THEORIES OF SECESSION

Edited by
PERCY B. LEHNING

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Theories of secession

Secessionist movements have risen to prominence in global politics in recent years. Within Europe the Basque separatists continue their claims for independence and the conflict in Northern Ireland continues. The collapse of the Soviet Union has led to fierce struggles for independence and in other areas, the Kurds, Tibetans and Québécois all lay claim to their own nations. Regardless of the differences between the examples, all raise the same question: what arguments justify their pleas for secession?

Theories of Secession presents a systematic analysis of this question. Bringing together some of the most respected scholars in their field, this study locates the right to secede in the context of contemporary political theory. The chapters deal with problems of nationalism and federalism, special rights to secede, conditions of ethnic and cultural pluralism and ask if constitutions should include a right to secede. The contributors also consider historical and contemporary examples of secession, raising fundamental questions about the interaction between the politics of identity, of nationalism, of democracy and key issues in secession.

As secessionist movements proliferate, the justification for such movements has increasingly become the subject of intense debate. The political theoretical approaches explored in this book allow this contentious subject to be analysed in a systematic way. It will be essential reading for those studying international relations, nationalism and political theory.

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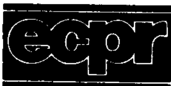

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Series Editor's preface

In relation to the concept of the 'people', the concept of the 'nation-state' is quite a puzzling one in political science. On the one hand, the relationship is considered one of the core subjects that needs no further justification. On the other hand, the relationship between nation, state and the the people is amongst the most intensely contested concepts, in particular by political theorists. This volume suggests that it should also be the subject for debate among a much wider readership. The volume demonstrates that political theorists can addresss topics that are relevant for all of us today, for it focuses on one of the most hotly debated issues of our time: why and on what grounds is secession from an existing nation-state justifiable? Equally important, on what grounds is the existing power and authority justified to force secessionist movement to remain within the realm?

In this volume, two terms emerge which form as it were a 'Siamese twin': *ethnos,* that is what unites fundamentally a large number of individuals according to their socio-cultural and socio-economic attributes, and *demos,* that is the political unification of individuals and with that the 'bearers' of authority over a geographically defined area. In accordance with the metaphor of the 'Siamese twin', the question is then: how can *demos* and *ethnos* live together?

The tension between national unity and statehood by means of delegation is not merely a theoretical one, but very much in existence. In modern history, especially since Napoleonic times, there have been numerous instances of national struggles for independence, as well as of the integration of sovereign states. European examples include Belgian independence (1830–1839), the Italian and German unification of the 1870s, as well as the Balkan wars leading up to the Great War of 1914–1918. Each of these examples can be seen as an instance of creating both statehood and nation-formation. In particular, the Great War was a watermark for a new concept of nation-state with respect to the *dialectical* relationship between *ethnos* and *demos.* This was not only because empires like Turkey and Austria disintegrated and new nation-states

emerged (Poland, Czechoslovakia, etc.), but also because the American president Woodrow Wilson at that time included in his peace proposals the right of 'self-determination' of minorities within multi-ethnic states as a universal principal.

In combination with the electoral franchise or democratization of the nation-state, this has meant a new challenge to the unity of many political systems. One can observe the same development after the Second World War during the era of decolonization. This process exacerbated, in particular outside Europe, the dialectics of *ethnos* and *demos,* as can be observed from the numerous cases of civil war, coup d'état and, in effect, secessions (for example Bangladesh and Biaffra in the 1970s). More recently, a new wave of secessionist movements has emerged due to the disintegration of the communist world. Hence, it may be concluded that the concept of nation-state is not only historically contested, but also that the grounds for establishing a nation-state and its viability as such is an important topic for the political scientist. Indeed, one could add to this it is a vital issue to be discussed in terms of *political theory.*

This volume contains an interesting debate about the relationship between the politics of common identities, unifying nationalism and democratic sovereignty. For instance, it should be observed that the socio-cultural unity and the absence of minorities in the so-called 'New Europe' is in actual fact *non*-existent (Portugal, and to some extent, Poland, are exceptions to the rule). In addition, in many European countries, particularly former colonial 'empires', and in the Baltic States, the size of migrant groups is considerable (see Budge and Newton, *et al, The Politics of the New Europe,* London and New York: Longman, 1997, pp. 106–7 and 382). Hence, one may rather ask the question: why do people *not* strive for secession? Or, conversely, why can and do people continue to live together even though there exist so many socio-cultural differences and related cleavages across the population within most nation-states? Two reasons can be put forward: first, because politically and economically it pays to stay within the nation-state; and second, because nationhood—with its associated 'rights' and 'entitlements'—is stronger than political ideas of secession. (This can be seen in the discussion about political devolution in Great Britain regarding Wales and Scotland; or in the different ideas about political action of the Basque and Catalan movements in Spain). Both reasons to remain within the realm may well be plausible, but they do not take away, let alone *explain,* the tense relationship between *demos* and *ethnos,* either today or in the future.

In this volume, political theorists address a number of these issues and topics in relation to the tensions inherent to *ethnos,* or the social community, and *demos,* the political community. These communities seem always to be

conflicting, that is a ‘socio-cultural person’ is not the same as a ‘political person’ in his or her role as citizen. In political theory, this distinction is important because it points to the *universal* principles of liberal democracy, on the one hand, and the *particular* claims of socio-cultural communities *within* the political community, or nation-state, on the other. In political theory, various answers to this problematic relationship have been put forward, which range from the federal option, to constitutional safeguards or to consociationalism. In response to these answers, one can ask whether or not a *right of secession* is possible and justifiable. This is an ongoing debate to which there are no definitive answers, only options which vary from a permissive stance at one extreme, to constitutional changes within the existing (nation-)state at the other. This latter view is differently argued by those who adhere to the ‘communitarian’ perspective in which the existence of communal attachment and practice may well justify the political *and* moral right to secede.

The principle of a ‘moral’ right, in addition to the principle of ‘justification’, is one of the reasons why I believe this volume of the European Political Science Series to be so important. Such questions of morality and justice are crucial to distinguishing between the ‘rights’ and ‘wrongs’ of emerging secessionist movements, together with their actual political behaviour and related actions, like ‘ethnic cleansing’, genocide, and the suspension of human rights. And, as we can all observe, these types of political action do happen around us, within our own society as well as others. This book may well assist us all to develop a more thoughtful stance.

Hans Keman
Series Editor
Haarlem, July 1997

Editor's preface

The main topic of this collection of essays is the issue of secession. Hardly any systematic reflection on problems of secession in general, and on specific cases in particular, seems to be available. Yet current events in many parts of the world—the disintegration of the former Soviet Union and movements for secession in, for instance, Chechnya; the tragic disintegration of the former Yugoslavia, with its 'ethnic cleansing' near the borders of the European Union; the Kurds' struggle for their own nation; and independence claims by the Tibetans, the Basques in Spain and the Québécois in Canada—show the urgency and relevance of developing theories that can give guidance on different aspects of secession.

The object of this collection is to locate the right to secede within the broader context of contemporary political theory. Its central subject is the arguments of political theory that can be adduced in favour of the idea of secession or, on the contrary, to formulate why secession, or partition, cannot be justified.

The arguments brought together here are, however, not only theoretical. Concrete historical and contemporary examples are taken into account to clarify and improve current thinking about secession issues. The political-theoretical analyses in this volume are applied to these examples to show their relevance not only to historical instances of secession but also to contemporary situations.

This volume is a result of a workshop on 'Theories of Secession' at 23rd Joint Sessions of Workshops, European Consortium for Political Research, Bordeaux, France, 27 April–2 May 1995, organised by Keith Dowding and Percy B.Lehning. Additional contributions were invited.

Percy B.Lehning
Erasmus University
Rotterdam

‘It is very unusual for a collection of original essays to maintain such as high standard of quality and coherance. Between them, the authors defend and attack all the main theories of secession from a variety of angles, giving the book a cumulative impact. What gives it special significance is that the issue of secession is used as a way of exploring deep questions about the nature and value of political community. Those coming fresh to the debate among political theorists about secession and those already familiar with it will equally find this collection rewarding and stimulating.’

Brian Barry
London School of Economics

1
Theories of secession
An introduction

Percy B.Lehning

There is a revival of secessionist movements. In Europe, for instance, they highlight the question of further European unification and may even enhance the formation of a genuine European Union. In Eastern Europe, hardly a border is immune to challenge on the grounds that it does an injustice to the ethnic or historical claims of a neighbouring state. The disintegration of Yugoslavia—with the horrors of ethnic cleansing in Bosnia-Herzegovina, culminating in the massacre at Srebrenica in July 1995—is but one example of how secessionist conflict can spill across international borders, and how an international response to the problem is needed. Within the borders of the present European Union, too, there are secessionist movements: Basques want to secede from Spain, there is secessionist sentiment in northern Italy, and there is a continuing struggle for a change of political borders in Northern Ireland. It would therefore be a mistake to think that the questions raised by secession are relevant only to a specific part of Europe and not to the future of a united Europe.

However, the revival of secessionist movements, and the related current revival of nationalism, is a still more widespread phenomenon. The collapse of the Soviet Union and the fierce struggle for independence for Chechnya that is one of its results, the long-standing claim of Kurds for their own nation, the plea for an independent Tibet, secessionist sentiment among Québécois—these are all examples of peoples seeking sovereign status and challenging the state's own conception of what its boundaries are. Over and above of specifics of each case, all these examples raise the same question: what arguments justify a plea for secession?

POLITICAL THEORIES OF SECESSION

Little systematic reflection on secession in general, and in specific cases in particular, seems to have been published. What arguments in political theory can be brought forward in favour of the idea of secession? What arguments

explain why secession should not be allowed to take place? How can the right to secede be located in the broader context of contemporary political theory? Is it possible to formulate a coherent political theory (or perhaps theories) to describe the conditions under which secession might be justified? Such theories will have to deal with, for instance, the problems of federalism, of whether there are special rights for groups wishing to secede, of conditions of ethnic and cultural pluralism, and of whether constitutions should—in general—include a right to secede.

Among political theorists of secession a variety of theories are at present available. One can distinguish three broad approaches: the anti-secessionists, who oppose the right to secession, except under certain conditions; the pro-secessionists, who support it, subject to certain conditions; and those who support or oppose secession, depending on a balance of considerations (see Chapter 2).

Alongside these three general approaches one can distinguish different perspectives that underlie the formulation of arguments on secession. One is that of liberal political theory, another perspective is communitarian. Each relies on different assumptions from which to formulate answers to the question of whether secession is permissible or not, and under what conditions.

Of the liberal perspective, two branches are distinguishable. One has a presumption against secession; another, more permissive, brings forward arguments that ultimately defend secession. The less permissive liberal view argues that there is a restricted right to secede, as well as to cultural preservation. The seceding group is taking a portion of the territory of the existing state, and it needs a very strong justification indeed for doing that; even the very great goods of cultural preservation and self-determination of a people are not strong enough reasons to justify this. The rights of secession formulated by, for instance, Anthony H.Birch (1984) and Allen Buchanan (1991) are examples of this view. Both assert a moral presumption in favour of maintaining existing states, but also a right of secession. This right is best understood as a right of remedial secession, since it is based on moral wrongs suffered by the separatists—wrongs that are great enough to override the presumption against secession. In Buchanan's theory the wrongs that create a right of secession are unjust conquest, exploitation, the threat of extermination and the threat of cultural extinction.

In the more permissive liberal view there is a right of secession, indeed even a right of unilateral secession. If a group of people perceive themselves as having a distinct culture and traditions, and they are extensively predominant in a distinct territory, can they then justifiably secede from a nation-state in which they are embedded if they elect, by a democratic decision, to do so—so long as

they do not violate the rights of others living in the territory, including the new minorities that would be created by their secession? Do individuals have the right to have the state of their choice, irrespective of the wishes of other individuals in the territory in which they live? Should the right of secession be treated like the right to a no-fault divorce? Should we have no-fault secession as well as no-fault divorce? In either case, this argument runs, if the parties want to split, then they have the right to do so, provided this does not inflict certain disadvantages (not *all* disadvantages) on the other party. One may wonder, though, whether such ideas would prove as simple and problem-free in practice as they sound in theory.

An example of the permissive liberal view is formulated by Harry Beran (see Chapter 3). He sketches a comprehensive normative theory of political borders. Formulated as a theory of a moral right of political self-determination and secession that is consistent with liberal-democratic principles, it should ideally provide a theoretical solution for the peaceful settlement of all border disputes. He argues that a theory of rightful secession can be fully plausible only as part of a comprehensive normative theory of borders.

The significance of this democratic theory of self-determination and secession can be clarified by contrasting it with rival theories of secession. The right of secession formulated by Beran is far more liberal than that asserted by Birch and Buchanan, although they also use a (liberal) democratic framework. According to Beran, neither adequately reconciles their highly qualified right of secession with the fundamental principles of democracy. In contrast, the right of secession asserted by Beran is based not on wrongs suffered by separatists but on the right of free political association, and this right may therefore be termed a right of no-fault secession. According to this democratic theory of self-determination, communities that have the right of self-determination and wish to secede do not have to justify secession, since they are merely exercising their right of free association.

DOES THE PERMISSIVE LIBERAL PERSPECTIVE GO TOO FAR?

Is this liberal perspective not too permissive? Most theorists of secession—even proponents of the less permissive liberal argument—recognise the moral and political right to secession, at least in extreme cases, though not every injustice grants this right.

For instance, does territorial injustice grant the moral or political right to secede? Hillel Steiner argues, in Chapter 4, that secession is not the right solution to problems of territorial injustice, especially not when there is

argument about national territorial entitlements. Territorial claims are not the sole objects of nationalist preoccupation, but they have probably excited more nationalist passion than any other type of issue. The assertion of such exclusive claims is one of the essential criteria for distinguishing nations from other types of social groups. And liberal principles have a very direct bearing on these claims.

In discussing national territorial entitlements, however, liberalism has had little to offer by way of a systematic account of what wealth transfers some nations owe to others. What does international distributive justice require? Steiner argues that, because liberalism's basic individual rights are universally applicable, the equality of each person's land-value entitlement is necessarily global in scope. Everyone, everywhere has a right to an equal share of the value of all land. To respect people's basic liberal rights, whether at home or abroad, not only must we refrain from murdering or assaulting them, we must also not withhold payment of their land-value entitlements. In this view, liberal principles demand that states pay rates, and the total revenues yielded by such payments are described as a 'global fund'. The operation of this fund might be expected to foster greater willingness to compromise in international boundary disputes (over land whose legitimate title-holders are difficult to identify) by attaching a price-tag to any instance of territorial acquisition or retention. The existence of such a fund would create stronger *dis*incentives to such practices as ethnic cleansing and forced expatriation, because such losses of a nations' members would reduce its receipts from the fund. In other words, it would make secession based on territorial injustice unnecessary.

If territorial injustice does not in itself grant the right to secession, how about a group's desire to protect its cultural identity? In the permissive liberal view—as formulated by Beran, for instance—groups have the right of self-determination, and those who wish to secede do not have to justify secession. One could ask whether a group's wish to protect its cultural identity did not grant the moral and political right to secession, thus overriding the other liberal view described above that holds a presumption against secession.

In Chapter 5, Keith Dowding argues that Allen Buchanan is right to think that liberalism has difficulties in dealing with secession. It can give no liberal account of secession from just states, although it can suggest reasons why it may be desirable for certain parts of a state to secede on the grounds of social injustice. The best arguments for secession are those which develop from the desire of groups to protect their identity (not simply their self-interest) and to govern themselves. Cultural distinctiveness may provide a good reason for separate political association, though not necessarily a good reason for a separate state. Dowding points out, however, that these reasons are not essentially liberal

ones. Arguments for secession based on the need to protect cultural identity are either illiberal (in that they are really arguments for opting out of liberal principles) or, where they are compatible with liberalism, it may be that what is required to sustain the culture is isolation, rather than political separateness.

There is a second argument for the idea that the protection of (cultural) identity does not immediately grant the moral or political right to secession. This is developed by looking more closely at the concept 'identity'. Linda Bishai argues, in Chapter 6, that attempts by liberal theory to make a coherent case for secession as a moral right fail, on moral, practical and theoretical grounds, to depict secession as either a moral right or a viable practical option for resolving intrastate conflict. Secession is at most a temporary and incomplete solution to problems of political consent, and its fatal flaw is not that it shatters the sanctity of the territorial state but that it perpetuates a framework in which territorial sovereignty is seen as the only means of protecting disaffected groups. It simply recreates the original problems inherent in state structure, and the use of the concepts of sovereignty and national identity as given—one of the inadequacies of liberal theory—prevents us from seeing another solution to intrastate conflict.

Bishai argues that modern individuals are embedded in interrelated and changeable identity possibilities. Regardless of which definition of nation is operative, individuals may identify with, or feel sympathy for, a number of various identities—either simultaneously or consecutively. In fact, since identities are prone to change, the only solution for the protection of rights (both individual and collective) is one that is flexible enough to accommodate these changes: one that is not rooted in territory.

FEDERATION INSTEAD OF SECESSION?

The argument about changeable identity possibilities, the various groupings individuals may identify with, seems to point in the direction of multination federations—countries which accommodate national diversity—the intrinsic benefit of which is that they can keep groupings together. But what if the value of belonging to such countries turns out not to be enough?

Will Kymlicka argues in Chapter 7 that a federation is inherently unstable. Why? If federalism works as its proponents envisage to combine shared rule with respect for ethnocultural differences, then its very success in accommodating self-government may encourage national minorities to seek secession. The more federalism succeeds in meeting the desire for self-government, the more it recognises and affirms the sense of national identity amongst minority groups and strengthens their political confidence. The more

successfully a multinational federal system accommodates national minorities, the more it will strengthen the sense that these minorities *are* separate peoples with inherent rights of self-government, whose participation in the larger country is conditional and revocable.

The option of secession will always be present, Kymlicka argues. Indeed, in a sense it becomes the default position: the baseline against which participation in the federation is measured. If limited autonomy is granted, this may simply fuel the ambitions of nationalist leaders who will be satisfied with nothing short of their own nation-state. Even when federalism works well, it is likely to simply reinforce the belief that the group is able and rightfully entitled to secede and exercise full sovereignty. For Kymlicka, this is the paradox of multinational federalism: while it provides national minorities with a workable alternative to secession, it also helps to make secession a more realistic alternative to federalism.

SECESSION DEPENDING ON A BALANCE OF CONSIDERATIONS

Can we be more specific and formulate specific conditions under which secession would be a more realistic alternative to federalism? Simon Caney considers whether *nations* should be allowed to secede. To answer this question he considers whether national self-determination is defensible and then asks whether this justifies national secession.

He suggests that many arguments for national secession are unconvincing—for instance, the arguments formulated by Beran—but that national self-determination is nonetheless defensible. There is no 'one very simple principle' to which one can appeal to decide issues of national self-determination, but he formulates three powerful considerations that could ultimately support such a step. These are the 'well-being' argument, the 'Rousseauean' argument, and the 'injustice' argument (see Chapter 8). To justify the next step—the proposition that nations are entitled to secede from multinational states to create their own nation-state—these considerations have to be supplemented with three conditions: the newly created nation-state must be able to survive; it must treat its citizens justly; and it must honour its international obligations.

The factors that weigh for or against secession having been debated in earlier chapters, in Chapter 9 Philip Abbott takes the example of the way Abraham Lincoln argued the issue of a right to secession. He subjects the propositions Lincoln employed against secession to a critical examination and goes on to discuss them in terms of the debate in democratic theory, especially in the light of contemporary liberal and communitarian accounts of the right to secede.

A COMMUNITARIAN ARGUMENT FOR SECESSION

An example of a communitarian justification for secession is given by Paul Gilbert in Chapter 10. His defence of national secession depends on the existence of a *real* community, not merely an imagined one. It is based on 'civic nationalism', which regards the nation as a group of people which derives its communal character wholly from shared political institutions. A nation may thus be a group already organised into a state or similar polity, or it may be a group whose members share a common will to be so organised. Civic nationalism may seem to be best founded on a communitarian basis, that is to say, on the basis of the right to independent statehood of a community created by political institutions.

Gilbert applies this analysis to the problem of adjudicating upon secessionist claims. The criterion he adopts is that the secessionist group should be a community of a kind suitable for statehood, and not already part of a wider such community that is the primary focus of communal attachment. A claim to secede, then, should be upheld only if there really *is* such a community—not if people merely believe there is one, or wish there were. Gilbert warns us that nationalist cases based either upon the alleged will of the people or upon supposed cultural distinctness are both to be mistrusted.

THE INTERNATIONAL DIMENSION OF SECESSION

Secessionist attempts are usually resisted with deadly force by the state, and human rights violations are common in such situations. In many cases the conflicts spill across international borders, and secession crises often have consequences that call for international responses. How should international law and institutions respond?

The question to be asked is whether the accounts of the right of secession offered by political theory should be incorporated into international legal regimes, building upon them and contributing to the development of more effective and morally defensible international institutions (including the international legal system). However, in Chapter 11, Allen Buchanan argues that most political theories of secession do not articulate or recognise the practical constraints that affect the right to secede, given that what they propose would be an international legal right. In effect, what they lack so far is an (international) institutional dimension.

In fact, two quite different normative questions can be asked about secession. One is: Under what conditions does a group have a moral right to secede—

independent of any question of international institutional morality or of any consideration of international legal institutions: in an institutional vacuum, so to speak? Buchanan contends that political theories of secession that answer this question are not attractive as guides to institutional reform: they create perverse incentives, and they do not cohere with and build upon the most morally defensible elements of existing international law. In fact, they are of little use for developing an international response to problems of secession. Mistakenly, they tend to assume that one can develop compelling conclusions about secession without considering the international context of secession, and thus how international institutions should react to secession crises.

The remedy is to ask another question: Under what conditions should a group be recognised as having a right to secede as a matter of international institutional morality? The task Buchanan has set himself in his contribution is to articulate criteria that should be met by any moral theory of the right of secession that can provide useful guidance in determining how international legal institutions ought ethically to respond to secession.

BETWEEN *DEMOS* AND *ETHNOS*

A recurring theme in debates on secession is the fundamental issue of *ethnos* versus *demos*. It raises theoretical as well as empirical questions about the interaction between the politics of identity, of nationalism, of democracy and issues of secession.

The essential question here is what is the basis of the claims that are persistently made by people in some area to be associated together in an independent state. A prime example of such a claim is one based on ethnic nationalism. This views the nation as a group that can be characterised as an actual or potential community, irrespective of its existing or desired political institutions. It is the pre-political features of people which collect them together as a nation.

But can *ethnos* be an appropriate criterion for determining membership of a common state? There are strong arguments for excluding ethnicity as a basis for state formation—or, for that matter, for common citizenship. What is significant about ethnicity is that it is negative: it is not (generally speaking) possible to join an ethnic group by an act of will. Individuals cannot choose their ethnicity. According to Brian Barry:

> The reason why ethnicity cannot in itself be a basis for the composition of a state on individualist premises is quite simply that there is no necessary

> connection between descent, which is a matter of biology, and interest, which is a matter of the fulfilment of human needs and purposes.
>
> (Barry, 1991, p. 169)

There are, then, good reasons to make a sharp distinction between an ethnic-cultural, 'national' idea of a state, on the one hand, and a political-democratic constitution of the 'citizenship-state', on the other: in other words, to differentiate the view that the basis for a state should be *ethnos,* from the claim that it is the *demos* that constitutes the political association. Without this, the doctrine of sovereignty of the people by which 'the people' *(demos)* are—on the political level—the bearers of political authority, could easily conflict with the idea of 'the people' as an ethnic, cultural, or socio-economic homogeneous unity *(ethnos).* The constitution of the *demos* exists through its bedding in a political order. The manipulable concept of *ethnos* should not determine the constitution of the *demos.* The idea of (common) citizenship is completely at odds with the idea of belonging to a pre-political community integrated on the basis of descent, a shared tradition or a common language.

We must, of course, acknowledge that modern democratic nation-states (though certainly not only these) are confronted with increasing social and ethnocultural differences and have citizens who do not share the same language or the same ethnic or cultural origins. This pluralism can—in fact sometimes does—lead to tension between, on the one hand, the universalist principles of constitutional democracy, with its specific conception of common citizenship, and, on the other, the particularist claims of communities to preserve the integrity of their habitual, homogeneous ways of life and so maintain their 'own' identity.

The disjunction between *ethnos* and *demos* in a democratic nation-state does not mean that cultural or ethnic pluralism is denied. Neither does it deny the importance of communal identification. What is denied, in this liberal conception of democratic citizenship, is that ethno-cultural characteristics should play a part in determining national identity. The *demos* cannot be based on an exclusive ethnocultural concept—an idea of ethnic homogeneity. On the contrary, the collectivity of citizens that constitutes the *demos* encompasses heterogeneity (Lehning, 1977).

Of course, the basic argument that state formation should not be based on *ethnos* also works the other way round. Ethnicity should be excluded as a justifiable argument for secession as well. Since ethnicity has no political status in either liberal-democratic or republican theory—except for the recognition of individual rights to private ethnic practices—it cannot be a legitimate basis for a right to secede from the polity. It may be a solution in cases of extreme

circumstances and to protect human rights, but ethnic secession is nonetheless incompatible with democracy. Because it bases the state on *ethnos,* it must regard those who are not members of the *ethnos* as, at best, second-class citizens. Secessionist claims may be based on the myth of ethnic homogeneity, which fails to recognise the divers identities, and consequently the rights, of individuals (see Chapter 2). Within a political union, any analogy or equivalence between *demos,* as the bearer of political sovereignty, and a specific *ethnos* will eventually lead to suppression or forced assimilation of other ethnic, cultural or religious parts of the population.

To uphold the distinction between *demos* and *ethnos* when discussing arguments for or against secession may be seen as merely the argumentation of political theorists, but more than just theory is at stake. In actual secessionist movements ethnic nationalism not only plays a strong role, it seems to be on the rise. We should be well aware that failing to uphold the distinction between *ethnos* and *demos* will lead to support for the formation of ethnically homogenous 'provinces' or mini-states in highly mixed areas. Not only can this theoretically prompt 'ethnic cleansing', it has *de facto* done so: events in the former Yugoslavia provide a recent horrific example. In the 'best' case it has led to the forcible expulsion of non-dominant ethnic groups in a given canton, in the worst it has, as we all know, led to the killing-fields around Srebrenica.

It would, of course, be a prime example of the political theorist's political naivety (or, at best, wishful thinking) to assume that, because the distinction between *demos* and *ethnos* (between, for instance 'civic nationalism' and 'ethnic nationalism') should be upheld in ideal world theory, it also will be upheld in the real world. The difference between cultural, or ethnic, community and political community is not a distinction that is widely drawn in the modern world. Even so-called civic nations rely on inherited cultural identity for the sense of belonging that binds its citizens. There is, therefore, a discrepancy between what political theorists want to see and what is. This should, however, not prevent us, either as political theorists or as citizens, from stressing the distinction that should be made between morally justified and morally unjustified exercises of the right of secession.

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2
The priority of function over structure
A new approach to secession

Michael Freeman

THE RIGHT TO SECESSION IN THEORY AND PRACTICE

One of the foundational events of modern politics was an act of secession: the American Declaration of Independence. One of the foundational events of the modern political system of the United States of America was the suppression of an act of secession: the Civil War. These two great events manifest the ambiguity of secession, which can be interpreted as self-emancipation from tyranny and as a challenge to the integrity of the polity. On the one hand, tyranny is the paradigm of political injustice, and secession is one solution to the problem of tyranny. On the other hand, a stable polity has commonly been considered to be a great good, an achievement hard won and easily lost. If the polity is a democracy based on the rule of law, constitutional checks and balances, respect for individual human rights, popular sovereignty and majority rule through free and fair elections, secession may appear to be both undemocratic and anarchic.

These two aspects of secession are expressed in the relations between state practice and international law, on the one hand, and political theory, on the other. Probably no principle so clearly divides state policy-makers and international lawyers from political theorists as that of the right to secession. State representatives have been extremely reluctant to recognise the legitimacy of secessions and have done so, with very rare exceptions, only when forced by circumstances. International law recognises no *right* to secession.[1] It does recognise a right to self-determination of peoples, but there has been a strong consensus among state élites and international lawyers, at least until recently, that this principle is restricted mainly to the right of populations subject to European colonial rule to constitute themselves as nation-states.[2] The principle of the territorial integrity of states, a central pillar of the United Nations

Charter, has strongly dominated that of the self-determination of peoples outside the context of struggles against European colonialism.

Political theorists have traditionally reflected on the constitution and dissolution of polities, and on the relations among them, but until recently they have neglected the problem of secession. Classical social-contract theory, for example, envisaged the creation of political communities by voluntary mutual agreements, but the point of this theory was to emphasise that the consent of the people was the basis of the authority of government. The liberal theory of John Locke derived from this principle the individual right to emigration and the collective right to revolution under certain conditions.[3] The American revolutionaries extended the Lockean right of resistance to tyranny to justify the right to secession.[4] Rousseau's theory of popular sovereignty and Herder's conception of cultural politics were developed into claims to national self-determination, but neither provided a theory of secession.[5] Thus, when state decision-makers were forced to confront the practical problems of secessionist claims, their theoretical resources were inadequate.

Those political theorists who have recently turned their attention to the problem of secession have favoured a more generous right to secession than that allowed by international law. Among political theorists of secession there are three general approaches: the prosecessionists, who support the right to secession on certain conditions; the anti-secessionists, who oppose the right to secession, except under certain conditions; and those who support or oppose secession depending on a balance of considerations.[6] I shall attempt to show that there is an 'overlapping consensus' among political theorists about the right to secession, which provides the basis of a critique of state practice and international law, but which is insufficiently emancipated from their statist assumptions. The most plausible argument for the current restrictive interpretation of the right to self-determination in international relations is that it is necessary to the maintenance of a peaceful and just world order. Since the world is neither very peaceful nor very just, the plausibility of this argument should be called into question. The collapse of the USSR and of Yugoslavia, and the resulting tragedies of Bosnia-Herzegovina, Croatia, Nagorno-Karabakh, Chechnya, Georgia, etc., show the so-called 'international community' to be confused not only about the justice of state boundaries and the right to self-determination but also about how to secure the stability which is its principal objective. Political practice stands in need of clarification by political theory. The project of developing a morally compelling and practicable theory of the right to secession could not be more timely.

THE PROBLEM OF SECESSION

Secession is probably as old as politics. Throughout history polities have tended to expand when they could, and to dominate other polities and peoples. Subject peoples have tended to resist when they could, and to attempt to escape the domination of alien rulers. The idea of the self-determination of peoples is an ancient one. The modern problem of secession, however, was generated by the following distinctive features of modern politics:

1. the concept of the sovereign, territorial state;
2. the development of the infrastructural power of the modern state which greatly enhanced its capacity to control civil society;
3. the ideas of natural rights, of consent as the source of political legitimacy, and of popular sovereignty;
4. the politicisation of the concept of the cultural nation;
5. the 'globalisation' of politics, in particular by means of European imperialism, global political, economic and cultural institutions, and global technologies.

The making and breaking of states with consequent changing of borders has been common throughout history. Since the Peace of Westphalia of 1648, however, a leading project of modern politics has been to stabilise the state system on the basis of fixed territorial boundaries, which may be changed only with the consent of the states concerned. In the twentieth century both the League of Nations and the United Nations Organisation were established to eliminate, or at least to minimise, the threat of war, and both adopted strong principles of the sovereignty and territorial integrity of states. During the period of the Cold War, the process of European decolonisation was combined with the management, though not the elimination, of other secessionist challenges. The end of the Cold War has produced an explosion of secessionist conflicts threatening to introduce a new world disorder.

In the contemporary world, states are still powerful actors, but because almost all existing states are polyethnic, and because state élites resist reduction of their power, there is an inherent tension between states and the diverse peoples over which they claim political authority.[7] The international order itself generates problems of secession. It offers strong incentives to peoples to seek the status of sovereign states, but it is reluctant to grant them that status. World-system ideology proclaims the right to self-determination while it suppresses its exercise. States agree to condemn secession, but some states support secessionist movements in other polities, and inter-state institutions pay

selective and intermittent attention to the underlying causes of secessionist claims. Particular configurations of the interstate system (e.g., Cold War, 'new world order', post-Cold War disorder) produce different patterns of integrationist and secessionist tendencies.

Secessionism may be encouraged by the democratisation of authoritarian systems. The deconstruction of authoritarian rule can leave communal groups politically, economically and culturally insecure, and consequently tempted to fight for statehood. The opposition to secession by the community of state élites may be seen as an expression not of an impartial principle of international justice but of the self-interest of a power bloc. The restrictive interpretation of the right to self-determination does not inhibit claims to self-determination, but it does inhibit their peaceful and just resolution, since it denies their legitimacy.[8]

LIFE, LIBERTY AND PROPERTY: POLITICAL THEORIES OF SECESSION

General considerations

Political theory can be done in an idealist or a realist way. Idealists begin with a foundational idea and derive from it a set of principles. They then propose reforms of the real world in the light of these principles. Realists are sceptical of foundational ideas, begin with the real world, and propose marginal improvements. Kantian cosmopolitanism is often treated as a version of idealism. Margalit and Raz propose a realist approach to self-determination. They suggest that we should assume that things are roughly as they are, and that we inhabit a world of states, nations, ethnic groups and tribes. Such facts, they say, are 'constitutive of morality'. To speculate about a reality with a different basic constitution would be pointless.[9] Things, however, are *exactly* as they are. It does not follow, nor should we assume, that such facts are 'constitutive of morality'. The way things are, we know that the world of states, nations, ethnic groups and tribes is often constitutive of immorality. Speculation about constitutional change within nation-states has not proved to have been pointless, and speculation about the political constitution of the world may not only have a point but also be morally required by the current state of the world.

Secessionist claims challenge the constitution of the world by calling into question the justice of state borders. Idealists are more ready than realists to call the justice of state borders into question. Borders divide persons into those within and those without the borders. Borders are therefore justifiable only if they are

the best way to provide justice for those within and justice between those within and those without.[10] It seems implausible to assume that the present set of borders is the most just possible. Indeed, present state boundaries obviously protect very unjust practices. Neither democracy nor ethnocracy guarantees that justice will be done either within or across borders. Ethnocracies may be either constituted by unjust ethnic cleansing or practice injustice towards those who do not belong to the ruling *ethnos,* while democracies can be disguised ethnocracies in which the dominant *ethnos* rules a society of formally equal citizens. Secession is one solution to the problem of such injustices, but secessionist states can perpetrate similar injustices.

A theory of just secession is a theory of the moral and political middle range. On the one hand, it should be derived from the principle that political institutions and practices should be justified by their contribution to the good of individuals. This principle is not 'individualistic' in the sense in which 'individualism' is usually criticised, for it does not endorse egoism nor assume that individuals are ontologically prior to society. It assumes that collective arrangements that are not good for individuals are not good, and this assumption is common ground among those who take seriously issues concerning the justice of political arrangements. On the other hand, secessions should be considered just only if they do not undermine the justice of the world order. It is useful to emphasise the 'middle-range' character of the theory of secession, because secession is often seen as raising only questions of the putative rights of the would-be seceders and of those from whom they wish to secede, and the individual and world-order levels are either marginalised or overlooked.

Secession: for and against

The classic argument for the right of secession relies on an analogy with the right of revolution. If, as liberal democrats believe, there are conditions in which there is a right of revolution by the people against a tyrannical government, there may be an analogous right of secession, where a minority is subjected to tyranny in circumstances in which a revolution by the majority would be unlikely, ineffective or unjust. This argument makes oppression a necessary condition of the right.[11]

A realist argument for the right to secession might be derived from the consensus that colonial rule is illegitimate. As the British are not entitled to rule over the Nigerians, it might be said, so the English are not entitled to rule over the Scots. The community of state élites has developed the so-called 'saltwater' criterion, which treats as colonies, for the purpose of the right to independence,

only those territories separated from the dominant state by open sea. This is an arbitrary criterion, since separation by salt water can have no moral significance, and it should therefore be rejected.

Objections to the right to secession normally rest upon two principles, of which the second has two versions. The first objection is that secession disrupts the world order and is likely to lead to conflict. The recognition of a right to secession would make it more difficult to reach just and peaceful resolutions of intrastate ethnic conflicts. It would increase the number of secessionist demands and actual secessions, and thereby produce conflict both between seceders and the states from which they wished to secede and between states supporting and those resisting secession. Even the recognition of justified secessionist claims may have demonstration effects in provoking less-justified claims elsewhere. This may be called the anarchy argument. Anarchy may frustrate some widely agreed political goals, such as the protection of human rights, economic development and the preservation of the environment.

The anarchy argument is contradicted by some cases of peaceful secession, even though such cases have been quite rare.[12] It has also been countered by the argument that the *refusal* of state élites to recognise the right to secession is a cause of ethnic conflict, while recognition of such a right might facilitate the peaceful settlement of disputes between states and discontented ethnic groups.[13] The anarchy argument may also be criticised for conflating two different propositions:

1 the right to secession threatens *the* international order, i.e., the existing system of powers and rules;
2 the right to secession threatens *international order,* i.e., the right will lead to increased international conflict.

The two propositions are easy to confuse because threats to the international order are likely to lead to conflict, and thus the two propositions are empirically interrelated, but their *normative* interrelation is less clear, because secession might *justifiably* threaten the existing system of power, even though the price in increased conflict might be high.

The second objection applies only to the right to secede from democratic states. There are two versions of this objection, because there are two main versions of democratic theory. According to the liberal theory of democracy, governments are legitimate if they are based on the consent of the majority of the people and if they respect the fundamental rights of every individual. According to the republican theory of democracy, governments are legitimate if they are based on the sovereignty of the people, which is in its turn based on the

principle of the equality of all citizens. The two versions may converge on support for similar sets of institutions, but they differ in that the liberal version is grounded in pre-political individual rights, while the republican version is a political theory of popular sovereignty.

Both the liberal and republican versions of democratic theory do not recognise the rights of ethnic groups as such. Liberal democrats recognise such rights as the right to cultural expression and the right to freedom of association. But ethnic groups as such have no political rights in liberal democratic theory. Similarly, in republican theory political rights belong to equal citizens, who may have the right to participate in ethnic practices, but whose ethnicity is politically irrelevant. Since ethnicity has no *political* status in either liberal-democratic or republican theory except for the recognition of individual rights to private ethnic practices, it cannot be a legitimate basis for a right to secede from the polity.

In the contemporary world, however, ethnic groups are the most common targets of unjust policies.[14] If secession were the best way to protect human rights, then the objections to secession from democratic principles, whether liberal or republican, would not be cogent, and the anarchy argument would have to be scrutinised very carefully. Most theorists of secession, therefore, recognise the right to secession at least in extreme cases. Liberals and democrats could not do less, yet it should be emphasised that this minimalist recognition of the moral and political right to secession goes beyond what international law allows.

Ethnic secession is nonetheless incompatible with democracy insofar as it bases the state on the *ethnos.* In such circumstances it must regard those who are not members of the *ethnos* as at best second-class citizens. If a territorially-based ethnic minority should secede from the state of which it has been a part, it may well not treat justly those who constitute minorities in the new secessionist state. Those members of the *ethnos* which formerly constituted the majority of the state's population and who live in what has become the secessionist state may lose the protection of the rights that they enjoyed in the former state and suffer various forms of discrimination by the *ethnos* that constitutes the majority in the new secessionist state. Similarly, those who belong to the secessionist ethnic minority, but who, after secession, are left in the state of the former majority *ethnos,* may lose rights, as a new minority, that they possessed as an established one m tfie former regime. Ethnic states formed by secession are therefore likely to discriminate unjustly on ethnic grounds, especially since the pains of the secessionist process are not likely to be conducive to the principle of equal citizenship.

Secession is a form of the self-determination of peoples. The concept of 'peoples', however, conceals the heterogeneous constitution of peoples.

Secessionist claims may be based on myths of ethnic homogeneity which fail to recognise the diverse identities and consequently the rights of individuals. Ethnic minorities may be divided about the nature of their problems and about the best solutions to them. Thus secession referenda may be crude devices for expressing the will of the relevant people.[15]

Secessions entail the withdrawal of persons, land and other economic assets from the jurisdiction of states. This withdrawal raises questions of distributive justice. Firstly, the secessionists may withdraw from a distributive scheme to which they are morally obliged and from which others have legitimate expectations. This problem would be particularly serious if the seceding part were relatively wealthy and the remainder would be impoverished by the withdrawal. Secondly, while the seceders could and probably should respect the rights to private property in the seceding territory held by citizens of the remainder state (and others), difficult questions may arise concerning the ownership of state assets. Secession may also weaken the strategic position of the remainder-state and may divide it geographically in ways that are socially, economically and politically harmful to the remaining population. Ideally, fair agreements could be reached on all such questions. In reality, justice will be difficult to achieve, both because there will probably be considerable grounds for reasonable disagreement about what justice requires and because the motives for secession are likely to be self-concerned and collectivistic, and therefore unlikely to motivate a concern for justice, especially to individuals. Thus, secession and justice are difficult to reconcile. This supports the moderately conservative view that secession should not be allowed unless the case from justice is clear.[16]

Self-determination: individual and collective

Harry Beran has derived a radical theory of secession from liberal-democratic premises. The theory is derived from the assumption that there is a human right to personal autonomy. By virtue of this right each individual has the right to determine his or her political relationships. Societies should therefore approach as closely as possible to voluntary schemes. The unity of the state should be voluntary, and secession by part of a state should therefore be permitted where it is possible. If the members of a community that is the traditional occupant of a territory wish to exercise their right of personal self-determination by leaving their state, they have the right to secede with their territory. In exercising this right they are exercising their sovereignty, which the theory treats as a set of individual choices. The grounds of the right to secession in this theory is not the right to resist oppression, nor the right to national self-determination, but the

right to freedom of political association. Those political divisions of humanity are held to be normally rightful which reflect the willingness of people to live together in separate units. The right to self-determination can be overridden ,by other human rights, and its exercise can sometimes be unwise, morally wrong or impossible. The right to self-determination is therefore not the sole component of justified political boundaries.[17]

This theory does not provide a systematic account of the moral grounds for overriding the right to secession. Some elements of such an account can, however, be found in the liberal theory on which it relies. Locke held, for example, that individual rights were subject to obligations of justice to others. Such obligations entailed the duty of respect for the rights of others, although this classic version of liberalism was not grounded in the foundational value of individual autonomy but in the moral value of a system of interrelated rights and obligations derived from a conception of the conditions of human flourishing. In this conception, individual autonomy is certainly an important value, and it can trump certain collective interests, such as the will of the government or the will of the majority. Yet Locke held that individual rights could be protected only in a regulated system of rights. The classical liberal view, therefore, is not that individual autonomy is foundational, and that there is a consequent presumption in favour of secession, but that individual autonomy is an important value that a just society would protect, and that secession is justified if, and only if, it is endorsed by the principles of social justice.[18]

Beran has proposed that the following conditions may justify not allowing secession:

1 the secessionist group is not sufficiently large to assume the responsibilities of an independent state;
2 it is not prepared to permit subgroups within itself to secede in accordance with the principles that justify its own secession;
3 it wishes to exploit or oppress a subgroup within itself which cannot secede;
4 its secession would create an enclave;
5 it occupies territory which is vital to the interests of the state from which it wishes to secede;
6 it occupies territory which has a disproportionately high share of the economic resources of the state from which it wishes to secede.[19]

He has suggested that the right to secession and its conditions should be organised by a theory of global justice.[20] This theory of secession accords

priority to values at the individual level. It recognises the relevance of values at the world-order level, but fails to articulate the different levels of value.

The subjects of the right to secession in Beran's theory are territorial communities, although this apparently collective right is derived from a set of individual rights to autonomy and freedom of association. International law appears to recognise the right to self-determination of *peoples,* although it has in practice restricted this right mainly to states, colonies and other dependent territories.[21] Beran's liberal theory and international law both recognise a right to self-determination that differs from the familiar right to *national* self-determination. According to the nationalist argument, individuals become moral only in association with particular others with whom they form political communities. Peoples, on this view, are based not on consent but on shared meanings and sentiments. Nations have pervasive cultures which have far-reaching effects on their individual members. The well-being and the autonomy of these individual members are consequently dependent upon the well-being and autonomy of the nation. This connection between individual and collective well-being and autonomy grounds the liberal-nationalist case for the right to national self-determination. The right is derived from the value of cultural identity and of a state that can be expected to respect it. Since nations are by definition communities of persons who feel a special sense of solidarity with and obligation to each other, only a national state, according to this theory, can be trusted to attend to the interests of the nation. A state that respected the cultural identity of its people would not necessarily be liberal-democratic, yet the ideal of the culturally self-expressing and politically self-determining nation can be liberal-democratic.[22] Democracy requires that the people/nation be sovereign. Liberalism requires that individuals have a set of secure rights to freedom. According to the nationalist theory of secession, liberal-democracy requires that peoples/nations and not individuals be the subjects of the right to self-determination. This collective right is consistent with liberalism provided that the self-determining nation respects the rights of individuals. David Miller has argued that the right to national self-determination does not require that every cultural group should have its own state. The problem of secession arises only where a state includes two or more groups with distinct and irreconcilable national identities.[23]

Although the right to national self-determination has recently been supported by some liberal democrats, it depends upon a morally defective theory. Firstly, nations are in fact so heterogeneous or so dispersed that nation-states either are impracticable or could be achieved only by ethnic cleansing that would involve the gross violation of the human rights of those deemed not to belong to the nation. In practice, ethnic nationalism often means the subordination of ethnic

minorities and of women, and the persecution of dissident liberal democrats. Nationalism is commonly based on nostalgia for a mythical past and hopes for a mythical future. Such nostalgia and such aspirations are notoriously inimical to liberal-democratic values. The practice of national self-determination is commonly conflated with nation-building, which entails the coercive attempt to reshape the identities of those who do not conform to some authoritarian conception of national identity.[24] In a free society the configuration of personal identity should be to some extent unfixed, and the fit between personal identity, nation and state should be somewhat unclear and unstable. Onora O'Neill is surely right to propose that nation-states are justified if, and only if, they are instrumental to the achievement of justice, and that sometimes they are and sometimes they are not.[25] Ryszard Legutko has suggested that the sovereign nation-state may be a necessary framework for the development of new democracies.[26] This may be plausible, but the dangers of the nationalist case for self-determination should not be forgotten.

Nations are therefore not suitable subjects for the right to self-determination, because it is not clear what nations are, and attempts to make this clear usually involve serious violations of human rights. Taylor has suggested that liberals, who value cultural diversity, should prefer multinational societies to nation-states.[27] Beran's theory of secession permits, but does not necessarily approve, the secession of nations from multinational states and parts of nations from nation-states. Nationalism makes national self-determination a duty rather than a right, and may entail duties to make irredentist claims. Liberal nationalists disclaim aggressive nationalism but fail to recognise that it is inherent in the logic of their theory.[28]

An objection has been made to the right to secession by appeal to the democratic principle of majority rule. In a democracy, it is said, the majority should determine the form of the state, and it is therefore undemocratic for a minority to secede against the will of the majority. The principle of majority rule, however, is neither liberal nor democratic if it entails the oppression of a minority. According to Beran's voluntarist theory of political association, even non-oppressive majorities have no right to coerce minorities to remain in the polity.[29] Majority rule is therefore not a sound principle for determining the boundaries of the state. A related objection to the right to secession is that it gives minorities an unfair bargaining weapon against majorities. This is a weak objection, however, for most rights can be abused. The solution to the problem of abuse of rights is not to refuse to recognise justified rights, but to specify the conditions of their proper exercise.[30]

Buchanan argues that claims to secession entail claims to territory. However, he says, the state may have the right to the territory claimed by the

secessionists. Strictly speaking, however, the people, not the state, are the owners of the territory. The state is the agent of the people in relation to 'its' territory. The state has territorial sovereignty, i.e. a set of jurisdictional powers over territory, and not a property right. All moral claims to sovereignty over territory are uncertain, but there should be a presumption for the *status quo* in the interest of stability. The sovereignty of the state and the property rights of its people are, therefore, barriers to the right of secession, but not insuperable barriers. A grossly unjust state may lose its sovereignty and its right to its territory.[31] This argument is quite weak. Buchanan emphasises that the barrier to secession is state sovereignty, rather than property rights. He is correct to make this emphasis, because secession does not necessarily threaten existing property rights. However, he admits that moral claims to territorial sovereignty are often weak, and he falls back on the different, and familiar, argument that the value of stability requires that state borders be changed only under conditions of extreme injustice. Thus the state's supposed right to territory has little relevance to the question of secession.

Beran argues that people have a moral right to live in their 'traditional homeland', and, if they wish to secede, they may leave the state and take their homeland with them. He claims that this proposal raises no question of rights to property but only the 'right to occupy one's homeland'. He maintains, in opposition to Buchanan, that those who have an undisputed right to the property that they occupy have the right to alter the sovereignty over that property.[32] But sovereignty includes property rights, so that a claim to the right to change the sovereignty over a territory is a claim to a sort of property right. Sovereigns should act justly in regard to property, but few political theories doubt that they have rights over property.

If there is a right to occupy one's traditional homeland, this is certainly a property right (i.e., a right of access to and disposition of things). For the right to exist, two conditions must be met:

1 the tradition must be identifiable beyond reasonable doubt;
2 the tradition must morally justify the property right.

Beran says that a group has the right to occupy the land that it in fact occupies, if it is a community whose communal existence depends on occupation of that land and it has acquired occupancy of the land justly.[33] This shifts the theoretical ground of the right of occupancy from tradition to two new conditions:

1 occupancy must be necessary to the communal existence of a community;

2 occupancy must have been acquired justly, a condition which does seem to require a theory of property rights.

Beran does not reconcile his traditional-communitarian theory of occupancy rights with his liberal premises. If his theory of occupancy rests, as it may, on the moral value of justified expectations, then he is using a principle that can be urged against a voluntaristic theory of secession, for voluntary secession may thwart justified expectations of various persons.[34] The historical and the communitarian grounds for the right to territory are also not necessarily mutually compatible, for a community might need for its communal existence a territory to which it had only a weak historical claim. Both the historical and the communitarian grounds of the right to territory may give more than one group a plausible claim to a particular territory, and therefore provide a basis for ethnic conflict. Beran's theory of territorial rights makes his theory of secession less liberal and more nationalist than he wishes it to be, for the subjects of the right to secession are not individuals but territorial communities. He also fails to reconcile four different grounds which he proposes for territorial rights:

1 traditional occupancy;
2 communal need;
3 just acquisition;
4 the right to a fair share.[35]

Beran's theory requires the 'recursive' use of the majority principle, whereby territorial minorities within secessionist groups have the same right of secession for the same reasons.[36] An unfortunate consequence of this principle is that its benefits are likely to be available to some but not to all. If group G secedes from state S, Beran allows minorities in G and S the right to further secession, but they may not be able to exercise it because, for example, they are not territorial minorities. Beran's theory can leave many minorities in states to which they do not consent.[37] The recursive principle will also evoke fears of 'Balkanisation', perhaps the strongest motive for opposition to secession.[38] This objection is often overstated, for it is not certain that the recognition of a right to secession would lead to a very large number of very small states that were unviable and mutually hostile. The objection betrays a prejudice in favour of large states, but there is no empirical evidence to suggest that large states are more likely to be prosperous or peaceful. Nevertheless the very term 'Balkanisation' warns us of the dangers of ill-judged secessions. Beran himself holds secession to be morally wrong if it were to lead to war, even if the secession would otherwise be perfectly just. It is important, however, he insists, to distinguish a just right to

secession from unjust opposition to such a right, which may lead to war, and this argument should be urged against those who oppose secession only on the grounds that it leads to conflict. However, Beran's right of political dissociation entails the right of reassociation with willing partners. In the real world such border changes can create very dangerous power imbalances. In the territory of the former Yugoslavia, for example, the exercise of an unqualified Beranian right to secession might well lead to the formation of a Greater Serbia. While it is obvious that current international policy on secession has had disastrous consequences, it is doubtful whether Beran's alternative would have been preferable.[39] Thus, while the distinction between just secession and unjust opposition to secession is theoretically valid, it may often be difficult to make in practice.

According to Beran's liberal theory of secession, the right to secession is conditional upon respect by the secessionists for the rights of the minorities in their midst and for individual human rights.[40] This produces a dilemma posed by secessionist groups that are unwilling to meet these conditions. The theory apparently denies them the right to secession, but there is a conflict between the consent theory of political obligation and the commitment to minority and individual rights. Illiberal secessionists would be forced to stay in a polity to which they did not consent.[41] A liberal theory of secession that accorded priority to social justice rather than individual autonomy would be better placed to weigh the harm that would be done by rights-violating secessionists and would have to overcome no presumption in order to hold probable rights-violations to be an argument against secession.

Beran also limits the right to secession to communities that are viable as independent states.[42] It is not clear how this limitation is derived from the liberal foundations of the theory. It appears to acknowledge implicitly that the right to secession is conditional on the obligation not to make unjust demands on others. It also conforms to the conventional principle of international law that disapproves of almost anything that is perceived as threatening to destabilise the interstate order. This is, however, primarily a statist, and not necessarily a liberal, principle.

CONCLUSIONS

If we assume that political theory should be derived from a plausible account of the most important human interests as these are expressed in the idea of human rights, then the existing world of nations and states should be called into question. It follows that we should weaken the strong presumption against secession on which the community of state élites has insisted. Many existing

states are very unjust, and some secessions could be justified by the requirements of justice. If secession is justified by the principles of justice, the right to secession is subject to those principles. The right to secession should be located, with all other rights, in a plausible theory of justice. This permits a balanced view of the legitimate interests at stake and is consistent with the classical liberal theory of rights. To ground the right to secession on the value of individual self-determination, as Beran does, is to rely on a principle that is highly contested even within liberal theory, for it begs some fundamental questions about the meaning and value of individual autonomy.[43] A theory of justice may endorse the value of individual autonomy, but it does not presuppose it. The theory of justice is better suited to articulate the right to secession with other political values, and the rights of individuals with those of groups.

Buchanan derives his analysis of secession from a liberal, balance-of-interests conception of justice, but this is not systematically elaborated. He has a reasonable scepticism about philosophical foundationalism, but he appears to conflate foundationalist dogma with systematic theory, and consequently fails to give a coherent account of the morally legitimate individual and collective interests at issue in evaluating claims to secession. Although he accords an important status to liberal, individual rights, he gives considerable weight to the value of state sovereignty, even though he admits that it often has dubious moral foundations. The theories of Beran and Buchanan are both liberal and yet too statist. Beran's right to secession is the right of territorial minorities to a state, while Buchanan allows considerable weight to the existing rights of states.

This statism is inherent in the problematic of secession itself, which assumes that the problem we have to address is whether discontented territorial minorities should or should not be allowed to leave the state in which they find themselves. It assumes that the borders of the state are the borders of the problem. This assumption is challenged by cosmopolitan liberalism, which treats the interests of individuals as primary, and institutions as secondary. According to this view, states may be necessary to defend legitimate interests, but functions are prior to structures, and the function of protecting human interests may be carried out by structures other than nation-states.[44] This is only a moderately idealist idea, for such non-state structures already exist in weakish form: for example, UN and regional human rights institutions. The solution of secession to the problem of injustice is part of the romance of the nation-state.[45]

There is a consensus among political theorists that the requirements of justice and peace entail a stronger right of secession than that which is currently recognised by international law and state practice. Yet secession may not be an ideal solution to the problems of territorial minorities and is often very costly in

the real world. We should recognise that no state is wholly autonomous, and that just and effective forms of autonomy are possible in forms other than the sovereign nation-state.[46] The optimum form and extent of autonomy defy generalisation and are matters of judgement in each case. In the real world, fear and insecurity often motivate injustice. To accord the right to secession a prominent place in the theory of international justice may encourage those vicious circles of suspicion that sustain the most terrible ethnic and national conflicts.

It is reasonable to conclude that there is a right to secession in theory but that it should be treated cautiously in practice. The changing of borders may be justified, required by justice or unavoidable, but it is often dangerous. The international community requires a clearer, more robust and more sensitive minority-rights regime and a clearer theory of, and policy towards, the right to self-determination of peoples. The internationalisation of ethnic-conflict problems may provide a better solution than secession, although the former is subject to the vagaries of great-power politics.[47] Notwithstanding this last reservation, the OSCE initiative on minorities should be seen as moving in the right direction, even though there is reason for cautious pessimism in the short term about the effectiveness of European institutions in finding durable solutions to the most serious minority-rights problems. There may also be a role for activist NGOs to play in this field.[48] Minorities policies require fine political judgement, for they can endanger individual rights and provoke backlash politics from majorities. Democracies require a common, core political culture that includes agreement about difference, and that is not easy to achieve, especially where a culture of respect for difference is not well established and economic problems are pressing.[49]

What are the policy implications of these theoretical conclusions for the new Europe? The tragedy of Yugoslavia shows that the current theory and practice of the international community is extremely inadequate. Dogmatic adherence to the principles of state sovereignty and territorial integrity made the international community, and especially the European powers, slow to realise that Yugoslavia was no longer a viable state. When they did realise this, they had no theory and poor judgement to bring to the question of rearranging the borders of the collapsing state. We should not, however, make the mistake of treating Yugoslavia as a paradigm case. According to the analysis presented above, recognition of the right to secession is a possible solution to the problem of ethnic conflict in various states of Europe, but the cure will often be worse than the disease. The orderly and sensitive redrawing of borders under international supervision may be called for. At present the capacity and the will of European state élites and peoples to address the problem of ethnic conflict is

very weak. This weakness inheres in the European form of democratic nationalism. The chief problem of this form of nationalism is not its propensity to be externally aggressive, which is slight, but its tendency to be narrowly self-absorbed. If we had not already dismissed Gorbachev's vision of 'a common European home' as a mere phrase, we might be placing—as we should—Kosovo, Macedonia and Chechnya at the top of the European political agenda. It has been said that the wars in former Yugoslavia began in Kosovo. The solutions to the problem of a genuine European community may have to begin there too.

NOTES

1 Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights,* Philadelphia, University of Pennsylvania Press, 1992, p. 46; Kamal S.Shehadi, *Ethnic Self- Determination and the Break-up of States,* Adelphi Paper 283, London, Brassey's for the International Institute for Strategic Studies, 1993, p. 19; Antonio Cassese, *Self-Determination of Peoples: A Legal Reappraisal,* Cambridge, Cambridge University Press, 1995, pp. 122–4. Some international lawyers hold that there may be a right to secession in exceptional circumstances: see Cassese, pp. 119–20, and Dieter Murswiek, 'The issue of a right of secession—reconsidered', in C.Tomuschat (ed.), *Modern Law of Self-Determination,* Dordrecht, Martinus Nijhoff, 1993, p. 31.

2 For a more expansive conception of the right to self-determination, see Cassese, op. cit.

3 John Locke, *Two Treatises of Government* [1690], Cambridge, Cambridge University Press, 1970, especially chapters VIII and XIX.

4 Lee C.Buchheit, *Secession: The Legitimacy of Self-Determination,* New Haven, Yale University Press, 1978, p. 55.

5 F.M.Barnard, *Self-Direction and Political Legitimacy: Rousseau and Herder,* Oxford, Clarendon Press, 1988.

6 Harry Beran, 'The place of secession in liberal democratic theory', in P.Gilbert and P.Gregory (eds), *Nations, Cultures and Markets,* Aldershot, Avebury, 1994, pp. 47–65.

7 Ted Robert Gurr, *Minorities at Risk: A Global View of Ethnopolitical Conflicts,* Washington DC, United States Institute of Peace Press, 1993, pp. 90, 135–6.

8 Buchheit, pp. 216–17; Shehadi, p. 21.

9 Avishai Margalit and Joseph Raz, 'National self-determination', *The Journal of Philosophy,* 1990, vol. 87, p. 440.

10 Onora O'Neill, 'Justice and boundaries', in C.Brown (ed.), *Political Restructuring in Europe: Ethical Perspectives,* London, Routledge, 1994, pp. 69–88.

11 Buchheit, pp. 52, 96–7, 221, 223.

12 Buchheit, pp. 98–9.

13 Harry Beran, 'A philosophical perspective', in W.J.A.Macartney (ed.), *Self-Determination in the Commonwealth,* Aberdeen, Aberdeen University Press, 1988, p. 24.
14 T.R.Gurr and J.R.Scarritt, 'Minorities at risk: a global survey', *Human Rights Quarterly,* 1989, vol. 11, p. 380.
15 Allen Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec,* Boulder CO, Westview Press, 1991, p. 49; Shehadi, pp. 5–6.
16 Buchheit, p. 232.
17 Beran, 'A philosophical perspective', pp. 23–4; A liberal theory of secession', *Political Studies,* 1984, vol. 32, pp. 23–6, 28; 'The place of secession in liberal democratic theory', pp. 56–7; A democratic theory of political self-determination for a new world order' (Chapter 3 in this volume).
18 Charles R.Beitz, *Political Theory and International Relations,* Princeton, Princeton University Press, 1979, pp. 103–5, 111–12.
19 Beran, 'A liberal theory of secession', pp. 30–31.
20 Beran, 'More theory of secession: a response to Birch', *Political Studies,* 1988, vol. 36, p. 320. Beran has recently developed a more elaborate analysis of the problem of enclaves in the theory of secession: see Harry Beran, *An attempt to formulate a democratic theory of the right of political self-determination and secession,* paper presented at the 23rd Joint Sessions of Workshops, European Consortium for Political Research, Bordeaux, 27 April–2 May 1995, pp. 15–19.
21 Cassese, op. cit.
22 Barnard, pp. 292, 297, 301–3, 305; Margalit and Raz, pp. 444, 449; David Miller, 'The nation-state: a modest defence', in C.Brown (ed.), *Political Restructuring in Europe: Ethical Perspectives,* London, Routledge, 1994.
23 Miller, p. 156.
24 Buchanan, p. 49; O'Neill, pp. 75–7; Zarko Puhovski, The moral basis of political restructuring', in C.Brown (ed.), *Political Restructuring in Europe: Ethical Perspectives,* London, Routledge, pp. 215, 219.
25 O'Neill, pp. 78–9.
26 Ryszard Legutko, 'Cosmopolitans and communitarians: a comnientary', in C.Brown (ed.), *Political Restructuring in Europe: Ethical Perspectives,* London, Routledge, 1994, p. 235.
27 Charles Taylor, 'Do nations have to become states?', in Stanley G.French (ed.), *Philosophers Look at Canadian Confederation,* Montreal, Canadian Philosophical Association, 1979, pp. 34–5.
28 Beran, 'A liberal theory of secession', p. 28; 'A philosophical perspective', p. 31; Barnard, p. 315.
29 Beran, 'A liberal theory of secession', pp. 26–7.
30 Cass R.Sunstein, 'Approaching democracy: a new legal order for Eastern Europe: constitutionalism and secession', in C.Brown (ed.), *Political Restructuring in Europe: Ethical Perspectives,* London, Routledge, 1994, pp. 12, 20–6; Buchanan, p. 100; Beran, *A democratic theory,* p. 20.

