

## LEGAL REGIMES FOR SECESSION: APPLYING MORAL THEORY AND EMPIRICAL FINDINGS

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Secessionist movements are here to stay. From Catalonia and Scotland to South Sudan and Kashmir, popular demands for independence are found throughout the world and in all kinds of political and economic circumstances. How should governments treat secessionists, and in particular, when should they be willing to suppress secession legally or militarily? To answer these questions, we must reflect on the normative principles governments and secessionists ought to respect, as well as on the empirical research on the consequences of particular policy choices.

Secession is a normatively difficult issue because contemporary cases of secession always involve conflicts in which some rights-holders find their legitimate interests frustrated. No secession referendum on a scale sufficient to create an internationally recognized state has ever succeeded with fully 100 percent support. Secession always brings along non-consenters, and prohibiting secession always suppresses the desires of some citizens to govern themselves separately, desires that are not inherently wrong. Thus, if it is morally desirable at some level to refrain from governing without consent of the governed, both allowing and prohibiting secession always have some morally regrettable consequences.

The vast normative literature on secession addresses some, though not all, of the relevant trade-offs, especially in attempts to qualify any right to secede with various moral requirements.<sup>1</sup> In a world of the second best, in which not everyone's rights can or will be respected, how can we minimize injustice? Unlike much of the normative literature on this topic, this paper is meant to be agnostic among a wide range of foundational moral views. As applied theory, the paper uses empirical findings to evaluate the consequences of policies toward secession. Rather than investigating the moral rights of secession or prohibiting secession a priori, I focus squarely on the morality of the domestic legal-constitutional regime regulating the relationship between a central government and secessionists on the territory it governs.<sup>2</sup> The argument moves from fairly minimal, uncontroversial moral criteria to radical conclusions—that is, conflicting sharply with existing practice in most of the world.

Every state has some legal regime toward secessionists. Even if the law and constitution are completely silent on the question of secession, whenever any secessionist movement does emerge, officials in the central government will have to respond to it, and out of those responses, the citizens will develop expectations about which acts will be permitted and which punished. However, many states have made their secession regime explicit. The St. Kitts and Nevis Constitution permits Nevis to secede on a two-thirds vote of its assembly, followed by a two-thirds vote of its residents.<sup>3</sup> By contrast, Article 2 of the French Constitution provides: “La France est une République indivisible, laïque, démocratique, et sociale” [France is an indivisible, secular, democratic, and social Republic]. Similarly, Article 2 of the Spanish Constitution asserts: “La Constitución se fundamenta en la indisoluble unidad de la Nación española, patria común e indivisible de todos los españoles” [The Constitution is based on the indissoluble unity of the Spanish Nation, the common and indivisible homeland of all the Spanish people]. Going yet further, the Constitution of India states, “It shall be the duty of every citizen of India . . . to uphold and protect the sovereignty, unity, and integrity of India” (section 51A(c)), and it provides further that every candidate for office must swear the following oath (Third Schedule): “I will bear true faith and allegiance to the Constitution of India as by law established and . . . will uphold the sovereignty and integrity of India.” Similarly, the Turkish Constitution (Article 68) provides: “The statutes and programmes, as well as the activities of political parties shall not be in conflict with the independence of the state, its indivisible integrity with its territory and nation, human rights, the principles of equality and rule of law, sovereignty of the nation, the principles of the democratic and secular republic.”<sup>4</sup>

Thus, at one end of the spectrum, St. Kitts and Nevis constitutionally guarantees a right of unilateral secession for one part of its territory, while France and Spain prohibit secession at the constitutional level, and India and Turkey prohibit not just secession, but secessionism, any democratic efforts toward changing the law.

Daniel Weinstock<sup>5</sup> and Wayne Norman<sup>6</sup> have previously defended a constitutional path to independence as a mechanism for taming secessionism. This paper’s argument is similar, but draws more explicitly on the empirical research and investigates at greater length the trade-offs involved with specific legal provisions governing secession. Norman opposes a “unilateral” right of secession on the grounds that the constitutional system should encourage negotiation between secessionists and the central government. The proposals developed here have a similar goal, but the secession right defended here is “unilateral” at the final stage: once the secession right is appropriately specified, a process that requires negotiation, the rest of the country should not have a right to veto any region’s decision to secede. Provided secessionists are able to meet certain criteria, the central government falls under a justiciable duty to permit them to secede. Following Weinstock and Norman, I accept an institutionalized secession right on both prudential and moral grounds: it can be the most prudent political mechanism

to morally desirable ends. Nevertheless, there are important qualifications and complications facing the implementation of such a right in any particular case.

The next section of the paper lays out and defends the normative principles and empirical generalizations necessary to the argument. The second section then considers the design of a constitutional right of secession, developing and then qualifying a plebiscitary right of secession. The goal is to come up with a range of “potentially permissible secession regimes” rather than a specific “point recommendation,” and to show how differing moral and empirical judgments affect that range. Along the way, this section considers “choice,” “nationalist,” and “just-cause” moral theories of secession, arguing that they all converge around a kind of plebiscitary solution in practice. The third section concludes with recommendations for legal provisions on secession and applies the conclusions to current secession crises around the world.

## I. THEORETICAL BACKGROUND

### *1.1 Normative Principles*

#### *1.1.1 Assumptions*

I begin with the following assumptions about normative principles relevant to secession, which are lexically ordered, each higher principle taking precedence over the one below it. These are “mid-range” normative principles that find appeal in multiple theoretical sources rather than following exclusively from some particular, foundational view such as utilitarianism, natural rights, or justice-as-fairness.

- (1) Maximize physical integrity rights for all. The range of potentially permissible secession regimes is limited to those that can plausibly satisfy this principle. Physical integrity rights include individual rights against extrajudicial killing and physical assault, torture, and illegal detention.
- (2) Maximize other basic liberties for all. Among those regimes that can satisfy the first principle, only those that also satisfy the second principle are potentially permissible. Political philosophers disagree on what counts as “basic liberties” that any minimally just regime must satisfy. At the very least, these liberties include wide guarantees for freedom of speech, thought, conscience, association, and equality before the law. John Rawls argues that the “fair value of equal political liberty,” a right to security of personal property, and the right to free choice of an occupation or profession count as fundamental liberties.<sup>7</sup> “Free-market fairness” advocate John Tomasi also includes the right to security of productive property and the right to own a business.<sup>8</sup> And so on. To the extent that there is disagreement about what counts as a basic liberty, there may be disagreement about the range of potentially permissible secession regimes.

- (3) Follow the principle of Pareto optimality. For any two regimes *A* and *B* and any two sets of citizens *X* and *Y*, if the consequences of the two regimes are such that *X* prefer one regime to the other, while *Y* are at least indifferent between the two regimes, then select the regime that *X* prefer. This principle rules out secession regimes that make some people worse-off without making anyone better-off, relative to some alternative regime.
- (4) Satisfy all other moral principles. Differing moral foundations yield different moral principles. I avoid making claims about moral foundations, but these foundational views may yield further principles limiting the range of permissible secession regimes. Differing views on the nature and importance of distributive justice and economic growth can justify marginally different views on the appropriate secession regime.

### *1.1.2 A Digression on Consent*

Under the last heading, the putative principle of “no forced association” deserves in-depth consideration. “Choice” theorists have often relied on this principle to argue for a democratic, moral right of unilateral secession.<sup>9</sup> Forcing people to associate themselves and the territory they inhabit with a state they firmly reject seems unjust or at least undesirable on some level. However, Wellman argues that individuals have a “Samaritan duty” to enter into political union with nearby individuals, provided the alternative is chaos.<sup>10</sup> This argument echoes Immanuel Kant’s argument in *The Metaphysics of Morals* that individuals have a duty of justice (that is, an enforceable duty) to submit themselves to the rule of law,<sup>11</sup> as well as Nozick’s argument that the minimal state may permissibly coerce and compensate independents.<sup>12</sup> Against this view stands the position of Lockeans that robust consent is necessary to legitimate a state’s rule.<sup>13</sup>

At the same time, it is unclear whether this debate over the foundations of legitimacy really generates a corresponding debate over the morality of secession. Let us consider the position of Lockean consent theorists first.

First, A. John Simmons and other contemporary quasi-Lockeans may well deny that voting for secession in a referendum counts as consent needed to transfer rights and confer legitimacy.<sup>14</sup> One may vote for or against secession for a variety of reasons other than true consent to be governed by the government that results from the vote, such as the belief that one government is likely to be slightly less intolerable than the other. Voting to secede at most counts as a very weak form of consent to the new government.

Second, real-world secessions necessarily involve the compulsion of some non-consenters even in the very weak sense, that is, those who voted against secession. It is unrealistic to require unanimity for secession. Beran’s position that secessionists who deny a reciprocal right to secede to their minorities should themselves be denied a right to secede generates an incoherence in his theory.

