THE MORALITY OF SECESSION

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CONTENTS

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INTRODUCTION

Centrifugal forces are threatening the integrity of plural societies. In Eastern Europe, Central Asia, the Near East, and Sub-Saharan Africa, separatist movements with deadly weapons are resisting the classical idea of *e pluribus unum*. Bosnians, Kurds, Tamils, and Somalis are fighting fiercely to achieve politically independent governments and culturally homogenous communities. Separatist tendencies have also reached Western soils: Francophones in Canada, Scots in Britain, and Basques in Spain are clamoring ardently for political autonomy. Waving the banner of self-determination, active campaigns for either full sovereignty or minority rights now operate in more than sixty countries, one-third the total roster of nations. Each day the political and ethnic dissonance continues to mount.[1]

The recent wave of political fragmentation has caught liberal philosophers unprepared. Almost exclusively, liberals have proposed political institutions to govern plural societies. After the Reformation splintered Christendom, John Locke advocated toleration to foster social stability amid religious diversity.[2] When the 1960s divided America, John Rawls argued that justice could reconcile rival conceptions of the human good.[3] During the three centuries separating Locke from Rawls, liberals of all stripes devised mechanisms for peaceful cooperation

[1] For an international inventory of separatist movements, see Halperin and Scheffer, *Self-Determination in the New World Order*.

[2] Locke, *A Letter Concerning Toleration*.

[3] Latent in *A Theory of Justice*, the idea of an overlapping consensus has appeared prominently in Rawls's recent essays, including "The Idea of an Overlapping Consensus," "The

within multicultural states. The same liberals said almost nothing about secessionist movements that disdain eclectic communities and cross-cultural cooperation.[4] To separatist agitators, liberal rules for running plural societies simply beg the fundamental question: Why must people remain in heterogenous states at all?[5]

Liberals cannot respond to burgeoning separatism by rehearsing moral theories of revolution and disobedience. Revolutionaries destroy *anciens régimes* and precipitate fundamental changes by overthrowing existing governments and establishing new ones.[6] More conservative than revolutionaries, civil disobedients acknowledge state authority over most matters but oppose certain policies on ethical grounds.[7] Secessionist movements do not fit neatly

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Domain of the Political and Overlapping Consensus," and *Political Liberalism*.

[4] Some liberals have discussed decolonization. See, e.g., Mill, "On Representative Government," 380-88 and Plamenatz, *On Alien Rule and Self-Government*. With the important exception of Allen Buchanan (*Secession*), liberal theorists have remained virtually silent, however, about breakaway groups outside the colonial context. My study differs from Buchanan's in several respects. Structurally, I attempt to organize my thoughts into a coherent theory, whereas Buchanan merely lists clashing arguments for and against secession. Substantively, I develop a position which is more permissive of secession and, I believe, more consistent with liberalism than Buchanan's thesis. Nevertheless, I treat political obligations as moral hurdles to secession, whereas Buchanan understands such obligations as potential arguments in favor of secession. Like Buchanan, I argue that territorial issues pose serious obstacles for separatist movements; unlike Buchanan, I offer philosophical principles for distributing property rights and settling secessionist disputes. Although I disagree strongly with Buchanan's organizational approach and substantive positions, I have learned much from his path-breaking book.

[5] Galston, "Pluralism and Social Unity," 711, 717; Williams, "Left-Wing Wittgenstein," 41.

[6] Calvert, *Revolution and Counter-Revolution*, esp. 15-16; Kamenka, "The Concept of a Political Revolution."

[7] A standard definition of civil disobedience appears in Rawls, *A Theory of Justice*, 364. See also Corlett, "The Right to Civil Disobedience and the Right to Secede," 24-25.

into either category. Separatists neither dissolve existing institutions, like revolutionaries, nor recognize state authority, like disobedients. Instead, breakaway groups liberate themselves from the political ambit of the prevailing government. Consequently, neither theories of revolution nor principles for disobedience speak directly to the problem of separatism.

Similarly, liberals should not expect moral theories of emigration to supply conclusive judgements about secession. Emigrants escape governments by leaving their present domiciles and relocating in foreign lands. Separatists, by contrast, can abandon states without changing residence. In most cases, breakaway movements redraw boundaries to capture the physical territory that they presently occupy. The secessionist territory often includes natural resources and manufactured objects that supply economic foundations for new polities. By extracting territory from the original state, separatists distinguish themselves from emigrants.[8] Principles of emigration surely affect the morality of secession, but migration rules cannot tell the whole story. To judge the international proliferation of separatist movements, liberal philosophers need a new theory.

In this thesis, I develop a limited, normative theory of secession. Technically, secession occurs when an individual or a collective gains political independence by redrawing state boundaries.[9] To warrant the secessionist label, a breakaway movement must liberate both people and territory from an existing government; the same movement must also produce an

[8] Brilmayer stresses the territorial issue in "Secession and Self-Determination."

[9] I use "secession" and "separatism" interchangeably to denote radical moves toward full independence. Other scholars have assigned both terms to political reforms short of full independence. See, e.g., Horowitz, *Ethnic Groups in Conflict*, 231-32.

independent country while leaving a remainder state.[10] My normative theory addresses two central questions: On what grounds and under what conditions, if any, should liberal philosophers acknowledge a moral right to secede? Furthermore, which parties in the international system may exercise a secessionist right? I answer these questions by developing a philosophical argument that spans five chapters.

A fuller normative theory would confront two vexing issues that I neglect. The first difficult topic involves the morality of force. Many secessionist feuds have sparked civil wars claiming thousands of lives. Amidst the carnage, separatists have asserted moral rights to brandish arms, while central governments have justified mass graves to retain territory. Under what conditions and for what reasons may breakaway movements and central governments exercise force to influence secession? The second complicated subject concerns the morality of intervention. Some countries have upheld the *cordon sanitaire* of scrupulous non-involvement, while others have taken active roles in separatist disputes. Under what conditions and with what methods may third parties affect secessionist outcomes? These questions lie beyond the scope of my thesis.[11]

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[10] Without the requirement of independence, secession could overlap with irredentism, which occurs when an ethnic group in one state retrieves kindred people and physical territory from a neighboring state. See Chazan, *Irredentism and International Politics*, Horowitz, "Irredentas and Secessions," and Mayall, *Nationalism and International Society*, 57-61. The independence requirement also distinguishes separatist controversies from mere boundary disputes.

[11] Authors addressing these questions include Heraclides, "Secession, Self-Determination and Nonintervention," esp. 415-19, Nafzinger, "Self-Determination and Humanitarian Intervention in a Community of Power," Pogge, "An Institutional Approach to Humanitarian Intervention," Powers, "Testing the Moral Limits of Self-Determination," 46-47, Ryan, "Rights, Intervention, and Self-Determination," Sureda, *The Evolution of the Right of Self-Determination*, 324-51, and

Distinct from my normative argument, an empirical theory could explain a broad range of separatist phenomena. Social scientists might hypothesize about why secession occurs and how movements develop. Researchers could also consider the political leadership and interpersonal dynamics of breakaway groups, as well as the power balance between separatist movements and central governments. Furthermore, scholars could investigate how intervening countries and multilateral institutions alter the prospects for secession. No satisfactory study of these fascinating topics currently exists.[12] In this thesis, I do not tackle empirical issues directly. I do, however, marshall explanatory theories and real-world examples to illustrate my philosophical points.

My normative theory of secession draws from the intellectual stock of liberalism. As a political philosophy, liberalism contains a set of moral arguments that justify public actions and political institutions. In its most attractive form, liberalism celebrates freedom as an essential component of human well-being and safeguards liberty by restricting governmental powers and upholding individual rights.[13] A more comprehensive theory of secession would exhibit illiberal arguments alongside liberal ones. Such an inclusive theory, I suspect, would also expose irresolvable tensions between liberal individualism and extreme communitarianism. When discussing collective rights and cultural networks, I borrow valuable insights from the

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Wilson, *International Law and the Use of Force by National Liberation Movements*.

[12] Cursory theories appear in Hechter, "The Dynamics of Secession," Heraclides, *The Self-Determination of Minorities in International Politics*, Holsti, "Change in the International System," and Horowitz, *Ethnic Groups in Conflict*.

[13] Instructive surveys of the liberal tradition appear in Gray, *Liberalism* and Merquior,

communitarian camp. Nevertheless, I intend my theory of secession to persuade an audience of liberals.

For both pragmatic and principled reasons, I begin with liberal theory, rather than a blank slate or an ideological competitor. The problem of secession engages the most challenging topics in political philosophy, including the basis of political obligations, the content of distributive justice, the importance of cultural health, and the nature of rights themselves. In a short thesis--or even a long lifetime!--I cannot build these complex themes from scratch. Stowing my *tabula rasa*, I construct a theory of secession from the materials of liberalism, with which my personal sympathies and widespread international support currently lie. Despite its flaws, liberal theory surpasses its intellectual rivals in moral sensitivity and philosophical clarity. For these reasons, liberalism seems like the appropriate point of departure for my argument about secession.

My theory of secession also employs the language of rights. I derive a conclusive right to secede from a liberal constellation of interests involving liberty, obedience, property, and culture. Different philosophers could discuss the problem of secession in the jargon of justification or the parlance of priorities. After weighing arguments on both sides of the separatist debate, these scholars could label secession right or wrong, vital or inconsequential, without assigning moral rights to breakaway movements. Lithuanians, for instance, could have acted within ethical bounds but exercised no secessionist rights when leaving the Soviet Union in 1991. An ethical vocabulary that excludes rights-rhetoric may seem perfectly intelligible, but I prefer to speak in a rights-laden tongue.

Liberalism Old and New. I amplify and qualify the liberal perspective in the next five chapters.

I adopt rights-talk to charge my philosophical theory with practical ambition. For decades, international lawyers recognized the right of self-determination but denied the privilege to secede. Today, the spread of liberal values and the multiplication of breakaway movements are challenging conventional wisdom. Scholars now observe a remarkable drift toward a new regime of international law accommodating democratic principles and perhaps even secessionist privileges.[14] To play a constructive role in the legal transformation, my thesis and others like it should exploit the language of rights. Familiar to international lawyers and inspirational for many policy makers, rights-based arguments could carry greater weight than either the jargon of justification or the parlance of priorities. In practical discourse, the language of rights displays impressive legal and motivational force.[15]

My philosophical theory develops over five chapters. In the opening chapter, I elaborate the conceptual features and the moral foundations of individual and collective rights. Chapter Two establishes a presumption for secession by citing the importance of liberty. The same chapter tempers the separatist presumption with the harm principle, which prohibits breakaway movements from injuring others in significant ways. In chapters Three and Four, I argue that separatists can inflict moral harm by breaking promises, exploiting cooperationists, jeopardizing welfare, and taking property. When separatists injure others, the original presumption may not

[14] Franck, "The Emerging Right of Democratic Governance" and *The Power of Legitimacy Among Nations*; O'Connell, Review of *Secession*, 1128. More cynical views appear in Brilmayer, "Groups, History, and International Law," Lapidoth, "Sovereignty in Transition," and Nanda, "Self-Determination Under International Law," 263.

[15] Buchanan, "Individual Rights and Social Change," 59-62.

crystallize into a conclusive right. The final chapter rebuilds the liberal presumption and specifies the parameters of a secessionist right.

CHAPTER ONE:
CONCEPTUAL FOUNDATIONS

In this opening chapter, I consider the conceptual features and the moral foundations of rights. I argue that a right to secede consists of a core privilege, a peripheral claim, and two associated immunities. Individuals and collectives bearing secessionist rights may sever ties with an existing polity and remove territory from a state's jurisdiction. Right-holders may also direct opposing parties to refrain from impeding the separatist endeavor. Simultaneously, rights can immunize separatists from people who would either obliterate the privilege to secede or declare independence on the bearer's behalf. I insist that any moral right to secede must rest on individual interests which serve human well-being. Finally, I suggest how liberals might accommodate a collective right to secede within the moral ontology of individualism.

I. DEFINING RIGHTS

A right specifies behavioral norms that govern relationships among people and things.[16] It favors the bearer over the addressee in disputes concerning the actions of either party.[17] Frequently, a right authorizes the bearer to demand special conduct from other people. To illustrate the diverse ways in which legal and moral rights direct individual and collective

[16] Alexy, "Rights, Legal Reasoning and Rational Discourse," 144-45; Martin, *A System of Rights*, 24-50.

[17] Wellman, *A Theory of Rights*, *passim*.

behavior, I schematize rights into five categories: privileges, claims, powers, immunities, and clusters.[18]

A privilege, or freedom to act, obtains in the absence of contrary duties, which oblige people to perform or eschew certain deeds in particular circumstances.[19] For instance, I hold the privilege to retrieve a penny from the sidewalk whenever I bear no duties to leave the coin on the pavement. A privilege serves the bearer by constraining second parties when conflicts arise. If I possess the privilege to appropriate the penny, then you may not complain when I pocket the coin. At the very least, you may not protest that I wrong you by taking the money. Nevertheless, a mere privilege generates no correlative duties. My privilege to fetch the penny does not prohibit you from confiscating the same coin. A privilege, one form of a right, guides behavior in trivial ways.

Weightier than a privilege, a claim imposes duties on second parties. If I hold legitimate claims that you supply my food and respect my property, then you bear corresponding obligations to prepare my dinner and refrain from trespassing. Similarly, if I possess a claim to the penny on the sidewalk, then you may not snatch the coin without my permission. Disgusted by the loose terminology of his legal contemporaries, Hohfeld reserved the title of "rights" for the category of claims.[20] But Hohfeld ignored one feature uniting all rights, including bare privileges: an advantage for the possessor. Both privileges and claims aid their bearers in behavioral

[18] Four of these categories appear in Hohfeld, *Fundamental Legal Conceptions*.

[19] More precise definitions of duties appear in Feinberg, "Duties, Rights, and Claims" and White, *Rights*, 21-32.

controversies. Powers and immunities perform similar functions and warrant the rights-label.

A power enables the bearer to alter rights through intentional acts. For instance, the power to promise can modify both privileges and claims. If I contract to paint your flat in Oxford this week, then I lose my privilege to comb the Bermudian beaches for the entire week. Likewise, if I agree to forgive your debt, then I dissolve my claim to your recompense. An immunity, opposed to a power, shields the bearer from other people who might endeavor to alter rights. As an American citizen, I hold an immunity against the British government, which lacks the legal power to conscript me into the Royal Navy. Both powers and immunities qualify as rights, because they serve bearers in potential conflicts with second parties.

Legal and moral discourse abound with cluster rights, complex advantages containing two or more Hohfeldian elements.[21] A core right defines the essence of the cluster, and peripheral elements reinforce the function of the core. One example of a cluster right, the liberty of free speech contains a core privilege to speak out or to remain silent on a wide range of controversial matters. The same liberty involves a peripheral claim, which supplements one party's privilege to speak with another party's duty of forbearance. Potential censors may not interfere with the verbal expression of the cluster-holder. In the United States, the liberty of speech further includes an immunity, embodied in the First Amendment, which prohibits the

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[20] Hohfeld, *Fundamental Legal Conceptions*, 35-41.

[21] Wellman advances a theory of cluster rights in "A New Conception of Human Rights" and *A Theory of Rights*, chaps. 3-4, 6. See also Kaufman, *Rights, Needs, and Groups*.

government or other parties from decreeing rules to eliminate the privilege.[22]

Having distilled rights into five classes, I characterize a secessionist right, in its most plausible form, as a complex cluster. Centrally, the right to secede involves a privilege to exempt oneself from a particular political jurisdiction and take a piece of potentially contested territory. Peripherally, the right accommodates a claim that second parties refrain from impeding the separatist endeavor. Opponents may develop arguments to dissuade separatists but may not apply force to block secession. Finally, the secessionist right contains two immunities: Only the bearer may declare a secession or waive the privilege. Any secessionist right which neglects these peripheral elements will seem inconsequential, and perhaps even pointless.

I have described a powerful cluster containing a core privilege and three associated elements, but secessionist parties might articulate more copious rights. On some accounts, the right to secede may include the privilege to fight, if necessary, for the separatist cause. The same cluster might also entail a peripheral claim to efficacious assistance from domestic elements, the sovereign government, or foreign players. Theorists wishing to study such an expansive right must engage the voluminous legal and philosophical literature on just war and humanitarian intervention. I leave that monumental task for another scholar or another time.

Before identifying the potential bearers of secessionist rights, I must dismiss one objection to the rights-language that I have been using. Most theorists now accept that some

[22] Ownership, another cluster right, entails the privilege to use, a claim against trespass, a power to transfer, and an immunity from being forced to sell. See the discussion of ownership in Munzer, *A Theory of Property*, 22-27.

obligations, such as the moral duty to act charitably, do not correlate with any rights.[23] Nonetheless, certain scholars still insist that every right entails a corresponding duty.[24] From this erroneous perspective, the resolute scholars echo Bentham's objection that lawyers and philosophers could replace statements about rights with declarations of duties that would express the same point with equal force.[25] The ancient Greeks developed a system of law and ethics without utilizing the concept of a right.[26] Likewise, modern thinkers can dispense with rights-talk.

The objection of redundancy suffers several infirmities. First, my scheme of rights includes three classes (privileges, powers, and immunities) which entail no corresponding obligations.[27] Additionally, claim-rights often precede correlative duties, logically if not empirically, and supply the reasons for assigning duties to second parties.[28] Finally, many claims connect with multiple duties. A conceptual shorthand, the language of rights allows theorists to speak efficiently about the lone advantage to which duties attach.[29] Consequently, scholars

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[23] Feinberg, *Social Philosophy*, 61-64; Raz, "Liberating Duties"; White, *Rights*, 60-64.

[24] See, e.g., Donnelly, "How are Rights and Duties Correlative?"

[25] Hart, "Bentham on Legal Rights."

[26] Strauss, *Natural Right and History*.

[27] Lyons, "The Correlativity of Rights and Duties."

[28] MacCormick, "Rights in Legislation," 200-4, "Taking the 'Rights Thesis' Seriously," 143-44, and "Children's Rights," 161-63. See also Dworkin, *Taking Rights Seriously*, 171 and Raz, "Legal Rights," 5.

[29] Brandt, "The Concept of a Moral Right and its Function," 43-45; Buchanan, "What's So Special About Rights?"; MacCormick, "Rights in Legislation," 206-7.

should not shy from the parlance of rights, an idiom that I employ throughout this thesis.