31 Buchanan, pp. 60, 65, 68, 73, 83 note 26, 107–10, 112.
32 Beran, *A democratic theory,* p. 5; ‘The place of secession in liberal democratic theory’, p. 61.
33 Beran, *A democratic theory,* p. 6.
34 Buchanan, p. 88; Margalit and Raz, p. 459.
35 Beran, ‘A liberal theory of secession’, p. 24.
36 Ibid., p. 29.
37 Miller, p. 155.
38 Buchheit, p. 28.
39 Beran, ‘The place of secession in liberal democratic theory’, pp. 55–6; *A democratic theory,* p. 23.
40 Beran, *A democratic theory,* pp. 9, 23.
41 Buchanan, pp. 59, 101. Beran’s failure to solve this problem is shown by his apparent support for secession by Islamic fundamentalists from ‘a world organization permeated by Western values’ (*A democratic theory,* p. 21), which appears to contradict his liberal constraints on the right to secession.
42 Beran, *A democratic theory,* p. 18.
43 See, for example, Chandran Kukathas, ‘Are there any cultural rights?’, *Political Theory,* 1992, vol. 20, pp. 105–39; Will Kymlicka, The rights of minority cultures: reply to Kukathas’, *Political Theory,* 1992, vol. 20, pp. 140–6; Brian Barry, *Justice as Impartiality,* Oxford, Clarendon Press, 1995, pp. 128–33.
44 Onora O’Neill, ‘Justice and boundaries’ (pp. 69–88), Charles R.Beitz, ‘Cosmopolitan liberalism and the states system (pp. 123–36), Thomas W. Pogge, ‘Cosmopolitanism and sovereignty’ (pp. 89–122), all in C.Brown (ed.) *Political Restructuring in Europe: Ethical Perspectives,* London, Routledge, 1994; R.B.J.Walker, ‘Sovereignty, identity, community: reflections on the horizons of contemporary political practice’, in R.B.J. Walker and Saul H.Mendlovitz (eds), *Contending Sovereignties: Redefining Political Community,* Boulder CO, Lynne Rienner, 1990, pp. 159–85.
45 David Luban, ‘The romance of the nation-state’, *Philosophy and Public Affairs,* 1980, vol. 9, pp. 392–7. For a principled yet pragmatic critique of the nation-state, see Albert Weale, ‘From Little England to democratic Europe?’, *New Community,* 1995, vol. 21, pp. 215–25.
46 Gurr, op. cit., pp. 298–9; Donald L.Horowitz, *Ethnic Groups in Conflict,* Berkeley, University of California Press, 1985, pt 5; Hannum, pp. 467–8.
47 Shehadi, pp. 9–10; Puhovski, pp. 216–17; Nicholas J.Wheeler, ‘Guardian angel or global gangster: a review of the ethical claims of international society’, *Political Studies,* 1996, vol. 44, pp. 123–135.
48 Shehadi, op. cit., pp. 59, 64–5. See also Council of Europe, *Framework Convention for the Protection of Minorities,* Strasbourg, November 1994. On NGOs, see Hannum, op. cit., p. 457.
49 Gurr, op. cit., p. 310.

3
A democratic theory of political self-determination for a new world order

Harry Beran

This is an attempt to sketch a comprehensive normative theory of political borders. It is formulated as a theory of a moral right of political self-determination and secession that is consistent with democratic principles.[1] A comprehensive normative theory of political borders must include a theory of good borders and of rightful borders, of the rightful unity of the state, and of rightful secession. Ideally it should provide a theoretical solution for the peaceful settlement of all border disputes. It seems likely that a theory of rightful secession can be fully plausible only as part of a comprehensive normative theory of borders.

The two most important theories of morally rightful political boundaries are the nationalist and the democratic theory of political self-determination. According to the former, it is nations that have the right of political self-determination. According to the latter, political unity must be voluntary, and it is democratically self-defined territorial groups that have this right.

In a previous article (Beran 1993), I have tried to show that the nationalist theory is fatally flawed as a general theory of rightful political boundaries. The nation can be defined either as a large, culturally distinct group (Lenin 1916) or as a group that is united by a special sentiment of solidarity (Russell 1963:78). The first approach creates three problems for the principle that states should coincide with nations. First, it comes in conflict with the democratic principle of consent, if part of a nation does not want to be in one state with its fellow nationals; democrats must wish this conflict resolved in terms of consent. Second, since cultural distinctness is a matter of degree, in many cases there is no correct answer whether a given group of people constitutes one or two nations. Third, since only culturally distinct groups of considerable size are nations, the concept of *nation* does not apply to populations which are culturally highly heterogeneous, such as the four million citizens of Papua New Guinea who speak some 700 distinct languages. These problems can be side-stepped if the nation is defined as a solidarity group, but then the truth contained in the

nationalist theory is expressed more clearly and economically in the democratic theory of self-determination.

In this article I state the democratic theory of political self-determination as a theory of rightful political boundaries, sketch the theoretical context in which the theory is most plausible, and defend the theory against objections. The nationalist theory of political boundaries has had many famous exponents. In contrast, the democratic theory of self-determination, as a theory for determining political boundaries, has had few supporters, and little effort has been made to formulate it clearly and fully. It was perhaps first put forward by Woodrow Wilson during World War I (see Pomerance 1976), though he did not distinguish sufficiently between the democratic theory and the nationalist theory and, in any case, the doctrine was intended to be applied only to peoples and territories unsettled by the war. Gilbert Murray (1922) did explicitly distinguish between the nationality principle and the voluntary unity principle and supported the latter. More recently, Robert Dahl (1970), Thomas Pogge (1992), and especially David Gauthier (1994) have written in support of voluntary political association. Perhaps Kai Nielsen (1993) should be included in this list, but it is not clear whether he holds that the unity of the state should be voluntary or accepts a version of the nationalist theory in which almost any group that desires political independence counts as a distinct nation (see Beran 1994:57).[2]

In sketching and assessing the democratic theory of political self-determination, I assume that there are human rights, that they include the right of all normal adults to personal self-determination, that the state has to be justified in terms of serving the interests of individual human beings, and that some sort of state can be justified in these terms. The theory is intended to be compatible both with versions of democratic liberalism and of democratic socialism that accept these assumptions.

By state is meant, in the early parts of this article, a sovereign political entity, such as the United States, Germany, Indonesia or Papua New Guinea. In other words, the kind of entity is meant that is currently entitled to membership in the United Nations, even if it is also a member of a confederation, such as the European Union or the Commonwealth of Independent States. In this characterisation of the state, the term nation-state is avoided, since this term is best defined as a state consisting entirely, or almost entirely, of one nation and, if so defined, fails to apply to a substantial proportion of the members of the United Nations.[3] Be that as it may, in the second half of this article the term state undergoes a shift in meaning and is used to refer to an entity whose sovereignty may be significantly reduced due to membership in various multi-

state associations (see below, 'Theoretical context for the theory of political self-determination': p.43).

I also take for granted that a theory of morally rightful political boundaries is best formulated in terms of a moral right of political self-determination. Political self-determination without economic and cultural self-determination may be a sham, but I deal with the former only. When, below, I speak simply of self-determination, it is to be understood as political self-determination.

GENERAL FEATURES OF THE RIGHT OF POLITICAL SELF-DETERMINATION

A group's right of political self-determination is the right to freely determine its political status. In some writings, democratic self-determination refers to the democratic political processes within a state whose boundaries are taken for granted. But, as already noted, this chapter attempts to use democratic principles to determine the rightfulness of the political boundaries and the unity of the state that are normally taken for granted.

The right of self-determination is a liberty right, not a claim right. This means that, in virtue of the right, other entities have a correlative obligation not to interfere with the exercise of the right, but do not have an obligation to assist in its exercise. The right can be exercised in a number of different ways. If the right-holding group is part of a state, it can exercise the right by remaining part of it, by entering a looser relationship with it, or by seceding and assuming independence or joining another state. If the right-holding group is independent, it can exercise the right by remaining independent, by entering a loose relationship with another state or by becoming an integral part of it. Of course, some of the exercises of the right, e.g. exercising it by merging with another state, require a willing partner. The group's right is not extinguished by its decision to remain an integral part of an existing state or to fully merge with another state.

By secession is meant the voluntary withdrawal from a state and its central government of part of its people with their territory, with the remainder of the existing state maintaining this state's legal identity. Secession can be distinguished from partition (the dissolution of a state into two or more new states) and from expulsion (the excision of people and their territory, against their wishes, from an existing state which maintains its legal identity).[4] All three types of change can come about legally and peacefully, but often they do not.

THE DEMOCRATIC THEORY OF POLITICAL SELF-DETERMINATION

The theory will be developed in a number of steps. Normal adults have the human right of freedom of association, including political association, with willing partners. Therefore, the rightful unity of the state has to be based on the willingness of its citizens to be part of one state. This in turn implies that individuals must have the right of emigration[5] and groups which have the right to occupy the territory on which they live must have the right of collective self-determination, including secession.

As Lea Brilmayer (1991) has stressed, the distinction between emigration and secession is important, because the former does not involve the removal of territory from the state, while the latter does. An individual or family has the right to emigrate from their state, but it is by no means obvious that they have the right to remove territory from the state they wish to leave. Any theory of rightful secession has to specify what sorts of groups have the right not only to leave their state but to leave it with their territory: in other words, have the right of continuing occupation of their territory (the right of habitation).[6]

The best candidates for the right of habitation are states, nations or territorial communities. Allen Buchanan (1991:108–9) has argued that the right to territory is vested in the state. But within liberal democratic theory the state cannot be the ultimate right-holder. Buchanan himself asserts that the liberal state is the agent of the people, and in liberal theory it cannot plausibly be claimed that this agency relationship is irrevocable. Therefore, all rights the state holds, including the right to the state's territory, must be derived from the people whose agent it is. There are no good arguments to show that this right is irrevocably held collectively by all the people of an existing state. Therefore, if a substantial part of a state's population no longer wishes the present state to be its agent, it may terminate the agency relationship and remove itself from the state with its land.

Nations, understood as social entities distinct from states, are obvious candidates for the right of habitation. Virtually by definition, nations have homelands, and it is plausible to claim that they have the right to live in their homelands. I accept this claim as sound, but ask whether nations are the smallest social groups that have the right of habitation.

Perhaps territorial communities are the smallest groups that have the right of habitation. We speak both of territorial groups (e.g. villages) and non-territorial groups (e.g. Australian academics) as communities. By a territorial community I mean a social group that has a common habitat, consists of numerous families (i.e., is larger and more complex than a family), and is

capable of self-perpetuation through time as a distinct entity. Its members have direct and many-sided relations to each other, have some common interests, have a sense of belonging to the group (which can coexist with a sense of belonging to other groups as well), and are conscious of themselves as a distinct group.

This characterisation of a (territorial) community is not offered as an accurate analysis of the concept of *community* in ordinary discourse, though it is probably closely related to it. It is a characterisation that suits the claims I wish to make about territorial communities. The concept of (territorial) *community,* as characterised, is best understood as a degree concept and possibly a cluster concept. This means that some territorial communities can have the characteristics listed to a greater degree than other communities, and that the absence (or presence to a very low degree) of one of the less significant characteristics may not disqualify a social group from being a territorial community.

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. While it is possible (logically and even practically) for a community to maintain itself if moved to a new location against its will, such forced relocation creates a very high risk of disintegration. In contrast, individuals and families can readily survive relocation. Therefore, communities have the right of habitation, provided they have acquired their land rightfully. Territorial communities can range from small ones, such as villages, to large ones, such as nations. The latter can perhaps be thought of as communities of communities and as communities in their own right. In the argument below, the adjective 'territorial' is usually taken for granted when it is claimed that communities have the right of self-determination.[7]

Does a community have to be viable as an independent entity to have the right of self-determination? An affirmative answer may be based not on paternalism but on the view that rights presuppose the ability to exercise them. The issue of a community's viability as an independent political entity can be raised with respect to its ability to govern itself, to sustain itself economically, and to defend itself successfully in war.

It is unclear how a community can have the right of self-determination if it is permanently unable to govern itself. Young children do not have political rights because they do not have the capacity, let alone the ability, to exercise such rights.[8] Of course, as they mature, they do typically develop the capacity and the ability to exercise them. Therefore, biologically normal adults, and groups of such adults, have the ability to govern themselves. However, if things go

badly for them, they may temporarily lose it. A tribal people's traditional form of government may be destroyed and replaced with a colonial form of government, alien to their traditions and operated by colonial officials. If the colonial government departs, this people may neither be able to revert to its traditional form of government nor to operate the alien form of government until they learn to do so. Perhaps in such cases one should say, not that the people concerned have lost the right of self-determination, but that it is temporarily suspended.

There is some plausibility to the claim that for a community to have the right of self-determination it must not only be able to govern itself but also to sustain itself economically; it must be economically viable. The plausibility of the claim derives from the thought that a community ought to be able to meet at least the basic needs of its members to have the right to form an independent political entity.

However, it is not easy to formulate a plausible test of economic viability. The test can hardly be that the community could support its present population even if it had to be economically self-sufficient. This test is implausible, since international trade and investment allows communities to develop much larger populations than they could support were they to rely entirely on their own resources. Nor can the test be that the community could support some (much smaller) level of population self-sufficiently, as this trivialises the test; any community that has some arable land and potable water can support some population self-sufficiently, provided it is small enough. Moreover, it is unclear how this test is relevant to the economic viability of the existing larger community whose right of self-determination is at issue. It is also implausible to suggest the test be that the community can meet at least the basic needs of its present population with the kind of foreign trade and investment it already has. This is implausible, since a number of already independent states, whose right of self-determination can hardly be challenged, fail to meet this test.

The only test of economic viability that does not require denying the right of self-determination to quite a few existing states is perhaps this: a community is economically viable if it can meet at least the basic needs of its members or has a reasonable prospect of doing so with appropriate economic development aid from other states, i.e. if it will not need handouts from other communities for ever. Not many communities likely to seek political independence would fail this test. And, of those that seem to fail it, some may not fail it after all if international justice requires that the benefits of the exploitation of natural resources be shared more equally than at present between resource-rich and resource-poor states. With some hesitation, I include economic viability, in the

sense just explained, as a necessary condition of a community having the right of self-determination.

A community's ability to defend itself successfully against military aggression must be rejected as a necessary condition for the right of self-determination. Not even superpowers can defend themselves successfully against nuclear attack. Small states have little chance of defending themselves successfully against non-nuclear attack by large neighbours. But this is no reason to deny the right of self-determination to them; rather it is a reason to work for a world free of war.

If the issue of changing political borders arises in a polity, there is usually disagreement as to whether a change should be made. At the time of the breakup of the former Yugoslavia there was a majority in favour of secession from Yugoslavia in Croatia; but in the portion of Croatia known as Krajina, inhabited mostly by Serbs, there was a majority against secession. The reiterated use of the majority principle seems to be the only method of resolving such conflicts 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.[9] 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 territorial community (i.e. a community which is not composed of a number of communities) to determine its political status.

The reiterated use of the majority principle to settle disputes about political borders always yields a determinate result. It therefore provides an adequate response to Ivor Jennings' quip (1956:56) that 'the people cannot decide [issues of political borders] until someone decides who are the people'. It also maximises the number of individuals who live in mutually desired political association, an ideal implicit in the right of freedom of association (cf. Gauthier 1994:360).

The democratic theory of political self-determination can be summarised as follows:

(a) Normal adults have the right of personal self-determination and, therefore, of freedom of association with willing partners.
(b) Territorial communities that have acquired their territory rightfully, have the right of habitation.

(c) A group has the right of political self-determination if it is a territorial community (or community of communities) and politically and economically viable as an independent entity.[10] This right is derived from the rights mentioned in (a) and (b).
(d) If a territorial community consists of smaller territorial communities, as most large territorial communities do, then its right of self-determination is derived from the right of the smaller communities, because of the voluntary association principle. Therefore, the right of a smaller community always overrides the right of the larger community of which it is part, if there is a conflict of wishes regarding political boundaries.
(e) The community's right to determine its political status is to be exercised in accordance with the majority principle. Normally, a referendum is required to determine the wishes of the community, but there can be cases where the wish of the community is so clear that there is no need for it.
(f) The right of self-determination includes the right of no-fault secession. The exercise of this right is subject to the just division of the assets and debts of the existing state.
(g) Since this theory is based on the right of personal self-determination and requires the use of the majority principle to resolve disagreements regarding political boundaries, it is appropriately termed a democratic theory of political self-determination.[11]

A few comments will clarify the significance of the theory. First, the theory is one, not of good, but of rightful borders: i.e., borders consistent with human rights. A theory of good borders is sketched below, in the third part of 'Theoretical context for the theory of political self-determination' (see p. 43).

Second, it is a theory of rightful political borders of populated areas only. It is of no help in determining the rights of the claimant states (China, Vietnam, Malaysia, Brunei, the Philippines and Taiwan) to the uninhabited but probably resource-rich Spratley Islands.

Third, the theory is intended to serve for the *peaceful* resolution of border disputes. It is not intended to imply that people who are being slaughtered by others in their state cannot justifiably secede (perhaps with the help of powerful friends) without a referendum to determine rightful borders or without a determination of the just division of the assets and debts of the existing state. The theory, therefore, needs to be supplemented with a theory of justifiable emergency secession not provided here.

Fourth, the right of self-determination shares certain features with other human rights: it can be overridden by other human rights, and its exercise can be unwise, morally wrong or impossible. While a systematic specification of the

conditions under which the right of self-determination is overridden by other moral considerations is beyond the scope of this article, some examples are mentioned in the paragraphs below on 'Replies to objections within ideal world theory' and on 'Replies to objections within real world theory' (see pp. 46 and 53). It also needs to be appreciated that it may be best to allow a group to do something which it does not have a moral right to do. Hence, there may be cases where it is best to allow political independence to a group that does not have the right of self-determination.

Fifth, the right of secession is not a panacea for social conflict. If a state consists of communities which are deeply divided from each other, one of the communities may wish to exercise its right of self-determination by secession. However, secession is not the only way of dealing with the issue of deeply divided states in a way that is peaceful, morally principled and consistent with democratic principles. Other ways include minority rights, power-sharing and federation (McGarry and O'Leary 1993, ch. 1). Minority rights are especially appropriate where a relatively small minority is dispersed within a state in such a way that it cannot secede even if it wants to or, even if it does occupy a homeland, does not really wish to secede except as a last resort. Power-sharing is especially appropriate where there are two very different more or less equally numerous communities within a state, which are so intermingled or economically interdependent that neither federation nor secession is a good way of avoiding oppression of the smaller group by the larger. Federation is especially appropriate where there are a number of relatively different communities which can thereby have the beneflts of local autonomy and of membership in a larger political and economic entity. All these ways of dealing with deeply divided states are consistent with democratic principles, as these principles are not exhausted by the majority principle. Democracy is a political system which respects the rights of individuals and communities of individuals, and such respect may require limiting majority rule by minority rights, power-sharing and federation in order to avoid the tyranny of the majority. The availability of these options in a state enables communities in it to exercise their right of self-determination in ways other than secession, without paying an excessively high price for remaining within their state.

The significance of the democratic theory of self-determination and secession can be further clarified by contrasting it with rival theories of secession. The right of secession formulated here is far more liberal than the right of secession asserted by O.S.Kamanu (1974), Anthony H.Birch (1984) and Allen Buchanan (1991), although the last two also use a (liberal) democratic framework. All three assert a moral presumption in favour of maintaining existing states, but also a right of secession. This right is best understood as a right of remedial

secession, since it is based on moral wrongs suffered by the separatists—wrongs that are great enough to override the presumption against secession. For example, in Buchanan's theory, the wrongs that create a right of secession are unjust conquest, exploitation, threat of extermination and threat of cultural extinction. None of the writers mentioned provides an adequate account of the compatibility of such a highly qualified right of secession with the fundamental principles of democracy.

In contrast, the right of secession asserted in this article is based not on wrongs suffered by separatists but on the right of free political association, and the right may, therefore, be termed a right of no-fault secession.[12] According to the democratic theory of self-determination, communities that have the right of self-determination and wish to secede do not have to justify secession, since they are merely exercising their right of free association. Nevertheless, given the considerable cost, disruption, and inconvenience of secession, communities that secede are likely to have strong reasons for doing so, reasons that have not been eliminated by negotiation with those from whom they are separating.

In asserting the moral right of free political association and right of no-fault secession, the democratic theory of self-determination has theoretical elements in common with libertarian theories of secession, as advanced by Ludwig von Mises (1983:34; 1985:109–10), Murray N. Rothbard (1994) and Robert W.McGee (1994). However, the democratic theory of self-determination is intended to be compatible with a more robust state than the libertarian minimal state, with a duty of aid to fellow citizens in need, and with principles of international distributive justice which libertarians reject.

As already noted, the democratically based right of self-determination comes in conflict with the principle that nations (conceived as culturally distinct entities) should coincide with states, if part of a nation has other ideas. However, the democratically based right of self-determination grants nations all they deserve: if the members of a nation are united in their wish for a state of their own then they are entitled to it.

According to international law, states have the right to resist with force internal and external challenges to their territorial integrity. The democratic theory of self-determination rejects the state's right to meet with force internal challenges to its integrity but fully supports its right to so meet external challenges.

THEORETICAL CONTEXT FOR THE THEORY OF POLITICAL SELF-DETERMINATION

The critical discussion of the democratic theory of self-determination requires specification of three aspects of the theoretical context within which it is most plausible.

1. In order to assess the force of objections to the theory, it is useful to distinguish between ideal world theory and real world theory of politics.[13] The former, unlike the latter, assumes that there is agreement among the communities of the world on moral principles directly relevant to self-determination, and that communities abide by these principles. It is important that agreement on morality, and compliance with it, is assumed only for the part of morality directly relevant to self-determination. For this means that ideal world theory is not as remote from reality as it would be if it assumed universal agreement on, and compliance with, all moral principles. The distinction between ideal world theory and real world theory is useful because, as will be shown in the next two sections, some objections to the democratic theory of self-determination apply to it only in a world where some communities act immorally, while other objections apply even in an ideal world.

Before the discussion of objections within real world theory, one aspect of this theory must be clarified. In ideal world theory all communities act in accordance with agreed morality. In real world theory, one of two assumptions can be made. It can be assumed that states have no choice but to act from the prudential rather than the moral point of view; or it can be assumed that states can act from the moral point of view, but that their deliberations also take into account that there are disagreements among states as to what morality requires, and that states often act from self-interest rather than morality. The second assumption is made below when real world objections to the democratic theory of self-determination are discussed.

2. International distributive justice is highly relevant to the democratic theory of self-determination. At present, states have total sovereignty over their natural resources and are considered to be entitled to all the benefits of exploiting them. However, the distribution of the benefits of the exploitation of natural resources seems to be a matter that falls within the proper scope of a theory of international distributive justice, and it seems likely that a sound theory would require a much more equal distribution among states of these benefits than at present. Surely it is irrelevant to the just distribution of the benefits of exploiting natural resources that one people happens to have oil under its sand and another people only more sand. And if the distribution of the

beneflts of exploitation are a matter of international justice, then so is whether particular resources are to be exploited and at what rate.

In an ideal world there would be agreement on the requirements of international distributive justice, and these requirements would be met. In such a world one notorious difficulty of secession would disappear. If Katanga, a province of the Congo, as it existed in the 1960s, has the Congo's only significant natural resources, this would give it little incentive to secede because, after secession, it would still have to share the benefits of exploiting these resources with the other provinces of the Congo, or even more widely. Should Katanga still want to secede from the Congo, the objection that this would impoverish the rest of the Congo would not apply.[14]

3. Since the end of World War II the number of independent states has increased from a few dozen to almost two hundred. Mostly this is so because the colonies of the Western powers have gained independence, but partly also because of the disintegration of the Soviet Union and Yugoslavia, the partition of Czechoslovakia, and the creation of Bangladesh and Eritrea by secession. Many existing states contain separatist movements. Some of these have so much support that they would create independent states, were the movements not suppressed by force. But at the same time as colonies and separatists have achieved independence, sovereign states have sought partial economic and political integration. The European Union is, of course, the prime example of increasing economic and political integration, and the North American Free Trade Agreement the prime example of (impending) economic integration.

There are theoretical reasons to think that both trends are in accordance with the needs of contemporary humanity. In 1970, in *After the Revolution?,* Robert Dahl made a case for dispersing some of the power of the contemporary sovereign state to local and international government. Stronger local government than usually exists now is desirable because it would create a stronger sense of local community and because it is best to make political decisions at the lowest level of political organisation that is competent to make them. Stronger international government than exists now is needed to minimise the incidence of war, to control international business, to preserve the environment, to manage natural resources, and to increase international justice.

Perhaps five levels of government are desirable: world, continental, state, provincial and local government. The levels can be illustrated as follows, using Europe and Germany as examples. Europeans wish to participate in making decisions about matters that affect all the communities of the world (world government); then there are decisions which affect all, but only European communities (continental government); matters that concern mainly Germans (state government); matters that concern mainly Bavarians (provincial

government) and matters that only concern the town of Pfaffenhofen (local government). Dahl calls this the Chinese boxes model of political organisation.[15] Ideally, the whole of humanity would belong to one set of nested boxes. Needless to say, the real world is more complicated: the number of levels of government need not be equal throughout the world; the borders among communities may be determined by different considerations in different parts of the world; a state in one continent may wish to belong to the continental government of a neighbouring continent; and there is no guarantee that all communities will agree to belong to one world-wide system of nested boxes.

The following are some of the principles that are relevant to determining the structure of the nested boxes.

(a) Among the criteria of good borders are natural geography, cultural homogeneity, cultural inclusiveness, availability of resources and externalities. But in some cases where a community's activities affect people beyond its borders, it may be best to deal with the issue by means of treaties, rather than by shifting borders.
(b) One principle for determining the number of levels of government is the principle of economy: people must not be expected to spend an unreasonably high proportion of their time on political activities.
(c) One principle for determining the relationship among the levels of government is the principle of subsidiarity: decisions should be made by the lowest level of government that can competently make them.

Some of these principles may come into conflict. Government at all levels should be created by democratic election among those who are affected by the decisions of these governments. But the principle of economy suggests that the members of world government and of continental governments be not elected popularly, but elected or appointed by state governments. For this sketch of a theory of rightful political borders it is not necessary to formulate a preferred proposal. It will, therefore, be left open what powers the world government and continental governments should have and how officials of these governments should be appointed. But two points are worth making. First, it seems plausible that stronger international peace-keeping forces and a stronger international court than exist now would improve the ability of communities to exercise their right of self-determination. Second, the nested boxes model of political organisation is intended to be consistent with the possibility that genuine nation-states may significantly increase in number in the next century and may remain the most important level of political organisation for some time

to come, despite the transfer of some of the present powers of states to higher levels of political decision making.

Voluntary association, the criterion of rightful borders, can come in conflict with the criteria of good borders. It may be best for the whole of humanity to be included in one set of nested political boxes, but the whole of humanity may not agree to such an arrangement. Those committed to democracy must assume that, on the whole, people have the competence to make the right decisions; that, therefore, the two sets of criteria give outcomes that are not too disparate; and that, to the extent to which rightful borders depart from good borders, it is normally better to put up with this than to achieve better borders by force.

In ideal world theory, it is assumed that communities comply with moral requirements relevant to rightful political boundaries. This means that they act in accordance with the right of communities to self-determination, the rights of minorities in states, and the requirements of international justice. However, ideal world theory need not assume that people always choose the best possible borders. Nor need it assume that the whole of humanity agrees to be part of one all-embracing political system of nested boxes. This is so because choosing borders other than the best, and choosing not to be a member of an all-embracing political system, need not be morally wrong.

REPLIES TO OBJECTIONS WITHIN IDEAL WORLD THEORY

In this section, the main focus is on objections which apply to the democratic theory of self-determination even in its ideal world form. In the next section the main focus is on objections which apply in the real world. However, to avoid repetition, the objections will not be completely separated into the two sections.

1 It may be claimed that the democratic theory of self-determination combines incoherently principles that belong to different stages in the historical development of the functions of political boundaries. Perhaps the right of self-determination is essentially part of a world order in which humanity is divided into genuinely sovereign states. In such a world, this right may be the appropriate criterion of rightful political boundaries. But the right may have no place in a world order in which humanity is governed by a number of levels of government, structured as a set of nested boxes, without fully sovereign entities. In such a world, rightful political boundaries are perhaps best determined by the majority principle without appeal to a right of self-determination.

The objection has to be rejected for two reasons. First, before a referendum can be held to determine whether a region is to change its political borders, it has to be determined who is entitled to vote in the referendum. Both sides in the dispute over Northern Ireland now agree that the dispute should be settled democratically—i.e., by a referendum that demonstrates the wishes of the people. But Sinn Fein, the political wing of the IRA, asserts that all inhabitants of Ireland should have a vote in the referendum; the Unionists of Northern Ireland and the British Government assert that only the inhabitants of Northern Ireland should have a vote. The claim that individual territorial communities have the right of self-determination provides a theoretical reason for siding with the latter assertion.

Second, the objection assumes that one system of nested boxes is accepted by the whole of humanity, and that the only decisions regarding boundaries that need to be made are decisions as to where the internal divisions within the largest box should be placed. But this assumption is not justified. If individuals have the right of personal self-determination, and the consequent right to determine their political relationships, then groups of individuals have the right to opt out of a single global system of nested boxes. The Mennonites of North America may not wish to belong to it. The Swiss, who rejected membership of the United Nations in a referendum in 1986, may not wish to belong to it and may not even accept membership in the

European Union. If the whole Islamic world turned fundamentalist, it might decline membership in a world organisation dominated by non-Islamic states. Hence, while this article asserts the desirability of the whole of humanity belonging to one global system of nested political boxes, it also regards individual territorial communities as the ultimate building blocks of the structure, and ascribes to them or any combination of them the right not to be part of a single global structure.

2 It may be claimed that (territorial) communities are entities no more definite than nations, and that, therefore, the democratic theory of self-determination is just as vague as the nationalist theory. Bhiku Parekh has put the issue forcefully in discussion by asking ‘How many communities are there in New York [City]?’

Michael Walzer (1978:93), who claims that it is political communities that have the right of self-determination, provides the following criterion for the existence of a distinct community:

> The problem with a secessionist movement is that one cannot be sure that it in fact represents a distinct community until it has rallied its own people and made some headway in the *‘arduous struggle’* for freedom. The

> mere appeal to the principle of self-determination isn't enough; evidence must be provided that a community actually exists whose members are committed to independence and ready and able to determine the conditions of their own existence. [Stress supplied.]

A commitment to independence displayed by an arduous struggle for it may be a sufficient condition for the existence of a community, but it is hardly a necessary one. There is no reason to think that only communities that are committed to independence have the right of self-determination.

If the characterisation of the concept of *community* offered in the section on 'The democratic theory of political self-determination' above is accepted, instead of Walzer's, the test for the existence of a distinct community is still an empirical one. Regarding many villages and small towns there is no difficulty in determining that they are distinct communities. But there may be no definite answer to the question how many communities there are in New York City. The relationships and sense of belonging among the inhabitants of this city are no doubt such that there are a number of communities in it, but they may also be such that often there is no correct answer as to whether a particular part of the city has one or two communities. If one accepts the characterisation of community offered earlier on, then there is of course no guarantee that the number of communities in New York City coincides with its five boroughs.

However, if the great majority of the people of a region of New York City wished to secede from this city, this itself would be evidence that the people of the region are a distinct community.[16] In contrast, that a group wishes to secede is no evidence that it is a distinct nation. When Western Australians voted for secession from Australia in 1933 they were, nevertheless, as much part of the Australian nation, in the cultural sense, as the inhabitants of the other Australian states. It is not true by definition that a group of people who have a common habitat and wish to secede from their existing political entity are a distinct community; however, one could take it as evidence that is often sufficient, in practice, to regard the group as being a community. For, if there is a right of free association and a group satisfies most of the criteria of being a community, then, in deciding whether to accept its claim to being a community, one should err on the side of accepting rather than rejecting the group's status as a community and, therefore, as having the right of self-determination.

3 According to the democratic theory of self-determination any territorial community within a state has the right to secede, but in seceding it may remove from the existing state territory which is militarily, historically or economically essential to it.

In the peaceful world envisaged by ideal world theory there are no militarily essential territories. But in the real world, there may well be. If the territory which is essential for the defence of the rump state against, say, invasion is only a relatively small part of the territory of the separatists, the difficulty may be overcome by the rump state and the new state assuming joint control over the territory. If the separatists do not agree to this and there is a genuine threat of invasion of the rump state, the rump state's right to peaceful existence may override the separatists' right of self-determination.

Even in an ideal world there could be historically or economically important territories that could be lost to a state by secession. The plain of Kosovo and the Gallipoli peninsula appear to have comparable significance in the history of the Serbian people and Australian people respectively. They are the locations of heroic military defeats important in the formation of national identity. In a world in which nations respect the sentiments of other nations, an Albanian nation-state which includes Kosovo (ninety per cent of whose inhabitants are Albanians) would respect Serbian wishes to visit their historic site, just as Turkey respects the desire of Australians to visit Gallipoli and to maintain the monuments to Australian soldiers who lost their lives there. Moreover, Turkey respects the desire of Australians to visit Gallipoli in the real world, and so would Albania if Yugoslavia respected the Albanians' right of self-determination and Kosovo Albanians decided to join the Albanian state. Similar remarks apply to the ability of Christians to visit Bethlehem, transferred from Jewish to Palestinian control in 1995, and the ability of Muslims who are not citizens of Saudi Arabia to visit Mecca.

The presence of natural resources often makes a territory essential to the economy of a state. The issue of the division of natural resources in the case of secession is one of the just division of the assets of the existing state. If a sound theory of international distributive justice requires resource-rich states to share the benefits of exploiting natural resources with resource-poor states, then the secession of a region which has the only natural resources of a state would make little, if any, difference to the distribution of the benefits of exploiting such resources. On the other hand, if such a theory endorses the claim of existing states to sovereignty over their natural resources, then the secession of a region with the only natural resources of the existing state should be subject to its willingness to share the benefits of exploiting the resources fairly with the rump state after secession. In an ideal world such agreements would be made and kept. In such a world the rump state and the new state would belong to a wider political entity which could assist both in the making of the agreement and in ensuring compliance with it.

In the real world states *are* considered to have complete sovereignty over their natural resources. Such sovereignty is exercised on behalf of all the members of the state. Hence, if a part of a state with the only natural resources of that state wishes to secede, justice, even in the real world, requires that the separatists continue to share the benefits of exploiting the resources with the rump state after secession. If the separatists decline to do this, or are likely to break an agreement to do so, then there may be a moral case for resisting secession.

4 It may be claimed that under the democratic theory of self-determination the number of states would increase to an extent incompatible with the effective government of humankind. Perhaps this would be the case if most of the five to seven thousand peoples speaking distinct languages existing in the 1990s wanted a state of their own. A United Nations with thousands of members might multiply by scores the number of states that could not effectively control their own affairs and would make international policy formation even more difficult than it is now.

Certainly, if the democratic theory of self-determination were generally accepted, the number of states would increase considerably. Nations which are split into minorities in a number of host states, such as the Kurds, Basques and Yoruba, would perhaps establish states of their own. Nations which are now minorities in single host states, such as the Tibetans, would probably establish states of their own. So, perhaps, would some other peoples that are probably best not characterised as nations, because they are culturally too heterogeneous, such as the Bougainvillians of Papua New Guinea. How many territorial communities would secede from China and India is not readily predictable.

However, the increase in the number of independent states would be limited by two factors. The democratic theory ascribes the right of self-determination only to communities that are viable as independent states. Communities that do not meet this condition could not seek independence by right, and this would limit the increase in the number of independent states that could come into existence by right. More importantly, small communities that *are* viable as independent states and desire greater control over their internal affairs or a more prominent place among the communities of the world would probably exercise their right of self-determination in a way that would allow them to remain members of larger political groupings because of the advantages of such membership. Depending on the size of the community involved, it would probably seek not total independence but separate local status within a province, or provincial status within a state, or separate statehood within a continental confederation. The more a community wants the benefits of the post-industrial world, the more this would be likely to be true.

The extent to which the general acceptance of the democratic theory of self-determination would lead to the multiplication of states can be illustrated by speculating what would have occurred in the former Yugoslavia in the early 1990s, had the theory been generally accepted then.[17] The member republics that seceded would probably have done so anyhow. Some of the borders of the republics of the former Yugoslavia would have been substantially redrawn. Many Serbian communities in Bosnia-Herzegovina and Croatia would, no doubt, have joined Serbia. Some Croatian communities in Serbia and Bosnia-Herzegovina would probably have joined Croatia. The Kosovo region of Serbia, almost entirely populated by Albanians, and some north-western parts of Macedonia, in which Albanians are the majority, would probably have joined Albania. Part of the Vojvodina region of Serbia, predominantly populated by Hungarians, might have joined Hungary. Bosnia-Herzegovina, reduced in size, would still have had a very mixed population. To provide justice for its heterogeneous population it might have introduced minority rights, power-sharing or a federal structure of government.

The result would have been a rump Yugoslavia and independent states of Slovenia, Croatia, Macedonia and Bosnia-Herzegovina, but with borders considerably changed, by peaceful means, to reflect the wishes of those living in these lands.[18] In due course these five states would probably have been accepted as members of the European Union, as the real successor states of the former Yugoslavia probably will be one day. The European Union would probably prefer to have the whole of the former Yugoslavia as a single member, rather than as five separate members, but the latter hardly makes the European Union ungovernable.

5 If small communities have the right of self-determination and exercise it by seceding, some states may end up with two sorts of enclave: small independent microstates, and pockets of territory that belong to another state. Had the democratic theory of self-determination been accepted at the time of the breakup of the former Yugoslavia, the two sorts of enclave mentioned might have emerged in independent Bosnia-Herzegovina: one or two communities of Vlachs might have established an independent microstate, and various territorially discontiguous communities of Serbs and Croats might have seceded from Bosnia to become enclave citizens of Serbia and Croatia.

Enclaves are anathema to contemporary politicians and political theorists, but they were not uncommon before the emergence of the contemporary state and some have survived. San Marino is totally surrounded by Italy; it has a population of 22,000 (1984 est.) and a territory of 61 sq. km. Vatican City has a population of 729 (1978 est). Llivia, a town of 921 people (1981 est.), is located in the Eastern Pyrenees of France, but is part of Spain.[19]

Are enclaves so intolerable in the contemporary world as to undermine the democratic theory of self-determination if their permissibility follows from this theory? To what extent would they compromise the ability of the surrounding state to fulfil its functions? The following are among the main problems enclaves could create for a swiss cheese state. They could be used as tax havens by companies operating in the surrounding state.[20] They could be free-riders regarding various public goods provided by the surrounding state. If they do not have effective public health measures, epidemics could spread from them. If the enclaves in one state are politically united with another, they could be used for military attack against the former. Finally, enclaves could impede desirable economic development, such as the construction of roads or hydro-electric and irrigation schemes, that require encroachment on their territories.

Of these problems the last is especially important for two reasons: first, it could hold even in an ideal world in which everyone acts morally; second, while it is possible for a state that contains enclaves to take effective, morally permissible counter-measures with regard to most of the problems mentioned, there may be no such measures regarding the last problem. Therefore, as it is not possible to discuss all the problems listed, I will discuss the last.

In the 1950s and 1960s a huge system of dams and artificial lakes, the Snowy Mountains Scheme, was built in Australia for the generation of electric power and the creation of irrigation schemes. Its creation required the relocation of Jindabyne, a long-established town with about 1,500 inhabitants. The cost of the relocation was met by the Australian Government, and Jindabyne is now a flourishing town on the southern shore of Lake Jindabyne. At the time the Snowy Mountains Scheme was built Australians already had one of the highest standards of living in the world.

Let it be assumed, for argument's sake, that the people of the old town of Jindabyne were a territorial community who had acquired their land rightfully and, therefore, had the right of self-determination, including the right of habitation and secession. Had they refused to move, despite reasonable offers from the government to meet the cost of relocation and to provide compensation for the trouble of relocation, would the Australian Government have been justified in forcing them to move? Three possible grounds for an affirmative answer suggest themselves. It may be claimed that Australians had the right to improve their living standard, and that this right overrode the Jindabynians' right of habitation. Or it may be claimed that, while the right to improve living standards did not override the right of habitation, justice required the Jindabynians to move in order to make possible the creation of new economic opportunities for numerous Australians. Or it may be claimed that, while the matter was not one of justice, the benefits to Australians generally of

the Snowy Mountains Scheme were so great that they outweighed the right of habitation of the people of Jindabyne.

Different theories of morality yield different assessments of these arguments. My own tentative view is that they are not sound. The right to improve living standards is a liberty right and does not override the right of habitation if the standard of living is already one of the best in the world, as it was in Australia at the time. The Jindabynians' refusal to move would have deprived other Australians of economic opportunities, but it is my intuitive, though weakly held, view that it would not have deprived them *unfairly*. (I do not have a preferred theory of justice applicable to the case.) Regarding the relationship between consequences and human rights, I accept Walzer's view (1978: ch. 16) that human rights may be overridden by consequences (as distinct from other human rights) only if they amount to certain and imminent disaster. The Jindabynians' refusal to move would not have had such consequences.

I am, therefore, inclined to believe that even highly beneficial economic development does not justify moving territorial communities by force in countries that already have a high standard of living. Their relocation has to be induced by appeals to their good will, the creation of an attractive alternative habitat, and compensation payments. If this is so, then there may also be no justification to prevent the secession of a community for the reason that secession would give the separatists a veto on economic development involving their territory.

A different conclusion may be justified regarding a country at a low level of economic development. The construction of China's Three Gorges Dam on the Yangtze River, in progress in the 1990s, requires the resettlement of 1.13 million people living in several cities, 140 towns and 4,500 villages. The dam is part of a hydro-electric scheme which is expected to have the capacity to produce about ten per cent of China's electricity needs in the year 2000 and to greatly reduce China's reliance on coal—and, therefore, to greatly reduce the emission of carbon and sulphur dioxide.[21]

If the construction of this dam is necessary to create economic opportunities that reduce starvation in the country, or to reduce health-impairing pollution, it may justify the forcible movement of some communities. This is so since the right to life and to health of the people who would benefit from the dam's construction may override the right of the communities that have to be relocated to occupy their traditional lands. And, if forcible relocation may be justified, then, if these communities attempt to secede to avoid being relocated, overriding their right of self-determination may also be justified. I do not know whether the Three Gorges Dam is necessary to reduce starvation and health-impairing pollution in China.

REPLIES TO OBJECTIONS WITHIN REAL WORLD THEORY

Some real world objections to the democratic theory of self-determination have already been replied to in the previous section. Here are replies to three further objections.

1 It may be said that ascribing the right of self-determination and secession to every territorial community in the real world is a recipe for war.[22] This objection fails to distinguish the morally justified from the morally unjustified suppression of the exercise of the right of secession. It is confused thinking to reject the right of secession because its exercise may unjustifiably be opposed by some states with force. The primary issue is whether there is such a right, and only then is it appropriate to consider under what conditions its exercise may not be justified and under what conditions its exercise may justifiably be opposed by others. For this reason, the distinction between ideal world theory and real world theory is useful in the critical assessment of a theory of self-determination.

According to the democratic theory of self-determination, the Slovenes had the right of secession from Yugoslavia, even if they could foresee that exercising the right would lead to the disintegration of Yugoslavia. According to the theory, the attempt by Yugoslavia to prevent secession by force would have been unjustified. However, if the Slovenes thought that the disintegration of Yugoslavia would in turn lead to a catastrophic war in Europe and the loss of millions of lives, they ought not to have exercised their right of secession at the time.

2 The secession of Quebec from Canada would turn one state with a large and powerful minority into two states, each with a relatively small and weak minority. These small minorities would be more likely to suffer injustice then the large minority in the existing state. Reference here is, of course, to Anglophones and Francophones.[23] For this reason, the secession of Quebec may be claimed to be morally undesirable (Miller 1993:13).

In a world in which morality is respected, the small minorities would not be oppressed or exploited. Therefore, the inevitable disadvantages they would suffer, even in an ideal world, would be outweighed, morally, by the benefit of the Québécois having the independent state they desire. The objection has more force in the real world, in which majorities have a tendency to ignore the interests of minorities or to oppress them. Therefore, in real world theory it has to be granted, and indeed stressed, that a community's right of secession, if exercised in order to oppress minorities in its midst, may be overridden by the right of these minorities not to be oppressed.

3 If parts of states have the right of self-determination and secession, they may use the threat of secession to extract unfair benefits from the rest of the state. They may indeed, but the existence of the right also makes the rest of the state less likely to treat them unfairly.

CONCLUDING REMARKS

The closer the real world is to the ideal world, the fewer limitations there are on the exercise of a democratically based right of self-determination. The collapse of communism and the end of the cold war have brought the real world closer to the ideal world, at least for the present. The willingness of the Czechs to negotiate Slovak independence peacefully and the apparent willingness of Anglophone Canadians not to resist Quebec independence by force suggests, despite the violent breakup of the former Yugoslavia and the violent suppression of Chechnya's attempted secession, that the democratic theory of self-determination is not utopian.

If the desirability of the nested boxes model of political organisation and a democratically based right of self-determination were generally accepted, the following changes would probably occur and gradually create a new world order.

1 The number of states would increase, political divisions within some states would increase, and some power would be devolved from state to sub-state levels of government.
2 The number of nation-states would increase, in many cases not by the creation of new states, but by redrawing borders so as to make them closer to national divisions.[24] However, some multinational states such as Switzerland would be likely to remain, especially as federations.
3 States would increasingly form economic and political links across state borders within more or less continental areas and would strengthen global decision-making mechanisms.
4 States would increasingly integrate their armies, so that they would be difficult to use for warfare by a single state against another.
5 There would be an increasing use of international courts, in place of war, to settle disputes.

NOTES

1 This article reformulates and develops ideas previously presented in Beran (1984) and Beran (1988). In the 1984 paper I tried to formulate a democratic theory of secession without appeal to human rights. The 1988 paper is a previous attempt to formulate a moral right of political self-determination and secession within a democratic framework. Earlier versions of the present article were presented in the Philosophy Departments of Hull University and Queensland University, at the International Political Science Association Congress in Berlin in 1994, the Australasian Political Studies Association Conference in Wollongong in 1994, in the workshop 'Theories of Secession', at 23rd Joint Sessions of Workshops, European Consortium for Political Research, Bordeaux, France, 27 April-2 May 1995, and the Australasian Philosophy Association Conference in Christchurch in 1995. The present version has benefited from the discussions that ensued; I am especially indebted to Richard Ashcraft and Bhiku Parekh for their comments at the Berlin conference and to the discussions at the workshop on secession in Bordeaux.

2 Since completing this article I have noticed that Wellman (1995) and Philpott (1995) also argue for a right of self-determination and secession based on voluntary political association. I believe David Copp, too, has published a democratic theory of secession, but at present I do not know where.

3 If the nation is defined either as a large culturally homogeneous group distinct from others or as a group constituted by a sense of solidarity, then the Soviet Union never was a nation-state, and China, India and Fiji are not nation-states now.

4 Expulsion is rare; Malaysia's 'invitation' to Singapore in 1965 to leave the Malaysian Federation comes close to it.

5 But individuals do not have a corresponding right of immigration into other states, unless they are refugees, since such a right could undermine the right of self-determination of these states. See Walzer (1985:42–51).

6 In speaking of a right of habitation, I am indebted to Gauthier's phrase 'claims of habitation' (1994:369).

7 Should there be fatal objections to the view that territorial communities have the right of habitation, one could fall back on the following individualistic doctrine. As humans are territorial animals, they have the right to occupy some piece of land, even if it is not that which they currently occupy. The territory of any particular state belongs to the people of this state and, therefore, any number of individuals, no matter how small, have the right to a fair share of the state's territory should they wish to secede. The state could perhaps reasonably insist that the land in question has to be on its borders.

8 An ability is a realised capacity; I have little ability to compose music, but may develop such an ability with training, provided I have a capacity for composition.

9 The requirement to hold such referenda could, of course, be subject to a certain proportion of a region's people asking for the referendum and limitations on repeat referenda.

10 In making the community the smallest group that has the right of self-determination I have been influenced by Michael Walzer (1978:92–3) and Paul Gilbert (1990:28–9).

11 Comments by an anonymous reviewer of this article, for which I am grateful, raise three issues that can be discussed only very briefly here.

   1 Although a group's right of self-determination and secession is derived in part from its members' personal right of free association, I claim that a group's exercise of its right of secession can be morally acceptable although a minority is against secession. Given that unanimity regarding secession is usually unobtainable, the right of free association is satisfied more widely if the majority, rather than the minority, gets its way.
   2 Does this mean that the minority's right of free association is violated —e.g. if they cannot secede in turn because they are territorially dispersed? No, it need not. Some members of the minority may reluctantly, but freely, accept membership in the new political entity, given that the majority want it. Others may exercise their right of free association by moving to the rump state of which they are citizens until the secession is finalised. In theory, further measures are available that would prevent most of the remaining dissenters from being forced into a political association they do not want; whether these measures can be justified in practice is another matter. The democratic theory of self-determination maximises the number of people who can live in mutually desired political association. No more can be required.
   3 The claim that individuals have the right of personal self-determination and free political association may imply, or have as a corollary, the claim that the political authority of the state must rest on the actual consent of its members. The democratic theory of self-determination and the consent theory of political authority may, therefore, stand or fall together. I have offered a contemporary exposition and defence of consent theory elsewhere (1987).

12 The term no-fault secession, coined by analogy to no-fault divorce, was introduced by Buchanan (1991:135–6).

13 The need to make this distinction in self-determination theory was pointed out to me by Neil MacCormick (1988:113).

14 Since the 1960s Katanga has been renamed Shaba, and the Congo has now become the Congo again, having been called Zaire under the Mobutu regime.
15 Pogge (1992) adopts essentially the same model, but speaks of nested sovereignties. Perhaps the best name for it is 'nested boxes model'.
16 In the 1980s there was a movement in Staten Island, one of the boroughs of New York City, for secession from the city and separate city status in New York State. I do not know how much support there was in Staten Island for secession, and only an empirical study could establish whether Staten Islanders constitute a community distinct from other inhabitants of New York City. I owe my awareness of this movement to McGee (1994: 28–30).
17 A brief but useful history of the Yugoslav conflict can be found in Zametica (1992).
18 These remarks assume, for simplicity's sake, that all the populations mentioned were entitled to occupy their lands. This aspect of the theory of self-determination is pursued in Beran (1990).
19 Information about the three places mentioned is taken from the *Encyclopaedia Britannica.*
20 I owe this point to Peter Parker.
21 *Sydney Morning Herald,* 6 April 1995.
22 David Miller (1993:12) calls this the Balkan objection. The reply to this objection should be read in the light of the acknowledgement, in the section of this chapter on 'The democratic theory of political self-determination', that the right of self-determination can be exercised, even in deeply divided states, in ways other than secession, and in the light of the reply already given to the third objection to the ideal world version of the democratic theory of self-determination.
23 American Indian and Inuit minorities would also be affected by Quebec's secession from Canada. For the sake of simplicity, they are omitted from the discussion.
24 The opposition to such redrawing of borders has been especially strong among African states since they gained independence from the colonial powers. However, Ali A.Mazrui (1993) asserts the need to redraw political borders to reflect ethnic boundaries more closely than they do now and predicts that such border changes will be made during the next century.

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4
Territorial justice

Hillel Steiner

It's a commonplace of political history that, at some times in some places, liberalism and nationalism have *not* been incompatible. More than that, they have been good friends—lending each other vital support, rejoicing in one another's triumphs, holding a shared view of who is the enemy, and so forth. Nor, according to Onora O'Neill, has this affinity been merely coincidental.

> In a pre-liberal world, [a person's] social identity might be given by tribe or kin, it might not depend on those who share a sense of identity being collected in a single or an exclusive territory. Because liberal principles undercut reliance on pedigree and origin as the basis for recognising who count as our own, and who as outsiders, liberalism had to find some alternative basis for identifying who counts. Pre-eminent among these ways are the differential rights with respect to a given state that citizenship confers.[1]

Liberalism, she seems to be suggesting, has actually *needed* nationalism.

Why? Well, because its hallowed subjects—namely individual persons, each of whom it lavishly adorns with all manner of rights and liberties—flnd themselves badly in need of some salient form of social identity when they emerge from their various imperial subjugations, ancient and modern. For, whatever severe oppression and disempowerment they endured under those subjugations for so long, one thing they did *not* thereby lack was a strong sense of social identity: a sense of identity underwritten by their being officially and principally regarded as members of this family or that clan. That particular form of strong social identity being lost to them in the emancipatory world of liberalism, its only plausible replacement is said to consist in their recognition as citizens, as persons possessing significant and fully-fledged membership in a national group. And nationalism is the celebration of that membership.

So what we have here is essentially a psychological hypothesis with strong political implications. People are said to have a vital need to be socially identified—to be thought of as members of groups—and, moreover, groups whose membership is neither open-endedly inclusive nor primarily elective. Marx (Groucho, that is) once famously remarked that he would not want to be a member of any club that would have him in it. On the present hypothesis, while I might *want* to be a member of a club that would have me in it, what I *need* is to be a member of one that has no choice in the matter.

Now, it's certainly beyond my competence to assess the authenticity of that need, its weight or the grounds for claiming that its incidence has been as widespread as O'Neill suggests. Nor do I intend to dwell on the quite serious degree of practical indeterminacy attending the suggestion that significant membership in a national group is the favoured, perhaps now the *only,* way of satisfying it. That indeterminacy is, these days, the unmistakable message of virtually every headline and news story emerging out of the former Yugoslavia, the former Soviet Union and countless other places around the globe. Just which national membership will bestow on a person the social identity he or she needs is a matter currently being decided, in those places, by repeated resort to distinctly illiberal means.

And this, of course, is the problem about the relationship between liberalism and nationalism. For, whatever historical affinities they have shared, whatever services they may have rendered to each other along the way to the modern world, the tensions between them are, and arguably always have been, transparently obvious. Neil MacCormick, the liberal legal philosopher, speaks for many when he rather despondently records that

> Whether 'nation' and 'nationalism' are antithetical to or compatible with 'individual' and 'individualism' is a question of acute personal concern for me. I have been for a good many years a member of the Scottish National Party, and yet remain in some perplexity about the justiciability of any nationalistic case within the terms set for me by the other principles to which I adhere.[2]

More trenchantly, Ernest Gellner describes these tensions as 'a tug of war between reason and passion'.[3] Why? What's the problem here? Was not Hume surely correct to insist that reason is the slave of the passions, and that conflict between them is therefore impossible?

We don't, I think, need to disagree with Hume in order to see what Gellner and MacCormick are getting at. Nationalism is associated with passion because its imperatives are inherently particularistic.

'This measure is necessary', the nationalist will say, 'because it best serves the interests of *my* nation. My nation (or, as in earlier times, my tribe or my family) is what matters most. Its well-being is far more intimately connected to my own well-being and to my sense of who I am than are the sundry other considerations with which it may, and often does, conflict'

Liberalism, in contrast, is associated with reason, because its imperatives are universalistic. It indiscriminately assigns rights to everyone. And it adamantly rejects any proposed differentiation of these assignments that invokes bottom-line premises which unavoidably include terms like 'me' and 'mine'.[4] 'That this policy would be good for me and mine' cuts no *moral* ice with liberals, because moral judgements—judgements about what *should* be done—have to be drawn from bottom-line premises devoid of any proper name or particular reference. Premises containing such terms may well furnish reasons for *my* doing or having certain things, but they can't—logically can't—furnish reasons for *others* to let me do or have them. They can't serve those others as justifications for measures which require their (passive or active) co-operation: co-operation which would therefore be non-rational.

Not, of course, that liberalism forbids the pursuit of self-interest, whether by individuals or groups. Indeed, the very wide scope it allows for such pursuits has, historically, been the main target of its fiercest critics, among whom nationalists of one stripe or another have figured quite prominently. But what liberalism does forbid are those pursuits of self-interest that cross the boundaries demarcating other persons' moral rights. And the liberal's problem with many nationalisms, past and present, is that they have engaged in just such boundary-crossings on a truly massive scale, especially though not exclusively in relation to members of other nations.

Is this at all avoidable? Can nationalisms be reconciled? And can they be reconciled in such a way as to render the many diverse values, which they severally embody, compatible with one another's and, ultimately, with individuals' moral rights? To ask these questions is to ask whether those rights are sufficient to yield a set of national and international norms which at once allow scope for nations to enact their respective value-sets *and* entail clear limits on how far those enactments may extend. And to answer this question we need first to take a look at what those rights are.

In a recent book on rights, I have argued that at least a necessary condition for any set of rights to be a *possible* set—that is, to be realisable—is that all the rights in it are mutually consistent, or what I there call *compossible*.[5] The duties corresponding to those rights have to be ones which are jointly fulfillable and not mutually obstructive. By means of a rather extended chain of reasoning, which I certainly won't bore you with here, I try to show that this condition is satisfied

only by a set of rights, each of which is (or is reducible to) a discrete property right—one which can be fully differentiated from every other right in that set and which therefore does not (in the language of set theory) *intersect* with any of them.[6] I further argue that, for a set of rights to be like this, it has to have a certain historical structure whereby each current right is one derived from the exercise of an antecedent right. The upshot of all this is that sets of mutually consistent rights are jointly and exhaustively constituted by a subset of ultimately antecedent or *foundational* rights and by the subset consisting of all the rights successively derived from those foundational rights.

Now let's apply these conceptual truths about rights in general to the specific case of liberalism. At the core of liberalism are three normative claims—claims which are not always as carefully distinguished from each other as they should be. The first and, in a way, least exceptionable of these is that foundational or non-derivative moral rights are held by *all* individuals. The second claim, hardly more controversial, is that these rights are the *same* for everyone. Of course, there are several liberalisms and, correspondingly, several competing conceptions of what these rights are. What I have tried to show in that book is that only one foundational right, the right to equal negative freedom, can generate a set of rights that satisfies the compossibility condition I have just described.

It's liberalism's third claim that expresses what is most distinctive about it, and that brings it into sharpest contrast with many other moral and political doctrines. And this is that no moral right may be permissibly overridden, regardless of how much social benefit might be achieved by doing so. There are numerous ways of characterising this inviolable status which liberalism assigns to rights: Ronald Dworkin says that *rights are trumps;*[7] Robert Nozick sees them as *side-constraints,* that is, as restrictions on how we may permissibly go about pursuing our other values;[8] John Rawls assigns them *lexical primacy,* by which he means that all their demands, even otherwise trivial ones, must be satisfied prior to the satisfaction of any other demands, however weighty these others might be.[9] Yet another way of characterising the liberal status of rights is to see them simply as *personal vetoes.* Whichever characterisation we prefer, they all point to the same thing: namely, that each person has a set of claims on the conduct of other persons—a set of claims that must not be traded off by political decision-makers and must therefore be honoured irrespective of the cost of doing so.[10]

I suggested above that the foundation of these claims—the basic moral right from which all our other moral rights are derived—is a right to equal freedom. In my book, I argue that this right immediately entails two other near-foundational rights which are construed, in a quasi-Lockean way, as rights to

self-ownership and to an equal share of the value of natural resources. In effect, it is exercises of these two rights that then serially generate all the various other moral rights we can have or, more precisely, all the mutually consistent moral rights we do have.

And it's not hard to see that many of the types of right implied by these two have a pretty direct bearing on some of the more salient aspects of nationalism. For it's from the right of self-ownership that liberalism infers such more familiar rights as those against murder and assault, as well as rights to freedom of contract and association. And it's the right to natural resources that not only forms part of the basis of legitimate territorial claims but also, and interestingly, generates related requirements for international distributive justice, about which I will have more to say presently.

Because our main focus here is on territorial claims, I'm not going to dwell for long on the ways in which the liberal right of self-ownership constrains the permissible pursuit of national interests. Most of these ways are well enough known already. Rights against murder and assault have immediate restrictive implications for the conduct of nations' military activities, many of which implications have long been explored in the literature on just wars and enshrined in various international conventions. Rights to freedom of contract pretty straightforwardly underwrite free trade and proscribe all manner of restrictions on it. Rights to freedom of association crucially entail rights to freedom of *dis*sociation: that is, they prohibit the kind of conscription implicit in Berlin Walls. And, just as they allow free emigration, they symmetrically prohibit national restrictions on immigration, since, whatever social benefits are thought to be secured by such restrictions, they amount to violations of the rights of those citizens who are willing to take outsiders in. So in all these cases, political decision-makers—even *democratic* ones—are morally disempowered from enacting such measures by virtue of the fundamental rights liberalism assigns to each person: rights which it construes as enjoying constitutional status in any legitimate legal system.

Which brings us to territorial claims. I think it's fair to say that territorial claims, though not the *sole* objects of nationalist preoccupation, have probably excited more of its passion than any other type of issue. To be sure, even if nations' territorial claims had everywhere and always been compossible, there would still be lots of other things for nationalists to be exercised about: the preservation of their language and culture, the prosperity of their economy, and so forth. And many kinds of measure designed to advance these concerns are, as I have just indicated, not permitted under liberal principles. But perhaps the simplest and most encompassing measure deployed on behalf of these and other national concerns is, and always has been, the assertion of exclusive claims to

territory—to portions of the earth's surface, along with the supra- and subterranean spaces adjacent to them. Indeed, the assertion of such claims, if not always their recognition by others, is one of the essential criteria for distinguishing nations from other types of social group. And liberal principles have a very direct bearing on these claims.

The first and most important feature of this bearing is that, for liberalism, all legitimate group claims must be aggregations of—must be reducible without remainder to—the legitimate claims of individual persons. This means that a group's legitimate territorial claims can extend no further than the legitimate territorial holdings of its members or their agents. How do persons acquire legitimate titles to territory? Basically, there are two ways. First, by those titles being transferred to them voluntarily by the previous legitimate title-holders. But, second, and more fundamentally, by their staking claims to land which is not already claimed by others.

