

Bossacoma Busquets, Pau (2020). *Morality and Legality of Secession. A Theory of National Self-Determination*. Palgrave Macmillan (Springer) (Federalism and Internal Conflicts). 386 pages.

Secession between Liberal Nationalism and Democracy

In his new book, Pau Bossacoma Busquets combines political theory and philosophy with perspectives from international and constitutional law and a variety of empirical, historical and contemporary case studies. Thereby, he presents a new theoretical framework for discussing the *Morality and Legality of Secession* (2020) in general and various theoretical, institutional and practical challenges presented by movements for independence in particular.

The theoretical core of this contribution is the conception of justice as multinational fairness (chapter 2). Bossacoma builds on Rawls's theory of justice but adapts it to the context of multinational states. He defends the idea of a hypothetical multinational contract which complements the Rawlsian hypothetical contracts that underly the latter's conception of justice as fairness between persons (1999) and his proposals for a law of peoples (2001). The conception of justice as multinational fairness is meant to facilitate negotiations of inter-national relations within multinational states that are characterised by demotic pluralism, i.e. the existence of more than one demos within one polity. It is furthermore designed to support negotiations in contemporary cases of secessionism and secession. According to the author, the personified nations of a multinational state negotiate this hypothetical contract behind a veil of ignorance where they would agree to the principle of multinational cohabitation as well as to a principled right to secede. The latter serves to safeguard the multinational compromise as well as to protect minority nations against possible discrimination and domination by the majority nation.

Bossacoma thus claims that nations, especially minority nations, hold the rights to internal or external national self-determination and potentially secession. Despite being "subject to multiple procedural, substantive and material limits and conditions" (p. viii), he conceptualises this right to secede as a primary right based on liberal nationalist premises (pp. 19-27, 48-61). The author combines these ascriptive theoretical foundations with arguments prominent in remedial rights theories as he highlights, for example, the relevance of oppression or discrimination of minorities by the state and the majority nation (chapter 4). He also links these foundations with arguments

put forward by plebiscitary rights theories insofar as minority nations need to follow a peaceful and democratic path to self-determination and secession (chapters 9-11). The national claim to self-determination, however, always retains its fundamental importance.

As the recognition of such a right to secede remains utopian in international law, in the second part of the book, Bossacoma defends “a more realistic right to external self-determination based on prior violation or failure of internal self-determination.” (p. xi) Two arguments support this view: first, that international law does not forbid unilateral secession (chapter 6) and, second, that there are good reasons to develop clear normative principles for recognising new states and to juridify their recognition in international law based on the principle of the self-determination of peoples (chapter 7).

With regard to the constitutional law of multinational states, the book presents arguments for constitutionalising the qualified right to secede and a clear, though not easy path to secession as a type of constitutional reform. For Bossacoma this reform institutionally strengthens and guarantees the right to secede and also fosters the recognition and accommodation of national pluralism, cooperation and compromise within multinational states. Building on these arguments, he offers an in-depth discussion of institutional and practical questions regarding the specific decision-making processes required in cases of secession: the desirable combination and interplay of representative decision-making and referendums as well as the set-up of referendums, including the wording of the question, the size of the constituency, necessary majorities and super-majorities etc. In general, any process of secession by a national community must start from lawful action, deliberation and negotiation and may only make use of less constitutional and possible unilateral actions if it encounters unjustified opposition and illegitimate obstacles (pp. 315-316). Bossacoma thus defends a primary right to secession and opens a clear avenue for movements for independence, not least in Catalonia. Yet, he puts the breaks on fast and unilateral forms of decision-making about secession (pp. 349-354).

Especially when negotiating specific political, institutional and legal questions of and about secession, the book shows the value of multi-perspectival work in political theory that considers relevant philosophical, theoretical, legal, historical and empirical points. Particularly in the third part of the book, Bossacoma weighs varied perspectives on institutional and practical political issues surrounding secession and thereby shows where tensions and challenges lie – and why. His arguments for constitutionalising a right to secede and his warning against a premature rejection of claims to secession based on international law are worthy of consideration. His thoughts

on the interplay between representative and directly democratic mechanisms as well as on the institutional set-up of independence referenda are relevant for a variety of contemporary cases.

At the same time, as in any work that combines different perspectives, there are several points of contention one could raise – from the assessment of the historical case of the Southern American States for secession to the interpretation of constitutional patriotism or cosmopolitanism. However, in the remainder of this review, I will focus on the liberal nationalist foundations of the argument and their consequences. I do not argue that national communities do not hold value and relevance for many people. But taking nationalist premises as the foundation of normative principles for democratic institution-building is problematic.

Bossacoma is highly transparent about the liberal nationalist foundations of his argument (pp. 38-44, chapter 3). He emphasises that national self-determination is only convincing if it is based on a liberal form of nationalism. He argues that nations should not be defined by race, religion or bloodline and highlights political criteria for defining nations and nationality. But pre-political criteria still retain importance as nations remain based not only on individual will and feelings but also on “family and residence, language and culture, history and myths” (p. 39). National boundaries, as a consequence, are hard, sometimes impossible to overcome for those without strong cultural, linguistic or family ties (see also below).