Legal and political theorists typically ascribe rights to individuals. Many cherished rights in Western society, such as the freedom of expression, the claim to privacy, the privilege to participate in political decision-making, and the claim to fair procedures in criminal trials, attach to each person singly and essentially. In principle, the party who enjoys standing with regard to these and other individual rights may exercise, invoke, or waive the advantages in his or her own name and on his or her own authority. The notion of individual rights has assumed a place of honor in the American Constitution, the French Declaration, legal theory, and liberal philosophy.

Like many Western rights, secessionist privileges can belong to discrete individuals. More precisely, a person can bear the right to found a new country on the lands of an existing state by declaring political independence and redrawing state boundaries. Neither domestic nor international lawyers have recognized a personal right to secede politically, and the present century has not witnessed a significant case of individual secession. Nevertheless, the paucity of precedent hardly demonstrates an impossibility in theory. Individuals could bear and apply a secessionist right, a personal advantage that Thoreau probably advocated in the first quarter of the nineteenth century.[30]

Lawyers and philosophers occasionally attribute rights to groups, as well as to individuals. An identifiable group holds standing with regard to a collective right when no single individual can exercise, invoke, or waive the advantage, unless he or she acts on the group's behalf through some method of political representation. In the absence of a scheme in which a

[30] Thoreau, "Civil Disobedience."

designated individual or a particular subset purports to act for the entire group, each member must exercise the collective right in solidarity with the others. Importantly, a collective right cannot reduce to the mere sum of the individual rights which belong to the group's members.[31]

Examples of collective rights appear in many legal and moral systems. Corporations and unions, as collective bodies, possess rights to negotiate wages and conduct strikes. These advantages, original to corporations and unions, remain distinct from the individual rights of stockholders and employees. As another bearer of collective rights, the government may impose taxes, break monopolies, mandate education, and conscript soldiers. Neither registered voters nor public officials may possess or wield such rights in isolation. Similarly, plural societies sometimes attribute to racial, linguistic, and religious groups the claims to hold quotas of seats in the central legislature and to preserve cultural integrity through public regulations.[32]

An analogy between individuals and collectives should buttress the notion that groups, like persons, can bear rights. Legislators and philosophers award individuals with rights that constrain the actions of fellow citizens and foreign parties. With parallel logic, scholars might visualize a teeming group as an isolated individual whose rights specify behavioral norms for second parties, whether individual or collective. The language of rights applies with equal

[31] Alston, "A Third Generation of Solidarity Rights"; Sanders, "Collective Rights," 368-70.

[32] Van Dyke, "Collective Entities and Moral Rights," 24-25, "Human Rights and the Rights of Groups," *Human Rights, Ethnicity, and Discrimination*, and "Justice as Fairness: For Groups?"; *Economist*, "Groping for Group Rights." Some plural societies nevertheless resist collective rights. On the paucity of group rights in America and Canada, see Clinton, "The Rights of Indigenous Peoples as Collective Group Rights?" and Trakman, "Group Rights: A Canadian Perspective."

coherence to individuals and groups.[33] Where the relevant group seems readily identifiable, theorists commit no logical error by ascribing collective rights to social groups, such as corporations, governments, and cultures.[34]

The analogy between individuals and collectives holds, provided that groups exist and act. If groups do not exist, then they, like unicorns and ghosts, cannot bear rights. If groups do not act, then they, like rocks and chairs, cannot exercise privileges. Passive parties may possess claims and immunities which require no action from the right-bearer. Only active parties, however, can enjoy a secessionist right, whose elemental core contains an executable privilege. The separatist privilege, the associated claims, and the peripheral immunities would provide meaningless advantages for inanimate parties that cannot separate politically from an existing polity and form a new government while leaving a remainder state.

The metaphysical status of collective entities and interpersonal relationships has proven somewhat controversial. In the 1950s, reductionists asserted that groups amount to mere aggregates of individual members. Organicists, on the other hand, described groups as social wholes existing independently of people themselves.[35] A superior position splits the difference between reductionism and organicism. Each person holds distinct ontological status, but psychologists and sociologists cannot understand the behavior of members without referring to

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[33] Raz, *The Morality of Freedom*, 209; Shapard, "Group Rights," 300-4; Waldron, "Can Communal Goods be Human Rights?" 314-20.

[34] Makinson stresses the need for a clear definition of the target group in "Rights Of Peoples" and "On Attributing Rights to all Peoples."

[35] Vincent, "Can Groups Be Persons?" 688-91.

the structures of collectives. The relationships within groups, unlike the collectives themselves, possess unique ontological standing. Consequently, theorists should regard groups as individuals in relationships.[36]

The relationships among members of groups need not assume formal characteristics. Corporations boast organizational hierarchies of authority stretching from the chief executive to the custodial assistant. Less formal groups tie members without explicit decision-making structures. A charismatic figure may enjoy apparent authority to act on behalf of a revolutionary movement, even though the rebellious warriors have not officially authorized the alluring leader to direct the group's activities. For some collectives, simple solidarity, a sentiment of commonality allowing people to identify their interests with the objectives of others, fastens members to one another.[37]

Whether formal or informal, structural relationships empower social groups to intend and act. Encouraging each member to aid the others, relationships enable groups to perform, in solidarity, feats that individuals could not accomplish in isolation. For example, soccer players may yearn to compete, but no person can participate unless the entire team plays the match. On the field, every competitor can run and kick, but each athlete will score more frequently and defend more effectively by cooperating with companions. The level of cohesion ultimately affects the team's prospects of winning or losing. To explain what occurs on a soccer field,

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[36] May, *The Morality of Groups*, chap. 1.

[37] May, *Morality of Groups*, chaps. 2-3. For the narrower view that groupness depends on action rather than sentiment, see Honoré, "What is a Group?"

theorists must look beyond the discrete movements of individual players and acknowledge the common spirit of the team itself.[38]

Likewise, relationships allow secessionists to act as groups. In the twentieth century, individual separatists have pursued the common objective of detaching themselves from an existing state. For instance, many Lithuanians worked in solidarity to declare independence from the Soviet Union. Successful separation altered the political status of the Lithuanian people, as a collective. Individuals voted in a referendum that approved secession, but private balloting decided the fate of the group primarily and the individual only secondarily. The Lithuanian act for secession cannot be reduced to the bare endeavors of each participant, because the content of the referendum makes no sense without referring to the group as a whole.[39]

If separatists behave as groups, then secessionist rights can attach to collective bodies. The reader will recall that, theoretically, an individual can hold and exercise a right to secede. Following the analogy between personal and collective rights, any group that exists and acts can also bear a secessionist privilege. The international community has already acknowledged secessionist rights for certain collectives. On one popular view, the Soviet Constitution awarded Lithuania a right that no person could exercise without interpersonal solidarity. Each resident

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[38] Londey, "On the Action of Teams." Similarly, relationships among individuals allow legislatures to pass laws, corporations to manufacture products, and orchestras to play music as collective bodies. Individuals participate in these processes, but only the group can accomplish such feats. See May, "Group Ontology and Legal Strategy" and Dworkin, "Liberal Community," 479, 493.

[39] For a game-theoretic analysis of the Lithuanian secession as a collective act, see Gerner and Hedlund, *The Baltic States and the End of the Soviet Empire.* A broader discussion of collective choice and secessionist movements appears in Hechter, "The Dynamics of Secession."

bore procedural privileges to participate in referenda and lead movements for independence, but no person possessed the secessionist option, which rested with the collective rather than an individual.[40]

Of course, secessionist rights need not attach to collective bodies as a matter of logic. Legal and political theorists have asserted, quite wrongly, that groups alone can hold rights to secede, as if secessionist privileges necessarily contain collective elements.[41] I have argued, on the contrary, that individuals can bear rights to secede, if separatist rights exist at all. For ethical and pragmatic reasons, liberal theorists might prefer individual rights over collective privileges. As I develop the moral case for secession, I will touch periodically on the lingering question of standing: To which individuals and collectives, if any, should separatist rights belong?

II. JUSTIFYING RIGHTS

Regardless of the appropriate bearer, secessionist and other rights may take legal or moral form. Most simply, legal and moral rights differ in location. Legal rights appear in statutes, constitutions, treatises, and common laws of judicial systems, while moral rights obtain independent of and antecedent to the law itself. Additionally, the two classes of rights serve distinct functions. Moral rights, in particular, critique their legal counterparts. Not every moral

[40] Sharlet, *Soviet Constitutional Crisis*, 97.

[41] See, e.g., Buchheit, *Secession*, 55-56, Crawford, "The Rights of People," 164-66, Taylor, "Human Rights," 56, Van Dyke, "Collective Entities and Moral Rights," 25-26, and *Yale Law Journal*, "The Logic of Secession," 803 n. 7

right warrants a corresponding legal advantage,[42] nor must all legal advantages rest on moral principles.[43] Nevertheless, Western theorists generally denounce as defective any legal system which fails to embody moral rights in public legislation.[44]

Most importantly, legal and moral rights require different justifications. Scholars prove the existence of legal rights by citing underlying statutes, fundamental charters, and social institutions. To demonstrate the presence of a moral right, theorists must, by contrast, articulate principled philosophical claims that sanction the right itself. In this thesis, I ask whether and when liberals should acknowledge a moral right to secede politically from an existing state. Nonetheless, I hope that my philosophical study will inform legal thinking about the importance and nature of secessionist rights.

In the context of liberalism, moral rights rest on fundamental suppositions about human worth and personal well-being.[45] Metaphysically and morally, liberals regard humans as uniquely important objects that deserve equal concern and respect. This deep reverence for human beings commits liberals to encourage personal well-being as a central objective of ethical theory. An individual achieves well-being by flourishing, rather than stagnating or withering. One contestable but popular view equates human well-being, both a process and a condition,

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[42] The proviso may hold with particular force in the case of secession. See Sunstein, "Constitutionalism and Secession."

[43] Koller, "A Conception of Moral Rights and its Application to Property and Welfare Rights," 154-55.

[44] Thomson, *The Realm of Rights*, 1-2.

[45] Feinberg, "The Nature and Value of Rights."

with pursing worthwhile activities and forging valuable relationships that make life intrinsically better.[46]

Moral rights connect most directly with interests, which promote well-being over time.[47] On some views, interests tie analytically to preferences, such that individuals find no interests in things they prefer to go without. More objective accounts derive interests from human nature, rather than subjective desire. The first position ignores the possibility of false consciousness, whereas the second perspective disregards the danger of authoritarianism. An acceptable permutation favors each individual's understanding of his or her own interests in most cases but acknowledges that objective individual interests must override erroneous personal judgements in specific circumstances.

Whether subjective or objective, interests need not serve people either exclusively or competitively. On the contrary, parties may find interests in common goods that serve many individuals nonconflictually and nonexcludably. For instance, all members of a cohesive group benefit when outside parties accord positive status to the group itself. If the standing of the

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[46] Raz, "Rights and Individual Well-Being."

[47] Detailed definitions of interests appear in Barry, *Political Argument*, 173-86, Reeve and Ware, "Interests in Political Theory," and Swanton, "The Concept of Interests." I reject "will" theories in which rights protect choices by recognizing some individual's will as sovereign over the will of others concerning given subject-matter in a given relationship. By conceiving the right bearer as a choosing agent, this theory fails to explain inalienable rights and the rights of non-choosing parties such as children, senile adults, and the terminally unconscious. The interest theory which I favor can incorporate the best elements of choice theory by acknowledging the capacity for choice as a vital interest. Excellent discussions of these points appear in Waldron, "Introduction" to *Theories of Rights*, 9-12 and *The Right to Private Property*, 95-101. See also MacCormick, "Rights in Legislation" and "Children's Rights."

collective deteriorates, however, then some members may suffer directly from epithets and bullets, while others may suffer vicariously from fear and empathy.[48] I return to the interest in group status when I develop the case for cultural rights in Chapter Five.

Many interests seem mundane, but vital interests ground moral rights. These compelling interests, which can change when people develop new capacities and shed old ones, seem crucial for the well-being of most individuals most of the time.[49] In ethical theory if not in political practice, moral rights secure and promote vital interests by establishing behavioral norms such as privileges, claims, powers, immunities, and clusters. Typically, the same rights prevent second parties from trammeling individual interests for the sake of social utility.

Special moral rights arise when transactions and relationships add considerable weight to previously mundane interests.[50] The most common examples of special rights concern promises and consents. If I promise to massage your back, then you hold a claim to my performance. Your claim emerges because promising adds new significance to the preexisting interest in forging bonds with other people.[51] Special rights may also emerge from collaborative relationships. When I accept benefits from a cooperative scheme to which you contributed, then you may demand my contribution to the same scheme. Your special right flows from the moral

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[48] May, *Morality of Groups*, chap. 5.

[49] Freeden discusses the flexibility of vita interests in *Rights*, 64-67.

[50] Hart, "Are There Any Natural Rights?" 183-88; Nelson, "Special Rights, General Rights, and Social Justice," 412-14.

[51] Raz, "On the Nature of Rights," 201-4 and "Promises and Obligations."

interest in non-exploitative relationships.[52] Chapters Three and Four reveal how special rights pose moral hurdles for separatist groups.

Although appealing, special rights supply only one part of any adequate theory of justice and secession. Special rights obtain for beneficiaries of promises and contributors to social surpluses.[53] These rights cannot afford the most rudimentary shields against personal injury to the congenitally handicapped, who cannot offer a net contribution to most collaborative schemes. Thus, special rights theories offend the moral intuition that individuals may claim assistance without profiting their benefactors. Special theories also forget that humans design cooperative frameworks to exclude certain individuals from the class of contributors. By failing to judge cooperative institutions, special theories provide an abridged set of moral rights.[54]

Satisfactory theories of justice and secession will supplement special rights with more general advantages. Unlike their special counterparts, general rights--sometimes called human rights--do not arise from transactions or relationships. Instead, general rights spring from vital interests that exist regardless of contingent events. Most theories of general rights rest on the foundational axiom that all persons are morally equal, despite disparate abilities to augment the social surplus and imbalanced opportunities to benefit from binding promises. In the next chapter, I defend secessionist rights as a general advantages flowing from the individual interest

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[52] Hart, "Are There Any Natural Rights?" 185.

[53] I define the cooperative surplus as the fraction of social wealth that would not have appeared in the absence of cooperation. Gauthier argues for such a theory of restricted rights in *Morals By Agreement*. See also Hume, *Enquiries*, sec. 152.

[54] Buchanan, "Justice as Reciprocity Versus Subject-Centered Justice"; Nelson, "Human Rights

in associative freedoms, rather than as special advantages arising from contingent events.

Philosophers rarely regard either special or general rights as absolute advantages. In presumably exceptional cases, liberals may avert social disaster by allowing utilitarian calculations to "trump" moral rights. More commonly, liberal theorists will raise one right over a competing advantage. For instance, the traditional right to substantial shares of private property may yield to the modern claim to adequate food for all individuals. Some philosophers may feel queazy about overriding certain rights in the name of higher rights. No liberal, however, should fetishize moral rights which cease to enhance human well-being, the *raison d'être* of rights themselves.[55]

Most theorists understand rights as presumptive or *prima facie* advantages, rather than absolute and permanent entitlements. Resting on solid philosophical arguments, *prima facie* rights should guide behavior in most cases. When stronger considerations intervene, however, liberals may withdraw or qualify *prima facie* rights. By weighing a particular right against the potential competitors, liberals could convert *prima facie* rights into conclusive or *sans phrase* advantages, which dictate results that people should follow in all cases to which the right applies. *Prima facie* rights nevertheless offer helpful starting points in liberal political theory.[56]

Having traversed some challenging terrain, I will pause now to recount my steps. Moral

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and Human Obligations," 286-88.

[55] Buchanan, "What's So Special About Rights?" 67-71.

[56] Helpful discussions of *prima facie* rights appear in Feinberg, *Social Philosophy*, 73-79, Martin and Nickel, "Recent Work on the Concept of Rights," 172-74, and Raz, "On the Nature of Rights," 210-11. Cf. McCloskey, "Rights--Some Conceptual Issues," 105-11 and Ross, *The Right and The*

rights derive from vital interests, which promote well-being over time. Philosophers can distinguish various types of moral rights by identifying the source of the compelling interest, the strength of the corresponding right, or the bearer of the advantage itself. Special rights emerge from contingent events or relationships that imbue interests with new significance, whereas general rights attach to vital interest that liberals find in most people. Furthermore, *prima facie* rights express rebuttable presumptions about ethical behavior, whereas conclusive rights offer final judgements, all things considered. Finally, individual rights belong to particular persons, whereas collective rights reside with social groups.

The foregoing discussion of moral rights sets the conceptual backdrop for my theory of secession. To justify a *prima facie* secessionist right, I must defend the separatist option as a vital interest which serves human well-being. In moving from a *prima facie* right to a conclusive advantage, I must add that competing rights, arising from contingent events and human nature, do not discredit the presumption for secession. I leave these difficult tasks for subsequent chapters. In the remaining pages of the present chapter, I attempt a more modest feat. In particular, I argue that liberals could--but not necessarily should--accommodate a collective right to secede within the moral ontology of individualism.

Liberal theorists commit themselves to moral individualism. They need not and should not deny that collectives exist, nor should they assume that individuals form groups exclusively or primarily to attain private ends. Nevertheless, liberal philosophers must accept the ethical mantra that only individuals matter, ultimately, from a moral perspective. The person, in other

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Good.

words, stands as the first unit of moral concern, the only self-originating source of valid claims. Groups such as families, tribes, nations, and states can acquire instrumental importance in liberal theory, but social collectives cannot be intrinsic sources of moral concern.[57]

Many liberals suspect that collective rights will devalue the individual in the name of the group.[58] The skeptical attitude bears a long pedigree. Individual rights historically emerged as conceptual shields against arbitrary governments. Where liberalism grew from fears of oppressive governments and hostile majorities, collective rights caused understandable anxiety.[59] The liberal conviction that group rights could advantage collectives over individuals strengthened during the Second World War. Horrified observers of the German atrocities concluded that group thinking had inspired the Nazis to exterminate the Jews. Consequently, the postwar system of international law replaced the rights of minorities, which had developed in the previous century, with the rights of individuals.[60] More recently, the specter of South African apartheid underlined the practical danger of deviating from a strict principle of individual rights.