Now, readers of Locke and the voluminous literature exploring these Lockean arguments will be intimately acquainted with all the complexities implicit in that second stipulation. Locke himself explores the possibility of deriving claim-stakers' entitlements *solely* from their rights of self-ownership, suggesting that claim-staking consists in their investing some of their self-owned labour in portions of as-yet-unowned land. But even he acknowledges that this 'first come, first served rule' cannot be the whole story on establishing legitimate land titles. (I will return to this problem presently.)

Yet for him, for liberals generally and perhaps for many others as well, it remains an important *part* of that story. So any piece of land currently rightfully belongs to whomever it has been transmitted to by an unbroken series of voluntary transfers originating in the person who first staked a claim to it. Any interruption of that pedigree, say by unredressed acts of conquest or expropriation, invalidates that current title, no matter how innocently its current holder may have acquired it. And, needless to say, in our slowly liberalising world of today, much applied philosophy literature and much litigation in American, East European, Australasian and other courts are deeply immersed in trying to figure out which current persons or groups are and are not in possession of legitimate titles to the land they claim on this basis. But however complex many of these enquiries have already proven to be-requiring, as they often do, massive amounts of historically remote data—those liberal principles do yield two rather concrete and highly topical inferences concerning nations' territorial entitlements.

The first of these is the endorsement of a right of *secession.* For, although Locke himself (for reasons which remain mysterious) balked at embracing this conclusion,[11] it is very clearly implied by his principles. That is, precisely

because a nation's territory is legitimately composed of the real estate of its members, the decision of any of them to resign that membership and, as it were, to take their real estate with them, is a decision which must be respected. Emigrants are not, under liberal principles, necessarily condemned to leave with only the shirts on their backs and whatever they can cram into their suitcases or foreign bank accounts. Of course, nations may, if they choose, expel members, engage in certain forms of 'ethnic cleansing', etc. But what they may not do is expropriate legitimate landowners or evict their tenants. Jurisdiction over land, like jurisdiction over persons, is a purely voluntary affair for consistent liberals, and it is thus predicated on the agreement of all the parties concerned.

The second inference about national territorial entitlements, and the one which I personally find the more interesting of the two, engages issues of *international distributive justice.* More interesting because, historically at least, liberalism has had conspicuously little to offer by way of a systematic account—one firmly anchored in its own basic premises—of what wealth transfers some nations owe to others. Indeed it's a notorious feature of political theorising in general that the questions it tends to address are posed at the level of polities taken separately, as if these were hermetically sealed units, with only occasional genuflections in the international direction when it comes to matters of trade and migration and war and peace. But the logical reach of basic liberal rights—although it certainly encompasses these matters, as we have just seen—also extends well beyond them. Why? How?

I said previously that, even for Locke, the 'first come, first served rule' is not the whole story on persons acquiring legitimate titles to as-yet-unowned land. This rule, you'll recall, is derived by him from our near-foundational right of self-ownership. But that right is itself only one of the two types of right immediately implied by our most fundamental right, the right to equal freedom. The other one is a right to an equal share of natural resource values. Rights to equal freedom imply *both* of these rights, rather than only the first, in order to prohibit claim-stakers from engrossing too much and thereby leaving others with little or no freedom at all. Locke himself says that claim-stakers, in appropriating a piece of land, must leave 'enough and as good' land for others.[12] But, as many writers in the Lockean tradition have long appreciated, this 'enough and as good' restriction is badly in need of some amplification if it is to sustain the freedom entitlements of countless persons who are generationally differentiated.

Accordingly, and again for reasons which would take too long to detail here, some of these writers have interpreted this restriction as a requirement that each person's entitlement, rather than being one in kind—an entitlement to literally an equal portion of land—is one to cash: that is, to an equal share of the

value of land. This interpretation neatly accommodates the problem of generational differentiation and also takes account of the fact that, for a host of reasons, land values vary over time. The idea, then, is that landowners thereby owe, to each other person, an equal slice of the current site value of their property: that is, the gross value of that property *minus* the value of whatever labour-embodying improvements they and their predecessors may have made to it.[13] Hence the validity of their titles to that land vitally depends upon their payment of that debt.

This has immediate implications for what some nations justly owe to others. Liberalism's basic individual rights being ones of universal incidence, the equality of each person's land-value entitlement is necessarily *global* in scope. Everyone, everywhere, has a right to an equal share of the value of all land. To respect people's basic liberal rights, whether here or abroad, not only do we have to refrain from murdering or assaulting them, but also we must not withhold payment of their land-value entitlements.

Just what those entitlements amount to is obviously going to depend on how many people there are and what the current aggregate global value of land is. Neither of these magnitudes poses insuperable computational problems. We pretty much know, or can do, how numerous various populations are. And people who own or purchase pieces of real estate usually have a fairly shrewd idea of what those sites are worth. Evidently the ownership of an acre in the Sahara Desert is of a different value, and consequently attracts a different payment liability, than the ownership of an acre in downtown Manhattan or the heart of Tokyo. Similar things can be said about real estate in the Saudi oilfields, the Amazon rain forests, the Arctic tundra, the Iowa corn belt, the Bangladeshi coast and the City of London. No doubt the values of these sites tend to vary with such factors as technological change, population shifts and changing consumption patterns, as well as depletions of extractable resources and discoveries of new ones. But, whatever relative variation there might be among these values, there's every good reason to suppose that their aggregate secular trend is unlikely to be downwards. Mark Twain was not giving his nephew unsound advice when he said: 'Buy land, son; they're not making it any more'.

Since nations' territories are aggregations of their members' real estate holdings, the validity of their territorial claims rests on the validity of those land titles. So nations wishing to sustain the legitimacy of their jurisdiction over these bits of real estate have to ensure that those titles retain their validity. And, since states claim exclusive entitlement to the use of force in their societies, including the enforcement of debt-payments, it falls to them to ensure that those land-value payment liabilities are met. To put it in a nutshell, liberal principles demand that *states pay rates.*

In my book, I describe the total revenue yielded by such payments as a *global fund*.[14] Each nation therefore has an equal *per capita* claim on this global fund. And its operation, we might reasonably speculate, would serve to establish a variety of benign incentive structures informing relations both within and between nations.[15] So I will conclude by briefly mentioning three of them.

First, the global impact of such a fund is bound to be strongly redistributive, since the differential incidence of its levies, in conjunction with the *per capita* parity of its disbursements, pretty much guarantee a substantial reduction in international (as well as national) economic inequalities. These international inequalities have always played a not unimportant role in generating high levels of demand for emigration. Under the regime of the global fund, poorer nations, being its net beneficiaries, would find fewer of their members leaving to seek their fortunes abroad. Second, the operation of such a fund might be expected to foster greater willingness to compromise in international boundary disputes (over land whose legitimate title-holders are difficult to identify) by attaching a price-tag to any instance of territorial acquisition or retention. And third, the existence of such a fund would give nations stronger *dis*incentives to engage in such odious practices as ethnic cleansing and forced expatriation, since their receipts from the fund would thereby decline with their loss of those members. Indeed, nations might well come to cherish each of their members all the more —to provide them each with a strong sense of social identity—for being sources of guaranteed income!

In short, the whole world might become a bit more liberal, both domestically and internationally. Now, would that not be a Good Thing?[16]

NOTES

1 Onora O'Neill, 'Magic associations and imperfect people', in Brian Barry and Robert Goodin (eds), *Free Movement,* Hemel Hempstead, Harvester Wheatsheaf, 1992, p. 118.

2 Neil MacCormick, *Legal Right and Social Democracy,* Oxford, Oxford University Press, 1981, pp. 247–8.

3 Ernest Gellner, *Thought and Change,* London, Weidenfeld & Nicholson, 1971, p. 149.

4 'Unavoidably', in the sense that the only unconditional objection that the nationalist can offer to any counter-proposal (for a reversed differentiation, or none at all) is that it is contrary to *his/her* particular nation's interest.

5 Cf. Hillel Steiner, *An Essay on Rights,* Oxford, Blackwell, 1994, especially ch. 3.

6 That is, the set of physical components (spatio-temporal locations, material objects) involved in performing the obligatory action correlatively entailed by any

right does not intersect with corresponding set entailed by any other right. I describe this compossibility requirement as implying that all rights are *funded.*

7 Ronald Dworkin, 'Is there a right to pornography?', *Oxford Journal of Legal Studies,* vol. 1, 1981, pp. 177–212.

8 Robert Nozick, *Anarchy, State, and Utopia,* Oxford, Blackwell, 1974, pp. 28–33.

9 John Rawls, *A Theory of Justice,* Oxford, Oxford University Press, 1972, pp. 42 ff.

10 These claims may, of course, be traded off by the persons vested with them: right-holders can *waive* their rights, thereby extinguishing the duties correlatively entailed by them.

11 John Locke, *Two Treatises of Government,* ed. Peter Laslett, Cambridge, Cambridge University Press, 1967, p. 364.

12 Locke, pp. 306, 309–10. That is, the individual right involved is the *negative* one, that no one else appropriate more than an equal portion of natural resources. Jeremy Waldron (*The Right to Private Property,* Oxford, Oxford University Press, 1988, pp. 209–18), however, denies that Locke actually intended this 'enough and as good' formula as a restriction on just appropriation.

13 These values are conceived as periodised ones, that is, as the current *rental* value of the assets involved. The value of labour-embodying improvements is excluded from the calculation of this liability because persons' rights of self-ownership imply unencumbered rights to the fruits of their labour, i.e. provided landowners' liabilities have been met.

14 For reasons not germane to the concerns of this article, the sources of the revenues constituting this global fund consist of *more* factors than only land values; cf. Steiner, ch. 8.

15 Cf. Nicolaus Tideman, 'Commons and commonwealths', in Robert Andelson (ed.), *Commons Without Tragedy,* London, Shepheard-Walwyn, 1991, for a more extended discussion of some of these incentive structures.

16 This article has benefited from the comments of Simon Caney, Tim Gray and Peter Jones. An earlier version of it, 'Liberalism and nationalism', appeared in *Analyse & Kritik,* vol. 17, 1995, pp. 3–11.

5
Secession and isolation

Keith Dowding

This article has two aims. First to suggest there is no distinctly liberal account of just secession, only liberal accounts of justified secession in unjust societies. Secondly, the primary argument for secession, which is not distinctly liberal, that of preserving cultural identity, goes further than is ordinarily recognised. Arguments for secession based upon the need to protect cultural identity are either illiberal, in the sense that they are really arguments for opting out of liberal principles, or, where they are compatible with liberalism, require isolation rather than political separateness.

Harry Beran (1984:23) suggests that 'liberal political philosophy requires that secession be permitted if it is effectively desired by a territorially concentrated group within a state and is morally and practically possible.' Allen Buchanan (1991:8) argues the opposite, suggesting secession is an embarrassment to liberalism because of its individualism and universalism: 'Liberalism's universalism… leads it to be suspicious of separatist political movements and to strive, instead, for the universal implementation of a single set of principles of political order.' Buchanan carefully considers twelve reasons often put forward to justify secession, concluding all are problematic, though combinations of them may justify territorially confined groups seceding from larger political units. Buchanan is right to think liberalism has difficulties dealing with secession. It is not that liberals cannot find reasons for supporting or opposing secessionist movements in practice, rather that liberalism has difficulty in dealing with the concept within a broader conception of the state. There may be liberal accounts about when secession is justified, but in the just liberal state there can be no just reason for one group to wish to secede from the whole. The only reason that justifies secession is social injustice. The only reason for opposing secession is social justice. The only liberal justification for one portion of a country to secede is social injustice which does not occur in the just liberal state. To wish to secede in order to sustain illiberal practices is unjust, and therefore liberals have good reasons for opposing it.

We can make a distinction between liberalism as a theory and liberalism as an attitude. Liberalism as a theory constitutes a reasoned set of propositions from which an overall theoretical construction of the just liberal state will be drawn. Liberalism as an attitude is the intuitive feelings which underlie a liberal theory and from which we draw the reasoned defence of toleration, human rights, liberty and so on. The argument of this article is that there is no general liberal theory of secession, and there cannot be, since liberalism as a theory does not provide answers to some of the most difficult questions posed when secessionist claims are made. Liberalism does not have a theory of the state, or at least of the optimal state (the state of the right size). Extant liberal conceptions of the state, insofar as they are satisfactory, cannot be applied to secessionists questions. This does not mean liberals may not be able to produce general pragmatic accounts of when secession should be allowed, but these are not specifically liberal. They could only be 'second best' solutions outside of, though not necessarily inconsistent with, a general liberal account of the just state. Nor does it entail that a liberal cannot have reasons for supporting or opposing given secessions on liberal grounds; but their reasons derive from a liberal attitude towards these questions rather than from a general liberal theory of secession.

Consent theories provide the most obvious account potentially applicable to a general normative theory of secession. Consent theories generally provide a mythical foundation for justifying the state. They provide hypothetical justifications for the acceptance of authority within state structures. Without central state authority providing for the defence of basic rights and liberties, consent theories suggest states will be undermined by the more powerful groups in society. Furthermore, general free riding on the collective goods which the state provides, whether these be minimal (defence of market contracting, defence against internal or external aggressors) or broader (welfare provision) also justifies state structures. Many argue that hypothetical contracts cannot justify state authority (for example Green 1988); for the moment (but see below) we can accept such justifications may stand. The general counteractual question, 'would you sooner live stateless with the risks of insecurity, or within a state which reduces those risks and provides liberties and opportunities unavailable under anarchy?', can justify some form of the state. The major disagreements and debate between liberal writers is over the nature and extent of the state justified by hypothetical reasoning. Some suggest that states require authoritarian powers in order to keep order, though from Hobbes towards today, most accounts have suggested very strict limitations upon central state power. Taylor (1987) provides game-theoretic arguments suggesting that co-operation with minimal state structures is possible, Ostrom (1990) suggests that decentralised solutions to common pool problems are less problematic than

many centralised solutions. Buchanan and Tullock (1962) argue that unanimity is required for the original agreement, suggesting very limited state powers, whilst Rawls's (1971) structure helps the worst-off group, justified by the hypothetical deciders wanting to minimise their risks of doing badly. Hypothetical consent can thus be filled out in many ways to justify different varieties of state, more or less authoritarian, minimalist or interventionist. But these are debates over the basic structure of a liberal society and how hypothetical reasoners may feel about generating different types of state structures. They are hypothetical reasoners, hypothetically consenting to hypothetical state structures made actual only by their tacit obedience to those state structures in which they find themselves. In short, consent theories, of themselves, can only justify why we should want to consent to *a* state in one or other given form, but not why we should consent to any particular state, Our consent to our actual state is tacitly taken for granted whilst we do not rebel in some manner or other. Hypothetical accounts certainly suggest that we should not consent to many actual states, but they do not of themselves justify any given population consenting to the state structure in which they find themselves. The tacit component of consent theories can only justify any particular state in relationship to the costs of producing some other, better, though disputed, state form. But any general theory of secession must include the precise make-up of the citizenry and geographical limits for just states. Beran (1984, 1987) argues that this requires that each state has actual rather than hypothetical or tacit consent. Consent theories do not help us much in real disputes, for real disputes are about actual, not hypothetical, consent.

Beran's consent account rests firmly upon the actual personal consent of citizens to their state. Following from the right to personal self-determination, Beran believes that any territorially concentrated group (where 'group' means more than one person, cf. Beran 1987:41) can potentially secede. (Why a single individual does not have the right to secede from her fellows is not made clear). In Beran's account each territory gets to vote on whether it wants to remain part of the larger territory. Once a territory has seceded, then any smaller area within it then also has the right to vote whether it wants to remain as part of the larger, now seceded, territory, and so on (see Figure 5.1). This is a very general theory of secession and is certainly democratic, based upon consent of the peoples within geographical units, and is possibly liberal. (For why it may not be liberal, see below.) However, this general account has a number of practical problems, both for the simple account of majority voting it contains, and also of a more general nature in terms of rights and duties.

Beran's theory certainly seems to have democratic credentials, with a referendum in every state for each potential secession. But democracy is not

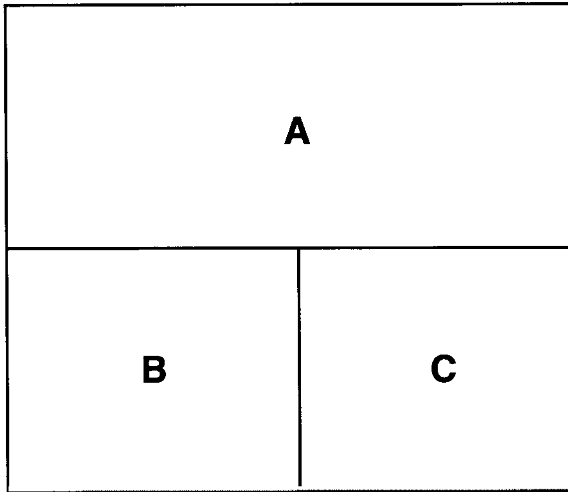

Figure 5.1 The state of A+B+C

that simple. Majority rule entails finding the Condorcet winner (the option that beats all other options in pair-wise votes), and no democratic state in the history of the world has ever instituted procedures which guarantee finding the Condorcet winner. Furthermore, there are serious problems associated with the possibility of there ever being a Condorcet winner in even relatively small state electorates (Black 1958, Arrow 1961, Riker 1982). Beran writes about referenda rather than referendums. This implies multiple constitutional choices, though it appears he means a single choice. To secede or not to secede, that is Beran's question. With multiple choices the possibility of voting cycles may emerge, with some groups in a given region preferring limited autonomy to full secession to remaining in the larger state, some preferring secession to remaining in the larger state to limited autonomy, and some remaining in the state to limited autonomy to secession.

If questions of secession or federation can be reduced to a single yes or no, then we might think that geographic cycling is possible, with A, B and C continually breaking up and federating. However, geographic cycling is unlikely as long as areas are allowed to secede and not forced to federate. As long as territories have a veto over whether or not they have to federate, then cycling will not occur. This can be simply shown. Imagine a state as in Figure 5.1. The state of A+B+C, is composed of three relatively homogenous areas, A, B and C. Imagine the preference profile of the three regions are:

A: A+B+C > A+B−C > A−B−C > A+C−B > A−B+C
B: A+B−C > A−B−C > A+C−B > A+B+C > A−B+C
C: A+C−B > A−B−C > A+B+C > A+B−C > A−B+C

where + means the two conjoints are federated, − means they are separate, and > means ‘prefers’. We have what looks like a cycle in the collective choice of the three states, with A+B+C beaten by A−B− C; A−B−C beaten by A+B−C; and A+B-C beaten by A+B+C. A+C−B is beaten by A+B-C and A–B–C. The first three set a cycle; however, under Beran’s schema we would expect that A +B−C will emerge as a winner. Beginning from the single state A+B+C, B would secede. A would then secede from B. A and B would then federate. C would want to federate with A and B, and this would be desired by A. A cycle may be set up with a referendum in A+B, which, if (as drawn in the figure) A were larger than B, may lead to C rejoining. However, B could veto this, stating that if C were to be allowed to rejoin, B would leave. As A prefers federation with B only over federation with C only, we would end up with the federation of A and B, with C outside. In this case, B effectively has a veto, which is what stops the cycle. Refusing to consent to an enlargement of the state, with the right to secede if one’s wishes are overwhelmed by the majority may seem a reasonable condition. However, this right of veto may not seem as justified as this example seems to imply.[1] We can see, for example, that the same result (a federation of A and B, with C separate) would ensue even if C’s preference ordering was A+B +C > A+C−B > A−B−C > A+B−C, given a clear majority between A, B and C for A+B+C, which is now not beaten by any other combination. However, B’s right of secession, and thus its ability to veto A+B+C, allows it to determine getting its first preference of A+B−C. Since, once B has seceded, A would rather break with C than remain as A+C, and then A and B could federate.

Quite what the history of B and C is, which leads B to determine that C is to be excluded, is surely pertinent to liberal attitudes to this result. If B and C have a history of warring, with citizens of B having been massacred in the past by the armies of C, then liberals may look at this result with equanimity, understanding that the vagaries of history are important in the consciousness of people. However, if B is rich in resources and does not want federation with C because of its poor and multitudinous population—once employed in low-wage, unskilled jobs in A+B+C, which are now in short supply—and B’s primary aim is to exclude C people from its economy (or employ them only as ‘guest-workers’ with few rights), then liberals may take another view of this dictatorial result.[2] In other words, Beran’s simple plan for apparently equal consent to the state is not the panacea for democratic liberals that it may at first

appear. The history and the justness of secession and federation are also important.

Other reasons of justice count against Beran's plan. If the secessionists wish to leave in order to harass a geographically dispersed minority within their ranks, then the liberal attitude would be to oppose secession. The only recourse left to Beran is to allow secession down to the level of the household (or why not the individual, if the household patriarch exploits the family?). But this enters the realm of fantasy, for there are pragmatic limits to size. These pragmatic limits strike at the foundational assumption of Beran's liberal-democratic account as we see below.

It turns out then, that the democratic or actual consent version of liberal secession may be very illiberal, and perhaps this is obvious, for there is no reason to think that democratic decisions necessarily are just ones. Arguments from democracy, despite Beran's attempt to tie this closely to consent theory, are analytically separate from liberalism itself.

The foundational assumption of Beran's liberal-democratic account of secession is 'that normal adults have the capability for personal self-determination and that it is, therefore, appropriate to ascribe to them a right of personal self-determination' (Beran 1987:34). From personal self-determination follows the actual consent account. However, self-determination is taken too literally here. Each person achieves little working alone, and co-operation between people, and between peoples, determines how much each can accomplish. The practical constraints upon the territories which can realise self-government include the willingness of neighbouring states and the world community to recognise and trade with them. In practice, arguments from self-determination do not take the conception of 'self-determining' very seriously and thus, as Buchanan argues (1991:50), do not entail full sovereignty. In order for full sovereignty to follow self-determination, it is usually tied up with nationalism. 'Nationalism' has been variously defined and defended. It is usually thought to involve a common self-identity, a common history and a common myth about that history (Gellner 1983; Miller 1994, 1995). But this can be said about many different types of community—the claim that a community constitutes a nation is more often tied up to a common territorially based history and claims about the social injustice wreaked upon that nation. Groups usually become nations when they feel hard done by (Buchanan 1991:52). Nationalist movements also tend to emerge when led by heresthetic politicians (Riker 1982; 1983; 1986) attempting to change political institutions for their own self-interest (Hardin 1995).

Buchanan (1991) dismisses consent accounts on the grounds that consent is not enough. A group must not only consent to have its own form of

government in a territory, it must also have legitimate title to that land. Whilst legitimate title may strengthen secessionist claims, surely there are other reasons that may override lack of legitimate title, though Buchanan may be right that simple consent is not enough. My reasons for dismissing consent accounts are rather more fundamental.

Underlying consent as a basis for the justification for the authority of the state is the intrinsic freedom of individuals to contract into political associations. Obviously empirically false, it also seems to be inherently problematic as a fiction. The fiction of the 'disembodied self' is useful for generating and elucidating impartiality in a theory of justice. It is not satisfactory for jump-starting consent accounts of the state. The maximum loss for anyone moving from the state of nature to political association is the 'physicalist' freedom to be able to do whatever they desire (which will not be much), unconstrained by morality. This trivial 'physicalist' freedom, upon which Hillel Steiner (1994) brilliantly constructs his political philosophy, is not a freedom 'worthy of the name' (Cohen 1989:125). Duty to the state comes with birth and the life one leads within that state. One gains from the existence of the state from the moment of one's birth. The degree of duty depends upon how much the state gives to you. What the state ought to give to you is based upon a theory of justice. I may not have asked to have been born, but that does not stop my having obligations to my parents. at least for as long as they bring me up properly. This lack of consent to my creation does not affect my moral duties to those who create and help me. We have duties towards our community even without (tacit) consent. The degree of our duty depends upon the rights we are given. From this sort of account it is hard to see how we can justify self-government of any particular territory, though it does not of course deny that particular areas are better for self-governing purposes than other possible regions. This must be generated from the efficiency of such national or cultural domains however, rather than their right of self-government.

We are brought back to the efficiency of national or cultural groups ruling themselves. If a 'people' want to govern themselves, if they feel better through governing themselves than being part of a wider governance, then surely that is an important reason why they should do so. Of course, other efficiency arguments are also important. Associated with secessionist movements, and with their failure, are the economic conditions of the populace. A people will more likely wish to secede if they think they will thereby be in an economically superior position, and they may reject secession if they think thereby they will be materially worse off (Bookman 1993).

Can simple desire for better material conditions justify secession? Buchanan seems to think so. He says:

> discriminatory redistribution is a violation of a fundamental term of the 'social contract' and, hence, of the conditions for legitimate political authority over those against whom it is perpetrated: namely, that government is to operate for genuine *mutual advantage*. Put negatively, the point is that government's exercise of power is legitimate only if it refrains from *exploiting* one group for the benefit of another.
>
> (Buchanan 1991:43–4)

There seems to be two ideas here. One is that one group should not exploit another, the other is that political association is to mutual advantage. The exploitation case is straightforward, though what constitutes exploitation is not (see, for example, Reeve 1987). Note that, by definition, exploitation of one group by another does not occur in the just liberal state, or at least is minimised. To the extent that one group is exploited, then secession may be justified—though secession is not the only answer for a group suffering injustice (Buchanan 1991).

Secession cannot be justly grounded in lack of mutual advantage, however, since the authority of the state cannot be justified on the grounds of mutual advantage. Brian Barry (1989; 1995) presents the most extended critique of justice as mutual advantage, and his thoughts can be applied to the formation of states. If mere 'mutual advantage' were to constitute the grounds for association, then anyone should be able to withdraw from the contract if they are so advantaged. One of the principles of smaller jurisdictions for taxing authorities within states is that communities desiring similar levels of tax-service provision can decide for themselves what they want (Tiebout 1956). This is thought to be Pareto-efficient. It has been recognised in theory (J.M.Buchanan 1971; Buchanan and Goetz 1972) and seen in practice (Dye 1990; Dowding, John and Biggs 1994) that this leads to overall reductions in redistributional services as the rich congregate together in low-tax areas. These 'club' effects for Pareto-efficiency (J.M. Buchanan 1965) can also be allied at the national level with the idea that constitutional secession clauses will lead to Pareto-efficiency and international justice. If it is not to any group's advantage to stay in a political association—and for any wealthier group in a redistributional system it is not—then 'mutual advantage' justifies its exit. This cannot constitute a liberal theory of secession. Citizens may dispute what level of redistribution is just within any given society, but this does not entail accepting the exit of those who do not like the current level of redistribution. Secession in such cases follows from naked self-interest, not social justice, and, whilst we may develop an account of social justice from self-interest (though I doubt it: see Barry 1995),

that account must start from a meta-level or some 'original position' and not simply the self-interest of any group at any actual point in time.[3]

We have seen that liberalism cannot justify any form of secession from the just liberal state; it can only justify secession as a practical response where there is injustice. Even here, of course, secession is not the only liberal response: greater justice within the state may satisfy the demands of liberal theory. Are there any arguments which can be brought to bear to justify secession in the just liberal state? The best arguments for secession are those which develop from the desire of groups to protect their identity (not simply their self-interest) and for self-government (Kukathas 1992a; 1992b; Buchanan 1993; Kymlicka 1995). But these are not essentially liberal; rather they are analytically separate, proceeding from considerations of efficiency and supremacy. Cultural distinctiveness may provide a good reason for separate political association, though not necessarily a good reason for a separate state. The problem for encompassing cultural identity within a liberal theory of secession is that either the just liberal state ought to include rights for protection, or its universalism will oppose secession on the grounds of illiberal practices. These arguments for separate states for cultural groups are essentially to escape the 'liberal paradox' that allowing freedom of worship and expression to some groups will shatter liberalism where those groups press for their illiberal practices to be compulsory for all. Groups may be illiberal in their practices as long as they do not break the law and allow exit for their members. The liberal state can only use illiberal methods to force such groups to accept the liberal state, but 'Recognizing a right to secede can only ease the liberal paradox by providing a way of protecting liberal institutions without betraying liberal principles' (Buchanan 1991:35).

Secession for these reasons cannot be justified by liberal precepts and is based upon a misunderstanding of liberalism. Liberalism is a view about the correct social structure and political institutions (Rawls 1971:274–5; 1978) for allowing individuals and the groups they comprise to lead their lives as they desire. It is neutral, or impartial, between those ways of life. This does not mean that it is impartial between non-liberal groups which wish to change the way of life of others and liberal groups that wish to allow others to behave in ways of which these groups disapprove. Barry (1995: esp. 168–73) has explained this liberal attitude as one of scepticism. Not a scepticism that suggests we do not have good reasons for accepting our beliefs, but one which accepts that, even for those beliefs which we hold most assuredly, we recognise others may hold contrary beliefs just as assuredly. He says: 'A liberal… has no objection to anyone holding a dogma, so long as it has to take its chances in competition with other ideas' (Barry 1990:13). Liberal society therefore has to have liberal institutions and is not neutral between different ways of organising society, but

it is impartial between different ways of living within those institutions. Secession for a group not wanting to live under liberal institutions may make for a more peaceful liberal society once they have gone; it may make that people happier, and may make the liberals left behind happier. These are reasons for allowing secession, and sometimes they may be good (or at least prudent) reasons, but they are not liberal ones.

There are sound reasons for groups to rule themselves. 'Technocratic arguments' provide solid grounds for states of a certain size, depending upon features of the environment (Dahl and Tufte 1974), even though they do not provide determinate answers. The problem, of course, is defining precisely what constitutes 'the people' (Dahl 1956; 1989). For social choice writers the notion of a 'people' is intricate, because any group of individuals will have different sets of preferences, and amalgamating those preferences into a coherent preference ordering is problematic (Arrow 1961; McKelvey 1976, 1979; Schofield 1978, 1983). In what sense can we have a 'people' when, with any reasonably large number of people, no consistent set of views can be generated? One way may be the fact of general agreement within a people. Formal social choice theory proves its theorems with 'universal domain'—that is, any set of preferences may be held by each person. In reality individuals do not have any old preference ordering, and people from similar backgrounds tend to order their preferences over certain sets of issues in particular ways. We might see a 'people' as a set of individuals (1) who tend to order their preferences with regard to certain issues in much the same way, (2) to whom these issues are important, (3) for whom these issues are historically conditioned through institutionally transmitted means, and (4) who tend to recognise themselves as a 'people' by this ordering tendency.[4]

This definition of a 'people' does not entail a right to self-determination. It merely suggests that, if a people is self-determining, electoral devices may more often provide outcomes which satisfy each of this group to a greater extent than if the group were part of some larger set with a different set of preference orderings on these issues. If, however, the issues on which this people had similar preferences were not ones open to electoral decision-making—that is, they were not ones which were (currently) in the political realm—the fact that this group had preferences so different from the rest of the society might seem practically irrelevant. (Though it may give them a reason for wanting a different constitutional settlement.) This common set of interests may enable the development of stable expectations of future behaviour, fostering trust and co-operation (Barry 1991:170). It is simply not true, however, that such trust necessarily leads to greater co-operation, though co-operation may be enhanced

if it is directed against other nations, groups (or indeed states) which seem to threaten the common interests of the group (Hardin 1995).

It so happens that, all too of ten, the mere existence of such divergences gives 'people' the desire for self-government. Why? One reason is to be able to defend one's 'nation'. But on the account above 'nation' is simply an emotive way of defining a group. Insofar as groups tend to become nations when they perceive they are being treated unjustly, then this may provide some basis. Proclaiming the right of a nation to govern itself and overcome injustices is more often the ploy of the heresthetic politician (Riker 1982; 1983; 1986) trying to break up previous alliances in order to propel him or herself into power (Hardin 1995).

Buchanan (1990, 1991) argues that there is a liberal presumption for preserving cultures within states rather than for secession. He suggests that this argument only works if the culture is really doomed in the state and less disruptive means for preservation, such as minority group rights, will not work; if the secessionists do not wish to create a non-liberal society themselves; and if the territory they wish to occupy has no other group with valid claims upon it.

Defining ethnic cleavages is controversial. Lane and Ersson (1994: 75) define an ethnic group as a 'collection of people who share the same language or have a common culture based on language.' O'Leary and McGarry (1993:3) more carefully define ethnic communities as 'cultural bounded and self-consciously differentiated from other such communities. They are most endogamous descent-groups. They are not to be confused with races or religious communities, even though they may be based upon the latter categories.' In other words, an ethnic community is a group of people who share a common culture, and self-identity with that culture, usually because of a common history. This self-identification is often created because of perceived social injustice directed against the ethnic group. Ethnicity and nationality are closely entwined, though self-identified nations are often made out of many ethnic groups.

Some writers defend secession on the grounds of the need to protect a group's 'culture' (Tamir 1993). Culture is a difficult concept to define and specify. Most writers want to specify some aspect of 'culture' as entering into the identity of individuals, those aspects by which people come to understand themselves as a separate entity, group or nation, and which are important to them. I will not attempt to define culture in any grand way. But there seem to be at least two separable aspects of culture which are pertinent to discussions of secession: those which a minority culture can without threat continue to practise within a wider set of cultural norms, and those which are difficult to practise within a wider set of norms. The former includes many religious practices and certain essentially private ways of life, including traditional dress,

foods, and so on. These relatively trivial (though perhaps no less important) aspects of cultural life need not be threatened by a wider society. Other aspects of such cultures—marriage norms, relations between the sexes, and so on—may be threatened by liberal constitutional norms. In terms of cultural norms which are individually coercive there is nothing for the liberal to say. Liberalism is not neutral or impartial on individual liberty.

To the extent that these cultural forms are truly desired by the group there seems no reason why they should not continue within the wider culture in which the group finds itself. It is true, of course, that often the younger generation of such cultural groups tend to take on more and more of the wider cultural behaviour, to the chagrin of the old. If you are a liberal individualist, this erasure may be regrettable but, as it occurs through choice, it is hard to oppose. That is not say, however, that these forms of cultural life cannot be protected within a liberal society. Individual rights (or, some claim, group rights) may protect many aspects of cultural life (Buchanan 1993; Kymlicka 1995; Freeman 1995). The very idea of impartiality or neutrality between different ways of understanding the good life is the liberal answer to the protection of such identities.[5]

Many aspects of culture are not simply to do with essentially private features of life, but rather concern interactions between people. Of course, the boundary between the essentially private and the interactive is fuzzy, but it is nonetheless important. These are social components of a culture; aspects which govern the relationships between members of that group and may govern their interactions with outsiders. Language is the paradigm example of this interactive component. Our language governs the way we associate with others around us, for it is the medium through which much of that interaction occurs. But there are other aspects of culture: how one should greet another person, behave towards them, the rules governing trade, and the ways in which a group survives economically. There are strong reasons why the desire to save social practices within cultures is justified, though whether secession is necessary, or whether it will be successful, is another matter. Let us consider in some detail the process by which interactive cultural facets may be destroyed by the encroachment of more dominant cultures. I will use the paradigm example of language to illustrate the problem using a simplified (and slightly modified) model based on a paper by Mike Nicholson (1994).

Nicholson's model assumes that people learn a second language in order to talk with people with whom they would not otherwise communicate. In this model he assumes two language groups, and each member of each language group would gain some utility from speaking with members of the other language group. There are costs of learning a language (primarily in terms of time) but no

supply problems; anyone can learn the second language. If we assume that for each member of language L the utility of learning the second language (M) is the same but the costs are different, then some number *l*, will learn M.Similarly, for language M a certain number *m* will learn L. If the utility of learning a foreign language is independent of how many of the foreign speakers speak one's own language then the demand curves of both L-and M-speakers can be drawn as in Figure 5.2. The demand curves can be understood as the number of speakers of each language who will learn the language. With independence, the numbers of second-language speakers will reach equilibrium where the lines cross, for here no more M-speakers want to learn L, and no more L-speakers want to learn M. In fact, though, anywhere along the *l/m-l/m* curve is a potential equilibrium for L-speakers, and anywhere along the *m/l-ml* curve is a potential equilibrium for M-speakers.

However, more realistically, the utility of learning M for L-speakers will depend on the number of M-speakers who speak L, and the utility of learning L for M-speakers will depend upon the number of L-speakers who speak M. In Figure 5.3 the demand curves for L-speakers learning M and for M-speakers learning L lie one on top of the other *(l/m-m/l).* Any point along that line is in equilibrium, for at each point there is no gain for any new M-speakers to learn L, or L-speakers to learn M. At point *a,* for example, there is an incentive for l_a speakers of L to learn M, and for m_a M-speakers to learn L. Thus the number of people learning the second language will move in the shaded triangle, say along the line marked, till equilibrium. At point *b,* there is disutility in knowing the language, and so people will 'forget' it. We can see this as the lack of the need to know the other language because there are so many people with whom you interact within that language group who know your own language. Thus the second language can be forgotten. (More realistically, this argument can run across generations, so that it will not be worthwhile to teach your children the other language.) Again, *b* will move back towards the demand equilibrium line.

It is easy now to see how a minority language within a larger language community can fall into disuse. In Figure 5.4 the demand for L-speakers to learn M is inside the demand curve for M-speakers to learn L. (It does not matter what shape the *l/m* demand curve is, as long as it is always inside the *m/l* demand curve.) Here, at point *a* more L-speakers want to learn M. Say the demand is satisfied to point *b.* Here, L is in equilibrium, but M is not. So m_b—m_c number of M-speakers learn L. But now L is out of equilibrium, so l_b—*ld* speakers 'forget' M. Now M is out of equilibrium, and the process continues until it is not in the interests (except perhaps for those intrinsically interested in languages, or anthropologists, or whomever) for L-speakers to learn M. M language used by L-speakers will drop along the marked line *(b-m/l).*

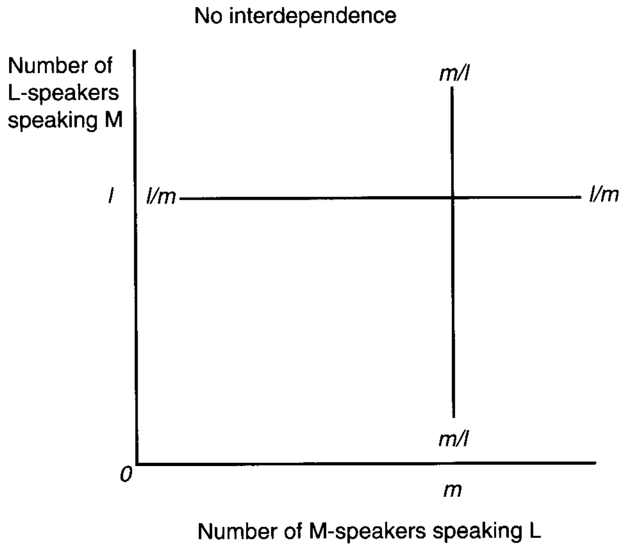

Figure 5.2

There are several reasons why *l/m-l/m* might be inside *m/l-m/l.* There might be far fewer M-speakers, and thus the utility of learning M for L-speakers is consequently lower. L-speakers may have much greater wealth, and thus M-speakers have more to gain by learning L and taking part in their economy. Either way, we can see how the dynamics of choice lead the dominant language to predominate. The minority groups have stronger incentives to learn the dominant language and, as they do so, speakers of the dominant language have fewer and fewer incentives to learn the minority language. Nicholson (1994) uses this to explain the dominance of English world-wide and the continued disappearance of some of the over 6,000 world languages as they fall into disuse.

Actually, nothing in the model presented suggests that M language will disappear, simply that L-speakers will not learn it, and that M-speakers will learn L and could converse in L if they chose. However, it is easy to see that, if it becomes in the interests of all M-speakers to learn L, then the language is in danger of disappearing, as did the Manx language this century (except as a hobby of a few people who learned from the recordings of the last native speaker, Ned Maddrel, who died in the early 1970s). This paradigm case of language can stand for other aspects of culture. Wherever cultural artifacts are in direct competition—the rules of trade, conventions of appropriate behaviour in institutional settings, and so on—this same model may explain how minority

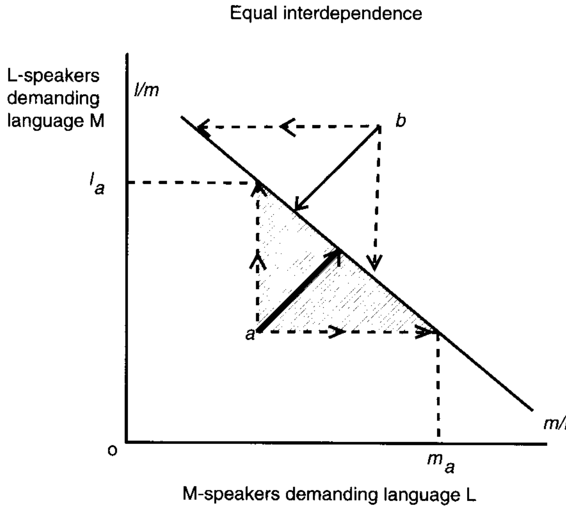

Figure 5.3

cultures disappear within broader cultural settings. The importance of this model is that it shows how minority cultures can lose their cultural identity through the *individual choice of their members,* even as those members are distressed by that cultural loss. For example, one may teach one's children to take the social mores of the dominant culture, knowing that they may better themselves economically through that process, whilst hoping that they will not forget their own cultural heritage. One may do this even though one knows that the hope is vain.

This process may continue within or without a state—French fear of Anglo-American language culture is barely less in France than in Quebec. Separating one's culture through political institutions may be an institutional response to, and an attempt to mitigate, the effects of the problem of choosing one's own cultural destruction: for example, the attempt to ban English or Franglais words from TV in France, and in Quebec the banning of signs in English that can be read from the street. As Buchanan argues (1991:62–3) this does not seem to justify Quebec secession, as it does not seem likely that simply being an independent political entity will reduce the rate of increase in English language-learning among immigrants, or indeed native Québécois. And Quebec has already brought in laws to try to protect their language without seceding.

We can also see why territory is so important. The utility of learning a foreign language will depend upon the degree of interaction with foreign-language-speakers. This will depend not only on how many foreign-language-

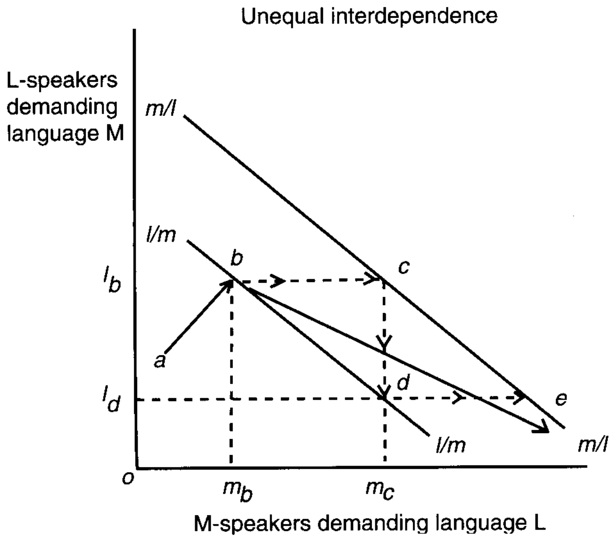

Figure 5.4

speakers there are, but also upon the probability of meeting them. In a mixed-language territory the probability is much higher than in homogenous territories. Only the territorially distinct community with relatively impermeable boundaries will halt the erosion of cultural identity.

Of course, territory is also vital for political legitimacy. Whilst several different conventions governing interaction may coexist with only the danger of embarrassing *faux pas* if one mistakes how one should behave in any given interaction, one has to know what and which the politically enforced rules are in any given transaction. Tying this to territory is much easier than tying it to dealing with different ethnic groups, unless the ethnic groups are based upon obvious racial features. Which of course is how apartheid is able to be enforced.

If Nicholson's language argument can stand as a paradigm for cultural degeneration, then we can have the basis of understanding of collective rights irreducible to individual rights, given the necessary interactiveness of language. Does this final argument thereby provide a reason for secession within the scope of the just liberal state? A cultural group may be given collective rights which are designed to protect cultural identity, and they may wish to protect it. Yet, if there are advantages in learning the cultural mores of the dominant culture, those rights may not be enough. Secession may seem to provide a further protection, but Nicholson's argument about language is not constitutionally

based. It simply requires interaction between two different language groups. It thus also demonstrates that secession may not be enough: isolation may also be required.

I have attempted in this article to demonstrate two separate but related arguments. First, I have argued that liberalism has no account of the morally correct boundaries of the state. It has no account of what size or nature just states should be. It can suggest how states should behave once they are formed, but does not suggest the precise boundaries around which they should form. Thus there can be no liberal account of secession from just states. Liberalism can suggest reasons why it may be desirable for certain parts of a state to secede on the grounds of social injustice, but better still for the liberal is for the state to be just in the first place. Beran's account of actual consent does attempt to overcome this problem for liberalism, relying upon individual self-determination to justify group self-determination through democratic referendums. However, I have shown that certain groups may thereby be expelled from the state against their will, and against the will of the majority within a state, because of the cycling of group preferences. It is not obvious that liberals should be committed to this exclusion, even if it is the result of Beran's referendum process.

Given this inability of liberalism to provide grounds for the correct boundaries of the state, I considered a non-liberal, though not anti-liberal, argument based on groups wishing to defend their culture. Many aspects of culture can be defended within a just liberal state, where groups are allowed to carry on practices which do not harm other groups, and, if those practices are to some extent illiberal, the liberal state can accept them as long as groups allow exit for their members. However, some aspects of culture may fall into disuse simply through the interaction of the group within a state. I took language to be a paradigm example of such interactive cultural practices. Secession may be thought to be justified in order to defend language and culture where they may fail within a state. However, I then suggested that secession may not be enough. Cultures may need to be isolated from other dominant cultures, if their cultural practices and language are not to be lost simply through the choice of their members. I used an economic model of the rationality of learning foreign languages to illustrate this. This model itself may be too austere and the conclusion too exacting. It may not be true that all languages and cultures will fall into complete disuse through such interactive processes (though obviously many have), and so complete isolation is not required to sustain one's culture. The model does nevertheless illustrate the processes that will lead to cultural disintegration. It also suggests that arguments for secession for cultural protection are not sustainable. The protections which may mitigate cultural

destruction may be provided within states; those which ensure cultural survival may be more than any state could actually bear.[6]

NOTES

1. Veto in this way, is much like the condition of unanimity demanded by some (Buchanan and Tullock 1962), which, if taken for all decisions, would entail a state form as desired by those least in need of the state.
2. The latter rationale makes more sense of A's preference profile. It prefers the state A+B+C to break up since it is indifferent towards any redistribution between B and C, and there are overall efficiency gains in having a single state (because of the barriers put up by B against C which constitute B's rationale for seceding). However, once B has left, A does not want to redistribute towards C, so prefers to secede itself. It prefers federation with rich B to separate status for the efficiency gains engendered.
3. Again such an argument entails the minimal Buchanan and Tullock (1962) solution.
4. I am not suggesting that this tendency will stop cycling, simply that it allows us to see why a given set of people may wish to congregate into a political territory, for they reach broad agreement over a bundle of possible policies or over the constitutional settlement.
5. The problem with many arguments about protecting cultures is that culture is a developing, not a static medium. Recently, the nude appearance of two Indian film stars in a newspaper created a furore, with politicians and religious leaders proclaiming that, whilst public nudity may be acceptable in the west, it is not a part of Indian culture. But then it was not a part of western culture fifty years ago. (Note this is not a defence of public nudity in India or anywhere else. But opposing public nudity on the grounds that it is morally wrong is not the same as opposing it on the grounds that it is not a part of one's culture).
6. I would like to thank the participants in the workshop 'Theories of Secession', at 23rd Joint Sessions of Workshops, European Consortium for Political Research, Bordeaux, France, 27 April–2 May 1995, for helping shape my views. I would also like to thank Brian Barry, John Charvet, Anne Gelling, Ruth Kinna and Mike Nicholson for their written comments.

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6
Altered states
Secession and the problems of liberal theory

Linda Bishai

In a world characterised by migration, integration, communication and the ever-shifting liquid surface of modern identity, the issue of secession has become compelling for the international political community. Few states can unabashedly claim to be composed of a single homogeneous ethnic group. Indeed the very meaning of 'homogeneity' can be sharply criticised. Even those states which make this claim must recognise slow but inevitable demographic changes due to immigration and increased cultural contact. The markers of group identification have always changed over time, regardless of how certain and fixed they have appeared. This process is merely a function of the nature of time and the enormous adaptability of the human species. Groups experience changes through economic, technological and cultural fluctuations. Members of groups are gained and lost through migration, and contact with other groups continually shapes the meanings and values of group identity. A quick glance through history confirms both the timeless nature and the deep significance of this pattern of cultural interaction. The contribution of the technological age has been such acceleration of these events that they may be observed within a generation. Then it is something of a paradox that the evolution of the modern political state has yielded a system in which legitimacy derives from sovereign control over bounded territory, yet the citizens who reside within a state territory may feel multiple forms of allegiance which not only transcend cartography but shift in response to events both internal and external to the state. These multiple and malleable identities create enormous problems for political theory. The 'people' who confer legitimacy on the state may be defined as those who live within the fixed territorial boundaries of the state. But making those 'people' fit the meaning of 'nation', ensuring that they feel both civic and cultural loyalty to each other as co-citizens, is an endlessly fruitless task which problematises the concept of 'nation-state'.

The principle of self-determination has taken a strong grip on the political imagination as a means of solving this legitimacy dilemma. However, the

problems of interpreting self-determination and what it requires have divided theorists into those who would limit self-determination to decolonisation—in other words, a 'one shot' framework—and those who believe that self-determination must logically include a right of secession for people who define themselves as oppressed or alienated by the government of the state where they reside. Since the international system overflows with oppressive and tragic regimes which ignore the very concept of human rights, and since national separatist movements are so often fought with sobering ferocity, inevitably, secession seems the only way to make things right. After all, the argument goes, the best way to stop a fight is to split up the antagonists. When couples fight irreconcilably, they are allowed a divorce. But the solution promised by secession is illusory. Political separation cannot be as clean and effective as a marital one. Secession merely draws new boundaries around the same problems of shifting populations and group identities.

Before proceeding further, it is necessary to properly define secession for the scope of this essay. I use the term here to denote the concept of 'self-cession': the unilateral withdrawal of territory and people from a state. The assumption therefore is that secession is always disputed by the parent state. Undisputed divisions, such as that of Sweden and Norway, or the Czech Republic and Slovakia, are not secessions within this analysis; rather, they are commendably peaceful political agreements. To use the term otherwise, I suggest, is to obscure the very serious theoretical impasse which secession presents for political theory; namely the impasse between self-determination, territorial sovereignty and the rights of minorities. One further qualification will help sharpen the analysis: I do not consider colonial populations to be true cases of secession. They are populations without the benefits of full membership in the parent state, and, not being full members of the state, they cannot be said to 'withdraw' from it. Thus, the American War of Independence in 1775 was just that, a war to gain independence, to shrug off a yoke of inequality—not a war of secession. In fact there is evidence that, had British colonial policy been more conciliatory, the American colonists would never have had the collective will to fight for independence from the mother country.[1] While these qualifications may appear restrictive, they are meant to clarify the debate. And a definition which regards secession as inherently conflictual more truly mirrors the nature of the debate which circles the concept.

Secession is an idea antithetical to the modern state. It is opposed almost without exception, because it involves the withdrawal of territory—the lifeblood and defining characteristic of the state. Territorial withdrawal by a disaffected group not only risks weakening a state economically and politically but also redefines the very meaning and identity of the state in question. In

addition to the basic foundation of the right to self-determination, theorists often rationalise a right to secession in terms of the rights of groups to protect their cultural identity or economic welfare. But theories which justify secession fail to adequately account for the rights of trapped minorities and for the futility of trying to match territorial boundaries to the many possible types of human group affiliation. Secession is at most a temporary and incomplete solution to problems of political consent. Its fatal flaw stems not from the fact that it shatters the sanctity of the territorial state, but from the fact that secession perpetuates a framework in which territorial sovereignty is the only means of protection for disaffected groups. Separatists feel that fully-fledged statehood is the only satisfactory option. While this may be true for the members of the primary secessionist group, it creates new types of minority groups, trapped within either the seceding territory or the territory of the parent state. Secession simply recreates the original problems inherent within state structure. Finally, even if liberty-based pro-secession arguments can be convincingly made, secession is a morally empty solution, because it sanctions separation rather than co-operation. It allows and encourages an increased number of boundaries between different groups of human beings—for essential to the nature of territorial control is the concept of exclusion. Even if separation is the best means of stopping two individuals from fighting, it is no guarantee that they will not fight again when next they meet. The border separating two states is no guarantee of co-operation and peace. Calling it a 'right' for secessionists to build the barriers of modern statehood between themselves and those in the remainder state represents a profoundly intolerant approach to the problems of political plurality. Territorial boundaries do not guarantee freedom; and freedom does not require boundaries to be regarded and protected as a right.

The first part of this essay will deal with the attempt of contemporary liberal theory to make a coherent case for secession as a moral right. I will argue that these attempts fail on moral, practical and theoretical grounds to depict secession either as a moral right or as a viable practical option for the resolution of intrastate conflict. The second part of the essay will address the alternatives to secession as a means of protecting the rights of groups within the state system. One of the inadequacies of liberal theory is the use of the concepts of sovereignty and national identity as givens. Taking these concepts *a priori* means that liberal theory does not address the evolution and multiplicity of political ideas and institutions, and therefore its prescriptions are incomplete. In order to more accurately address the issue of group rights, both sovereignty and national identity must be recognised as flexible concepts which have changed through several historical contexts.[2] Territorial control is a modern form of sovereignty which has effectively created a perceived need for secession as the solution to

oppressive government. Relaxing the territorial basis of sovereignty towards a more organic and flexible emphasis on groups and shared identity will allow sovereignty to function across state boundaries and produce a closer fit between self-determining groups and their need for a sympathetic form of government. Since the linkage of territory and sovereignty has generated a perpetual clash between statehood, self-determination and group identification, the only long-term practical and moral alternatives are those which reshape sovereignty (and therefore also national identity) in terms which reflect the multiple and malleable natures of the post-modern world.

JUSTIFYING SECESSION: LIBERAL DEMOCRATIC THEORIES

Among the liberal democratic approaches to secession, the marriage and divorce metaphor appears most recurrent and compelling. This is rooted in a theoretical framework which places maximum emphasis on freedom of individual choice, even into the political sphere. This emphasis on the voluntary nature of political association underpins the analysis of Allen Buchanan, who states in his book that political association is like marriage, in the sense that it is an artificial structure designed to meet the needs of those subject to it.[3] Buchanan's marriage analogy, with its emphasis on the voluntary nature of political relationships, frees him to find a rationale for secession wider than the simple one of oppressive government. Although he cycles through no fewer than twelve possible reasons for political 'divorce', Buchanan settles on a very limited right to secede based on the most compelling moral arguments. These are:

1. persistent violations of human rights;
2. rectification of past unjust takings of territory;
3. discriminatory redistribution.[4]

In considering secession a remedial right, rather than a general one, Buchanan confirms the present international order, which continues to hold state territorial integrity sacrosanct. He is not alone in this approach. Anthony Birch also finds that any justification for breaking up an existing state must be serious and persistent.[5]

Birch's framework, not unlike Buchanan's, starts from the assumption that secession should not be encouraged, but should be available as a last option in certain troubling cases. The justifications Birch finds persuasive are:

1. continuous refusal on the part of a people to give consent to membership in a union;
2. failure of the government to protect the basic rights of certain citizens;
3. failure to safeguard political and economic interests of a region;
4. failure to keep a bargain made to preserve the interests of a region which would be outvoted nationally.[6]

Though differently worded, the justifications presented by these two theorists are more or less the same. Birch's first justification, refusal to consent, can be viewed as a substantial element of Buchanan's unjust taking of territory argument, since a territorial taking would only be considered unjust if the resident population continuously and vociferously protested. Protection of basic human rights is a straightforward justification for both writers and is certainly meant to address the persecution of minorities in various forms. Finally, Birch's third and fourth justifications, failure to protect interests and failure to keep a political bargain, seem to merge comfortably into Buchanan's discriminatory redistribution argument. Both writers recognise this argument as one of the primary factors in motivating secessionist movements.

The similarities between two liberal writers on secession indicate the limitations of liberalism as a framework for analysing the problems of secession. With its emphasis on the rights of the individual, liberalism can only address secession as a necessary evil; one which should be controlled but cannot be banished. A major flaw in this approach is that each of the justifications for secession yields additional scope for disagreement about its application in addition to the disagreement which already exists between the secessionists and the parent state. Any approach which provides 'guidelines' for justifiable secession will simply be subject to broad disagreement about the applicability and practicality of those criteria, and will only further complicate the situation.

For example, the most morally appealing justification, that of protection of human rights, still yields internal contradictions when placed within the remedial secession framework. One might apply the marriage analogy in this situation and liken a repressive state to an abusive spouse. A battered spouse certainly has the right to divorce, and, in comparison, the spectre of brutal massacres in ethnically divided states compels a drastic solution. But the analogy does not really fit so neatly. The rights and obligations which regulate relations between two people do not translate easily into political relations among large groups of people. While people certainly have a right to personal physical integrity, it is not clear that secession is the logical outcome of that right. Buchanan likens the situation to the right of self-defence, an effort to 'protect against a lethal threat'.[7] But secession is not a defence open to everyone. It

belongs only to those groups privileged enough to be concentrated within a definable territory. What about self-defence for members of groups which are spread throughout the territory of a state? They are left exposed and defenceless by this framework. It is interesting to note that neither Buchanan nor Birch seriously discuss the obligation of other states to intervene in cases of genocide.[8] Further, neither writer addresses the question of why the creation of a new state would serve as protection. Territory cannot itself serve as protection. Even the states with control over the largest land masses have no ‘security’ without peace treaties, co-operative agreements and military might. The inherent weakness of the self-defence argument is simply that a regime (or a private group) bent on a campaign of ethnic eradication would not cease because its victims proclaimed their independence. Such activities are not stopped by the declaration of a state border, they are stopped by force, or rather by *enforcement* of law and order. The tragic example of Bosnia, where ‘ethnic cleansing’ began in response to secession, rather than being forestalled by it, should serve to illustrate that secession helps to create a climate of fear and difference rather than a protective boundary around threatened groups.[9]

Equally appealing as a justification for secession is the rectification of unjust takings of territory. Buchanan defines this as the previous incorporation of the seceding area directly by annexation into the existing state and gives the example of the Baltic Republics and the Soviet Union. Birch considers the Catholic counties of Ireland, and also the difficult cases of indigenous peoples in lands conquered by settlers. The power of the argument stems from its link to stolen property. But this analogy is not secure, because the analogy of territory as private property does not make sense in the collective form. Finding a right of secession for annexed groups is substantially more problematic than finding that these people have the right to remain in the land where their ancestors lived. A right of secession in this case depends not only on a firm commitment to the concept of collective ownership of territory but also on the means to legally organise and ratify such ownership. Not only is this position difficult to support legally and morally, it is fraught with practical pitfalls and inconsistencies. For example, decisions about when such ownership becomes vested, when it lapses, and which persons are to be considered members of the ‘ownership group’ would require the impossible foundation of an international recorder-of-deeds. Even Buchanan admits that ‘the history of existing states is so replete with immoral, coercive, and fraudulent takings that it may be hard for most states to establish the legitimacy of their current or past borders.’[10] Allowing a right to secession in this case ignores the evolving and locomotive nature of group identities. It would allow groups to claim that a right to territory legally attached and remained fixed at some indefinable point in time,

despite processes of immigration and nation-building which may have gone on since; this is a morally suspect result. This analysis is not meant to condone conquest and land-grabbing on the part of established states, as, for example, the invasion of Kuwait by Iraq. This was not a case of secession but of resisting invasion. The point is that by the time a territory has become fully integrated, so that its inhabitants are citizens with the full complement of civil rights, then secession becomes extremely problematic. Those from the parent state who have moved into the territory and consider it home also have rights which should be protected. This has happened in the Baltics, where the rights of ethnic Russians are proving a difficult issue. When this occurs, the 'rights' of two or more groups come into direct conflict, and the creation (or 'reinstatement') of a new state is no longer a morally pristine solution. As Birch admits in his discussion of the Indians of North America, '[t]here is undoubtedly a sense in which these indigenous peoples have suffered cruelly from the white man's invasion, but it would be romantic to suggest that secession is now an appropriate answer to their problems.'[11] A right of secession in these cases only encourages groups to remain isolated and separate, and works against beneficial co-operation and integration. The question, then, should not be whether or not a group has 'title' to territory but whether the rights of the group as citizens and human beings are being protected by the existing political machinery.

Finally, there is the justification of discriminatory redistribution. This occurs, according to both Birch and Buchanan, when a political system allows deprivation to occur, or ignores the crucial interests of a region. The interesting aspect of this type of unfair situation is that it can occur even in states which observe liberal democratic principles, if they implement schemes which arbitrarily advantage some groups and disadvantage others. Both writers illustrate their concerns with examples from the US Civil War. Buchanan mentions the fact that discriminatory tariffs were enacted against the Southern states through proper congressional procedures, causing Southern leaders to feel that their interests could never be protected in the Union. Birch discusses the fact that Congress broke the negotiated agreement that new states admitted to the Union would alternate between slave state and free state. Southern leaders felt that this move threatened their economic interests. Birch concludes that '[i]n terms of the liberal principles here proposed, this attempted secession was probably justifiable.'[12] Amazingly, Birch does not discuss the moral issue of the human rights violation of slavery in this case. What this argument fails to address is exactly why discriminatory redistribution translates into a good argument for secession. If a democratic state commits a serious injustice against the interests of a group or region within its jurisdiction, why should a newly-seceded democratic state not turn around and reproduce similar unfair schemes

on its own populace? There is no way to guarantee in advance that re-partitioning territory will result in an equitable distribution of assets, either for those seceding or those remaining behind.[13]

The discriminatory redistribution argument requires the assumption that governmental legitimacy depends upon non-exploitation of its citizens. That is, although 'the state's distributive policies are to be allowed to affect different groups differently, there must be some sound moral justification for the differences.'[14] What moral justifications, however, will be considered acceptable and to whom must they be presented? The argument is fraught with theoretical and practical problems. It implies that failure on the part of the state to justify its distributive policies effectively voids its claim to the territory in which those who are discriminated against reside. This seems a harsh solution for a problem which only exists as a problem subjectively. Further, it does not consider the idea that such distribution problems ebb and flow with both time and politics. Discriminatory redistribution will cease to be profitable to the exploiting parties if, for example, the resources become hopelessly depleted or political fortunes change. Also, as Buchanan acknowledges, it is part of the nature of political association and the construction of the state that the wealth of certain areas will be redistributed for the benefit of certain other areas.[15] Any accurate determination of the point at which this ceases to be co-operation and becomes exploitation or neglect is impossible. One certainly cannot expect regional wealth to be maintained indefinitely at a high constant, or the costs of regional neglect to remain localised. Economic swings are inevitable, and levels of exploitation are present at any given moment. Since economists can hardly agree on how best to stimulate and manage wealth, it seems exaggerated to find that a state has lost its legitimate claim to territory because wealth has been unfairly redistributed. Of course, some states include discriminatory redistribution in a laundry list of oppressive and autocratic acts of state. This is a serious issue. But secession is not a plaster which can patch up broken or harmful states. It only allows concentrated groups of people to redraw their political boundaries, neglecting the problems of discrimination which occur every time a piece of territory is delineated.