The theory justifies unilateral secession by majority rule on the grounds that it is better for more individuals to be more satisfied with the government they live under, even if some individuals have to be coerced (Beran does not advocate an individual-level right of secession). But to deny a right to secede to a large group because it denies the right to secede to a small subgroup would be to coerce the many for the sake of the few, even though Beran's theory is grounded on the assumption that it is better to coerce fewer than more.<sup>15</sup> In summary, consent theory sees present-day secessions as violating some individuals' rights and therefore justified, if at all, only by some principle of the second best.

Next, consider those who see the foundations of legitimacy in something like "ability to carry out the functions of law and order" and reject individuals' right to deny consent to an adequately functioning state.<sup>16</sup> While this position may defeat one rationale for permitting individual-level secession, it does not provide any rationale for prohibiting unilateral secessions of groups that can adequately provide security, law, and any other basic functions of a state. And to the extent that a secessionist group cannot fulfill the basic functions of a state (and thereby impose large costs on others), the justification for denying them the right to secede would be covered by the Pareto optimality principle above.<sup>17</sup> In short, this position on legitimacy provides no additional rationale beyond those already surveyed for proscribing unilateral secession. Indeed, Wellman's later work justifies a fairly permissive, group-based right to secede.

In summary, the debate over the source of states' legitimacy seems to yield little difference in principles regulating secession. Lockean consent theory at most generates a weak *prima facie* right of unilateral secession by majority vote, while Kantian rule-of-law theory generates a presumption *against* permitting secession only whenever the resulting state is inadequate to its fundamental responsibilities.

## *1.2 Empirical Generalizations*

This section discusses generalizable empirical findings relevant to the debate over constitutionalizing secession rights.

### *1.2.1 Frequency of Secessionism*

Secessionism is rare. As of this writing, in all the high-income democracies of Europe, North America, and the Pacific Rim, there is only one region in which parties clearly favoring short-run independence have won an absolute majority of votes in any recent election: Scotland. Furthermore, in Scotland, many voters voted for the Scottish National Party (SNP) without favoring independence, and support for independence has been below 50 percent in polls since that election, including the September 18 referendum itself.<sup>18</sup> In Catalonia, an unspecified consultation on some form of statehood is expected in 2014 or 2015, but the largest Catalan nationalist party prefers the ambiguous term "statehood" to "independence" because key leaders in the party oppose independence.<sup>19</sup> Similarly, in Flanders,

a majority has voted in the most recent federal and regional elections for parties that support eventual independence or confederation, and in the Basque Country, nationalists regularly win a majority of votes, but the largest nationalist party is only formally committed to independence, having favored “freely associated state” status in the recent past.<sup>20</sup> Finally, the Faroe Islands has had, at various times, a majority coalition committed to long-term independence from Denmark.<sup>21</sup>

In the United States, there are organized secessionist movements in Puerto Rico, Alaska, Texas, and Vermont, all of which are small. Public Policy Polling found between 14 and 18 percent of Texans favoring independence in 2011.<sup>22</sup> Rasmussen Reports polled US registered voters in 2009 and found that just 11 percent favored their own state’s secession.<sup>23</sup> Vermont shows no more than 13 percent support for independence.<sup>24</sup>

The picture outside the developed West is similar. Using data from the Minorities at Risk project, I found that as of 2003, 107 “ethnonational minorities,” 38 percent of the total number in the data set, had a secessionist organization.<sup>25</sup>

To investigate this claim further, I have examined electoral data from India, which prohibits secessionist candidates and parties. As a result of this proscription, secessionist organizations boycott elections.<sup>26</sup> Refraining from voting is an extremely low-cost form of protest for secessionists, and therefore if secessionism is at all widespread in a state or territory, we should see heavy abstention there.<sup>27</sup>

In Jammu and Kashmir, which hosts by far the strongest secessionist movement in India, only 39.7 percent of electors turned out to vote in the 2009 Indian general election. That was indeed the lowest figure in the country. However, several generally poor states without secessionist movements had turnout levels nearly as low: Bihar at 44.5 percent, Rajasthan at 48.4 percent, and Uttar Pradesh at 47.8 percent. Overall turnout in India was 58.2 percent. Moreover, a moderate Muslim party won the largest percentage of the Jammu and Kashmir vote and three of the state’s six seats, even though Muslims represent only a bare majority of the state population, suggesting that Muslims did not abstain at significantly greater rates than non-Muslims, virtually none of whom are secessionist. A high-end estimate of the proportion of the eligible electorate of Jammu and Kashmir that supports independence is thus 20 percent.

That figure is even lower elsewhere in India. In Nagaland, which still has an unresolved secessionist insurgency, turnout was 90 percent. Insurgents truly seem to enjoy only negligible support in the population. Assam hosts several secessionist movements, and its turnout was also above the Indian average.

In short, in less developed democracies, secessionism seems virtually as rare and as poorly supported as in advanced democracies, despite the former countries’ generally much more recent state-building processes. This consideration suggests that were a unilateral right of secession available to ethnonational minorities, very few of them would exercise the right, at least in the short run.

### 1.2.2 *Secessionist Contagion*

One worry about a right of unilateral secession is secessionist “contagion” across regions or countries, but secessionism does not in fact seem to be contagious across countries.<sup>28</sup>

Once other factors are considered, regions of the world with more successful secessions do not have more secessionists, and even Eastern Europe and the former Soviet Union do not have an unexpectedly high number of secessionists. Also, countries adjacent to countries with more secessionists do not themselves have more secessionists. However, the more secessionist groups have organized in a country, the more likely it is that other minorities will also start to promote secession. Thus, government suppression of the first secessionist movement can prevent future secessionist movements from forming.<sup>29</sup>

On the last point, Barbara Walter<sup>30</sup> additionally finds that when governments fight the first secessionist movement to appear, rather than concede autonomy, other ethnic groups in the country are less likely to pursue independence.

### 1.2.3 *Origins of Secessionism*

The main reason why secessionism is rare is that only groups expecting to benefit from independence pursue it. Henry Hale finds in the post-socialist Eurasian countries that richer autonomous republics were more likely to pursue independence.<sup>31</sup> Cultural difference did not seem to matter much; for instance, the central Asian republics were the most culturally different from the Russian majority of the Soviet Union, but the least secessionist. Gourevitch, Emizet and Hesli, and I have all similarly found that the economic benefits of independence or autonomy play a critical role in the emergence and success of secessionist movements.<sup>32</sup> When those benefits are negative, even highly culturally distinctive groups are unlikely to develop demands for far-reaching autonomy or independence, instead preferring a strategy of “voice” or “loyalty” to advance group interests.<sup>33</sup> Galicians in Spain, Alsations in France, and the Dravidian ethnic groups of south India are just a few examples of ethnonationalist groups with strong identities but little interest in secession due to its economic undesirability.

The way specific economic and social variables condition support for independence may, however, vary by context. In Eurasia and the advanced democracies, richer regions were apparently more secessionist. Horowitz has found in the post-colonial context, by contrast, that backward groups with backward homelands were the earliest, most committed secessionists because they feared political domination in their newly independent states.<sup>34</sup> There is also evidence that more populous groups are more likely to become secessionist, presumably because viability is less a concern for the states they might form, but *relatively* large groups (within the states they inhabit) are less secessionist and more likely to compete for power at the center.<sup>35</sup>

At the individual level, there is some evidence that voter support for independence is “rational,” that is, related in the expected way to the expected benefits

of independence. However, there is a difficult-to-resolve debate about the extent to which independence support is caused by voters' assessments of the benefits of independence, or if instead it causes those estimates of benefits through a process of rationalization.<sup>36</sup> There is little debate about the fact that many voters are risk-averse and therefore tend to vote against independence even when their evaluations of its likely consequences are somewhat positive.<sup>37</sup> Fears of what may happen after secession make referendums on the question extremely unlikely to succeed in well-established democracies.<sup>38</sup>

#### *1.2.4 Causes of Ethnic Violence*

Secessionism is strongly associated with violent conflict.<sup>39</sup> In general, separatist civil wars last longer than other kinds of wars, implying that the warring parties cannot find negotiated settlements even when the conflicts are stalemated.<sup>40</sup> In country-level analyses, several robust findings emerge about the correlates of ethnic civil war.<sup>41</sup> Richer, less populous, contiguous, and non-oil-exporting countries are less likely to experience ethnic civil war. Ethnic diversity at the country level is not associated with the onset of war.