Although genuine, these liberal fears do not weigh conclusively against collective rights.

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[57] For a sample of the burgeoning literature on liberal individualism and its alleged defects, see Avineri and De-Shalit, *Communitarianism and Individualism*.

[58] This view, I believe, underlies Dworkin's desire to hold individual rights as moral trumps over collective goals. See Dworkin, *Taking Rights Seriously*, 194.

[59] Shklar, "The Liberalism of Fear"; Freeden, *Rights*, 68, 72-73.

[60] Lerner, *Group Rights and Discrimination in International Law*, 7-22; Mayall, "Nonintervention, Self-Determination and the 'New World Order'," 424; Kymlicka, *Liberalism, Community and Culture*, 206-19. Apart from the right to self-determination, no collective rights appear in the Genocide Convention (1948), Universal Declaration (1948), the International Covenant (1966), or the Helsinki Act (1975). See the texts in Carter and Trimble, *International Law*.

By promoting the autonomy and vitality of groups, certain collective rights can serve vital human interests, including the individual interest in group membership. As long as collective rights enhance individual well-being, these rights can survive the scrutiny of liberal theorists.[61] When would-be collective rights fail to advance legitimate interests--the right to apartheid surely fails this test--then liberals should purge the offensive rights from ethical discourse.[62] Philosophers rightly denounce some collective rights as moral abominations, but liberal criticisms hardly invalidate the entire class of collective rights.

Nevertheless, liberal fears and historical records suggest the need for a bi-level regime that supplements collective rights with individual advantages.[63] Personal liberties to associate, participate, print, and speak could constrain leaders from misrepresenting the interests of collectives. The same liberties could also empower dissatisfied individuals to form new communities and modify existing ones. Finally, individual freedoms could facilitate faster appeals to legal tribunals in cases where collective action might prove particularly difficult. Consequently, liberals should not eliminate individual rights when assigning collective advantages.[64]

Some liberals reject collective rights as superfluous norms, rather than moral hazards. For example, the authors of the major conventions in the postwar epoch assumed that individual

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[61] Van Dyke has suggested this possibility repeatedly.

[62] Buchanan, "Individual Rights and Social Change," 67-73.

[63] Freeden, *Rights*, 74-75; Triggs, "The Rights of 'Peoples' and Individual Rights."

[64] Buchanan, "Assessing the Communitarian Critique of Liberalism," 862-65.

rights could serve members of racial, religious, and cultural groups as well as, and probably better than, collective rights.[65] The authors also believed that individual rights could afford valuable benefits to flourishing communities. Liberties of association, expression, and religion could protect subnational groups from totalitarian ideologies that had obliterated communities in the preceding decades.[66] Where individual rights fulfil vital interests, collective rights will seem philosophically unnecessary.

Individual rights, however, might not satisfy the interests of people as members of groups. As I suggest in the final chapter, isolated individuals may not be able to preserve cultural communities by regulating property rights, levying income taxes, establishing voting requirements, or drafting educational laws. If human well-being hinges on cultural welfare and individuals alone are not able to maintain cultures, then groups like the Canadian francophones and the Australian aborigines might require collective rights. Similarly, secessionist movements could need group rights to promote individual well-being. In subsequent chapters, I contend that human interests in group membership can warrant collective rights concerning culture and secession. Here, I have merely shown how liberals might justify collective rights as instruments for individual well-being.

[65] Brownlie, "The Rights of Peoples in Modern International Law." For a recent statement that collective rights add nothing to individual rights, see McDonald, "Group Rights."

[66] Buchanan, "Assessing the Communitarian Critique of Liberalism," 858-62.

CHAPTER TWO:
THE PRESUMPTION FOR SECESSION

In this chapter, I establish a presumption for secession based on the importance of freedom. I argue that the liberal commitment to associative freedoms entails a preliminary bias for unimpeded secession by individuals and groups. Next, I qualify the presumption for secession with the principle of harm, which constrains separatists from injuring others in morally significant ways. To show how the harm principle might refute the secessionist presumption, I consider separatist movements that injure dissenting minorities. In subsequent chapters, I demonstrate that separatists can inflict additional harm by breaking promises, exploiting cooperationists, compromising welfare, and taking property.

I. THE LIBERAL PRESUMPTION

Most liberals regard individual freedom as a vital interest. They commit themselves to a wide gamut of political liberties, including privileges to speak, print, plan, associate, participate, and emigrate. Liberals also raise banners for civil liberties concerning private activities ranging from religious practices to sexual behavior. If there exists a semblance of unity in the tradition of liberalism, this apparent solidarity stems from the widespread conviction that individual freedom plays a crucial role in promoting human flourishing.[67]

[67] I will not engage the rich debate over the concept of liberty. From my own perspective, liberals should intertwine negative and positive freedoms. Without embracing the totalitarian

For at least two reasons, many liberals regard multifaceted freedom as a necessary ingredient for human well-being. First, freedom allows adults to identify and pursue projects that will make their lives worthwhile. It privileges agents to question existing commitments and jettison shallow goals, and it allows people to explore diverse alternatives and embrace new lifestyles. Second, freedom enables choosers to reap the benefits of their activities. To enjoy a healthy bundle of human excellences, adults must act on their own convictions. Coercion strips many goods--from prayer and poetry to conversation and companionship--of their inherent worth.[68]

In the next few pages, I develop the liberal perspective by examining three forms of associative freedom, a broad class of individual liberties which seems particularly important for human well-being. Without capturing the full range of liberal privileges, the associative class contains vital freedoms which liberals traditionally extol. Furthermore, the philosophical and empirical links between associative liberties, on the one hand, and human well-being, on the other, underpin the rebuttable presumption for political secession.

Liberals typically insist that an individual can enrich his or her life by associating with

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variant of positive liberty, which equates real freedom with blind submission to a good society, liberals should accept the intuitive notion that a free person acts according to deep desires which the individual chooses after reflecting rationally. To this positive conception, liberals should add the negative insight that a free person operates in an external environment which does not unduly constrain personal options. Helpful discussions appear in Berlin, *Four Essays on Liberty*, J. Gray, "On Negative and Positive Liberty," T. Gray, *Freedom*, MacPherson, "Berlin's Division of Liberty," Miller, "Introduction" to *Liberty*, and Taylor, "What's Wrong with Negative Liberty?"

[68] I have followed Feinberg, "Interest in Liberty," Kymlicka, *Liberalism Community and Culture*, 10-20, and Raz, *The Morality of Freedom*, in defending freedom as an instrumental interest for human well-being. Others might uphold freedom as a moral end in itself.

others. In Chapter One, I stipulated that human well-being consists mainly in forging valuable relationships and pursuing worthwhile activities that make life intrinsically better. Many relationships, such as marital partnerships and golfing foursomes, enhance life directly by providing intimacy and camaraderie. Some associations, like labor unions and political parties, also improve life indirectly by empowering people to pursue in solidarity certain ends which they might not achieve in isolation.[69] Absent the liberty to combine with others, most lives would seem empty and many projects would appear futile. Consequently, liberal theorists hold that the freedom to associate can contribute to human well-being.

Liberals commonly couple the privilege *to* associate with the freedom *from* association.[70] For instance, the Universal Declaration of Human Rights, a liberal charter, not only authorizes people to form groups at whim, but also protects people from joining groups under duress.[71] The freedom from association complements the privilege to associate by promoting human well-being. When totalitarian regimes force individuals to maintain particular friendships or join certain organizations, then people typically find neither depth nor joy in their interpersonal bonds. For meaningful and fruitful relationships, adults should associate consensually.

Finally, the broad category of associative freedoms can include the privilege to *dissociate*

[69] American lawyers, for instance, argue that associations enable people to exercise privileges of speech, press, and petition. See Abernathy, *The Right of Assembly and Association*, chaps. 8-11, Fellman, *The Constitutional Right of Association*, and Leahy, *The First Amendment*, chap. 8.

[70] See, e.g., Leader, *Freedom of Association*, 27-31.

[71] Art. 20.

from an existing group.[72] For example, the most permissive view of divorce allows either spouse to dissolve the nuptial relationship without citing a single injustice. Pertaining not merely to matrimonial unions but more broadly to communal relationships, the liberal perspective on dissociation permits each person to terminate dysfunctional commitments and shallow relationships and thereby liberates individuals to explore new partnerships in alternative settings that might improve life. Thus, a concern for well-being may justify the privilege to dissociate.

The connection between association and well-being generates a tentative presumption, and therefore a *prima facie* right, in favor of secession. My preliminary discussion of moral rights noted that most liberals identify human well-being as the foundational objective of their ethical theories. Since associative freedoms promote individual well-being, the lodestar of liberalism, liberals will protect these freedoms as provisional behavioral norms, and perhaps even as conclusive moral rights, which cluster core privileges with peripheral claims, powers, and immunities. Advocates of coercion can overturn the presumption for freedoms of association only by furnishing weighty arguments which invalidate the standing case for personal freedom.

The liberal penchant for associative freedom entails a moral presumption for political secession by either an individual or a group.[73] Liberals who hold that every individual enjoys associative liberties must also permit any person to leave a political community and constitute a

[72] Kukathas, "Are There Any Cultural Rights?" esp. 116-17, 126-29.

[73] Beran, "A Liberal Theory of Secession" and "More Theory of Secession"; Chen, "Self-Determination as a Human Right"; Suzuki, "Self-Determination in International Law," 1250-51; von Mises, *Nation, State, and Economy*, 34; and Walzer, "The New Tribalism," 169. Although he takes this stand initially, Buchanan (*Secession*) ultimately requires separatists to justify their causes.

new polity. Likewise, liberals who maintain that each individual may associate and dissociate freely must also allow groups to behave similarly, when individuals exercise their associative liberties through interpersonal cooperation. According to Mill, "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."[74] I have already described secession, in its most prevalent form, as a collective act requiring mutual solidarity. Hence, liberals should allow groups to abandon political associations which their members reject.

In the twentieth century, President Woodrow Wilson captured the presumption for secession in his principle of self-determination. Neither the president nor his contemporaries intended to encourage rampant separatism, but their libertarian principle logically accommodated secessionist movements. A normative guideline, the Wilsonian principle entitled every people to determine its own destiny by establishing an independent state. Perhaps Wilson understood self-determination as a macrocosmic expression of individual freedoms of association and participation. Just as individuals should govern themselves within a national system, so too should peoples rule themselves within the global arena. No friend of Wilsonian idealism, Secretary Robert Lansing nevertheless conceded the theoretical unimpeachability of his president's vision. Lansing could not detach the principle of self-determination from either a true conception of associative liberty or the democratic notion of popular consent.[75]

Following Wilson and other liberals, I rest the presumption for secession on a provisional

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[74] Mill, "Considerations on Representative Government," 381.

[75] Lansing, *The Peace Negotiations*, 96, 101.

correspondence between individual and collective freedoms: If people bear the privilege to secede individually, then they should also enjoy the option to separate collectively. Mill articulated this symmetry in his classic treatise: "...from [the] liberty of each individual follows the liberty...of combination among individuals...."[76] Applying the harm principle which I introduce in the second section of this chapter, a philosopher could negate the presumption for group secession by demonstrating that separatists, acting collectively, could inflict grievous injuries that they could not wreak, operating individually. From the outset, however, liberals should presume that people may secede together if they may legitimately secede alone.

By itself, the transition from individual to group freedoms does not necessitate collective rights. The reader will recall that collective rights, which attach to social pluralities, cannot reduce to mere sum of individual rights. To justify a collective right, liberals must show that individual rights, by themselves, inadequately serve the human interest in separating freely from existing polities. If people can achieve collective independence and enhance well-being by exercising individual rights in conjunction with others, then group entitlements will seem morally superfluous. The presumption for secession, based solely on the interest in freedom, cannot justify rights for groups. Only minority problems and necessity pleas, which I discuss in Chapter Five, can compel liberal philosophers to supplement individual rights with collective privileges to secede.

The presumption for secession embodied in the Wilsonian principle of self-determination raises the question of legitimate status: Which individuals, acting in either solitude or concert,

[76] Mill, *On Liberty*, 13.

may exercise the right to secede? Wilson empowered the people to decide with whom they would associate and how they would participate, but he did not define the identity of the people for the purposes of his principle. Without additional arguments, the principle of self-determination merely restates but hardly resolves the vexing problem of geopolitical boundaries. In the words of Sir Ivor Jennings, "The people cannot decide until somebody decides who are the people."[77]

Views regarding the legitimate status of self-determining peoples have shifted dramatically since the First World War.[78] When the ink dried on the Versailles treaty, Wilson's universal principle became a selective vehicle for dividing vanquished lands in Eastern Europe, the Balkans, and the Middle East.[79] The allied powers did not apply the concept of self-determination to Africa and Asia, whose underdeveloped peoples ostensibly lacked legitimate status. Instead, the victors parceled vast lands and numerous inhabitants of the German empire to seven developed nations[80] and evinced only muted concern for the liberated peoples of the Turkish domain. Most strikingly, the victors denied legitimate status to their own colonies in the

[77] Jennings, *The Approach to Self-Government*, 56.

[78] Ronen explores the shifting notion of legitimate status more fully in *The Quest for Self-Determination*.

[79] On these lands, Wilson applied his principle inconsistently by favoring some nationalities over others. See Pomerance, "The United States and Self-Determination," 3-9. The victors applied the Wilsonian principle in Ireland but denied self-determination to the rest of Europe, including the Aaland islands, which sought to transfer allegiances from Finland to Sweden.

[80] Australia, Belgium, Britain, France, Japan, New Zealand, and South Africa.

third world.[81]

Several postwar covenants promised legitimate status to all peoples, regardless of geography. For example, two articles of the UN Charter list the "self-determination of peoples" as a defining goal of the organization.[82] The General Assembly authoritatively interpreted the dual passages of the UN Charter by urging the independence of all colonial peoples.[83] In 1966, the International Covenant on Civil and Political Rights afforded every people the privilege to determine its political status and pursue its economic, social, and cultural development.[84] Finally, the Friendly Relations Declaration of 1970 ascribed legitimate status to all peoples for the purposes of self-determination.[85]

In practice, the universal ascriptions of legitimate status became narrow writs for political decolonization. As the European powers dismantled their sprawling empires, the principle of self-determination for colonial peoples became a preemptory norm of international law, which neither treaties nor acquiescence could override.[86] Outside the colonial context, international law

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[81] Emerson, "Self-Determination," 463-64.

[82] Arts. 1(2) and 55.

[83] GA Resolution 1514.

[84] The International Covenant on Economic, Social, and Cultural rights contains an identical provision. See the texts of the UN Charter, GA Resolution 1514, and the rights covenants in Carter and Trimble, *International Law*.

[85] The declaration appears in Henkin, *International Law*, 279-80. The ICJ advisory opinion on the Western Sahara (1975) also confirmed the principle of self-determination in the context of international law.

[86] For the claim that self-determination has achieved the status of *jus cogens*, see Brownlie, *Principles of Public International Law*, 512-15 and Nanda, "Self-Determination Under

denied legitimate status to separatist groups.[87] Free from imperial rule, peoples could no longer challenge the territorial integrity of existing states.[88] Excepting Bangladesh and South Africa, international law refused self-determining privileges to non-colonial territories.

African unionists and UN members sanctioned the anti-colonial interpretation of self-determination. Pan-Africanists like Ali Mazrui advanced a pigmentational criterion for legitimate status: To qualify for freedom, peoples must distinguish themselves in color from their political masters. Mazrui's pigmentational test challenged the trans-racial expansionism of European countries in the third world; the same standard simultaneously condoned intra-racial empires on every continent.[89] The United Nations, for its part, adopted a saltwater test for legitimate status: Peoples hold privileges of self-determination only when an ocean or a sea separates independence movements from central authorities.[90]

Against international law, some scholars have broadened the scope of legitimate status to

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International Law," 271. Pomerance advances the contrary view in *Self-Determination in Law and Practice*.

[87] Buchheit, *Secession*, 58-97; Hannum, *Autonomy, Sovereignty, and Self-Determination*, 44-49; Heraclides, *The Self-Determination of Minorities*, 21-32; Sureda, *The Evolution of the Right of Self-Determination*, 95-225.

[88] The Friendly Relations Declaration stipulates that the principle of self-determination should not compromise the territorial integrity of existing states. This qualification follows from the doctrine of *uti possidetis* (as you now possess), which the ICJ has applied to Africa. The doctrine freezes post-colonial boundaries. See Mayall, "Non-intervention, Self-Determination and the 'New World Order'," 424-25.

[89] Mazrui, *Towards a Pax Africana*. Kamanu criticizes the pigmentational test in "Secession and the Right of Self Determination."

[90] Thornberry, "Self-Determination, Minorities, Human Rights," 873-74.

embrace all groups--not merely colonial peoples--suffering severe injustices. More complex than the colonial standard, this remedial view relies on controversial theories of social justice and empirical assessments of exploitation and neglect. In its most generic form, the remedial view stipulates that minorities win legitimate status for the sake of self-determination when dominant groups systematically compromise the vital interests of vulnerable minorities and when political demonstrations offer little prospect of speedy remedy.[91]

Finally, President Mikhail Gorbachev tackled the question of legitimate status through an open referendum. In 1991, Gorbachev asked the population of the Soviet Union to decide whether each republic could determine its political future. A positive outcome, which never materialized, would have awarded self-determining privileges to the republics. Gorbachev's strategy overlooked a grave defect in democratic theory. The majoritarian principle cannot decide its own domain without begging the question: Why should the Soviet empire as a whole, rather than the Lithuanian republic in isolation, settle the issue of legitimate status? A majority vote cannot answer this difficult question without presupposing that the proper unit of political authority already exists.[92]

As presumptive positions, the foregoing restrictions on legitimate status seem morally

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[91] Proponents of the remedial view include Beitz, *Political Theory and International Relations*, 105-15, Heraclides, "Secession, Self-Determination and Nonintervention," 410-12, Nanda, "Self-Determination Under International Law," 277-80, and Powers, "Testing the Moral Limits of Self-Determination," 44.

