Could California Secede? A Philosophical Discussion

AUTHOR
Chloe M Rispin

ABSTRACT
Secession has returned to the political discourse in the US and grassroots secessionist movements have developed in California. There is significant literature regarding the norms of secession from an international law perspective. This paper seeks to delve into the philosophical debates that influence the positions of international law on secession. Under what conditions is the break-up of states justifiable in a post-colonial world? Would a Calexit from the US be a possibility? Relevant theories of Primary Right and Remedial Right secession will be applied to the hypothetical case of California.

Correspondence address
Chloe M Rispin, BA Student, University of Buckingham.
Email: 1404859@buckingham.ac.uk

INTRODUCTION
It is constructive to engage in a speculative debate on the subject of secession due to its prominent nature in philosophy and international law. This paper seeks to pose a hypothetical question of whether or not the state of California could secede from the United States to stimulate an academic discussion. In posing this question on the feasibility of a California secession, the debate will be focused on the broader philosophical debates surrounding secession. It is important to discuss the philosophical approaches to the issue as the field of study has significant influence on the position of international law. Distinct conclusions on secession will be drawn from each philosophical perspective analyzed.

Following the 2016 election in the US, the topic of secession has again been brought into the current national political dialogue. Additionally, secession has become a pertinent international question due to the ongoing debate regarding the Catalan secession from Spain. More than 60% of Californians voted for the Democratic Presidential candidate Hillary Clinton and were disappointed that the strongly Democratic state was not able to influence the makeup of the federal government (Nytimes.com, 2017). Due to the US’s federal structure, each state sends Senators and Representatives to ensure their interests are represented in Washington D.C. In the bicameral Congress, two Senators are sent from each state. The number of representatives sent to the House of Representatives depends on the state’s population. In the case of California, the state sends two senators and 53 representatives to Congress. Both California senators are from the Democratic Party and the majority of the Representatives. Many Californians disagree with the current immigration policies of the federal government and are adamant that Californians should be able to decide on their own policy reflecting their views. For example, recently there has been a stand-off between California judges obstructing the enforcement of President Trump’s travel ban. Additionally, Californian politicians have been antagonistic in regards to the President’s crackdown on so-called “sanctuary cities” (Mason and Halper, 2017). A proportion of Californians believe that secession is an option in order to exercise their political autonomy. In protest of the election results, some Californians took inspiration from the recent Brexit to call for a reevaluation of the state’s relationship with the US or potentially a so-called Calexit.1

1 In 2015, the Yes California Independence Campaign was founded citing influence from the Scottish
When discussing the question of secession from a philosophical perspective, theorists concentrate on the moral aspect of the issue. Theorists try to create a universally applicable theory keeping moral principles in mind. There are several different theories that have been proposed to justify, restrict, and deny a right to secede. Many in this field of study believe that the phrase of “having a right to secede” is too vague (Buchanan, 2017). There are different distinctions that have been made to the characterization of a right relating to secession. The attention on unilateral secessions tends to focus on its potential to lead to chaos and disorder (Ibid.). For example, in the recent case of Catalonia, Spain, there has been a great deal of confusion during the debacle (Díez and Mateo, 2017). In contrast, bilateral or consensual secession is characterized by mediation to reach an agreement on a referendum or by other means or through an amendment to the constitution if previously there was no provision (Buchanan, 2017). The literature seeks to understand under what circumstances a right to secede exists. Relating to secession, two main umbrella theories exist, Primary Right and Remedial Right theories. Within each there are different concepts and disagreements.

The types of theories that will be addressed in this paper are not exhaustive. Irredentist secession or other types of breaking up states will not be discussed as it is not relevant to our hypothetical case. In our case of evaluating the possibility for a Californian secession, interest lies in the cases that are characterized by the previous contiguous territory remaining behind. The focus will solely be on the issues with unilateral and bilateral secession (Buchanan, 2017). In order to ascertain whether a right to secede exists within political philosophy, the relevant theories from both the Primary Right and Remedial Right will be examined. The justifications and limitations within Primary Right and Remedial Right theories on secession will be discussed. Then each theory will be theoretically applied to the case of California.

**PRIMARY RIGHT THEORIES**

First, this paper will analyze how Primary Right theories see secession. When discussing secession, many supporters contend that a universal right to secede exists. In the literature, a Primary Right to secede has been defined as secession that is warranted without any previous injustices having taken place. Additionally, within the Primary Right theory, there are Ascriptive, or Nationalist, and Associative group theories (Buchanan, 2017). First, the Ascriptive theories will be detailed. Later subsections will cover Associative Group theories and Discriminatory Redistribution.