Of particular relevance to this paper, I find that providing a legal path to independence is associated with less ethnonationalist rebellion.<sup>42</sup> Although very few countries provide a constitutional guarantee of a right to secede, several others have provided an informal path to independence for certain territories.<sup>43</sup> Most of these countries are high-income democracies, such as Canada, the United Kingdom, Belgium, Denmark, and the United States (for Puerto Rico). Yet, the pacifying effect of a legal path to secession does not seem to be a "rich-democracy" syndrome. Among rich democracies with secessionist movements, those governments that have provided a right to self-determination to certain territories have seen less secessionist violence than those that have not (France, Spain, Italy, and Finland with respect to Åland). Moreover, when governments conceded a right to self-determination to previously rebellious groups (the UK to Irish Republicans in the Good Friday Agreement and the United States to Puerto Rican nationalists in 1952), rebellion subsided. Finally, clauses permitting secession were essential to the success of the peace agreements ending civil conflicts in South Sudan and Bougainville. This evidence supports Wayne Norman's speculations that a right to secede can be a way of "domesticating" secessionism.<sup>44</sup>

One reason why a legal path to independence could promote peace is that it constrains secessionists and central governments to pursue their objectives using electoral and legislative means. On the one hand, secessionists have no excuse for resorting to violent tactics; to do so would be to admit failure to persuade a majority of the people they claim to represent, while imposing costs of violence on the very people they purport to represent and from whom they would have to recruit. On the other hand, central governments often cannot commit to respecting a negotiated regional autonomy compromise without also conceding a right

to secede. The South Sudanese and Bougainvillean secessionists would probably not have agreed to a peace deal without a referendum guarantee. These conflicts lasted twenty-two and nine years, respectively. Authoritarian and especially nationalistic central governments will face both desire and opportunity to renege on previously negotiated autonomy arrangements; only a right to secede may be sufficient to deter them and thereby induce secessionist rebels to lay down arms in the first place. I also find that central governments permitting a legal path to independence are more likely to decentralize to ethnic minority regions and have never recentralized power in the post-World War II era.<sup>45</sup>

## 2. ARGUMENT

### *2.1 For Legal Secession*

The first normative principle tells us that, above all, we should select the secession regime that minimizes the risk of death or other physical integrity rights violations to innocents. Therefore, since a legal path to independence is likely to reduce the risk of violent conflict and death of innocents, governments have an obligation to provide such a path, at least whenever the probability that a secessionist movement would become violent is nonzero.

This conclusion would not follow if providing a legal path to independence is equally likely to raise the risk of violence through other channels. Horowitz argues that larger, more diverse countries are superior for managing ethnic conflict because they will encourage interethnic cooperation and reduce the likelihood that any one group will control the state, and that therefore secession should be prohibited and union encouraged.<sup>46</sup> However, the evidence actually suggests that larger countries are more likely to see civil wars, apparently because they are more likely to host a disaffected group of a significant size. Moreover, more ethnically diverse countries do not necessarily see less violence.

Now, permitting secession could create more conflictual interstate relations. Indeed, shortly after secession, Eritrea went to war with its former host state Ethiopia. On the other hand, civil wars have killed about seven times more people than interstate wars since the end of World War II.<sup>47</sup> Civil wars last much longer than interstate wars.<sup>48</sup> The international norm of sovereignty and the prohibition on conquest reduce commitment problems in interstate wars that plague the resolution of civil wars. Therefore, increasing the number of states in the world somewhat may result in more interstate conflict but should reduce violent deaths from civil conflict more than equivalently.

Finally, the evidence from the previous section on the paucity of secessionists suggests that even a unilateral right to secede would not drastically increase the number of new states. Since modestly increasing the number of states is more likely to decrease than increase violent death, the case seems even stronger for permitting a path to legal secession, even a unilateral right to secede.

Of course, a legal path to secession does not necessarily imply a right to unilateral secession. For instance, the Canadian Supreme Court has ruled that if Quebec votes in favor of independence, the Canadian federal government must negotiate with provincial authorities in good faith, but secession would still require a constitutional amendment. In other words, Quebec has no unilateral right to secede, and the rest of Canada may be able to veto Quebec secession. Should potentially secessionist regions further have some kind of constitutionally guaranteed right to unilateral secession? The next section turns to this question.

### *2.2 For a Plebiscitary Right to Secede without a Central Government Veto*

If there is to be a legal path to independence, how is that path to be implemented? Should the rest of the country have the right to veto one region's attempt to secede by democratic means?

To answer these questions, consider two possible scenarios: a nationalistic majority likely to veto secession if they have such a right and a non-nationalistic majority unlikely to veto secession if they have such a right. Spain might be an example of a country fitting into the former category, while Britain fits comfortably into the latter (support for Scottish independence may be higher among English voters than among Scottish voters<sup>49</sup>).

In the former case, requiring statewide consent to secession would amount to an effective prohibition on secession. Therefore, the considerations from the previous section support the lack of a central government veto. In the latter case, requiring statewide consent is unlikely to make a difference.

Therefore, the default position we are left with is that if secession is to be permitted, it should be permitted on the basis of at least a majority vote among the potentially seceding group in a referendum. By requiring a majority vote in a referendum, the government requires a secessionist movement to make a persuasive case through democratic discourse. Secessionists will have no justification for pursuing violence, and governments will have more incentive to compromise with secessionists through mutually agreed autonomy arrangements. The majority requirement also ensures that secession, whenever it occurs, will improve freedom of association for more people.

This default position might require qualification. Are there some circumstances under which a plebiscitary right to secede would tend to violate Pareto optimality or some other principle of justice? Moreover, nothing has been said yet about how exactly such a right should be designed. What should the threshold for a successful referendum be, for instance? The next subsection discusses unpersuasive objections to the plebiscitary right of secession, and the following subsection discusses valid qualifications to the right.

### *2.3 Unpersuasive Objections to Plebiscitary Secession Rights*

#### *2.3.1 Rights-Violating Secessionists*

The most important complication is that counting heads is probably not the best way to determine relative legitimacies of governments, and therefore the “one person, one vote” assumption behind the plebiscitary procedure may be flawed.

Suppose secessionists want to enslave a minority in their midst, while the previous state had made slavery illegal. The first normative principle, protection of physical integrity rights, tells us that preventing this kind of secession would be justified. Note, however, that even in this case, a better course of action would be to allow secession in a smaller territory with no minority group, supposing that is possible. Furthermore, if the successor state had allowed slavery prior to secession, then the fact that this practice would be maintained in the new state would not necessarily be a reason for prohibiting secession at all—presumably one would have to make judgments about the probability of eventually prohibiting slavery in the united state compared to the secessionist state and about the future costs of repressing secession. (Should South Sudan have been prohibited from seceding from Sudan because it was unlikely to be a Western-style liberal democracy, or should it have been allowed to secede because it was likely to prove at least as liberal as a united Sudan? The latter conclusion follows from the first two normative principles articulated above.) Thus, choice theorists have typically required respect for minority rights in the new state to be a necessary precondition for permissible secession.<sup>50</sup>

The lexical ordering of the normative principles implies that, indeed, if secessionists are predictably more likely to violate basic rights than the existing central government is, the central government should prohibit secession. But what seems plausible in the abstract proves unworkable in the concrete. A constitutional provision enshrining something like the first two normative principles in law would be unenforceable because of the “biased referee” problem.<sup>51</sup> The central government will be tempted to use the excuse of civil liberties violations to suppress secessions unjustly. Similarly, secessionists will always claim to be liberal if they are required to do so, but that does not mean practices will not change once they achieve independence. Thus, directly implementing within the law a requirement to respect individual or minority rights after independence as a condition of being permitted to secede will not affect actual respect for rights, and it could be an excuse for suppressing morally desirable secessions.

Now, in cases such as the US Civil War, in which the central government is sincerely persuaded that a particular secession would be morally disastrous despite, let’s assume, a constitutional provision permitting it, then the government may be morally justified in acting extraconstitutionally to prevent the secession. (Still, a better solution would be to enact and enforce a legal prohibition on the rights-violating activity.) The goal of this paper, once again, is not to develop

conditions under which secession or suppression of secession is morally justified, but to develop principles for the constitutional-legal framework of secession. In extraordinary circumstances, morality can demand violations of laws that are ordinarily just.

### 2.3.2 *Nationalist Objections*

“Nationalist” theories of secession hold that only well-defined national groups have a moral right to secede based on the preponderance of their members’ wishes.<sup>52</sup> Patten argues that only national groups whose national identity the central government has disrespected have a right to secede.<sup>53</sup> According to the “liberal nationalist” perspective, national identity is a positive good for individuals, and it is desirable, whenever possible, to allow people’s national identities to shape their political context. Thus, the right to secede is really (reducible to) an individual right, but it should be limited to individuals as constituted in nations—as opposed to choice theory, which would recognize secession rights for any group that desired them.

Moore argues for restricting secession rights to national groups for the following reasons: nationalism is the principal motivation of secessionist movements, a fact not taken into account by choice theories; non-nationalist motivations for secession, such as ideological differences, may undermine democratic exchange and deliberation; and as dealt with previously, she believes that it is a problem for choice theories that they could permit secession even when it creates new, territorially dispersed minorities.<sup>54</sup>

Problematically, a crucial assumption behind nationalist theories is that there is some independent way to distinguish national identity from a collective demand for self-government, whatever the source of that demand may be. But empirical scholars of nationalism widely recognize that there are no “objective markers” of national identity.<sup>55</sup> Scots are widely recognized to be a nation even though they are not necessarily linguistically, phenotypically, or religiously distinct from other British peoples, and were recognized as such even when they lacked any actual political autonomy. There is no other way to define a nation but as a group of people holding a shared aspiration for common, distinct political institutions.<sup>56</sup> Subjective beliefs, not objective characteristics, mark a people off as a nation.