[92] Dahl pinpoints the democratic defect in "Democracy, Majority Rule, and Gorbachev's Referendum," "Federalism and the Democratic Process," 103-7, *After the Revolution*, and *Preface to Democratic Theory*, 51-54. See also P. Gilbert, "Community and Civil Strife," 10 and Streeck, "Inclusion and Secession."

arbitrary.[93] If I grant status to one agent, simply because the secessionist option would enhance the agent's well-being, then I commit a logical error by refusing status to other agents in analogous situations.[94] Theorists who restrict *prima facie* secessionist rights to certain people must produce moral arguments distinguishing, say, colonial parties from their metropolitan counterparts. They must belittle the well-being of metropolitan groups, deny that such groups can determine their own destinies, or assert that freedom exclusively benefits colonial peoples. Through the liberal lenses of universalism and egalitarianism, these three contentions seem wildly implausible. Liberal theory must *presume* legitimate standing for all individuals, acting solely or concertedly, regardless of geographic location, ethnic identity, or political situation.[95]

As conclusive constraints rather than presumptive positions, the views of international leaders from Wilson to Gorbachev appear more sensible. Politicians and philosophers have argued that the moral imperative of international order supplies powerful reasons for restricting separatist status along geographic, ethnic, and political lines.[96] In subsequent chapters, I add that

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[93] French and Gutman, "The Principle of National Self-Determination," 140.

[94] I borrow the requirement of generic logical consistency from Gewirth, *Reason and Morality*.

[95] I challenge the presumption for universal status in subsequent chapters.

[96] I cannot pursue the speculative issue of international order in this thesis. For warnings regarding the relationship between rampant secession and international stability, see Lansing, *The Peace Negotiation*, 96-98, 102-4, Lincoln, *Collected Works*, IV.268, and Sidgwick, *The Elements of Politics*, 649-50. A sophisticated exploration of the moral costs of institutional disorder appears in Waldron, "Special Ties and Natural Duties." For the view that a permissive principle of secession will not induce anarchy, see Beran, "A Liberal Theory of Secession," 29-30, Birch, *Nationalism and National Integration*, 67, 225-26, Pogge, "Cosmopolitanism and Sovereignty," 70, and Przetacznik, "The Basic Collective Human Right to Self-Determination of Peoples and Nations as a Prerequisite for Peace."

political bonds and economic justice generate moral obligations which deprive certain people of legitimate standing, despite the initial presumption resting on associative freedoms. Nevertheless, liberals should assume, as a point of departure, that every individual possesses a moral right to secede. The burden of proof rests with the opponents of secession.

II. THE HARM PRINCIPLE

Let me summarize the presumption for secession that I have just elaborated. Liberal philosophers value freedoms of association because these personal liberties promote human well-being over time. The liberal prejudice for associative freedoms entails a preliminary bias toward separatist privileges, which each person may exercise in isolation. Additionally, the correspondence between individual to collective freedoms authorizes people to secede in conjunction with others. Consistent with the universalism and egalitarianism of liberal theory, *prima facie* separatist privileges must belong to all individuals, acting solitarily or cooperatively.

At least one scholar has elevated the liberal presumption for separatism to an absolute right to secede. In three recent articles, Professor Robert McGee attributes to every individual several unqualified liberties including the inviolable right to associate freely. Under no circumstances, asserts McGee, must individuals remain in associations that they spurn. From this unconditional premise, McGee draws the logical conclusion that secession is an absolute right which individuals may exercise whenever they wish and for whatever reason they choose.

The right to secede exists "in all cases" and is "always justified."[97]

Professor McGee taints his libertarian theory with two concessions that unravel his absolutist conclusion. Unconditional freedom would yield political anarchy by invalidating all acts of government. To escape this unruly outcome, McGee recommends a minimal state which protects individual rights to life, liberty, and property.[98] He further authorizes governments to prohibit individuals from using private property to violate others' rights.[99] McGee's concessions reveal that individual liberties, including freedoms of association, must share the moral spotlight with life and property, two human goods of significant value. Consequently, the right to secede, derived from associative liberties, cannot assume absolute status. Governments may prohibit secessions which jeopardize life, liberty, or property.

Other liberals similarly acknowledge the moral limits of associative freedoms. For instance, liberals regularly attack the privilege *to* associate by prohibiting trusts which enervate economic competition and by closing bath houses which jeopardize public health. Liberal theorists have also endorsed anti-discrimination laws that qualify freedoms *from* association by forcing employers to hire individuals without considering race, sex, or ethnicity. Finally, liberals have argued that a country should not restrict immigration on racial grounds, nor should it thwart efforts to unite families across borders.[100] Widespread restrictions on association might weaken

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[97] McGee, "The Theory of Secession and Emerging Democracies" and "A Third Liberal Theory of Secession," McGee and Lam, "Hong Kong's Option to Secede."

[98] McGee, "A Third Liberal Theory of Secession," 46.

[99] McGee, "The Right to Not Associate," 136-37.

[100] Carens examines the liberal view in several articles, including "Aliens and Citizens,"

the derivative right to secede.

Liberals who fail to restrict freedoms of association must embrace the unsavory possibility of political expulsion. Absolute privileges to dissociate would authorize communities to foist independence upon unwilling people, as Malaysia ousted Singapore in 1965.[101] But liberals acknowledge that people sometimes acquire legitimate interests, protected by moral rights, in associating continually with families, friends, residences, and institutions.[102] The interests and rights which arise when people plant roots in a particular community restrict the liberal privilege to dissociate freely, as well as the correlative right to separate politically.

The concessions of McGee and other liberals imply that a duty to avoid harming others can qualify liberties of association; by implication, the same duty can also limit the derivative right to secede. In the first chapter, I explained that conclusive secessionist privileges cannot exist in the presence of overriding duties of opposing content. The most plausible duties which constrain separatists flow from a modified version of the harm principle, which Mill proposed in the nineteenth century.[103] This principle obliges individuals to avoid harming others in serious ways, when serious harm thwarts or defeats a vital interest.[104] Nor may individuals inflict

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"Membership and Morality,"and "Nationalism and the Exclusion of Immigrants." See also Dowty, *Closed Borders*.

[101] Fletcher, *The Separation of Singapore from Malaysia*.

[102] Carens, "Migration and Morality," 29.

[103] Mill, *On Liberty*, esp. 10-11. An excellent and recent discussion of Mill's general principle appears in Feinberg, *Harm to Others*.

[104] The category of others may include future people. For the argument, contra Parfit, that today's choices can harm future people in morally significant ways, even if the injured people would not

unreasonable risks of harm on others.[105] Finally, individuals must prevent others from suffering harm if they can offer effective protection without violating a conflicting duty, exerting an excessive effort, or assuming an unreasonable risk.[106]

The duty to refrain from harming others applies to groups as well as individuals. Through intentions and actions, groups can harm others in morally significant ways. In some cases, collectives can even achieve noxious results that individuals could not produce through solitary actions.[107] Certain people, particularly those who play key roles in collective behavior, bear more responsibility for the resulting harm than accomplices who assume less significant functions. Nevertheless, all members bear some responsibility when the group inflicts harm, because each member engages in acts or omissions which contribute to the damage.[108] Since the Millian principle binds collectives, separatist groups bear moral duties to avoid harming others.

An explication of the harm principle requires a theory of moral rights.[109] Mill's principle

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have existed absent the choice, see Hasner, "Harming Future People."

[105] Lackey, "Taking Risk Seriously."

[106] A lucid discussion of acts and omissions appears in Malm, "Between the Horns of the Negative-Positive Duty Debate."

[107] Parfit, *Reasons and Persons*, chap. 3.

[108] May supplies the best analysis of collective responsibility in *The Morality of Groups*, chap. 4, "Collective Inaction and Shared Responsibility," and *Sharing Responsibility*. Cf. Benjamin, "Can Moral Responsibility be Collective and Nondistributive?"; Feinberg, "Collective Responsibility"; and Held, "Can a Random Collection of Individuals be Morally Responsible?" For the view that hierarchically structured organizations such as corporations can avoid collective responsibility, see Caste, "Corporations and Rights" and Tam, "Review Essay: May on Corporate Responsibility and Punishment."

[109] Mill did not develop a full theory of rights, which could have added meat to his skeletal

does not forbid every act which could frustrate individual interests, nor does it mandate every deed which could advance personal concerns. A moral principle which protected every human interest would spawn unlimited duties, since most types of human conduct alter the welfare of others to some degree. A more reasonable principle prohibits acts and omissions that cause avoidable and substantial setbacks to vital interests protected by moral rights. To elaborate the harm principle, I must enumerate moral rights and identify their possessors.

I have already mentioned several human interests which warrant *prima facie* rights. When building the presumption for secession, I emphasized the link between liberal freedoms of association, on the one hand, and human well-being, on the other. Individuals need some measure of associative freedom to choose the relationships and projects that will enrich their lives. The near-universal interest in personal freedom justifies a host of behavioral privileges, as well as peripheral claims and related immunities.

In the remainder of this chapter, I consider the associative rights of dissatisfied minorities. I demonstrate that separatists can threaten the liberal presumption for unbridled secession by depriving minorities of traditional associates and political clout. After dismissing three proposals to palliate disgruntled minorities, I acknowledge that secession, in most cases, will respect the associative liberties of one party at the expense of similar rights held other parties. Consequently, I advocate a balancing approach that weighs the competing privileges of majorities and minorities. In subsequent chapters, I introduce additional rights which correlate with political obligations and emerge from economic justice.

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principle of harm.

Secessionists can compromise liberties of association by trapping minorities in breakaway provinces. For example, Baltic separatists claimed territory containing millions of ethnic Russians. Some of these Russians opposed the Baltic drive for self-determination and preferred integration with the Soviet Union, while others supported bold moves toward political autonomy but rejected the leadership of the separatist majorities. Russian protests notwithstanding, the Baltics achieved independence in 1991. The secessions of Estonia, Latvia, and Lithuania impeded attempts by Russian minorities to associate politically with Muscovite comrades.

Yearning for their traditional associates, trapped minorities now inspire a civil war in the former Yugoslavia. A steadfast nationalist, President Slobodan Milosevic insists that all Serbs must live within a Serbian state. Milsovec could not sit idly when the Croatian secession thrust "alien rule" upon 600,000 Serbs, approximately ten percent of Croatia's population. To protect the Serbian minority in Croatia, Milsovec marched his armies from Belgrade toward Zaghreb. More recently, the leaders of both Serbia and Croatia have resisted Bosnian independence, which threatens to impose Muslim rule on religious minorities. The fighting in Bosnia has claimed thousands of lives and shows no sign of abating.[110]

Separatist movements can also threaten liberties of association by stranding minority groups in the remainder state. The French-speakers of Canada live predominately, but not exclusively, in Quebec. Wielding tremendous influence in the national legislature, the francophone minority has secured cultural protection in every province and embodied linguistic

[110] Magaš, *The Destruction of Yugoslavia*. See also the statistical appendix on trapped minorities in Dragnich, *Serbs and Croats*, 194-95.

rights in the federal constitution. Secession by Quebec would remove millions of French-speakers from the Canadian federation. Francophone minorities in the remaining provinces would lose opportunities to associate politically with the people of Quebec and influence effectively the path of parliamentary legislation.[111]

Of course, colonial histories may discredit the complaints of trapped and stranded minorities. Stalin planted minorities in Estonia, Latvia, and Lithuania by relocating Russian families to the Baltics and banishing indigenous populations to Siberia.[112] Can the Russian colonists legitimately protest that secession curtailed liberties to associate with Muscovites, when the Soviet government illegitimately annexed the Baltic states and forcibly created a minority problem during the Second World War? More generally, can the objections of hostile invaders and their descendants trigger the harm principle and overturn the presumption for secession? The answer to these questions must vary with circumstances, which I cannot detail here.[113] In some cases, only people born within the disputed territory may protest validly; in other cases, each resident may gripe legitimately about trammeled liberties of association.

When colonial histories do not taint the complaints of trapped or stranded minorities, then secession may force a genuine clash of associative rights. In the case of Bosnia, the privilege of the Muslim plurality to dissociate from Yugoslavia conflicts with the right of the religious

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[111] Trudeau, *Federalism and the French Canadians*, 34.

[112] Taagepera, *Estonia*, 81-84, 95-96; Vizulis, *The Molotov-Ribbentrop Pact of 1939*, 64-70. For a more general discussion of the Soviet occupation, see Misiunas and Taagepera, *The Baltic States*.

[113] A sketchy discussion of these difficult questions appears in Eisner, "A Procedural Model for the Resolution of Secessionist Disputes."

minority to associate with Serbia. Similarly, the Muslim decision to alter the social environment by redrawing boundaries clashes with the minority right to live within borders that seem personally acceptable. Secession respects the liberties of Muslims by compromising the freedoms of Serbs. Flaunting the harm principle, disgruntled Serbs might assert that the value of freedom actually reverses the presumption for secession.

To satisfy the demands of disaffected minorities and minimize the clash of liberal rights, one theorist has proposed the principle of recursion: Any individual or sub-group may split from a larger entity, either to (re)join an existing state or to establish an independent country.[114] For example, Russians may secede from Eastern Ukraine or the Baltic states, which themselves separated from the Soviet Union. Serbs, likewise, could abandon Bosnia and Croatia to found a new country or rejoin their Serbian brethren. Recursive secession might allow both the proponents and the opponents of secession to exercise their liberties of association.

The recursive principle might benefit territorially compact minorities, but it cannot assist entropically mixed populations. Many minorities have intermingled with indigenous populations and scattered across vast tracts. Lacking a clear mandate in an integral territory, dissatisfied groups like the Russians in the Baltic states and the Serbs in the former Yugoslavia cannot exercise the recursive right to secede. In rare instances, recursion could mollify all parties seeking associative liberties. More commonly, iterated secessions will only create fresh minorities in the breakaway and the remainder states. The recursive principle cannot eliminate all clashes involving associative liberties.

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[114] Beran advocates the recursive principle in "A Liberal Theory of Secession," 29-30.

A second proposal appeases trapped and stranded minorities by fostering emigration and resettlement. Advancing a modified version of the recursive principle, negotiators from America and Britain have planned to fracture Bosnia, already a breakaway state, into ten enclaves, each enjoying political autonomy. The primary interlocutors acknowledge that simple recursion will reproduce ethnic problems on a smaller scale by relegating commingled minorities to inhospitable enclaves. Therefore, Cyrus Vance, on the American side, and Lord Owen, from the British camp, have recommended that millions of Croats, Muslims, and Serbs choose their political associates and influence their social environments by relocating from one province to another.

Resettlement, like recursion, offers an incomplete solution to the stubborn problem of trapped and stranded minorities. Some minorities in the former Yugoslavia might relocate eagerly to neighboring enclaves. Many Bosnians, however, will lack the financial and psychological resources to leave established jobs, abandon cherished homes, sever personal relationships, and pursue new lives in unfamiliar regions. The United Nations has already estimated that the resettlement plan developed by Vance and Owen will cost one-hundred million dollars, generate tremendous personal hardship, and spark endemic ethnic skirmishes.[115] If the bloody migration following the partition of India supplies a historical precedent, then population transfers will not homogenize provinces either completely or peacefully.[116]

Third, advocates of secession could tackle the problem of minorities by requiring super-

[115] *Economist*, "The Bloodiness of Partition," 54.

[116] On the political and social costs of partition, see Schaeffer, *Warpaths*.

majoritarian support for political independence. Perhaps separatists should demonstrate that three-quarters of the population in a particular territory endorses autonomy from the parent state. Informal indices, such as opinion polls and public manifestations, could exhibit popular aspirations, but more formal mechanisms, including political representation and public referenda, might prove more precise. In representative democracies, elected officials could voice the desires of their constituencies. Although efficient, the representative approach allows ignorant and ambitious elites to misstate the objectives of the masses.[117] To minimize the risk of representational bias, collectives should speak directly through public referenda.[118] Super-majoritarian referenda would slim the risk that a pro-secession outcome could disappoint a substantial patriotic minority.

Unfortunately, super-majoritarianism could not eradicate clashes involving associative freedoms. An electoral requirement of seventy-five percent would have enabled substantial minorities to veto the European secessions of 1991; the same decision-rule would have prevented modest majorities from achieving separatist ends. High voting hurdles respect the social and political aspirations of a small fraction of the population by infringing the associative liberties of a larger segment within the same territory. Furthermore, super-majoritarian standards cannot protect trapped minorities in the original state.

The shortcomings of recursion, resettlement, and super-majoritarianism demand a

[117] UN members resisted the Katangan secession, because the Tashombe regime allegedly misrepresented the true wishes of the Katangan people. See Islam, "Secessionist Self-Determination."

[118] Eisner, "A Procedural Model for the Resolution of Secessionist Disputes," 415-25.

balancing approach to minority rights. In most cases, neither iterated secessions nor population transfers can prevent separatists from frustrating the associative liberties of minorities. Nevertheless, the mere presence of harm does not overturn the liberal presumption for secession. A sophisticated approach to the morality of secession must weigh the vital interests and correlative rights of separatists against the clashing concerns and incompatible rights of minorities, to determine which course minimizes moral harm when rights conflict.

Liberals could deploy a quantitative standard to evaluate the competing claims of majorities and minorities.[119] Briefly, a quantitative standard exhorts liberals to count heads, the ultimate goal being to minimize the number of people harmed or to maximize the number of rights respected. This "utilitarianism of rights" which characterizes the numeric approach rests on the foundational premise that each person counts for one and deserves equal respect. Further, the quantitative rule regards all forms of associative liberties as equally important, from a moral perspective. In secessionist controversies, the numeric method would favor the majority over the minority.

The quantitative standard may seem too blunt to resolve intricate disputes between separatists and dissenters. First, the criterion fails to differentiate the privilege *to* associate, on the one hand, from the freedom *from* association and the right to *dis*sociate, on the other. Each variant of associative liberty probably deserves unique moral weight. Second, the numeric criterion neglects that associative liberties may prove more vital and require stronger rights for

[119] Helpful discussions of the quantitative standard appear in Nozick, *Anarchy, State, and Utopia*, 28, Parfit, "Innumerate Ethics," Taurek, "Should the Numbers Count?" and Waldron, "Rights in Conflict."

some people than for others. Mere head-counting, therefore, provides an facile solution to the clash of liberal rights.