**Ascriptive Theories**

When discussing theories of secession, the Ascriptive theories are the most well-known as they are frequently utilized to justify secession (Pérez Lozano and Sanjaume Calvet, 2013; Costa, 2003). Ascriptive theories of secession assert that each distinct nation or a people are entitled to self-determination. Some proponents extend this right all the way to asserting independent statehood (Costa, 2003, p. 64). Harry Beran defines a nation as a sizeable culturally unique group or a group that is unified through “a special sentiment of solidarity” (2005, p. 33). Some strongly link the idea of self-determination with the concept of nationhood. For example, Paul Gilbert affirms that “to deny the right to self-determination then we must deny that there are nations” (Costa, 2003, p. 64). Proponents of Ascriptive theories of secession refer to the position of the United Nations in various documents. The presumption for self-determination is seen in Resolution 1514 of the General Assembly. The Resolution maintains that a nation should be able to exert their own self-governance to preserve their cultural and socioeconomic progression. Additionally, the UN Charter makes a similar statement regarding self-determination (Buchanan, 1991, p. 328).

Three flaws of Ascriptive theory are frequently pointed out (Costa, 2003; Brilmayer, 1991; Requejo and Sanjaume, 2015; Buchanan 1991). Many state that it is a difficult and extremely subjective task to determine who can be considered a nation and who is entitled to self-governance. In addition to this issue, it has been said that there would be more eligible groups than movement. The secessionist party, the California National Party (CNP), has not yet officially attained status as a registered political party in California.
feasible countries. Classical liberal critics of Ascriptive theories assert that favoritism of these groups is not fair to other different types of groups. This has been called “equal respect objection” (Costa, 2003, p. 65). Additionally, Ascriptive theories have been criticized due to the idea of creating a state out of a homogenous group (Olaizola, 2012, p. 66). Buchanan contends that the theories proposed by Beran and Wellman are similar in the fact that they both are initially liberal as they presume in favor of freedom. Buchanan and Wellman equally have elaborated a stance that finds its basis in the belief of freedom of political association for people on an individual level, taking inspiration from John Stuart Mill and Joel Feinberg. At a basic level, Mill’s Harm Principle maintains that people should have freedom provided that the “interests of others” are not harmed (Buchanan, 1997, p. 56).

When applying the fundamental beliefs of Ascriptive theories to California, it raises many questions. For instance, does California qualify as a nation according to the aforementioned definitions? On the issue of self-determination, California's status as a state within the US already grants it many privileges, such as maintaining its own state government. In relation to being a nation, although Californians are not a homogeneous ethnic group it can be said that English is tangibly the shared language. Beran’s idea of having unified experience can be applied to California. There is definitely a sense of a shared Californian experience and identity. On the issue of culture, some might argue against the idea that California has its own culture and identity. It could be said that California's culture reflects the environment of the Golden State. Most Californians have a strong affinity with their home state. In 2016, the Institute for Social Research at Sacramento State University conducted a survey of Californians' opinions on a wide range of topics. It featured two questions on Californians’ satisfaction of living in the state and state pride. Of those interviewed, 78% of Californians stated that California “was a special place to live.” Within this group, 42% affirmed that California “is very special.” A further question on state pride found that 47% of respondents stated that “they are very proud” to be Californian (Dyck et al., 2016, p. 2).

**Associative Group Theories**

The other significant type of theory within the Primary Right theories branch is Associative Group theories. These theories are similar to Ascriptive theories in the way they both maintain that it is not necessary to have suffered in some manner as in Remedial Right theories (Buchanan, 1997; Pérez Lozano and Sanjaume Calvet, 2013). In contrast to Ascriptive theories, no ascriptive features are mandatory for secession. Associative group theories do not find these cultural conditions to be a necessary part of having a right to secede. Therefore a population can be heterogeneous like the state of California and be eligible. All that is necessary in Associative group theory is the belief in a mutually shared experience and an aspiration to secede (Buchanan, 1997, p. 38). This concept has been called imagined communities by Benedict Anderson (1983). The focal point for advocates of the Associative theory is the freedom to decide their “own independent political unit’ and proponents’ maintain that the existence of “a nation or people are arbitrary” conditions (Ibid.). In some Associative Group theories the right to secede is based in the idea of freedom of political association. Buchanan states that the most basic version of this theory is pure Plebiscitary theory (Ibid.).