The comments on international law offer additional insights into the premises of Bossacoma’s arguments. Chapter 5.4 “A Utopian Type of Secession to Foster Perpetual and Just Peace” evokes secession based on national self-determination. It is considered a “non-realistic utopia” (p. 146), but a utopia, nonetheless. This line of argumentation seems to build on the assumption that nations form the core building-blocks of the world and that it is possible to demarcate them territorially in such a way that nations and their states can simply exist side by side. But this is empirically questionable. Additionally, it is assumed that the national differentiation of polities would lead to peace and justice. Nevertheless, the exclusive character of national communities – however attenuated it is by liberal norms and values – undermines the assumptions that a nationally differentiated world would somehow be more just and more peaceful. I doubt that disputes about national, social, political and/or territorial boundaries would be less likely to occur than in the world as we know it.

Bossacoma, in defending the notion of justice as multinational fairness, stops short of proposing a solely nationally differentiated world. But the national

structuring of the political landscape remains powerful. I will argue that the nationalist premises stand in tension with and in fact undermine the tripartite contractarian argument and the idea of demotic pluralism. This is particularly regrettable because the notion that more than one demos can exist within one polity or constellation of polities constitutes a highly important contribution of this book and highlights the theoretical necessity of developing approaches for conceptualising and assessing their interplay. Furthermore, the frictions between liberal nationalist premises and democratic principles become particularly visible with regard to decisions on secession as well as to the resulting citizenship that might emerge from these decisions.

The hypothetical contract between nations in a multinational state is supposedly characterised by ‘compatibility in parallel’ to the Rawlsian contracts between persons on the one hand and between peoples on the other. The multinational contract is intended to complement them in order to negotiate questions of national pluralism in contemporary liberal democracies and ‘to overcome an excessively individualistic approach to political theory’ (p. 35). In cases of collision between the different contracts, particularly involving the contract between persons and the contract between nations – which seem inevitable since justice as multinational fairness considers equality between nations to be more valuable than equality between citizens (p. 46) – Bossacoma calls for balancing the different contracts (pp. 35-36). He indicates possible solutions with regard to redistributive politics within a state whereby justice as multinational fairness would limit the applicability of redistributive politics on a state-wide basis. However, more and more fundamental questions about the relationship between the different contracts arise when attention turns to the notion of demotic pluralism and the question of who the demos is or rather who the relevant demoi are.

Throughout the book, the possibility of a legitimate state-wide demos of equal citizens, which lies at the heart of Rawls’s contract between persons, is repeatedly challenged: Firstly, states are understood never to be “nationally neuter” (p. 21) but instead to constantly favour the majority nation. Secondly, when Bossacoma discusses the relation between majority and minority nations and the permanence of the latter’s status, there is no mention made of cross-cutting cleavages (pp. 255-258). Thirdly, majority nations, nations that make up most of the state-wide citizenry, are generally presumed to discriminate against minority nations, a danger supposedly less salient once the minority nation has its own state (pp. 28-31, 49-50). This framing of the argument deprives the social contract between persons of its foundation. The national demoi that are recognised in this contractual theory of secession do

not simply complement the state-wide demos in a pluralist constellation of demoi in which each demos is recognised as a similarly constituted political entity. Instead, the national demoi assume priority; any attempts to balance the different contracts become tilted in favour of the nationalist logic. The state-wide demos of equal citizens vanishes as a normative reference point.

I agree with Bossacoma that understanding many of our democratic polities in terms of demotic pluralism as opposed to demotic monism (pp. 10-11, 272) opens important avenues for theoretical and political discussion, not least with regard to polities like the UK, Spain, or the European Union. But the question remains, ‘what kind of demotic pluralism do we envision?’ The idea of demotic pluralism is not promising if one kind of demos enjoys primacy on principle: Demoi are not all the same and, in a constellation of plural polities, distinct demoi are relevant and competent with regard to different political questions and decisions. However, recognising that the different demoi are equal insofar as they are all political artefacts is a basic precondition of developing a convincing conception of demotic pluralism. Each demos’s place in a constellation of demotic pluralism should be justified on political grounds only. Significantly, this does also align with some of Bossacoma’s central contentions: He convincingly argues that historically, states and demoi were formed by force and that “the formation of the demos should no longer depend on accident and force but on reason and vote” (p. 208, see also p. 366). In his more specific proposals, however, the democratic thrust of this argument does not always align with the nationalist premises put forward.

These theoretical frictions between liberal nationalism and democratic decision-making have also significant practical consequences as can be seen with regard to the questions of “who decides” in a referendum on independence and who becomes a citizen of the potential new state: Discussing the constituency of an independence referendum, Bossacoma takes great care not to exclude any residents of the region – whether they are members of the national majority-to-be or not. He defends the individual right to vote on secession and warns against excluding non-nationals from the demos (pp. 307-308). Nevertheless, the discussion is framed by an implicit opposition between the members of the relevant nation and the citizens of the parent state. This framing weighs national membership higher than the *joint* state citizenship that all citizens share. To be sure: Bossacoma argues: “The nation seeking secession would bear a moral burden of proof of a compelling reason to question the vote of citizens of the parent State who live on the seceding territory.” (p. 309) But it is precisely the nationalist framing of the argument which makes it necessary to justify the membership of individuals, who are

presently citizens but supposedly do not belong to the relevant nation, in the constituent demos and prospectively in the demos of the new state. This is a troubling consequence of employing a nationalist framework. It leads to a situation in which the equality of some citizens is constantly undermined by the need to justify their membership while others simply belong.

In sum, Bossacoma's argument is stronger where he stresses that secession is a long-term political project just as existing polities, their institutional setup and their demoi are the result of long term and continued political decisions. It is stronger where he argues in favour of deliberative and democratic multilateral decision-making surrounding questions of secession. It becomes weaker, however, where the liberal nationalist premises stand in tension with the ideas of democratic boundaries, demotic pluralism and the equality of all citizens.

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