A philosophically superior but hopelessly complex model would balance the claims of majorities and minorities by informing the bald quantitative standard with precise qualitative data. In particular, the model would assign a unique weight to each right and correlative duty that protects human interests. Theorists could marshall detailed information about the quantity and force of competing rights and duties when determining whether the tentative bias for separatism crystallizes into a conclusive right to secede.

I do not construct an elaborate model which painstakingly weighs the associative interests of patriots against the dissociative interests of separatists. Instead, I assume that the privilege to dissociate freely from a certain community enhances human well-being as significantly as the right to associate perpetually with a given polity. My assumption arithmetically entails that the privileges of separatist majorities will outweigh the rights of trapped and stranded minorities. Consequently, dissatisfied minorities cannot cite traditional freedoms of association to demonstrate moral harm grave enough to reverse the liberal presumption for secession.

To this point, I have presented a partial list of moral rights and correlative duties. I have focused primarily on associative liberties, which underpin the presumption for secession and implicate the principle of harm. In the next two chapters, I introduce additional rights flowing from political obligations and economic justice. Unlike minority privileges of association, moral rights to political obedience and material holdings can trigger the harm principle and overturn the secessionist presumption.

CHAPTER THREE:
POLITICAL OBLIGATIONS

In the previous chapter, I established a rebuttable presumption for political secession. I argued that many liberals regard multifaceted freedom as a necessary ingredient for human well-being. If these liberals believe that individuals should associate freely, then they must also allow groups to secede gratuitously, since secession expresses associative liberties microcosmically. To remove itself from the authority of the state, a group need only express its collective will in a public referendum. In the preceding pages, I also introduced the principle of harm, which constrains separatists from injuring others in morally significant ways. I suggested that the harm principle could negate rebut the secessionist presumption.

Some may charge that political obligations and their correlative rights can reverse the presumption for secession. At least since Plato, philosophers have argued that moral bonds connect people to political communities. These bonds oblige people to support and obey the political authorities in their countries of residence. The ethical bonds between people and polities also award governments the complementary rights to demand support and obedience. I have already explained that secessionists, like emigrants, remove themselves from the state's jurisdiction. If removal breaches political obligations and correlative rights, then the harm principle will rob unrestrained secession of its liberal appeal. Thus, the nature of political obligations must appear prominently in my analysis of secession.

In this chapter, I investigate consent and fairness, two liberal theories of political obligation. Both theories trace moral obligations and correlative rights to transactions and

relationships among individuals. I find that consent and fairness can support duties and rights which undermine the legitimacy of secession. Nevertheless, I regard these duties and rights as neither ubiquitous nor absolute. Political obligations threaten the secessionist presumption only under certain conditions, and even when these conditions obtain, political obligations provide inconclusive arguments against separatist endeavors. Conflicting moral principles, which I explore in Chapter Five, can override political obligations and restore the presumption for secession.

I. PATRIOTIC CONSENT

Consent theorists base political obligations on voluntary promises. These philosophers embrace the liberal premise that individuals should, as much as possible, direct their own lives by their own decisions. Free individuals need not support a political authority, unless they submit themselves to a particular polity. Through personal promises and their conceptual relatives, people can pledge their allegiance to a state.[120] Patriotic promises create moral obligations to support governments and endow states with correlative rights to demand obedience.[121]

[120] On the similarities and differences among promises, agreements, consents, and contracts, see Fried, *Contract as Promise*, chap. 1, Gilbert, "Agreements, Coercion, and Obligation" and "Group Membership and Political Obligation," and Simmons, *Moral Principles and Political Obligations*, 75-77.

[121] In Chapter One, I explained that promises generate moral obligations and correlative rights by adding considerable weight to the otherwise mundane interest in forging special bonds with other

Two broad classes of voluntary promises, express and tacit consent, can signal behavioral intentions and generate political obligations. Express consent often involves linguistic conventions. People consent expressly to political authority by uttering a formula such as an oath, signing a contract like a constitution, or forging an agreement through a joint declaration. Unlike its express counterpart, tacit consent requires silence or passivity. Possible indications of tacit consent include maintaining residence and casting votes in a particular polity. Their historical popularity notwithstanding, neither class of patriotic promises presents widespread barriers to political secession. I discuss both express and tacit consent in the first section of this chapter.

Anglo-American politicians have sometimes contended that express consent poses obstacles for secession. In the seventeenth century, John Locke wrote that express consenters must remain perpetual subjects of their commonweal. These people can regain freedom only if a calamity destroys their government or an ordinance terminates their citizenship.[122] Two centuries later, Abraham Lincoln articulated a similar argument to justify the Civil War. According to Lincoln, Southern states expressly consented to a perpetual union by signing the US Constitution. Consequently, the Southern separatists bore strong obligations to abide with their Northern brethren, and the federal government held correlative rights to resist the unlawful

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people. Scanlon has argued, somewhat differently, that promise-breaking frustrates valuable expectations. See his "Promises and Practices." Unlike Hume, I do not trace the duty of fidelity to a more fundamental obligation to preserve the social order. Hume's position appears in *Treatise of Human Nature*, III.2.8.

[122] Locke, *Two Treatises of Government*, II.121.

secession.[123]

Locke's assertion that express consent always impedes political exit seems groundless, both logically and empirically. People sometimes consent expressly on the *condition* that they may exit freely. While living in a particular polity individuals offer their allegiance; when shifting their residence people retract their commitments. Examples of provisional consent span two millennia. In ancient Greece, Athenian males pledged allegiance to the city-state, but express consent did not preclude voluntary emigration. At any time and on any whim, men could collect their possessions and vacate the city.[124] In the present century, most Western constitutions allow citizens the right to emigrate, and the fundamental laws of some Eastern countries award separatist rights to constituent republics.[125] Express consenters *can* renounce the secessionist option, but people need not and often do not bind themselves so irretrievably.[126]

Lincoln's view that express consent blocked the *Confederate* secession seems more plausible. Calhoun, Davis, and Tocqueville averred that the American Constitution allowed state

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[123] Lincoln, "First Inaugural Address--Final Text," in *The Collected Works of Abraham Lincoln*, IV.265-66. For a similar view by a Southern Unionist, see Alexander H. Stephen's speech in Freehling, *Secession Debated*, esp. 55-56.

[124] Woozley, *Law and Obedience*, 77-78, 104-6.

[125] I am thinking particularly of the former constitutions of the Soviet Union, Burma (1947-74), China (1931), and Yugoslavia, which allowed secession at least in theory if not in practice.

[126] Even people who renounce the separatist option in the short term may retain it for distant future. For instance, people may form a political union to attain a limited purpose, such as independence from an empire, but reserve the right to leave the union one they have achieved the limited goal. Buchanan offers an interesting example in *Secession*, 35-36.

secession,[127] but more careful analysis suggests the opposite conclusion. Secessionist rights would have contradicted the original document's Madisonian spirit, which sought constitutional provisions to preserve the American experiment. In his first inaugural address, Lincoln articulated this Madisonian view: "Perpetuity is implied, if not expressed, in the fundamental law of all national governments....no government proper ever had a provision in its organic law for its own termination."[128] The Supreme Court formally settled the Constitutional controversy over secession in 1869.[129] Today no serious scholar argues that a secessionist right existed under American law. Thus, the Southerners legally renounced secession when they signed the Constitution.

By neglecting the importance of intent, Lincoln's constitutionalism demonstrated the illegality but not the immorality of secession. I have already suggested that prominent Southerners, including Calhoun and Davis, thought the Constitution permitted secession.[130] Other Southerners might not have known what the Constitution required until the Civil War and the Supreme Court clarified the document's ambiguities. Consequently, some Confederates could have forsworn secession inadvertently. From an ethical perspective, unintentional Southern consent generated neither political obligations nor correlative rights.

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[127] Calhoun, *The Works of John Calhoun*, VI.1-58; Davis, *The Rise and Fall of the Confederate Government*, 168; de Tocqueville, *Democracy in America*, I.387. See also Bledsoe, *Is Davis a Traitor?*

[128] Lincoln, *Collected Works*, IV.264.

[129] *Texas v. White*, 74 US 700 (1869) 724-26.

[130] I am taking their written statements literally.

In many liberal theories, unintentional consent carries no moral weight.[131] Consent theories preserve individual freedom by denying that individuals must support powers they have not authorized. Importantly, consent theories can safeguard personal autonomy only when consent involves intent. If I fall under your command even though I neither desire your authority nor choose your rule, then you curtail my freedom against my will, but if I place myself under your command intentionally, then I dispose of my liberties according to my wishes. To establish moral bonds to a political union, Southerners must have intended to renounce secession when they adopted the Constitution. Certain Southerners probably intended perpetuity, but those who did not bore no moral obligations to refrain from seceding.

Some Southerners tried to escape their legal and moral commitments by citing Northern breaches of the organic law. In the 1840s and 50s, several Northern states nullified the fugitive slave laws by refusing to enforce national extradition statutes within state borders. A decade earlier, President Jackson had declared nullification both incompatible with the Union and contrary to the Constitution. If Jackson interpreted the Constitution correctly, then Northern nullifications violated the federal charter several years before the Civil War. Carrying the argument one step further, some Southerners claimed that Northern breaches invalidated the Constitution for all states and thereby released the Confederates from their political obligations.[132]

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[131] Flathman, *Political Obligation*, 220. For the suggestion that unintentional consent may generate moral obligations, see Plamenatz, *Consent, Freedom and Political Obligation*, 168-69 and Weale, "Consent."

[132] See, e.g., the secessionist speeches of Thomas Cobb, Robert Toombs, and Benjamin Hill in

The Confederate view of Constitutional breaches mischaracterizes the promissory act that bound Southerners to the Union. If the Southern states had forged a joint agreement with the Northern ones, then each state would have voiced its willingness to ratify the Constitution in conjunction with the others, and no state would have acquired obligations without the simultaneous and interdependent commitments of its partners. When the Northern states invalidated the agreement through nullification, then the Southern states could have shed their obligations as well. However, the empirical record suggests that each Southern state pledged its allegiance to the Constitution through a sequential and independent promise, rather than a simultaneous and joint agreement.[133] These independent promises retained their moral significance despite Northern behavior.[134] My analysis suggests that Southerners who intentionally repudiated secession when signing the Constitution violated their political obligations by seeking independence.

After the Civil War, many Southern states expressly renounced the right to secede. Arkansas's new constitution pledged the "paramount allegiance" of every citizen to the federal government and allowed the people no power to separate their state from the Union. The same constitution granted central authorities full powers to deploy armed forces against secessionist groups. The new charter in Raleigh vowed that North Carolinians would forever remain loyal Unionists and specifically waived separatist rights. Florida, Mississippi, South Carolina, and

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Freehling, *Secession Debated*, esp. 7-15, 48, 83-86.

[133] Gillespie and Lienesch, *Ratifying the Constitution*.

[134] Gilbert distinguishes the relative binding forces of joint agreements and independent promises

Virginia also adopted new constitutions which relinquished the right to secede.[135]

Products of coercion, these explicit pledges probably did not establish moral bonds between the Southern states and the postwar Union. Briefly, coercion obtains when the beneficiary of a promise deploys violence to induce another's pledge, even if the pledge might have obtained absent the hostile threats.[136] Coercion followed the Confederate truce, because the Northern states, which gained from anti-secessionist constitutions, maintained occupational armies until the Southern states renounced the separatist option.[137] Like inadvertent consents, coerced promises do not create either moral obligations or correlative rights. The coerced party may renege on its promise, and the coercing party enjoys no right to performance.[138]

Assuming that the vanquished Confederates faced no coercion when they abjured secession, would nineteenth-century promises bind twentieth-century Americans? Freedom-revering liberals should doubt that the dead past can impose political obligations on the living present. If primitive tribesmen at the beginning of recorded history aligned themselves with a neighboring empire, then their voluntary decision should not bind modern descendants to

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in "Agreements, Coercion, and Obligation," 688-96.

[135] Arkansas Constitution of 1868, I.1; North Carolina Constitution of 1868, I.4-5; Florida Constitution of 1868, I.2-3; Constitution of Mississippi 1868, I.20; Constitution of South Carolina 1868, I.4-5; and Constitution of Virginia 1870, I.2-3. The texts appear in Swindler, *Sources and Documents of United States Constitutions*.

[136] For more detailed analysis, see Klosko, "Reformist Consent and Political Obligation," 679-81, Nozick, "Coercion," and Wertheimer, *Coercion*.

[137] Morse, "The Foundations and Meaning of Secession," 431-33.

[138] Horton, *Political Obligation*, 30-32. For an argument that coerced agreements bind weakly, see Gilbert, "Agreements, Coercion, and Obligation," 701-5.

associate with the empire's heirs. At a minimum, liberals must allow each generation to decide whether to renew its constitutional pledges and to relinquish secession. The express consent of one generation should not bind subsequent cohorts inescapably.[139]

In the present century, few Americans have expressly pledged their political allegiance, much less renounced secession. The founding fathers drafted the original charter, some public officials swear oaths of obedience, and all naturalized citizens consent to authority, but these promissory activities represent political exceptions. In most cases, American adults neither utter a vow nor sign a contract fastening themselves to the state. Instead, people emerge involuntarily into the political climate which their parents inhabited. The largest proportion never contemplate the question of consent but simply lead their lives in political apathy. At least in the United States, express consent has not yielded widespread bonds, so it cannot impede political secession.

Even in its purest form, express consent does not bind absolutely. I have argued that promise-breaking wrongfully upsets the expectations and dependencies which the promise itself produced. Promise-keeping, on the other hand, may neglect competing obligations based on similar or stronger values. When express consent ties people to political communities which impose unexpected hardship or mortal danger on their members, then these members may violate their promissory obligations to avoid greater evils.[140] In Chapter Five, I describe several injustices which might override political obligations and restore the secessionist presumption. In

[139] Thomas Jefferson expressed this point emphatically in his Letter to Samuel Kercheval, 12 July 1816, reprinted in *The Portable Thomas Jefferson*, 552-61.

[140] Waldron, "Theoretical Foundations of Liberalism," 46-47.

the absence of injustice, express consenters should be able to terminate contractual relationships by providing both adequate warning and acceptable compensation to people who have relied on patriotic promises.

I have drawn from American history to highlight several conditions which must obtain before express consent can impede political secession. Living members of the separatist group must expressly pledge their political allegiance to a unitary government, without reserving the option of exit, and they must offer these promises outside a coercive context. If other parties do not invalidate a joint agreement, and if conflicting obligations do not weigh more heavily, then express consent can establish a moral barrier to political secession. These conditions may or may not have prevailed during the Civil War and its immediate aftermath, but they probably do not obtain today. In the twentieth century, express consent presents few barriers to political secession in most countries.

When the empirical conditions for express consent do not prevail, liberals sometimes cite tacit consent to explain political obligations. One of the earliest arguments from tacit consent appears in Plato's *Crito*, in which the state reminds Socrates that he lived contentedly in Athens for seventy years. By remaining within Athenian jurisdiction, Socrates signaled his satisfaction with the government and his willingness to obey.[141] Locke suggested a similar standard in his *Second Treatise of Government*. According to Locke, people consent tacitly to political authority by placing themselves within the territorial dominion of a particular government.[142] More

[141] Plato, *Crito*, 51d-53a.

[142] Locke, *Two Treatises*, II.119.

universal than express consent, Locke's version of tacit consent obliges everyone automatically.[143]

Despite its historical popularity, Locke's residential standard suffers a foundational flaw. Liberals typically assert that tacit consent relies on nothing more than voluntary actions. In reality, the doctrine of tacit consent depends on a prior assignment of territorial sovereignty. If residence in a territory counts as consent to authority, then the state must already wield legitimate sovereignty over the territory in question, such that it can demand consent as a condition of residence. Now if the state possesses legitimate sovereignty, then consent becomes morally superfluous; the state can exercise power regardless of the inhabitants' wishes. In the words of Lea Brilmayer, the "genteel gloss" of tacit consent hides the "raw fact" of territorial authority.[144]

Beyond its foundational flaw, Locke's theory of tacitivity mistakenly equates residence with consent. In a world where leaders seal their borders and cow their subjects, we should not infer that everyone who lives in a political jurisdiction has approved that jurisdiction's authority. Furthermore, people with political freedom might suffer financial setbacks by leaving established jobs and by spending precious resources to resettle in new countries. Financial matters aside, emigration could sever familial and cultural ties.[145] In many cases, we should construe refusal to

[143] Pitkin, "Obligation and Consent," 54-55.

[144] Brilmayer, "Consent, Contract, and Territory."

[145] Hume perceptively asked: "Can we seriously say that a poor peasant or artisan has a free choice to leave his country, when he knows no foreign language or manners and lives from day to day by the small wages he acquires? We may as well assert that a man, by remaining in a vessel, freely consents to the dominion of the master, though he was carried on board while asleep, and must leap into the ocean and perish the moment he leaves her." Hume, "Of the Original Contract,"

emigrate as a decision to avoid unpleasantries, rather than as a signal of tacit consent.

Even if defensible, the residential standard could not create moral obstacles to secession. Far from barring departure, Locke's tacit theory permits exit and equates lingering with consent.[146] Locke himself stressed that people who give nothing more than tacit consent may join different commonwealths or establish new ones.[147] Under certain conditions, the residential standard might actually reinforce the presumption for secession. If residence entails consent and people cannot or will not emigrate, then secession may provide the only escape from unwanted obligations. Nevertheless, the foundational and empirical flaws seem sufficiently severe to disqualify the residential standard as a persuasive ground for political obligation.

II. FAIR PLAY

The principle of fairness provides a second warrant for political obligation and a potential barrier to unrestrained secession. This principle, which Herbert Hart suggested in a seminal article, states that individuals who accept benefits from cooperative schemes have obligations to assume burdens for the sake of fairness. The same principle also grounds correlative rights:

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475 [punctuation modified slightly].

[146] I am not suggesting that Locke actually sanctioned separatism as a legitimate form of political exit. Although he allowed people to sever obligations by emigrating, Locke constrained individuals from taking land by seceding. See *Two Treatises*, II:117. However, Locke's own libertarianism should permit owners to claim their private property as a secessionist tract when changing political affiliations. Steiner exposes Locke's inconsistency in "Libertarianism and Transnational Migration," 92-93. I discuss property rights more fully in Chapter Four.