Therefore, if a group of people demonstrate their demand for collective, distinct political institutions by voting for secession, on what grounds could their nationhood be denied? Could jurists or other political actors somehow claim that they are not a “real” nation because they fail to meet certain criteria? To accept such a determination as potentially justifiable, we would have to deny that individual people have the right to define their own national identities. In short, we could no longer be liberal nationalists. Nationalist theories of secession must either rely on discredited, illiberal theories of nationality or break down into choice theories of secession.

### 2.3.3 *Strategic Secession*

Keith Dowding has a clever example to show how paradoxes of social choice could cause liberal secession to privilege one group's wishes over others'.<sup>57</sup> In a country with three groups, *A*, *B*, and *C*, suppose that *B* wants to expel *C* (and their territory) from the country. Failing this result, *B* prefers independence. *A* and *C* both support a continued union of *A*, *B*, and *C* as their first-choice arrangement. *B* therefore threatens to secede, but *A* prefers union with *B* to union with *C*, so *A* agrees to secede along with *B* and form a new *A-B* union. Effectively, *A* and *B* can expel *C*, even if *C* prefers to remain in the union. *A* and *C* are both worse-off relative to the status quo, while only *B* is better-off.

The example gets its bite from busybody preferences. *A* and *C* would like to compel *B* to remain in the union. Busybody preferences are indeed common in secessionist conflicts, but should they matter for the resolution? According to the fourth principle above, they should not count. The reason they should not count is that one group may not compel another into association without any reason. *B*'s "compulsion" of *A* and *C* through secession is morally different from *A* and *C*'s possible compulsion of *B* through prohibiting secession. By seceding, *B* creates a situation in which *A* desires to secede as well: unless we are prepared to say that *A* and *C* have a legitimate interest in ruling over *B*, *B*'s act of secession does not violate *A*'s or *C*'s rights, or frustrate any legitimate interests of theirs. By contrast, prohibiting secession would frustrate the legitimate interests of *B* by preventing the members of this group from governing themselves in a way they regard as more desirable.

In addition to the foregoing considerations, it is not clear how any legal regime could deal *ex ante* with possible strategic secessions in a different way from non-strategic secessions. If more secessions are non-strategic than strategic, then tightening the standards for all secessions could well do more harm than good even if one believed that groups could have legitimate interests in ruling over others.

### 2.3.4 *Plebiscitary Abjuration of the Right to Secede*

Wayne Norman poses a clever dilemma for choice theorists.<sup>58</sup> Is it permissible for a group to abjure its right of secession by voting in a constitutional provision making secession difficult or impossible? If the choice theorist answers no, then she faces a tension between advocating majoritarian self-determination on the issue of secession but opposing it on the issue of a constitutional ban on secession. (The tension is not airtight, however; one could argue that a ban on secession is permanent and therefore cannot be revoked, while the act of secession is not permanent: the secessionist state could later decide to rejoin the remainder state. A permanent alienation of a right may be unwise or even impossible.<sup>59</sup>) If the choice theorist answers yes, then it seems that the issue of secession loses its distinctiveness, and secession rights merely become one aspect of a larger theory of constitutional design.

This essay assumes that the design of the secession regime is indeed one aspect of a larger theory of constitutional design. The issue under discussion here is not whether voting to give up the right to secede is a morally permissible act, but whether it is wise for a constitution to contain such a provision. I argue that it is not.

### 2.3.5. *Nonviability*

Beran argues that enclaves and other “nonviable” territories should not be allowed to secede.<sup>60</sup> He denies that this requirement is paternalistic, stating instead that it relies on a view that rights presuppose the ability to exercise them. This response is inconsistent with Beran’s own liberal theory, however, which holds that rights presuppose merely the capacity of their exercise, not necessarily the ability. I am unable to dunk a basketball on a ten-foot goal, but that fact presumably has no relevance to whether I have a moral right to do so. On the other hand, if a secession left both secessionists and the remainder state nonviable, that secession would presumably violate the Pareto optimality principle. Assuming the risk of violence due to secession’s proscription would be low in such a case, then there would be a good reason to proscribe secession. But very small states almost never have secessionist movements in the first place.

In any case, it is usually anti-secessionist central governments that create nonviable territorial units, precisely to prevent secession or indeed any decentralization of power.<sup>61</sup> Post-Revolutionary France and post-Ottoman Turkey are examples of highly centralized states with many very small administrative subunits, the borders of which are intentionally drawn not to reflect historic cultural communities. In practice, I shall argue, it is essential that administrative units be the subjects of any constitutional right to secede, but it is also important to follow sound principles for the territorial organization of the state. Viability is one such principle. Therefore, while Beran’s viability restriction seems inconsistent with his moral theory, it should indirectly be part of a well-designed secession regime.

### 2.3.6 *No Recursive Secession*

A related reason for prohibiting secession is that the seceding group does not allow its own minorities the right to secede.<sup>62</sup> In the real world, there are hardly any cases in which a seceding group does recognize the right of recursive secession. The reason for this is not that contemporary secessionists are hypocritical individualist Lockean, but that they are consistent nationalists. They favor the autonomy and the unity of their nation.

Denying a right of recursive secession is generally wrong, for the same moral-prudential reasons that denying a right of secession in general is wrong. But does this wrong justify the central government’s banning secession to begin with? A Lockean choice theorist like Beran can answer yes only by assuming that the rights of the many may be violated for the sake of the rights of the few. But Lockean choice theory depends in the first place on the assumption that freedom

of association for the many is more valuable than freedom of the association for the few: that is the way in which the theory justifies secession by a simple majority vote, rather than by unanimity only. As argued above, Beran's position is incoherent.

For the institutional perspective adopted in this essay, a right of recursive secession is generally desirable (but see the discussion of irredentism in section 2.4). However, the mere fact that a right of recursive secession is not available does not automatically mean that it would be better to have no right of secession at all. During the negotiations to settle the 1983–2005 Sudanese civil war, should the Sudanese government have insisted that South Sudan recognize a right of, say, Nuer people to an independent state as a condition of an independence referendum for the South? Surely not. When people are not perfectly fulfilling their moral obligations, we have to triage moral wrongs. Stopping killing is the most important thing; ensuring that rights of freedom of association are guaranteed to the letter must take a backseat.

Finally, the problem of recursive secession can often be solved if the boundaries of territorial units are drawn appropriately. The essay discusses how to solve the administrative-boundaries problem in section 2.4.1.

### *2.3.7 Undermining Democratic Deliberation*

Allen Buchanan draws on Albert Hirschman's tripartite conceptualization of strategies of the discontented: exit, voice, and loyalty.<sup>63</sup> If exit (secession) becomes too easy, then voice (public discussion in a democratic context) is no longer worthwhile. "Vanity secessions" undermine democratic dialogue and compromise. Cass Sunstein similarly argues that secession threats damage democracy, and banning secession often enhances democratic quality.<sup>64</sup>

However, there do not seem to be any actual historical examples of vanity secession. As discussed in section 1.2.1, secessionism is rare among ethnic minorities territorially concentrated in a homeland. Most ethnic organizations choose to advance group interests using the "voice" strategy. In advanced democracies, secession is particularly difficult because risk-averse voters tend to vote against independence even when they view the net benefits of sovereignty as positive.<sup>65</sup> The United States is a large, diverse, politically polarized country, but even there, the level of support for secession is tiny. Were secession legal for American states, as it is for Puerto Rico, it is highly unlikely that disgruntled ideologues could mount a credible secession threat in any state.

A right to secede makes secessionism easier to organize, but it may well decrease the latent level of secessionist support in the population. The European Union allows member states a right of unilateral secession because member states would be highly unlikely to join without it: banning secession would threaten the future interests of the members, even if it temporarily suppressed some of the expression of that insecurity. That latent secessionism can explode into action

when circumstances permit is amply demonstrated by the collapse of the Soviet Union after glasnost and, somewhat less spectacularly, the strong electoral success of minority nationalists in Spain after the end of the Franco dictatorship. (In the case of the Basque country, the early-1980s success of the nationalists has never since been matched.)

Finally, the right to exit can enhance the effectiveness of voice. The ability to secede may enhance democratic deliberation by requiring the majority to pay stricter attention to minority concerns. Deliberative democratic theorists favor a genuine search for consensus over simple majoritarianism, and a right to secede could force narrow majorities to develop broader consensus on fundamental issues.<sup>66</sup> In any case, it is unclear at which point merely “ideological” differences, which Buchanan and Sunstein believe are invalid reasons for secession, become fundamental differences in civic philosophy that can sustain a “legitimate” civic-nationalist movement. For instance, Vermont secessionists’ advocacy of small-scale republicanism and vivid denunciation of the United States government’s “imperial giantism” certainly seem to transcend everyday left-right disagreements.<sup>67</sup> Estonian secession from the Soviet Union probably would have been justified even if it had been motivated solely by ideological anticommunism and not by ethnonational identity.