While Birch and Buchanan approach secession as a remedial right, one which should only kick in when wrongs have been manifested, Harry Beran approaches it from the opposite side of the fence as a moral right from which there should be a presumption that secession is just.[16] Beran also compares his theory of secession to marriage and divorce, illustrating his point with three types of legal divorce:

1 cases in which it is only allowed on specific moral grounds such as adultery or cruelty;
2 cases in which the parties are so incompatible that they both wish to be apart;
3 cases in which the marriage ends even at the wish of only one of the parties.

Beran prefers the last case as a model for his theory of secession because it provides the greatest scope for satisfying parties in unhappy marriages. Ultimately, Beran argues, 'liberal political philosophy requires that secession be permitted if it is effectively desired by a territorially concentrated group within a state and is morally and practically possible.'[17]

From the starting point of democratic consent theory, Beran argues that, in a contemporary democracy, the closer adult decisions are to being voluntary, the closer such a society comes to matching the ideal liberal model. Citizens in a liberal state may work and live and marry as they choose, and governments are voted in and out of office by their choice. Under this scheme, according to Beran, no state can be indissoluble, since that would limit the freedom of choice to the generation which formed the state in question. In other words, a group's right of self-determination is 'the right to freely determine its political status.'[18] There are two flaws in this argument. First, it is not so easy to determine which individuals belong to the group with this right; and, second, it is based on the assumption that 'political status' must mean the determination of a state with borders. Beran's reply to the calculation of group members is quite simple: the reiterated application of the majority principle. In other words, Beran's theory holds that groups can be determined by continued referenda on the issue of secession: 'the only solution that is consistent with democratic principles.'[19] The elegance of this solution is chimerical. People will not be so cleanly divided into groups on the issues of identity and territory. They have plural identities, not majority/minority ones. Additionally, the language of any proposed referendum itself will largely dictate the outcome. Depending on how the secession issue is stated, different groups will find their interests represented, and the end result will not necessarily protect the political choice of all the parties. For example, what protects the freedom of individuals within a seceding group who do not wish to leave? Their only means of remaining within the parent state is to move—hardly a protection for these 'involuntary victims' whose actual choice is to remain within the whole state.[20] Also, reiterated referenda do not affect the problem of dispersed or integrated minorities; they are people whose interests can never be addressed territorially.

The second flaw is the assumption that the right to determine 'political status' must mean the right to create new state borders. Political organisation has existed in many forms throughout history, and it is a narrow interpretation indeed which restricts its manifestation to the modern state. Territorial states as they are now, with strict border delineation and control, are a modern outgrowth of the nineteenth century.[21] There is no structural requirement that our conception of the 'state' be fixed to a territorial entity. Our understanding of what is meant by 'the state' has already undergone alteration and continues to do so, especially in the face of increasingly private control of finance and economics. Within this context, liberal theory provides a restricted vision of political freedom. For many ethnic or national groups, the 'freedom' of a territorial state is more responsibility than they have the resources to handle. For these groups, the notion of the state as the only manifestation of political freedom is actually a burden which limits them by presenting them with an all-or-nothing choice. Freedom can only be truly protected by flexible conceptualisations of political organisation, conceptualisations which recognise that political free choice can be directed at group membership rather than state citizenship.[22]

Beran further elaborates that his democratic theory of self-determination is meant to produce rightful borders, not necessarily good ones.[23] This statement implies both that the right of secession is a moral right and that stable and peaceful borders are not necessarily the morally justified ones. In fact, Beran criticises Birch and Buchanan for their attempts to limit the right of secession, stating that anything less than 'no-fault secession' is inconsistent with basic liberal principles.[24] But Beran then confuses the issue by allowing for limitations to the right of secession on practical grounds, and even for the suppression of secession by force, where there is a moral justification.[25] By conceding that the right of secession can be limited by certain expediencies, such as viability and monopoly of resources, Beran conflates a moral/ normative analysis of secession with a utilitarian analysis based on practicality and maximised interests. If the right of self-determination is tied to the individual right of free political association, how can the use of force to suppress secession ever be justified? A true moral right cannot be limited by practicalities. It is the concept of practicality which ultimately weakens Beran's thesis. Once he allows for practical limitations on the 'permissive' right, it becomes difficult to differentiate his outcomes from those of Birch and Buchanan.

The three writers discussed above are similar because they are deeply concerned with justifying secession by means of a rights-based analysis. Although they approach secession from opposing sides of a presumption, they all consider secession (when it exists) to be a right derived from liberal democratic

principles. There is another school of writers who look at secession pragmatically, as a necessary evil. Alexis Heraclides is representative of this type of approach. While writing from within the Western liberal perspective, he is far less concerned with whether secession is a right than with confronting the realities of separatist movements in the international system.[26] Heraclides examines three possibilities for a normative approach to secession and discards two of them. First, he considers the 'Pandora Box' option, which permits unilateral secession for those capable of achieving it and which allows outside states to become involved as they see fit. The logic of this approach is something akin to a political version of the survival of the fittest, but with the additional corollary that 'the unfit won't try'. Heraclides finds this prospect destabilising and blind to the merits of each prospective case, 'rewarding military prowess and diplomatic adroitness as if "might" could be "right"'.[27]

Next, he examines the 'Window of Opportunity' approach, which basically describes the post-war limited-permission regime in which separation was possible only through partition or by mutual agreement. Heraclides believes this framework lasted until 1990 and the breakup of the Eastern Bloc. The 'Window of Opportunity' tradition, Heraclides suggests, could be updated by adding an emphasis on minority protections and various forms of federation. Heraclides maintains that this scheme is unjust on the basis of unequal treatment of certain groups, since the idea cannot be maintained 'that an arbitrarily carved colony or a unit of a federation which does not suffer inequality should have more of a right to independence than an ethnic or regional group which suffers systematic and flagrant discrimination… with no realistic prospect of change.'[28] Ironically, Heraclides' distaste for this type of discrimination cannot be cured by any framework regarding the disposition of state territory, since the historical legitimacy of claims to territory can be disputed indefinitely.

Heraclides' final plan is the one which he advocates: that of allowing secession in specified cases. He retains the emphasis on the protection of distinct cultures and suggests, in addition, a method for ascertaining the legitimacy of unilateral independence. Heraclides also recognises a variety of interesting possibilities for minority self-rule without the need for secession, calling them 'ethno-social contracts'. Such options include an agreement on the part of the minority group to remain loyal to the state, or a non-secessionist oath, in exchange for mutual acceptance and accommodation. An ethno-social contract, according to Heraclides, might also provide for non-secessionist autonomy or for some type of communal federation for the minority group. Ultimately, Heraclides sees the need for a specific framework which would identify justifiable cases of secession. His criteria sound familiar. Justifiable cases

must be those where there is alien domination. Specific circumstances which would justify a unilateral secession must include

1. the existence of a sizeable compact community strongly in favour of statehood;
2. a pattern of exploitation on the part of the state against this group;
3. cultural rejection or attempts to forcibly assimilate this group on the part of the state;
4. the refusal of the state to enter into any discussions with the group on the matter, and the refusal of the state to consider any form of internal autonomy for the group.[29]

Heraclides' step-by-step analysis for legitimating secession still fails to account for the poverty of secession itself as a solution to political problems, and it leaves some confusion about its application.

If a state neglects the needs of a minority group within its borders, does that group have the right to secede? Since secession is widely considered to be disruptive, is it really a desirable approach in such a case? Most glaringly, is it fair to grant the right of secession to aggrieved minority groups within a state simply because they have the good fortune to reside in concentrated numbers on delineated areas of territory? What a right of secession actually amounts to in this case is a right to a group identity and a state frozen at the moment of the vesting of the right. But cultures and their relationships to territory cannot be fixed in this way. Populations have been moving and mixing over the surface of the globe since time began. Now that travel has become faster, safer, easier and cheaper, it seems hopelessly unrealistic to assume that the only means of political organisation available is one in which territorially sovereign bounded states must mirror the location of cultural and national groups as they themselves adapt and change. Political freedom can be manifested and protected in other ways.

The right of secession is essentially an outgrowth of the philosophical search for a good life and the liberal assumption that individuals must be free to determine (and consent to) the good life for themselves. Secession, however, assumes that a sizeable group of individuals agrees that a certain precise type of state (territory, population, structure, etc.) is necessary to preserve their ability to live the good life. Given the fact that such decisions are extremely difficult to reach precise agreement on, and that the result of imprecision is the denial of similar rights to those who disagree with separatism, it is far from obvious that secession really provides an assurance of the liberal right of free political association. The real inconsistency of the frameworks put forward by

secession's apologists is the lack of protection for the rights of the groups which either become trapped within the seceding territory or remain behind in the parent state. Such groups are the 'children' of the metaphorical political divorce espoused by these theorists, and their best interests are as difficult to protect as those of the children of real broken marriages. Further, there is a practical weakness to secession, in that it rarely provides a long-term solution to conflict.[30] Secession does not 'solve' problems of group conflict, it merely redraws the boundaries around them.

This discussion is not meant to resolve the question of a right to secession. Rather, the point has been to question the relevance of the debate in terms of providing a solution for the conflicts which arise. In problematising the debate itself, I also suggest that the justifications of secession ultimately fail because they do not confront the nature of political, cultural and national identities. These identities are far too fluid and interactive to fit within the presumption of state boundaries and political freedom upon which secession is premised. Presenting independent statehood as the only satisfactory goal of self-determination for separatist groups only perpetuates the conditions which allow nationalism to flourish in its most virulent forms. Once the constructed nature of identity is recognised, then secession becomes illusory, both as a solution to intrastate conflict and as a means of protecting political freedom. This analysis is not meant to suggest that minorities should or must be forced to remain under oppressive conditions—merely to assert that secession promises a new set of equally serious problems.

CONTAINING IDENTITY: TIME, SPACE AND SAND THROUGH A SIEVE

Theorists of nationalism have long recognised that the term 'nation-state' is only marginally accurate as a description of the nature of international political bodies. Not only have the concepts of nation and state come to be seen as having developed independently of each other, but both can be represented as subjective political identity contexts: constructions of the modern world. Modern individuals are embedded in interrelated and changeable identity possibilities; regardless of which definition of nation is operative, individuals may identify with or feel sympathy for a number of various identities, either simultaneously or consecutively. R.B.J.Walker puts it thus: 'Modern political identities are fractured and dispersed among a multiplicity of sites, a condition sometimes attributed to a specifically post-modern experience but one that has been a familiar, though selectively forgotten, characteristic of modern political life for several centuries.'[31] In contrast, the international political system is

based upon a presumption that identities are fixed arbitrarily and externally by territory and residence, thus limiting national identities by a concept of the state which apparently defines the outer limits of political possibility. National identities are far too non-territorial to be confined to the fixed boundaries of the state. Onora O'Neill puts it best: 'The concepts by which people define who they are—in which they articulate their sense of identity—are all of them concepts without sharp borders, and hence cannot provide a basis for sharp demarcations such as political boundaries between states.'[32]

Political theorists link national identity and territory by means of the concept of sovereignty. As the defining characteristic of statehood, sovereignty has become the focal point of the nation/state identity nexus. This definition is problematic for identities, since they are essentially unbounded. Furthermore, the tenuous link can only be sustained if the concept of sovereignty remains territorial. Paradoxi cally, neither states, nations nor sovereignty are fixed structural entities. As Walker points out:

> The patterns of inclusion and exclusion we now take for granted are historical innovations. The principle of state sovereignty is the classic expression of those patterns, an expression that encourages us to believe that either those patterns are permanent or that they must be erased in favour of some kind of global cosmopolis.... Its fixing of unity and diversity...or inside and outside, or space and time is not natural. Nor is it inevitable. It is a crucial part of the practices of all modern states, but they are not natural or inevitable either.[33]

Just as it is commonly understood that many post-war boundaries were determined accidentally by military battle lines, so the concepts of 'state' and 'sovereignty' themselves are historically contingent. They have developed and changed in response to human patterns of domination and organisation, from the age of feudal princes to the enlightenment principle of popular sovereignty as manifested in the French and American Revolutions, to the twentieth-century incarnation of nationally self-determined states.

Successive manifestations of sovereignty and statehood have produced and have been produced by changing political identities in a dynamic interrelationship. For example, the early twentieth-century shift from popular sovereignty to national sovereignty as the basis of state legitimacy mirrors the power of the concept of the collective self as opposed to the individual self. As James Mayall points out, there are no naturally given national boundaries for the collective self, and so 'the nation is ultimately a group whose identity is forged by a particular interpretation of its own history. Thus fortified, the 'nation' is in

a position to take on the world, daring the authorities to deny its existence by suppressing it by force.'[34] The boundaries of the nation, then, are limited only by the collective imagination of its members.

The vitality of the collectively imagined nation exhibits a boundlessness which puts it on a collision course with the intrinsically limited nature of the modern conception of the territorial state. Contemporary notions of statehood and nationhood are incapable of producing a perfect fit. This is not to suggest that states cannot be formed with nations in mind and vice versa, or that there are no possibilities for the growth of a 'civic' national identity within the boundaries of the state. But problems arise with the introduction of the concept of sovereignty. It has come to symbolise privilege and superiority: 'it is almost impossible for a people to feel equal to others if it does not enjoy the privileges of sovereign statehood… as long as state sovereignty allows for the subjugation of peoples, it will continue to be sought by those who fear its use against them.'[35] Because sovereignty has become a badge of international legitimacy and a symbol of power, it aggravates the disjunction between nations and states. Secessionist movements are the result.

Failing to account for the dynamic conditions of the interaction between states and nations and secessionist movements within the liberal framework is a fundamental flaw. How can liberal theory claim to justify secession when its analysis is founded on the rights of the individual? Furthermore, how can liberal theory form a coherent framework when the identities of the individuals are taken as fixed? Not only does this approach fail to address the plurality of group identities available to individuals, but it assumes that individuals will remain within groups, and thus that group characteristics will not alter. Otherwise, why would secession be worth justifying for any group, given the difficulties involved? In fact, since identities are prone to change, the only solution for the protection of rights (both individual and collective) is one that is flexible enough to accommodate the changes: one that is not rooted in territory.

Although the goal of secessionist movements is statehood, the badge which they require is sovereignty. A means of reconciling the zero-sum clash between nationalist/secessionist movements and territorial states is to detach sovereignty from territory and make it available to nationalist groups. This approach has been suggested by Gidon Gottlieb:

> The divide between the status of statehood and all other forms of political organisation has contributed to the elevation of the value of independence beyond what it might otherwise have been. The many types of quasi-states, associated states, federal states, and state communities designed by modern statecraft have by and large not been

> responsive to the demands of nations that are still struggling to break free. Many strive not only to rule themselves but also to achieve a fuller access to the benefits and entitlements of international life.[36]

States may be too rigid to satisfy the special demands of groups whose identities are widely different from those of the majority or of those who hold political power.

Premised on the assumption that the shield of sovereignty has already been pierced by various interventions and monitoring agreements, Gottlieb suggests an approach which deconstructs sovereignty and redistributes the parts. Thus, he suggests a nation system can be created to function side by side with the state system. National homelands might be allowed to operate as administrative entities over and beyond present state boundaries. Different and overlapping layers of citizenship might exist so that an individual could simultaneously be a citizen of the state where she resides and also a citizen of her national homeland. The details, of course, require some legal and administrative elaboration, but the underlying concept allows for a conceivable next step towards addressing the problems of intrastate conflict.

CONCLUSION

The traditional approach to problems posed by secession is embodied by various liberal frameworks which attempt to provide a moral scale for balancing the various rights and wrongs and difficulties involved. While the physical examples provided by secessionist conflicts can be horrifying, treating secession as a solution and not as a symptom will only perpetuate the instability inherent in a territorial approach. As long as sovereignty remains inextricably linked to territory, aggrieved groups will continue to clash with states. Recognising the contingent nature of sovereignty will shift the focus of such conflicts from territory, which is fixed and thus absolute, to sovereignty and its various features, which are contingent and thus flexible. Only by using an approach which is as flexible as the nature of secessionist groups, can theorists hope to provide a practical, moral and theoretically sound solution.[37]

NOTES

1 Bill Bryson, *Made in America,* London, Minerva, 1994, pp. 41–4. See also John M.Murrin, *Political Development,* in Jack P.Green and J.R.Pole (eds), *Colonial British America: Essays in the New History of the Early Modern Era,* Baltimore, Johns Hopkins University Press, 1984, pp. 408–56.

2 See J.Samuel Barkin and Bruce Cronin, 'The state and the nation: changing norms and the rules of sovereignty in international relations', *International Organization,* vol. 48, no. 1, 1994, pp. 107–30; Anthony D.Smith, 'The nation: invented, imagined, reconstructed?', *Millennium: Journal of International Studies,* vol. 20, no. 3, 1991, pp. 353–68.

3 Allen Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec,* Boulder CO, Westview Press, 1991, p. 7.

4 Allen Buchanan, *Self-determination, secession, and the rule of law,* paper submitted to the 23rd Joint Sessions of Workshops, European Consortium for Political Research, Bordeaux, 27 April-2 May 1995, p. 13.

5 Anthony H.Birch, *Nationalism and National Integration,* London, Unwin Hyman, 1989, p. 64.

6 Birch, pp. 64–6.

7 Buchanan, *Secession,* p. 65.

8 Buchanan does discuss the strengthening of international institutions in his conference paper, mentioned in note 4, but not in a manner which recognises the implications of a norm of intervention for the concept of secession as a right.

9 Although analysis of the conflict in the former Yugoslavia usually points to its history of violent ethnic group clashes, there is also no doubt that many peaceful mixed communities were forcibly polarised by calculated political campaigns of terror.

10 Buchanan, *Secession,* p. 68.

11 Birch, p. 64.

12 Ibid., p. 66.

13 Charles R.Beitz, *Political Theory and International Relations,* Princeton, Princeton University Press, 1979, p. 109.

14 Buchanan, *Secession,* p. 44.

15 Ibid., p. 42.

16 Harry Beran, 'A liberal theory of secession', *Political Studies* vol. 32, 1984, pp. 21–31.

17 Ibid., p. 23.

18 Harry Beran, *An attempt to formulate a democratic theory of the right of political self-determination and secession,* paper presented at the 23rd Joint Sessions of Workshops, European Consortium for Political Science Research, Bordeaux, 27 April–2 May 1995, p. 2.

19 Ibid., p. 4.

20 Beitz, p. 110.

21 See E.J.Hobsbawm, *Nations and Nationalism since 1780: Programme, Myth, Reality,* Cambridge, Cambridge University Press, 1990.

22 One liberal theorist, Will Kymlicka, notably stands out in addressing the importance of group membership for the protection of free choice. See Will Kymlicka, *Liberalism, Community and Culture,* Oxford, Clarendon Press, 1989.

23 Beran, *Attempt to formulate,* p. 12.

24 Ibid., p. 12.

25 Ibid., p. 19.
26 Alexis Heraclides, 'Secessionist conflagration: what is to be done?', *Security Dialogue,* vol. 25, no.3, 1994, pp. 283–93.
27 Ibid., p. 285.
28 Ibid., p. 286
29 Ibid., p. 289.
30 The continued conflicts between Hindus and Muslims within Pakistan serve as an example that secession does not provide the solution to conflict among peoples.
31 R.B.J.Walker, 'State sovereignty and the articulation of political space/ time', *Millennium: Journal of International Studies,* vol. 3, no. 20, 1991, pp. 445–61.
32 Onora O'Neill, 'Justice and boundaries', in Chris Brown (ed.), *Political Restructuring in Europe: Ethical Perspectives,* London, Routledge, 1994, p. 78.
33 Walker, p. 460.
34 James Mayall, *Nationalism and International Society,* Cambridge, Cambridge University Press, 1990, p. 51.
35 Kamal S.Shehadi, *Ethnic Self-Determination and the Break-up of States,* Adelphi Paper 283, London, Brassey's for The International Institute for Strategic Studies, 1993, p. 30
36 Gidon Gottlieb, *Nation Against State: A New Approach to Ethnic Conflicts and the Decline of Sovereignty,* New York, Council on Foreign Relations Press, 1993, p. 32.
37 An earlier version of this essay was presented in the workshop 'Theories of Secession', at 23rd Joint Sessions of Workshops, European Consortium for Political Research, Bordeaux, France, 27 April–2 May 1995. I gratefully acknowledge the helpful comments of the members of the panel and in particular the thorough follow-up by Harry Beran. James Mayall provided both thoughtful discussions and warm but critical encouragement. My heartfelt thanks also to Andreas Behnke, who was with me every step of the way, who cheerfully allowed me to bounce ideas off of him, and who intelligently bounced them right back in much improved form.

7
Is federalism a viable alternative to secession?

Will Kymlicka

Around the world, multi-ethnic states are in trouble. Many have proven unable to create or sustain any sense of solidarity across ethnic lines. The members of one ethnic group are indifferent to the rights and interests of the members of other groups, and are unwilling to make sacrifices for them. Moreover, they have no trust that any sacrifice they might make will be reciprocated. Recent events in Eastern Europe and the former Soviet Union show that where this sort of solidarity and trust is lacking, demands for secession are likely to arise.

Some commentators have argued that secession is indeed the most appropriate response to the crisis of multi-ethnic states. On this view, the desire of minority groups to form a separate state is often morally legitimate, and it is unjust to force them to remain within a larger state against their will. International law should therefore define the conditions under which a group has the right of secession, and the procedures by which that right can be exercised.[1]

Critics of this approach argue that recognising a right of secession, either at the level of normative political theory or international law, would encourage more secessionist movements, and thereby increase the risk of political instability and violence around the world. On this view, secession often leads to civil war, and may start a chain reaction in which minorities within the seceding unit seek to secede in turn. Moreover, even if actual secession never occurs, the very threat of secession is destabilising, enabling groups to engage in a politics of threats and blackmail.[2]

I will not be directly addressing the question of whether groups have a moral or legal right to secede. Focusing exclusively on this question may blind us to the really significant fact of our current situation—namely, that so many people want to secede, or are at least prepared to consider it. It is a striking (and distressing) fact that so many groups in the world today feel that their interests cannot be satisfied except by forming a state of their own.

Nor is this problem confined to the Second and Third Worlds. Various multi-ethnic democracies in the West whose long-term stability used to be taken for granted now seem rather more precarious. Consider recent events in Belgium or Canada. Even though they live in prosperous liberal states, with firm guarantees of their basic civil and political rights, the Flemish and Québécois may be moving down the path to independence. The threat of secession has arisen in both capitalist and Communist countries, in both democracies and military dictatorships, in both prosperous and impoverished countries.

The prevalence of secessionist movements suggests that contemporary states have not developed effective means for accommodating ethnocultural diversity. Whether or not we recognise a right to secede, the fact is that secession will remain an ever-present threat in many countries unless we learn to accommodate ethnocultural diversity. As long as minority groups feel that their interests cannot be accommodated within existing states, they will contemplate secession.

In this article, therefore, I want to focus on one of the most commonly cited mechanisms for accommodating ethnocultural pluralism—namely, federalism. Many commentators argue that federalism provides a viable alternative to secession, since it is uniquely able to accommodate ethnocultural diversity. Federalism, it is said, respects the desire of groups to remain autonomous, and to retain their cultural distinctiveness, while nonetheless acknowledging the fact that these groups are not self-contained and isolated, but rather are increasingly and inextricably bound to each other in relations of economic and political interdependence. Moreover, since federalism is a notoriously flexible system, it can accommodate the fact that different groups desire different levels or forms of self-government.[3]

My aim in this article is to evaluate this claim. I will challenge this optimistic picture of the value of federalism in accommodating ethnocultural pluralism. For one thing, federalism is simply not relevant for many types of ethnocultural pluralism. Moreover, while there are some circumstances where federalism is relevant, these very same circumstances make it likely that federalism will simply be a stepping-stone to either secession or a much looser form of confederation. In general, it seems to me unlikely that federalism can provide an enduring solution to the challenges of ethnocultural pluralism. It may restrain these challenges for a period of time, but federal systems which are designed to accommodate self-governing ethnocultural groups are likely to be plagued by deadlock and instability.

This isn't to say that federalism should be rejected as a tool for accommodating ethnocultural pluralism. On the contrary, federalism often provides the best hope for keeping certain countries together. My point, rather,

is that, where federalism is needed to keep a country together, the odds that the country will remain together over the long-term are not great. Federalism may be the best available response to ethnocultural pluralism, but the best may not be good enough.

Of course, many federal systems were not designed as a response to ethnocultural pluralism—e.g. those of the United States or Australia. In these federal systems, the federal units do not correspond in any way with distinct ethnocultural groups who desire to retain their self-government and cultural distinctiveness. These sorts of federal systems can be quite stable. I will discuss the American model of federalism below, but my focus in this article is on countries which have adopted federalism in order to accommodate ethnocultural pluralism.

In this article, then, I will first distinguish two forms of cultural pluralism—which I call 'polyethnic' and 'multinational'. I will then explore whether federalism is an appropriate response to these forms of cultural pluralism. I will argue that federalism is largely irrelevant to the accommodation of polyethnicity, but is potentially relevant to the accommodation of multinational pluralism (see p. 119). Whether federalism is in fact appropriate for multination states depends on many factors—in particular, how the boundaries of federal subunits are drawn, and how powers are distributed between different levels of government. Contrary to popular conceptions, I will argue that federalism often lacks the flexibility to resolve these issues in a satisfactory way (see p. 127). Finally, I will argue that even where federalism has been designed in such a way as to accommodate ethnocultural groups, it may not be a stable solution, but rather may simply provide a stepping-stone to secession (see p. 138).

TWO FORMS OF ETHNOCULTURAL PLURALISM

It is a commonplace to say that modern societies are increasingly 'multicultural'. But the term 'multicultural' covers many different forms of cultural pluralism, each of which raises its own challenges. I will distinguish two broad patterns of ethnic diversity—which I will call 'multinational' and 'polyethnic'—before considering the relevance of federalism to them.

One source of cultural diversity is the coexistence within a given state of more than one nation, where 'nation' means a historical community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and culture.[4] A 'nation' in this sociological sense is closely related to the idea of a 'people' or a 'culture'—indeed, these concepts are often defined in terms of each other. A country which contains more than one nation is, therefore, not a nation-state but a multination state, and the smaller cultures

form 'national minorities'. The incorporation of different nations into a single state may be involuntary—as occurs when one cultural community is invaded and conquered by another, or is ceded from one imperial power to another, or when its homeland is overrun by colonising settlers. But the formation of a multination state may also arise voluntarily, when different cultures agree to form a federation for their mutual benefit.

Many Western democracies are multinational. For example, there are a number of national minorities in the United States, including the American Indians, Alaskan Eskimos, Puerto Ricans, the descendants of Mexicans (Chicanos) living in the Southwest when the United States annexed Texas, New Mexico and California after the Mexican War of 1846–8, native Hawaiians, the Chamoros of Guam, and various other Pacific Islanders. These groups were all involuntarily incorporated into the United States, through conquest, colonisation or imperial cession. Had a different balance of power existed, these groups might have retained or established their own sovereign governments. And talk of independence occasionally surfaces in Puerto Rico or the larger Indian tribes. However, the historical preference of these groups has not been to leave the United States, but to seek autonomy within it.

As they were incorporated, most of these groups acquired a special political status. For example, Indian tribes are recognised as 'domestic dependent nations' with their own governments, courts and treaty rights; Puerto Rico is a 'Commonwealth', and Guam is a 'protectorate'. Each of these peoples is federated to the American polity with special powers of self-government, as well as group-specific rights regarding language and land use. In short, national minorities in the United States have a range of rights intended to reflect and protect their status as distinct cultural communities, and they have fought to retain and expand these rights.[5]

Most of these groups are relatively small and geographically isolated. Together, they constitute only a fraction of the overall American population. As a result, these groups have been marginal to the self-identity of Americans—and indeed the very existence of national minorities, and their self-government rights, is often ignored by American politicians and theorists.

In other countries the existence of national minorities is more obvious. Canada's historical development has involved the federation of three distinct national groups (English, French and Aboriginals).[6] The original incorporation of the Québécois and Aboriginal communities into the Canadian political community was involuntary. Indian homelands were overrun by French settlers, who were then conquered by the English. While the possibility of secession is very real for the Québécois, the historical preference of these groups—as with the national minorities in the United States—has not been to leave

the federation, but to renegotiate the terms of federation, so as to increase their autonomy within it.

Many other Western democracies are also multinational, either because they have forcibly incorporated indigenous populations (e.g. Finland; New Zealand), or because they were formed by the more or less voluntary union of two or more European cultures (e.g. Belgium and Switzerland). In fact, many countries throughout the world are multinational, in the sense that their boundaries were drawn to include the territory occupied by pre-existing, and often previously self-governing, cultures. This is true of most countries throughout the former Communist bloc and the Third World.[7]

The second source of cultural pluralism is immigration. A country will exhibit cultural pluralism if it accepts large numbers of individuals and families from other cultures as immigrants and allows them to maintain some of their ethnic particularity. This has always been a vital part of life in Australia, Canada and the United States, which have the three highest per capita rates of immigration in the world. Indeed, well over half of all legal immigration in the world goes into one of these three countries.

Prior to the 1960s immigrants to these countries were expected to shed their distinctive heritage and assimilate to existing cultural norms. This is known as the Anglo-conformity' model of immigration. Indeed, some groups were denied entry if they were seen as unassimilable (e.g. restrictions on Chinese immigration in Canada and the United States, the 'white-only' immigration policy in Australia). Assimilation was seen as essential for political stability, and was further rationalised through ethnocentric denigration of other cultures.

This shared commitment to Anglo-conformity is obscured by the popular but misleading contrast between the American 'melting-pot' and the Canadian 'ethnic mosaic'. While 'ethnic mosaic' implies respect for the integrity of immigrant cultures, in practice it simply meant that immigrants to Canada had a choice of two dominant cultures to assimilate to. As Porter puts it, the 'uneasy tolerance which French and English were to show towards each other was not extended to foreigners who resisted assimilation or were believed to be unassimilable'.[8]

However, beginning in the 1970s, under pressure from immigrant groups, all three countries rejected the assimilationist model and adopted a more tolerant and pluralistic policy which allows, and indeed encourages, immigrants to maintain various aspects of their ethnic heritage. It is now widely (though far from unanimously) accepted that immigrants should be free to maintain some of their old customs regarding food, dress, religion and recreation, and to associate with each other to maintain these practices. This is no longer seen as unpatriotic or 'un-American'.

But it is important to distinguish this sort of cultural diversity from that of national minorities. Immigrant groups are not 'nations' and do not occupy homelands. Their distinctiveness is manifested primarily in their family lives and in voluntary associations, and is not inconsistent with their institutional integration. They still participate within the public institutions of the dominant culture(s) and speak the dominant language(s). For example, immigrants (except for the elderly) must learn English to acquire citizenship in Australia and the United States, and learning English is a mandatory part of children's education. In Canada, they must learn either of the two official languages (French or English).

The commitment to ensuring a common language has been a constant feature of the history of immigration policy. Indeed, as Gerald Johnson said of the United States, 'It is one of history's little ironies that no polyglot empire of the old world has dared to be so ruthless in imposing a single language upon its whole population as was the liberal republic "dedicated to the proposition that all men are created equal".'[9] The rejection of Anglo-conformity has not meant a slackening in this commitment to ensuring that immigrants become Anglophones, which is seen as essential if they are to be included in the mainstream of economic, academic and political life of the country.

So, while immigrant groups have increasingly asserted their right to express their ethnic particularity, they typically wish to do so within the public institutions of the English-speaking (or in Canada French-speaking) society. In rejecting assimilation, they are not asking to set up a parallel society, as is typically demanded by national minorities. The United States and Australia, therefore, have a number of 'ethnic groups' as loosely aggregated subcultures within the larger English-speaking society, and so exhibit what I will call 'polyethnicity'. Similarly, in Canada there are ethnic subcultures within both the English- and French-speaking societies.

It is possible, in theory, for immigrants to become national minorities, if they settle together and acquire self-governing powers. After all, this is what happened with English colonists throughout the British Empire, Spanish colonists in Puerto Rico, and French colonists in Quebec. These colonists did not see themselves as 'immigrants', since they had no expectation of integrating into another culture, but rather aimed to reproduce their original society in a new land. It is an essential feature of colonisation, as distinct from individual emigration, that it aims to create an institutionally complete society, rather than integrating into an existing one. It would, in principle, be possible to allow or encourage immigrants today to view themselves as colonists, if they had extensive government support in terms of settlement, language rights and the

creation of new political units. But immigrants have not asked for or received such support.

Many people believe that this 'polyethnic' model no longer applies to Hispanic immigrants to the United States. These immigrants are said to be uninterested in learning English or in integrating into the Anglophone society. This is a mistaken perception, which arises because people treat Hispanics as a single category, and so confuse the demands of Spanish-speaking national minorities (Puerto Ricans and Chicanos) with those of Spanish-speaking immigrants recently arrived from Latin America. If we look at Hispanic immigrants who come to the US with the intention to stay and become citizens, the evidence suggests that they, as much as any other immigrants, are committed to learning English and participating in the mainstream society. Indeed, among Latino immigrants 'assimilation to the English group occurs more rapidly now than it did one hundred years ago'.[10] (Obviously, this doesn't apply to those who don't expect to stay—e.g. Cuban refugees in the 1960s, and illegal Mexican migrant workers today.)

Immigration is not only a 'New World' phenomenon. Many other countries also accept immigrants, although not on the same scale as the United States, Canada and Australia. Since the Second World War Britain and France have accepted immigrants from their former colonies. Other countries which accept few immigrants nonetheless accept refugees from throughout the world (e.g. Sweden). In yet other countries 'guest-workers' who were originally seen as only temporary residents have become *de facto* immigrants. For example, Turkish guest-workers in Germany have become permanent residents, with their families, and Germany is often the only home known to their children (and now grandchildren). All these countries are exhibiting increasing 'polyethnicity'.

Obviously, a single country may be both multinational (as a result of the colonising, conquest or confederation of national communities) and polyethnic (as a result of individual and familial immigration). Indeed all of these patterns are present in Canada—the Indians were overrun by French settlers, the French were conquered by the English, although the current relationship between the two can be seen as a voluntary federation, and both the English and French have accepted immigrants who are allowed to maintain their ethnic identity. So Canada is both multinational and polyethnic, as is the United States.

Those labels are less popular than the term 'multicultural'. But that term can be confusing, precisely because it is ambiguous between multinational and polyethnic. This ambiguity has led to unwarranted criticisms of the Canadian 'multiculturalism' policy, which is the term the government uses for its post-1970 policy of promoting polyethnicity rather than assimilation for

immigrants. Some French-Canadians have opposed the 'multiculturalism' policy because they think it reduces their claims of nationhood to the level of immigrant ethnicity.[11] Other people had the opposite fear that the policy was intended to treat immigrant groups as nations, and hence to support the development of institutionally complete cultures alongside the French and English. In fact, neither fear was justified, since 'multiculturalism' is a policy of supporting polyethnicity within the national institutions of the English and French cultures. Since 'multicultural' invites this sort of confusion, I will use the terms 'multinational' and 'polyethnic' to refer to the two main forms of cultural pluralism.

It is important to note that 'nations', whether they be the majority national group or a national minority, are not defined by race or descent. Due to high rates of immigration for over 150 years, Anglophone Americans or Canadians who are of solely Anglo-Saxon descent are a (constantly shrinking) minority. Similarly, national minorities are increasingly multi-ethnic and multiracial. For example, while the level of immigration into French Canada was low for many years, it is now almost as high as immigration into English Canada or the United States, and Quebec actively seeks Francophone immigrants from West Africa and the Caribbean. There have also been high rates of intermarriage between the indigenous peoples of North America and the English, French and Spanish populations. As a result, all of these national minorities are racially and ethnically mixed. The number of French-Canadians who are of solely Gallic descent, or American Indians who are of solely Indian descent, is also constantly shrinking, and will ultimately become a minority in each case. In talking about national minorities, therefore, I am not talking about racial or descent groups but about cultural groups.[12]

FEDERALISM AND THE ACCOMMODATION OF ETHNOCULTURAL GROUPS

Immigration and the incorporation of national minorities are the two most common sources of ethnocultural diversity in modern states. Most (though not all) ethnocultural groups can be located within one or other of these broad categories.[13] Virtually all liberal democracies are either multinational or polyethnic, or both. The 'challenge of multiculturalism' is to accommodate these national and ethnic differences in a stable and morally defensible way. In this section, I will discuss whether federalism provides a feasible or desirable mechanism for responding to the demands of national minorities and ethnic groups.

There is no universally accepted definition of 'federalism'. For the purposes of this article, I take federalism to refer to a political system which includes a constitutionally entrenched division of powers between a central government and two or more subunits (provinces/ *Länder*/states/cantons), defined on a territorial basis, such that each level of government has sovereign authority over certain issues. This distinguishes federalism from both (a) administrative decentralisation, where a central government establishes basic policy in all areas, but then devolves the power to administer these policies to lower levels of government, typically regional or municipal governments; and (b) confederation, where two or more sovereign countries agree to co-ordinate economic or military policy, and so each devolves the power to administer these policies to a supranational body composed of delegates of each country.[14]

It is possible to combine elements from these different models, and some political systems may be difficult to categorise. All of these systems involve power-sharing, but the path by which these powers come to be shared differs. In both administrative decentralisation and confederation the central government within each country is assumed to possess complete decision-making authority over all areas of policy; it then chooses to devolve some of this authority upwards or downwards on the basis of its perceived national interest. But this devolution is voluntary and revocable—it retains ultimate sovereignty over these areas of policy, and so it retains the right to unilaterally reclaim the powers it has devolved. By contrast, in a federal system both levels of government have certain sovereign powers as a matter of legal right, not simply on a delegated and revocable basis. Both the central government and the federal subunits possess sovereign authority over certain policy areas, and it is unconstitutional for one level of government to intrude on the jurisdiction of the other. The central government cannot 'reclaim' the powers possessed by the federal subunits, because those powers never belonged to the central government. Conversely, the subunits cannot reclaim the powers possessed by the central government, because those powers never belonged to the subunits. In short, unlike administrative decentralisation and confederation, both levels of government in a federal system have a constitutionally protected existence, and do not just exist on the sufferance of some other body.

Immigrant groups

As a general rule, federalism is not relevant to immigrant groups. This is partly because immigrant groups are rarely territorially concentrated, and hence it would be difficult, if not impossible, to draw federal boundaries in such a way that these groups form a majority within a federal subunit. In principle, this

obstacle could be overcome either by encouraging territorial concentration or by adopting a non-territorial form of self-rule, such as the 'millet system' of the Ottoman Empire, or the Cultural Councils in pre-war Estonia.[15] But the fact is that immigrant groups within the major immigrant countries historically have not sought the sort of institutional separateness and political self-government which federalism provides. Italian-Americans or Japanese-Canadians do not seek to form separate and self-governing societies based on their mother tongue, alongside the mainstream Anglophone society. They seek to integrate within the mainstream Anglophone society.

To be sure, many immigrant groups—particularly since the 'ethnic revival' in the 1970s—have demanded greater accommodation of their ethnocultural differences. For example, there have been demands for: recognition of Jewish and Muslim religious holidays in school schedules; exemptions from school or government dress-codes so that Muslim girls can wear headscarves and Sikh and Jewish men can wear turbans or yarmulkas; greater recognition of the role of ethnic groups in school history textbooks; and proportional representation of ethnic groups in the police, judiciary or legislature. But none of these demands involves the desire to establish a separate and self-governing society alongside the mainstream society. On the contrary, they aim to reform mainstream institutions so as to make immigrant groups feel more at home within them. These measures—which I elsewhere call 'polyethnic rights'—are consistent with, and indeed often promote, the integration of immigrants into the public institutions of the mainstream society, including its political structures.[16]

I should emphasise that I am speaking here of immigrant groups within those liberal democratic countries where there is a tradition of welcoming immigrants, and where it is easy for immigrants to become full citizens regardless of their race, religion or ethnic origin. Under these circumstances, immigrant groups have not demanded the sort of group self-government provided by federalism. Of course, in many parts of the world—including some Western democracies—immigrants are much less welcome, and it is far more difficult for them to acquire equal citizenship. Where immigrants are subject to severe prejudice and legal discrimination—and hence where full equality within the mainstream society is unachievable—it is more likely that immigrants will seek to create a separate and self-governing society, alongside the mainstream society. For example, if the German government persists in making it difficult for long-term Turkish residents (and their children and grandchildren) to gain citizenship, one would expect Turks to press for greater powers of self-government. Perhaps they would press for some quasi-federal or consociational form of devolution, so that they can create and perpetuate a separate and self-governing society alongside the German society to which they are denied entry.

But this is not the preference of the Turks, whose main goal, like that of immigrants in other liberal democracies, is to become full and equal participants in German society. And, while I cannot argue the point here, I believe that any plausible account of liberal justice will insist that long-term immigrants should be able to acquire citizenship.[17] In short, the historical record suggests that quasi-federal forms of self-government will only be sought by immigrant groups within liberal democracies if they face unjust barriers to their full integration and participation in the mainstream society.

National minorities

The situation of national minorities is very different. In most multination states, the component nations are inclined to demand some form of political autonomy or territorial jurisdiction, so as to ensure the full and free development of their cultures and to promote the interests of their people. They demand certain powers of self-government which they say were not relinquished by their (often involuntary) incorporation into a larger state. At the extreme, nations may wish to secede if they think their self-determination is impossible within the larger state.

One possible mechanism for recognising claims to self-government is federalism. Where national minorities are regionally concentrated, the boundaries of federal subunits can be drawn so that the national minority forms a majority in one of the subunits. Under these circumstances, federalism can provide extensive self-government for a national minority, guaranteeing its ability to make decisions in certain areas without being outvoted by the larger society.

For example, under the federal division of powers in Canada the province of Quebec (which is 80 per cent Francophone) has extensive jurisdiction over issues that are crucial to the survival of the Francophone society, including control over education, language and culture, as well as significant input into immigration policy. The other nine provinces also have these powers, but the major impetus behind the existing division of powers, and indeed behind the entire federal system, is the need to accommodate the Québécois. At the time when Canada was created, in 1867, most English-Canadian leaders were in favour of a unitary state, like England, and agreed to a federal system primarily to accommodate French-Canadians. Had Quebec not been guaranteed these substantial powers—and hence protected from the possibility of being outvoted on key issues by the larger Anglophone population—it is certain that Quebec either would not have joined Canada in 1867 or would have seceded sometime thereafter.

Historically, the most prominent examples of federalism being used in this way to accommodate national minorities are Canada and Switzerland. The apparent stability and prosperity of these countries has led other multination countries to adopt federal systems in the post-war period (e.g. Yugoslavia) or upon decolonisation (e.g. India, Malaysia, Nigeria). Even though many of these federations are facing serious difficulties, we are currently witnessing yet another burst of interest in federalism in multination countries, with some countries in the process of adopting federal arrangements (Belgium, Spain), and others debating whether it would provide a solution to their ethnic conflicts (e.g. South Africa).[18]

This widespread interest in federalism reflects a welcome, if belated, acknowledgement that the desire of national minorities to retain their distinct cultures should be accommodated, not suppressed. For too long, academic theorists and political élites assumed that modernisation would inevitably involve the assimilation of minority nationalities, and the withering away of their national identity. Central governments around the world have tried to dissolve the sense amongst national minorities that they constitute distinct peoples or nations, by eliminating previously self-governing political and educational institutions, and/or by insisting that the majority language be used in all public forums. However, it is increasingly recognised that these efforts were both unjust and ineffective, and that the desire of national minorities to maintain themselves as culturally distinct and political autonomous societies must be accommodated.[19]

Federalism is one of the few mechanisms available for this purpose. Indeed, it is quite natural that multination countries should adopt federal systems—one would expect countries which are formed through a federation of peoples to adopt some form of political federation. But, while the desire to satisfy the aspirations of national minorities is welcome, we should be aware of the pitfalls involved. Federalism is no panacea for the stresses and conflicts of multination states. In the rest of the article I will discuss a number of qualifications regarding the potential value of federalism in multination states. I will separate my concerns into three areas. First, the mere fact of federalism is not sufficient for accommodating national minorities—it all depends on how federal boundaries are drawn and how powers are shared. Indeed, federalism can be, and has been, used by majority groups as a tool for disempowering national minorities, by rigging federal units so as to reduce the power of national minorities. We need therefore to distinguish genuinely multinational federations, which seek to accommodate national minorities, from merely territorial federations, which do not. Second, federalism is not as flexible as its proponents often claim. Where the subunits of a federal system vary in their territory, population and their

desire for autonomy, as is often the case, developing an 'asymmetric' form of federalism has proven to be very complicated (see p. 127). Finally, even where federalism is successfully working to accommodate the aspirations of national minorities, its very success may simply lead minorities to seek even greater autonomy, through secession or confederation (see p. 138).

MULTINATIONAL VS. TERRITORIAL FEDERALISM

While federalism is increasingly being considered as a solution to the problems of multination states, it is important to note that many federal systems arose for reasons unrelated to ethnonational diversity.[20] In fact, the most famous and widely studied federation—the American system—makes no effort to respond to the aspiration of national minorities for self-government.

Anglo-Saxon settlers dominated all of the original thirteen colonies which formed the United States. As John Jay put it in *The Federalist Papers,* 'Providence has been pleased to give this one connected country to one united people—a people descended from the same ancestors, speaking the same language, professing the same religion, attached to the same principles of government, very similar in their manners and customs.' Jay was exaggerating the ethnocultural homogeneity of the colonial population—most obviously in ignoring blacks[21]—but it was true that none of the thirteen colonies were controlled by a national minority, and that the original division of powers within the federal system was not defined with a view to the accommodation of ethnocultural divisions.

The status of national minorities became more of an issue as the American government began its territorial expansion to the south and west, and eventually into the Pacific. At each step of this expansion the American government was incorporating the homelands of already settled, ethnoculturally distinct peoples —including American Indian tribes, Chicanos, Alaskan Eskimos, native Hawaiians, Puerto Ricans, and Chamoros. And at each step, the question arose whether the American system of federalism should be used to accommodate the desire of these groups for self-government.

It would have been quite possible in the nineteenth century to create states dominated by the Navaho, for example, or by Chicanos, Puerto Ricans and native Hawaiians. At the time these groups were incorporated into the United States they formed majorities in their homelands. However, a deliberate decision was made not to use federalism to accommodate the self-government rights of national minorities. Instead, it was decided that no territory would be accepted as a state unless these national groups were outnumbered within that state. In some cases this was achieved by drawing boundaries so that Indian

tribes or Hispanic groups were outnumbered (Florida). In other cases, it was achieved by delaying statehood until Anglophone settlers swamped the older inhabitants (e.g. Hawaii; the Southwest).[22] As a result, none of the fifty states can be seen as ensuring self-government for a national minority in the way that Quebec ensures self-government for the Québécois.

Indeed, far from helping national minorities, there is reason to believe that American federalism has made them worse off. Throughout most of American history Chicanos, American Indian tribes and native Hawaiians have received better treatment from the federal government than from state governments. State governments, controlled by colonising settlers, have often seen national minorities as an obstacle to greater settlement and resource development, and so have pushed to strip minorities of their traditional political institutions, undermine their treaty rights, and dispossess them of their historic homelands. While the federal government has, of course, been complicit in much of the mistreatment, it has often at least attempted to prevent the most severe abuses. We can see the same dynamic in Brazil, where the federal government is fighting to protect the rights of Indians in Amazonia against the predations of local state governments.

In short, American-style territorial federalism, far from serving to accommodate national minorities, has made things worse. This should be no surprise, since the people who devised American federalism had no interest in accommodating these groups. In deciding how to arrange their federal system—from the drawing of boundaries, to the division of powers and the role of the judiciary—their aim was to consolidate and then expand a new country and to protect the equal rights of individuals within a common national community, not to recognise the rights of national minorities to self-government.[23] As I discuss below, insofar as national minorities in the US have achieved self-government, it has been outside of—and, to some extent, in spite of—the federal system, through non-federal units such as the 'commonwealth' of Puerto Rico, the 'protectorate' of Guam or the 'domestic dependent nations' status of American Indian tribes.

Since American federalism was not intended to accommodate ethnocultural groups, why then was it adopted? There are several reasons why the original colonists, who shared a common language and ethnicity, nonetheless adopted federalism—reasons which are famously explored in *The Federalist Papers.* Above all, federalism was seen as a way to prevent a liberal democracy from degenerating into tyranny. As Madison put it, federalism helped to prevent 'factions'—particularly an economic class or business interest—from imposing its will through legislation to the detriment of 'the rights of other citizens, or to the permanent and aggregate interests of the community'. Federalism makes it

more difficult for those who 'have a common motive to invade the rights of other citizens' to 'act in unison with each other'. The 'influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States'.[24] Conversely, the existence of strong, independent state governments provided a bulwark for individual liberties against any possible encroachment by a federal government which is captured by sinister factions.

Federalism was just one of several mechanisms for reducing the chance of tyranny. An equal emphasis was placed on ensuring a separation of powers within each level of government—e.g. separating the executive, judicial and legislative powers at both the state and federal levels. This, too, helped minimise the amount of power that any particular faction could command, as did the later adoption of a Bill of Rights. The adoption of federalism in the United States should be seen in the context of this pervasive belief that the power of government must be limited and divided so as to minimise the threat to individual rights.

It is important to note that Madison was not thinking of ethnocultural groups when talking about 'factions'. Rather, he was concerned with the sorts of conflicts of interest which arise amongst 'a people descended from the same ancestors, speaking the same language'. These include, above all else, economic divisions between rich and poor, or between agricultural, mercantile and industrial interests. Madison's preoccupations are reflected in his list of the 'improper or wicked projects' which federalism will help prevent—namely, 'A rage for paper money, for an abolition of debts, for an equal division of property'.[25]

The subsequent history of the United States suggests that federalism offers other, more positive, benefits. For example, it has helped provide room for policy experimentation and innovation. Faced with new issues and problems, each state adopted differing policies, and those policies which proved most successful were then adopted more widely. Moreover, as the United States expanded westward and incorporated vast expanses of territory with very different natural resources and forms of economic development, it became increasingly difficult to conceive how a single, centralised unitary government would be workable. Some form of territorial devolution was clearly necessary, and the system of federalism adopted by the original thirteen colonies on the Atlantic coast served this purpose very well.

So there are many reasons, unrelated to ethnocultural diversity, why a country would adopt federalism. Indeed, any liberal democracy which contains a large and diverse territory will surely be pushed in the direction of adopting some form of federalism, regardless of its ethnocultural composition. The

virtues of federalism for large-scale democracies are manifested not only in the United States but also in Australia, Brazil and Germany. In each of these cases, federalism is firmly entrenched and widely endorsed, even though none of the federal units is intended to enable ethnocultural groups to be self-governing.

In some countries, then, federalism is adopted, not because it accommodates the desire of national minorities for self-government, but rather because it provides a means by which a single national community can divide and diffuse power. Following Philip Resnick, I will call this 'territorial federalism', as distinct from 'multinational federalism'.[26]

My concern in this article is with multinational federations. Most scholarly discussions of federalism, however, have focused on territorial federalism. This is partly due to the historical influence of American federalism. Perhaps because the United States was the first truly democratic federation, American federalism has become the model, not just of territorial federalism but of federalism *tout court,* or at least of 'mature' or 'classic' federalism. Similarly, *The Federalist Papers* are often taken to be the paradigm expression of 'the federalist principle'. Other federal systems are then categorised on the basis of how closely they conform to the basic attributes of the American system. Thus, for example, Australia is typically seen as a more truly federal system than Canada or India, since the latter deviate significantly from the American model.

Yet if our concern is with multinational federalism, then we cannot use the United States as our model. The American federal system, and *The Federalist Papers,* offer us no guidance on how to accommodate ethnocultural groups. On the contrary, as I noted earlier, federal subunits were deliberately manipulated to ensure that national minorities could not achieve self-government through federalism. More generally, territorial federalism, in and of itself, is no guarantee that ethnocultural groups will be accommodated. Whether the allocation of powers to territorial subunits promotes the interests of national minorities depends on how the boundaries of those subunits are drawn, and on which powers are allocated to which level of government. If these decisions about boundaries and powers are not made with the conscious intention of empowering national minorities, then federalism may well serve to worsen the position of national minorities, as has occurred in the United States, Brazil and other territorial federalisms.

HOW FLEXIBLE IS MULTINATIONAL FEDERALISM?

For a federal system to qualify as genuinely multinational, decisions about boundaries and powers must consciously reflect the needs and aspirations of

minority groups.[27] But to what extent can the boundaries and powers of federal units be defined so as to accommodate these groups? As I noted earlier, many theorists argue that federalism is appropriate precisely because it has great flexibility in answering these questions. Even a cursory survey of federal systems shows that there is great variety in how boundaries are drawn and powers distributed. There seem to be few, if any, a priori rules regarding the size, shape or powers of federal subunits.

I believe, however, that federalism is less flexible than many people suppose. There are significant limitations on how powers can be divided, and on how boundaries can be drawn. I will discuss these two problems in turn.

Dividing powers in a multinational federation

Let us assume that boundaries can be drawn in such a way that national minorities form a majority in their federal subunit, as with Quebec or Catalonia. This provides a starting-point for self-government, but whether the resulting federal system is satisfactory to national minorities will depend on how powers are distributed between the federal and provincial levels. The historical record suggests that this issue may lead to intractable conflicts, because different units may seek different powers, and it is difficult for federalism to accommodate these divergent aspirations.

This is particularly true if only one or two of the federal units are vehicles for self-governing national minorities, while the rest are simply regional divisions within the majority national group. This is the case in Canada, for example, where the province of Quebec secures self-government for the Québécois, but the nine remaining provinces reflect regional divisions within English Canada. A similar situation exists in Spain, where the Autonomous Communities of Catalonia, the Basque Country and Galicia secure self-government for national minorities, while most of the other fourteen Autonomous Communities, such as La Mancha or Extremadura, reflect regional divisions within the majority Spanish national group.[28] In both countries, then, some units embody the desire of national minorities to remain as culturally distinct and politically self-governing societies (what I will call 'nationality-based units'), while others reflect the decision of a single national community to diffuse powers on a regional basis (what I will call 'regional-based units').

It is likely that nationality-based units will seek different and more extensive powers than regional-based units. As a general rule, we can expect nationality-based units to seek greater and greater powers, while regional-based units are less likely do so, and may indeed accept a gradual weakening of their powers. This is reflected in the way the American and Canadian federal systems have

developed. It has often been pointed out that the United States, which began as a strongly decentralised federation, with all residual powers attributed to the states, has gradually become one of the most centralised; whereas Canada, which began as a strongly centralised federation, with all residual powers attributed to the federal government, has gradually become one of the most decentralised. This is often said to be paradoxical, but it is understandable when we remember that the United States is a territorial federation, composed entirely of regional-based units. Because none of the fifty states in the United States are nationality-based, centralisation has not been seen as a threat to anyone's national identity. While many Americans object to centralisation as inefficient or undemocratic, it is not seen as a threat to the very survival of anyone's national group. By contrast, centralisation in Canada is often seen as a threat to the very survival of the Québécois nation, insofar as it makes French-Canadians more vulnerable to being outvoted by Anglophones on issues central to the reproduction of their culture, such as education, language, telecommunications, and immigration policy.

This difference has had a profound effect on how the US and Canada have responded to the pressures for centralisation in this century. In both countries, there have been many occasions—most notably the Depression and the two World Wars—when there were great pressures to strengthen the federal government, at least temporarily. In Canada these pressures were counterbalanced by the unyielding insistence of French-Canadians that the self-governing powers of Quebec be protected, so that any temporary centralisation would ultimately be reversed. In the United States, however, there was no similar countervailing pressure, and the various forces for greater centralisation have gradually and cumulatively won out.

The fact that regional-based and nationality-based units typically desire different levels of power is also reflected within both Canada and the United States. For example, while most Québécois want an even more decentralised division of powers, most English-Canadians favour retaining a strong central government.[29] Indeed, were it not for Quebec, there is good reason to believe that Canadian federalism would have succumbed to the same forces of centralisation which won out in the United States. However, while the regional-based American states have gradually lost power, we find a very different story if we look at the quasi-federal units used to accommodate national minorities—e.g. the Commonwealth of Puerto Rico, Indian tribes, or the Protectorate of Guam. In these cases of nationality-based units, we see a clear trend toward greater powers of self-government, in order to sustain their cultural distinct societies.[30]

We find the same pattern throughout Europe as well. For example, Catalonia and the Basque Country have expressed a desire for greater autonomy than is sought by other regional-based units in Spain. Corsica seeks greater autonomy than other regional-based units in France. While many European countries are engaging in forms of regional decentralisation, particularly if they had previously been highly centralised states, this process is going much farther in countries where the resulting units are nationality-based (e.g. Belgium) than where they are regional-based (e.g. Italy). And of course the most extreme assertion of self-government—namely, secession—has only been made by nationality-based units, whether it be in the former Czechoslovakia, Yugoslavia or the Soviet Union, and not by regional-based units.

In a federal system which contains both regional-based and nationality-based units, therefore, it seems likely that demands will arise for some form of asymmetrical federalism—i.e., for a system in which some federal units have greater self-governing powers than others. Unfortunately, it has proven extraordinarily difficult to negotiate such an asymmetrical model. There seems to be great resistance, particularly on the part of majority groups, to accepting the idea that federal units can differ in their rights and powers. As a result, national minorities have found it very difficult to secure the rights and recognition that they seek.

The difficulty in negotiating asymmetry is, in one sense, quite puzzling. If English-Canadians want a strong federal government, and Québécois want a strong provincial government, asymmetry would seem to give both groups what they want. It seems perverse to insist that all subunits have the same powers, if it means that English-Canadians have to accept a more decentralised federation than they want, while French-Canadians have to accept a more centralised federation than they want.

Yet most English-Canadians overwhelmingly reject the idea of ‘special status’ for Quebec. To grant special rights to one province on the grounds that it is nationality-based, they argue, is somehow to denigrate the other provinces, and to create two classes of citizens.[31] Similar sentiments have been expressed in Spain about the demand for asymmetrical status by the Basques and Catalans.[32] Some commentators—such as Charles Taylor—argue that this simply reflects confused moral thinking.[33] Liberal democracies are deeply committed to the principle of the moral equality of persons, and equal concern and respect for their interests. But equality for individual citizens does not require equal powers for federal units. On the contrary, special status for nationality-based units can be seen as promoting this underlying moral equality, since it ensures that the national identity of minorities receives the same concern and respect as that of the majority nation. Insofar as English-Canadians view the federal government

as their 'national' government, respecting their national identity requires upholding a strong federal government; insofar as Québécois view Quebec as their national government, respecting their national identity requires upholding a strong provincial government. Accommodating these differing identities through asymmetrical federalism does not involve any disrespect or invidious discrimination.[34] It is difficult to avoid the conclusion that much of the opposition to asymmetry amongst the majority national group is rooted in a latent ethnocentrism—i.e., a refusal to recognise that the minority has a distinct national identity that is worthy of respect. This fits into the long history of neglecting or denigrating the desire of national minorities to remain culturally distinct societies, which I discussed earlier.

Another factor underlying the opposition to asymmetry is the profound influence of the American model of federalism. As I noted earlier, many people have supposed that American federalism is the model of federalism *tout court,* and that all federalisms should aim to be purely territorial. On this view, any special accommodations for nationality-based units are seen as merely transient measures which are not appropriate in a 'mature' territorial federalism.

The problem is not simply that regional and nationality-based units happen to desire different powers. These variations in desired powers reflect an even deeper difference in the very conception of the nature and aims of political federation. For national minorities, federalism is, first and foremost, a federation of peoples, and decisions regarding the powers of federal subunits should recognise and affirm the equal status of the founding peoples. On this view, to grant equal powers to regional-based units and nationality-based units is in fact to deny equality to the minority nation, by reducing its status to that of a regional division within the majority nation. By contrast, for members of the national majority, federalism is, first and foremost, a federation of territorial units, and decisions regarding the division of powers should affirm and reflect the equality of the constituent units. On this view, to grant unequal powers to nationality-based units is to treat some of the federated units as less important than others.