When I willingly accept benefits from your cooperative scheme, then you may legitimately demand that I lend my support.[148] The fairness principle rests on the attractive premise that we should not gain from the labors of others without contributing our fair share. At a more basic level, it expresses the Aristotelian maxim that we should treat similar individuals similarly.[149]

Philosophers have developed two versions of the fairness principle to explain political obligations. The first version, which I label the participatory argument, characterizes liberal democracies as cooperative schemes for making collective choices about governmental policies. Democratic schemes benefit voters, who can shape public policy through elections and referenda; the schemes also burden voters, who must uphold the results of the decision-making process. If voters accept benefits by casting ballots, then they must also assume burdens by obeying public laws. The participatory argument explains why voters may not observe laws selectively or withdraw participation unilaterally the moment legislation seems to go the wrong way.[150]

A different version of the fairness principle generates political obligations independent of electoral participation. This second variant, which I call the goods argument, holds that the state coordinates the contributions of citizens to provide important benefits for the polity's members. The state produces private (excludable) benefits, such as transfer payments and toll roads, which

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[147] Locke, *Two Treatises*, II:121.

[148] Early discussions of fair play appear in Hart, "Are There Any Natural Rights?" 185; and Lyons, *Forms and Limits of Utilitarianism*, 161-77.

[149] Arneson illuminates the underlying premises in "The Principle of Fairness and Free-Rider Problems."

[150] Rawls, "Legal Obligation and the Duty of Fair Play"; Singer, *Democracy and Disobedience.*

it grants to some members and denies to others. The state also produces public (non-excludable) benefits, such as civil order and national defense, which it cannot restrict to certain citizens. The goods argument obliges individuals who enjoy public and private benefits to support the schemes that make such benefits possible.[151] Both versions of the fairness principle affect the morality of secession. In this section, I consider each version in turn.

During the American Civil War, President Lincoln and other Unionists asserted the participatory argument to denounce the Southern secession. Noting that Southerners had balloted voluntarily in the national elections of 1860, Lincoln maintained that the South should willingly accept the electoral outcome, even though the results disappointed many Confederates. The president protested that Southerners acted unfairly by playing the electoral game and expecting Northern compliance when national laws served Confederate causes, but then withdrawing unilaterally when the political tide turned against Southern interests.[152] If valid, the participatory argument challenges the secessionist presumption not only in antebellum America but also in other democracies.

Lincoln's argument might not have restrained Southern separatists who boycotted national elections. The will of the majority binds people who accept benefits by casting ballots; it does not oblige those who renounce advantages by foregoing participation.[153] Some Southerners skipped the election of 1860. These dissenters acknowledged the value of majority rule within a

[151] Klosko has advanced the goods argument most comprehensively in *The Principle of Fairness and Political Obligation*.

[152] Lincoln, *Collected Works*, IV:267.

proper political unit, but they denied the legitimacy of Northern participation in their Confederate democracy. Nonparticipation might not have voided obligations immediately, since Southerners who won their way for decades owed lingering debts to co-citizens, but electoral boycotts could have dissolved Southern obligations eventually and cleared the hurdles to secession.

The participatory argument does not bind people who vote involuntarily in political contests. As Nozick persuasively demonstrated, the fairness principle obliges no one to requite unwanted benefits.[154] Electoral records for 1860 probably cannot substantiate pervasive claims of electoral coercion, but forcible interference in political contests has prevailed on other occasions outside the nineteenth century and beyond the American South. In the pseudo-democracies of Africa, Asia, and Latin America, reluctant electors have supported ruthless candidates on pain of death. The participatory argument succeeds only where nonparticipation remains feasible.[155]

Electoral participation cannot generate widespread obligations unless decision-making mechanisms operate fairly. This important qualification matches the moral intuition that people need not contribute equally to a cooperative scheme which treats them unequally. Of course, the notion of a fair procedure remains highly controversial.[156] As public choice theorists have

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[153] Dahl, "Democracy, Majority Rule, and Gorbachev's Referendum," 491.

[154] Nozick, *Anarchy, State, and Utopia*, 90-95; Bell, "Nozick and the Principle of Fairness."

[155] Fishkin, "Towards a New Social Contract," 221-22, 225.

[156] On the essential contestability of fairness, see Connolly, *The Terms of Political Discourse*, chap. 1.

shown, all procedures advantage certain voters and disadvantage others.[157] Nevertheless, most philosophers agree that tolerably fair procedures must allow each individual to express an opinion and influence the outcome. By contrast, methods allowing either dictators or oligarchs to determine collective choices seem highly unjust.[158]

Unlike the Southerners of antebellum America, the Bengalis of East Pakistan could rightly complain about the fairness of decision-making procedures. When Britain partitioned India in 1947, it begot a Pakistani state composed of two wings. For decades, electoral peculiarities and elite manipulation systematically distorted the pattern of democratic influence to profit Westerners at the expense of Easterners. The Bengalis, who accounted for fifty-six percent of the national population, could hold only a handful of posts in the administration and the army. In the early 1970s, elite minorities contrived to ignore the overwhelming results of the national election. When the Awami League captured an absolute majority in the National Assembly, the People's Party threatened a boycott and launched a war.[159] The participatory argument might have obliged American Southerners, but it could not have bound Pakistan's Bengalis, who seceded in 1971.

Even in countries with democratic procedures, electoral participation does not oblige permanent minorities. The participatory argument assumes that all voters secure political

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[157] Riker, *Liberalism Against Populism*; Miller, "Deliberative Democracy and Social Choice."

[158] Arrow proposed the standard of non-dictatorship in *Social Choice and Individual Values*.

[159] Heitzman and Worden, *Bangladesh*, 25-26, 29-30; Heraclides, *The Self-Determination of Minorities*, 150-52.

benefits; groups who suffer in one election can garner greater influence in subsequent rounds.[160] Despite free speech and unfettered association, the probability of rotating benefits seems rather unlikely in certain countries. Some groups never shape public policies. The Moros, an Islamic minority in the Christian Philippines, have registered electoral victories in the Sulu Archipelago but have never affected national legislation. Perennially powerless, the Moros endure governments they cannot form and laws they cannot influence.[161] For separatist minorities like the Moros, democracy means tyranny.[162] If permanent minorities never win electoral benefits, then they need not assume political obligations--at least not according to the participatory argument.

Sometimes procedural fairness can yield substantive injustice. Philosophers have not yet converged on an authoritative definition of unjust outcomes. Without ignoring their complex debates, I propose my own hypothesis. In the first chapter, I suggested that vital interests ground human rights. When a majority enacts laws which trammel human rights, then that collective body perpetrates a substantive injustice. In some cases, the injustice will seem relatively uncontroversial. Today most liberals would denounce slavery in antebellum America and genocide in Hitler's Germany. The foregoing examples suggest that nominally democratic procedures cannot foreclose unjust laws that the majority and its leaders decide to enact.

In some cases, unjust laws can void political obligations arising from electoral

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[160] Birch assumes rotating benefits in "Another Liberal Theory of Secession," 598.

[161] Heraclides, *The Self-Determination of Minorities*, 165-73.

[162] von Mises, *Nation, State, and Economy*, 46-56.

participation. When procedural and substantive justice clash, then voters should weigh conflicting duties. In particular, electoral participants should assess the gravity and depth of the substantive injustice.[163] Under certain circumstances, the aggrieved party can employ procedural mechanisms to repeal heinous laws. In other contexts, permanent minorities might harbor no hope for constitutional resistance. Where neither balloting nor disobedience can eliminate the harm, then substantive injustices can overwhelm procedural obligations and eliminate moral barriers to secession.

My analysis demonstrates that the procedural argument blocks secession only under specific conditions. If separatists participate voluntarily in a fair scheme for making collective decisions, then they may not escape political obligations through unilateral secession. Where separatists boycott elections or vote involuntarily, the procedural argument can delay secession temporarily, but it cannot frustrate separatism indefinitely. In any case, the procedural argument does not bind disadvantaged groups and permanent minorities who cannot shape public policies. Finally, flagrant injustices can overrule procedural obligations and re-establish the legitimacy of secession.

The goods argument, a second variant of the fairness principle, obliges people who accept state benefits to assume cooperative burdens. Enemies of secession have articulated the goods argument to justify political union. In the decades preceding the Civil War, the US government spent millions of dollars to acquire southern territories from Spain. The same government also

[163] Birch, *Nationalism and National Integration*, 64; Rawls, "Legal Obligation and the Duty of Fair Play," 14-15.

vanquished Floridian natives, relieved Texan debt, improved the Mississippi River, built coastal fortifications, and established customs houses. During the war, Confederates appropriated these federal investments for themselves. Among others, President Lincoln and Senator Douglas accused the secessionists of behaving unfairly by snatching governmental benefits without contributing commensurate burdens.[164] More recently, President Gorbachev demanded that Lithuanian separatists compensate the Soviet government for the benefits it provided. If cogent, the goods argument might overturn the secessionist presumption.

Critics of the goods argument have stressed that people assume obligations only when they *accept* benefits. Without the acceptance condition, the fairness principle offends our moral intuitions: We need not pay for unwanted benefits.[165] With the acceptance condition, the goods argument loses some utility: Fairness might not justify widespread obligations in modern states. An early exponent of the fairness principle, John Rawls ultimately divined that people do not accept governmental benefits willingly, because they are born into political systems involuntarily. From the valid condition of acceptance, Rawls (wrongly) extrapolated that the goods argument yields no general obligations.[166]

In a philosophical debate, American Confederates and Lithuanian separatists might have insisted that they never accepted benefits from central authorities. Politically weak, the secessionists could neither refuse nor choose investments, which Washington and Moscow thrust

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[164] Sandburg, *Abraham Lincoln*, I.7-8, 15, 297-98.

[165] See Nozick's book-thrusting and street-sweeping examples in *Anarchy, State, and Utopia*, 90-95. See also Simmons, *Moral Principles and Political Obligations*, chap. 5.

upon them. If neither Confederates nor Lithuanians accepted investments, then they bore no obligations to repay their donors. Allen Buchanan has exonerated Lithuania with the following analogy: If you trespass my land and seize my house, then I owe you no compensation for the improvements you made during your unwelcome occupation. Similarly, Lithuanian separatists owe no socio-economic debt to their Soviet oppressors.[167]

Separatist groups could strengthen their cases by exposing the tenuous relationship between the acceptance condition and public goods. The state can offer private benefits, such as special police protection and agricultural extension services, to people who request them. Individuals signal that they accept private benefits by pursuing them actively and obtaining them successfully. By contrast, the state must offer public goods, such as national defense and civil order, to all residents, regardless of their wishes. Public goods threaten the principle of fairness by obscuring the notion of acceptance.

To solve the problem of public goods, George Klosko has developed the category of presumptive benefits. Akin to Rawlsian primary goods,[168] presumptive benefits are those that appeal to all rational people, regardless of unique life plans. Klosko counts physical security and bodily integrity as two presumptive benefits. A state secures such indispensable benefits by maintaining a national defense and preserving the public order. Given a choice, rational people would accept the vital services of the state, so they must also assume the burdens which make

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[166] The erroneous conclusion appears in Rawls, *A Theory of Justice*, 113-14.

[167] Buchanan, *Secession*, 107.

[168] Rawls, *A Theory of Justice*, 62, 90-95.

vital services possible. Klosko's argument shows, *contra* Rawls, that public goods can generate widespread obligations.[169]

More recently, Klosko has extended the goods argument to encompass discretionary public benefits. An abridged list of discretionary benefits might include highways, sewers, and schools, which seem desirable but not indispensable for human well-being. Klosko asserts that the state cannot provide presumptive goods without first supplying discretionary benefits. For instance, adequate defense in the modern age requires efficient transportation, reliable communication, robust industry, energetic science, and effective education. Rational individuals would accept a long list of discretionary benefits, so they must also support a healthy range of governmental services.[170]

Without mentioning secession, Klosko's writings undermine the separatist case by suggesting that breakaway groups would have accepted many benefits from central authorities. In particular, Klosko's work implies that Confederates would have welcomed national defense, debt relief, commercial support, and public works. Furthermore, Lithuanians would have requested industrial aid given a free choice. I will not try to locate the empirical reality amid the theoretical possibilities. I merely want to stress that secessionists who appreciated benefits should have assumed burdens for the sake of fairness. Neither Confederates nor Lithuanians

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[169] Klosko, "Presumptive Benefit, Fairness, and Political Obligation" and *The Principle of Fairness*, 35-42, 48-57. Kavka anticipated Klosko in "Review of Simmons," 228.

[170] Klosko, "The Obligation to Contribute to Discretionary Public Goods" and *The Principle of Fairness*, chap. 4. Klosko's extended argument cannot justify public charity, which might require some appeal to natural duty.

could escape obligations by seceding.

Separatists who accepted governmental benefits could have vitiated corresponding burdens by paying fair compensation to the remainder state. The goods argument does not forbid secession *per se*; it merely indicts separatists who gain from the labors of others without contributing a fair share. If the Southern commissioners had established an arbitration board to adjudicate financial matters and repay outstanding debts, then obligations of fairness might not have restrained the Confederate departure.[171] Unfortunately, the issue of fair compensation involves tremendous complexities which I can only flag here.

The appropriate level of economic compensation depends on the *net* flow of financial resources. John Calhoun calculated that the US government extracted more revenue from Southerners than it returned in investments.[172] Soviet separatists protested that Moscow raped the Baltic states and central Asia to supply manufactures and cotton for other republics.[173] Basques resented paying thirteen percent of Spain's taxes but securing only five percent of the state's benefits.[174] In the 1960s, Biafrans lamented that their wealth was subsidizing other

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[171] Southern commissioners actually proposed a compensatory scheme. See Sandburg, *Abraham Lincoln*, I.298.

[172] Calhoun's estimates included the effects of federal tariffs that protected Northern industries but crippled the Southern economy, which depended on imports. Aranson, "Calhoun's Constitutional Economics." See also the views of Robert Toombs and Henry Benning, two Georgian separatists who complained that complained that the federal treasury had become a "suction pump" to drain subsistence from the South to the North. Speeches by Benning and Tooms are reprinted in Freehling, *Secession Debated*, esp. 36-38 and 134-42.

[173] Vizulis, *The Molotov-Ribbentrop Pact of 1939*, 70-73; Feshbach and Friendly, *Ecocide in the USSR*.

[174] Horowitz, *Ethnic Groups in Conflict*, 250.

regions, while Katangans chanted that their enclave had become the milk cow for the whole Congo.[175] In these and other cases, breakaway groups might owe nothing to the remainder state, and the rump could actually owe financial compensation to the secessionists.

The precise amount of financial compensation also depends on the moral demands of general rights. In this chapter, I have focused primarily on special obligations and correlative rights arising from promises and cooperation. I have not emphasized general advantages, including welfare rights, which inhere regardless of contingent circumstances. Welfare rights might compel either the secessionist region or the remainder state to transfer economic resources to needy individuals. In particular, welfare rights might require one region to become the milk cow for its political neighbors. I examine welfare rights more closely in the next chapter.

[175] Nwanko and Ifejika, *Biafra: The Making of a Nation*, 229; Horowitz, *Ethnic Groups in Conflict*, 257; Gerard-Libois, *Katanga Secession*, 187-220.

CHAPTER FOUR:
ECONOMIC JUSTICE

In Chapter Three, I stressed that secessionist movements declare political independence from sovereign states. By detaching themselves from existing authorities, secessionists can violate political obligations and correlative rights arising from patriotic consent and fair play. When breakaway movements shirk political duties and disregard complementary rights, then the harm principle will strip presumptive legitimacy from the separatist endeavor. Nevertheless, conflicting moral principles can override political obligations and restore the presumption for secession. Before developing several competing principles in the ultimate chapter, I consider a second form of moral harm which separatist movements can inflict on other parties.

Secessionists not only withdraw from the political ambit of the governing state but also claim territory on which they will found new polities. From Fort Sumter to Bosnia-Herzegovina, separatist movements have demanded significant tracts and economic accoutrements. Secessionist lands often include natural resources such as minerals, plains, and reservoirs. Katanga boasts rich copper reserves, Ukraine contains sprawling wheat fields, and Eritrea borders the Red Sea. Separatist regions may also contain manufactured objects such as factories, automobiles, and houses. Croats and Slovenes, for instance, literally snatched the industrial complex from Montenegrans and Macedonians. Wherever they arise, separatist movements extract tangible assets from the remainder state.

When taking material items, separatists can violate economic rights and overturn the

presumption for secession.[176] In this chapter, I do not develop a comprehensive theory of economic justice,[177] nor do I explain how an unabridged theory would affect secession's morality. Instead, I explore welfare rights and property rights, two moral advantages that any reasonable theory of economic justice should accommodate. I argue that secessionist movements can trammel economic rights by seizing contested territory. My limited discussion suggests that economic rights can reverse the secessionist presumption on many occasions.

I. WELFARE RIGHTS

Any acceptable theory of economic justice must accommodate some form of welfare rights. Unlike special rights that emerge from patriotic promises and cooperative schemes, welfare rights do not depend on contingent events.[178] Instead, these general rights spring from vital interests that exist regardless of interactions between people and resources. Most theories of welfare rights rest on the axiom that all persons are morally equal, regardless of disparate abilities to appropriate material goods and augment the social surplus. On these egalitarian foundations, theories of welfare erect structures of rights which protect vital interests common to

[176] I focus on rights to material things, such as natural resources and manufactured goods, rather than incorporeal items, such as inventions and reputations.

[177] Becker sets the research agenda for a comprehensive theory in "The Moral Basis of Property Rights," 192-200 and "Too Much Property," 198-204. For a particularly ambitious philosophy of economic justice, see Munzer, *A Theory of Property*.

[178] Possible short list of welfare rights should include claims to food, clothing, shelter, education, and medicine. No theory of economic justice would seem plausible without welfare rights. See

all individuals.

On one view, the human interests which vindicate welfare rights originate from more fundamental interests in freedom and security. Malnutrition, homelessness, and disease can undermine human capacities to devise plans, pursue projects, and forge relationships that confer value to life. People who wallow in abject poverty often govern themselves according to necessary impulses, rather than autonomous deliberations. Desperate need additionally exposes individuals to exploitation and insecurity by allowing governments and private parties to seize interests and commandeer decisions in exchange for economic necessities. If humans bear rights to freedom, then people also hold rights to socioeconomic goods that make freedom possible.[179]

A second view explains welfare rights by tying socioeconomic interests and human well-being directly. The blights of indigence and disease impede human flourishing as effectively as coercion and exploitation. Thus, goods like food and medicine seem essential for dignified and valuable lives, regardless of any effects on the freedom and security of a particular individual. This second, more straightforward defense of welfare rights relies on a copious conception of human personhood. Individuals exist not merely as pursuers of projects and relationships, but more generously as packages of needs and capacities. Each vital characteristic justifies a human

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Waldron, *The Right to Private Property*, esp. chaps. 1, 6, and 7.