In summary, it is unclear whether a right to secede will increase the prevalence of secessionist politics, and even if it did, it is unclear whether the additional increment of secessionist politics permitted by such a right is really deleterious for constitutional democracy.

## *2.4 Qualifying the Right to Secede*

A permissive secession regime could have some negative consequences, which this section takes up, along with proposed solutions.

### *2.4.1 Strategic Demarcation of Territory*

If the secessionists were to determine the proper scope of the electorate in a simple-majority secession referendum, they could include additional territory that is not part of their traditional homeland. Suppose that in the traditional homeland, secession is supported by 75 percent of the electorate, but a simple 50 percent majority in a referendum suffices for secession, and the framers of any secession referendum question may set the boundaries of the proposed country. In this case, the secessionists may confidently include the territory of many non-secessionists within the referendum area and still win.

Now, Beran might reply that his choice theory permits recursive secessions, so that these non-secessionists could secede from the new state and rejoin the old. In most real-world circumstances, however, secessionists do not permit recursive secessions, yet Beran’s solution of simply denying a group a right to secede if it does not permit recursive secessions is not always attractive or realistic.

Requiring a large supermajority for secession would solve this problem but introduce others, such as denying some clearly legitimate movements. For instance, due to longstanding Soviet economic and demographic policies, 48 percent of Latvia's population was non-Latvian by 1991. A supermajority requirement would have left Latvia under Russian or Soviet control.

Instead, a better solution might be to limit the right of secession to top-tier geographical sub-units of the state, denying secessionists the right to determine the territorial scope of the referendum and their new state. Margaret Moore notes some problems with this administrative-boundaries solution.<sup>68</sup> First, administrative boundaries may be morally arbitrary, just like interstate boundaries. Second, relying on administrative boundaries to set the limits of regions that enjoy the right to secede gives central governments an incentive to manipulate administrative boundaries to dilute potential secessionist challenges. Third, allowing regions to secede along existing administrative boundaries may trap significant minorities within the new state. These are all very real problems, as Yugoslavia's attempted recursive secessions demonstrate. The secession of Croatia trapped Serbs, and the secession of Bosnia trapped both Croats and Serbs. The Badinter Commission denied these groups a recursive right of secession, and therefore they saw their only option as war combined with ethnic cleansing to alter ethnic balances.

Dealing with the issue of recursive secession only after a region tries to gain independence is too late. In such circumstances, the central state can use the logic of rescuing its minorities in the secessionist region as an excuse to invade. Even in advanced democracies, the issue of recursive secession can present a stumbling block and major source of uncertainty for post-secession negotiations, as the case of the Quebec Crees demonstrates. It is best to deal with administrative-boundaries problems before secession becomes an issue.

To determine which state or substate unit should have jurisdiction over a particular piece of territory, Moore recommends the procedure of "rolling cantonization," whereby low-level political units hold referendums on which larger political unit to join, or whether to become their own unit. In this manner, administrative boundaries would generally be those desired by the citizenry, and granting a right of secession to regions within existing administrative boundaries would be less problematic, even without a right of recursive secession. Making referendums regular and universal would reduce the ability of the central government selectively to target certain regions whose territory it wishes to reduce or enlarge.

Absent a process like rolling cantonization, boundary-drawing will have to be up to negotiation between the central government and the secessionists. Bargaining power often determines negotiation outcomes. Yet, the distribution of bargaining power, sometimes reflecting merely the ability to inflict suffering on one's partner, is morally arbitrary. The appropriate starting point for negotiation is critical to the outcome. In the abstract, a simple rule would be to use boundaries reflecting the distributions of culturally distinct populations as of last measurement, such

as a census, unless both the center and the secessionists consent to deviations. In the concrete, it may be difficult to apply such a rule, given disputes about map resolution (town-level, neighborhood-level), data sources, and the like.

#### 2.4.2 *Irredentism*

A permissive right of secession could foster irredentism, agitation for the separation of territory from one state and attachment to another.<sup>69</sup> Normative theorists have rarely treated secessionism differently from irredentism. But irredentism must be regarded more skeptically than secessionism. Irredentism has been a significant cause of war among states, including both world wars. As in Ukraine in 2014, irredentists often instigate violent conflict in order to draw in their “parent” state.

Legalizing irredentism by plebiscite would encourage states to meddle in each other’s domestic politics in hopes of boundary revisions. Instead, irredentism can usually be alleviated with generous autonomy, as has occurred in Åland and South Tyrol. Where irredentism cannot be satisfied with autonomy, such as where the irredentist group is a minority in the disputed region (e.g., Northern Ireland), then a solution will be more difficult, and the states involved may not wish to rule out completely a future transfer of sovereignty.

In any case, irredentist conflicts should be addressed on a case-by-case basis, and a universal right to transfer territory by plebiscite would be dangerous indeed. Because irredentism has such a poor reputation, irredentist movements have frequently shifted to a secessionist strategy (for instance, in the disputed Nagorno-Karabakh region of Azerbaijan). In these cases, it seems reasonable to prohibit the seceding state from ever joining its kin-dominated state.

#### 2.4.3 *Vague Referendum Questions*

While the problem of “vanity secessions” is sometimes overstated, secession without a settled majority in favor of the move can indeed occur when the referendum question is vague and the threshold is low (e.g., simple majority). Secessionists have an incentive to design vague referendum questions when they poll better. For instance, Quebec’s 1995 referendum asked voters whether they believed Quebec should “become sovereign” because the alternative phrase “become a sovereign country” polled lower. On the other hand, the Canadian government’s passage of the Clarity Act, reserving to itself alone the right to determine a future referendum question and threshold, only sets the stage for further controversy, legal conflict, and political and economic uncertainty.

The principle of Pareto optimality demands clarity on the conditions of secession referendums. When secessionists and the central government cannot agree, the political and economic uncertainty attendant on the referendum depresses economic output and creates unnecessary anxiety among citizens. Therefore, the terms of a secession referendum should be negotiated and agreed to by both the central government and potential secessionists.

The recent Scottish experience is a model in this regard. The Scottish and British governments agreed on the conditions for the 2014 referendum, including a clear question: “Should Scotland be an independent country?” The threshold for success was a simple majority. In the Union of Serbia and Montenegro, the threshold was 55 percent. There is nothing magical about any particular threshold, so long as it is above 50 percent. The key concern is that the procedures for secession be legally defined in advance of any secession attempt, in such a manner as to command the assent of both the central government and potential secessionists.

#### *2.4.4 Transaction Costs and Bargaining Failure*

A permissive right of unilateral secession may generate incentives for central and regional behavior that makes both parties worse-off and virtually guarantees secession. “No-fault secession” is analogous to no-fault divorce in this respect. Although secession and divorce are not morally equivalent,<sup>70</sup> the analytical similarities are fruitful.

Economists have analyzed divorce laws through the prism of the Coase Theorem, which says that transaction costs are the potential obstacle to an efficient allocation of resources, no matter how initial property rights are assigned. For example, if a husband is guilty of “fault,” then under laws requiring a demonstration of fault for divorce, the husband does not have a right to terminate the marriage, but the wife does. If the wife does not consent to the divorce, the husband will have to “buy” her consent, making both parties better-off. If the laws allow unilateral termination of marriage (“no-fault”), then the husband does have the right to terminate the marriage, and the wife must “buy” his consent to remain in the marriage. No matter which laws are in place, if there are no barriers to buying spousal consent, marriages that both spouses want will survive, and ones that at least one spouse does not want will break up.<sup>71</sup>

Although there remains some debate over the magnitude of the effect,<sup>72</sup> most statisticians now believe that no-fault divorce laws caused the divorce rate to increase, implying that there are transaction costs preventing marriage-valuing husbands and wives from compensating their otherwise at-fault spouses.<sup>73</sup> One possibility is that spouses derive most of their value in a marriage from the children, who are a kind of nontransferable public good.<sup>74</sup> If spouses derived most of their value from private, transferable goods, then spouses could still transact efficiently, but if they lack the resources to compensate each other within marriage, then even marriages that could make both spouses better-off will not survive.

The logic of transaction costs as public goods probably does not apply to most secession movements because typically, central and regional governments will have enough financial resources to pay each other enough to substitute for non-transferable public goods. A region’s threat of unilateral secession could evoke

transfers from the central government sufficient to keep the region within the union if and only if the union is efficient.<sup>75</sup>

Another kind of transaction cost more applicable to secessions is the time-inconsistency problem. For example, a central government may wish to make a large one-time investment in a region, in exchange for which the region agrees not to secede (politics dictate that the terms of the bargain will usually not be so explicit, of course). Once the central government has made the investment, the region has no incentive to abide by the bargain if it may secede unilaterally and keep the investment. As a result, the central government will not invest, and the region will definitely secede.

