorists have not established a hierarchy between them.

In conclusion, it is impossible to be democratic all the way down when dealing with the whole process of secession – a process that includes not only the “How” but also the “Who”. Without being able to decide the “Who” in a fully democratic way, it is rather hard to see how a unilateral, democratic right to secede can be justified.

Two relevant worries remain, however. First, it might seem that I assign no value at all to a group's desire to form a new state. Their yearning for independence ap-

pears to be irrelevant for my argument: if it is not possible, in principle, to determine the relevant demos through democratic values, then the claim of those seeking independence counts for nothing. I reply that, from the fact that the boundary problem provides a *prima facie* case against democratic theories of secession that intend to be democratic about the “Who”, it does not follow that a group of people expressing their preference for secession is politically or morally irrelevant. Perhaps such an expressed preference does not morally ground a democratic right to secede via a referendum within the so-called secessionist region; but nevertheless I think there is a moral duty to address the considerations that motivate any such secessionist claim. Thus, an expressed preference for secession does not morally justify any unilateral action on behalf of the secessionists, but it does oblige the established state to address the concerns that secessionists invoke to justify their claim of secession – and when such concerns are not met, their expressed preference for secession also obliges the international community to press the established state to deal with those concerns. In conclusion, contrary to first appearances, people democratically expressing their desire to secede is not morally irrelevant – it just does not guarantee a unilateral *right* to secede.

The second worry that I want to briefly address, before ending this article, arises from my criticisms of democratic theories of secession. If it is truly impossible to democratically establish boundaries, then it would seem that this holds not only for secessionist boundaries, but also for the actual boundaries of existing, recognized states. To put it differently, the boundary problem affects both potential new states and established old states. So it might seem that, if I am right, my argument proves too much, since I would not be able to democratically justify the boundaries of actual states. Although I will not elaborate it here, my response is to say that I am not uncomfortable with such a conclusion. It was not my intention to justify the existence of actual states while denying such justification for potential new states. If it follows from my arguments that actual boundaries are also democratically unjustified, and that a world without borders is democratically justified, I am willing to bite the bullet. But an explicit argument for this stronger conclusion will have to wait for another occasion. In any case, if the consequences of my argument seem impracticable, because a world without borders is too far-fetched, then – as Goodin says when justifying his idea that virtually everyone everywhere should have a vote on virtually everything decided anywhere – «we need to begin thinking what arrangements might best approximate that ideal in some practice that is feasible»⁵⁴.

⁵⁴ Goodin 2007: 64.

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