[179] Gewirth, *Human Rights* and "Human Rights and Conceptions of the Self"; Goodin, *Reasons for Welfare*, chaps. 5-7; Shue, *Basic Rights*, chap. 1; Waldron, "Liberal Rights" and "Homelessness and the Issue of Freedom." For a reply suggesting that I have confused having a right with exercising one, see Smith, "On Deriving Rights to Goods from Rights to Freedom."

right.[180]

Whatever the justificatory basis, welfare rights entitle every individual to a minimal quantity of basic goods. No credible theory of social justice would award infinite holdings of food, clothing, shelter, education, and medicine. An adequate theory need not distribute basic goods evenly, either. To safeguard human well-being and merit the liberal imprimatur, a theory of welfare rights need only entitle each individual to a decent minimum necessary for a valuable life. This minimal standard, which could shift over time and across societies, provides a moral floor below which no individual should plunge.[181]

Scholars and politicians have long charged that secessionist movements can deprive people of essential quantities of basic goods. First, secession could exclude certain groups from the natural resources, manufactured items, and human capital necessary for economic survival. Second, separatism could fragment scale economies into smaller units. Balkanized systems would forego the productive efficiency that accompanies widespread organizations of labor and exchange. By creating infirm states that cannot sustain economic development or provide basic goods, separatists could dispossess people of the material holdings that humans desperately need.[182]

Empirical evidence suggests that secessionists will sacrifice material welfare for political

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[180] Freeden, *Rights*, 52-62; Okin, "Liberty and Welfare"; Waldron, "Liberal Rights."

[181] Miller, "Equality"; Waldron, "Rawls and the Social Minimum" and "Welfare and the Images of Charity."

[182] For an well-documented study of the economic issues which separatists raise, see Bookman, *The Economics of Secession*.

autonomy. In the twentieth century, most separatists have hailed from underdeveloped regions, poor in natural resources and low in per capita productivity.[183] After winning independence, these intrepid groups have struggled to sustain themselves economically. Bangladesh still relies on international aid to maintain a precarious existence. Newly autonomous Soviet republics such as Armenia and Moldavia are now scraping the bottom of the economic barrel. Despite slim chances for material prosperity, secessionist rebels continue fighting in southern Sudan, the southern Philippines, northern Chad, and Iraqi Kurdistan.

On the other hand, secessionists have stood ready to force remainder states into economic tailspins. Wealthy regions have occasionally sequestered vital resources in separatist campaigns.[184] During the 1950s, Katanga generated eighty percent of the mineral value and supplied sixty percent of the national revenue for the Belgian Congo. The following decade, copper-rich Katanga declared independence, threatening the economic viability of the Congolese republic.[185] Similarly, the secessions of 1991 deprived Serbia of the most prosperous industrialized regions and the most dynamic export sectors in the former Yugoslavia.[186] Today, Punjabi separatists in northern India claim the national wheat bowl for themselves.[187]

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[183] Horowitz, *Ethnic Groups in Conflict*, 233-43 and "Patterns of Ethnic Separatism," 194.

[184] For hypotheses concerning the relative infrequency of political secession by wealthy groups, see Horowitz, *Ethnic Groups in Conflict*, 243-59 and Mayall and Simpson, "Ethnicity is Not Enough," 19.

[185] Buchheit, *Secession*, 142.

[186] Iglar, "The Constitutional Crisis in Yugoslavia," 233.

[187] Mayall and Simpson, "Ethnicity is Not Enough," 18.

Whether secession induces poverty will depend partly on trading patterns in the international system. Ricardians always assumed that freely moving labor and capital would equalize real prices across various regions. The classical economists nevertheless conceded that many productive factors could not escape national boundaries. More recently, several theorists have demonstrated that free trade in commodities can substitute for free movement in factors by driving wages and rents to equality.[188] If free trade distributes economic returns to productive factors evenly, then secession might not enrich some areas and impoverish other regions.

Like many abstract models of international trade, the factor-price theorem ignores an empirical reality: Commodities do not travel freely in the modern world. Transportation costs limit economic exchanges between distant regions. Political and social factors also constrain free trade. Most governments erect tariff walls and provide lucrative subsidies to create comparative advantages for domestic producers.[189] Patriotic citizens buy home-grown foods and domestically manufactured items, even when foreign producers offer lower prices or superior quality. The constellation of tariffs and NTB's diminishes the relevance of the factor-price theorem for real-world secessions.

The factor-price theorem also relies on several dubious assumptions about technology and resources. Initially, the secessionist region and the remainder state must share productive

[188] Caves, Frankel and Jones, *World Trade and Payments*, chap. 7 and 8; Samuelson, "International Trade and the Equalisation of Factor Prices" and "International Factor-Price Equalisation Once Again" in *The Collected Scientific Papers of Paul Samuelson*, vol. 2; A. Lerner, "Factor Prices and International Trade."

[189] Bhagwati, *Protectionism*.

technologies. Further, the countries in question must enjoy relatively equal endowments of productive factors. Finally, both areas must produce some quantity--however small--of each good. If the foregoing conditions ever obtained, secessionists could alter the economic balance by sequestering technology, snatching resources, and specializing completely in certain commodities. Thus, trading patterns will not equalize economic holdings on the only globe we now know.[190]

Trade may not distribute goods evenly, but commercial relations could keep economies afloat in secession's wake. Wherever commodities and factors move somewhat freely, people will trade for items they need. An international team of academic economists recently concluded that Estonia, Latvia, and Lithuania could survive political independence despite weak industrial bases. By reconstituting economic sectors and developing new trade, the Baltic states could maintain their populations above the poverty line.[191] Small states and underdeveloped regions might struggle materially in the short run, but lagging areas could develop vibrant economies in the long run. Nevertheless, partial trade cannot rescue the poorest states from crippling destitution.

Economic unions could buttress trade to promote material welfare in a secessionist world. With varying degrees of success, the industrialized countries of North America and Western Europe are promoting stable growth by coordinating commercial and financial policies. Both

[190] Samuelson, "Equalisation by Trade of the Interest Rate along with the Real Wage," in *Collected Scientific Papers*, II.924.

[191] Van Arkadie and Karlsson, *Economic Survey of the Baltic States*.

separatists and remainders could pursue similar tacks. Careful students of international relations might object, however, that economic integration cannot flourish without political consensus. Governments will not leave macroeconomic targets such as inflation rates and unemployment levels to the discretion of neighbors. By shattering political agreements, secession could preclude the economic cooperation that would promote sustainable growth.[192]

Where neither partial trade nor economic integration can sustain fledgling economies, international aid might ensure adequate levels of material welfare. During the past half-century, several multilateral institutions, such as the World Bank and the IMF, have afforded economic advantages to underdeveloped states. In particular, the institutions have provided regular access to capital markets and buffered the painful effects of economic gyrations. For both moral and strategic reasons, bilateral aid has also become increasingly common in the postwar era.[193] Although economists still debate the holistic benefits of economic aid, few dispute that generously funded and well-targeted assistance programs have saved millions of lives and reduced global suffering.

Even when poverty follows secession, liberals may find few grounds for condemning separatists. I have argued that each person possesses a moral claim to a decent level of material goods. I have also identified trade, cooperation, and aid as three options for supplying minimal shares when breakaway movements create indigent states. Significantly, I have not shown that

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[192] Etzioni, "The Evils of Self-Determination," 30-31. The most comprehensive argument concerning the relationship between political factors and economic cooperation appears in Gilpin, *The Political Economy of International Relations*.

[193] The most recent empirical study is Lumsdaine, *Moral Vision in International Politics*.

secessionists bear *particular* obligations to the destitute people in the remainder state. Philosophers should not assume, without further argument, that separatists shirk moral duties and violate associated rights by refusing commercial relations, economic cooperation, and international alimony to the rump territory.

On one view, separatists hold no particular obligations toward any needy parties, including former countrymen.[194] Philosophers since Mill have argued that welfare rights correlate with imperfect duties, obligations toward a broad class of eligible recipients rather than a specific individual or a determinate group. If Katangans owed something to the poor generally but nothing to the Congolese specifically, then welfare rights might not have challenged the Katangan secession. Similarly, the absence of direct obligations from Sikhs to Hindus could lower the moral barriers to Punjabi self-rule. Imprecise duties hardly threaten the separatist presumption.

A more sensible view obliges separatists to support new co-citizens primarily and former countrymen only secondarily. To perfect the ambiguous duties that correlate with welfare rights, political theorists have admitted differential obligations. In particular, philosophers have argued that people bear stronger obligations to compatriots than to foreigners.[195] If the patriotic position seems plausible, then secession could transform the moral landscape. By interposing national borders, separatists could convert citizens into strangers. The political transformation could

[194] I use co-citizens, compatriots, and countrymen synonymously to denote two or more people sharing the same political system.

[195] On the consistency of moderate patriotism with liberal impartiality, see Nathanson, "In Defense of 'Moderate Patriotism'."

curtail--perhaps even eliminate--the distributive obligations of the secessionist movement to the remainder state.[196]

At least three arguments support the philosophical claim that separatists owe more to current co-citizens than to previous countrymen. First, intuition suggests that the strongest obligations lie among nuclear families, genuine friends, meaningful acquaintances, and cultural groups.[197] Observers would look suspiciously upon someone who bypassed his or her burning mother to rescue a total stranger from a fire. Similarly, one might wonder why someone would send charitable donations to an impersonal organization rather than a starving friend. Holding other factors constant, most people would help intimates over aliens. To the extent that secession collects intimates under one political roof, separatist duties to compatriots will exceed analogous obligations to foreigners.

The intimacy argument may suffer two defects. For starters, scholars who, unlike myself, understand moral thinking as impersonal reasoning will insist that natural prejudices do not constitute philosophical proofs. People may feel stronger obligations to people physically near and emotionally dear, but feelings cannot afford moral sanction to local obligations.[198] Furthermore, separatists may leave family members, close friends, and ethnic relatives in foreign lands, either advertently or reluctantly. If the intimates of separatists do not hail from the

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[196] Buchanan, *Secession*, 114-24; Pogge, "Loopholes in Moralities," 88-90.

[197] Shue, "Mediating Duties," 691-93. For the argument that special commitments to imagined communities, such as nations, are not irrational, see Miller, "The Ethical Significance of Nationality."

[198] See, e.g., Goodin, "If People Were Money," 9-10. Space, unfortunately, precludes me from

breakaway region, than the intimacy argument will not prove that separatists owe more to co-citizens than to foreigners.

A second argument traces differential obligations to the fairness principle.[199] In the third chapter, I explained that people who take benefits from cooperative schemes must contribute burdens for the sake of fairness. Conventional wisdom understands most countries as cooperative schemes that provide valuable goods for citizens. If the breakaway region fits the collaborative description, then separatists might owe special duties to co-citizens, beyond imperfect obligations to non-nationals. By the same token, each cooperating member may claim appropriate contributions from the other citizens. Thus, separatists may justify moderate patriotism by restricting the scope of social cooperation.

Like the intimacy argument, the fairness principle may not always vindicate differential duties. In the real world, the boundaries of breakaway regions do not coincide perfectly with prevailing schemes of social cooperation. Domestic residents sometimes refuse cooperative benefits to compatriots. More often, people exchange valuable benefits across national borders.[200] Nevertheless, the fairness principle can explain why separatists bear stronger obligations to support their own governments than to uphold foreign regimes. The same principle may also demonstrate that separatists should put the welfare of new co-citizens above

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enumerating my own objections to the narrowly impersonal perspective.

[199] Goodin, "What Is So Special about Our Fellow Countrymen?" 675-78.

[200] A discussion of economic interdependence and multilateral cooperation appears in Keohane and Nye, *Power and Interdependence*, chaps. 1-3. The international relationships usually fall short of the extensive dependencies within states themselves. See Barry, "Humanity and Justice in

the prosperity of former countrymen.

A third argument justifies differential obligations as efficient means of discharging imperfect duties. Each person bears general obligations to assist indigent people around the world. Donors, however, would squander precious resources and thwart effective relief by honoring duties without coordinating activities. Consequently, the efficiency argument suggests a moral division of labor: People should help their compatriots.[201] Separatists, by implication, should guarantee the material welfare of their co-citizens. By delegating responsibilities clearly, the appeal to expediency solves coordination problems that could prevent aid from reaching the poor.

As a rigid strategy for allocating moral responsibility, the efficiency argument could defeat its own objectives. People will sometimes prove unwilling or unable to supply basic goods for fellow citizens. Desperate pleas from Bangladesh to Somalia suggest that underdeveloped countries lack the political will and the material resources to sustain burgeoning populations. As long as such pleas fill the international airwaves, a compatriot-only rule will prevent people, including separatists, from discharging the imperfect duties that correlate with welfare rights. The expediency argument cannot justify unswerving patriotism.

Despite my criticisms, the three arguments for differential obligations retain some philosophical force. I have not rejected the common intuition that separatists owe more to

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Global Perspective," 194-95.

[201] Goodin, "What Is So Special About our Fellow Countrymen?" 678-86. See also Goodin, "The State as a Moral Agent."

intimates than to strangers, nor have I renounced the popular notion that secessionist movements acquire special duties from cooperative schemes. I have simply noted that intimates and collaborationists might hold passports that fail to exhibit the separatist seal. Likewise, I did not deny the expediency argument as a helpful way of discharging imperfect duties. I merely argued that a rigid division of labor should not prevail in the case of need. Appeals to intimacy, fairness, and expediency can support particular duties connecting separatist parties to their own co-citizens.

If duties differ across borders, then separatists could alter the distribution of moral obligations that correlate with welfare rights. Specifically, differential duties would enable secessionists to reduce distributive obligations to the remainder state by gathering intimates within the breakaway region, restricting the scope of social cooperation, or citing the argument from patriotic expediency. As long as the remainder state floats above the economic minimum, separatists violate no welfare rights by refusing trade, cooperation, or aid to former countrymen. The harm principle does not condemn groups who declare independence to evade egalitarian standards of distributive justice.

Patriotic appeals, however, do not excuse separatists from ignoring the basic demands of economic justice. Welfare rights and imperfect duties survive the absence of fellow feeling, shared projects, and prudential considerations. If separatists use national borders as crude rationalizations to shirk imperfect duties, then the harm principle will overturn the liberal presumption for unbridled secession. I am not suggesting that separatists bear special obligations to sustain their former compatriots, though an expediency argument (help your geopolitical

neighbors) might justify such obligations. I am merely arguing that separatists may not declare political independence to ignore basic rights.[202]

II. PROPERTY RIGHTS

Any liberal theory of economic justice should supplement rights to welfare with protections for property. Welfare rights entitle each person to a minimal level of basic goods but no particular item from the general store. Property rights, by contrast, connect people with determinate sets of material items, such as unique articles of clothing and specific plots of land. As clusters of Hofeldian advantages, property rights typically include claims against trespass, immunities from seizure, and privileges to use named material goods. The clusters may also contain powers to transfer particular objects to different owners.

Morally and legally, the West has long affirmed a distinct class of common property.[203] Owned and managed by the society at large, common property remains available for each member according to the *jus publicum*, or public right. Thinkers from ancient Rome to contemporary England have reserved the common title for plenteous goods, such as airsheds and sunlight, because private ownership has seemed impractical or unnecessary. Bounded regions,

[202] Perhaps separatists may ignore their own rights by committing economic suicide. Breakaway movements may not, however, deny the welfare rights of trapped minorities who preferred political union to suicidal secession. I cannot pursue these difficult issues here.

[203] Butler, "The Commons Concept," Ostrom, *Governing the Commons*, Rose, "The Comedy of the Commons," Stevenson, *Common Property Economics*, and M. Taylor, "The Economics and Politics of Property Rights and Common Pool Resources."

like tidelands and waters,[204] have also fallen within the public domain. Finally, grazing pastures, park lands, and wild game have assumed common character in certain societies.

Political theorists and legislating bodies have supplemented common property with collective ownership.[205] Collective schemes award material items to social groups, such as tribes and governments. The groups typically control an assortment of natural resources, transportation links, military facilities, and office buildings. Socialist governments also dominate agricultural land and strategic industries. The most pervasive forms of collective ownership appear in communist states and utopian treatises. The twentieth century saw Stalin, Mao, Castro, and Kim collectivize nearly every resource of any significance.

Finally, philosophers and politicians have developed systems of private property, which assign separate objects to particular people. Within the limits of nuisance law, individual owners may control material resources according to their personal whims. Private schemes also award property to partnerships, cotenancies, corporations, and other sub-societal groups. The possibility of group ownership in private systems blurs the division between private property and its collective counterpart.[206] Fortunately, my argument does not hang on sharp distinctions between property systems. Rough classifications suffice to identify the types of property that

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[204] Tidelands are territories between low and high tides. In the category of waters, I include high seas, rivers, and lakes, as well as soils beneath the waters.

[205] Baynard, *Public Land Law and Procedure*, chap. 1; Sax, "The Public Trust Doctrine in Natural Resource Law."

[206] At any rate, many theorists and policy makers combine two or more ownership systems. See Menon, *The Succession of States in Respect to Treaties, State Property, Archives, and Debts*, 77-78; Waldron, *The Right to Private Property*, 44-46.

separatists can seize.

Liberals might justify the three classes of property rights by citing the human interest in devising life-plans. I have already praised autonomy as a necessary ingredient for human flourishing. Life-plans, which include not merely transitory goals but also abiding ends, enrich autonomy by promoting ethical responsibility and reasonable agency. Through long-range plans, individuals can transcend the subjectivity of immediate existence and confer stability on their impetuous wills.[207] Philosophers who value autonomy should promote the life-plans that make autonomy possible. Property rights, I argue, supply the prerequisites for long-range plans and deep autonomy.