The solution to the problem is to allow regions to bind themselves somehow to more lasting relationships with the central government. For instance, it may be desirable to allow regions to create, through a supermajority vote, supermajority requirements for secession. Another solution is for the region to put up a sizeable bond before a secession referendum: if the referendum fails, then if the region holds another referendum in the future and secedes, the bond would be forfeited to the central government. A similar, cruder solution is to restrict secession referendums to intervals of, say, twenty years. Scottish First Minister Alec Salmond advocated this solution in the event of a failed referendum. Both solutions would address government anxieties about a secessionist “neverendum.” It would not be efficient for the central government to ban unilateral secession forever after a first referendum on the matter failed. Such a provision would allow inefficient unions to persist. The key is to “price” secession somehow in order to avoid the time-inconsistency problem and encourage central and regional governments to make investments in goods of joint value.

#### *2.4.5 Distributive Justice*

Section 1.2.3 noted that, among Western democracies, relatively richer regions tend to be more secessionist. The reason for this correlation is apparently that voters in relatively rich regions see a potential benefit in independence or full fiscal autonomy: cutting off redistributive flows to poorer parts of the country. Some theories of distributive justice generate strong duties of redistribution within advanced capitalist societies. Secession for the purpose of reducing redistribution could be morally problematic on these views.

However, a firm conclusion on this point would require further specification of the duties of distributive justice. The field of global distributive justice addresses duties among “peoples.” If duties to redistribute yield a duty not to secede, then they must also yield some duty of richer states to unify with poorer states. If this conclusion is unpalatable, then it seems that duties of redistribution across peoples do not imply duties of political unity between peoples after all. Instead of prohibiting secession by the rich, we should then appeal to their post-secession fiscal duties toward the rump state (and other peoples).

### 3. CONCLUSIONS

To a very significant degree, the competing moral theories of secession converge on practical recommendations for secession rights. To put the point another way, a fairly spare set of normative assumptions is sufficient, in combination with empirical evidence and political reasoning, to generate robust conclusions in favor of a plebiscitary right of secession without a central government veto. To be sure, the design of a constitutional right of secession remains somewhat speculative. Empirical analysis does not much help us address this issue because only a few countries have adopted an explicit right of secession in their constitutions.

#### *3.1 Recommendations*

The following paragraphs summarize some of the practical recommendations for a constitutional right of secession that have come out of this essay's discussion.

- (1) If well drawn, the territorial subunits are the subjects of the right to secede. The boundaries of these units should generally be fixed to the mutual agreement of most citizens throughout the country. If not well drawn, then boundaries should follow distributions of national identifiers as closely as possible, with deviations based on consent of both secessionists and the central government.
- (2) The plebiscitary threshold for secession should be established with the consent of the territorial subunits. There is no one best threshold for secession in a referendum, whether 50 percent plus one, 55 percent, two-thirds, or something else. Whatever the threshold is, it should have legitimacy and certainty in the eyes of both the government and the secessionist group. In general, as Daniel Weinstock has noted, "timing is everything: the time to entrench a secession provision is probably when secession seems at most a distant possibility, rather than an imminent threat."<sup>76</sup>
- (3) There should be an established, accepted procedure for arbitration of disputes over the secession process. Since consent of both parties is required, it is necessary to specify a "reversion outcome" if the parties fail to agree on a threshold or other terms. This reversion outcome can affect the bargaining process itself, making it important to specify it as neutrally as possible. Binding arbitration by a mutually agreed third party, such as an international organization, is one solution. If the parties ultimately cannot agree even on arbitration or the basic ground rules of negotiation, then we are left with the secessionist "state of nature," in which the only appeal is to force. The parties have a duty to avoid that outcome.
- (4) Secession plebiscites should follow international standards for clarity of question by including generally accepted legal language. Terms such as

“full political sovereignty” or “independent statehood” have accepted, unambiguous legal meanings. “Sovereignty” alone is ambiguous, eliding the distinction between external and internal sovereignty as enjoyed by units in a federal system. “Complete independence” is misleading since no country enjoys complete independence of political and legal ties with other countries.

- (5) Irredentist disputes should be settled by the states involved. It is reasonable to impose higher thresholds for plebiscites on joining another country, or to allow a right of the rump state to intervene militarily if the seceding state ever attempts to join a third country.
- (6) Reasonable limits on the frequency of secessionist plebiscites are possible. Secessionist regions may be required to put up forfeitable bonds, or simply to wait twenty years between referendums.

The foregoing principles for constitutionally recognized secession rights will not by any means settle all controversies about the issue. In any specific case, there will be additional issues to resolve, such as specific guarantees to minorities in the seceding state, the division of state assets and debts upon dissolution of the union, and disputes over the exact delineation of the border.

### 3.2 Applications

The United Kingdom currently sets the gold standard for management of secessionist politics. The British and Scottish governments negotiated in good faith over the terms of the independence referendum that Scotland held on September 18, 2014. If Scotland had voted to secede, the British government would have recognized its independence, thus affirming that the United Kingdom is a free partnership among its peoples.

Spain presents a different scenario altogether. Catalonia intends to hold its own “consultation” on independence, but the Spanish government has denied its right to do so, thus denying that Spain is a free partnership. The Catalan government has repeatedly sought to hold negotiations on the self-determination process, but has been rebuffed. What ought the Catalan government to do? By the criteria set forth in this paper, Catalonia has tried to conform to a just institutional regime for regulating secessionist politics, while Spain has not. Catalonia would be justified in using all proportionate means to secure a just outcome.

In the United States, secession is much discussed, but a remote possibility. The 1869 Supreme Court case *Texas v. White* held that states may not unilaterally secede, but may do so with the consent of other states, presumably through an act of Congress. The United States is therefore not indivisible like France and Spain, but it also does not recognize a unilateral secession right for states. The U.S. Congress has recognized Puerto Rico’s right to independence, and it would be reasonable for legislators to offer the same recognition to states. At the

moment, it is not an urgent issue, but the time to address secession procedures is well before an actual crisis.

While most governments do not yet provide stable legal procedures for the breakup of their territory, they have good reasons to do so. If they adopt generous secession rights before a major secessionist outbreak, they should be able to reduce the incentives for violence and to create specific procedures more to their liking. Regions are much more likely to consent to stricter procedures for secession when secessionist movements are weaker. A caveat: if it is wrong to deny a legally guaranteed right to secede whenever there is a non-negligible risk of secessionist violence, as I maintain, then it is also wrong to use the threat of denying such a right in order to extract favorable concessions.

It may be objected that these recommendations conflict with the interests of political leaders, that political leaders always act in their own interests, and that the recommendations will therefore never be adopted. This objection demonstrates that the assumption that political leaders do not necessarily act in their own interests is essential to any argument justifying policy recommendations. If leaders always act only in their own interests, then normative policy work is irrelevant because leaders cannot act differently from their current course of action. For normative policy work to have any purchase, it must be the case either that some leaders are mistaken about their interests, or that some leaders can consciously subordinate some of their own interests to other objectives. This essay depends particularly on the latter assumption. Most governments around the world are unlikely to adopt rules sanctioning unilateral secession any time soon, but those leaders who see the normative principles adopted in this essay as appropriate constraints on their pursuit of self-interest should be open to new ways of acting.

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## NOTES

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1. Beran, "Liberal Theory of Secession"; Buchanan, *Secession*; Philpott, "In Defense of Self-Determination"; Beran, "Democratic Theory of Political Self-Determination"; Patten, "Democratic Secession"; Buchanan, *Justice, Legitimacy, and Self-Determination*.

2. Weinstock, "Constitutionalizing the Right to Secede"; Sunstein, "Should Constitutions Protect the Right to Secede?"; Norman, *Negotiating Nationalism*.

3. St. Kitts and Nevis Constitution, section 113. <http://pdba.georgetown.edu/Constitutions/Kitts/kitts83.html>.

4. Translation from Prime Minister's Press Office, [www.byegm.gov.tr](http://www.byegm.gov.tr).

5. Weinstock, "Constitutionalizing the Right to Secede."
6. Norman, "Domesticating Secession"; Norman, *Negotiating Nationalism*.
7. Rawls, *Theory of Justice*, 197–99.
8. Tomasi, *Free Market Fairness*.
9. Beran, "Liberal Theory of Secession"; Beran, *Consent Theory of Political Obligation*; Wellman, "Defense of Secession"; Philpott, "In Defense of Self-Determination"; Freeman, "Priority of Function over Structure."
10. Wellman, *Theory of Secession*.
11. Kant, *Metaphysics of Morals*.
12. Nozick, *Anarchy, State, and Utopia*.
13. Locke, *Second Treatise of Government*; Simmons, *Moral Principles and Political Obligations*; Simmons, *On the Edge of Anarchy*; Huemer, *Problem of Political Authority*.
14. Simmons, *Moral Principles and Political Obligations*; Simmons, *On the Edge of Anarchy*.
15. Beran's suggestion that secessionists who themselves deny a right to secede may be forbidden from seceding may be a good idea for other reasons. The problem is that Beran's reciprocal-secession proviso contradicts his broader theory and shows that theory to be unattractive.
16. For example, Nozick, *Anarchy, State, and Utopia*; Copp, "Idea of a Legitimate State"; Wellman, *Theory of Secession*.
17. That Pareto optimality is the concern is apparent in Nozick, for whom it is obvious that independents can be fully compensated, leaving everyone at least as well-off as under anarchy.
18. UK Polling Report, "Scottish Independence Referendum"; UK Polling Report, "Scottish Independence."
19. Guibernau, "Calls for Independence in Catalonia."
20. Requejo and Sanjaume i Calvet, "Secession and Liberal Democracy."
21. Ackrén, "Faroe Islands."
22. "Texas Miscellaneous."
23. "Just 11% Favor Seceding from the Union."
24. Ketcham, "U.S. Out of Vermont!"
25. Sorens, *Secessionism*, 56.
26. Steyn, *Zapuphizo*.
27. Swami, "For Secessionists, Humiliation Follows Hubris."