Under Plebiscitary theory, the idea is that every group that can form a plurality is entitled to secede (Ibid., 1997, p. 40). The most basic requirement is the ability to hold a successful plebiscite. There is significant disagreement regarding holding plebiscites on a prospective secession. Scholars, such as Aleksandar Pavkovic, stress that this theory has liberal democratic states in mind (Pavkovic, 2004, p. 695). Other variants add other necessary conditions, including having the necessary means to secede (Costa, 2003, p. 65). Advocates of Plebiscitary theory maintain that this is the most democratic method to attain self-determination (Pérez Lozano and Sanjaume Calvet, 2013, p. 5; Olaizola, 2012, p. 67). Supporters of this theory maintain that a state’s exercise of power over a territory only can be justified by the population. If the people have a desire to reject “the authority,” proponents assert

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3 The foundation of these theories rests with the liberal premise for individuals derived from J.S. Mill and Joel Feinberg of the freedom of political association. Adhering to liberal principles, there is a prima facie justification for secession, according to Wellman.

4 The most recent census data from the U.S. Census Bureau in 2011 regarding language usage states that 15 million or 44% of Californians spoke a language other than English.
that secessionists should be at liberty to do so in the form of secession. This is contingent upon the new state fulfilling the requirements of ensuring the population’s security and basic human rights (Wellman, 1995, p. 145). In the context of Remedial Right theory, this refers to principles of Article 3 of Universal Declaration of Human Rights to ensure the “right to life, liberty, and security of person” (Un.org, n.d.). This right applies to extreme cases such as the treatment of the Kurds in Iraq (Buchanan, 1997, p. 36).

Political theorists as well as international legal scholars have criticized Plebiscitary theory, affirming that many negative consequences would arise from accepting such a notion (Buchanan, 1997; Patten, 2002). These include the increased feasibility of the breakup of states, a rapid escalation of secessionist movements, and ensuing turmoil. As such, critics assert that this theory has the potential to undercut democracy itself (Patten, 2002, p. 559).

Pavkovic discusses the issue of secession with current liberal democratic states in mind. It is affirmed by Pavkovic that it is important that secessions are bilateral and subject to all citizens having an equitable say and that the majority's wishes prevails. According to Pavkovic, ensuring a just representation of the majority on secession is a fair method and would not be counter to liberal democratic values, as in the case of Norway. An example of bilateral secession, Norway separated from the Kingdom of Sweden following a referendum in 1905. From this perspective, the issue with unilateral secession is the lack of “consent” from the rest of the state to hold a plebiscite (Pavkovic, 2004, p. 695). Fundamentally this is seen as a violation of core liberal values by neglecting the role that the decision of the majority plays and by pursuing a unilateral secession are ignoring the opinions of the rest of the citizens in an attempt to refuse them an opportunity to have a say in their own political determination. Additionally, this seems to counter “the principle granting equal rights to all citizens” (Ibid., 2004, p. 696).

A variation of the theory, advanced by Beran, bases the foundation of the right to secede “in a consent theory of political obligation’ (Buchanan, 1997, p. 39).’ According to the theory, it is necessary that consent of the public is not based on hypothetical consent. It is affirmed that without expressed consent there can be no political obligation. Therefore the theory maintains that secession must be permitted in order to obtain consent (Ibid.).

Plebiscitary theory can be applied to the case of California. In California, it is normal for the public to vote during elections on amendments to the California Constitution and California Codes. Unlike most other states in the US, Californians have a tradition of being involved in the affairs of the state via direct democracy. There have been several initiatives submitted to the California Attorney General’s Office regarding some form of redefinition of California's connection with the US. One such effort, initiative 17-0005 on ‘California Autonomy from the Federal Government,’ has been cleared for circulation by the Attorney General’s Office. This initiative seeks to have a joint constitutional amendment and to amend state statutes. In order to amend California’s Constitution, an initiative has to receive the specified amount of signatures to become a ballot measure. Ballot measures will be voted on in the upcoming General Election in 2018 (oag.ca.gov, 2017). There are different methods in which this issue could be handled in California. Either it could be voted on as a ballot measure in the General Election or it could be discussed in the California legislature. If this became an eligible ballot measure there would be many questions on what should happen following a vote on a change in the relationship between California and the US (McGee, 2016, p. 14). For critics, there would still be an issue with the plebiscite only being held in California. Those that assert that the rest of the country would need to be in agreement would not be satisfied with a successful plebiscite on a California secession. Opponents would contend that a national referendum would need to take place to ensure that it is the majority’s wish for California to secede. This would present practical issues as ballot initiatives are voted on at state level rather than federal. Voting ballots and subsequent information and choices are different depending on the state you reside in. The only alternative that can be seen at this time would be a Congressional vote on the potential Constitutional amendment to permit secession which would be voted on by all the Senators and representatives from all 50 states.