This difference in the conception of federalism can lead to conflicts even when there is little variation in the actual powers demanded by regional-based and nationality-based units. For example, some people have proposed a radical across-the-board decentralisation in Canada, so that all provinces would have the same powers currently demanded by Quebec. This is intended to avoid the need to grant 'special status' to Quebec. The response by many Quebec nationalists, however, was that this missed the point. The demand for special status was a demand not just for this or that power but also for national recognition. As Resnick puts it, 'They want to see Quebec recognised as a

nation, not a mere province; this very symbolic demand cannot be finessed through some decentralising formula applied to all provinces'.[35] Quebec nationalists want asymmetry, not just to gain this or that additional power, but also for its own sake, as a symbolic recognition that Quebec alone is a nationality-based unit within Canada.[36]

This may seem like a petty concern with symbols rather than the substance of political power. But we find the same response in other multinational federations. For example, prior to the breakup of Czechoslovakia some people proposed a decentralised federation composed of three units with equal powers —Slovakia and two Czech regions (Moravia and Bohemia). This would enable Slovak national self-government, while also accommodating Moravia's historical status as a distinct region within the Czech nation. However, Slovak nationalists dismissed this proposal, since 'it would have meant equivalence between the Slovak nation and Moravian cultural and historical specificity, thus lessening the relevance of Slovak nationhood'.[37]

Or consider the response of Catalan and Basque nationalists to the proposal to make the same maximal level of autonomy exercised by their nationality-based units available to all federal units in Spain, including the regional-based units (i.e. to 'generalise' autonomy):

> the 1978 Constitution assumed the principle of autonomy because it was absolutely essential to resolve the claims to self-government made by Catalonia and the Basque country if indeed a democratic system was to be installed which aimed not just at the freedom and rights of citizens but also of peoples. When the attack began via what has been called the generalisation of autonomies, the politicians tried to forget what was originally intended.[38]

We can now see why disputes about the division of powers within a multinational federalism are so difficult to resolve. The problem is not simply that units differ in their preferences regarding the extent of autonomy. That problem can often be resolved by reasonable people of good will. And indeed many English-Canadians are willing to accept a more decentralised federation than they would ideally like in order to accommodate Quebec, while many Québécois are willing to accept a less decentralised federation than they would ideally like in order to accommodate English Canada. Reasonable people are willing to compromise, within limits, on the precise powers they seek for their federal units.

Unfortunately, the problem goes deeper than this. While the majority may be willing to compromise on the precise degree of decentralisation, they are

unwilling to compromise on what they take to be a basic principle of federalism—namely, that all federal units should be equal in their rights and powers. Conversely, while the national minority may be willing to compromise on its demands for autonomy, it is not willing to compromise on what it takes to be a basic principle of federalism—namely, that its status as one of the founding peoples must be symbolically recognised through some form of asymmetry between nationality-based and region-based units. As a result, even if both regional-based and nationality-based units happen to desire a roughly similar set of powers, serious conflicts are likely to remain. For each side rejects on principle what the other side views as part of the very nature and purpose of federalism. For the majority nation, federalism is a compact between equal territorial units, which therefore precludes asymmetry; for the national minority, federalism is a compact between peoples, which therefore requires asymmetry between nationality-based units and regional-based units.

This helps explain why asymmetry has been so difficult to negotiate within multinational federations. But there are other problems which further reduce the flexibility of federalism in adopting asymmetry. Let's assume that the conflicts I have just been discussing are somehow solved, and there is a widespread acceptance of the need for some form of asymmetry for nationality-based units. There remain some practical problems to be solved, particularly regarding the representation of the nationality-based unit in the federal government. These problems are, I believe, formidable, and we have very few models around the world of how to resolve them.

Let's imagine, then, that an asymmetrical transfer of powers from the federal government to Quebec occurs, so that the federal government would be passing laws that would apply to all provinces except Quebec. Under these circumstances, it seems only fair that Quebecers not have a vote on such legislation (particularly if they could cast the deciding vote). For example, it would seem unfair for Quebec's elected representatives at the federal level to vote on federal legislation regarding immigration, if the legislation does not apply to Quebec. In short, insofar as the jurisdiction of the federal government over a national minority is reduced, compared to other regional-based units, this seems to entail that the minority group should have reduced influence (at least on certain issues) at the federal level.

Some national minorities do have this sort of reduced influence at the federal level. For example, because residents of Puerto Rico have special self-governing powers which exempt them from certain federal legislation, they have reduced representation in Washington. They help select presidential candidates in party primaries, but do not vote in presidential elections. And they have only one representative in Congress, a 'commissioner' who has a voice but no vote,

except in committees. This reduced representation is seen by some as evidence that Puerto Rico is 'colonised' by the United States. But, while the details of the existing arrangement are subject to criticism, the existence of reduced representation can be seen as a corollary of Puerto Rican self-government, and not just its colonial subjugation. The less a group is governed by the federal government, the less right it has to representation in that government. An asymmetry in powers entails an asymmetry in representation.

But how exactly should an asymmetry in the powers of subunits be reflected in terms of representation at the federal level? If a particular subunit has greater powers, one would expect its representatives to be fewer in number, and/or restricted in their voting power. Both of these apply to Puerto Rico. But the Puerto Rican model has obvious weaknesses. While Puerto Rico has very limited federal representation, it is still very much subject to Congressional authority in some areas. It would seem preferable, therefore, to reduce their influence in a more issue-specific way—for example, by allowing their Congressional representative to have a full vote on legislation which applies to Puerto Rico, but no vote on legislation from which Puerto Rico is exempt. Unfortunately, this is easier said than done. Many pieces of legislation deal with areas of jurisdiction that Puerto Rico is partly exempt from, and partly subject to. There is no way to divide up the business of government into such clear-cut groupings. Moreover, this leaves unanswered the question of how many representatives a nationality-based unit should have at the federal unit. A strong asymmetry in powers for federal subunits suggests that there should be a compensating reduction in the number of representatives, but what is a fair trade-off here?

This has been a serious stumbling-block in developing a workable model of asymmetrical federalism in Canada. It is increasingly accepted that a strongly asymmetrical status for Quebec will require reducing the influence of Quebec's elected representatives in the federal legislature. However, there is no available model which tells us how to do this.[39] And of course this problem links up with the previous problem of differing conceptions of federalism. Since members of the majority are already inclined to view any form of asymmetry as an unfair privileging of the minority, they will be keenly sensitive to any evidence that the minority is exercising undue power at the federal level (e.g. by voting on legislation from which they are themselves exempt).

Yet we can expect the national minority to resist any serious reduction of their representation at the federal level. After all, they are already, by definition, a minority at the federal level, and to reduce their influence even further will just make the federal government seem more remote, and indeed more of a threat. It will seem increasingly like an 'alien' government. The more Quebec's

influence is reduced at the federal level, the more tempting it will be for Quebecers to decide to simply go it alone, and seek secession. Why stay within the federation if their influence on federal policy is gradually eroding? The danger that asymmetry will eventually lead to secession is a serious one, I believe, since there are other factors pulling in the direction of secession, which I discuss in the next section.

So there are many reasons why federal systems have difficulty adopting asymmetrical arrangements. Indeed, these problems are so severe that some people have claimed that a federal system cannot survive for long if it adopts asymmetry. This is an overstatement, but there are greater limits on the flexibility of federalism than many proponents of federalism admit.[40]

The inability of federalism to accommodate asymmetry is exacerbated by the fact that the procedure for amending the constitution in a federal system is so cumbersome. For example, to amend the constitution in the United States requires the consent of thirty-five states, and two-thirds of the members of Congress. In Canada, depending on the nature of the proposed change, a constitutional amendment requires the consent of both federal houses, plus either seven provinces containing 50 per cent of population, or all ten provinces. Recent experience with the Equal Rights Amendment in US, or the Meech Lake and Charlottetown Accords in Canada, suggests that achieving this level of agreement is very difficult. If implementing asymmetrical federalism requires amending the powers of federal subunits, or the system of federal representation, the obstacles are enormous. Whereas a unitary state can typically amend its constitution by a single majority or super-majority vote, federalism requires the consent of concurrent majorities—i.e. majorities in the country as a whole, plus in all of its constituent units. This sets the threshold so high that even a widely supported proposal for asymmetry may fall short.

Drawing boundaries in a multinational federation

One limitation on federalism's ability to accommodate national minorities, then, is that it may be difficult to achieve the desired division of powers. But, in addition to dividing powers, we must also draw boundaries, and this raises another limit on the flexibility of multinational federalism. For federalism to serve as a mechanism for self-government, it must be possible to draw federal subunits in such a way that the national minority forms a majority within a particular subunit, as the Québécois do in Quebec. This is simply not possible for some national minorities, including most indigenous peoples in the United States or Canada, who are fewer in number, and who have been dispossessed of much of their historic lands, so that their communities are often dispersed, even

across state/provincial lines. With few exceptions, indigenous peoples currently form a small minority within existing federal units, and no redrawing of the boundaries of these federal subunits would create a state, province or territory with an indigenous majority.[41] It would have been possible to create a state or province dominated by an Indian tribe in the nineteenth century, but, given the massive influx of settlers since then, it is now virtually inconceivable.

For most indigenous peoples in the US or Canada, therefore, self-government can only be achieved outside the federal system. Self-government has been primarily tied to the system of reserved lands (known as tribal 'reservations' in the United States, and band 'reserves' in Canada). Substantial powers are exercised by the tribal/band councils which govern each reserve. Indian tribes/bands have been acquiring increasing control over health, education, family law, policing, criminal justice and resource development. (Or, more accurately, they have been reacquiring these powers, since, of course, they governed themselves in all these areas before their involuntary incorporation into the larger Canadian or American polity). They are becoming, in effect, a kind of 'federacy', to use Daniel Elazar's term, with a collection of powers that is carved out of both federal and state/ provincial jurisdictions.[42]

One could, in principle, define each of these reserved lands as a new state or province within the federal system. But that is impractical, given that there are so many separate tribes/bands in the United States and Canada (over six hundred in Canada alone), and that many of these groups are very small both in population and territory, and that they are located within existing federal subunits. Moreover, Indian peoples do not want to be treated as federal subunits, since the sort of self-government they seek involves a very different set of powers from that exercised by provinces. They would only accept the status of a federal subunit if this was a strongly asymmetrical status, which included powers typically exercised by both the federal and provincial levels. Furthermore, Indian tribes/bands differ enormously amongst themselves in the sorts of powers they desire. They seek not only asymmetry, but varying degrees of asymmetry. Yet, for the reasons I've just discussed, it is extremely difficult to achieve that sort of flexibility within a federal system. Hence Indians have pursued self-government through a sort of 'federacy' relationship that exists outside the normal federal system.

As the term suggests, a 'federacy' has important analogies with federalism—for example, both involve a territorial division of powers. But because most Indian tribes now form a minority even within their historic homelands, and so are territorially located within existing states or provinces, their self-government occurs outside of, and to some extent in opposition to, the federal system. Rather than possessing the standard rights and powers held by federal

subunits, and governing under the same rules which apply to federal subunits, they instead possess a set of group-specific powers and exemptions which partially removes them from the federal process by reducing the jurisdiction of both the federal and state/provincial governments over them. As I noted earlier, federalism in the United States and Canada, far from empowering Indian peoples, has in fact simply increased their vulnerability, by making their self-governance subject to encroachment from both federal and state/provincial governments. The achievement of Aboriginal self-government through 'federacy', therefore, involves protection against the federal system.

The fact that Indians in the United States do not control state governments has tended to make them more vulnerable, since their self-government powers do not have the same constitutional protection as states' rights. They are therefore more subject to the 'plenary power' of Congress, which has often been exercised to suit the needs and prejudices of the dominant society, not of the national minority. However, the fact that they lie outside the federal structure has compensating advantages. In particular, it has provided much greater flexibility in redefining those powers to suit the needs and interests of the minority. Whereas there is pressure within federal systems to make all subunits equal in their powers and federal representation, 'federacy' arrangements allow for greater variations. Moreover, it is much easier to negotiate new self-government provisions for the Navaho than to amend the powers of individual states.

The same applies to other national minorities in the United States. For example, because Puerto Rico is a 'Commonwealth' not a state, it has been easier to amend its self-governing powers and to negotiate an asymmetrical status in terms of both powers and federal representation. This might have proved impossible had Puerto Rico been granted statehood when it was incorporated by the United States in 1898.[43]

For a variety of reasons, then, federalism may lack the flexibility needed to accommodate national minorities. It may be impossible for a small national minority to form a majority in one of the federal subunits. For such groups, self-government can only be achieved outside the federal system, through some special non-federal or quasi-federal political status. And, even if the boundaries can be drawn in such a way that the national minority forms a majority within a federal subunit, it may be impossible to negotiate a satisfactory division of powers, particularly if the federation includes both nationality-based and regional-based subunits.

Therefore, in many cases, the aspirations of national minorities may best be achieved through political institutions which operate outside the federal system —as 'commonwealths', 'federacies', 'protectorates' or 'associated states'—

rather than by controlling a standard federal subunit. Standard models of federalism, with their implicit assumptions of equal powers and regional-based units, and their complex amendment procedures, may not be capable of responding to the distinctive interests and desires of nationality-based units.

FEDERALISM, SECESSION AND SOCIAL UNITY

So far, I have been discussing limits on the ability of federalism to accommodate the needs of national minorities. Let's imagine, however, that these problems have been overcome. Let's assume that national minorities are satisfied with the boundaries of their subunit, that they possess sufficient self-governing powers to maintain themselves as culturally distinct societies, and that some form of asymmetry has either been accepted or proven unnecessary. In short, let's assume that federalism is working as its proponents envisage to combine shared rule with respect for ethnocultural differences. There is one further problem that is worth considering. The very success of federalism in accommodating self-government may simply encourage national minorities to seek secession. The more that federalism succeeds in meeting the desire for self-government, the more it recognises and affirms the sense of national identity amongst the minority group, and strengthens their political confidence. Where national minorities become politically mobilised in this way, secession becomes more likely, even with the best-designed federal institutions.

One way to describe the problem is to say that there is a disjunction between the legal form of multinational federalism and its underlying political foundations. Legally speaking, as I noted earlier, federalism views both levels of government as possessing inherent sovereign authority. This distinguishes it from a confederation, where sovereign states delegate certain powers to a supranational body—powers which they can reclaim. In a federal system, however, the general government has inherent, not just delegated, power to govern its citizens. Just as the province of Quebec has the inherent authority to govern all Quebecers—an authority which the federal government did not delegate and cannot unilaterally revoke—so the federal government of Canada has the inherent authority to govern all Canadians (including Quebecers), an authority which the provincial governments did not delegate, and cannot unilaterally revoke.

This is the legal form of federalism. But political perceptions of it are likely to be rather different. Multinational federations are often viewed by national minorities as if they were confederations. National minorities typically view themselves as distinct 'peoples', whose existence predates that of the country they currently belong to. As separate 'peoples', they possess inherent rights of

self-government.[44] While they are currently part of a larger country, this is not seen as a renunciation of their original right of self-government. Rather it is seen as a matter of transferring some aspects of their powers of self-government to the larger polity, on the condition that other powers remain in their own hands. In countries that are formed from the federation of two or more national groups, the (morally legitimate) authority of the central government is limited to the powers which each constituent nation agreed to transfer to it. And these national groups often see themselves as having the (moral) right to take back these powers, and withdraw from the federation, if they feel threatened by the larger community.[45]

Legally speaking, of course, nationality-based federal units do not have the right to reclaim the powers exercised by the federal government. Legally, these powers are inherently vested in the federal government, and the subunits cannot 'reclaim' what was never theirs. But the political perceptions of national minorities are unlikely to match these legal niceties. For them, the larger country feels more like a confederation than a federation, in the sense that the larger country's existence is seen as morally dependent on the revocable consent of the constituent national units. As a result, the larger political community has a more conditional existence than a unitary state or a territorial federalism.

In short, the basic claim made by national minorities is not simply that the political community is culturally diverse (as immigrants, for example, typically claim).[46] Instead, the claim is that there is more than one political community, and that the authority of the larger state cannot be assumed to take precedence over the authority of the constituent national communities. If democracy is the rule of 'the people', national minorities claim that there is more than one people, each with the right to rule themselves. Multinational federalism divides the people into separate 'peoples', each with its own historic rights, territories and powers of self-government, and each, therefore, with its own political community. They may view their own political community as primary and the value and authority of the larger federation as derivative.[47]

The reason why multinational federalisms are likely to be unstable should now be obvious. The more a federal system is genuinely multinational—that is, the more it recognises and affirms the demand for self-government—the more it will strengthen the perception amongst national minorities that the federal system is *de facto* a confederal system. That is, the more successful a multinational federal system is in accommodating national minorities, the more it will strengthen the sense that these minorities are separate peoples with inherent rights of self-government, whose participation in the larger country is conditional and revocable. And if the attachment of national minorities to the

larger state is conditional, then sooner or later one can expect conditions to change, so that staying within the federation no longer seems beneficial. Federalism also provides national minorities with the experience of self-government, so that they will feel more confident of their ability to go it alone, and with an already recognised territory over which they are assumed to have some prima facie historical claim.[48]

Moreover, if the secession itself can be achieved peacefully, then the costs of going it alone as a small state have dramatically fallen. In the past, national minorities needed to join larger countries in order to gain access to economic markets, and/or to ensure military security. But these beneflts of federalism can now be achieved through confederal arrangements (like the European Community, or the North American Free Trade Agreement), and through the gradual strengthening of international law. If Quebec or Catalonia seceded, they would still be able to participate in continental or international free trade and security arrangements.[49]

In any event, the option of secession will always be present. Indeed, in a sense, it becomes the default position, or the baseline against which participation in the federation is measured. Amongst national minorities, the starting point will not be 'Why should we seek greater autonomy?' but rather 'Why should we continue to accept these limits on our inherent self-government?'. After all, there seems to be no natural stopping point to the demands for increasing self-government. If limited autonomy is granted, this may simply fuel the ambitions of nationalist leaders who will be satisfied with nothing short of their own nation-state. Any restrictions on self-government—anything short of an independent state—will need justification.

For all these reasons, it seems likely that multinational federalism will be plagued with instability, and may eventually devolve into a confederation or simply break up. What then can keep a multination federation together? Since the main instrumental arguments for federation (economic markets and military security) have lost much of their force, it seems that we need to focus more on the intrinsic benefits of belonging to a federation—that is, the value of belonging to a country which contains national diversity. In some circumstances, I think this can be a very powerful argument. For example, Petr Pithart, the former Prime Minister of Czechoslovakia, reflecting on its dissolution, stated that:

> In the last 55 years, the Czechs have lost—as co-tenants in their common house—Germans, Jews, Ruthenians, Hungarians and Slovaks. They are now, in effect, an ethnically cleansed country, even if it was not by their own will. It is a great intellectual, cultural, and spiritual loss. This is

> particularly true if we consider central Europe, which is a kind of mosaic. We are still living touristically from the glory of Prague, which was a Czech-German-Jewish city and a light that reached to the stars. But you cannot win elections with that kind of argument.[50]

It seems to me that there often is a 'great intellectual, cultural and spiritual loss' when multination states dissolve. But it is not easy to articulate these losses, and, as Pithart notes, these arguments have not always been politically effective to date.

CONCLUSION

In this article I have outlined several reasons why federalism may not provide a viable alternative to secession in multination states. There are limits on the ways that boundaries can be drawn in a federal system, and on the ways that powers can be distributed—limits which seriously reduce federalism's ability to accommodate the aspirations of national minorities. Moreover, even when federalism is working well to satisfy these aspirations, it is likely simply to reinforce the belief that the group is able and rightfully entitled to secede and exercise full sovereignty. This indeed is the paradox of multinational federalism: while it provides national minorities with a workable alternative to secession, it also helps to make secession a more realistic alternative to federalism.

So it would be a mistake to think that implementing federalism will remove the issue of secession from the political agenda. I should emphasise again that I am not suggesting that we therefore reject federal solutions. Federalism is often the only option available for accommodating conflicting national identities within a multination state. And, even if a federal system eventually dissolves, it may bequeath important lessons regarding the nature and value of democratic tolerance.[51] So federalism is certainly worth trying.

However, we shouldn't be overly optimistic about the extent to which federalism provides a viable long-term alternative to secession. It is wrong, I think, to suppose that federalism provides a tried and true formula for the successful and enduring accommodation of national differences. It provides at best a hope for such an accommodation, but to make it work requires an enormous degree of ingenuity and good will, and indeed good luck. And, even with all the good fortune in the world, multinational federations are unlikely to exist for ever. We shouldn't expect citizens of a multinational federation to view themselves as members of 'one co-operative scheme in perpetuity', as John Rawls puts it.[52] To demand that sort of unconditional allegiance is to set a standard that multinational federations are unlikely to meet. A well-designed

federal system may defer secession—perhaps into the indefinite future. But secession will remain a live option in the hearts and minds of national minorities. Indeed, it is likely to form the benchmark against which federal systems are measured.

NOTES

1 See, for example, Daniel Philpott, 'In defense of self-determination', *Ethics,* vol. 105/2, 1995, pp. 352–85; Alan Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec,* Boulder CO, Westview Press, 1991; Michael Walzer, 'The new tribalism', *Dissent,* vol. 39, spring 1992, pp. 164–71.

2 See Donald Horowitz, 'Self-determination: politics, philosophy, and law', in Will Kymlicka and Ian Shapiro (eds), *Nomos 39: Ethnicity and Group Rights,* New York, New York University Press, 1997, pp. 421–63.

3 See, for example, Daniel Elazar's *Federalism and the Way to Peace,* Institute of Intergovernmental Affairs, Queen's University, Kingston, 1994, and his *Exploring Federalism,* Tuscaloosa, University of Alabama, 1987.

4 By 'institutionally complete', I mean containing a set of societal institutions, encompassing both public and private spheres, which provide members with meaningful ways of life across the full spectrum of human activities, including social, educational, religious, economic and recreational life. For a fuller discussion, see my *Multicultural Citizenship: A Liberal Theory of Minority Rights,* Oxford, Oxford University Press, 1995, ch. 5.

5 For a survey of the rights of national minorities in the United States, see Sharon O'Brien, 'Cultural rights in the United States: a conflict of values', *Law and Inequality Journal,* vol. 5, 1987, pp. 267–358; Judith Resnik, 'Dependent sovereigns: Indian tribes, states, and the federal courts', *University of Chicago Law Review,* vol. 56, 1989, pp. 671–759; Alexander Aleinikoff, 'Puerto Rico and the constitution: conundrums and prospects', *Constitutional Commentary,* vol. 11, 1994, pp. 15–43.

6 On the language of nationhood by Aboriginals and the Québécois, see Jane Jenson, 'Naming nations: making nationalist claims in Canadian public discourse', *Canadian Review of Sociology and Anthropology,* vol. 30, no. 3, 1993, pp. 337–58. I should note that Aboriginal peoples are not a single nation. Aboriginals in Canada can be divided into eleven linguistic groups, descended from a number of historically and culturally distinct societies. It has been estimated that there are 35–50 distinct 'peoples' in the Aboriginal population, see Paul Chartrand, 'The aboriginal peoples in Canada and renewal of the federation', in Karen Knop *et al.* (eds), *Rethinking Federalism,* Vancouver, University of British Columbia Press, 1995.

7 On the Communist world, see June Dreyer, *China's Forty Millions: Minority Nationalities and National Integration in the People's Republic of China,* Cambridge

MA, Harvard University Press, 1979; Walker Connor, *The National Question in Marxist-Leninist Theory and Strategy,* Princeton, Princeton University Press, 1984. On the Third World, see Alemante Selassie, 'Ethnic identity and constitutional design for Africa', *Stanford Journal of International Law,* vol. 29, no. 1, 1993, pp. 1–56; Basil Davidson, *The Black Man's Burden: Africa and the Curse of the Nation-State,* New York, Times Books, 1992.

8 John Porter, *The Measure of Canadian Society,* Ottawa, Carleton University Press, 1987, p. 154; cf. Jeffrey Reitz and Raymond Breton, *The Illusion of Difference: Realities of Ethnicity in Canada and the United States,* Ottawa, C.D.Howe Institute, 1994.

9 Gerald Johnson, *Our English Heritage,* Westport, Greenwood Press, 1973, p. 119. For the history of language rights in the United States, see Heinz Kloss, *The American Bilingual Tradition,* Rowley, Newbury House, 1977; Edward Sagarin and Robert Kelly, 'Poly-lingualism in the United States of America: A multitude of tongues amid a monolingual majority', in William Beer and James Jacob (eds), *Language Policy and National Unity,* Totowa, Rowman and Allenheld, 1985, pp. 21–44. As both note, the imposition of English was more 'ruthless' for national minorities than for immigrants, since the latter expected to integrate, whereas imposing English on national minorities required the coercive disbanding of long-standing educational, political and judicial institutions using the minority's mother-tongue.

10 M.Combs and L.Lynch, quoted in Rodolpho de la Garza and A.Trujillo, 'Latinos and the Official English debate in the United States', in David Schneiderman (ed.), *Language and the State: The Law and Politics of Identity,* Cowansville, Editions Yvon Blais, 1991, p. 215; cf. Linda Chavez, *Out of the Barrio: Toward a New Politics of Hispanic Assimilation,* New York, Basic Books, 1991, p. 42. Hispanic immigrant groups have expressed an interest in bilingual education, but they view Spanish-language education as supplementing, not displacing, the learning of English. As a general rule, immigrants to the United States who speak Spanish are expected to integrate into the mainstream Anglophone society just as much as immigrants who speak Portuguese, Urdu or any other language. For a careful discussion of this, see the article by de la Garza and Trujillo cited above.

11 I discuss this and other confusions regarding the term 'multiculturalism' in *Multicultural Citizenship,* ch. 2.

12 Some national groups employ a descent-based definition of membership—e.g. Germany; the Afrikaners in South Africa also have a descent-based conception of national membership. This used to be true of French Canada as well, and twenty per cent of Québécois still hold that immigrants cannot call themselves Québécois, see Jean Crête and Jacques Zylberberg, 'Une problématique floue: l'autoreprésentation du citoyen au Quebec', in Dominique Colas *et al.* (eds), *Citoyenneté et nationalite: Perspectives en France et au Quebec,* Paris, Presses Universitaires de France, 1991, pp. 425–30. However, the majority of Quebecers, like most other national groups in the West, define membership in terms of participation in a societal culture, not descent. On the increasing

disjunction between ethnic origin and language-group membership, see Leslie Laczko, 'Canada's pluralism in comparative perspective', *Ethnic and Racial Studies,* vol. 17, no. 1, 1994, p. 29.

13 African-Americans are an important example of an ethnocultural group which does not fit these categories. They do not fit the voluntary immigrant pattern, not only because most were brought to America involuntarily as slaves, but also because when they arrived they were prevented (rather than encouraged) from integrating into the institutions of the majority culture (e.g. racial segregation; laws against miscegenation and the teaching of literacy). Nor do they fit the national minority pattern, since they do not have a homeland in America or a common historical language.

They came from a variety of African cultures, with different languages, and no attempt was made to keep together those with a common ethnic background. On the contrary, people from the same culture (even from the same family) were often split up once in America. And even if they shared the same African language, slaves were forbidden to speak it, since slave-owners feared that such speech could be used to foment rebellion. Moreover, before emancipation they were legally prohibited from trying to recreate their own culture (e.g. all forms of black association, except churches, were illegal). The historical situation of African-Americans, therefore, is very unusual. They were not allowed to integrate into the mainstream culture, nor were they allowed to maintain their earlier languages and cultures, or to create new cultural associations and institutions. They did not have their own homeland or territory, yet they were physically segregated. So we should not expect policies which are appropriate for either voluntary immigrants or national minorities to be appropriate for African-Americans, or vice-versa. For a discussion of their unique status, and other anomalous groups, see *Multicultural Citizenship,* chapters 2 and 5.

However, a recent survey of ethnocultural conflicts around the world suggests that the two broad categories I have outlined do cover most groups involved in these conflicts, see Ted Gurr, *Minorities at Risk: A Global View of Ethnopolitical Conflict,* Washington DC, Institute of Peace Press, 1993.

14 Other characteristic features of federalism include the existence of a bicameral legislature at the federal level, with the second chamber intended to ensure effective representation for the federal subunits in the central government. Thus, each federal subunit is guaranteed representation in the second chamber, and smaller subunits tend to be over-represented. Moreover, each subunit has a right to be involved in the process of amending the federal constitution, but can unilaterally amend its own constitution. In defining federalism in this manner, I am following Wheare's classic account, K.C.Wheare, *Federal Government,* New York, Oxford University Press, 1964, 4th ed., chapters 1–2; cf. Jonathan Lemco, *Political Stability in Federal Governments,* New York, Praeger, 1991, ch. 1. For a typology of various 'federal-type' arrangements—which distinguishes federations from confederations, consociations, federacies, legislative unions, associated states and condominiums, see Elazar, *Exploring Federalism,* ch. 2.

15 On non-territorial forms of minority rights, see J.A.Laponce, 'The government of dispersed minorities: from Constantinople to Ottawa', in Tamas Kozma and Peter Drahos (eds), *Divided Nations,* Budapest, Educatio Publishing, 1993. On the 'millet system', see my 'Two models of pluralism and tolerance', *Analyse & Kritik,* vol. 14/1, 1992, pp. 33–56.

16 I develop this at length (and discuss the few exceptions) in *Multicultural Citizenship,* ch. 5, and 'Social unity in a multiethnic state', *Social Philosophy and Policy,* vol. 13/1, 1996. Exceptions to this generalisation include certain immigrant-based religious sects which seek to disassociate from the mainstream society.

17 For a defence of this claim, see Joseph Carens, 'Membership and morality: admission to citizenship in liberal democratic states', in William Brubaker (ed.), *Immigration and the Politics of Citizenship in Europe and North America,* University Press of America, 1989, pp. 31–49. Germany has recently amended its naturalisation policies to make it easier for Turks to apply for citizenship, although the application is still only approved on a selective and discretionary basis, so that Turks still face great uncertainty about whether they will be able to become equal participants in German society.

18 See the discussion of the 'federalist revolution' in Elazar, *Exploring Federalism,* ch. 1.

19 For a discussion of why national identity has been so enduring, and why national minorities differ in this respect from immigrants, see *Multicultural Citizenship,* chapters 5–6.

20 For the rest of the article, I will use the term 'ethnonational' in the context of national minorities in a multination state, as distinct from the more general term 'ethnocultural', which encompasses both national minorities and immigrant groups.

21 Alexander Hamilton, James Madison and John Jay, *The Federalist Papers,* New York, Bantam, 1982. Jay not only ignores the sizeable black population, but also pockets of non-English immigrants (particularly Germans), and the remnants of Indian tribes who had been dispossessed of their lands.

22 Hence Nathan Glazer is quite wrong when he says that the division of the United States into federal units preceded its ethnic diversity; see his *Ethnic Dilemmas: 1964–1982,* Cambridge MA, Harvard University Press, 1983, pp. 276–77. This is true of the original thirteen colonies, but decisions about the admission and boundaries of new states were made after the incorporation of national minorities, and these decisions were deliberately made so as to avoid creating states dominated by national minorities.

23 See Barbara Thomas-Woolley and Edmond Keller, 'Majority rule and minority rights: American federalism and African experience', *Journal of Modern African Studies,* vol. 32, no. 3, 1994, pp. 416–17. Despite emphasising this difference between the American experience and the situation of most multinational federations, Thomas-Woolley and Keller do not, I think, fully consider its implications for the relevance of the American model to other countries.

24 James Madison, *The Federalist Papers,* no. 10, New York, Bantam, 1982, pp. 54, 61. The belief that federalism helps prevent tyranny was one reason why federalism was imposed by the Allies on Germany after World War II. It was supposed to help prevent the re-emergence of nationalist or authoritarian movements. For a critique of the claim that federalism is inherently more protective of individual liberty, see Martha Minow, 'Putting up and putting down: tolerance reconsidered', in Mark Tushnet (ed.), *Comparative Constitutional Federalism: Europe and America,* New York, Greenwood, 1990, pp. 77–113; Franz Neumann, 'Federalism and freedom: a critique', in Arthur MacMahon (ed.), *Federalism: Mature and Emergent,* New York, Russell & Russell, 1962, pp. 44–57.

25 As he put it, 'the most common and durable source of factions has been the various and unequal distribution of property'. A lesser concern was the periodic schisms within the Protestant churches, which often gave rise to upsurges of religious conflict.

26 Philip Resnick, 'Toward a multination federalism', in Leslie Seidle (ed.), *Seeking a New Canadian Partnership: Asymmetrical and Confederal Options,* Montreal, Institute for Research on Public Policy, 1994, p. 71.

27 If the United States is the paradigm of territorial federalism, what is the prototype of multinational federalism? Elazar argues that Switzerland is 'the first modern federation built upon indigenous ethnic and linguistic differences that were considered permanent and worth accommodating'; see Daniel Elazar, 'The Role of federalism in political integration', in D.Elazar (ed.), *Federalism and Political Integration,* Ramat Gan, Turtledove Publishing, 1987, p. 20. Yet, as Murray Forsyth notes, the old Swiss confederation, which existed for almost five hundred years, was composed entirely of Germanic cantons, in terms of ethnic origin and language. While French- and Italian-speaking cantons were added in 1815, the decision to adopt a federal structure was not primarily taken to accommodate these ethnolinguistic differences. According to Forsyth, the Canadian federation of 1867 was the first case where a federal structure was adopted to accommodate ethnocultural differences. This is reflected in the fact that the 1867 Constitution not only united a number of separate provinces into one country, it also divided the largest province into two separate political units—English-speaking Ontario and French-speaking Quebec—to accommodate ethnocultural divisions, see Murray Forsyth, 'Introduction,' in M.Forsyth (ed.), *Federalism and Nationalism,* Leicester, Leicester University Press, 1989, pp. 3–4.

28 Some of the remaining fourteen Communities are not simply regional divisions, but form culturally distinct societies, even if they are not self-identified as distinct 'nations'. This is true, for example, of the Balearic Islands, Valencia and Asturias, where distinct languages or dialects are spoken. But many of the Autonomous Communities do not reflect distinct ethnocultural or linguistic groups. For a discussion of Spain's Autonomous Communities, and their varying levels of ethnocultural distinctiveness, see Audrey Brassloff, 'Spain: the state of the autonomies', in Forsyth (ed.), *Federalism and Nationalism,* pp. 24–50.

29 See Citizen's Forum on Canada's Future, *Report to the People and Government of Canada,* Ottawa, Supply and Services, 1991, figure 2, p. 158. See also Philip Resnick, p. 73, and the references in note 31 below.
30 See the references in note 5 above.
31 On English-Canadian opposition to special status, see Alan Cairns, 'Constitutional change and the three equalities', in Ronald Watts and Douglas Brown (eds), *Options for a New Canada,* University of Toronto Press, 1991, pp. 77–110; David Milne, 'Equality or asymmetry: why choose?', in ibid., pp. 285–307; Andrew Stark, 'English-Canadian opposition to Quebec nationalism', in R.Kent Weaver (ed.), *The Collapse of Canada?,* Washington DC, Brookings Institution, 1992, pp. 123–58. Stephane Dion, 'La fédéralisme fortement asymétrique', in Seidle (ed.), *Seeking a New Canadian Partnership,* pp. 133–52, cites a poll showing 83 per cent opposition to special status. See also the articles by Resnick and Milne in ibid. A certain amount of *de facto* asymmetry in powers has been a long-standing aspect of Canadian federalism, but, as these authors discuss, most English-Canadians have been unwilling to formally recognise or entrench this in the constitution, let alone to extend it.
32 Brassloff, p. 44.
33 Charles Taylor, 'Shared and divergent values', in Ronald Watts and D.Brown (eds), *Options for a New Canada,* Toronto, University of Toronto Press, 1991, pp. 53–76; Jeremy Webber, *Reimagining Canada: Language, Culture Community and the Canadian Constitution,* Montreal, McGill-Queen's University Press, 1994, pp. 232–51.
34 English-Canadians often say to Quebecers, 'Why can't we all be Canadians first, and members of provinces second?', without realising that this involves asking the Québécois to subordinate their national identity, whereas for English-Canadians it simply involves strengthening their national identity *vis-à-vis* their regional identity.
35 Philip Resnick, p. 77.
36 As I note below (note 41), changes to the boundaries of the Northwest Territories will soon create a new nationality-based unit, controlled by the Inuit, to be known as 'Nunavut'.
37 Petr Pithart, 'Czechoslovakia: The loss of the old partnership', in Seidle (ed.), *Seeking a New Canadian Partnership,* p. 164.
38 M.Fernandez, quoted in Brassloff, p. 35
39 For an attempt to develop a workable model of asymmetrical federal representation, see Philip Resnick, op. cit; cf. my 'Group representation in Canadian politics', in Leslie Seidle (ed.), *Equity and Community: The Charter, Interest Advocacy, and Representation,* Montreal, Institute for Research on Public Policy, 1993, pp. 61–89.
40 For a survey of various forms of asymmetrical federalism, see Elazar, *Exploring Federalism,* pp. 54–7; and Dion, op. cit.
41 Two exceptions would be the Navaho in the American Southwest, and the Inuit in the Canadian Northwest. And indeed the boundaries of the Northwest

Territories in Canada are being redrawn so as to create an Inuit-majority unit within the federation.

42 Elazar, *Exploring Federalism,* p. 229. For the relation of Indian self-government to federalism, see Frank Cassidy and Robert Bish, *Indian Government: Its Meaning in Practice,* Halifax, Institute for Research on Public Policy, 1989; J.A.Long, 'Federalism and ethnic self-determination: native Indians in Canada', *Journal of Commonwealth and Comparative Politics,* vol. 29/2, 1991, pp. 192–211; Judith Resnik, 'Dependent sovereigns'; David Elkins, *Where Should the Majority Rule? Reflections on Non-Territorial Provinces and Other Constitutional Proposals,* University of Alberta, Centre for Constitutional Studies, 1992.

43 On Puerto Rico's status, and the limits of potential statehood, see Alvin Rubinstein, 'Is statehood for Puerto Rico in the national interest?', *In Depth: A Journal for Values and Public Policy,* Spring 1993, pp. 87–99; Aleinikoff, op. cit.

44 The right of national groups to self-determination is affirmed in international law. According to the United Nations Charter, for example, 'all peoples have the right to self-determination'. However, the UN has not defined 'peoples', and it has generally applied the principle of self-determination only to overseas colonies, not internal national minorities, even when the latter were subject to the same sort of colonisation and conquest as the former. This limitation on self-determination to overseas colonies (known as the 'saltwater thesis') is widely seen as arbitrary, and many national minorities insist that they too are 'peoples' or 'nations', and, as such, have the right of self-determination.

45 I should emphasise that I am speaking of political perceptions, not historical facts. A rigorous historical examination may show that the existence of the national minority as a separate people did not predate that of the larger country. In some cases, the sense of national distinctiveness arose concurrently with the development of the larger federation, rather than preceding it, so that the original formation of the larger country was not, historically speaking, a 'federation of peoples'. While nationalist leaders often imply that their nation has existed since time immemorial, historians have shown that the sense of national distinctiveness is often quite recent, and indeed deliberately invented; see Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism,* London, New Left Books, 1983; Ernest Gellner, *Nations and Nationalism,* Oxford, Blackwell, 1983. What matters, however, is not historical reality, but present-day perceptions. If a minority group today has a strong sense of national identity, and a strong belief in its right of self-government, then it will tend to view the federation as having only derivative authority, whatever the historical facts.

46 I noted earlier that immigrants are increasingly demanding special political recognition in the form of certain 'polyethnic' rights. But this is rarely a threat to political stability, since in making these demands, immigrants generally take the authority of the larger political community for granted. They assume, as John Rawls puts it, that citizens are members of 'one co-operative scheme in perpetuity' (*A Theory of Justice,* Oxford, Oxford University Press, 1972).

Immigrants assume that they will work within the economic and political institutions of the larger society, demanding only that these institutions be adapted to reflect the increasing cultural diversity of the population they serve. National minorities, by contrast, question the legitimacy and permanence of the larger country.

47 To reduce this danger, federal governments have encouraged national minorities to identify with, and feel loyalty towards, the federal government. This new identification, it is hoped, would then compete with, and possibly even supersede, their original national identity. However, the historical record suggests that these efforts have limited success. See, on this, Kenneth Wheare, 'Federalism and the making of nations', in A.MacMahon (ed.), *Federalism Mature and Emergent,* pp. 28–43; Robert Howse and Karen Knop, 'Federalism, secession, and the limits of ethnic accommodation: a Canadian perspective', *New Europe Law Review,* vol. 1/2, 1993, pp. 269–320; Wayne Norman, 'Towards a normative theory of federalism', in Judith Baker (ed.), *Group Rights,* University of Toronto Press, 1994; and my *Multicultural Citizenship,* cit., ch. 9.

48 Of course, this is only a prima facie claim, since the territory encompassed by the federal subunit may include the homeland of other national groups. This is a serious issue in Quebec, where the northern part of the province is the historic homeland of various indigenous peoples. These indigenous groups argue that their right of self-determination is as strong as that of the Québécois, and that if Quebecers vote to secede, they may decide to stay in Canada, so that an independent Quebec would only include the southern part of the province. See, on this, Mary Ellen Turpel, 'Does the road to Quebec sovereignty run through Aboriginal territory?', in D.Drache and R.Perin (ed.), *Negotiating with a Sovereign Quebec,* Toronto, Lorimer, 1992.

49 On the importance of external threats in the formation and maintenance of federations, see Lemco, op. cit., chapter 8. This is particularly important for understanding the Swiss federation. Switzerland is often cited as an example of a stable multinational federation, with a strong sense of shared loyalty. But what made the development of a Swiss patriotism possible was the shared experience, over some five hundred years, of having common enemies, and having to rely on each other's military support. Insofar as international bodies reduce the threat of war, the result, paradoxically, may be to undermine one of the few factors which supported the development of stable multinational federations.

50 Pithart, p. 198.

51 For example, even if Canadian federalism eventually fails, it would not have been a moral failure. On the contrary, I would argue that it has been a remarkable moral success (whatever happens with Quebec), since it has enabled Canadians to achieve prosperity and freedom with an almost complete absence of violence. Moreover, federalism has made possible the development of strong liberal and democratic traditions within both English and French Canada. As a result, should Canadian federalism fail, the result would almost surely be two peaceful and prosperous liberal democracies where there used to be one. Multinational

federalism in Canada may prove to be just a transitional phase between British colonisation and the birth of two independent liberal-democratic states; if so, it will have been a good midwife. For a more detailed evaluation of the prospects for federalism in Canada, see my *Finding Our Way: Ethnocultural Relations in Canada,* Toronto, Oxford University Press, forthcoming.

52 In developing his well-known contractarian theory of distributive justice, John Rawls argued that the parties to the social contract should view themselves as members of ‘one co-operative scheme in perpetuity’. This might be a reasonable assumption in the case of unitary states or territorial federations. But it is not a plausible assumption, either sociologically or morally, in the case of multinational federations.

8
National self-determination and national secession
Individualist and communitarian approaches

Simon Caney

During the last decade a large number of nations have sought to secede. In the Baltic region Latvia, Lithuania and Estonia have declared independence. In Yugoslavia, Slovenia, Croatia, Macedonia and Bosnia-Hercegovina all declared independence. Furthermore, on 1 January 1993 the Czechs and Slovaks dissolved their union and formed two independent states. Moreover, in other states there are secessionist movements who have not attained what they seek. Some French-speaking Québécois, some Scots and a small number of Basques and Catalans demand self-determination. In this article I want to consider whether *nations* should be allowed to secede. To answer this question I shall begin by considering whether national self-determination is defensible and then ask whether this justifies national secession.[1]

Many arguments have been given to defend national self-determination. Harry Beran has argued that a commitment to individual 'freedom' justifies self-government, and one might use his argument to defend national self-determination (section I). He has also argued that a commitment to both 'sovereignty' (section II) and the principle of 'majority rule' entitle people to self-government (section III). Others have given other arguments. David Miller, for example, has argued that distributive justice is best promoted if nations are self-governing (section IV), and that collective action problems would best be overcome if nations were given statehood (section V). Both these arguments would thus imply that national secession is legitimate to create nation-states. An alternative, more communitarian, approach might argue that groups such as nations have moral importance, and as such are entitled to be self-governing (section VI). Additionally, some, like Neil MacCormick, have proposed a 'Kantian' argument for national self-determination (section VII). All of these arguments, I shall suggest, are unconvincing.

I shall then present three more persuasive arguments in defence of the proposition that nations are entitled to secede from multinational states to create their own nation-state. These are:

(a) the ‘well-being’ argument: this maintains that self-determination and secession are legitimate because and to the extent that they promote the well-being of the members of a nation (section VIII).
(b) the ‘Rousseauean’ argument: this maintains that self-government and secession are legitimate because they create an association in which people’s ‘autonomy’ is furthered (section IX).
(c) the ‘injustice’ argument: this maintains that nations are entitled to secede because and to the extent that this is necessary to avoid unjust treatment at the hands of their existing state (section X).

In the penultimate section, I then consider some misgivings one might have about national secession (section XI). The final section then considers the conditions that must be satisfied before national secession is justified (section XII).

Before I begin, however, four points should be made:

1 First, since I shall be discussing the justifiability of national self-determination, we need a working definition of ‘nationality’. How to define a nation is, of course, a matter of considerable dispute. One very common—and, I think, the most plausible—account maintains that a group of individuals constitute a nation if they define themselves as such and if they share a common culture and history.[2]
2 Secondly, it is important that we have a clear understanding of the terms ‘national self-determination’ and ‘secession’. National self-determination can be understood in a strong or a weak sense. In the strong sense it insists that a nation be given statehood, whereas in the weak sense it requires only that a nation be given some form of self-government. Weak national self-determination is thus compatible with a multinational state in which nations are given some political autonomy.[3] It is clear that the weak notion of self-determination can encompass differing degrees of self-determination, including confederations, federations, consociational democracies, and unitary states with sub-national autonomy (i.e. regional parliaments, local governments, and so on). Most who defend national self-determination advocate giving nations statehood, but some are explicit that if this is not possible nations should be given self-government in a weaker form.[4]
3 The term ‘secession’ also needs to be defined. In this article secession will be defined as follows: A community secedes when it breaks away from its present state and founds its own independent state.[5] Secession thus involves the creation of a new state with sovereign jurisdiction over its

citizens. Some would add that an adequate definition of secession would include a reference to territory.[6] Buchanan writes that '[s]ecession necessarily involves a claim to territory'.[7] On my account, however, secession and self-determination are concerned primarily with the relationship between the state and a people (in this case a nation). Land is of derivative importance: if a state has authority over a group of individuals, it thereby has authority over the land that they legitimately possess. In addition, if a nation is entitled to secede, then its members are entitled to take their legitimately owned property (including land) with them to the new state. The relationship between secession and territory is thus a contingent, rather than a necessary, relationship, although it is a contingent relationship that in reality always applies.[8]

4 It is also worth distinguishing between two approaches to justifying national self-determination—right-based and goal-based.[9] A right-based approach argues that members of a nation have a right to national self-determination. A goal-based approach, by contrast, maintains that national self-determination is a desirable goal. Suppose, for instance, that one defends national self-determination on the grounds that this reduces international instability. This is best understood as a goal-based account (although one could perhaps maintain that people have a right to live in a stable political system).

Now that we have some understanding of nationality, national self-determination and secession, let us consider some arguments given in defence of national self-determination and national secession.

I

Several important justifications of secession have been given by Harry Beran, who has published a considerable amount on this issue.[10] In an important article published in 1984 he outlines three defences of secession, and it is worth examining whether these arguments would justify national self-determination and secession.

His first argument is right-based and begins with the assumption that freedom is valuable. It then argues that this implies that government is legitimate only if individuals consent to it.

Because of liberalism's commitment to freedom as an ultimate value, liberals see the ideal society as one that comes 'as close as a society can to being a voluntary scheme'. This…mean[s] that all relationships among sane adults in such a society should be voluntary.[11]

Consequently, individuals are entitled to set up their own state.[12]

One problem with this argument, however, is that it is not clear why a commitment to liberty *does* imply that a government is legitimate only if it is one to which individuals consent. One could—without contradiction—argue that individuals should be free and that a state which protects their liberty is legitimate regardless of whether the individuals consent to that state.[13] In other words, one could argue that what follows from the worth of liberty is simply that the state has a duty to maintain its citizens' liberty. Indeed, Rawls, whom Beran quotes in the passage reproduced above, does not argue that accepting the ideal of liberty entails that a state has authority only if its citizens consent. Expressed in another way, one can distinguish between the questions 'who should rule?' and 'how should the rulers govern?' and argue that a commitment to liberty provides an answer to the second question.[14] The 'freedom' argument thus does not justify national self-determination (nor secession).

II

Beran does give a second right-based argument in defence of self-determination and secession which draws on the idea of 'sovereignty'.[15] He assumes that sovereignty resides with the people:

> To ascribe political sovereignty to the people is to claim that moral rights of rulers can be derived only from the creation or at least voluntary acceptance of certain political arrangements by the people. It is to claim that there can be no political authority without the consent of the governed.[16]

Legitimate government thus requires the consent of the people.

One problem with an appeal to 'popular sovereignty' is that it is not clear who should count as 'the people'. Indeed, who one chooses to count as the 'people' will affect the answer as to whether a particular secession is justified or not. Consider a multinational state which contains a national minority: is there not popular sovereignty under this multinational state if the people as a whole are self-governing? The people are sovereign in a democratic multinational state, in the sense that they are choosing those who make the political decisions. Consider, for instance, the vote in France in 1988 on the issue of whether New Caledonia should be allowed to secede from France.[17] In this case, all French citizens were entitled to vote, and accordingly New Caledonia was denied permission to secede. Perhaps a different result would have been reached if only the New Caledonians had been polled. Invoking what the

'people' want is therefore an unhelpful approach: part of the problem is that it is not clear who is the relevant constituency. Sir Ivor Jennings' famous statement is entirely apposite: 'On the surface it seemed reasonable: let the people decide. It was in fact ridiculous because the people cannot decide until someone decides who are the people'.[18]

Beran, however, makes it clear that one has to interpret the idea of sovereignty in an individualistic way. According to his account of sovereignty the state has authority over an individual if that individual consents: 'sovereignty must be composed of the moral rights of individuals to decide their political relationships'.[19] Why should we accept this notion of sovereignty? Beran suggests that this follows from valuing freedom, but, as we have seen, this argument is not convincing. Furthermore, the consent theory of political authority on which this account of sovereignty rests is problematic. It is, for example, surely implausible to claim that a state has authority over an individual only if he or she consents. Surely a state is entitled to restrict people in its territory if they would otherwise commit unjust acts. An individual's consent to a state is therefore not required for that state to possess authority over that individual. A more plausible account of authority, I suggest, can be found in Raz's 'normal conception of authority', according to which a state has authority to the extent that it serves the interests of the people.[20]

III

Beran gives a third related argument for accepting self-determination and secession which draws on the idea of 'majority rule'.[21] Like the two preceding arguments it invokes people's rights, in this case, their right to choose who governs them. He argues that, when deciding the borders of states, people have a duty to comply with the political choices made by a majority if either:

(a) they accept the majoritarian procedure,[22] or
(b) they do not accept the majoritarian procedure, but:

  (i) no one is able to emigrate from the state in question,[23]
  (ii) it is crucial that a policy is enacted with which everyone in that society complies,[24] and
  (iii) 'a majority vote is a fair procedure for making the decision'.[25]

Now suppose that a group (group X) can emigrate from a state. In such a situation, according to Beran, one cannot use (b) to demonstrate that this group has an obligation to accept the authority of the present state. Consequently, it

follows that group X should accept the political choices made by a majority only if (a) holds: they accept the majoritarian procedure. But, Beran says, they will accept the majoritarian principle only if they can choose who will vote. As Beran puts it:

> in those cases where separatists can leave an existing group, the use of the majority principle creates a moral reason for their accepting the outcome of a vote only if they have given their agreement as to who is permitted to have a vote in the secessionist referendum.[26]

Accordingly, group X can decide who should be polled, and they will probably decide that the vote should take place in the seceding territory. In short, the principle that majority rule is a legitimate way of deciding who is to be in a polity requires that everyone accept this (except under the conditions specified by (b)), and this requires the permissibility of secession.[27]

This rather complicated argument can be challenged at several stages. First, it is unclear why we should accept (a) and (b), and Beran does not adduce any considerations in their defence. He simply asserts these conditions. One might, for example, argue that a state operating with majority rule has authority over people even if they do not accept the majoritarian procedure. Can the state's legitimacy not derive from its implementing just and fair legislation?

Secondly, even if we accept (a) and (b), these alone do not justify Beran's conclusion. Beran argues that because a seceding group would not accept the majoritarian principle it should be allowed to choose who should be included in the referendum. Such a measure secures the agreement of the secessionists but it may well not enjoy the acceptance of members of the existing state who do not wish group X to secede (group Y). In this event a political decision is being made in which a group does not accept the majoritarian procedure. So condition (a) is not met, and, if we assume that they are able to emigrate, condition (b) is also inapplicable. Given this, those belonging to group Y have no reason to accept Beran's proposal. Beran's suggestion that the secessionist movement can choose the constituency who votes on the issue thus will win the consent of the would-be seceders but may lose the consent of those who oppose secession. Indeed, it is difficult to see what kind of arrangements could satisfy both (a) and (b).

IV

Having considered Beran's consent-based arguments, I now want to consider two defences of national self-determination given by David Miller, which, by

implication, justify the secession of nations from multinational states. The first defence argues that national self-determination best furthers ideals of distributive justice. Miller argues that, as a matter of justice, members of nations have special obligations to fellow nationals which they do not have to people who do not belong to their nation. In Miller's view we have *special* obligations to members of our own nation and *global* obligations to all human beings.[28] Miller, then argues, that we can best fulfil our obligations to fellow nationals if nations are granted political power. It is, Miller argues, much more difficult for members of a nation to fulfil their national obligations in a multinational state.[29]

Miller's defence, however, rests on a highly questionable theory of distributive justice. Miller, like many communitarians, assumes that individuals acquire special obligations simply in virtue of belonging to communities. This view faces two problems. First, it is far from clear that belonging to a community does imply special obligations to other members of that community. This view appears attractive when we consider belonging to a family or being a friend. It is plausible to claim that one has special obligations to other members of one's family and to one's friends. This, however, does not show that we have obligations in virtue of belonging to a group. It is implausible to argue, for example, that racists have special obligations to fellow-racists and that anti-Semites have special obligations to other anti-Semites.[30] If one did hold these views, one would have to think that someone who belongs to a racist culture who did not further the interests of fellow-racists above others is acting immorally because she is not fulfilling her *duty*. A more plausible view is, surely, that one has special obligations to those who belong to one's community only if that community is 'morally valuable'. Accordingly, to establish that one has special obligations to fellow nationals, one has to show that a nation is a morally satisfactory form of community.[31]

Secondly, and more importantly, even if one concedes Miller's assumption that nationality implies special obligations, this is insufficient for his argument. One might agree with Miller that belonging to a nation creates obligations to one's fellow nationals in the same way that we normally think that belonging to a family creates obligations to fellow members of one's family. But this does not establish that these are *enforceable* obligations. After all, we do not think that friends should be compelled to care for their friends. Nor do we think that someone should be forced to put the interests of his sister or brother above those of complete strangers. Given this, why should we accept Miller's contention that a political system should be created to compel us to devote more of our money to fellow nationals than to foreigners? If these other special

obligations are non-enforceable, then why should national obligations be enforceable?[32]

V

Miller gives a second defence of national self-determination, which is best described as a goal-based argument. He argues that states need nations if they are to perform some important roles, like, for example, overcoming collective action problems and providing public goods. He then argues that 'the provision of public goods such as a clean and healthy environment' requires a society in which people are willing to co-operate with others.[33] Since one very strong adhesive is a sense of nationality, states will be able to perform their roles when the people are united by national ties.[34] Nations should therefore be self-governing. A multinational state, by contrast, has no similar political culture of willingness to co-operate on which it can draw.

This defence of national self-determination is, however, also flawed. First, it is questionable whether the overcoming of collective action problems requires nationality. Miller is right to emphasise the significance of 'trust' in overcoming collective action problems but we have no reason to accept his assumption that nationality is the only or best form of trust. Collective action problems can be overcome at a sub-national level by giving regions some political autonomy. As Robert Putnam has pointed out in his study of Italian democracy, citizens in the Northern regions have been able to draw on long-standing civic traditions to co-operate to provide public goods.[35] It is also possible that sufficient trust can exist between citizens in multinational states. A common nationality is therefore not the only source of cohesion. Can *citizenship* not also induce a sense of reciprocity?[36]

Secondly, giving nations statehood may well exacerbate the difficulties of overcoming other collective action problems. Some of the most pressing collective action problems arise with global problems such as environmental pollution. Now, giving nations statehood will clearly produce more states than would exist in a world in which some states are multinational. And the more actors there are, the more difficult it will be to secure international agreement. Consequently, granting nations self-government would worsen the prospects of solving some collective action problems.

A third point should also be noted. On the surface it might appear that Miller's case is supported by the evidence. Multinational states, it is often claimed, experience greater distrust between citizens, and this might appear to lend support to Miller's argument. But this inference would be hasty. Nations are not always static and given. It is clear that, in *some* cases, states have been

able to create a sense of national identity. Arguably Britain, Australia and the United States all illustrate this point. Accordingly, a concern with ensuring that states are bound together by a sense of national identity need not entail giving existing nations statehood.

Finally, we should record some unattractive implications of Miller's argument. If the resolution of collective action problems requires commonality then this would justify the state's adoption of immigration policies that keep out those who are not 'one of us'. In addition, it would give the state a prima facie reason to expel those who do not share the common 'national identity'. That is, it would justify a mild version of ethnic cleansing.

It follows, therefore, that the resolution of collective active problems does not, of necessity, justify nation-states. Consequently, Miller's argument does not show that nations should be permitted to secede from multinational states.

VI

Given the failure of the arguments for national self-determination considered so far, one might adopt an alternative, more communitarian, approach to the question of whether groups are entitled to be self-governing. In his work on group rights, Vernon van Dyke maintains that the liberal tradition is inadequate because it is preoccupied with the rights of individuals.[37] His writings are sometimes ambiguous, but at times he clearly states that groups, like nations, have intrinsic moral value. He writes, for example, that 'a theory of justice must concern itself with groups as well as with individuals'.[38] He adds '[i]t is arbitrary to assume that justice is only for individuals'.[39] Individuals, he writes, are not the only entities that possess moral value: so do groups. Accordingly, we should have a political theory which respects individual and group interests through a system of individual and group rights. If one takes this view, then groups such as nations have a right to 'choose' who should govern them and to which political system they belong.

This defence of national self-determination and secession is, however, problematic for two reasons. First, van Dyke moves from a plausible premise but mistakenly infers from it that groups have intrinsic value. He makes the sound point that individuals belong to communities, and that any political theory that neglects the social character of persons is for that reason implausible. But this does not show that groups have independent moral worth. What it shows is that, if we are to recognise the worth of individuals, we should be attentive to the social nature of individuals.

Furthermore, van Dyke's communitarianism is open to the same type of objection that Rawls makes against utilitarianism, namely that it fails to 'take

seriously the plurality and distinctness of individuals'.[40] Van Dyke states that the legitimacy of political arrangements depends, in part, on whether communities do or do not consent to these political arrangements.[41]

It is, however, inaccurate to think of nations as tightly integrated entities (in the way that individual human beings are): they consist of separate individuals with many divergent beliefs and values. It would be a mistake, therefore, to make an analogy between individuals and groups and to argue as a consequence that, like individuals, groups (including nations) have intrinsic value and should be allowed to be self-governing. To suppose that individuals and nations are analogous simply ignores the plural and heterogeneous nature of nations which, for all their commonality, consist of different individuals.

VII

How else might we justify national self-determination and hence the secession of nations from multinational states? Neil MacCormick has advanced a right-based 'Kantian' argument for national self-determination that is grounded in Kant's principle of respect for persons. As he writes:

> The Kantian ideal of respect for persons implies…an obligation in each of us to respect that which in others constitutes any part of their sense of their own identity. For many people, though quite probably not for all, a sense of belonging to some nation is an element in this precious fabric of identity. This comprises…a will or hope for continuity into the future; and also consciousness of a form of cultural community which requires protection and expression in appropriate institutional forms.[42]

His argument thus makes the following three claims:

(P1) Persons should be treated with respect.
(P2) Respect for persons entails respecting integral features of their personality, such as their membership of a nation.
(P3) Respect for a person's membership of a nation requires that their nation be given some political autonomy.[43]

In this argument (P1) is relatively uncontroversial but both (P2) and (P3) are questionable.

Some critics have objected against MacCormick's argument that (P3) is implausible. They question whether respect for a person's nationality requires that this person's nation be given political sovereignty.[44] David George, for

example, writes that 'it is an obvious *non-sequitur* that respect for nations implies their organisation into separate states with separate governments'.[45] George's point, however, misinterprets MacCormick, who stresses that his argument does not necessarily entail that nations should be granted statehood.[46] MacCormick is trying to show only that nations should be given some political autonomy (and this is compatible with devolution within a multinational state). Nonetheless, one could give a revised version of George's criticism, objecting that MacCormick has not shown that respect for nationality requires granting that nation *any* political autonomy (let alone political sovereignty). George writes:

> Respect for nations (as for families and religious communities) out of respect for persons who are their members minimally requires that the state protect them from attacks as it protects the persons of their individual members. And it is by no means self-evident that, while family groups and religious communities can be protected by and within an existing state, the same is also not true of nations. The idea that nations can only be secured in all circumstances by being organised as independent states is an extra, hidden and empirically dubious, premise of the argument.[47]

MacCormick can, however, make several points in response to this objection. First, whilst it is true that respect for a person's nationality 'minimally' requires protecting them, it also requires more than that. It requires allowing them to express this identity as long as this does not harm others. Secondly, the comparison with families and religious communities does not damage the nationalist case. We *do* accept that respect for the family implies that families should be given some autonomy, as groups, to rule their lives: why can one not analogously argue that nations should too? Similarly, respect for religions may quite plausibly require giving them some political control over their lives when that is feasible (i.e., among other conditions, they are geographically concentrated). Thirdly, the claim that nations are best furthered by giving them political autonomy is, contra George, not far-fetched. If nations have some political autonomy, then they can use the educational system to foster their national culture. Similarly, they could pass laws promoting the public use of their language and employ the state-owned television network to broadcast programmes furthering their national history, literature, music and culture. Moreover they have a greater interest in promoting their national culture than would a multinational state. Nation-states thus have the incentive and the ability to promote the culture of their nation.

MacCormick's argument does, however, face some problems. In particular, it is unclear why one should respect the features of a person's character by which he or she defines themselves. What if a person's anti-Semitism or chauvinism is an integral part of who they are? To claim here that this feature of their personality should be respected is, of course, utterly unacceptable. So to establish that one should respect someone's nationality one must show that nationality is not obnoxious in the same way that racism and sexism are.[48] One must establish that nations are worthy of respect.