28. Ayres and Saideman, "Is Separatism as Contagious as the Common Cold"; Sorens, *Secessionism*.
29. Sorens, *Secessionism*, 72.
30. Walter, "Information, Uncertainty, and the Decision to Secede."
31. Hale, *Foundations of Ethnic Politics*.
32. Gourevitch, "Re-Emergence of 'Peripheral Nationalisms'"; Emizet and Hesli, "Disposition to Secede "; Sorens, "Cross-Sectional Determinants of Secessionism."
33. Hirschman, *Exit, Voice, and Loyalty*.
34. Horowitz, "Patterns of Ethnic Separatism."
35. Cederman, Buhaug, and Rød, "Ethno-Nationalist Dyads and Civil War"; Sorens, *Secessionism*.
36. Howe, "Rationality and Sovereignty Support"; Mendelsohn, "Rational Choice and Socio-Psychological Explanations."
37. Nadeau, Martin, and Blais, "Attitude Towards Risk-Taking and Individual Choice."
38. Dion, "Why Is Secession Difficult in Well-Established Democracies?"
39. Toft, *Geography of Ethnic Violence*.
40. Fearon, "Why Do Some Civil Wars"; Sorens, *Secessionism*.
41. For example, Sambanis, "Do Ethnic and Nonethnic Civil Wars"; Fearon and Laitin, "Ethnicity, Insurgency, and Civil War"; Buhaug, "Relative Capability and Rebel Objective."
42. Sorens, *Secessionism*.
43. Besides St. Kitts and Nevis, Ethiopia provides such a right in its constitution, as did the Union of Serbia and Montenegro prior to its breakup. The European Union Constitution permits unilateral secession, and recent peace agreements in Sudan and Papua New Guinea have provided for a one-time-only referendum on secession. However, like the Yugoslav and Soviet constitutions, authoritarian single-party control of all organs of government in Ethiopia effectively nullifies the right of secession.
44. Norman, "Domesticating Secession"; Norman, *Negotiating Nationalism*.
45. Sorens, *Secessionism*.
46. Horowitz, "Right to Secede?"
47. Collier and Sambanis, "Preface"; Peace Research Institute of Oslo. "Data on Armed Conflict."
48. Fearon, "Why Do Some Civil Wars."
49. Park et al., *British Social Attitudes*.
50. For example, Beran, "Liberal Theory of Secession."

51. Buchanan, *Secession*; Norman, "Domesticating Secession."
52. Moore, *Ethics of Nationalism*.
53. Patten, "Democratic Secession."
54. Moore, *Ethics of Nationalism*.
55. Hutchinson and Smith, "Question of Definition"; Barrington, "'Nation' and 'Nationalism.'"
56. Nodia, "Nationalism and Democracy."
57. Dowding, "Secession and Isolation."
58. Norman, "Ethics of Secession," 41.
59. McConnell, "Nature and Basis of Inalienable Rights."
60. Beran, "Democratic Theory of Political Self-Determination," 36.
61. Levy, "Federalism, Liberalism, and the Separation."
62. Beran, "Liberal Theory of Secession"; Beran, "Democratic Theory of Political Self-Determination."
63. Buchanan, "Democracy and Secession"; Hirschman, *Exit, Voice, and Loyalty*.
64. Sunstein, "Should Constitutions Protect the Right to Secede?"
65. Dion, "Why Is Secession Difficult?"
66. Dryzek and Niemeyer, *Foundations and Frontiers*.
67. Naylor, *Secession*; Ketcham, "U.S. Out of Vermont!"
68. Moore, *Ethics of Nationalism*, 158–60.
69. Saideman and Ayres, *For Kin or Country*.
70. Aronovitch, "Why Secession Is Unlike Divorce"; Bauböck, "Why Secession Is Not Like Divorce."
71. Peters, "Marriage and Divorce."
72. Glenn, "Further Discussion of the Effects."
73. Allen, "Marriage and Divorce"; Friedberg, "Did Unilateral Divorce Raise Divorce Rates?"; Rodgers, Nakonezny, and Shull, "Did No-Fault Divorce Legislation Matter?"
74. Zelder, "Inefficient Dissolutions."
75. Treisman, *After the Deluge*.
76. Weinstock, "Constitutionalizing the Right to Secede," 198.

## REFERENCES

- Ackrén, Maria. "The Faroe Islands: Options for Independence." *Island Studies Journal* 1, no. 2 (2006): 223–38.
- Allen, Douglas W. "Marriage and Divorce: Comment." *American Economic Review* 82, no. 3 (1992): 679–85.
- Aronovitch, Hilliard. "Why Secession Is Unlike Divorce." *Public Affairs Quarterly* 14, no. 1 (2000): 27–37.
- Ayres, R. William, and Stephen Saideman. "Is Separatism as Contagious as the Common Cold or as Cancer? Testing the International and Domestic Determinants of Secessionism." *Nationalism and Ethnic Politics* 6, no. 3 (2000): 92–114.
- Barrington, Lowell W. "'Nation' and 'Nationalism': The Misuse of Key Concepts in Political Science." *PS: Political Science and Politics* 30, no. 4 (1997): 712–16.
- Bauböck, Rainer. "Why Secession Is Not Like Divorce." In *Nationalism and Internationalism in the Post-Cold War Era*, edited by Kjell Goldman, Ulf Hannerz, and Charles Westin, 214–41. London: UCL Press, 2000.
- Beran, Harry. *The Consent Theory of Political Obligation*. London: Croom Helm, 1987.
- . "A Democratic Theory of Political Self-Determination for a New World Order." In *Theories of Secession*, edited by Percy B. Lehning, 33–60. London: Routledge, 1998.
- . "A Liberal Theory of Secession." *Political Studies* 32, no. 1 (1984): 21–31.
- Buchanan, Allen E. "Democracy and Secession." In *National Self-Determination and Secession*, edited by Margaret Moore, 14–33. New York: Oxford University Press, 1998.
- . *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*. Oxford, UK: Oxford University Press, 2004.
- . *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec*. Boulder, CO: Westview, 1991.
- Buhaug, Halvard. "Relative Capability and Rebel Objective in Civil War." *Journal of Peace Research* 43, no. 6 (2006): 691–708.
- Cederman, Lars-Erik, Halvard Buhaug, and Jan Ketil Rød. "Ethno-Nationalist Dyads and Civil War: A GIS-Based Analysis." *Journal of Conflict Resolution* 53, no. 4 (2009): 496–525.
- Collier, Paul, and Nicholas Sambanis. "Preface." In *Understanding Civil War: Evidence and Analysis*. Vol. 1, Africa, edited by Paul Collier and Nicholas Sambanis, xiii–xv. Washington, DC: The World Bank, 2005.
- Copp, David. "The Idea of a Legitimate State." *Philosophy and Public Affairs* 28, no. 1 (1999): 3–45.
- Dion, Stéphane. "Why Is Secession Difficult in Well-Established Democracies?" *British Journal of Political Science* 26, no. 2 (1996): 269–93.
- Dowding, Keith. "Secession and Isolation." In *Theories of Secession*, edited by Percy B. Lehning, 71–90. London: Routledge, 1998.
- Dryzek, John S., and Simon Niemeyer. *Foundations and Frontiers of Deliberative Governance*. Oxford, UK: Oxford University Press, 2012.
- Emizet, Kisangani, and Vicki Hesli. "The Disposition to Secede: An Analysis of the Soviet Case." *Comparative Political Studies* 27, no. 4 (1995): 493–536.
- Fearon, James D. "Why Do Some Civil Wars Last So Much Longer than Others?" *Journal of Peace Research* 41, no. 3 (2004): 275–301.
- Fearon, James D., and David D. Laitin. "Ethnicity, Insurgency, and Civil War." *American Political Science Review* 97, no. 1 (2003): 75–90.