**Discriminatory Redistribution**

Although not a normative theory of secession, it is necessary to address the defense of secession that arises from the claim of discriminatory
The US Department of the Interior (DOI) has tried to repeal a rule that was completed in 2016 and was meant to be valid from January 2017. It serves to verify that the correct royalties are received from the extraction of natural resources on federal lands in California (State Of California D.O.J. Office of The A.G., 2017). This is seen as a significant issue as 45% of California land is federally owned (Congressional Research Service, 2017, p. 7). The US Department of the Interior (DOI) has tried to repeal this rule to the detriment of California, but a Federal District Court concluded that the DOI’s actions were illegal. In October 2017, the AG filed a suit against the DOI alleging that the federal government is trying to please the energy industry and hurt Californians (State Of California D.O.J. Office of The A.G., 2017).

To illustrate the gravity in economic terms of a potential Calexit, the California Legislative Analyst's Office stated in 2013 that California ranks as the world’s eighth largest economy in the world (Garosi and Sisney, 2014). During a State of the State speech in 2007, Governor Schwarzenegger affirmed that California has “the economic strength, the population, the technological force of a nation-state” (Governors.library.ca.gov, n.d.). The economic viability of an independent California seemingly serves to heighten the political and regulatory tension between it and the Union.

Nonetheless, the state by definition exists in order to derive funding for its function from the public (Hoffman and Graham, 2009, p. 13). Certainly, there are instances in which discriminatory redistribution occurs, but in the case of California this would be ultimately difficult to prove. Californians are obligated to pay state as well as federal taxes. State taxation varies between states and is collected by the state government, while federal taxes are collected by the Internal Revenue Service. The majority of funding for Californians’ public services are derived from state taxation (LAO, 2007, p. 7). The US government by nature operates as the apparatus that distributes funds to cover a variety of federal aid and maintenance (Rector, 2015). Additionally, the statistics relating to overall citizens’ trust in the government is at nearly all-time lows. Less than a quarter of the US population maintains that the federal government can be trusted (Pew Research Center, 2017).

REFRESHER RIGHT THEORIES

The second main branch of secessionist theory in political philosophy is Remedial Right theories, which are fundamentally different from the various aforementioned Primary Right theories. The defining characteristic of Remedial Right theories is that they deny that a so-called Primary Right to secede exists, seeking instead to present remedial conditions for secession (Buchanan, 1991, p. 330). Theorists affirm that the right to secede exists only as the last line of defense in extreme cases. Unlike the other theories discussed, there is an obligatory condition to secede under the theory of a Remedial Right. Generally, it is agreed that the right to secede is dependent upon the violation of human rights, although sovereignty is an important factor. For example, the Baltic States were able to regain independence under the premises of the Remedial Right following the fall of the USSR. The Baltic States were eligible as previously they were
independent states but were deprived of their sovereignty by manner of coercion. A broad interpretation would include the aforementioned condition as well as the repeal of autonomy arrangements. An example of this took place in 1989 when Kosovo’s autonomy was rescinded (Buchanan, 2017). Next, the debate surrounding Remedial Right theories will be discussed. These theories will then be applied to the case of California.

The basis for secession in Remedial Right theories is recognized by Beran and other Associate Group theorists that advocate a Primary Right (Buchanan, 1997, p. 40). In affirming their case for a right to secede, advocates warn of the negative effects if the plebiscitary right to secede were to be rejected. Theorists state that a people that are excluded from seceding in accordance to the Remedial Right theory but are able to mobilize supporters and hold a successful plebiscite have the potential to cause chaos (Patten, 2002, p. 560). These circumstances can arguably be seen in the case of Catalonia.

In the basic variant of this theory, a right to secede derives from a successful plebiscite held on secession (Ibid., p. 561). Critics believe that this theory is too allowing of secession (Ibid., p. 562). Within Remedial Right theories there are exceptions to the condition of suffering past injustices. These exceptions include whether the state permits secession, if secession is included in the constitution, or whether, when the state was derived from an independent one, there was an expectation that secession would be possible later on. Some believe that the latter applies to the Southern states in the US. If any of the aforementioned cases apply, then there would be a special right to secede under Remedial Right theories.