One point that MacCormick makes might be used to reply to this objection. MacCormick stresses that individuals, if they are to develop, require a specific social culture. Like Charles Taylor, he emphasises the importance of 'social contexts that are essential to their development and formation'.[49] MacCormick appears to suggest that being a member of a nation is important for this maturation (unlike Taylor who does not specifically mention nations). MacCormick might then reply that one can defend respect for nationality on the grounds that nationality is crucial for the fostering of individual autonomy. This line of defence is, however, unconvincing. The main problem is that it is unclear why individuals need a *national* culture. Indeed, it is clear that frequently individual autonomy is fostered by an international culture. A contemporary American's personality (i.e., his conceptual framework, his assumptions, talents and desires) for example, is deeply shaped by a culture that transcends America's borders. The culture which nurtured him, for instance, contains the English language (which is, in turn, derived from Latin and Greek), Arabic mathematics, Japanese technology, a religious outlook that originated from the Middle East, and a set of assumptions shaped by the Enlightenment and Western civilisation in general. Membership of a nation need not be particularly important for self-development. Respect for nationality cannot therefore be defended on the grounds that nationality is important for autonomy. The second objection thus remains: why should a person's nationality be treated with respect?[50]

VIII

Having criticised seven justifications of national self-determination I now want to outline three more persuasive arguments.

The first powerful defence of national self-determination that I shall discuss argues that national self-determination is desirable because it furthers people's well-being.[51] The argument makes three claims:

(P1) Political institutions that further people's well-being are *pro tanto* valuable.
(P2) An individual's membership of a nation furthers his or her well-being.
(P3) A nation-state can best further a nation's practices and culture.

Therefore:

(C) National self-determination is, *ceterls paribus,* valuable.

Let us consider each of the steps. (P1) is surely a plausible assumption: that a political arrangement furthers people's well-being is a reason in favour of that political arrangement.

(P2) is more controversial. In its defence one might make two points.[52] First, (i) as Margalit and Raz argue, members of a nation draw on their culture to select ways of life instantiated in that culture. A national culture is therefore an important source of conceptions of the good.[53] Secondly, (ii), one can plausibly argue that belonging to a community is one element of a fulfilling life. We all value being a part of a community. Accordingly one can value nations for providing this good.

The next step in the argument, (P3), can also be supported by two arguments. First, following Margalit and Raz, one might argue on *instrumental* lines that a multinational state is less likely to advance the interests people have in their national culture.[54] Nations should thus be allowed to be self-governing, and accordingly nations in multinational states should be granted political autonomy. One could, however, also advance what Margalit and Raz call the *intrinsic* argument, arguing that, even if a nation-state is not instrumentally better at promoting national traditions, the promotion of a national identity necessitates its embodiment in political institutions. A nation-state has symbolic importance for a national culture which a multinational state cannot provide.[55] Margalit and Raz criticise this intrinsic approach, arguing that members of a nation can enjoy this public recognition of their nationality without needing a nation-state. The public validation of their nationality 'does not require a political organisation whose boundaries coincide with those of the group. One may be politically active in a multinational, multicultural polity'.[56] This objection, however, does not refute the intrinsic argument. It might be true that members of a nation can experience some 'political expression' of their national identity in a multinational state.[57] But this does not show that they could not acquire even greater political expression were they to live in their own nation-state. Under the present political arrangements in the United Kingdom, for instance,

the Scots have political recognition in the sense that there are Scottish Members of Parliament in the House of Commons. But it is clear that, for some Scots, this is insufficient. Their well-being would be furthered to a greater extent if they were granted greater political recognition. The value to people of a political *recognition* of their identity can be tremendously important. Margalit and Raz thus fail to recognise the *symbolic* and *expressive* importance of granting nations political sovereignty.[58]

And if we accept (P1), (P2) and (P3), we must accept (C), the conclusion that national self-determination is, *ceteris paribus,* valuable. Of course, this argument does not justify national self-determination *tout court.* As Margalit and Raz point out, their considerations in defence of self-determination can be overridden if a nation-state treats its members or those who are not its members unjustly.[59]

The 'well-being' argument might be criticised in several ways. I shall consider three possible objections:

(a) the first, expressed by Buchanan, adds more stringent provisos to this argument
(b) the second argues that (P2) is implausible, and
(c) the final maintains that the defence of (P2) is inadequate.

Let us begin with Buchanan's discussion. In his treatment of what I have called the 'well-being' argument he specifies five conditions which the argument must meet if secession is to be legitimate and concludes that '[o]nly rarely will the need to preserve a culture justify secession'.[60] Buchanan's five conditions are as follows:

1 The culture in question must in fact be imperilled.
2 Less disruptive ways of preserving the culture (e.g., special minority group rights within the existing state) must be unavailable or inadequate.
3 The culture in question must meet minimal standards of justice (unlike Nazi culture or the culture of the Khmer Rouge).
4 The seceding cultural group must not be seeking independence in order to establish an illiberal state, that is, one which fails to uphold basic individual civil and political rights, *and* from which free exit is denied.
5 Neither the state nor any third party can have a valid claim to the seceding territory.[61]

How plausible are these conditions? And do they severely restrict the number of nations entitled to secede from multinational states? Let us consider each of

these conditions in turn. Buchanan's first condition is a very stringent condition, and it is not clear why a culture must be facing extermination before we can justify its members being enabled to promote it. Why can one not say that there is a case for self-government if that best promotes people's well-being? Surely, if a culture is valuable, then this gives one a *pro tanto* reason to enable its members to further it, even if its existence is not jeopardised. If it contributes to the richness of its members' lives, then it follows that a political arrangement that promotes it to a greater extent than alternative political arrangements is valuable. (1) is, thus, without any reason, biased against secession and partial to the *status quo*.

Buchanan's second condition, by contrast, is not too severe but would not, I argue, limit many cases for national self-determination. Buchanan is right to suggest that political mechanisms other than self-determination can permit members of nations to further their own national culture. For instance, he has argued convincingly that individual rights—such as the right to free association and free speech—enable groups to pursue their own traditions and collective ideals.[62] However, whilst these rights allow people to further their cultural commitments it is also true that granting nations the power of self-government further increases their ability to pursue their shared ways of life. Buchanan also correctly suggests that national cultures could be furthered to some extent by special group rights within a multinational state.[63] Accordingly, granting them some self-government, i.e. *weak* national self-determination (as well as individual rights) furthers their ability to promote their national traditions. Nonetheless, as was argued earlier, granting a nation-statehood has tremendous symbolic and expressive importance. Perhaps the instrumental benefits of a nation-state can be provided in other ways, but the intrinsic contribution of a nation-state cannot be created in any other way.[64]

Furthermore, the third and fourth conditions are easily met by many secessionist movements. Scottish, Québécois and Basque and Catalan secessionist movements would surely satisfy conditions (3) and (4).

This leaves Buchanan's fifth condition. This condition needs further elucidation. What would it mean to say that an existing state is entitled to the land? Buchanan outlines two possibilities: (i) the existing state is entitled to the land that those seeking national independence wish to have, or (ii) the existing state is not entitled to the land under consideration. Suppose that a state is already entitled to that land. In such a case, Buchanan argues, the claims of the nationalists to that land may be outweighed because:

(a) to decide otherwise would treat 'valid territorial claims too lightly',[65] and

(b) to override a state's legitimate entitlement to the land in order to further a community's autonomy would lead to international chaos.[66]

In defence of (b) Buchanan argues that allowing group autonomy means having to decide who is the appropriate community, and this can only lead to disagreement and dissensus. (Consider a *Land* in Germany. If one values communal self-government, which community is it that should govern—those in that *Land,* those in Germany, or those who are members of the European Union?) Given (a) and (b), Buchanan concludes, if a state is already entitled to a piece of land others may not legitimately lay claim to it. Buchanan then considers situations where the existing state is not entitled to. the land but then points out that this does not mean that a seceding nation is entitled to it. Perhaps another community or political entity is entitled to it.[67]

Buchanan's defence of his fifth condition is, however, problematic.

It may be true that, if another political organisation (like a multinational state) is entitled to the territory under consideration, then a seceding nation is never entitled to it (although this would hold only if one makes the strong assumption that the right of the existing state in every instance takes priority over the interests of the national minority seeking secession). But what is puzzling about Buchanan's case is that it is odd to assume that others are entitled to the disputed territory: this is, in part what we are trying to discover. What would it mean to say that the multinational state is entitled to the land unless it means, among other things, that the secessionist arguments for their possession of the land are unconvincing. One cannot reach a conclusion as to the entitlement of other groups to the territory under dispute until one has considered both secessionist and anti-secessionist arguments. Buchanan's fifth condition thus runs the risk of begging the question against secession. One can know whether the secessionists or others are entitled to the territory only when one has reached a conclusion: so it would be illegitimate, therefore, to invoke the entitlement of non-secessionists at an earlier stage in the argument.[68]

In conclusion, then, (1) is too stringent and should be relaxed; (2), (3) and (4) are frequently met by nations seeking self-determination, and (5) should be rejected. Once this is done, it is clear that many national independence movements would be entitled to be self-governing. The well-being argument thus provides a powerful defence of national self-determination.

A second objection that a critic might raise against the 'well-being' argument dwells on (P2), namely the assumption that a person's national identity contributes to their well-being. One might deny that a person's national identity contributes to their well-being on the grounds that national cultures are based on myth and ignorance. This is a worrying objection, because we do care

whether our conceptions of the good embody false beliefs.[69] Indeed Raz himself makes this point very lucidly.[70] And it is frequently true that people's beliefs about their nation are false.

(a) One response to this objection is made by David Miller, who distinguishes between 'beliefs that are constitutive of social relationships and background beliefs which support those constitutive beliefs'.[71] Miller illustrates what he means by a constitutive belief with a discussion of friendship. Friends, he says, are, amongst other things, people who are concerned about each other. Now a person's belief that someone does care for him is a constitutive belief: if it is inaccurate then we would say that the latter is not really a friend.[72] Background beliefs, as their name suggests, are beliefs that support people's constitutive beliefs. How can this be applied to the nation? Miller believes that the constitutive beliefs involved in belonging to a nation include beliefs like 'we share a common history' and 'we have certain traits, customs and behaviour in common'.[73] A nation's background beliefs include, by contrast, specific historical claims (such as 'we invented printing' or 'we defended the ideals of liberty and justice'). Now Miller's claim is that it does not matter if a nation's background beliefs are false: what matters is that a nation's constitutive beliefs be true, and he claims that they frequently are. How plausible is Miller's response?

(i) Miller is right to say that some beliefs are not central to the existence of a community, and that therefore it does not matter if they are incorrect. If it transpires that the battle of Hastings occurred in 1067 and not in 1066 this would not, and should not, undermine the existence of a British national identity.

(ii) Miller is, however, wrong to argue that it never matters if background beliefs are false. Many constitutive beliefs rest on false background beliefs, and if their falsity were exposed the constitutive belief should be rejected. People are concerned not only about whether they hold the correct constitutive beliefs but also about whether some of their background beliefs are true. We should therefore distinguish between *essential* and *unessential* background beliefs. Miller discusses a case in which a family bring up a child who, unknown to the child and the family, is actually someone else's offspring. In such a case, he claims, what matters is the sense of belonging to the family. Here people have correct constitutive beliefs, since each correctly thinks the others care for him or her, and each correctly thinks that the two parents have brought up the children: it does not matter whether this relationship is grounded on a false empirical belief.[74] But it is clear that many do not share this view. People do care who their 'real' parents are. It does matter to them whether the beliefs supporting their constitutive beliefs (i.e. their background beliefs) are correct. Accordingly

it is important to them that their beliefs about their national history are not mythical. Miller's response is thus unconvincing.

(b) A more fruitful reply would, I think, distinguish between two elements of a national culture, a *cognitive* and *non-cognitive* component. The former refers to beliefs that members of a nation hold about it ('the Americans invented X, Y and Z'); the second refers to traditions, codes of behaviour, attitudes and language. Now clearly some traditions are dependent for their meaning on beliefs (say a day celebrating the triumph over an evil nation), but others are less so, and to the extent that they do not depend on propositional claims they are immune to the objection that they affirm false belief-claims. Consider, for example, a tradition not related to nationality, namely celebrating Christmas. Now, it seems entirely plausible to take part in some aspects of the festivities (giving presents to others, preparing certain traditional foods, inviting people round, visiting relatives, etc.) without believing in Christianity. Indeed most Christians do not believe some of the factual beliefs supposedly affirmed by Christianity (i.e. that Jesus Christ was born on 25 December). Nonetheless it is an important festival for them. Some aspects of belonging to a nation are, perhaps, similar to this. A French person's national identity may, for instance, consist of desires (wanting to speak French, the language of her forebears; liking French literature, music and cinema, and eating French cuisine), habits (a certain manner of dress and codes of behaviour) and national pastimes (like, for example, following the Tour de France). If this is the case, the 'argument from myth' fails to show that no aspects of one's national identity can enrich one's life. The critique of (P2) thus fails.

At this point someone might advance a third objection, namely that, even if the objection against (P2) is unsuccessful, neither of the arguments for (P2) is successful. Consider both reasons given in defence of (P2). The first drew attention to the need for a culture instantiating ways of living. The second emphasised the value of belonging to a nation as a source of well-being. One might ask, however, whether individuals require a *national* culture? Would an international culture not suffice?[75] To put the point another way: one may argue that both arguments show the value of a certain *type* of good for each individual (i.e. community) but fail to show why we should value a specific *token* (namely a person's national community).

One reply that a nationalist might make in response to this is that people need to be able to identify with a culture if they are to benefit from it.[76] Consequently, since people tend to identify with their own national culture to a greater extent than they do with other cultures, their well-being is best promoted by furthering their national culture. So, in defence of the first argument, one could claim that members of one nation will not draw from the

forms of life of other foreign cultures. Consequently, their national culture must be furthered. Similarly, one might argue along the lines of the second argument, that individuals are particularly committed to their national community. Their wish is not simply to be part of a large community: they wish to belong to a community to which they have traditionally belonged and which also distinguishes them from other people. Both defences of (P2) thus survive.[77]

It might help if the arguments of this section were summed up. I have argued that a person's membership of a nation often does contribute to their personal fulfilment; that a nation-state, on both instrumental and intrinsic grounds, can best promote national cultures; and that Buchanan's arguments do not disqualify many national independence movements. The 'well-being' argument thus gives some support to the claim that national self-determination is justifiable.

IX

A second powerful defence of self-determination is what I have called the 'Rousseauean' argument. In *The Social Contract,* Rousseau famously sought

> to find a form of association which will defend the person and goods of each member with the collective force of all, and under which each individual, while uniting himself with the others, obeys no one but himself, and remains as free as before.[78]

His answer, of course, was that there should be small self-governing communities. In this way people remain autonomous. A similar argument can be given in defence of national self-determination. If nations are given political autonomy (either in the form of statehood or devolution) its members achieve what Miller has felicitously called 'collective autonomy'.[79] The point is that, with nation-states, people are less alienated from their political system. Through their political institutions, the people are collectively acting to affirm their identity. They are not estranged from their polity and are to a large extent reconciled with their social and political environment. They are in that sense autonomous.[80] Now this does not assume that nations are homogenous and that decisions made in a nation-state will be unanimously supported by the citizenry. It assumes only that, because of their national commonality, the decisions reached by their political institutions express *to a greater extent* than otherwise the interests of each individual.

Rousseau is often regarded as illiberal but the argument I am making appeals to a value which liberals like John Rawls and Joshua Cohen embrace, namely the ideal of a 'well-ordered society'.[81] Rawls and Cohen use this term to describe a

political system in which the state enacts principles that are widely endorsed by its citizens, and they argue that this ideal—one in which the state is in harmony with its citizens—is prima facie valuable. Drawing on this value, my argument is that granting nations self-determination furthers this good. By enabling nations to govern themselves we increase the possibility of a state enacting policies which enjoy the widespread support of its citizens.

X

A third plausible justification of national self-determination (and accordingly secession) is that sometimes it is necessary to prevent the unjust treatment being meted to a nation in a multinational state.[82] One very obvious example of a secession that can be justified by this last argument is the secession of Bangladesh from Pakistan in 1971. East Pakistan (as Bangladesh was known between 1947 and 1971) was systematically exploited economically by West Pakistan.[83] For example, between 1965 and 1970, 64 per cent of the resources of the Five Year Plan were spent on West Pakistan and 36 per cent on the East, despite the fact that the East was more populous and more underdeveloped.[84] Similarly, this argument would justify the secession of the Kurds from Iraq, Turkey and Iran, who each, in different ways, have persecuted the Kurdish people.[85] National self-determination and thus national secession are, consequently, defensible as instrumental devices to prevent persecution and exploitation.

It is worth making two points about how this nrgument relates to the previous two.

[1] First, it is unlikely that there will be situations in which the third argument has force but the first two would not justify independence. This would require a state of affairs in which a national minority was being persecuted or economically exploited *but* the well-being of its members would not be increased by greater independence. Additionally, this would have to be a situation in which one could not move any closer to the Rousseauean objective of a polity in which, insofar as it is possible, political outcomes match the views of the people.

[2] Secondly, the first two arguments may have force even when the third does not. There may often be cases where a state does not persecute its citizens and yet the first two arguments have force, because one could, say, further promote the well-being of a national minority. It is thus possible that there will be instances where the first two arguments justify national self-determination but the third has no force.

In conclusion, then, many arguments in defence of national self-determination are unconvincing. None of Beran's three arguments are

persuasive. Similarly, Miller's claims that distributive justice and the solution of collective action problems require self-governing nations are not convincing. A communitarian claim that nations have intrinsic moral value is similarly unpersuasive, as is MacCormick's Kantian argument. More persuasive are the claims that individuals have a need for political institutions to promote their cultural commitments; that national self-determination expresses an ideal of 'collective autonomy'; and that national self-determination may be needed to prevent exploitation and injustice.

XI

Having adduced three considerations in support of the ideal of national self-determination, it is appropriate to address some misgivings that might be expressed about this ideal. Two objections frequently made are that:

(a) national self-determination could lead to rights abuses (the 'argument from rights'),
(b) secession leads to a lack of order and stability (the 'argument from order').

Neither justifies a blanket ban on national self-determination.

Consider first the 'argument from rights'. This argument opposes national self-determination on the grounds that this threatens people's central and important rights. Now, it is true that some national governments have perpetrated awful crimes against their own people, but this should not lead to a wholesale rejection of national self-determination. Someone adhering to the latter may simply argue that national self-determination is defensible, but only if the nation in question will respect individual rights. Now, whilst this might rule out some claims for national independence, it is clear that it would not rule out many others (like, for example the Scots).

Let us now consider the 'argument from order'. It is often alleged that allowing nations to become self-governing, and thereby permitting their secession from multinational states, encourages other nations to do so and thereby jeopardises international order. Several points, however, should be made in response:

1 In some cases, it is simply inaccurate to claim that a national independence movement has triggered further demands for secession. As Beran notes, neither the secession of Norway from Sweden in 1905 nor Iceland's secession in 1944 from Denmark generated an increased demand for new

states.[86] Similarly, the secession of Singapore in 1965 did not create increased demand for independence.

2 Secondly, even if a national independence movement's success inspires others to call for independence this does not necessarily lead to *instability*. There have, of course, been quite stable transitions to independence, like for example the secession of Singapore from Malaysia.[87]

3 In addition, one should not fetishize international order. Order is not intrinsically desirable and possesses value only insofar as the condition being rendered stable has value. Consequently, that national self-determination might threaten international order does not count against national self-determination unless the present order is worth preserving. To take a concrete example, it is difficult to see the moral value of stability when what is being stabilised is the intolerant treatment of Kurds by the Iraqi, Iranian and Turkish governments. Thus the alleged instability brought about by national independence movements counts against that ideal only if it jeopardises fair and just states. If it leads to the dismantling of a system that oppresses national minorities, then it is unclear why this is a disadvantage.

4 Finally, it is worth making the point that trying to contain divergent nationalities within a multinational state may frequently generate instability and unrest. Where one nation in a multinational state dominates, this may lead to distrust and enmity. The USSR clearly exemplified this, since Russians dominated the CPSU and important state posts. It is natural in this context to expect minority nations to resent this, and for this resentment to express itself in resistance.

Neither objection thus demonstrates that nations should not be self-governing units. The case for national self-determination is thus still intact.

XII

Accepting the justifiability of national self-determination does not automatically justify secession. We need to add some additional conditions that have to be met. Different philosophers have offered different lists of preconditions: Beran lists six, Birch four, and Miller five.[88] I shall suggest three, namely:

1 The newly created nation-state must be able to survive.[89] Without this it will not be able to promote people's well-being nor attain the Rousseauean ideal; similarly, it fails to protect individuals from exploitation.

2 Second, the new state must treat its citizens justly. This requires, for example, that it respects the political and economic rights of minorities within it.[90]
3 Thirdly, the state must honour its international obligations, and thus treat people of other states justly. This requires, amongst other things, that it should not jeopardise other just political arrangements.

These conditions, I suggest, are necessary preconditions of legitimate national secession, and when combined with any of the three arguments given earlier they are also sufficient. Others have, however, given other accounts of the necessary and sufficient conditions of secession, and it is worth discussing two other potential conditions:

(a) Beran proposes an additional necessary condition, arguing that secession would be illegitimate if the secession created 'an enclave',[91] although he adds that this condition may be over-ridden.[92] But it is not clear what is morally unacceptable about an enclave. It would be unusual, and perhaps face some practical problems, but there is no principled reason why it should not be self-governing. Perhaps the thought is that it would easily be dominated by the surrounding state, but this is also true of the people in that region if they did not secede, and if they did secede they would perhaps be better equipped to protect themselves.
(b) Birch would dissent from my conditions, because he argues that secession is legitimate if the state violates an initial agreement that it made with one of the communities in that state.[93] So he would reject my necessary and sufficient conditions, arguing that one sufficient (but not necessary) condition of secession is the violation by a state of the conditions underlying an original contract. He argues, on these grounds, that the Southern slave-owning states were entitled to secede from the United States when the rule of one-free-state-one-slave-state was broken.[94] This condition is, however, extremely unattractive, since it would permit in this case slavery and exploitation. In addition, it is hard to see why present generations should be affected by what third parties (i.e. earlier generations) agreed to.

Both Beran's (qualified) necessary condition and Birch's sufficient condition should therefore be rejected.

XIII

It is appropriate to sum up my arguments. I have suggested that many arguments for national secession are unconvincing, but that national self-determination is nonetheless defensible. There is no ‘one very simple principle’ to which one can appeal to decide issues of self-determination.[95] Nonetheless three powerful considerations support national self-determination—the well-being argument, the Rousseauean ideal and the injustice argument—and, when supplemented with the three conditions given above, they justify national self-determination and national secession.[96]

NOTES

1 I thus do not address the question of whether groups other than nations (like, for example, ethnic groups) are entitled to secede. Of course, some of the arguments given in defence of national secession may also show that groups other than nations may secede.

2 For plausible accounts of the nature of nationality, which I broadly follow, see Brian Barry, ‘Self-government revisited’, in *Democracy and Power: Essays in Political Theory,* vol. 1, Oxford, Clarendon Press, 1991; David Miller, ‘ln defence of nationality’, *Journal of Applied Philosophy,* vol. 10, no. 1, 1993; David Miller *On Nationality,* Oxford, Clarendon Press, 1995, chapter 2.

3 Allen Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec.* Boulder CO, Westview Press, 1991, pp. 49–50; Allen Buchanan, ‘Secession and nationalism’, in Robert Goodin and Philip Pettit (eds), *A Companion to Contemporary Political Philosophy,* Oxford, Blackwell, 1993, pp. 588–9; Yael Tamir, *Liberal Nationalism,* Princeton, Princeton University Press, 1993, pp. 9, 75, 142–3, 150–3.

4 See Brian Barry, ‘Nationalism’, in David Miller (ed.), *The Blackwell Encyclopedia of Political Thought,* Oxford, Blackwell, 1987.

5 What if a group ceases to be governed by one state and joins itself to another? Buchanan would describe this as secession (*Secession,* p. 10), but on my definition it is not seceding, since it is not setting up its own independent state. Following Bookman, I believe that such a situation is more accurately defined as ‘irredentism’ (Milica Bookman, *The Economics of Secession,* London, Macmillan, 1993, pp. 3–4). In practice not much may hang on this distinction, since the arguments for secession may frequently also justify irredentism.

6 Lea Brilmayer, ‘Secession and self-determination: a territorial interpretation’, *Yale Journal of International Law,* vol. 16, pt 1, 1991; Buchanan, *Secession,* pp. 10–11.

7 Buchanan, *Secession,* p. 11.

8 According to Allen Buchanan, the conclusion that I am defending is also affirmed by Randy Barnett for a quite distinct (but nonetheless persuasive) reason: see

Buchanan, *Secession,* p. 24, footnote 18. See also Paul Gilbert, 'Prolegomena to an ethics of secession', in Moorhead Wright (ed.), *Morality and International Relations: Concepts and Issues,* Aldershot, Avebury, 1996; and Daniel Philpott, 'ln defense of self-determination', *Ethics,* vol. 105, 1995, pp. 370–1.

9 See Ronald Dworkin's famous division of political theories into goal-based, right-based and duty-based theories, *Taking Rights Seriously,* London, Duckworth, 1977, pp. 171–2. As far as I know there are no duty-based arguments for self-determination and secession.

10 See *The Consent Theory of Political Obligation,* London, Croom Helm, 1987, pp. 37–42; 'More theory of secession: a response to Birch', *Political Studies,* vol. 36, 1988; 'Border disputes and the right of national self-determination', *History of European Ideas,* vol. 16, nos. 4–6, 1993; 'The place of secession in liberal democratic theory', in Paul Gilbert and Paul Gregory (eds), *Nations, Cultures and Markets,* Aldershot, Avebury, 1994.

11 Beran, 'A liberal theory of secession', *Political Studies,* vol. 32, 1984, p. 24. The quotation in Beran's passage is from Rawls, *A Theory of Justice,* Oxford, Oxford University Press, 1972, p. 13. In this footnote Beran also cites Carole Pateman, *The Problem of Political Obligation,* Chichester, John Wiley, 1979.

12 See Beran, 'A liberal theory of secession', pp. 24–5; Beran, *The consent theory of political obligation,* pp. 37–8.

13 See, for example, Joseph Raz, *The Morality of Freedom,* Oxford, Clarendon Press, 1986, pt 1.

14 For a related distinction see Isaiah Berlin, 'Introduction', in *Four Essays on Liberty,* Oxford, Oxford University Press, 1969, p. xliii. See also Avishai Margalit and Joseph Raz, 'National self-determination', *Journal of Philosophy,* vol. 87, no. 9, 1990, pp. 454–5. Of course, one might argue that one's answers to the two questions are linked. If one believes that rulers should protect freedom, then one may argue that the question of who should rule should be 'those who are most likely to respect freedom'. Accordingly, one might defend self-government and secession on the following grounds: freedom is valuable; a people which is given statehood is most likely to respect its citizens' freedom; therefore a people should be given self-determination. This is not the argument that Beran is making. Something like this argument is discussed in section X.

15 Beran, 'A liberal theory of secession', pp. 25–6.

16 Ibid., pp. 25–6. At the end of the passage quoted in the text, Beran cites an earlier work by himself.

17 See Bookman, *The Economics of Secession,* p. 11.

18 Quoted in Lee Buchheit, *Secession: The Legitimacy of Self-Determination,* New Haven and London, Yale University Press, 1978, p. 9.

19 Beran, 'A liberal theory of secession', p. 26.

20 Raz, *The Morality of Freedom,* part 1.

21 Beran, 'A liberal theory of secession', pp. 26–8.

22 Ibid., p. 27.

23 Ibid., pp. 27–8.

24 Ibid., p. 28.

25 Ibid., p. 28.

26 Ibid., p. 28.

27 It is worth noting here that even Beran's argument would not justify the secession of the Basques, since only twenty per cent of the Basques want secession. Michael Keating, 'Spain: peripheral nationalism and state response', in John McGarry and Brendan O'Leary (eds), *The Politics of Ethnic Conflict Regulation: Case Studies of Protracted Ethnic Conflicts,* London, Routledge, 1993, p. 223. Similarly the Catalonian independence movement only received ten per cent of the vote in the 1992 Catalan elections, Keating, p. 221.

28 Miller, 'The ethical significance of nationality', *Ethics,* vol. 98, 1988, especially section II.

29 Miller, *On Nationality,* pp. 83–5, 98; see also Barry, 'Self-government revisited', pp. 174–5.

30 See Allen Buchanan, 'Assessing the communitarian critique of liberalism', *Ethics,* vol. 99, 1989, pp. 874–6.

31 See Simon Caney, 'Individuals, nations and obligations', in Simon Caney, David George and Peter Jones (eds), *National Rights, International Obligations,* Boulder CO, Westview Press, 1996.

32 There is one further puzzle about Miller's defence of national self-determination. He acknowledges that there are some global principles of justice but, in contrast to his treatment of national obligations, does not provide any institutional framework to ensure that these obligations of justice are met. It might be that a system of nation-states—whilst it furthers national obligations—hampers the attainment of Miller's global principles of justice.

33 Miller, *On Nationality,* p. 91; see generally *On Nationality,* pp. 90–8. See also Barry, 'Self-government revisited', especially pp. 174–5, 177–8.

34 See also J.S.Mill's discussion of nationality in his essay *Coleridge* [1840], in Alan Ryan (ed.), *Utilitarianism and Other Essays: J.S.Mill and Jeremy Bentham,* Middlesex, Penguin, 1987, pp. 195–6; Ernest Barker's account of the role of nationality, *Principles of Social and Political Theory,* London, Oxford University Press, 1967, p. 55.

35 See Robert Putnam with Robert Leonardi and Raffaella Nanetti, *Making Democracy Work: Civic Traditions in Modern Italy,* Princeton, Princeton University Press, 1993, especially chapter 6.

36 It is also, of course, true that sometimes a sense of nationality is unable to generate sufficient willingness to co-operate. The current situation in Italy, where the Northern Leagues are campaigning for greater political autonomy, is an instance of this.

37 See Vernon van Dyke, 'Justice as fairness for groups?', *American Political Science Review,* vol. 69, no. 2, 1975; 'The individual, the state, and ethnic communities in political theory', *World Politics,* vol. 29, 1977; 'Collective entities and moral rights: problems in liberal-democratic thought', *Journal of Politics,* vol. 44, no. 1, 1982.

38 Van Dyke, 'Justice as fairness for groups?', p. 607.
39 Ibid., p. 614.
40 Rawls, *A Theory of Justice,* p. 29.
41 Van Dyke, 'The individual, the state, and ethnic communities in political theory', pp. 360–1.
42 Neil MacCormick, 'Nation and nationalism', in *Legal Right and Social Democracy: Essays in Legal and Political Philosophy,* Oxford, Clarendon Press, 1982, p. 261.
43 See MacCormick, 'Nation and nationalism', pp. 261–4; MacCormick, 'Is nationalism philosophically credible?', in William Twining (ed.), *Issues of Self-Determination,* Aberdeen, Aberdeen University Press, 1991, pp. 16–7; MacCormick, 'What place for nationalism in the modern world?', in Caney, George and Jones (eds), *National Rights, International Obligations,* pp. 35–47. Note that MacCormick is keen to emphasise that his arguments 'certainly do not support the facile assumption that sovereign statehood is the only acceptable status fitted to the essence of nationhood' (*Nation and nationalism,* p. 264).
44 Gordon Graham, *Politics in its Place: A Study of Six Ideologies,* Oxford, Clarendon Press, 1986, pp. 138–9,
45 David George, 'The ethics of national self-determination', in Paul Gilbert and Paul Gregory (eds), *Nations, Cultures and Markets,* p. 76.
46 MacCormick, 'Nation and nationalism', p. 264.
47 George, 'The ethics of national self-determination', p. 76.
48 Ibid., pp. 76–7; Graham, *Politics in its Place: A Study of Six Ideologies,* p. 139.
49 MacCormick, 'What place for nationalism in the modern world?', p. 41; Charles Taylor, 'Atomism', in *Philosophy and the Human Sciences: Philosophical Papers Volume Two,* Cambridge, Cambridge University Press, 1985.
50 A second reply to this question might be that a person's nationality frequently contributes to their well-being, and as such ought to be respected. This reformulated Kantian argument collapses into what I have called the 'well-being' argument which is discussed in section VIII.
51 Miller, *On Nationality,* pp. 85–8; Kai Nielsen, 'Secession: the case of Quebec', *Journal of Applied Philosophy,* vol. 10, no. 1, 1993; Tami, *Liberal Nationalism,* pp. 72–7; Margalit and Raz.
52 See Buchanan, *Secession,* pp. 53–4.
53 Margalit and Raz, p. 449. Will Kymlicka emphasises and develops this point about culture in his excellent works *Liberalism, Community and Culture,* Oxford, Clarendon Press, 1989, especially pp. 135–205, and *Multicultural Citizenship: A Liberal Theory of Minority Rights,* Oxford, Clarendon Press, 1995, especially pp. 82–9 and 105.
54 Margalit and Raz, pp. 450–1, 457; Miller, *On Nationality,* pp. 87–8; Nielsen, pp. 32–3.
55 Tamir, *Liberal Nationalism,* 71–4. For Margalit and Raz's discussion of the intrinsic argument see 'National self-determination', pp. 451–3.
56 Margalit and Raz, p. 452; see pp. 451–3 more generally.
57 Ibid., p. 452.

58 On the importance of 'recognition', see Charles Taylor's discussion in 'The politics of recognition', in Amy Gutmann (ed.), *Multiculturalism and the 'Politics of Recognition': An Essay by Charles Taylor,* Princeton, Princeton University Press, 1992.
59 Margalit and Raz, pp. 449, 451, 459–60.
60 Buchanan, *Secession,* p. 64. For Buchanan's general discussion of the 'well-being' argument, see *Secession,* pp. 52–64.
61 Ibid., p. 61.
62 Buchanan, 'Assessing the communitarian critique of liberalism', pp. 858–62, 865; Buchanan, *Secession,* pp. 77ff.
63 Buchanan, *Secession,* p. 64.
64 This is brought out well by Isaiah Berlin, 'Two concepts of liberty', in *Four Essays on Liberty,* pp. 156–61. I am grateful to Dylan Griffiths for reminding me of Berlin's discussion. But see also Yael Tamir's discussion in 'The right to national self-determination', *Social Research,* vol. 58, no. 3, 1991, pp. 584–9.
65 Buchanan, *Secession,* p. 60.
66 Ibid., p. 60.
67 Ibid., pp. 60–1.
68 A similar point is made by Christopher Wellman in his analysis of Buchanan's treatment of 'consent': see his 'A defense of secession and political self-determination', *Philosophy and Public Affairs,* vol. 24, no. 2, 1995, pp. 152–3. My argument can be expressed in the form of a dilemma: either the multinational state's entitlement to the territory required by the national independence movement is a *pro tanto* reason or an *all-things-considered* reason. If it is the former, then it can be outweighed in some cases by the claims of the national minority seeking independence. The multinational state's *pro tanto* entitlement does not entail the *all-things-considered* claim that its entitlement always outweighs that of the national minority. If, on the other hand, Buchanan claims that the multinational state's entitlement is an *all-things-considered* reason, he cannot appeal to this to argue against the claims of the national minority. He cannot because, before one can reach the *all-things-considered* reason, one must consider the claims of the national minority. To assert that—all things considered—the multinational state is entitled to the land begs the question against the national independence movement.
69 Richard Kraut, 'Two conceptions of happiness', *The Philosophical Review,* vol. 88, no. 2, 1979, pp. 177–9; Will Kymlicka, *Contemporary Political Philosophy: An Introduction,* Oxford, Clarendon Press, 1990, pp. 14–17.
70 Raz, *The Morality of Freedom,* pp. 300–3.
71 Miller, The ethical significance of nationality', p. 655. For further criticism of Miller's discussion, see Charles Jones 'Revenge of the philosophical mole: another response to David Miller on nationality', *Journal of Applied Philosophy,* vol. 13, no. 1, 1996, pp. 78–9.
72 Miller, 'The ethical significance of nationality', p. 655.
73 See ibid., pp. 656ff.

74 Ibid., p. 655.

75 This objection is raised and discussed by Allen Buchanan, *Secession,* pp. 54–5. See, relatedly, Kymlicka's discussion in *Multicultural Citizenship,* pp. 84ff.

76 See Miller, *On Nationality,* pp. 86, 110.

77 It is worth mentioning other objections to the 'well-being' argument. A fourth objection (suggested to me by Harry Beran) is that the concept of a nation is too ill-defined to be of much use. It is often very difficult, the argument runs, to say exactly who does and does not belong to specific nations. Consequently, it is inappropriate to aim to give nations political sovereignty, and other more determinate criteria (such as individual consent) should be used to determine political boundaries. This objection merits more attention than I can give it here. Beran's argument is, however, vulnerable in two ways. First, whilst some national boundaries are contested, it is also clear that many are not, and Beran's argument fails to show what is inappropriate about national self-determination in such cases. Secondly, it is also worth recording that the concept of individual consent runs into problems analogous to those which Beran claims afflict the criterion of 'nationality'. As many have argued, it is notoriously hard to know whether a person has consented, which political authority a person has consented to, and whether his or her consent is genuine. His theory, too, suffers from grey areas. (This second objection was suggested to me by Hillel Steiner. He, however, thinks that a consent theorist can meet this objection).

78 Jean-Jacques Rousseau, *The Social Contract* [1762], Middlesex, Penguin, 1986, p. 60.

79 Miller, *On Nationality,* pp. 88–9. Daniel Philpott also appeals to the value of autonomy to justify self-determination: see 'In defense of self-determination', especially pp. 355–61.

80 MacCormick, 'Is nationalism philosophically credible?', pp. 44–5. David Miller adds three qualifications to this argument. First, some may not value this 'collective autonomy'; secondly, it is not justified if it leads to illiberal policies; and, finally, any attempt to be 'collectively autonomous' may be chimerical because of the high level of economic interdependence (*On Nationality,* p. 89).

81 See John Rawls, *Political Liberalism,* New York, Columbia University Press, 1993, especially pp. 35–40; and Joshua Cohen, 'Moral pluralism and political consensus', in David Copp, Jean Hampton and John Roemer (eds), *The Idea of Democracy,* Cambridge, Cambridge University Press, 1993. Cf. also Cohen's reference to Rousseau, 'Moral pluralism and political consensus', pp. 275, 289.

82 Anthony Birch, *Nationalism and National Integration,* London, Unwin Hyman, 1989, pp. 63–6; Buchanan, *Secession,* pp. 40–5.

83 Harun-or-Rashid, 'Bangladesh: the first successful secessionist movement in the Third World', in Ralph R.Premdas, S.W.R.de A.Samarasinghe and Alan B.Anderson (eds), *Secessionist Movements in Comparative Perspective,* London, Pinter, 1990, pp. 83–94; Alexis Heraclides, *The Self-Determination of Minorities in International Politics,* London, Frank Cass, 1991, pp. 147–64.

84 Harun-or-Rashid, 'Bangladesh', p. 86.

85 Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights,* Philadelphia, University of Pennsylvania Press, 1990, pp. 178–202.
86 Beran, 'A liberal theory of secession', pp. 29–30.
87 See Robert Young, 'How do Peaceful Secessions Happen?', *Canadian Journal of Political Science,* vol. 27, no. 4.
88 See Beran, 'A liberal theory of secession', pp. 30–1; Birch, *Nationalism and National Integration,* pp. 64–6; Miller, *On Nationality,* pp. 113–15. See also three additional conditions that Miller gives, specifying when increased autonomy within a multinational state is superior to secession (*On Nationality,* pp. 116–18).
89 Beran, 'A liberal theory of secession', p. 30.
90 See also Beran's second and third conditions ('A liberal theory of secession', p. 30); Birch, *Nationalism and National Integration,* pp. 64–6.
91 Beran, 'A liberal theory of secession', p. 30.
92 Ibid., p. 31.
93 Birch, *Nationalism and National Integration,* p. 66.
94 Ibid., p. 66.
95 I refer, of course, to J.S.Mill's famous description of his position on the value of liberty, *On Liberty* [1859], Middlesex, Penguin, 1982, p. 68.
96 This article was presented to the political theory seminar at the University of Hull, and in the workshop Theories of Secession', at 23rd Joint Sessions of Workshops, European Consortium for Political Research, Bordeaux, France, 27 April–2 May 1995. I am grateful to participants at both for their many helpful comments and would like to thank Harry Beran, Keith Dowding, Matthew Festenstein, Michael Freeman, Paul Gilbert, Charles Jones, Percy Lehning, Avner de-Shalit, Hillel Steiner and an anonymous referee for their criticisms and suggestions. Another version of this paper was published in the *Journal of Political Philosophy,* vol. 5, no. 4, 1997.

9
The Lincoln propositions and the spirit of secession

Philip Abbott

Whether secession movements in Europe draw support from the disintegration of the Soviet Union into multiple units based on separate national identities or whether there are also independent centrifugal forces, the 'right to secession' has emerged as a pressing question of democratic theory, one which is intertwined in complex ways with the current debate over the foundations of modern democratic society. This essay seeks to clarify the issue of right to secession through a critical examination of a single modern statesman: Abraham Lincoln.

It is true, of course, that recent patterns of secession in Europe are different in important ways from Lincoln's successful resistance to the Confederacy of the United States. Southern nationalism was not based on a direct ethnic identity, and the socio-economic system of slavery was already an anomaly in Western societies when the Civil War began. Nevertheless, political actors of both the ante-bellum period and the Civil War itself offered complex political, legal and moral arguments both for and against secession, arguments to which Lincoln responded with an ingenuity that deserves review today. Moreover, Lincoln himself, despite some persistent critics, is a revered international figure whose speeches and actions have earned him a privileged place alongside twentieth century leaders such as FDR, Churchill, Sun Yatsen, Nehru, Nkrumah, and even Ho Chi Minh. Lincoln memorials dot the globe from the US to Honduras to Trinidad to England to Germany and to Poland.[1]

Lincoln's arguments against secession will be grouped into broad categories and generalised in terms of a set of eight 'Lincoln propositions'. Then I will attempt to assess these propositions in terms of the commonly called liberal-communitarian debate in contemporary democratic theory. Since it is this debate that forms the current structure from which the right to secession is conceptualised, I hope we will then be in a position to determine if Lincoln stands in the way of the current spirit of secession.

THE LINCOLN PROPOSITIONS

Lincoln's success in galvanising support for resisting secession rests on a set of arguments that respond to two core Southern propositions:

1. the institution of slavery was not inconsistent with democratic society;
2. the United States as a political unit contained the implicit right of secession on the part of one or more states.

The first proposition appears ludicrous today, while the second appears more problematic, since conventional wisdom asserts that it was the Civil War itself that resolved this question. Thus Gary Wills writes: 'Up to the Civil War, the United States was invariably a plural noun: "The United States are a free government." After Gettysburg, it became singular: "The United States is a free government."'[2] Yet the South enjoyed a plethora of precedents supporting their later claim. Not the least of these were the Kentucky-Virginia resolutions, written by two of the founders themselves, and the Hartford Convention, supported by dissident New England Federalists in what became the heartland of abolitionism. Their trump card, however, was the Declaration of Independence itself, which, as the privileged revolutionary text, asserted the right to revolution and did so on contractual terms. Thus Jefferson Davis in his inaugural address explained the formation of the Confederacy thus: 'ln this they [the CSA] merely asserted the right which the Declaration of Independence of 1776 defined to be inalienable.'[3] It was the first proposition that Southern secessionists found much more difficult to defend. They were driven to seek pre-liberal precedents in biblical interpretation, in Athenian democracy and by way of inversion, in their critique of 'wage slavery' as the less humane of the two economic systems.[4]

The young Lincoln argued as early as 1838 that the union, now in its second generation, was especially fragile. He warned in the Lyceum address that the edifice created by the fathers of the republic 'must fade, is fading and has faded' and urged rededication of filial piety centred upon pledging obedience to the 'patriots of seventy-six.'[5] But, as Lincoln developed his positions after the deepening crisis created by the Kansas-Nebraska Act of 1854, he found that neither of the Southern propositions was easily refutable. There was a gaping hole, of course, in the Southern recourse to liberal contractarian arguments on the one hand and the very un-Lockean defence of a semi-feudal society on the other. But Lincoln, too, faced his own contradictions. If he used the Declaration as the ballast for his central anti-secessionist support, focusing on its assertion of equality ('all men are created equal'), then he must also confront the

Declaration's seeming support for rebellion ('the right of the People to alter or abolish governments'). In more immediate political terms, Lincoln faced marginalisation if he adopted an abolitionist position that centred the former part of the text at the expense of the latter and indistinguishability from his rivals in both parties if he accepted various kinds of accommodations that would satisfy the Southerners from exercising their alleged right to separate. In his Springfield speech accepting his party's nomination for US Senate, Lincoln moved dramatically away from the later alternative by employing the biblical metaphor of a House Divided to predict that the union 'cannot endure, permanently half-slave and half-free.[6] The house-divided position still provided him some wiggle room, however. In the debates with Douglas, Lincoln variously contended his comment was simple prediction and that he never advocated political or social equality for African-Americans. Nevertheless, the critique of Douglas' doctrine of popular sovereignty from which Lincoln drew the house-divided position, along with the vividness of the metaphor, placed him in a position where the Declaration, suitably re-read, became the central metonymy from which he attacked the legitimacy of secession.

As Lincoln moved into the national arena, he boldly chose Jefferson—the joint author of the Virginia-Kentucky resolutions, advocate of states rights and slave owner—as his exemplar. But Lincoln's Jefferson was quite different from the Southern hero as this commemoration indicates: 'All honour to Jefferson—to the man who, in the concrete pressure of a struggle for national independence by a single people, had the coolness, forecast, and capacity to introduce into a merely revolutionary document, an abstract truth, and so embalm it there, that today and in all coming days, it shall be a rebuke and a stumbling block to the very harbingers of reappearing tyranny and oppression.'[7] The Declaration could have been 'merely a revolutionary document' had not Jefferson the foresight to introduce the idea of an 'abstract truth'. Note how Lincoln says the work is simply a revolutionary pamphlet written under 'concrete pressure' except for a singular abstract idea. But the idea is 'embalm [ed]'; Lincoln must bring a dead thing to life. Thus Lincoln as president-elect is able to say that he never had 'a feeling politically that did not spring from sentiments in the Declaration of Independence', and that the Declaration was the 'immortal emblem of our humanity' and 'all honor to Jefferson', because he read the Declaration not as a revolutionary document but as one entailing a moral commitment to equality. The rest was 'merely revolutionary' reflecting the 'concrete pressure' of the moment.

In the debates with Douglas, Lincoln contended there were compromises and appeals to self-interest that a political system could not accommodate without losing its self-identity. Lincoln's minimal line was drawn differently than that of

the abolitionists (he objected only to the extension of slavery). In the late 1850s and throughout the war, however, Lincoln, borrowing directly from the abolitionists, created a broader, even more demanding conception of nationhood containing a more complex conception of political religion than he had recommended in 1838. In essence, Lincoln was creating an argument that contended not only that slavery challenged American identity but that the fate of the nation had a world significance, that America's struggle with slavery constituted an even broader struggle, the outcome of which was of immense importance to humankind. For example, Lincoln's second inaugural, delivered near the end of the Civil War, is generally regarded as a conciliatory document. The address does close with'the biblical injunction to behave with malice toward none and charity to all. But the body of the speech interprets the war as the result of divine retributive justice. Both sides 'read the same Bible' and prayed to the same God; both invoked 'his aid against the other'. But Lincoln is clear about the righteousness of the Northern cause: 'lt may seem strange that any men should dare ask a just God's assistance in wringing their bread from the sweat of other men's faces.' He also warns 'if God wills that it continue until all the wealth piled up by the bondsman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the sword, as was said three thousand years ago, so still it must be said, "the judgments of the Lord are true and righteous altogether".'[8]

Even from this brief summary, one can see Lincoln's arguments against secession were complex and evolving. In 1838 Lincoln was very much concerned about the possibility of the political disintegration of the US, but his assessment of slavery on these terms had changed dramatically by 1858, when he developed the house-divided argument, and changed again by 1864, when he began to explore themes of expiation and war guilt. His conception of nationhood continued to expand in moral and historical scope as well. Thus reducing Lincoln's arguments to a set of propositions risks over-simplification. Still, it is possible to identify four broad sets of arguments through which Lincoln probed and then expanded the contours of American political culture which have relevance to the question of secession in general.

First, Lincoln denied the legitimacy of the units which undertook secession. This was an especially bold undertaking in the American context (although undoubtedly this general response is likely to be the case in any secession crisis), given the nature of American political development. In his case, Lincoln was able to make the claim by presenting an alternative legal history of the union, one which placed the moment of incorporation before the revolution, and hence before the existence of states proper. In his first inaugural Lincoln laid out the implications of this position, a position which was then seized upon by many

secessionists who correctly followed the argument and ignored the conciliatory tone.[9] For here Lincoln made the argument that the 'Union is perpetual' and the Union was 'much older than the constitution since the purpose of the constitution was to form a more perfect union.'[10] When he called Congress in emergency session on 4 July 1861 Lincoln had reached the position that the states were not and could never be 'states' at all: 'The states have their *status* in the union, and they have no other *legal status*'. In Lincoln's formulation, states were both a moral and legal fiction: 'The Union and not themselves separately, procured their independence, and their liberty. By conquest, or purchase, the Union gave each of them whatever of independence, and liberty, it has. The Union is older than any of the States; and in fact, it created them as states. Originally, some dependent colonies made the Union, and in turn, the Union threw off their old dependence for them and made them states, such as they are.'[11]

Second, Lincoln denied the cultural legitimacy of the seceding units. Although extremely cautious in any particulars and willing to accept a policy of containment, Lincoln denied both arguments that the system of slavery in the Southern States was morally justifiable or even a question of local jurisdictions to decide. Lincoln offered the argument that certain practices could not be tolerated without the certainty they would infect and erode the principle of self-government itself and ultimately somehow the armed struggle against secession constituted a cleansing of national guilt over the toleration of slavery.

Thirdly, Lincoln offered a national epic which placed America as the bearer of a world experiment in equality and self government. Since his Lyceum address, Lincoln had emphasised the uniqueness of the American revolution and the American system of government which was to be guaranteed through citizens' contractual reaffirmation of obedience to all its laws. With his participation in the secession crisis, Lincoln pursued this theme, portraying the Southern states as collectively in rebellion against this obligation. During the Civil War the conflict itself was added to the epic and interpreted by Lincoln as a narrative of trial and redemption. At Gettysburg, Lincoln stated this conception in terms so eloquent that the address has become a masterpiece of American political discourse. Birth ('four score and seven years ago our fathers brought forth on this continent a new nation, conceived in liberty'), trial ('Now we are engaged in a great civil war, testing whether that nation so conceived and dedicated can long endure') and rebirth ('we here highly resolve that these dead shall not have died in vain; that this nation, under God, shall have a new birth of freedom') was the meaning he attached to the war.[12]

Fourthly, Lincoln offered what collectively might be called an inverse epic of American history, should secession be successful. Sometimes he drew scenarios

of an independent Southern nation which crowded out free labour, particularly in new territories; of a permanent antagonism between two belligerent states; of a Northern nation that, having proved that 'all republics' have 'fatal and inherent weakness' in maintaining their won existence, lost its *raison d'être* and was thus prone to ever more secessions.

If one further simplified these tropes Lincoln employed against secession, one could arrive at the following list which, while not an exclusive rendering, does retrieve his major arguments:

1 The perpetuity proposition: Since the union was created in perpetuity, seceding units have no moral or legal identity separate from the existing republic.
2 The democratic privilege proposition: Secession is a violation of majority rule.
3 The infinite secession proposition: Secession will provide precedents for further secession until all effective government ceases.
4 The economic mobility proposition: Secession will severely inhibit economic mobility.
5 The outlaw culture proposition: There is no legitimate cultural claim to secession for those who violate basic human rights.
6 The expiation proposition: Resistance to secession will expiate national guilt for tolerating evil practices.
7 The exceptionalism proposition: Secession is unjustified in cases in which a state is undertaking an extraordinary course in democratic development.
8 The common heritage proposition: Secession will sever an irretrievable and treasured common heritage.

LIBERALISM, COMMUNITARIANISM AND THE LINCOLN PROPOSITIONS

The current exploration of the foundations of democratic systems between those committed to liberal and communitarian positions has not systematically focused upon the secession question. Issues, however, which divide the two orientations, such as the neutrality of the state, the existence of group rights, and the nature and extent of contract as an expression of political obligation as well as competing conceptions of the self, have a direct bearing upon the right to secession.[13] These are, of course, questions which are embedded throughout the Lincoln propositions, and it is our next general task to ask how Lincoln's arguments inform this general debate.

A few more caveats need to be offered before we examine the Lincoln propositions in terms of this debate in democratic theory. First, there is no necessary relationship in a general sense between a liberal or communitarian position that is sympathetic or hostile to secession as a right. For example, Rawls, while acknowledging a limited right to civil disobedience in a liberal polity, apparently gives no authority to a (limited) right to secession[14] while Dahl, operating from liberal premises as well, acknowledges a limited right to secession and in fact, conceptualises secession as one among several solutions to the problem of majority rule.[15] There are, however, certain arguments, which I hope to illustrate, that are more of a challenge to the formation of a right to secession in one orientation than in another.

Second, many liberals and communitarians assign Lincoln a central place in the delineation of their respective positions, albeit with somewhat different readings of Lincoln's contribution to democratic thought. Thus Lincoln's resistance to secession is offered by William Galston as an example of liberalism's capacity to place 'public authority in the service of what is right', even at the expense of 'discord and violence.'[16] Bellah and his associates argue, on the other hand, that it is precisely Lincoln's language of republicanism informed by biblical understandings which has been attenuated by the dominance of individualism.[17] These reference points, however, are by no means universal. Charles Murray has argued for the restoration of the 'Jeffersonian republic' damaged by Lincoln, and William Bradford has written quite negatively about Lincoln's moralisation of means, as has Willmore Kendall of Lincoln's 'mis-reading' of the Declaration.[18]

Thirdly, a matrix of anti-secession, pro-Lincoln liberals/communitarians and pro-secession, anti-Lincoln liberals/communitarians can further divide when the Lincoln propositions are considered. For example, while Galston cites Lincoln as an exemplar and asks rhetorically, 'how many Americans believe that the Civil War was too high a price to pay for the abolition of slavery?' he has also criticised Rawls for failing to consider secession as an option.[19] Whether it is possible to selectively appropriate Lincoln's propositions, and whether it is possible to offer a right of secession while also acknowledging the correctness of Lincoln's arguments, is a question we will want to consider as well.

(1) As we indicated, Lincoln's perpetuity argument represented the conclusion 'to a brilliantly conceived analysis which attempted to centre the dispute over secession, as well as slavery itself, in terms of the Declaration rather than the Constitution. Lincoln could have focused upon the fact that the Constitution contained no right of secession (which he noted, but always in passing) and that the founders themselves justified the Constitution as a bulwark against secession.[20] But from Lincoln's viewpoint, if the Declaration was the

founding text, and if its central message was equality, then the South had no right to secede, and in fact its secession constituted the rebellion Lincoln insisted upon in his characterisations. Thus Lincoln attempted to move the entire argument away from what mutual obligations existed among the states and what ones, if any, were violated.

We have seen how Lincoln revised his argument from his formulation employing the Declaration generally as an obstacle against lawlessness. The momentous addition of focusing upon the 'all men are created equal' proposition as the sole source of political obligation provided the perpetuity argument with its full force. As long as the union was committed to this dedication, there was no moral exit. Thus Lincoln's admission that secession might be permitted if all the states agreed was a moot case because this assumed 'the United States was not a government proper, but an association of states in the nature of compact merely.'[21]

Lincoln's perpetuity argument is a powerful case from the liberal standpoint, since it not only fixes the founding upon a propositional agreement consistent with individualism but also heightens this commitment by, in essence, refusing to let any party turn back. Thus it is entirely possible for parties in the original position to accept the perpetuity argument along Lincoln's lines. This does not, however, suggest that there are no other grounds on which secession might be considered—although, in the case at hand, they would certainly not aid the case of the South—nor that a liberal might not be reluctant to accept such a no-exit proposition.

The communitarian argument in theoretical terms (i.e., not in the case of Southern secession) is more problematic. Here I focus upon the question of the novelty of Lincoln's argument about the Declaration as a starting point. The significance of the Hegelian distinction between *Sittlichkeit* and *Moralitat* which explicitly informs Charles Taylor's communitarianism and certainly bears upon this issue, as well as other distinctions employed by communitarians (such as Walzer's connected and disconnected critic), are especially appropriate here.[22] Did Lincoln clarify and intuit the implications of the ethical foundation of the American polity, or did he distort its *Sittlichkeit* by imposing a moral universalism which some Northerners and Southerners resisted? The latter was the conclusion of the editorialists of the *Chicago Times* after the Gettysburg Address: 'It was to uphold this constitution, and the Union created by it, that our officers and soldiers gave their lives at Gettysburg. How dare he, then, standing on their graves, misstate the cause for which they died, and libel the statesmen who founded the government? They were men possessing too much respect to declare that Negroes were their equals, or were entitled to equal privileges.'[23] Willmore Kendall, writing in critique of liberalism a generation

before the liberal-communitarian debate, saw in Lincoln's project a *Moralität* that, severed from existing communing understandings, led to 'caesarism.'[24] On the other hand, numerous communitarians have reached the opposite conclusion. Bellah and his associates implicitly acknowledge the high risk strategy of Lincoln and the isolation from other communities—both abolitionist and Southern—that was the result. Yet 'what saved Lincoln from nihilism was the larger whole for which he felt it was important to live and worthwhile to die. No one understood better the meaning of the Republic and the freedom and equality that it only imperfectly embodies.'[25]

(2) The argument from democratic privilege was most forcefully stated by Lincoln in his first inaugural address. Here Lincoln admitted that majorities can be mistaken but contended that majority rule in the US

1 was 'held in restraint by constitutional checks and limitations';
2 'always changes easily, with deliberate changes of popular opinions and sentiments.'

He particularly emphasised the case at hand, arguing that the threatened secession was a violation of the entire principle of majority rule through election. The South had submitted to the principle in the past election and now raised the precedent that those who won could only 'save the government from immediate destruction by giving up the main point, upon which the people gave the election.'[26]

To Lincoln, secession was a rejection of democratic privilege and left only two alternatives: despotism or anarchy. He permitted only one extra-constitutional measure. When a majority deprived a minority of 'any clearly written constitutional right, it might, in a moral point of view, justify revolution—certainly would, if such a right were a vital one.'[27]

In 1865 the South (disregarding the outlaw culture argument) certainly could make a case that Lincoln's restrictions on majority rule were no longer operational. Constitutional obstacles to the abolition of slavery were under systemic consideration (indeed in his address, Lincoln explicitly denied the Supreme Court an 'irrevocably fixed' authority to decide vital constitutional questions), and public opinion was hardly 'easily' changeable. Lincoln admitted that laws regarding slavery were being met only as 'a dry legal obligation' by most, and broken by a few, and this was the best one could expect in a 'community where the moral sense of a people imperfectly supports the law itself.' Moreover, is secession in response to an election *per se* insupportable, since one could imagine that a minority need not submit to the victory of a person who expressed grossly hostile opinions in terms of a minority (say, for example,

the election in America of an overt racist)? Most difficult of all to accept in Lincoln's formulation of democratic privilege is his contention that rebellion is permissible for a minority, while secession is not. At least from the standpoint of prudence, a beleaguered minority might stand a better chance of survival (if it enjoyed territorial cohesion) in secession than under conditions of rebellion. Secession might on these terms be regarded as a more cautious and less threatening response than rebellion. Such, in fact, was the Southern position. Jefferson Davis said that he expected 'little rivalry' between the newly divided states and suggested that 'mutual interest would invite good will and kind offices.'[28]

While it is true that, in Lincoln's case, an evaluation of the actual status of a minority in terms of its own conception of democratic privilege (the outlaw culture argument) weighs very heavily, it is hard to say that liberal political thought, with its historical suspicion of majority rule in general, could develop a categorical endorsement of Lincoln's democratic privilege argument. A defence of Lincoln's position would seem to turn on the validity of his empirical assessments of the current constraints in place and the degree of good will in general terms toward the minority. Thus Dahl argues that a minority that loses faith in the majority's intentions can, at the extreme, secede, and 'this solution is...perfectly consistent with democratic practice.'[29] The communitarian argument, while different in the points it might emphasise, is likely to reach a similar conclusion. *If* a minority can make a convincing case that it constitutes a community in peril, *then* secession cannot be excluded as an option.[30]

(3) There is a sense in which the infinite secession argument, one of Lincoln's negative scenarios of the nation divided, is a derivative of his democratic privilege proposition. Lincoln argued that, should secession succeed, it would set a precedent for the minority of the newly seceded unit to secede rather than acquiesce. He suggested that the Confederacy itself faced this scenario, since Southern dis-unionists were already 'being educated in the exact temper of doing this.'[31] But it is the image implicit in the scenario itself that captures the imagination, for Lincoln laid before his audience a process of dissolution that ended finally in anarchy. The question that such a proposition raises, but does not itself automatically answer, is whether alternatives less severe than secession begin this slippery slope process as well. Clearly Lincoln believed that federalism did not necessarily trigger the process of infinite secession; his perpetuity proposition was designed to accommodate a federal arrangement in which secession was impermissible. Nor could Lincoln even regard secession itself as a process of infinite regress to anarchy on these terms, since the American revolution could certainly be regarded as a successful secession, though not one in violation of majority rule as Americans came to understand the concept. To

the extent, then, that one is convinced by Lincoln's proposition that secession leads to anarchy, the liberal position would be forced to assent. Robert Dahl, for example, reaches this conclusion in terms strikingly similar to Lincoln's: 'lmagine that a democratic country were actually to declare political autonomy to be an absolute right. Granting such a right would make a state, or any coercive organisation, impossible (or at any rate illegitimate), since any group facing coercion on any matter could demand and through secession gain autonomy. In effect anarchism would be legitimised.'[32] Of course, it is a crucial question whether secession weakly challenged or strongly but unsuccessfully challenged would produce the same infinite secession scenario. There is also the question of whether it matters what exactly the secessionists are seeking to preserve through their act. Could one make the case that a single secession (even one initiated by a minority in a democratic society) may not avoid the scenario laid out by Lincoln? Dahl apparently believes so, since he eventually offers a limited right to secession, thus accepting the Lincoln proposition only in part. Among his standards is a version of what we call Lincoln's outlaw culture proposition discussed below. But Dahl places great weight upon a final general criterion that, all things considered, 'the gains must outweigh the cost.' Such a general assessment includes quantitative concerns (efficiency costs) as well as qualitative ones, and he admits that secessionists will tend to underestimate costs and unionists overestimate them.[33] Thus, while Dahl eagerly accepts the Lincoln proposition of infinite secession in an instance in which an open or 'no fault' right of secession is in place, he is willing to grant Lincoln's scenario as only one of several in other cases. This sort of utilitarian defence of limited secession, however, also needs to include an assessment of the likelihood of whether strategic patterns of 'chicken' by one or more parties might become endemic. Allen Buchanan, writing largely from a liberal perspective, lists this pattern, which he calls 'strategic bargaining', as one of the moral arguments against secession.[34]

If communitarians accepted Lincoln's infinite secession proposition, then they would certainly oppose secession, since its anarchical end point entails the impossibility of community and the ultimate destruction of shared meanings so essential for growth of the human spirit.[35] However, many communitarians show an intense affection for small communities, especially as an antidote to the bureaucratic organisation of modern society, which they see as being orchestrated by the state. Thus Christopher Lasch writes that communitarianism 'proposes a general strategy of devolution or decentralisation, designed to end the dominance of large organisations and to remodel our institutions on a human scale. It attacks bureaucracy and large-scale organisations, however, not in the name of individual freedom or the free market but in the name of continuity and

tradition.'[36] Whether this process of devolution would include secession and whether a communitarian would be willing to risk the Lincoln proposition of infinite secession depends on a range of considerations. One may well involve an assessment of the existing or retrievable degree of shared affection for small autonomous forms of political organisation. Charles Taylor, for example, who supports this devolution sensibility, contends that decentralisation to the level of provincial government is probably the best lower limit, since Canadians lack strong identification with truly local communities.[37] Certainly in the American case, decentralisation would reach much smaller levels. On the other hand, if one made the argument that atomisation had reached nearly total success in destroying community, it might be possible for a communitarian to support secession as a way to invent new communities. This was G.K.Chesterton's scenario in his insightful novel, *The Napoleon of Notting Hill* which is a blueprint for this kind of inverse Leninist communitarianism.[38] The protagonist, a clerk in a massively bureaucratic society, is selected leader by lot. Ignoring the ceremonial understanding of the position, the clerk creates neighbourhoods by executive fiat dividing the city into ersatz medieval urban micro-states. The citizens of each become enlivened by this devolution and are ferociously committed to their new-found communities.