- Freeman, Michael. "The Priority of Function over Structure." In *Theories of Secession*, edited by Percy B. Lehning, 13–32. London: Routledge, 1998.
- Friedberg, Leora. "Did Unilateral Divorce Raise Divorce Rates? Evidence from Panel Data." *American Economic Review* 88, no. 3 (1998): 608–27.
- Glenn, Norval D. "Further Discussion of the Effects of No-Fault Divorce on Divorce Rates." *Journal of Marriage and the Family* 61, no. 3 (1999): 800–02.
- Gourevitch, Peter Alexis. "The Re-Emergence of 'Peripheral Nationalisms': Some Comparative Speculations on the Spatial Distribution of Political Leadership and Economic Growth." *Comparative Studies in Society and History* 21, no. 3 (1979): 303–22.
- Guibernau, Montserrat. "Calls for Independence in Catalonia." *LSE European Politics and Policy (EUROPP) Blog*, October 8, 2012. <http://eprints.lse.ac.uk/49913/>.
- Hale, Henry E. *The Foundations of Ethnic Politics: Separatism of States and Nations in Eurasia and the World*. New York: Cambridge University Press, 2008.
- Hirschman, Albert O. *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States*. Cambridge, MA: Harvard University Press, 1970.
- Horowitz, Donald L. "Patterns of Ethnic Separatism." *Comparative Studies in Society and History* 23, no. 2 (1981): 163–95.
- . "A Right to Secede?" In *NOMOS XLV: Secession and Self-Determination*, edited by Stephen Macedo and Allen E. Buchanan, 50–76. New York: New York University Press, 2003.
- Howe, Paul. "Rationality and Sovereignty Support in Quebec." *Canadian Journal of Political Science* 31, no. 1 (1998): 31–59.
- Huemer, Michael. *The Problem of Political Authority: An Examination of the Right to Coerce and the Duty to Obey*. Basingstoke, UK: Palgrave Macmillan, 2013.
- Hutchinson, John, and Anthony D. Smith. "The Question of Definition: Introduction." In *Nationalism*, edited by John Hutchinson and Anthony D. Smith, 15–16. Oxford, UK: Oxford University Press, 1994.
- "Just 11% Favor Seceding from the Union." *Rasmussen Reports*, April, 20, 2009. [http://www.rasmussenreports.com/public\\_content/politics/general\\_politics/april\\_2009/just\\_11\\_favor\\_seceding\\_from\\_the\\_union](http://www.rasmussenreports.com/public_content/politics/general_politics/april_2009/just_11_favor_seceding_from_the_union).
- Kant, Immanuel. *The Metaphysics of Morals*, translated by Mary Gregor. Cambridge, UK: Cambridge University Press, 1996. First published 1797.
- Ketcham, Christopher. "U.S. Out of Vermont!" *American Prospect* 24, no. 2 (2013). <http://prospect.org/article/us-out-vermont>.
- Levy, Jacob T. "Federalism, Liberalism, and the Separation of Loyalties." *American Political Science Review* 101, no. 3 (2007): 459–77.
- Locke, John. *Second Treatise of Government*. Indianapolis: Hackett, 1980. First published 1690.
- McConnell, Terrance. "The Nature and Basis of Inalienable Rights." *Law and Philosophy* 3, no. 1 (1984): 25–59.
- Mendelsohn, Matthew. "Rational Choice and Socio-Psychological Explanations for Opinion on Quebec Sovereignty." *Canadian Journal of Political Science* 36, no. 3 (2003): 511–37.
- Moore, Margaret. *The Ethics of Nationalism*. New York: Oxford University Press, 2001.
- Nadeau, Richard, Pierre Martin, and André Blais. "Attitude Towards Risk-Taking and Individual Choice in the Quebec Referendum on Sovereignty." *British Journal of Political Science* 29 (1999): 523–39.

- Naylor, Thomas H. *Secession: How Vermont and All the Other States Can Save Themselves from the Empire*. Port Townsend, WA: Feral House, 2008.
- Nodia, Ghia. "Nationalism and Democracy." In *Nationalism, Ethnic Conflict, and Democracy*, edited by Larry Diamond and Marc F. Plattner, 3–22. Baltimore, MD: Johns Hopkins University Press, 1994.
- Norman, Wayne. "Domesticating Secession." In *NOMOS XLV: Secession and Self-Determination*, edited by Stephen Macedo and Allen E. Buchanan, 193–237. New York: New York University Press, 2003.
- . "The Ethics of Secession as the Regulation of Secessionist Politics." In *National Self-Determination and Secession*, edited by Margaret Moore, 34–61. New York: Oxford University Press, 1998.
- . *Negotiating Nationalism: Nation-Building, Federalism, and Secession in the Multinational State*. New York: Oxford University Press, 2006.
- Nozick, Robert. *Anarchy, State, and Utopia*. New York: Basic Books, 1974.
- Park, Alison, Caroline Bryson, Elizabeth Clery, John Curtice, and Miranda Phillips, eds. *British Social Attitudes: The 30th Report*. London: NatCen Social Research, 2013.
- Patten, Alan. "Democratic Secession from a Multinational State." *Ethics* 112, no. 3 (2002): 558–86.
- Peace Research Institute of Oslo. "Data on Armed Conflict." <http://www.prio.no/Data/Armed-Conflict/> (accessed September 20, 2013).
- Peters, H. Elizabeth. "Marriage and Divorce: Informational Constraints and Private Contracting." *American Economic Review* 76, no. 3 (1986): 437–54.
- Philpott, Daniel. "In Defense of Self-Determination." *Ethics* 105, no. 2 (1995): 352–86.
- Rawls, John. *A Theory of Justice*. 2nd ed. Cambridge, MA: Harvard University Press, 1999.
- Requejo, Ferran, and Marc Sanjaume i Calvet. "Secession and Liberal Democracy: The Case of the Basque Country." In *Secessionism and Separatism in Europe and Asia: To Have a State of One's Own*, edited by Jean-Pierre Cabestan and Aleksandar Pavković, 110–26. London: Routledge, 2013.
- Rodgers, Joseph Lee, Paul A. Nakonezny, and Robert D. Shull. "Did No-Fault Divorce Legislation Matter? Definitely Yes and Sometimes No." *Journal of Marriage and the Family* 61, no. 3 (1999): 803–09.
- Saideman, Stephen, and R. William Ayres. *For Kin or Country: Xenophobia, Nationalism, and War*. New York: Columbia University Press, 2008.
- Sambanis, Nicholas. "Do Ethnic and Nonethnic Civil Wars Have the Same Causes? A Theoretical and Empirical Inquiry (Part 1)." *Journal of Conflict Resolution* 45, no. 3 (2001): 259–82.
- Simmons, A. John. *Moral Principles and Political Obligations*. Princeton, NJ: Princeton University Press, 1981.
- . *On the Edge of Anarchy: Locke, Consent, and the Limits of Society*. Princeton, NJ: Princeton University Press, 1995.
- Sorens, Jason. "The Cross-Sectional Determinants of Secessionism in Advanced Democracies." *Comparative Political Studies* 38, no. 3 (2005): 304–26.
- . *Secessionism: Identity, Interest, and Strategy*. Montreal, QC: McGill-Queen's University Press, 2012.
- Steyn, Pieter. *Zapuphizo: Voice of the Nagas*. London: Routledge, 2000.
- Sunstein, Cass R. "Should Constitutions Protect the Right to Secede? A Reply to Weinstock." *Journal of Political Philosophy* 9, no. 3 (2001): 350–55.

- Swami, Praveen. "For Secessionists, Humiliation Follows Hubris," *Hindu*, December 23, 2008. <http://www.thehindu.com/todays-paper/tp-opinion/for-secessionists-humiliation-follows-hubris/article1400191.ece>.
- "Texas Miscellaneous." *Public Policy Polling*, September 23, 2011. <http://www.publicpolicypolling.com/main/2011/09/texas-miscellaneous.html>.
- Toft, Monica Duffy. *The Geography of Ethnic Violence: Identity, Interests, and the Indivisibility of Territory*. Princeton, NJ: Princeton University Press, 2003.
- Tomasi, John. *Free Market Fairness*. Princeton, NJ: Princeton University Press, 2012.
- Treisman, Daniel. *After the Deluge: Regional Crises and Political Consolidation in Russia*. Ann Arbor: University of Michigan Press, 1999.
- UK Polling Report, "Scottish Independence." <http://ukpollingreport.co.uk/scottish-independence>.
- . "Scottish Independence Referendum." <http://ukpollingreport.co.uk/scottish-independence-referendum>.
- Walter, Barbara F. "Information, Uncertainty, and the Decision to Secede." *International Organization* 60, no. 1 (2006): 105–35.
- Weinstock, Daniel. "Constitutionalizing the Right to Secede." *Journal of Political Philosophy* 9, no. 2 (2001): 182–203.
- Wellman, Christopher Heath. "A Defense of Secession and Political Self-Determination." *Philosophy and Public Affairs* 24, no. 2 (1995): 142–71.
- . *A Theory of Secession: The Case for Political Self-Determination*. New York: Cambridge University Press, 2005.
- Zelder, Martin. "Inefficient Dissolutions as a Consequence of Public Goods: The Case of No-Fault Divorce." *Journal of Legal Studies* 22, no. 2 (1993): 503–20.