Some see the Remedial Right theory by Buchanan as overly prohibitive. The theory does not permit any other conditions for secession other than the disregard for the welfare of a particular group. Opponents disapprove of the low regard that this theory inherently places on self-determination. A theory presented by Alan Patten goes further than Buchanan in allowing another circumstance in which the right to secede may be found: the failure of recognition. Also, the theory maintains that a prima facie right to secede derives from a government that does not make any constitutional mechanisms to permit a people to practice self-governance (Olaizola, 2012, p. 68).

In applying Remedial Right theories to the case of California, several issues arise. Remedial Right theories maintain it is necessary to have suffered some type of contravention of a state’s sovereignty or the population’s right to safety and representation. Concerning the prior infraction, a broad interpretation of Remedial Right theory would permit secession if California lost its autonomy. Unless Washington, D.C. returns California's US Senators and removes the Californian Governor, it is scarcely possible to make this claim.

Similarly, it would be difficult to prove that the US has been systematically violating Californians' constitutional rights. The state of California has many agencies and institutions that are intended to protect the public, such as the Court system, law enforcement agencies, and the federally-funded California National Guard. Although there have not been any recent contraventions of human rights in California, some might argue that this has already occurred. After California had become a state in 1850, the conditions of the Treaty of Guadalupe Hidalgo that sought to ensure the rights of various Native American tribes were not observed (Klein, 1996, p. 202). Hence some sizable California Native American tribes could potentially call upon a broad interpretation of Remedial Right theory to support a secessionist claim.

Erik Jensen, a legal scholar, asserts that if secession should be accepted, then it is necessary to take note of certain Native American tribes that would be eligible. Factors that would be beneficial to a claim of independence include an accepted territory, previously they existed as a separate independent entity, cultural integrity and their current state of quasi self-governance. This is not applicable to all tribes due to their small size and the issue of being economically dependent on the US. For many tribes, the financial aspect would prevent secession if it were not accompanied by payments following the divorce (Jensen, 1993, p. 396).

**CONCLUSION**

This paper has addressed some of the significant philosophical debates surrounding the question of secession and how these issues relate to the hypothetical secession of California. The permissibility and requirements of secession vary considerably depending on whether Primary or Remedial Right theories are supported. Potentially, under a Primary Right theory,
California might have a claim. In particular, whereas California might not be able to demonstrate specific ascriptive qualities, it can demonstrate a distinct sense of having a shared Californian experience. As Associate Group theories do not maintain that it is necessary to have any ascriptive qualities, California would therefore most likely be eligible for secession if it could attain majority support for secession.

For its part, the claim of California being subject to discriminatory redistribution would need more evidence. Until there is a definitive ruling on the claim on the federal government exploiting California's natural resources, it would be difficult to demonstrate such a claim. In terms of applying these theories to international law, scholars have stated that some are more compatible than others. Buchanan maintains that it is improbable that Primary Right theories would be accepted by international legal thinkers since they promote the disintegration of a state regardless of whether or not it is a liberal democratic one that is performing its duties as a state. Therefore states would view these Primary Right theories as inherently detrimental to “their territorial integrity” (Nielsen, 1998, p. 271). Nielsen believes that these states do in fact “have a morally legitimate interest” in ensuring the integrity of their borders, but would not extend this assertion to every state (ibid.).

Academics view claims for secession through Remedial Right theories more favorably since there are limitations. It would, however, be difficult for Californians to make a claim that the United States has violated their sovereignty or the vitality of their culture. Potentially, if the US government rescinded California’s autonomy, some Remedial Right theorists, such as Buchanan, would permit secession. With that in mind, the issue of Native Americans further complicates the question of secession. A concern could be that certain Californian Native American groupings would secede and create several Native American states within California. There is already a degree of antagonism towards the laws and exemptions that Native American living on reservations enjoy. Such a proposal for Native American states would most likely aggravate the situation.

In sum, the prospect of Californian secession is a complicated issue from many perspectives. For the time being, Calexit-supporting Californians will most likely have to keep dreaming until a ballot initiative is successful in reaching a vote generating further discussion on the state’s secession. While Remedial Right theory appears to be the least implausible argument if California were to have a justifiable case for secession, Californians would have to be subjected to significant injustices in the form of deprivation of the populations’ civil rights and the state’s self-governance. As these conditions seem not to exist at present, the notion of Californian secession is mainly confined to the realm of philosophy.

BIBLIOGRAPHY