(4) Lincoln's economic mobility argument, stated so succinctly in the debates with Douglas as a justification for limiting slavery ('Slave states are places for poor white people to remove from.... New free states are the places for poor people to go, and better their condition.'), was extended after the Civil War began. Lincoln, for example, in 1862 spoke of a west divided as one in which economic opportunity would be reduced by limited access to ports and trade regulations and natural resources. Students of Lincoln tend to give this argument from self-interest less weight than his overtly moral arguments against slavery, and it is true that, particularly as the war progressed, Lincoln came to rely more on the latter. Nevertheless, the economic mobility argument was a popular one, more attractive to parts of the population than the propositional devotion to the Declaration. Moreover, it represented an application of Lincoln's Whig political economy that was carried over from the partisan battles with the Jacksonian Democrats in the 1830s and 1840s. In the previous generation economic questions centred around tariffs, the Bank of the US and the development of Western lands, with the Whigs in general representing the interests of large-scale capital and Democrats the aspirations of the petite bourgeoisie. By the 1840s, however, Whigs began to disregard the more openly élitist aspects of their thought, emphasising economic mobility, or, as Hartz has said, 'Whigs gave up Hamilton's hatred of the people... retained his grandiose capitalist dream, and combined it with the Jeffersonian concept of economic

opportunity.'[39] This is not to say that Lincoln himself was a founder in this process, but it is correct to note that his tethering of the economic mobility trope to the slavery question was an act of innovation. The argument for economic mobility also fits even more strikingly as a contrast with the growing Southern redefinition of political economy in paternalistic terms. Lincoln thus denied the Southern dichotomy between 'slave labor' and 'wage slavery' by arguing that the wage-earning status was temporary and benevolent and without paternalism: 'The prudent penniless beginner in the world, labours for wages for awhile, saves a surplus with which to buy tools or land, for himself; then labours on his own account another while, and at length hires another new beginner to help him. This, say its advocates, is free labour—the just and generous, and prosperous system, which opens the way for all—gives hope to all, and energy, and progress, and improvement of condition to all.'[40]

From Lincoln's perspective, then, the economic mobility argument is not one primarily derived from self-interest to the extent to which it seeks to defend an entire system which, in his framework, is uniquely suited as a means for the creation of the good life. Without prejudicing the communitarian argument by connecting it to slavery, the dispute between the North and the South about political economy did turn upon evaluations of a liberal society's capacity to sustain community. Southerners, denied the reality of economic mobility, charged that the capitalist wage relationship constituted power without authority and described the North as a society in which, in Fitzhugh's words, 'virtue loses its loveliness, because of selfish aims.'[41] Undoubtedly there is a sense in which the advocacy of agrarian community in America has been historically tainted by this Southern position, which saw community as integrally related to slavery. In fact the Northern abolitionists, who worked very hard to expose the idyllic image of the plantation, emphasised the system as one in which choice was absent. The 'right to enjoy ones body and ones labour' were 'inalienable' and denied in the South.[42]

Even granted a suspicion of the reality of economic mobility, there was among the Southern defenders, and is today among the contemporary communitarians, a willingness to lower economic mobility as a value and to express an active suspicion of it as an eroder of community stability. Thus Michael Walzer, who acknowledges more of the liberal project than many communitarians, writes: 'Liberalism is, most simply, the theoretical endorsement and justification of… movement…. Nevertheless, this popularity has an underside of sadness and discontent that is intermittently articulated, and communitarianism is, most simply, the intermittent articulation of these feelings. It reflects a loss and this loss is real…social mobility, which carries people down as well as up and requires adjustments that are never easy to manage.'[43] But if the communitarian

argument may have been culturally damaged in America by the Southern defence and the national embrace of mobility, so too has the argument been made about Lincoln's and the Republicans' struggle against secession on the basis of this proposition. For we know that economic mobility and family proprietorship were placed under the severest of challenges after the Civil War, so much so that the generalised Southern critique of wage slavery has a prophetic character which Lincoln apparently never foresaw. If, then, secession must be defended to promote equality of opportunity, the historical record of post-Civil-War economic development is hardly supportive.[44] While Lincoln drew vivid scenarios of an America overtaken by a slave economy, he presented no picture of an America overtaken by trusts and economic inequality. Thus, not only does this Lincoln proposition anticipate the liberalism-communitarian debate in its most extreme tropes, it may lead to a certain humility in opposing secession on the basis of anticipated economic developments.

(5) Lincoln's outlaw culture proposition supported by his re-reading of the Declaration remains at the centre of his international reputation. Lincoln's argument is eloquently and sharply put in his second inaugural. After noting the religious common heritage of North and South, he asked how 'men should dare ask a just God's assistance in wringing their bread from other men's faces'. To Lincoln, since a slave culture could not be accorded the same rights as a free one before secession, it could not be permitted cultural autonomy as a separate state. Lincoln thus was not confronted with the question of cultural autonomy in general as a basis for secession, but the line he drew has been nearly universally endorsed by both liberal and communitarian theorists. Dahl, for example, writes: 'a group's claim to autonomy is less justifiable the more likely that their new government will not respect the democratic process. The right of self-government entails no right to form an oppressive government.'[45] And Walzer speaks of minimal standards which any culture is bound to respect, and for him the master-slave relationship is the exemplary case in which 'shared meanings' are absent, since 'the two groups are simply at war.'[46]

While Lincoln's proposition is hardly a moot formulation if one extends violation of basic human rights to practices authorised by chattel slavery, such as uncompensated labour or torture, the liberal-communitarian debate centres around how far the minimal standard should be raised, or how it shall be interpreted. A liberal could note that Lincoln's own minimalist view, which remained uncommitted to political and social equality for African-Americans in the union (and hence, presumably, the criterion set by the outlaw culture proposition would have been met had the Southern secessionists abolished slavery), left the reunited states without the cultural reserve to counter

Southern resistance during reconstruction. A communitarian could note, on the other hand, that, to the extent to which Lincoln formulated his outlaw culture proposition along the lines of *Sittlichkeit,* any other statement than the minimal one he formulated would have been inappropriate.

(6) Up to this point, we have been usually able to translate each Lincoln proposition into terms from which both liberals and communitarians could find common anchors, though certainly not reaching the same positions in regard to secession. The final three propositions place a great strain on this approach, and thus I am forced to proceed largely in terms of how these propositions can inform communitarian responses to secession. This separation in itself is significant enough for the question of a right to secession, and even for democratic theory in general, to consider briefly the liberal exit in regard to the exceptionalist, expiation and common heritage propositions.

In a stretch, one could find propositional analogues for these propositions. Rawls, for example, suggests that Lincoln's Second Inaugural 'with its prophetic (Old Testament) interpretation of the Civil War as God's punishment for the sin slavery' is probably within the confines of public reason, that is, argumentation which is consistent with a liberal conception of justice. Then, however, he adds that he is making the assessment in terms of the standards of his (Lincoln's) day—'whether in ours is another matter—since what he says has no implications bearing on constitutional essentials or matters of basic justice.'[47] Thus Rawls either takes Lincoln's expiation proposition (1) to be irrelevant in that it can be translated in terms that are within the limits of public reason, as perhaps a question for future constitutional agendas; (2) to be irrelevant since expiation was an expression of ceremonial statement of nonpublic (in this case religious) reason. Either interpretation does violence to Lincoln's fundamentally religious conception of national guilt, in which nations as well as individuals must pay for moral crimes. To read the birth-trial-rebirth narrative of the Gettysburg Address without acknowledging its conception of a community theologically punished and sanctified is to miss the point of the proposition. This is not to say that Lincoln's employment of 'nonpublic reason', as Rawls calls it, does not lead to the kinds of policies political liberalism attempts to avoid, but rather to suggest that the expiation proposition is one largely beyond liberal employment in developing a right of secession.

(7) So, too, the exceptionalist argument. One could recast Lincoln's proposition that America represented the world's 'last great hope' for free government in terms that emphasised the negative consequences should a slave culture survive and flourish through secession, or tether this proposition with Lincoln's democratic privilege, which might create doubts about a democratic regime's capacity to contain minorities peacefully and thus reduce the attraction

of free government globally. In other words, one could recast Lincoln's exceptionalist proposition into a democratic capitalist version of what later became known as the 'actually existing socialist regimes proposition'. These would certainly be acceptable arguments against secession which could be formulated with appropriate empirical evidence to carry consider able weight, although it is possible to argue, as some abolitionists did, that the American experiment was more likely to succeed should the South leave the union peacefully, and that the North would defeat the South eventually through peaceful economic competition. For Lincoln, however, the extraordinary course in democratic development that America was undergoing contained much deeper significance. Even before Lincoln gave the war itself a cosmic meaning, he employed what is probably the strongest feature of American culture to oppose secession. The belief that America is exceptional extends from Winthrop's 'city on the hill' evocation and, while it took several forms even by the nineteenth century, stood as perhaps the central element of American national identity.[48] Thus Lincoln was in essence arguing in his exceptionalist proposition that, should secession succeed, America would begin a process of resemblance to other societies which, by confirming rather than refuting historical patterns of republics, would remove from Americans the singularity of their national character.

(8) A great deal of effort has been expended on the part of liberals especially in indicating potential points of agreement on the question of the community in democratic thought.[49] Does Lincoln's 'common heritage' argument suggest some *modus vivendi* in these general terms, and perhaps thus some consensus on the question of secession? Since the number of writers who have addressed this question is quite large, let me focus on just two responses as suggestive, though not definitive, of a likely outcome. Ronald Dworkin, in the course of discussing liberal tolerance, has argued that liberalism can certainly foster a sense of community, as long as this conception entails a 'practical' view of collective obligation rather than a 'metaphysical view of integration' which defines community as a 'super-person'. In order to define the former, Dworkin employs the analogy of an orchestra as a practical community. Members can be fully integrated into the practical community of the orchestra, that is, they live not as prima donnas who use the orchestra only as a means to their own self-advancement, for they are exhilarated—or ashamed—'by the performance of the orchestra as a whole.'[50] Thus, to carry this analogy to Lincoln's, the separation of the orchestra, say into two, would indeed involve severing the 'mystic chords of memory.' Individual members might regret the loss of friends, the heights of excellence now no longer possible and experience, etc. The analogy, which is designed to show that 'civic republican' understandings of

community are consistent with liberal ones, contains, however, a partially hidden resistance to the communitarian ideal, for part of Dworkin's notion of practical integration is to show that the orchestra members' ties are those connected only with their *'musical life'*. Their sex lives are obviously irrelevant as a source of mutual concern (which is Dworkin's stated point), as well presumably as their family relationships, political views and other common concerns, except perhaps in instrumental or incidental senses. An orchestra member may be concerned about his fellow member's marriage because it affects her performance, or two or more members may take regular vacations together or be Republicans. Thus the spirit of Dworkin's practical community is a segmented one in ways which are quite different from Lincoln's. For Lincoln closed his first inaugural with a plea to consider the irretrievability of a common heritage that centred upon a whole narrative of American generations ('stretching from every battlefield, and patriot grave, to every living heart and hearthstone') that a nation as orchestra cannot capture.[51]

An even more aggressive position is offered by Michael Freeman, who argues that the notion of a national identity, particularly one which is framed in terms of remembrance of military actions, is illiberal for precisely the reasons which Lincoln recommends it.[52] Sacrifices on the battlefield are always morally ambiguous, and may even involve the celebration of morally wrong acts like genocide. But the fundamental error in any extrapolation of common heritage as a basis for mutual obligation is that it commands a 'preferential treatment' that is inconsistent with 'pluralist democracy of equal citizenship'. Not only nations are ordered in degrees of respect, but so are sub-national groups (majority-descent immigrants; English-speaking Canadians; Francophones; Crees/Mohawks). In place of the 'pre-liberal doctrine of state sovereignty', Freeman offers the principles of 'cosmopolitan liberalism' in which the rights of minorities (Muslims of Bosnia, Kurds of Iraq, Crees of Quebec are his examples) are afforded protection, and perhaps rights of secession by the international community.

There is a sense in which Lincoln's propositions, even the later ones under discussion, swing freely from liberal universalism (hence, in part, the basis for his international standing) and nationalism. Freeman's discussion, however, illustrates how uncomfortably these sensibilities connect in the context of the current liberal-communitarian debate in which common heritage denotes contested methodological approaches, and in which national identity in a post-holocaust, post-Cold-War environment is treated with considerable suspicion. Still, even Lincoln's liberal nationalism could not tolerate a perspective so cosmopolitan that it would replace the common American experience of the

revolution and the founding as a central focus of mutuality with United Nations principles.

None of this difficulty in liberals' employment of Lincoln propositions 6–8 implies that communitarians would necessarily accept the particular vision of community offered by Lincoln, that is, a national one in which the (embalmed) idea of equality historically unfolds through a difficult re-birth.[53] In cases in which communitarian preferences are more local and more hierarchical (or more equalitarian), Lincoln's exceptionalist, expiation and common heritage propositions do not speak effectively to secessionist demands.[54] The difference in regard to propositions 6–8 is rather one of a liberal attempt to offer a diluted translation (as Rawls and Dworkin seem to have done) or alternative formulation (Freeman's 'cosmopolitan solidarity') and communitarian rejection for other forms. Of course, for those communitarians who postulate a form of democratic community similar to Lincoln's, these propositions provide the 'noblest example' of their model.[55]

LINCOLN'S LEGACY AND THE SPIRIT OF SECESSION

With a single notable exception, none of Lincoln's propositions offer a definitive denial of the right to secession from the standpoint of both contemporary liberal and communitarian accounts of democracy. This exception might well be Lincoln's outlaw culture proposition, although here liberals and communitarians are likely to divide on the question of minimum standards.[56] To the extent to which this aspect of secession corresponds to a deep divide on the degree to which modern democratic societies should tolerate or even foster communities that are hierarchical, or even ones in which individual exit is not readily available, it seems likely that this exception is likely to collapse except in cases where practices are egregious, such as those in Bosnia.

This is not to say, however, that individual Lincoln propositions do not offer strong support against a right of secession for particular accounts of liberalism and communitarianism. For example, carefully theorised, the perpetuity and economic mobility propositions are a powerful limitation on secession for liberals, as are the exceptionalist, expiation and common heritage propositions for what we might call 'national communitarians'. Inversely, several of Lincoln's propositions can conceivably actually provide a limited right to secession (democratic privilege) or depend upon relatively specific historical circumstances to carry much force (infinite secession).

If Lincoln's propositions, however, do not stand as a wall of resistance to secession taken individually and/or in conjunction with contemporary liberal-communitarian understandings, Lincoln's pro ject taken as a whole is extremely pertinent. It is true that the ethnic/ national idea was not the dominant feature of secession in nineteenth-century America (although atavistic strands in Southern thought should not be underestimated) and that the immediate background of the spirit of secessionism is rather different. Still, secessionist movements in the former Soviet Union and in Eastern Europe represent complicated responses to societies in which both pre-modern and liberal modern practices and institutions have been repressed. Lincoln drew sharp lines between the politics and political economies of an emerging modern liberal society and one which in several respects marked out a course which rejected significant aspects of modernity. It is in this broad context of societies divided that Lincoln's project is significant. The spirit of secession also appears in different contexts. It appears in societies in which the transition to liberalism has long since been made but in which a communitarian yearning, informed by past injustices, emerges as a retreat or defence against the rigors of civil society, such as Scotland and Quebec. In this case, too, Lincoln is relevant, since his perspective involves the articulation of unimagined formations of national identity which centres their tragic character. Thus, he showed that an innovative reading of national texts could produce powerful sources of unity as strong as regional ones, and he showed that communitarian and liberal understandings could be merged in moments of national trial.

Certainly, the Declaration of Independence as a national text, as well as American constitutional development, provided a strong background for secessionist claims. Yet Lincoln extracted from the Declaration a set of propositions which, if not overwhelmingly convincing in certain parts (propositions 1–3), denied even a limited right of secession to those who would violate basic human rights. Lincoln's reading of the Declaration was, at the same time, an extremely cautious one within the context of this great igenuity, and it is not clear how inclusive was his conception of African-American civil rights. But, as Lincoln alleged to have discovered the embalmed element in the text of the Declaration, so too have subsequent commentators discovered the embalmed aspects of Lincoln's reading. It is noteworthy in this regard that, even apart from the expected difficulties with propositions 6–8, liberals should largely ignore Lincoln's achievement, and importantly the role of leadership in general. Clearly, it is the suspicion of speaking from the perspective of 'a national-popular discourse'[57], with all its implications of proceeding in the philosophically illegitimate manner of *Sittlichkeit,* that prevents the liberal from exploring the historically contingent speech of regime actors as an independent

variable. Communitarians, on the other hand, also fail to fully explore the universalising aspects of Lincoln's propositions, but for different reasons. Some communitarians are doubtful of Lincoln's method and suggest that he offered a reading so inventive that it destroyed or distorted shared cultural understanding. While it does not necessarily follow that secession would have been the price for a more cautious reading of national texts, this position is unwilling to place too much weight on the role of leaders in recasting the terms of national unity. For the communitarians of the small place, the evocations of national identity contain their own embalmed aspects, since they tend, in their view, to silence dissenting formulations through the Lincoln narrative of national trial and re-birth replayed in other historical contexts.

What is also striking about the Lincoln propositions in their totality in regard to the liberal-communitarian debate is their inclusion of such strongly worded liberal and communitarian propositions. While it is true that the expiation, exceptionalist and common heritage propositions are aggressively communitarian by contemporary standards, so too are the economic mobility (and certain interpretations of the perpetuity and outlaw culture) propositions for liberals. There are several possible explanations for the inclusion of such contradictory propositions from the standpoint of the current form of the liberal–communitarian debate. One is that the propositions, considered *in toto,* reflect the opportunism of a politician and hence, scoring one for the liberals, the perils of relying too heavily on *Sittlichkeit.* Another is that Lincoln was simply wrong except in certain particulars. Lincolnian political thought, in other words, represents an efflorescence of nineteenth-century liberal nationalism that is outdated in its reliance on the liberating effects of capitalism (i.e., economic mobility is not an effective reason to resist secession), on its cosmology (God is indifferent to the affairs of nations, at least in any way that humans might be capable of comprehending) and on its conception of national identity (the Declaration is not an effective bulwark against racism). Therefore, it is permissible, even necessary, for liberals and communitarians to ignore Lincoln's effort to include such varyingly anchored propositions in his arguments against secession. They must proceed rather by identifying with Lincoln's effort only in terms of selected propositions. Finally, and one which is important for the liberal-communitarian debate, there is the position that Lincoln's inclusion of apparently hostile propositions was a reflection of his insistence on the part of Americans to incorporate both perspectives—liberal *and* communitarian—no matter how difficult, or impossible, the task might be. Thus the Lincoln exemplar is so attractive because it insisted upon recognising hostile propositions and, in fact, did merge them at a moment in time crucial to the republic—the moment of possible dismemberment.

The latter view, despite Lincoln's extraordinary effort, is likely to be a fragile product. In fact, there have been two legacies drawn from Lincoln in America, one which emphasises Lincoln (himself born in a log cabin, 'rail splitter' in his youth and a rising country lawyer) as the exemplar of individual economic mobility, and one which emphasises his role in defining American nationhood. When we reduced Lincoln's thought to propositional form, these components became apparent, as indeed they became culturally apparent in America after the Civil War, which saw the rise of individualism as well as the resurgence of regional community in the form of Southern resistance to racial equality. Thus the full force of the Lincoln project is likely to be historically variable, and one must force oneself to ask to what extent these two strands have contributed to just settlements to racial and sectional conflict and at what price. To the extent to which ethnic antagonism in Europe is the functional equivalent to racial ones in America, perhaps then the real legacy of the Lincoln propositions is that their examination forces us to gauge the moral costs of both individualism and community in resisting or acceding to demands for secession. Those who debate the relative merits of liberal and communitarian frameworks for democratic theory would do well to study Lincoln's propositions as well as their derivation in order to test their own assertions and to also measure them against other historical contexts. For it might be possible to argue that the current debate among liberals and communitarians, taken as a whole, is itself a refraction of the Lincoln propositions, and thus itself an unacknowledged statement of American exceptionalism. For where, except in America, is the demand that the most forthright propositions of national identity contain both liberal and communitarian beliefs?

NOTES

1 See Merrill D.Peterson, *Lincoln in American Memory,* New York, Oxford University Press, 1994, pp. 366–7 and 396, for Lincoln's international reputation.
2 Gary Wills, *Lincoln at Gettysburg,* New York, Simon and Schuster, 1992, p. 145.
3 Inaugural Address in *Echoes of the South,* New York, E.B.Treat, 1866, p. 138.
4 I rely here upon Louis Hartz's classic analysis in *The Liberal Tradition in America,* New York, Harcourt, Brace and World, 1955, ch. 6–7.
5 Lyceum Address, 1838, T.Harry Williams (ed.), in *Abraham Lincoln: Selected Speeches,* New York, Holt, Rinehart, Winston, 1957, p. 14. All following page citations are from this edition unless noted.
6 Speech at Springfield, 1858, ibid., p. 76.
7 Letter to Henry Pierce, 1859, ibid., p. 114.

8 Second Inaugural Address, 1865, ibid., p. 283.
9 See, for example, the editorial in the *Richmond Dispatch,* 5 March 1861.
10 First Inaugural Address, 1861, *Abraham Lincoln: Selected Speeches,* p. 141.
11 Special Message to Congress, 1861, ibid., p. 160.
12 Address at Gettysburg, 1863, ibid., p. 247.
13 Since the actual question of secession is implicit, my examples must be considered largely illustrative of likely general positions, and I have divided the two groups simply into Team L and Team C as Charles Taylor does initially for one of his discussions ('Cross purposes: the liberal-communitarian debate' in Nancy L.Rosenblum (ed.), *Liberalism and the Moral Life,* Cambridge MA, Harvard University Press, 1989, pp. 159–82). I attempt to note, whenever possible, perfectionist liberals and different kinds of communitarians, and also include writers who are not technically part of the current dispute but who contribute to the debate in general or in particular in regard to Lincoln.
14 Whether it is possible to incorporate secession into the concepts of the original position and/or public reason is an intriguing question, especially given Rawls earlier minimax strategic emphasis and his willingness to acknowledge the limited right of civil disobedience (John Rawls, *A Theory of Justice,* Cambridge MA, Harvard University Press, 1971, p. 136). In Rawls's more recent formulations, to the extent to which public reason is dependent upon a particular constitutional consensus it is at least problematic whether secession could constitute a legitimate argument (*Political Liberalism,* New York, Columbia University Press, 1993, pp. 212–54). Also see Allen Buchanan (*Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec,* Boulder CO, Westview Press, 1991, pp. 5–7), who criticises Rawls for failing to consider secession.
15 Robert Dahl, *Democracy and Its Critics,* New Haven, Yale University Press, 1989, pp. 193–209.
16 William A.Galston, *Liberal Purposes,* Cambridge, Cambridge University Press, 1991, p. 274.
17 Robert N.Bellah, et. al., *Habits of the Heart,* New York, Harper and Row, 1985, p. 40.
18 Charles Murray, 'The local angle', in *Reason,* vol. 25, October 1993, pp. 40–4; William Bradford, *Remembering Who We Are,* Athens GA, University of Georgia, 1985, p. 155; Willmore Kendall, *The Conservation Affirmation,* Chicago, Regnery, 1963, p. 252.
19 William Galston, *Liberal Purposes,* p. 275, and 'Pluralism and social unity', *Ethics,* vol. 99, July 1989, p. 717.
20 The justification of the Constitution as a preventive against likely future secessionist efforts occurs frequently. See Jacob E.Cooke (ed.), *The Federalist,* Middletown CT., Wesleyan University Press, 1961, nos 2, 5, 6–8.
21 First Inaugural Address, *Abraham Lincoln: Selected Speeches,* p. 141. The latter is precisely Harry Beran's position, which argues that no fault secession is a corollary of the truly liberal view that the state can be justified only as a voluntary

form of association ('A liberal theory of secession', *Political Studies,* vol. 32, 1984, pp. 21–31).

22 Charles Taylor, *Hegel and Modern Society,* Cambridge, Cambridge University Press, 1973; *Interpretation and Social Criticism,* Cambridge MA, Harvard University Press, 1987, pp. 62–4.

23 *Chicago Times,* 23 November 1863.

24 Kendall, p. 252.

25 Bellah, et. al., pp. 146–47. Also see Harry Jaffa who defends Lincoln against the charge of abstraction (*The Crisis of the House Divided,* Seattle, University of Washington Press, 1959, pp. 363–86).

26 First Inaugural Address, *Abraham Lincoln: Selected Speeches,* p. 144.

27 Ibid., p. 143.

28 Davis, Inaugural Address, in *Echoes of the South,* p. 140. Compare Lincoln's inaugural on this point. While he assured the South that no precipitous action would be undertaken by him, the scenario he offered of the divided states, even without Civil War, was one of open belligerency. First Inaugural, *Abraham Lincoln: Selected Speeches,* pp. 142, 145.

29 Dahl, p. 184.

30 Taylor, *Cross purposes: the liberal-communitarian Debate,* p. 182.

31 First Inaugural, *Abraham Lincoln: Selected Speech.es,* p. 144.

32 Dahl, p. 196.

33 *Ibid.,* p. 209.

34 Buchanan, *Secession,* pp. 100ff. There is some evidence that the American Civil War may have been partly the result of this phenomenon. See J.David Greenstone, (*The Lincoln Persuasion,* Princeton, Princeton University Press, 1993), who argues that leaders of both political parties engaged in chicken games (pp. 165–8), and Kenneth Greenburg, who contends that Southern responses to the 1860 election were conditioned by the duelling code culture of the plantation class (*Masters and Statesmen,* Baltimore, Johns Hopkins University Press, 1985, pp. 135–44).

35 Although see David Miller, who accepts a limited right to secession but also argues that what he calls the Balkan objection is more a problem for liberals, since individual consent implies that borders be set wherever people want them to be drawn, while nations are based upon individual identity rather than individual will ('Defence of nationality', *Journal of Applied Philosophy,* vol. 10, 1993, p. 12).

36 Christopher Lasch, 'The communitarian critique of liberalism', in Charles Reynolds and Ralph Norman (ed.), *Community in America,* Berkeley, University of California Press, 1988, p. 174.

37 Charles Taylor, 'Alternative futures', in *Legitimacy, Identity and Alienation in Late Twentieth Century Canada,* Toronto, Knopff and Morton, 1986, p. 221.

38 G.K.Chesterton, *The Napoleon of Notting Hill* [1904], Oxford, Oxford University Press, 1994. This neglected work states the communitarian case with vigour, and at the same time exposes the risks involved in radical communitarian devolution.

39 Hartz, p. 111.

40 Roy P.Basler (ed.), *The Collected Works of Abraham Lincoln,* New Brunswick, Rutgers University Press, 1953–55, vol. 3, p. 478.
41 George Fitzhugh, Cannibals All, Richmond VA, A.Morris, 1857.
42 See, for example, 'The Liberty Party resolutions' (1843), in John L.Thomas (ed.), *Slavery Attacked: The Abolitionist Crusade,* Englewood Cliffs, Prentice-Hall, 1965, pp. 94–8.
43 Michael Walzer, 'The communitarian critique of liberalism', *Political Theory,* vol. 18, February 1990, pp. 9–10.
44 In fairness, one must also compare the reverse scenario of a successful Southern secession. See Jaffa, p. 408, for depictions of an American version of French Algeria.
45 Dahl, p. 208.
46 Michael Walzer, *Spheres of Justice,* New York, Basic Books, 1983, p. 250.
47 Rawls, *Political Liberalism,* p. 254.
48 For a discussion of this aspect, as well as the role of American exceptionalism in American political science, see Philip Abbott, 'Redeeming American exceptionalism/redeeming American political science', *Social Science Journal,* vol. 32, summer 1995, pp. 219–34.
49 See Allen Buchanan, 'Assessing the communitarian critique of liberalism', *Ethics,* July 1989, pp. 852–82; Will Kymlicka, 'Liberalism and communitarianism', *Canadian Journal of Philosophy,* vol. 18, June 1988, pp. 181–204; Amy Gutmann, 'Communitarian critics of liberalism', *Philosophy and Public Affairs,* vol. 14, Summer 1985, pp. 308–22.
50 Ronald Dworkin, 'Liberal community', in Shlomo Avineri and Avner de-Shalit (eds), *Communitarianism and Individualism,* Oxford, Oxford University Press, 1992, p. 209.
51 Although hardly sanguine about the consequences of nationalism, Benedict Anderson emphasises the central role entailed in the creation of the equivalent of a biographical narrative with its frequent employment of a fratricidal incident as a commemoration which must be both remembered (that is, commemorated) as well as forgotten (that is, forgiven). *Imagined Communities: Reflections on the Origin and Spread of Nationalism,* London, Verso, 1991, rev. ed., pp. 199–206.
52 Michael Freeman, 'Nation-state and cosmopolis', *Journal of Applied Philosophy,* vol. 11, 1994, pp. 79–87.
53 See, for example, Julia Kristeva's acknowledgement of American exceptionalism and her attempt to outline an exceptionalist French national community, based upon the teachings of Montesquieu, that confronts problems of racism and ethnocentrism. *Nations Without Nationalism,* New York, Columbia University Press, 1993, pp. 1–47.
54 See John O'Neill ('Should communitarians be nationalists?', *Journal of Applied Philosophy,* vol. 11, 1994, pp. 135–43), who argues that the state is a principal source of the unencumbered self, not a bulwark of community, and suggests its dismantling via a restatement of the projects of classical anarchism and socialism. Michael Sandel himself has expressed doubts about the nation-state, but ones

largely based on size ('The procedural republic and the unencumbered self', *Political Theory,* vol. 12, 1994, pp. 81–96).

55 Bellah, et al., p. 40.

56 See, for example, Kymlicka's discussion of the social thesis in *Contemporary Political Philosophy,* Oxford, Oxford University Press, 1990, pp. 216–37; Marilyn Friedman's attack on the communitarians' choice of exemplary communities in *Feminism and modern friendship* in Avineri and de-Shalit (eds), *Communitarianism and Individualism,* pp. 109–110; Stephen Holmes' challenge to communitarians that they specify which hierarchical practices they would endorse, in 'The permanent structure of anti-liberal thought' in Rosenblum (ed.), *Liberalism and the Moral Life,* pp. 231ff.

57 See, for example, Vet Bader 'Citizenship and exclusion', *Political Theory,* vol. 23, May 1995, pp. 211–35.

10
Communities real and imagined
Good and bad cases for national secession

Paul Gilbert

I

Benedict Anderson proposed a now famous definition of the nation: ‘it is an imagined political community—and imagined as both inherently limited and sovereign’.[1] It is an illuminating definition when we consider the nature of disagreements over claims for national secession. For characteristically these involve the imagining of different limits on the scope of political communities and corresponding differences as to the sovereign states there ought to be. The connection Anderson makes between the limits of nations and the boundaries of states is indeed crucial to understanding what claims to national secession come to: they are founded on the presumption that, whatever a nation is, it is at least something which has, other things being equal, a right to independent statehood.[2] That it is the sort of community which has this right is intrinsic to the kind of political community people are imagining when they imagine themselves a nation.

Anderson is at pains to stress that an imagined community might for all that be a *real* community: ‘all communities larger than the primordial villages of face-to-face contact (and perhaps even these) are imagined’. A community is *created,* not by actual contact between fellow members, but because ‘in the minds of each lives the image of their communion’. So Anderson is happy to concur in a paraphrase of Seton-Watson: ‘a nation exists when a significant number of people in a community imagine themselves to form a nation’.[3] Imagining makes it so. Thus, when the nation is ‘imagined as a *community,* because, regardless of the actual inequality and exploitation that may prevail in each, the nation is always conceived as a deep, horizontal comradeship’, real ‘fraternity’[4] is generated.

Yet this resolute social constructionism[5] about nations seems to have an apparently unwelcome consequence: a nation, and therefore a certain kind of

community, exists simply in virtue of being imagined appropriately. What could such imagining consist in? More, perhaps, than that people should '*consider* themselves to form a nation'—Seton-Watson's original formulation.[6] More is required than a mere thought; for Anderson stresses that certain factors are necessary to make possible the required imagining—as the existence of print languages lying between Latin and spoken vernaculars can do, for example. Nevertheless it is quite unclear that such additional factors are sufficient to enable us to distinguish truth from error in people's thoughts about the existence of their nation. And this, I say, would be an unwelcome consequence.

It is a consequence that would evidently make disagreements over claims for national secession impossible to arbitrate on the basis that one depended on a correct identification of a nation and the other upon an incorrect one. Yet that is at least the *form* that such disagreements characteristically take—the proponents of national secession *asserting* national difference, their opponents *denying* it; and the arbitration of claims characteristically takes account of the relative plausibility of such assertions and denials. The form may, of course, be misleading as to the substance. Perhaps all we do have here are more or less *potent* imaginings. But the potency of imaginings is surely to be judged by their effect upon behaviour—as Anderson would agree, for he attributes to the fraternity which is constituted by the imagined community the power to lead 'so many millions of people, not so much to kill, as willingly to die for such limited imaginings'.[7] Such behavioural consequences may open up a sufficient gap, however, to distinguish between the mere thought of a community and its reality.[8] My eventual aim in this article will be to see how such a distinction can be drawn within a broadly constructionist framework, and to apply it to the arbitration of secessionist claims.

II

In itself Anderson's definition of the nation leaves it open as to what what kind of community a nation is. All it does is rule out any account of nations which first, as we have seen, fails to link them essentially to their *political* role, and second, as we shall see in a moment, regards them as existing independently of their members *choices.* It rules out, that is to say, radically *involuntarist* accounts of nations, such as racist or organicist ones, which make membership depend upon unchosen natural features; more broadly, it also rules out ethnicist ones, which make membership depend on transmitted features other than people's choosing to commune with those they do and not with others.

Why does Anderson's definition rule out radically involuntarist accounts of nations? It does so because it views nations as *imagined,* and the kind of

imagination which Anderson has in mind is one that leaves room for *choice*. This, ultimately, is what distinguishes it from *belief*. I cannot choose to believe what I like in the face of the reasons for holding one belief rather than another. I can imagine things as I choose, though some imaginings will be easier to sustain than others—they will be more potent. The imagined community that constitutes the nation is, for Anderson, something which can be shaped by choices, albeit the choices of many. This, surely, is not surprising. For the difference between racist or ethnicist accounts and Anderson's rests on his emphasis on participation in a *community,* rather than upon mere qualification for membership of one. A community, whether it is one we find ourselves in or one we enter voluntarily is the product of choices. Even the community most circumscribed by convention leaves room for choice, and at least some of these choices can be seen as expressing the way its members view it, the way they choose to imagine it. They may, for example, imagine it as something commanding greater loyalty than the family, or they may not. Whichever way they do imagine it will be the outcome of many individual choices. Putting the political character of Anderson's account together with its anti-involuntarism may make it look as if, contrary to what I have claimed, it rules out a very large number of accounts of the nation. Does it not rule out all culturalist and realist accounts and leave room only for a civic voluntarist one? To see that it does not, and to clear the way for a distinction between communities real and merely imagined, we need to make some distinctions that are often elided and some classifications that are overlooked.

III

Civic nationalism, as I shall use the term here,[9] regards the nation as a group of people whose communal character derives wholly from their shared political institutions. Thus a nation may either be a group already organised into a state or similar polity, or it may be a group whose members share a common will to be so organised. Different versions of civic nationalism can allow one or other of the disjuncts or both as qualifying a group for nationhood. If only the latter is required then the imagined community that is the nation will only be a real community when it has effective political institutions. The political institutions must, of course, be of an appropriate kind: they must organise people on the basis of a formal equality as members of the nation,[10] whether or not the organisation is itself democratic or even a form of organisation that the people wish for themselves.

We may contrast civic with non-civic nationalism, which views the nation as a group that can be characterised as an actual or potential community

independently of its existing or desired political institutions. The thought behind non-civic nationalism is that there are *pre-political* features of people which collect them together as a nation. These features make them apt to form a political community, whether or not they do already form some pre-political community.[11] They thus provide a reason for people to choose to be so organised politically. *Cultural* features are an obvious example. Thus cultural nationalism holds that a nation is constituted by its culture—its language, history and so forth.

Anderson's definition is, I believe, compatible with some forms of non-civic nationalism, since to say the nation is imagined as sovereign is not necessarily to say that its members share a common desire for their own sovereign state: the nation may be imagined as the kind of group apt for such an organisation before any *explicit* will for it becomes general. It may be imagined, for example, as having a certain kind of history—a history of people resisting alien thraldom, say.

By voluntarism I understand the doctrine that a group is constituted by its individual members willing its existence. This may be secured by acts which bind them to it contractually, or by their continuing willingness to form a group, whose withdrawal terminates its existence.[12] Thus voluntarist nationalism views the nation as constituted by a common will for shared nationhood. Of course the *content* of what they will needs to be specified. In the case of civic nationalism it is that they be members of a shared *state* (or similar polity). But equally, as we shall see later, *cultural* voluntarism is also possible, whereby common membership of a culturally constituted group is accepted or chosen. The willing involved in these cases may not be explicit and avowable; it may be implicit and inferable from behaviour. Different theories may require explicitness or dispense with it. It is hard to see, however, how the wish to be a member of an as yet non-existent state could be implicit, by contrast with the acceptance of an existing one. In opposition to voluntarism is involuntarism—the doctrine that what constitutes a group, for instance a nation, is some factor independent of any act of individual will. It should not be confused with the denial of some specific form of voluntarism, for the denial that willing one kind of content is constitutive of nationhood does not, of course, preclude the willing of another kind's being so.[13]

Involuntarist nationalisms are *realist,* as I use this term here.[14] That is to say they regard the existence of a nation as a *discoverable fact,* not merely something whose assertion is justified only by its political point. Not all voluntarists would oppose this kind of realism; not all, that is to say, are anti-realists, though some are. Among the latter are those civic voluntarists who hold that the existence of a nation consists in the explicit and continuous willing by its members of a

national state. So far as the members are concerned they cannot *discover* that they form a nation; they can only perform the act of will that makes them one—an act of will expressible as an assertion of their nationhood made for political purposes. If Anderson's definition really did apply only to the nation as understood by such civic voluntarism, then there would be no distinction between truth and error, as against reasonableness and unreasonableness, with respect to the existence of a nation. Properly speaking, this distinction can be made only within a realist conception.

Other voluntarist nationalisms, however, are compatible with realism—for example, the kind of civic conception which requires the existence of political institutions for nationhood, together with an implicit acceptance of them. This conception may be applied in the case of a province seeking to secede from a federal state in such a way that it is deemed a matter for investigation and discovery whether it is through the province or through the federal state that the inhabitants are willingly constituted as a political community. Furthermore, although constructionism is, as indicated earlier, incompatible with involuntarism, it is not incompatible with all forms of realism. For though under constructionism nations are constituted by the voluntary social behaviour of their members, whether they are *successfully* so constructed may be a matter of discoverable fact.

IV

I have introduced these rather indigestible ingredients in order to indicate how we may concoct some standard nationalisms and assess their capacity to ground secessionist claims. First, what we may call *liberalism* roots national identity in membership of a voluntary association. Such an association is most naturally thought of as civic—as an association to administer law and order within a state. Liberalism of this sort is a form of civic voluntarism which holds that it is a nation, thought of as an association for civic purposes, that has a right to independent statehood. This right is founded on a supposed right to freedom of association.[15] Any state which organises people politically other than as they choose violates that right and thus lacks legitimacy. In these circumstances, it is claimed, those people have a right to secede from the existing state.

If freedom of association is indeed the basis for liberal nationalism then this conclusion seems inescapable.[16] Liberals must prefer the strong version of voluntarism, whereby withdrawal of consent terminates association in the nation. The weaker version, which *binds* members into an association they have at some time agreed to, imposes additional limits upon their freedom. To prevent secession on the grounds of an earlier agreement seems as unwarranted

as preventing emigration. Yet to allow the unrestricted right of secession on voluntarist grounds conflicts sharply with the Hobbesian presupposition that underlies civic nationalisms. For this makes the maintenance of community depend upon subordination to the state. What is agreed to, even if only tacitly through accepting the benefits of state membership, is precisely the relinquishing of the pursuit of sectional interest in the expectation that the general interest in civic peace will be served by such subordination. Yet if this is what is willed in willing a state, then the right to secede at will from that state must be denied. And if it is denied to others, how can it consistently be claimed by those seeking a secessionist state? Civic voluntarism's doctrine of community is at odds with its liberal inclinations. The civic voluntarist's national community is not only one that cannot be realised, it cannot even be imagined.

Civic nationalism cannot, I suggest, be coherently combined with the voluntarist justification of secession. It cannot, if the Hobbesian presupposition is correct, be sensible of the secessionists to pursue their cause, since their own projected state will lack a secure basis. Thus voluntarism will 'lead naturally to an indefinite disintegration of political societies',[17] and the Hobbesian horror story will ensue. Perhaps a trade-off can sometimes be found between security and freedom; but it is hard to see how it could be one that grounded a right of *national* secession, that is to say that tied a right of secession to the identity of a group as a nation. For how could one's national identity depend upon consideration of whether in particular circumstances the risk of political disintegration does or does not outweigh the benefits of one's otherwise preferred association? Such considerations have to do with whether one is justified in exercising a right of national secession, not with whether it exists.[18]

Civic nationalism may seem to be better founded on a communitarian basis, that is to say, on the basis of the right of a community created by political institutions to independent statehood. Indeed, as indicated earlier, many secessionist movements are founded on just such a claim, namely those where a group with some form of regional government seeks independence from the larger state of which it is a part.[19] The question that arises is whether regional government does indeed create a *separate* community. That question may be answered, in part, by determining with whom members of the group wish to associate politically. But this may be an implicit rather than an explicit association, evidenced by their primary commitment to the region rather than the wider existing state. The difficulty with this approach lies in extending it to a general theory of national secession; for the cases it covers, though numerous, are restricted to those where regional government—official or unofficial[20]—exists. This seems a quite arbitrary restriction, for surely there are rights of national secession where, through no fault of the secessionists, no such

government exists. There are nations which are not yet *civic* communities, and their right to secede is the limiting case of a right to *some* form of independent government,—a right which seems hard to explain on civic versions of communitarianism or liberalism.

V

A kind of 'liberal nationalism'[21] different from the civic version proposes a form of *cultural* voluntarism. Nations are voluntary associations, in the sense that they are constituted by explicit commitments, but they are associations to participate in (and protect) a culture. The culture is thought of realistically as a system of discoverable characteristics that members of a certain group share. Yet, since there are many cultural characteristics which one shares with different groups, a specific commitment is required in order to identify a culture as the *national* one. The nation may thus be viewed as a pre-political community, held together by its shared culture but given its political aspect by its members' national will. This aspect may, under certain circumstances in which it is required to protect the culture, include the right to statehood. Where it exists, this right derives from the right of individuals publicly to express their chosen, communal identity.

Yet why should *this* identity yield political rights, rather than other identities which one may have—British, say, rather than Scottish or English? If it is because their communal identity is explicitly *chosen,* then whether there really *is* a genuine community corresponding to it, rather than the romantic impression of one, cannot be part of an answer. For we will encounter again the problem endemic in all strong explicit voluntarism: there will be no fact of the matter as to which nations there are. Similarly placed, some people will choose one identity, others another, and only the weight of the majority will determine questions of separate statehood. Cultural voluntarism seeks to escape this anti-realist conclusion by identifying pre-political, cultural communities. But if political rights attach to such cultural communities, how is a national *will* relevant? Not, one is inclined to say, as necessary for the *existence* of the right, only for deciding whether to claim it. Here it may well be prudent to take the majority view on what the dominant cultural identity *in fact* is as decisive; a quite different thing, we may note, from canvassing the majority's *preference.* However superficially similar, an opinion poll is a very different thing from a plebiscite.[22] Let us turn, then, to cultural nationalisms which do not embody the explicit voluntarism that characterises liberalism: how might they ground a right of national secession? Typically this is viewed as a *collective* right of the cultural nation. But in order for the nation to have any collective rights it would

seem to need the corporate existence of, in some sense, a community.[23] There is a tendency[24] among cultural nationalists to assume that the mere sharing of a culture generates a community. But this is evidently not the case. Scattered speakers of a language, dispersed members of an ancient tribe, isolated coreligionists commonly live in another community: they lack one of their own. Imagining by itself cannot create one. Nor does it necessarily do so, I shall shortly suggest, even when people are not so scattered. But if a community is lacking, then there is no bearer of a collective right of statehood, still less one whose right is grounded in the *value* of community. We need to distinguish, then, between such *communitarian* groundings of the right, to which we shall return, and more strictly cultural ones.

A cultural defence of the right to statehood must somehow locate it in the *value* of a culture. As in the version of cultural voluntarism discussed above, the right attaches to individual members of the culture; but now they have the right because they have an obligation to protect their culture, which statehood enables them to fulfil. They cannot choose their culture, because it furnishes the context of their choices,[25] without which they are unable to live their lives coherently. Their obligation is, then, no more than an extension of their duty to conduct their lives in a responsible and rational way. The value of the culture is not, therefore, to be seen as instrumental in enabling them to realise their goals: their goals are shaped by it, so that its value lies in creating their moral identities.

The argument we must now examine, then, is that secession may be necessary for the preservation of one's culture, to which one has a right —a right that generates a justified claim to independent statehood only if one's culture is under threat.[26] The difficulty is to see how such *individual* rights can give rise to *national* ones. For why, we may ask, should a threat to the kind of culture that could plausibly define people as a nation justify a secessionist claim more than any other cultural threat. For example, many states have been founded in order to protect their citizens' religion. But their religion may well be shared with many others and, though it may, in combination with other factors, characterise their conception of themselves as a nation, it is not as *national* that it motivates believers to seek independence. On the face of it, the same thing goes for other cases of secession (e.g. to protect languages), especially where there is no motivation to combine with co-culturalists into a common state, when this is practicable. It is, however, one thing to defend secession as needed to protect people against an attack on their culture, just as on any other aspect of their lives, but quite another to defend it as the exercise of a right they have as a nation, which is what we are concerned with here.[27]

The moral I wish to draw from this point is that we must distinguish the cultural aspects of people's lives which characterise their conception of themselves as a community from those which do not—from those, that is to say, which simply mark them out as individually similar to some and different from others, rather than as different from others because related in a specifically communal way to some. Anderson is right, I suggest, to lay stress on the idea of the imagined *community* as grounding a claim to statehood. Although common adversity, or just a common difference, can create communal ties, it is these communal ties, and not common adversity or a common difference, that sustain a claim to national secession.

VI

I turn then, as promised, to a communitarian defence of national secession which depends on the existence of a real community and not a merely imagined one. How can we capture this distinction? We can capture it, I suggest, in two ways: we can see it as a distinction either between what really exists as against what is falsely believed to, or between what is actually accomplished as against what is only aspired to and worked for. The justification for making the distinction in the first way depends, I shall suggest, upon our ability to make it in the second. But first let us see what makes the difference between a true and false belief in the national community.

A community is a group of people leading a common life and sharing a common purpose in making it possible. Its members are related through a range of interdependencies which express their common purpose. They are, *qua* members, on terms of formal equality with respect to the rights and obligations that articulate their mutual dependence. If a nation is a community, then it must, I suggest, consist of a specific sort of group answering to these conditions. Evidently not all sorts of group that are politically organised fulfil them.[28] Some will not even appear to—such as colonies, where the goals and interdependencies of the colonists and of the colonised are different, and no formal equality exists between them. The reason why some independence movements in colonies represent themselves as nationalist is because independence may be necessary to *create* a nation: there may as yet not be one, and not even appear to be.

In other cases, however, there is the deliberate *appearance* of community, but for a variety of reasons there may be none. The story that a nation exists is put about, but social relationships belie the story. Whether there is or there is not a national community is to be judged by the *actual* behaviour and relationships of people, and thus by their *implicit* intentions as much as, or more than, by their

explicit ones. It is because people can go wrong about their own intentional behaviour in ways not very different from those in which observers can go wrong about it that they can be in error as to their national identities. They can, for example, suppose themselves to be willing to associate together when the actual pattern of their relationships is otherwise,[29] or, more commonly, to be unwilling to associate with others with whom they already enjoy successful communal relations. We have here examples where there *is* a common purpose and the interdependencies which express it, but where these do *not* correspond to the nation which they *suppose* to exist.

A different type of correspondence failure occurs when no formal equality exists between the supposed members of the nation.[30] There may be no effective common goal because a subgroup within the larger whole is able to determine its agenda and to control others for sectional advantage. While obligations may be imposed upon them, they are not reciprocated by the subgroup's recognising their rights of communal membership. The social system works, we may say, through relations of power rather than through relations of community. Oppression and exploitation, as constitutive, rather than merely accidental, features of social organisation, are inconsistent with the real existence of a nation.[31] There may or may not be a suitable community of the oppressed to qualify for nationhood. If there is, then the oppressive subgroup must either be brought to modify its behaviour appropriately or be excluded from national membership. There is a presumption in favour of the former alternative, for if the subgroup *claims* to be part of the nation then that is what it ought to do. And, quite irrespective of any such claim, this alternative embodies a *better* way of life than that implied by the latter.

The community is viewed—quite rightly—as providing for a better way of life than its alternatives. This is not just for instrumental reasons—not just because it provides a better chance for the people involved in it to have what they want than they would in a free-for-all or in a system of power and subordination. It has an intrinsic value too, the value of concord[32] and co-operation, as against strife and emulation. The nation, then, though it may fall away from these values in actual cases, must at the very least aim at and be capable of realising them. A group collected together otherwise cannot qualify as a nation. For the nation's right to statehood is founded on the desirability of a form of political organisation which safeguards, on a suitable scale, the realisation of such values. This it does both internally, through providing for the formal equality of members in the constitutional equality of citizenship, and externally, through ensuring the community's continued existence as a group with its own life and purpose.[33]

VII

If a nation is an imagined community then it is precisely because people value such a community that they imagine themselves to be one. First, they want to *be* a community, and thinking of themselves as one helps to make them so. Second, people prefer to think of their lives as exemplifying value, and imagining themselves a community conduces to that. The first point explains why imagining a national community for ourselves is inextricably linked to aspiring to be one. But what is valued may not be achieved. It is upon this gap between aspiration and achievement that, as I suggested earlier, the availability of a distinction between true and false judgements of national existence depends. The possibility of this gap is integral to the work of imagining a national community. Far from imagining making it so, through, so to speak, the *free play* of the collective consciousness, the construction of the nation is a continuing task whose accomplishment requires constant monitoring and readjustment in the face of the threat of failure. The *merely* imagined community is the unsuccessfully imagined one.

Yet, as the second point above indicates, it is comforting to believe that one is part of a *real* community.[34] It is not surprising, therefore, when facile fancies are preferred to strenuous production, failures of imagination are not acknowledged, mere imagining is taken to have made it so. The national imagination is prone to self-deception, for the values it aims for are easier to envision than to realise, the facts easier to falsify than to confront (not least because scepticism can itself inhibit the relationships which imagination tries to build).

It is culture that accomplishes the work of national imagination. While the processes involved are too complex to be documented here, we can note some of the ways in which community and culture can come apart. Culture I take, in a broad sense, to be the medium through which our lives are understood and valued. It will include our language, history and customs. In order to provide an adequate vehicle for understanding, it must be both rich and coherent, or else we will be uncomprehending or confused. Yet, if the understanding it provides is to be rooted in *facts* about our lives, it must be flexible and open. Otherwise it will *impose* an interpretation upon our lives and be unresponsive or antagonistic to changes in them. This second requirement pulls in a different direction from the first. The richer a language, for example, the less need it has of neologisms; the more it is open to foreign borrowing the less coherent, conceptually well-integrated, it threatens to be. The more rigid a history, the more sharply it can define a life; but the rfiore that life changes, the less realistic, the more mythic,

this history will be as a narrative of life. In sum, what conduces to construction militates against correspondence to fact and vice versa.[35]

We hold the Ireland in the heart
More than the land our eyes have seen;
And love the goal for which we start
More than the tale of what has been…
No blazoned banner we unfold—
One charge alone we give to youth,
Against the sceptred myth to hold
The golden heresy of truth.[36]

These words from the Irish nationalist poet George Russell ('A.E.') illustrate the way a myth—in this case the myth of 'the last splendour of the Gael'—is seen as limiting and distorting the imagining of a nation. It is one of a number of ways the national imagination may fail through its cultural inadequacies. Adopting the scheme suggested in the preceding paragraph, we can classify them roughly as follows. First, cultural poverty may make it impossible for a common project or shared understandings to develop. Second, cultural incoherence may prevent the common identification of a single community. Third, cultural rigidity may obscure communal realities (for example, of exploitation). Fourth, cultural closure may impede the acceptance of effective communal relations (for example, with immigrants). This is excessively schematic, but it is, perhaps, sufficient to indicate how the 'cultural artefact'[37] that is, properly constructed, the nation, can, through constructional defects, fail to achieve its desired shape —so that what those engaged in the construction believe themselves to have made does not exist. And it indicates, too, how a national community can exist quite otherwise than as it purports to have been constructed in a culture, and yet how difficult it may be for people to acknowledge this.

VIII

Finally in this article, I want to apply the foregoing suggestions to the problem of adjudicating upon secessionist claims. The communitarian criterion that I am adopting is that the secessionist group should be a community of a kind suitable for statehood[38] and not already part of a wider such community that is the primary focus of communal attachment. A claim to secede, then, should be upheld only if there really *is* such a community, not if people merely believe there is one, or wish there were. Nationalist cases based either upon the alleged

will of the people or upon supposed cultural distinctness are both to be mistrusted.

The first is suspect precisely because there can be many reasons[39] for wanting a separate polity that have nothing to do with constituting a separate community and everything to do with seeing an opportunity to advance sectional interests in a way that is impossible precisely *in* the community. A harsh judgement of the Ulster Protestant secession from Ireland might view it in just this light. After all, the position of Protestants in the Irish community was scarcely less than equal to that of Catholics (unlike that of Catholics in Northern Ireland *vis-à-vis* Protestants). And this is so whatever the inadequacies of a Gaelic Irish culture to represent the real relations within that community.

The second, the culturalist case, is suspect, then, because community may fail to correspond to culture. This can happen, as already suggested, in a number of ways, but two are of particular importance here. In the one case a culture may extend well beyond any community which exemplifies it. German language and culture, for example, spread across Europe in a way that in no sense involved the territorial expansion of a national community. Rather it created separate communities or parts of other communities. The strongest argument that might have been produced for the secession of the Sudetenland would have been that it was a community independent of the rest of Czechoslovakia, not a detached part of the national community of Germany. (Arguably, analogous considerations have applied to the alleged cultural Britishness of Northern Ireland). In the other case, however, a culture may fail to cover the full extent of a community. This is the claim of those who argue that a united Ireland cannot be founded on a Catholic, Gaelic culture, or of those who oppose the culturalist presumptions[40] of the secession of the formerly Soviet Baltic states. In each instance there seems to be a functioning national community wider than the dominant national culture: there are communal relations, that is to say, between those who exhibit that culture and those who do not.

This situation flies in the face of what we may call the *integrated ideal*[41] espoused by many nationalists, which links community and culture inextricably. Yet this ideal adopts a *totalising* view of culture which is both fantastical and dangerous. For people in complex societies do not possess a homogenous culture, dominating all facets of their lives and uniformly distinct from the cultures of others. People's culture is composite, and its different aspects relate them to different groups in different ways. *One* way is that in which it relates them to their fellow nationals, but that need not be the way in which it relates them to coreligionists, speakers of the same language or whatever. Indeed it would evidently be dangerous, not only to individual autonomy but to the

flexibility and openness of the culture, to suppose it must. Nor, contrary to much nationalist thinking,[42] is it at all necessary for national unity. All this requires is that the cultural resources of the nation—different as they may be frorn group to group—are sufficient for them to be able successfully to imagine a community with a right to statehood—and this different groups may imagine differently, even though they imagine the same community.[43] When this happens we have what may not unfairly be called a demotic, rather than an ethnic, national community.

For this there must, in a restricted sphere, be a harmony of cultures within the nation. That is to say the ways the nation is conceived of in them must embody a shared project and a mutually valued interdependence. This may be accomplished in different ways. One that springs immediately to mind is through the possession of a common *political* culture which institutionalises interrelationships in a public space that abstracts from the private values and views of life of its participants. It is the belief that such a political culture *must* be necessary for communal life, at least beyond the narrow confines of a culturally homogenous group, which sometimes motivates civic nationalism. But we can imagine that harmony should be achievable otherwise, for example by different cultural groups forming a *system,* without which the community could not survive. (Indeed, it appears that the Hutu and the Tutsi, with their different agricultural and pastoral functions, formed just such a system prior to its deformation by Belgian colonialism.) And there are other, less systematic, ways of achieving cultural harmony within the national community.[44] There is no reason to suppose that such harmony is not possible just because at a particular time people do not believe it to be so. But, on the other hand, evidence is needed in order to demonstrate that it is.[45]

NOTES

1 *Imagined Communities: Reflections on the Origin and Spread of Nationalism,* London, Verso 1991, p. 6.

2 This does not imply that a nation *should* have its own state (pace E.Gellner, *Nations and Nationalism,* Oxford, Blackwell 1983, p. 3), for a nation may choose not to exercise its right on the grounds that is better for it to share a state with another nation or for the nation to be divided into several states. Nevertheless, the boundaries of a community provide *possible* boundaries for a state, in a way that other accounts of the nation do not. See my 'Criteria of nationality and the ethics of self-determination', *History of European Ideas,* vol. 16, 1993, pp. 515–20. The point is convincingly developed by Harry Beran in Chapter 3 of this volume, though Beran does not want to regard the relevant community as necessarily a

national community. My approach is to regard the delineation of a community in connection with a claim to statehood as *in virtue of that claim* the delineation of a national community. There are, of course, real difficulties as to how to delineate the community at the borderline.

3 Foregoing quotations from *Imagined Communities,* p. 6. Anderson's definition is remarkably similar to that of the Irish nationalist George Russell ('A.E.'): 'A nation exists primarily because of its own imagination of itself', in *The Living Torch,* London, Macmillan 1939, p. 183. Russell's account of the nation as a 'spirit' is clearly idealist. This articlecan be seen as an attempt to rid the definition of idealism.

4 Anderson, *Imagined Communities,* p. 7.

5 As will become clear, I regard a group as a social construction if its constitutive relationships are determined not by natural processes but by the rational activities of social agents in historical circumstances.

6 *Nations and States,* Boulder CO, Westview Press, 1977, p. 5 (my emphasis). Notoriously this kind of view is open to the objection that 'if nothing but a belief unifies the group the belief must be an illusion' (J.D.Mabbott, *The State and the Citizen,* London, Hutchinson, 1947, p. 164).

7 Anderson, *Imagined Communities,* p. 7. The passage he quotes from Seton-Watson allows the nation to exist if people consider themselves one 'or behave as if they formed one'.

8 I draw this distinction in 'Criteria of nationality and the ethics of self-determination', p. 579. It is raised with reference to Anderson by J.O'Neil, 'Should communitarians be nationalists', *Journal of Applied Philosophy,* vol. 11, 1994, p. 138.

9 The term is generally used in contrast to ethnic nationalism, e.g. A.D. Smith (*National Identity,* Harmondsworth, Penguin, pp. 8–12), who points out that the notion derives from Meinecke, but that is not quite how I am using it here, as will become clear later.

10 Except perhaps for a monarchy, when national identity is dependent upon allegiance to such a person. This conception is not, however, free of difficulties.

11 Notice that a non-civic nationalist can share the civic nationalist's Hobbesian intuition that political institutions are necessary for community, while holding that pre-political features are also required, which the civic nationalist denies (though without necessarily denying that they may be conducive to it).

12 This is a distinction between *causal* and *logical* voluntarism as drawn in my *Terrorism, Security and Nationality* (London, Routledge, 1994, pp. 98–101). It may be illustrated by the distinction between a political party, whose members contract to support it, and a group of party supporters, which exists only so long as support is spontaneously forthcoming.

13 It is important to appreciate that the question of whether people can *decide* what nation to join is a quite different question from whether the nation is constituted voluntaristically. For whether people constituted a nation could be determined by their willing it, yet membership be restricted; while the nation could be

constituted involuntaristically (e.g. as some might suppose, geographically), but membership be open (e.g. through immigration). The question of membership is a question about specific nations; voluntarism is a theory about nations in general.

14 This is not quite as I introduced the term in the two publications cited above, where I emphasised discoverability by any observer as characterising a realistically conceived assertibility condition. But the two formulations are closely related, since if for some observers assertion is simply a matter of decision, then it is not rooted in fact, and, if it is not, then for *at least* some it must be a matter for decision; and if that is so, then for others it can at most be a matter of convention. (It goes without saying that I am assuming a realist conception of all natural and at least some social facts).

15 'One hardly knows what any division of the human race should be free to do, if not to determine with which of the various collective bodies of human beings they choose to associate themselves' (J.S.Mill, *Representative Government,* 1861, ch. 16).

16 As Harry Beran argues (*The Consent Theory of Political Obligation,* London, Croom Helm, 1987, pp. 37–8).

17 Henry Sidgwick, *The Elements of Politics,* London, Macmillan, 1891, p. 621.

18 The same goes for justifications of secession based upon the injustice to which would-be secessionists have been subjected, as in what Allen Buchanan calls 'the fault model' version of substantive justifications (*Secession.* Boulder CO, Westview Press, 1991, p. 135). Though this might well provide a reason to withdraw from the present association and form a new one, it scarcely gives a reason based upon national identity. It is sometimes easy to overlook this when the injustice is directed against people *as* a national minority group. But on whatever basis they are so identified it is not *this* that gives them their reason to secede, pace R.E. Ewin ('Peoples and secession', *Journal of Applied Philosophy,* vol. 11,1994, p. 229).

19 The case of the formerly Soviet Baltic States, and of Quebec discussed by Kai Nielsen, 'Secession: the case of Quebec', *Journal of Applied Philosophy,* vol. 10, 1993, pp. 29–3.

20 Unofficial in, for example, the case of an administration formed by insurgents.

21 As proposed in the book of this title by Yael Tamir (Princeton: Princeton University Press, 1993); see especially ch. 3 on which the following account is based. The two kinds of cultural nationalism I go on to discuss are related to those addressed by Simon Caney as 'individualist' and 'communitarian' respectively in Chapter 8 above. Since Caney regards a common culture as essential to nationhood, his treatment might be thought to need restricting to culturalist defences of national self-determination like those I consider here. However, it is one thing to regard a common culture as necessary to nationhood and another to regard that culture as founding its claim to statehood. In consequence, Caney can consider a wider range of defences than the strictly culturalist ones. But, if there are to be defences of *national* self-determination,

they need to derive from the other feature of nationhood he identifies—a people's self-definition as a nation.

22 As envisaged in Renan's famous dictum, 'The existence of a nation is a daily plebiscite' 'Qu' est-ce qu' une nation?' in J.Hutchinson and A.D. Smith (eds), *Nationalism,* Oxford, Oxford University Press, 1994, p. 17).

23 David George, 'The right of national self-determination', *History of European Ideas,* vol. 16, 1993, p. 510. For the relevant notion of collective right, see Michael Hartney, 'Some confusions concerning collective rights', in W.Kymlicka (ed.), *The Rights of Minority Cultures,* Oxford, Oxford University Press, 1995, p. 205.

24 E.g. Buchanan p. 54; Nielsen p. 31.

25 In Kymlicka's phrase (*Liberalism, Community and Culture,* Oxford, Oxford University Press, 1989, p. 166). This notion is closely related to that involved in the idea of an 'encompassing group', on whose value Avishai Margalit and Joseph Raz base the right of national self-determination ('National self-determination', *Journal of Philosophy,* vol.87, 1990, pp. 439–61).

26 Here I agree with Buchanan, op. cit., p. 60, and disagree with O'Neil, op. cit., p. 34. Additional argument would be needed to show either that statehood was always required for adequate cultural fulfilment or that a cultural group had a right to determine for itself what was required. In either case it is unclear why this should apply to national groups and not to others.

27 See footnote 18 above.

28 E.g. a group organised within 'the dynastic realm', Anderson op. cit. p. 19.

29 This is a belief *constitutive* of nationhood. David Miller illustrates the contrast with *background* beliefs that need not be accurate by comparing relationships in friendship and in the family, though he does not appear to apply it directly to national relationships ('The ethical significance of nationality', *Ethics,* vol. 98, 1988, p. 655). Ross Poole appears to make the appropriate point *vis-à-vis* nations, but fails to distinguish it from the attribution of erroneous background beliefs (*Morality and Modernity,* London, Routledge, 1991, p. 108).

30 Even if there is *political* equality, as there has been in Northern Ireland, despite the fact that Catholics were not treated there as equal members of a British nation.

31 It is this which gives rise to the French Revolutionary idea that the nation is the Third Estate: see J.R.Llobera, *The God of Modernity,* Oxford, Berg, 1994, pp. 182–9.

32 'Homonoia', as Aristotle calls it, in *Ethics,* 1167a6.

33 Or negotiating its absorption into another, on terms which may or may not permit a future secession.

34 The psychological processes involved are discussed in William Bloom, *Personal Identity, National Identity and International Relations,* Cambridge, Cambridge University Press, 1990.

35 Cf. Renan, 'to forget and—I will venture to say—to get one's history wrong, are essential factors in the making of a nation', quoted with approval by Miller ('In

defence of nationality', *Journal of Applied Philosophy,* vol. 10, 1993, p. 8). I do not agree that false history is essential or even helpful in nation building, still less that 'the nation is an illusory community, and not just an imagined one, because of the necessary role of unrecognised falsity—of illusion—in its constitution', (Poole, loc. cit).

36 *On Behalf of Some Irishmen Not Followers of Tradition,* in *Collected Poems,* London, Macmillan, 1913.

37 Anderson' s phrase, op. cit. p. 4.

38 In this article I am studiously silent as to what kind of community this is. There are, I believe, constraints as to scale, territorial compactness, economic viability and so forth, but they are hard to codify and to explain. There are also problems as to what it is for a community to *exist.* Is there, for example, a national Kurdish community, in view of the fact that its development is continuously frustrated by the states within which the Kurds live? Here we can, I think, say that if the Kurds *were* not thus interfered with they *would* develop a community. In this sense a community exists, albeit a deformed one. Notice that this is a very different thing from saying that if some people *had* not been interfered with they *would have* developed a community. This is true of innumerable peoples who in no sense exist as nations.

39 Some of them *good* reasons: as when a group which lays no claim to national distinctiveness seeks independent government to protect itself from injustice. (But the multiplicity of possible reasons is a further argument against voluntarist nationalisms, which would need restricting to cases of a will to associate with some rather than others disinterested save for a concern with security or cultural preservation.)

40 As enshrined in the language requirements for citizenship imposed upon the ethnic Russian populations.

41 As I use the phrase in the Introduction to Paul Gilbert and Paul Gregory (eds), *Nations, Cultures and Markets,* Aldershot, Avebury, 1994, pp. 2–4.

42 E.g. Miller, 'ln defence of nationality', pp. 10–12. Despite Miller's disclaimers, his account does seem to me to have the totalising consequences anathematised by Michael Freeman in his reply, 'Nation-state and cosmopolis', *Journal of Applied Philosophy,* vol. 11, 1994, pp. 83–5.

43 *One* way in which they may imagine themselves members of the same community may be if they imagine themselves all Britons, say, even if they imagine Britishness differently. In such a case the British nation may exist partly because its members do think of themselves as members of it. But this is not, I would argue, in general necessary for the existence of a nation, since people may be able to think of themselves as members of the relevantly same community as others, even if they do not have the concept of a nation in terms of which to think of that community.

44 E.g. through a *culture* of multiculturalism!

45 I am grateful to fellow members of the Theories of Secession' workshop, at 23rd Joint Sessions of Workshops, European Consortium for Political Research, Bordeaux, France, 27 April–2 May 1995 for valuable comments made on an earlier draft.

11
The international institutional dimension of secession

Allen Buchanan

After a long period of neglect, political theorists have turned their attention to secession. A growing number of positions on the justification for, and scope of, the right to secede are being staked out. Yet, so far there has been no systematic account of the types of normative theories of secession. Nor has there been a systematic assessment of the comparative strengths and weaknesses of the theoretical options.

Indeed, as I shall argue, there is even considerable confusion about what sorts of considerations ought to count for or against a theory of the right to secede. Although some writers pay lip-service to the distinction between arguments to justify a moral right to secede and arguments to justify prescriptions for how international law should deal with secession, they have not appreciated how great the gulf is between their moral justifications and any useful guidance for international law. This article begins the task of remedying these deficiencies.

THE INSTITUTIONAL QUESTION

Most existing theories either do not distinguish between two quite different normative questions about secession, or do not appreciate that the two questions require quite different answers.

1 Under what conditions does a group have a moral right to secede, independently of any questions of *institutional* morality, and in particular apart from any consideration of international legal institutions and their relationship to moral principles?
2 Under what conditions should a group be recognised as having a right to secede as a matter of international *institutional* morality, including a morally defensible system of international law?

Both are *ethical* questions. The first is posed in an institutional vacuum and, even if answerable, may tell us little about what institutional responses are (ethically) appropriate. The second is a question about how, from an ethical standpoint, international institutions and, especially, international legal institutions ought to respond to secession.

Those who offer answers to the first question assume that answering it will provide valuable guidance for reforming international institutions. Whether this is the case, however, will depend upon whether the attractive features of non-institutional theories remain attractive when attempts are made to institutionalise them. I shall argue that they do not: otherwise appealing accounts of the right to secede are seen to be poor guides to institutional reform once it is appreciated that attempts to incorporate them into international institutions would create perverse incentives. In addition, I shall argue that moral theorising about secession can provide significant guidance for international legal reform only if it coheres with and builds upon the most morally defensible elements of existing law, but that non-institutional moral theories fail to satisfy this condition. My contention is that, unless institutional considerations are taken into account from the very beginning in developing a normative theory of secession, the end result is unlikely to be of much value for the task of providing moral guidance for institutional reform.

Which question one is trying to answer makes a difference, because, depending upon which question is being asked, different considerations can count for or against a theory of the right to secede. Because I believe that the more urgent and significant task for political theory at this time is to answer the second question, I will concentrate on theories of the right to secede understood as answers to it.[1]

The chief reason for believing that the institutional question is the more urgent one is that secession crises tend to have international consequences that call for international responses. If these international responses are to be consistent and morally progressive, they must build upon and contribute to the development of more effective and morally defensible international institutions, including the most formal of these, the international legal system.

The *international legal system* is comprised of legal norms and the authoritative bodies that enact or recognise them and which make decisions concerning their application, including the General Assembly of the United Nations and the World Court of Justice. The concept of *international legal institutions* employed here is even broader, including the various regional bodies and agencies whose authority is recognised in international law, such as the Council of Europe and the Organization of American States. *'International institutions'* is an even broader category, including not only international legal institutions but also

international financial agencies, such as the World Bank, and the various mechanisms for implementing the trade, cultural and scientific agreements which international law authorises states to enter into. Finally, none of these terms should be taken to imply that there is a sharp distinction in every case between international legal practice and the international political practice for which international law provides a framework. Thus, when we speak of *international institutional morality* we mean the ethical underpinnings of the whole range of international institutions from the legal system to the patterns of international political practice which the legal system makes possible, and which in turn shapes the evolution of the legal system itself. A systematic inquiry into international institutional morality would articulate the moral principles that speak in favour of developing international institutions to cope with problems of serious moral import and would develop arguments to show why and how particular international institutions, including international legal institutions, should be shaped by appropriate moral principles.

Because secessionist attempts are usually resisted with deadly force by the state, human rights violations are common in secession. In many cases the conflicts, as well as the refugees fleeing from them, spill across international borders. Recent events in the former Yugoslavia demonstrate both the deficiencies of international legal responses and the lack of consensus on sound ethical principles to undergird them.[2]

Some, perhaps most, recent writers offering accounts of the right to secede do not state whether, or if so how, their proposals are intended to be incorporated into international legal regimes.[3] They refer only to 'the right' to secede, without making it clear whether this means a non-institutional moral right or a proposed international legal right. Others signal that they are proposing changes in the way in which the international community responds to secession crises, and this presumably includes international legal responses, but do not acknowledge the gap between their arguments concerning the justification and scope of a moral right to secede and the requirements of a sound proposal for reforming international law.[4] Finally, some analysts acknowledge this gap and cautiously note that their theories are only intended to provide general guidance for the latter enterprise, but provide no clues as to how the gap might be bridged.[5] None of these three groups has articulated or even implicitly recognised the constraints that are imposed on accounts of the right to secede, once it is clearly understood that what is being proposed is an international legal right.

Keeping the institutional question in the foreground, I will first distinguish between two basic types of theories of the right to secede: *Remedial Right Only theories* and *Primary Right theories*. All normative theories of secession can be

classified under these two headings. In addition, I will distinguish between two types of Primary Right theories, according to what sorts of characteristics a group must possess to have a Primary Right to secede: Ascriptive-Group theories and Associative-Group theories.

Then I will articulate a set of criteria that ought to be satisfied by any moral theory of the right to secede capable of providing valuable guidance for determining what the international legal response to secession should be, and explain the rationale for each criterion.

Finally, after articulating the main features of what I take to be the most plausible instances of Remedial Right Only theories and Primary Right theories of secession, I will employ the aforementioned criteria in their comparative evaluation. The chief conclusion of this comparison will be that Remedial Right theories are superior. Whatever cogency Primary Right theories have, they possess it only when viewed in an institutional vacuum. They are of little use for developing an international institutional response to problems of secession.

TWO TYPES OF NORMATIVE THEORIES OF SECESSION

All theories of the right to secede either understand the right as a remedial right only or also recognise a *primary* right to secede. By a right in this context is meant a *general* right, not a *special* right (one generated through promising, contract or some special relationship). Remedial Right Only theories assert that a group has a general right to secede if, and only if, it has suffered certain injustices, for which secession is the appropriate remedy of last resort.[6] Different Remedial Right Only theories identify different injustices as warranting the remedy of secession.

Primary Right theories, in contrast, assert that certain groups can have a (general) right to secede in the absence of any injustice. They do not limit legitimate secession to being a means of remedying an injustice. Different Primary Right theories pick out different conditions that groups must satisfy to have a right to secede in the absence of injustices.

Remedial Right Only theories

According to this first type of theory, the (general) right to secede is in important respects similar to the right to revolution, as the latter is understood in what may be called the mainstream of normative theories of revolution. The latter are typified by John Locke's theory, according to which the people have

the right to overthrow the government if, and only if, their fundamental rights are violated, and more peaceful means have been to no avail.[7]

The chief difference between the right to secede and the right to revolution, according to Remedial Right Only theories, is that the right to secede accrues to a portion of the citizenry, concentrated in a part of the territory of the state. The object of the exercise of the right to secede is not to overthrow the government, but only to sever the government's control over that portion of the territory.

The recognition of a remedial right to secede can be seen as supplementing Locke's theory of revolution and theories like it. Locke tends to focus on cases where the government perpetrates injustices against 'the people,' not a particular group within the state, and seems to assume that the issue of revolution arises usually only when there has been a persistent pattern of abuses affecting large numbers of people throughout the state. This picture of legitimate revolution is conveniently simple: when the people suffer prolonged and serious injustices, the people will rise.

In some cases however, the grosser injustices are perpetrated not against the citizenry at large but against a particular group concentrated in a region of the state. (Consider, for example, Iraq's genocidal policies against the Kurds in northern Iraq). Secession may be justified, and may be feasible, as a response to selective tyranny when revolution is not a practical prospect.

If the only effective remedy against selective tyranny is to oppose the government, then a strategy of opposition that stops short of attempting to overthrow the government (revolution), but merely seeks to remove one's group and the territory it occupies from the control of the state (secession), seems both morally unexceptionable and, relatively speaking, moderate. For this reason, a Remedial Right Only approach to the right to secede can be seen as a valuable complement to the Lockean approach to the right to revolution understood as a remedial right. In both the case of revolution and that of secession the right is understood as the right of persons subject to a political authority to defend themselves from serious injustices, as a remedy of last resort.

It was noted earlier that Remedial Right Only theories hold that the *general* right to secession exists only where the group in question has suffered injustices. This qualification is critical. Remedial Right Only theories allow that there can be *special* rights to secede if:

1 the state grants a right to secede (as with the secession of Norway from Sweden in 1905), or if

2 the constitution of the state includes a right to secede (as does the 1993 Ethiopian Constitution), or perhaps if
3 the agreement by which the state was initially created out of previously independent political units included the implicit or explicit assumption that secession at a later point was permissible (as some American Southerners argued was true of the States of the Union).

If any of these three conditions obtain, we can speak of a *special* right to secede. The point of Remedial Right Only theories is not to deny that there can be special rights to secede in the absence of injustices. Rather, it is to deny that there is a *general* right to secede that is not a remedial right.

Because they allow for special rights to secede, Remedial Right Only theories are not as restrictive as they might first appear. They do *not* limit permissible secession to cases where the seceding group has suffered injustices. They *do* restrict the general (as opposed to special) right to secede to such cases.

Depending upon which injustices they recognise as grievances sufficient to justify secession, Remedial Right theories may be more liberal or more restrictive. What all Remedial Right Only theories have in common is the thesis that there is no (general) right to secede from a just state.

A Remedial Right Only theory

For purposes of comparison with the other basic type of theory, Primary Right theories, I will take as a representative of Remedial Right Only theories the particular version of this latter type of theory which I have argued for at length elsewhere.[8] According to this version, a group has a right to secede only if

1 The physical survival of its members is threatened by actions of the state (as with the policy of the Iraqi government toward the Kurds in Iraq) or it suffers violations of other basic human rights (as with the East Pakistanis who seceded to create Bangladesh in 1970), *or*
2 its previously sovereign territory was unjustly taken by the state (as with the Baltic Republics).

I have also argued that other conditions ought to be satisfied if a group that suffers any of these injustices is to be recognised through international law or international political practice as having the right to secede.[9] Chief among these is that there be credible guarantees that the new state will respect the human rights of all of its citizens and that it will co-operate in the project of securing other *just terms* of secession.[10] (In addition to the protection of human rights, the

just terms of secession include a fair division of the national debt, a negotiated determination of new boundaries, arrangements for continuing, renegotiating or terminating treaty obligations, and provisions for defence and security.) This bare sketch of the theory will suffice for the comparisons that follow.

Primary Right theories

Primary Right theories fall into two main classes: *Ascriptive-Group theories* and *Associative-Group theories*. Theories that include the Nationalist Principle (according to which every nation or people is entitled to its own state) fall under the first heading. Those that confer the right to secede on groups that can muster a majority in favour of independence in a plebiscite fall under the second.

Ascriptive-Group theories

According to Ascriptive-Group versions of Primary Right theories, it is groups whose memberships are defined by what are sometimes called ascriptive characteristics that have the right to secede (even in the absence of injustices). Ascriptive characteristics exist independently of any actual political association which the members of the group may have forged. In other words, according to Ascriptive-Group theories of secession, it is first and foremost certain *non-political* characteristics of groups that ground the group's right to an independent political association.

Being a nation or people is an ascriptive characteristic. What makes a group a nation or people is the fact that it has a common culture, history, language, a sense of its own distinctiveness, and perhaps a shared aspiration for constituting its own political unit. No actual political organisation of the group, nor any actual collective choice to form a political association, is necessary for the group to be a nation or people.

Thus, Margalit and Raz appear to embrace the Nationalist Principle when they ascribe the right to secede to what they call 'encompassing cultures', defined as large-scale, anonymous (rather than small-scale, face-to-face) groups that have a common culture and character that encompasses many important aspects of life and which marks the character of the life of its members, where membership in the group is in part a matter of mutual recognition and is important for one's self-identification and is a matter of belonging, not of achievement.[11]

Associative-Group theories

In contrast, Associative-Group versions of Primary Right theories do not require that a group have any ascriptive characteristic, such as ethnicity or having an encompassing culture, even as a necessary condition for having a right to secede. The members of the group need not even believe that they share any characteristics other than the desire to have their own state, much less a common ethnic or cultural identity. Instead, Associative-Group theorists focus on the *voluntary political choice* of the members of a group (or the majority of them), their decision to form their own independent political unit. Any group, no matter how heterogeneous, can qualify for the right to secede. Nor need the secessionists have any common connection, historical or imagined, to the territory they wish to make into their own state. All that matters is that the members of the group voluntarily choose to associate together in an independent political unit of their own. Associative-Group theories, then, assert that there is a right to secede that is, or is an instance of, *the right of political association*.

The simplest version of Associative-Group Primary Right theory is what I have referred to elsewhere as the *pure plebiscite theory* of the right to secede.[12] According to this theory, any group that can constitute a majority (or, on some accounts, a 'substantial' majority) in favour of secession within a portion of the state has the right to secede. It is difficult to find unambiguous instances of the pure plebiscite theory, but there are several accounts which begin with the plebiscite condition and then add weaker or stronger *provisos*.

One such variant is offered by Harry Beran.[13] On his account, any group is justified in seceding if:

1 it constitutes a substantial majority in its portion of the state, wishes to secede, and
2 will be able to marshal the resources necessary for a viable independent state.[14]

Beran grounds his theory of the right to secede in a *consent theory of political obligation*. According to Beran, actual (not 'hypothetical' or 'ideal contractarian') consent of the governed is a necessary condition for political obligation, and consent cannot be assured unless those who wish to secede are allowed to do so.

Christopher Wellman has more recently advanced another variant of plebiscite theory.[15] According to his theory, there is a primary right of political association, or, as he also calls it, of political self-determination. Like Beran's right, it is primary in the sense that it is not a remedial right, derived from the

violation of other, independently characterisable rights. Wellman's right of political association is the right of any group that resides in a territory to form its own state if:

1. that group constitutes a majority in that territory;
2. the state it forms will be able to carry out effectively the legitimating functions of a state (pre-eminently the provision of justice and security); and
3. its severing the territory from the existing state will not impair the latter's ability to carry out effectively those same legitimating functions.

Like Beran's theory, Wellman's is an Associative-Group, rather than an Ascriptive-Group, variant of Primary Right Theory, because any group that satisfies these three criteria, not just those with ascriptive properties (such as nations, peoples, ethnic groups, cultural groups or encompassing groups), is said to have the right to secede. Both Beran and Wellman acknowledge that there can also be a right to secede grounded in the need to remedy injustices, but both are chiefly concerned to argue for a Primary Right, and thus to argue *against* all Remedial Right Only theories.

According to Primary Right theories, a group can have a (general) right to secede even if it suffers no injustices, and hence it may have a (general) right to secede from a perfectly just state. Ascriptive characteristics, such as being a people or nation, do not imply that the groups in question have suffered injustices. Similarly, according to Associative-Group theories, what confers the right to secede on a group is the voluntary choice of members of the group to form an independent state; no grievances are necessary.

Indeed, as we shall see, existing Primary Right theories go so far as to recognise a right to secede even under conditions in which the state is effectively, indeed flawlessly, performing all of what are usually taken to be the *legitimating functions* of the state. As noted above in the description of Wellman's view, these functions consist chiefly, if not exclusively, in the provision of justice (the establishment and protection of rights) and of security.

Notice that, in the statement that Primary Right theories recognise a right to secede from perfectly just states, the term 'just' must be understood in what might be called the uncontroversial, or standard or theory-neutral, sense. In other words, a perfectly just state here is one that does not violate relatively uncontroversial individual moral rights, including above all human rights, and which does not engage in uncontroversially discriminatory policies toward minorities. This conception of justice is a neutral or relatively uncontroversial one in this sense: we may assume that it is acknowledged by both Remedial

Right Only theorists and Primary Right Only theorists—that both types of theorists recognise these sorts of actions as injustices, though they may disagree in other ways as to the scope of justice. In contrast, to understand the term 'just' here in such a fashion that a state is assumed to be *unjust* simply because it contains a minority people or nation (which lacks its own state) or simply because it includes a majority that seeks to secede but has not been permitted to do so, would be to employ a conception of justice that begs the question in this context, because it includes elements that are denied by one of the parties to the debate, namely Remedial Right Only theorists. To repeat: the point is that Primary Right theories are committed to the view that there is a right to secede even from a state that is perfectly just in the standard and uncontroversial, and hence theory-neutral, sense.[16]

CRITERIA FOR EVALUATING PROPOSALS FOR AN INTERNATIONAL LEGAL RIGHT TO SECEDE

With this classification of types of theories of the right to secede in mind, we can now proceed to their comparative evaluation. Special attention will be given to considerations that loom large, once we look to these theories for guidance in formulating proposals for a practical and morally progressive international legal approach to dealing with secession crises. The following criteria for the comparative assessment of competing proposals for how international law ought to understand the right to secede are not offered as exhaustive. They will suffice, however, to establish two significant conclusions. First, theories of the moral right to secede that might initially appear reasonable are seen to be seriously deficient when viewed as elements of an institutional morality articulated in a system of international law. Second, some current theories of the right to secede are much more promising candidates for providing guidance for international law than others. Others fail to take into account some of the most critical considerations relevant to the project of providing a moral foundation for an international institutional response to secession crises.

Minimal realism

A proposal for an international legal right to secede ought to be morally progressive, yet at the same time at least minimally realistic. A *morally progressive* proposal is one which, if implemented with a reasonable degree of success, would better serve basic values than the *status quo*. Pre-eminent among these values is the protection of human rights.

A proposal satisfies the requirement of *minimal realism* if it has a significant prospect of being adopted in the foreseeable future, through the processes by which international law is actually made. As we shall see, it is important to keep in mind one crucial feature of this process: international law is made by existing states (that are recognised to be legitimate by the international community).[17]

Minimal realism is not slavish deference to current political feasibility. The task of the political theorist concerned to provide principles for an international legal response to secession crises is in part to set moral targets—to make a persuasive case for trying to transcend the current limits of political feasibility in pursuit of moral progress. Nevertheless, moral targets should not be so distant that efforts to reach them are not only doomed to failure, but unlikely to produce any valuable results at all.

To summarise: a theory is morally progressive and minimally realistic if, and only if, its implementation would better serve basic values than the *status quo* and if it has some significant prospect of eventually being implemented through the actual processes by which international law is made and applied.

Consistency with well-entrenched, morally progressive principles of international law

A proposal should build upon, or at least not squarely contradict, the more morally acceptable principles of existing international law, when these principles are interpreted in a morally progressive way. If at all possible, acceptance and implementation of a new principle should not come at the price of calling into question the validity of a well-entrenched, morally progressive principle.

Absence of perverse incentives

At least when generally accepted and effectively implemented under reasonably favourable circumstances, a proposal should not create perverse incentives. In other words, acceptance of the proposal, and recognition that it is an element of the system of international institutional conflict resolution, should not encourage behaviour that undermines morally sound principles of international law or of morality, nor should it hinder the pursuit of morally progressive strategies for conflict resolution, or the attainment of desirable outcomes such as greater efficiency in government or greater protection for individual liberty. (For example, an international legal principle concerning secession whose acceptance encouraged groups to engage in ethnic cleansing, or that encouraged

states to pursue repressive immigration policies, or discriminatory development policies, would fail to meet this criterion).

The chief way in which acceptance as a principle of international law creates incentives is by conferring *legitimacy* on certain types of actions. By conferring legitimacy on certain types of actions, international law reduces the costs of performing them and increases the cost of resisting them. (These costs consist not only of the risk of tangible economic or military sanctions, but also the stigma of condemnation and adverse public opinion, both domestic and international). Hence, by conferring legitimacy on a certain type of action, international law gives those who have an interest in preventing those actions from occurring an incentive to act strategically to prevent the conditions for performing the actions from coming into existence.

To illustrate this crucial legitimating function of international law and the incentives to which it can give rise, suppose that a principle of international law were to emerge that recognised the legitimacy of secession by any federal unit following a majority plebiscite in that unit in favour of independence. Such a principle—or, rather, *its acceptance* as a valid principle of international law—would create an incentive for a state that wishes to avoid fragmentation to resist efforts at federalisation. For if the state remains centralised, then it will not face the possibility of a secessionist plebiscite, nor have to contend with international support for secession if the plebiscite is successful. As we shall see, some theories of secession create just such an incentive. The incentive is perverse, insofar as it disposes states to act in ways that preclude potentially beneficial decentralisation.

Among the various benefits of decentralisation (which include greater efficiency in administration and a check on concentrations of power that can endanger liberty) is the fact that it can provide meaningful autonomy for territorially concentrated minorities without dismembering the state. In some cases, federalisation, rather than secession, may be the best response to legitimate demands for autonomy by groups within the state. Thus a theory of secession whose general acceptance would create incentives to block this alternative is defective, other things being equal.

Moral accessibility

A proposal for reforming international law should be morally accessible to a broad international audience. It should not require acceptance of a particular religious ethic or of ethical principles that are not shared by a wide range of secular and religious viewpoints. The *justifications* offered in support of the proposal should incorporate ethical principles and styles of argument that have broad, cross-

cultural appeal and motivational power, and whose cogency is already acknowledged in the justifications given for well-established, morally sound principles of international law. This fourth criterion derives its force from the fact that international law, more so than domestic law, depends for its efficacy upon voluntary compliance.

Although these four criteria are relatively commonsensical and unexceptionable, together they impose significant constraints on what counts as an acceptable proposal for an international legal right to secede. They will enable us to gauge the comparative strengths of various accounts of the moral right to secede, at least so far as these are supposed to provide guidance for international institutional responses to secessionist crises.

COMPARING THE TWO TYPES OF THEORIES

Remedial Right Only theories have several substantial attractions. First, a Remedial Right Only theory places significant constraints on the right to secede, while not ruling out secession entirely. No group has a (general) right to secede unless that group suffers what are uncontroversially regarded as injustices and has no reasonable prospect of relief short of secession. Given that the majority of secessions have resulted in considerable violence, with attendant large-scale violations of human rights and massive destruction of resources, common sense urges that secession should not be taken lightly.

Furthermore, there is good reason to believe that secession may in fact exacerbate the ethnic conflicts which often give rise to secessionist movements, for two reasons. First, in the real world, though not perhaps in the world of some normative theorists, many (perhaps most) secessions are by ethnic minorities. But when an ethnic minority secedes the result is often that another ethnic group becomes a minority within the new state. All too often the formerly persecuted become the persecutors. Second, in most cases, not all members of the seceding group lie within the seceding area, and the result is that those who do not become an even smaller minority, and hence even more vulnerable to the discrimination and persecution that fuelled the drive for secession in the first place.[18] Requiring serious grievances as a condition for legitimate secession creates a significant hurdle that reflects the gravity of state-breaking in our world and the fact that secession often does perpetuate and sometimes exacerbate the ethnic conflicts that give rise to it.

Minimal realism

Remedial Right Only theories score much better on the condition of minimal realism than Primary Right theories. Other things being equal, proposals for international institutional responses to secessionist claims that do not pose pervasive threats to the territorial integrity of existing states are more likely to be adopted by the primary makers of international law—that is, states—than those which do.

Primary Right theories are not likely to be adopted by the makers of international law because they authorise the dismemberment of states even when those states are perfectly performing what are generally recognised as the legitimating functions of states. Thus Primary Right theories represent a direct and profound threat to the territorial integrity of states—even just states. Because Remedial Right Only theories advance a much more restricted right to secede, they are less of a threat to the territorial integrity of existing states; hence, other things being equal, they are more likely to be incorporated into international law.

At this point it might be objected that the fact that states would be unlikely to incorporate Primary Right theories into international law is of little significance, because their interest in resisting such a change is itself not morally legitimate. Of course, states will not be eager to endanger their own existence. Similarly, the fact that a ruling class of slave-holders would be unlikely to enact a law abolishing slavery would not be a very telling objection to a moral theory that says people have the right not to be enslaved.[19]

This objection would sap some of the force of the charge that Primary Right theories score badly on the minimal realism requirement if states had no morally legitimate interest in resisting dismemberment. However, it is not just the self-interest of states that encourages them to reject theories of the right to secede that make their control over territory much more fragile. States have a *morally legitimate interest* in maintaining their territorial integrity. The qualifier 'morally legitimate' is crucial here. The nature of this morally legitimate interest will become clearer as we apply the next criterion to our comparative evaluation of the two types of theories.

Consistency with well-entrenched, morally progressive principles of international law

Unlike Primary Right theories, Remedial Right Only theories are consistent with, rather than in direct opposition to, a morally progressive interpretation of

what is generally regarded as the single most fundamental principle of international law: the principle of the territorial integrity of existing states.

It is a mistake to view this principle simply as a monument to the self-interest of states in their own survival. Instead, I shall argue, it is a principle that serves some of the most basic morally legitimate interests of *individuals.*

The interest that existing states have in continuing to support the principle of territorial integrity is a morally legitimate interest because the recognition of that principle in international law and political practice promotes two morally important goals:

1. the protection of individuals' physical security, the preservation of their rights, and the stability of their expectations; and
2. an incentive structure in which it is reasonable for individuals and groups to invest themselves in participating in the fundamental processes of government in a conscientious and co-operative fashion over time.

Each of these benefits of the maintenance of the principle of territorial integrity warrants explanation in detail.

Individuals' rights, the stability of individuals' expectations, and ultimately their physical security, depend upon the effective enforcement of a legal order. Effective enforcement requires effective *jurisdiction,* and this in turn requires a clearly bounded territory that is recognised to be the domain of an identified political authority. Even if, strictly speaking, political authority is exercised only over persons, not land, the effective exercise of political authority over persons depends, ultimately, upon the establishment and maintenance of jurisdiction in the territorial sense. This fact rests upon an obvious but deep truth about human beings: they have bodies that occupy space, and so do the materials for living upon which they depend. Furthermore, if an effective legal order is to be possible, both the boundaries that define the jurisdiction and the identified political authority whose jurisdiction it is must persist over time.

So by making effective jurisdiction possible, observance of the principle of territorial integrity facilitates the functioning of a legal order and the creation of the benefits that only a legal order can bring. Compliance with the principle of territorial integrity, then, does not merely serve the self-interest of states in ensuring their own survival; it furthers the most basic morally legitimate interests of the individuals and groups that states are empowered to serve, their interest in the preservation of their rights, the security of their persons, and the stability of their expectations.

For this reason, states have a morally legitimate interest in maintaining the principle of territorial integrity. Indeed, that is to indulge in understatement.

States, so far as their authority rests on their ability to serve the basic interests of individuals, have an *obligatory* interest in maintaining territorial integrity.

The principle of territorial integrity not only contributes to the possibility of maintaining an enforceable legal order and all the benefits that depend on it; it also gives citizens an incentive to invest themselves sincerely and co-operatively in the existing political processes. Where the principle of territorial integrity is supported, citizens can generally proceed on the assumption that they and their children, and perhaps their children's children, will be subject to laws that are made through the same processes to which they are now subject—and whose quality they can influence by the character of their participation.

For it to be reasonable for individuals and groups to so invest themselves in participating in political processes, there must be considerable stability both in the effective jurisdiction of the laws that the processes create and in the membership of the state. Recognition of the principle of the territorial integrity of existing states contributes to both.

In Albert Hirschman's celebrated terminology, where exit is too easy, there is little incentive for voice—for sincere and constructive criticism and, more generally, for committed and conscientious political participation.[20] Citizens can exit the domain of the existing political authority in different ways. To take an example pertinent to our investigation of secession, if a minority could escape the authority of laws whose enactment it did not support by unilaterally redrawing political boundaries, it would have little incentive to submit to the majority's will, nor to reason with the majority to change its mind.[21]

Of course, there are other ways to escape the reach of a political authority, emigration being the most obvious. But emigration is usually not a feasible option for minority groups and, even where feasible, is not likely to be attractive, since it will only involve trading minority status in one state for minority status in another. Staying where one is and attempting to transfer control over where one is to another, more congenial political authority is a much more attractive alternative, if one can manage it.

Moreover, in order to subvert democratic processes it is not even necessary that a group actually exit when the majority decision goes against it. All that may be needed is to issue a credible threat of exit, which can serve as a *de facto* minority veto.[22] However, in a system of states in which the principle of territorial integrity is given significant weight, the costs of exit are thereby increased, and the ability to use the threat of exit as a strategic bargaining tool is correspondingly decreased.

In addition, the ability of representative institutions to approximate the ideal of deliberative democracy, in which citizens strive together in the ongoing articulation of a conception of the public interest, also depends, in part, upon

stable control over a definite territory, and thereby the effective exercise of political authority over those within it. This stability is essential if it is to be reasonable for citizens to invest themselves in cultivating and practising the demanding virtues of deliberative democracy.

All citizens have a morally legitimate interest in the integrity of political participation. To the extent that the principle of territorial integrity helps to support the integrity of political participation, the legitimacy of this second interest adds moral weight to the principle.

To summarise: adherence to the principle of territorial integrity serves two fundamental morally legitimate interests: the interest in the protection of individual security, rights and expectations, and the interest in the integrity of political participation.

We can now see that this point is extremely significant for our earlier application of the criterion of minimal realism to the comparison of the two types of theories of secession. If the sole source of support for the principle of territorial integrity—and hence the sole source of states' resistance to implementing Primary Right theories in international law—were the selfish or evil motives of states, then the fact that such theories have scant prospect of being incorporated into international law would be of little significance. For in that case the Primary Right theorist could simply reply that the criterion of minimal realism gives undue weight to the interests of states in their own preservation.

That reply, however, rests on a misunderstanding of my argument. My point is that it is a strike against Primary Right theories that they have little prospect of implementation even when states are motivated solely or primarily by interests that are among the most morally legitimate interests that states can have. Thus, my application of the minimal realism requirement cannot be countered by objecting that it gives undue weight to the interests of states in their own preservation.

Before turning to the application of the third criterion, my argument that the principle of the territorial integrity of existing states serves morally legitimate interests requires an important qualification. That principle can be abused; it has often been invoked to shore up a morally defective *status quo.* However, some interpretations of the principle of territorial integrity are less likely to be misused to perpetuate injustices and more likely to promote moral progress.

The morally progressive interpretation of the principle of territorial integrity

What might be called the *absolutist* interpretation of the principle of the territorial integrity of existing states makes no distinction between legitimate and illegitimate states, extending protection to all existing states. *Any* theory that recognises a (general) right to secede—whether remedial only, or primary as well as remedial—is inconsistent with the absolutist interpretation, since any such theory permits the non-consensual breakup of existing states under certain conditions. This first, absolutist interpretation has little to recommend it, however. For it is inconsistent with there being any circumstances in which other states, whether acting alone or collectively, may rightly intervene in the affairs of an existing state, even for the purpose of preventing the most serious human rights abuses, including genocide.

According to the *progressive* interpretation, the principle that the territorial integrity of existing states is not to be violated applies only to *legitimate* states—and not all existing states are legitimate. There is, of course, room for disagreement about how stringent the relevant notion of legitimacy is. However, recent international law provides some guidance. States are *not* legitimate if they:

1 threaten the lives of significant portions of their populations by a policy of ethnic or religious persecution, or
2 exhibit institutional racism that deprives a substantial proportion of the population of basic economic and political rights.

The most obvious case in which the organs of international law have treated an existing state as illegitimate was that of apartheid South Africa (which satisfied condition (2)). The United Nations as well as various member states signalled this lack of legitimacy not only by various economic sanctions, but by refusing even to use the phrase 'The Republic of South Africa' in public documents and pronouncements. More recently, the Iraqi government's genocidal actions toward the Kurds within its borders (condition (1)) was accepted as a justification for infringing Iraq's territorial sovereignty in order to establish a 'safe zone' in the north for the Kurds. To the extent that the injustices cited by a Remedial Right Only theory are of the sort that international law regards as depriving a state of legitimacy, the right to secede is consistent with the principle of the territorial integrity of existing (legitimate) states.

Here, too, it is important to emphasise that the relevance of actual international law is conditional upon the moral legitimacy of the interests that

the law, or in this case, changes in the law, serve. The key point is that the shift in international law away from the absolutist interpretation of the principle of territorial integrity toward the progressive interpretation serves morally legitimate interests and reflects a superior normative stance. So it is not mere conformity to existing law, but consonance with morally progressive developments in law, which speaks here in favour of Remedial Right Only theories. Moreover, as I argued earlier, the principle that is undergoing a progressive interpretation, the principle of territorial integrity, is one which serves basic moral interests of individuals and groups, not just the interests of states.

In contrast, any theory of secession that recognises a primary right to secede for any group within a state, in the absence of injustices that serve to delegitimise the state, directly contradicts the principle of the territorial integrity of existing states *on its progressive interpretation.*[23] Accordingly, Remedial Right Only theories have a singular advantage: unlike Primary Right theories, they are consistent with, rather than in direct opposition to, one of the most deeply entrenched principles of international law on its morally progressive interpretation. This point strengthens our contention that according to our second criterion Remedial Right Only theories are superior to Primary Right theories.

So far, the comparisons drawn have not relied upon the particulars of the various versions of the two types of theories. This has been intentional, since my main project is to compare the two basic *types* of theories. Further assessments become possible, as we examine the details of various Primary Right theories.

PRIMARY RIGHT THEORIES

Avoiding perverse incentives

Remedial Right Only theories also enjoy a third advantage: if incorporated into international law, they would create laudable incentives, while Primary Right theories would engender very destructive ones (criterion 3).

A regime of international law that limits the right to secede to groups that suffer serious and persistent injustices at the hands of the state, when no other recourse is available to them, would provide protection and support to just states, by unambiguously sheltering them under the umbrella of the principle of the territorial integrity of existing (legitimate) states. States, therefore, would have an incentive to improve their records concerning the relevant injustices in order to reap the protection from dismemberment that they would enjoy as

legitimate, rights-respecting states. States that persisted in treating groups of their citizens unjustly would suffer the consequences of international disapprobation, and possibly more tangible sanctions as well. Furthermore, such states would be unable to appeal to international law to support them in attempts to preserve their territories intact.

In contrast, a regime of international law that recognised a right to secede in the absence of any injustices would encourage even just states to act in ways that would prevent groups from becoming claimants to the right to secede, and this might lead to the perpetration of injustices. For example, according to Wellman's version of Primary Right Theory, any group that becomes capable of having a functioning state of its own in the territory it occupies is a potential subject of the right to secede. Clearly, any state that seeks to avoid its own dissolution would have an incentive to implement policies designed to prevent groups from becoming prosperous enough and politically well-organised enough to satisfy this condition.

In other words, states would have an incentive to prevent regions within their borders from developing economic and political institutions that might eventually become capable of performing the legitimating functions of a state. In short, Wellman's version of Primary Right Theory gives the state incentives for fostering economic and political dependency. Notice that here, too, one need not attribute evil motives to states to generate the problem of perverse incentives. That problem arises even if states act only from the morally legitimate interest in preserving their territories.

In addition, a theory such as Wellman's, if used as a guide for international legal reform, would run directly contrary to what many view as the most promising response to the problems that can result in secessionist conflicts. I refer here to the proposal, alluded to earlier and increasingly endorsed by international legal experts, that every effort be made to accommodate aspirations for autonomy of groups *within* the state, by exploring the possibilities for various forms of decentralisation, including federalism.

Wellman might reply that the fact that the implementation of his theory would hinder efforts at decentralisation is no objection, since on his account there is no reason to believe that decentralisation is superior to secession. There are two reasons, however, why this reply is inadequate.

First, as we saw earlier, decentralisation can be the best way to promote morally legitimate interests (in more efficient administration, and in avoiding excessive concentrations of power) in many contexts in which secession is not even an issue. Hence, any theory of secession whose general acceptance and institutionalisation would inhibit decentralisation is deficient, other things being equal. Second, and more importantly, according to our second criterion for

evaluating proposals for international legal reform, other things being equal, a theory is superior if it is consonant with the most well-entrenched, fundamental principles of international law on their morally progressive interpretations. The principle of territorial integrity, understood as conferring protection on legitimate states (roughly, those that respect human rights) fits that description, and that principle favours first attempting to address groups' demands for autonomy by decentralisation, since this is compatible with maintaining the territorial integrity of existing states. It follows that the Primary Right theorists cannot reply that the presumption in favour of decentralisation as opposed to secession gives too much moral weight to the interests *of states* and that there is no reason to prefer decentralisation to secession. The point, rather, is that decentralisation has its own moral attractions, and in addition is favoured by a well-entrenched, fundamental principle of international law that serves basic, morally legitimate interests of individuals (and groups).

Even if Wellman's view were never formally incorporated into international law, but merely endorsed and supported by major powers such as the United States, the predictable result would be to make centralised states even less responsive to demands for autonomy within them than they are now. Allowing groups within the state to develop their own local institutions of government and to achieve a degree of control over regional economic resources would run the risk of transforming them into successful claimants for the right to secede. Beran's version of Primary Right Theory suffers the same flaw, because it too gives states incentives to avoid decentralisation in order to prevent secessionist majorities from forming in viable regions.

If either Wellman's or Beran's theories were implemented, the incentives regarding *immigration* would be equally perverse. States wishing to preserve their territory would have incentives to prevent potential secessionist majorities from concentrating in economically viable regions. The predictable result would be restrictions designed to prevent ethnic, cultural or political groups who might become local majorities from moving into such regions, whether from other parts of the state or from other states. Similarly, groups that wished to create their own states would have an incentive to try to concentrate in economically viable regions in which they can *become* majorities—and to displace members of other groups from those regions.

There is a general lesson here. Theories according to which majorities in regions of the state are automatically legitimate candidates for a right to secede (in the absence of having suffered injustices) look more plausible if one assumes that populations are fixed. Once it is seen that acceptance of these theories would create incentives for population shifts and for the state to attempt to prevent these, they look much less plausible.

The same objections just noted in regard to the Primary Right theories of Wellman and Beran also afflict that of Margalit and Raz, although it is an Ascriptive-Group, rather than an Associative-Group, variant. On Margalit and Raz's view, it is 'encompassing groups' that have the right to secede.

Like the other Primary Right theories already discussed, this one scores badly on the criteria of minimal realism and consistency with deeply entrenched, morally progressive principles of international law. Also, if incorporated in international law, it would create perverse incentives.

First, it is clear that no principle which identifies all 'encompassing groups' as bearers of the right of self-determination, where this is understood to include the right to secede from any existing state, would have much of a chance of being accepted in international law, even when states' actions were determined primarily by the pursuit of morally legitimate interests. The reason is straightforward: most, if not all existing states, include two or more encompassing groups; hence, acceptance of Margalit and Raz's principle would authorise their own dismemberment.

Second, the right to independent statehood, as Margalit and Raz understand it, is possessed by every encompassing group even in the absence of any injustices. Consequently, it runs directly contrary to the principle of the territorial integrity of existing states on its most progressive interpretation (according to which just states are entitled to the protection the principle provides).

Third, if accepted as a matter of international law, the right endorsed by Margalit and Raz would give states incentives to embark on (or continue) all-too-familiar 'nation-building' programmes designed to obliterate minority group identities—to eliminate all 'encompassing groups' within their borders, save the one they favour for constituting 'the nation', and to prevent new 'encompassing groups' from emerging. Instead of encouraging states to support ethnic and cultural pluralism within their borders, Margalit and Raz's proposal would feed the reaction against pluralism.

Moral accessibility

The last of the four criteria for assessment, moral accessibility, is perhaps the most difficult to apply. None of the accounts of the right to secede under consideration (with the possible exception of the Nationalist Principle in its cruder formulations) clearly fails the test of moral accessibility. Therefore, it may be that the comparative assessment of the rival theories must focus mainly on the other criteria, as I have done.

Nevertheless, it can be argued that Remedial Right Only theories have a significant advantage so far as moral accessibility is concerned. They restrict the right to secede to cases in which the most serious and widely recognised sorts of moral wrongs have been perpetrated against a group, namely violations of human rights and the unjust conquest of a sovereign state. That these are injustices is widely recognised. Hence, if anything can justify secession, surely these injustices can. Whether *other* conditions also justify secession is more controversial across the wide spectrum of moral and political views.

Recall that, according to all Primary Right theories, a group has the right to form its own state out of a part of an existing state, even if the state is flawlessly performing what are generally taken to be the legitimating functions of states—even if perfect justice to all citizens and perfect security for all prevail. Presumably the intuitive moral appeal of this proposition is somewhat less than that of the thesis that

the most serious injustices can justify secession.

POLITICAL LIBERTY, THE HARM PRINCIPLE AND THE CONSTRAINTS OF INSTITUTIONAL MORALITY

The Primary Right theories advanced by Beran, Wellman, and Margalit and Raz share a fundamental feature. Each of these analysts begins with what might be called the *liberal presumption in favour of political liberty* (or freedom of political association). In other words, each develops a position on the right to secede that takes as its point of departure something very like the familiar liberal principle for *individuals* which is so prominent in Mill's *On Liberty* and which Joel Feinberg has labelled 'The Harm Principle.'

According to the Harm Principle in its simplest formulation, individuals (at least those possessed of normal decision-making capacity) ought to enjoy liberty of action so long as their actions do not harm the legitimate interests of others. Wellman is most explicit in his application of the Harm Principle to the justification of secession:

> We begin with liberalism's presumption upon individual liberty, which provides a prima facie case against the government's coercion and for the permissibility of secession.... [T]his presumption in favour of secession... is outweighed by the negative consequences of the exercise of such liberty. But if this is so, then the case for liberty is defeated only in those circumstances in which its exercise would lead to harmful conditions. And because harmful conditions would occur in only those cases in which

> either the seceding region or the remainder state is unable to perform its political function of protecting rights, secession is permissible in any case in which this peril would be avoided.[24]

Margalit and Raz similarly note that harmful consequences of the exercise of the right to secede can override the right, when they caution that the right must be exercised in such a way as to avoid actions that fundamentally endanger the interests either of the people of other countries or the inhabitants of the seceding region.[25] And Beran at one point complicates his theory by acknowledging that the right to secede by plebiscite is limited by the obligation to prevent harm to the state from which the group is seceding, as when the seceding region 'occupies an area which is culturally, economically, or militarily essential to the existing state.'[26]

What these theorists have not appreciated is that, even if the Harm Principle is a valuable principle to *guide* the design of institutions (if they are to be liberal institutions), it cannot itself serve as an overriding principle *of* institutional ethics. One cannot argue straightaway from hypothetical or actual cases in which secession harms no one's legitimate interests to the conclusion that, as a matter of international law, or even of informal political practice, we should recognise a right to secede whenever no harm to legitimate interests can be expected to result from the exercise of the putative right in the particular case. And one certainly cannot argue, as Beran and Wellman do, that the only legitimate interests to be considered are those of the two parties directly involved. (Margalit and Raz, at least, recognise that the legitimate interests of the inhabitants of all countries are relevant to determining the scope and limits of the right to secede, whereas Beran considers only the legitimate interests of the remainder state, and Wellman only the legitimate interests of the people of the remainder state and those of the members of the seceding group.)

The most fundamental problem, however, is not that these theorists have not considered all the harmful effects of the particular exercise of the putative right to secede. Rather, it is that they have not seen that the institutionalisation of an otherwise unexceptionable ethical principle that recognises a right can create a situation in which unacceptable harms will result, even if these harms do not result from any particular exercise of the putative right. Unacceptable harms may result, not from exercises of the putative right, but rather from strategic reactions on the part of states that have an interest in preventing the conditions for exercising the putative right from coming about.

The chief mechanism by which this occurs, in the case of legal institutions, is by the encouragement of harmful behaviour that can result from *legitimising* certain actions. As I emphasised above, when a type of action is legitimised by

international law, the costs of performing it are, other things being equal, lowered. But, for this very reason, those whose interests will be threatened by the performance of these actions have an incentive to prevent others from being in a position to satisfy the conditions which make performance of the actions legitimate.

For example, as was shown earlier, serious harms may occur as states apprehensive of their own dissolution take measures to prevent regions within them from developing the economic and political resources for independent statehood, or to prevent minorities from developing 'encompassing cultures,' or to bar groups from immigrating into an area where they might become a secessionist majority. In each case, the harms that would result from the incorporation of the putative right to secede into international law would not be caused by a particular group of secessionists who exercised the right so described. Instead, the harms would result from the actions of states reacting to incentives that would be created by the acceptance of this conception of the right as a principle for the international institutional order.

IDEAL VERSUS NON-IDEAL THEORY

I have argued that Primary Right theorists have not appreciated some of the most significant sorts of considerations that are relevant to making a case that a proposed principle of rightful secession ought to be recognised as such in the international system. Because of a lack of *institutional* focus, Primary Right theories fail to appreciate the importance of states, both practically and morally. Once we focus squarely on institutions, and hence on the importance of states, we see that Primary Right theories:

1. are deficient according to the criterion of minimal realism (because they neglect the role of states as the makers of international law),
2. are not consistent with morally progressive principles of international law (because they contradict the principle of the territorial integrity, even when it is restricted to the protection of morally legitimate states), and
3. create perverse incentives (because their proposed international principles would encourage morally regressive behaviour by states in their domestic affairs).

My contention has been that, by failing to take institutional considerations seriously in attempting to formulate a right to secede, these analysts have produced normative theories that have little value as guides to developing more humane and effective international responses to secessionist conflicts.

Before concluding, I will consider one final reply which those whose views I have criticised might make. The Primary Right theorists might maintain that they and I are simply engaged in two different enterprises: I am offering a *non-ideal* institutional theory of the right to secede; they are offering an *ideal,* but nonetheless, institutional theory. They are thinking institutionally, they would protest, but they are thinking about what international law concerning secession would look like under ideal conditions, where there is perfect compliance with all relevant principles of justice.[27] Thus, from the fact that in *our* imperfect world attempts to implement their principles would create perverse incentives, or would be rejected by states genuinely concerned to prevent violations of human rights that might arise from making state borders much less resistant to change, is quite irrelevant. None of these adverse consequences would occur under conditions of perfect compliance with (all) valid principles of justice.

This criticism raises complex issues about the distinction between ideal and non-ideal political theory that I cannot hope to tackle here. However, I will conclude by noting that this strategy for rebutting the objections I have raised to Primary Right theories comes at an exorbitant price. If such theories are only defensible under the assumption of perfect compliance with all relevant principles of justice, then they are even less useful for our world than my criticisms heretofore suggest—especially in the absence of a complete set of principles of justice for domestic and international relations.

International legal institutions are designed to deal with the problems of our world. A moral theory of international legal institutions for dealing with secessionist conflicts in our world must respond to the problems that make secessionist conflicts a matter of moral concern for us, the residents of *this* world. A moral theory of institutions for a world that is so radically different from our world, not only as it is, but as it is likely ever to be, cannot provide valuable guidance for improving *our* institutions. The gap between that kind of 'ideal' institutional theory and our non-ideal situation is simply too great.[28] Moreover, unless the full ideal theory of justice is produced, or at least sketched, it is unilluminating to deflect objections by declaring that they would not arise if there were complete compliance with all principles of justice.

This is not to say, however, that there is no room for ideal theory of any sort. The Remedial Right Only theory that I endorse is in a straightforward sense an ideal theory: it sets a moral target that can only be achieved through quite fundamental changes in international legal institutions and doctrine. (If I am right, this target is morally progressive, but not disastrously utopian.) My scepticism is rather directed only to theories that are so 'ideal' that they fail to engage the very problems that lead us to seek institutional reform in the first place.[29]

NOTES

1 There is another question which a comprehensive normative theory of secession ought to answer: under what conditions, if any, ought a constitution to include a right to secede, and what form should such a right take? See Allen Buchanan, *Secession: The Morality of Political Divorce From Fort Sumter to Lithuania and Quebec,* Boulder CO, Westview Press, 1991, pp. 127–49.

2 International law recognises a 'right of all peoples to self-determination' which includes the right to choose independent statehood. However, international legal practice has interpreted the right narrowly, restricting it to the most unambiguous cases of decolonisation. The consensus among legal scholars at this time is that international law does not recognise a right to secede in other circumstances, but that it does not unequivocally prohibit it either. Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights,* Philadelphia, University of Pennsylvania Press, 1990, pp. 27–39; W.Ofuatey-Kodjoe, *The Principle of Self-Determination in International Law,* New York, Nellen Publishing, 1977; Christian Tomuschat (ed.), *Modern Law of Self-Determination,* Dordrecht, Martinus Nijhoff, 1993.

3 Harry Beran, *The Consent Theory of Political Obligation,* London, Croom Helm, 1987. David Copp, 'Do nations have a right of self-determination?' in Stanley G.French (ed.), *Philosophers Look at Canadian Confederation,* Montreal, Canadian Philosophical Association, 1979, pp. 71–95. David Gauthier, 'Breaking up: an essay on secession', *Canadian Journal of Philosophy,* vol. 24, no. 3, 1994, pp. 357–72.

4 Daniel Philpott, 'ln defense of self-determination', *Ethics,* vol. 105, 1995, pp. 352–85. Michael Walzer, 'The new tribalism', *Dissent,* vol. 39, no. 2, spring 1992, pp. 165–9. Kai Nielsen, 'Secession: the case of Quebec', *Journal of Applied Philosophy,* vol. 10, no. 1, 1993, pp. 29–43. David Gauthier, op. cit.

5 Avishai Margalit and Joseph Raz, 'National self-determination', *The Journal of Philosophy,* vol. 87, no. 9, 1990, pp. 439–61. Christopher Wellman, 'A defense of self-determination and secession', *Philosophy and Public Affairs,* vol. 24, no. 2, 1995, pp. 142–71.

6 Some versions of Remedial Right Only theory, including the one considered below, add another necessary condition: the proviso that the new state make credible guarantees that it will respect the human rights of all those who reside in it.

7 John Locke, *Second Treatise of Civil Government* [1690], Hackett Publishing, 1980, pp. 100–24. Strictly speaking, it may be incorrect to say that Locke affirms a right to revolution, if by revolution is meant an attempt to overthrow the existing political authority. Locke's point is that, if the government acts in ways that are not within the scope of the authority granted to it by the people's consent, then governmental authority ceases to exist. In that sense, instead of a Lockean right to revolution it would be more accurate to speak of the right of the people to constitute a new governmental authority.

8 Buchanan, *Secession,* pp. 27–80.
9 Allen Buchanan, 'Self-determination, secession, and the rule of international law', in Robert McKim and Jeffrey McMahon (eds), *The Morality of Nationalism,* Oxford, Oxford University Press, 1997.
10 This proviso warrants elaboration. For one thing, virtually no existing state is without some infringements of human rights. Therefore, requiring credible guarantees that a new state will avoid all infringements of human rights seems excessive. Some might argue, instead, that the new state must simply do a better job of respecting human rights than the state from which it secedes. It can be argued, however, that the international community has a legitimate interest in requiring somewhat higher standards for recognising new states as legitimate members of the system of states.
11 Margalit and Raz, pp. 445–7. Nielsen's view is also an Ascriptive-Group Primary Right theory ('Secession: the case of Quebec').
12 Buchanan, 'Self-determination, secession, and the rule of international law'.
13 Beran, p. 42.
14 Ibid., p. 42, adds another condition: that the secession not harm the remainder state's essential military, economic or cultural interests.
15 Wellman, p. 161.
16 It is advisable at this point to forestall a misunderstanding about the contrast between the two types of theories. Remedial Right Only theories, as the name implies, recognise a (general) right to secede only as a remedy for injustice, but Primary Right theories need not, and usually do not, deny that there is a remedial right to secede. They only deny that the right to secede is *only* a remedial right. Thus, a Primary Right theory is not necessarily a Primary Right Only theory.
17 The statement that it is states that make international law requires a qualification. Non-governmental organisations (NGOs) are coming to exert more influence in the international legal arena. However, their impact is limited compared to that of states.
18 Donald Horowitz, 'Self-determination: politics, philosophy, and law', in Will Kymlicka and lan Shapiro (eds), *Nomos 39: Ethnicity and Group Rights,* New York, New York University Press, 1997, pp. 421–63.
19 This example is drawn from Christopher Wellman, *Political Self-Determination,* unpublished manuscript.
20 Albert O.Hirschman, *Exit, Voice, and Loyalty,* Cambridge MA, Harvard University Press, 1970.
21 Cass R.Sunstein, 'Constitutionalism and secession', *University of Chicago Law Review,* vol. 58, 1991, pp. 633–70.
22 Buchanan, *Secession,* pp. 98–100.
23 Here it is important to repeat a qualification noted earlier. The progressive interpretation of the principle of territorial integrity operates within the limits of what I have called the relatively uncontroversial, standard or theory-neutral, conception of justice, as applied to the threshold condition that states must be minimally just in order to be legitimate and so to fall within the scope of the

principle of territorial integrity. Therefore, it will not do for the Primary Right theorist to reply that his theory is compatible with the progressive interpretation of the principle of territorial integrity because, on his view, a state that does not allow peoples or nations to secede or does not allow the secession of majorities that desire independent statehood is unjust. The problem with this reply is that it operates with a conception of justice that goes far beyond the normative basis of the progressive interpretation and in such a way as to beg the question by employing an understanding of the rights of groups that is not acknowledged by both parties to the theoretical debate.

24 Wellman, 'A defense of secession and self-determination', p. 163.

25 Margalit and Raz, pp. 459–60.

26 Beran, p. 42.

27 For a valuable discussion of the distinction between ideal and non-ideal theory and for the beginning of a normative account of secession from the standpoint of domestic institutions (including constitutional provisions for secession), see Wayne Norman, 'Domesticating Secession' (unpublished paper). For a discussion of the idea of a constitutional right to secede, see Buchanan, *Secession,* pp. 127–49.

28 I am indebted to Harry Brighouse for his suggestion that the sort of ideal theory which would have to be assumed by Primary Right theorists in order to escape my objections is so extreme as to be practically irrelevant.

29 This article is a revised version of 'Theories of secession', *Philosophy and Public Affairs,* vol. 26, no. 1, winter 1997, pp. 31–61. Material from the latter article appears here with the kind permission of the editors of that journal. I am deeply indebted to Tom Christiano and to Percy Lehning for their detailed comments on drafts of this article. It was Christiano's paper 'Secession, democracy, and distributive justice', *Arizona Law Review,* vol. 37, no. 1, 1995, pp. 65–72, that encouraged me to take a more institutional approach to secession. I also received helpful comments from Frederick (Ric) Bolin, Harry Brighouse, Wayne Norman, David Schmidtz, Christopher Wellman, and Clark Wolf.

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