Property rights facilitate life-plans by affording each person stable control over material resources. Some abiding ends, like maintaining friendships and revering scriptures, require few if any physical objects; other enduring goals, like growing crops and developing businesses, involve material goods centrally and immediately. People need fields and factories to develop long-range plans involving farming and fabricating. More broadly, individuals require stable access to natural resources and manufactured items. Without firm control over material goods, people would never pursue certain abiding ends. Property rights, which stabilize control over physical items, seem essential for many long-term goals.[208]

I have suggested an apology of property rights without presenting a formula for allocating

[207] Waldron elaborates this quasi-Hegelian view of moral autonomy in *The Right to Private Property*, chap. 10, esp. 370-74.

[208] Munzer, *A Theory of Property*, chap. 4, esp. 79.

entitlements. Each person should control some goods to develop life-plans and enhance autonomy, but which people, through communal, collective, or private schemes, should control which objects? Theories of economic justice that do not assign specific items to particular parties will not provide sufficient information about the morality of secession. Before applying the harm principle, I must prove not only that property rights exist but also that separatists violate rights by taking territory belonging to other people. In short, I must recommend a strategy for deciding who owns what.

One formula for allocating property rights trades on the human interest in fulfilling legitimate expectations.[209] Most people expect to acquire and retain certain material goods. For better or worse, these people organize their lives around expectations about property. Anticipating indefinite control over a tennis court, an athlete, for example, might open a small club and offer private lessons. Having committed to directing tennis, the athlete may prove incapable of changing careers without substantial pain. Thus, the athlete *could* possess a legitimate interest, protected by a moral right, in controlling the court at the heart of the club. As a general rule, liberals should apportion property rights according to legitimate expectations and stubborn plans that develop around particular objects.

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[209] Helpful discussions of the expectations argument appear in Goodin, "Compensation and Redistribution," Munzer, *A Theory of Property*, 28-29, 79, and Waldron, "Superseding Historic Injustice," 16-18. A different theory might include a principle allocating material items to meritorious laborers. Philosophers, unfortunately, cannot agree on the precise meaning of a desert principle. Diverse versions appear in Kirzner, *Discovery, Capitalism, and Distributive Justice*, Munzer, *A Theory of Property*, chap. 10, Nozick, *Anarchy, State and Utopia*, chap. 7, and Rothbard, *The Ethics of Liberty*, 29-61. For criticism, see Christman, "Can Ownership Be Justified by Natural Rights?" Cohen "Are Freedom and Equality Compatible?" and Waldron, *The Right to Private Property*, chaps. 6-7.

Raw expectations lack the requisite legitimacy to dictate any distributions of property rights. I define raw expectations as predictions resting on pure imagination or dubious evidence. Suppose that I am the athlete in the previous example. One night, I dream that aunt Jane unconditionally endows me with the tennis court on her Southern estate. I spend the next year purchasing rackets, designing programs, and soliciting members for a new club, which I plan to open behind Jane's mansion. Devoid of any factual foundations, my raw expectations cannot ground moral rights to the tennis court, even though I have invested long hours and tremendous energy planning the private club.

Likewise, reasonable expectations cannot justify specific patterns of property rights. By stipulation, reasonable expectations involve solid evidence but offend liberal rights in impermissible ways. Suppose that I build a tennis ranch, complete with swimming pools and riding stables, on unowned land outside Jane's town. To fill the pools and satiate the horses, I appropriate scarce supplies of fresh water and drive the community to terminal dehydration. Knowing that my armed thugs can outmatch the local authorities, I predict that I will retain the water, and I plan my life around the ranch. Infringing welfare rights, my expectations and plans cannot sanction absolute control over the water supply.

Only legitimate expectations can determine particular entitlements to physical items. Legitimate expectations accord not merely with human reason but also with liberal rights. Imagine that I construct the aforementioned ranch from unowned materials on unclaimed land. Imagine further that I respect welfare rights by leaving ample supplies of potable water and other goods for nearby residents. Expecting to control the ranch for the foreseeable future, I launch a

career of teaching and directing. My legitimate expectations and associated life-plans, which threaten no liberal rights, underpin my moral rights to the tennis ranch.

Once liberals have allocated property rights, neither raw nor reasonable expectations can rationalize new distributions. Assume, for example, that Jane owns the estate and warns repeatedly: "Use the facilities whenever you want, but know that I might move to Boston. If I leave, then I will auction the property, including the court, to the highest bidder." Noting how passionately Jane loves the estate and detests the North, I predict that my aunt will retain the property, so I open the club and begin to teach. My reasonable expectations cannot strip Jane of valid rights to sell the estate, nor can my expectations prevent new proprietors from closing the club.

Legitimate expectations, on the other hand, can sanction new configurations of property rights. Once more, suppose that Jane owns the estate. Through simple promises, commercial transactions, and other displays of explicit consent, Jane can simultaneously waive her rights to the tennis court and arouse legitimate expectations that give me title. Jane may also transfer title implicitly. Suppose that I use the court without requesting permission. Over several years, Jane watches me run the club but never complains that I have trespassed, so I expect to continue teaching. By acquiescing, Jane consents tacitly to my presence and encourages expectations about the court that vest me with property rights.

Legitimate expectations can justify strong property rights (SPRs) for people with stubborn life-plans. The most potent forms of material entitlements, SPRs resist utilitarian

calculations on nearly all occasions.[210] Imagine that I have dedicated my life to directing the club and cannot not change directions without suffering tremendously. Next imagine that government wants to build a highway through the tennis court. The unexpected taking would devastate my abiding plans and disrespect my vital autonomy, if not my personal identity. When pecuniary compensation cannot ease my pain, philosophers should award SPRs which perpetuate my control over the tennis court.

In conjunction with the harm principle, SPRs can overturn the presumption for secession. The harm principle constrains breakaway movements from trammeling moral rights, including property rights. Separatists could violate SPRs by snatching territory belonging to patriotic individuals, social groups, and entire communities. To avoid inflicting injury, separatists could purchase property in voluntary transactions or secure release from their rightful owners. SPR-bearers, on the other hand, could veto secession by refusing to alienate their material goods. If separatists nonetheless expropriate contested territory, then the harm principle will strip secession of its liberal sanction.

Where life-plans seem flexible rather than stubborn, legitimate expectations will ground weak property rights (WPRs). Flimsy protections for material holdings, WPRs allow second parties to snatch property for utilitarian reasons. Suppose that I have directed tennis for only one month and can switch careers without profound pain. Suppose also that government confiscates the court to build a more convenient post office or a less circuitous highway. If the construction

[210] Other theorists have referred to SPRs as "property rules" or "fundamental property rights." See, e.g., Calabresi and Melamed, "Property Rules, Liability Rules, and Inalienability" and Wright, "Fundamental Property Rights."

project boosts net utility, such that the gainers can palliate the losers, and if public officials pay appropriate compensation, equal to the objective value of the condemned property, then WPRs will not block the condemnation.[211]

WPRs pose moral hazards for breakaway movements. Separatists routinely take collective property residing in government hands and common property appertaining to the public domain; less frequently but no less significantly, they confiscate private property belonging to other people. The non-consensual takings might not achieve potential Pareto improvements, such that the secessionist gainers can compensate the patriotic losers. Additionally, secessionists might offend liberal standards by refusing to compensate former property owners. Where breakaway movements fail to produce net social improvements and compensate the economic victims, WPRs will trigger the principle of harm and overturn the presumption for secession.

Despite their force, both SPRs and WPRs must yield to competing rights on certain occasions.[212] Like other moral advantages, property rights rest on vital interests which serve human well-being. I have stressed that strong and weak entitlements to material goods can protect compelling interests in legitimate expectations. Absolute entitlements, however, might impede human flourishing by precluding separatists from escaping abominations like slavery and

[211] WPRs can only approximate the true value of expropriated property to the original owner. Excellent studies of just compensation are Michelman, "Property, Utility, and Fairness," Munzer, "Compensation and Government Takings of Private Property," 205-13, Paul, *Property Rights and Eminent Domain*, and Samuels, *Essays on the Economic Role of Government*, vol. 1, part 3.

[212] Nagel, "Libertarianism Without Foundations," 196-99; Pennock, "Thoughts on the Right to Private Property," 180-82.

genocide. In the final chapter, I cite traditional and cultural rights that override strong and weak property rights and restore the presumption for secession.

My formula for allocating both strong and weak property rights entails an unsettling corollary: Original owners can lose moral claims to recover stolen goods.[213] The Chevy that I purloined from your driveway decades ago presumably does not stand at the center of your life today. Like many victims of auto theft, you either purchased another vehicle or discovered alternative transportation. Although you once dreamed of repossessing your favorite Chevy, you have now refashioned your life without the car. By discarding legitimate expectations and abiding plans involving the stolen vehicle, you forfeited moral rights to regain the missing Chevy.

The unsettling corollary fails when reclamation interests persist over time. For instance, tribes from New Zealand to North America base cultural activities and religious traditions on sacred lands. Aboriginal people also glean senses of identity and feelings of worth from collective property. Several centuries after the wrongful dispossessions, stolen territory and religious artifacts still animate native life and shape abiding plans. Some tribes even expect to regain ancestral property through official or illicit channels.[214] Where lost goods play continuing roles in the lives of victims, new patterns of possession will not fade original rights to property.

My allocative formula additionally implies that fresh rights can arise from wrongful

[213] Waldron, "Superseding Historic Injustice," 18-20.

[214] Addis, "Individualism, Communitarianism, and the Rights of Ethnic Minorities," 1266; Moustakas, "Group Rights in Cultural Property."

takings.[215] Thieves commonly fashion elaborate plans around pilfered goods. Territorial plunderers, in particular, sink enormous economic and psychological resources into building homes, growing crops, and launching enterprises on stolen lands. Completely innocent of the original injustice, immigrants and descendants might also devise lasting plans around material goods with dubious pedigrees. Appreciating the limits of the law, clever thieves expect to get away with many crimes. These reasonable expectations cannot condition new rights. If, somewhat differently, economic victims acquiesce to wrongful takings, then new rights can flow to the authors and the beneficiaries of unjust acts.

Both corollaries to the allocative formula affect the morality of secession. Estonia, Lithuania, and Latvia gained political independence from the Russian empire in 1920. Two decades later, Soviet armies recaptured the Baltic properties according to a secret pact between Hitler and Stalin.[216] Russians promptly regarded the Baltic booty as communist property.[217] For fifty years, the original aggressors, new Russian settlers, and many innocent offspring based their lives on lands that they expected to retain. If time extinguished the original rights of Baltic peoples and vested new entitlements in ethnic Russians, then the secessions of 1991 might have violated property rights and tripped the harm principle.

The Baltics should insist that illegitimate expectations cannot generate new titles. Baltic

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[215] International lawyers have reached similar conclusions regarding conventional rights. See Dinstein, *War, Aggression and Self-Defence*, 157-61 and Mulgan, "Should Indigenous Peoples Have Special Rights?" 385-86.

[216] Remnick, *Lenin's Tomb*, 236-40; Vizulis, *The Molotov-Ribbentrop Pact of 1939*; Webb, "The International Legal Aspects of the Lithuanian Secession," 310-12.

regulars did not stand suicidally against Russian armies, but guerilla resistors organized in 1940 and operated throughout the postwar period.[218] Western states simultaneously defended the Baltic cause by refusing to recognize the communist puppets and receiving diplomats from the exiled governments.[219] Some Russians predicted, quite reasonably, that the Baltic people would never regain the stolen property, but reasonable expectations cannot support new rights to contested territories. Active protests demonstrated that the Baltic people never legitimized the Russian expectations by acquiescing to the wrongful takings. Thus, the secessions of 1991 probably violated few, if any, Russian property rights.

Without rendering a final judgement on Baltic separatism, I emphasize that property rights pose serious obstacles for secessionist movements. People develop legitimate expectations and abiding plans involving physical objects. The expectations and plans support specific distributions property rights, both weak and strong. By seizing territory belonging to other people, social groups, and whole communities, separatists can violate property rights and overturn the presumption for secession. To rebuild the liberal presumption, breakaway movements must appeal to competing rights that make independence a moral imperative. I consider several competing rights in the final chapter.

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[217] Taagepera, *Estonia*, 218-21.

[218] Laar, *War in the Woods*.

[219] Grazin, "The International Recognition of National Rights," 1405-7.

CHAPTER FIVE:
REBUILDING THE PRESUMPTION

Let me review the philosophical argument that has spanned four chapters. Whether individual or collective, a moral right to secede must rest on vital interests which serve human well-being. The interest in freedom establishes a presumption for secession, but it does not justify separatist rights *tout court*. Ultimately, the principle of harm, which constrains separatists from injuring others in significant ways, will qualify the right to secede. I have shown that separatists can inflict moral harm by breaking promises, exploiting cooperationists, jeopardizing welfare, and upsetting expectations. Where separatists visit such injuries on others, the original presumption for secession may not crystalize into a conclusive right to secede.

Acknowledging the harm that secession inflicts on others, separatists might buttress their cases by appealing to necessity. More precisely, desperate rebels might show that secession alone will secure vital interests beyond associative freedoms. Under extreme circumstances, secession will provide the only escape from ruthless leaders and intolerant citizens who compromise the security, liberty, and property of others. In different situations, secession will afford indispensable protection to cultural structures that anchor personal identities and enhance individual autonomy. If sufficiently strong, the appeal to necessity will restore the presumption for secession by overriding political obligations and economic rights.

Importantly, the necessity plea will not justify secession when alternative reforms can protect essential interests without harming others. Dissatisfied populations can propose a range

of political statuses short of full sovereignty.[220] For example, individuals and groups can demand regional autonomy within a federal system,[221] greater representation in national bodies,[222] collective entitlements to property and culture,[223] and individual rights of equal citizenship. Often, these demands will fall on deaf ears.[224] Occasionally, non-separatist reforms will perpetuate injustices by leaving important powers in central hands or threatening basic interests protected by moral rights.[225] If alternative reforms prove politically feasible and morally satisfactory, however, then the appeal to necessity will not support a right to secede.

Even when secession offers the sole escape from moral injustice, the necessity plea might not justify a separatist right. Perhaps independence would avert evils that seem insufficiently grave to overrule political obligations and economic rights. For example, the property rights that separatists infringe could outweigh the cultural threats that independence eludes. Unfortunately,

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[220] General discussions of alternative statuses appear in Hannum, *Autonomy, Sovereignty and Self-Determination*, *passim* and Kingsbury, "Self-Determination and 'Indigenous Peoples'," 390-93.

[221] Ackerman, *Social Justice in the Liberal State*, 190-94; Arneson, "Primary Goods Reconsidered," 436. In *After Apartheid*, Kendall and Louw suggest ethnic cantons for South Africa. McGee recommends a similar scheme for Yugoslavia in "The Theory of Secession and Emerging Democracies," 466-70. Most radically, Pogge proposes dispersing political authority over nested territorial units. See his "Cosmopolitanism and Sovereignty," 57-69.

[222] Birch, *Nationalism and National Integration*, 228.

[223] Claude, *National Minorities*, chap. 1; Kymlicka, *Liberalism, Community and Culture*, chaps. 7-14.

[224] Serbs resisted the confederate proposals of Croatia and Slovenia. Iraqi officials similarly rejected Kurdish demands for political devolution. See Iglar, "The Constitutional Crisis in Yugoslavia," 216, 235-37 and Buchheit, *Secession*, 157-61.

[225] I am thinking particularly Kymlicka's proposal to sacrifice certain liberties for the sake of cultural integrity.

the task of ranking evils and balancing rights still vexes moral philosophers.[226] In this thesis, I do not assign lexical priorities or precise weights to every right that secession affects. Instead, I provide a rough guide to the morality of secession by mixing principles and intuitions.

Finally, a successful appeal to necessity might leave a troublesome moral residue.[227] The necessity plea provides a strong argument for defeating political obligations and economic rights, but the plea might not dissolve obligations and rights completely. If a breakaway movement must infringe certain rights to avert a greater evils, then the same movement should seek advance release from proper right-holders. When separatists cannot attain release, then the political rebels might bear moral duties to compensate the people they injure. At a minimum, separatists should display some spirit of reluctance and sense of apology when they harm innocent parties to advance higher causes.

I conclude my short essay by developing the necessity plea more fully. In the first section, I discuss several basic rights, ranging from physical security to material welfare, that many liberals have long included in their moral catalogues. I explain how traditional rights can rebuild the philosophical case for secession. In the next section, I examine a more controversial member of the liberal litany: the right to culture. In particular, I test the argument that a cry for culture can justify a right to secede. I find that both traditional and cultural pleas can support separatist rights by overriding political obligations and economic justice.

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[226] Instructive discussions appear in Feinberg, *Harm to Others*, chap. 5, Munzer, *A Theory of Property*, chap. 11, and Waldron, "Rights in Conflict".

[227] On moral residue, see Thomson, *The Realm of Rights*, chap. 3.

I. TRADITIONAL RIGHTS

Few theorists would dispute that the universal interest in physical security grounds moral rights. Individuals cannot achieve well-being while suffering intense pain, experiencing grotesque disfigurement, or losing their lives at the hands of others. Short of bodily harm, people flourish while living in permanent fear of physical assault. Montesquieu described fear as a physiological reaction, a moral impulse that flows from the soul and paralyzes the body. Both physically and psychologically, fear cripples its victims, who cannot enjoy the present in anticipation of the future.[228] The shared need for physical security underlies human rights against bodily trespass, an umbrella term covering many forms of forcible assault.

In the postwar period, some groups have justified secession as the only alternative to physical extermination. During the Nigerian riots of 1966, frenzied northerners massacred thousands of eastern Ibos.[229] Asserting that secession alone could protect the Ibo population, leaders declared independence for Biafra, the eastern region. Casualties mounted when Nigerian armies bombed and starved the Biafran population. Whatever the ultimate intentions of the government in Lagos,[230] the Ibos found compelling reasons to protect their lives by struggling for

[228] Montesquieu discuses fear in *Spirit of the Laws*, VIII.8, 10 and "Persian Letter 34." For a recent interpretation, see Shklar, *Montesquieu*.

[229] Metz, *Nigeria*, 57.

[230] International observers found no clear evidence of genocidal designs. See Heraclides, *The Self-Determination of Minorities*, 93.

independence.

The Bengalis, like the Ibos, ostensibly seceded to survive. During the Indo-Pakistani war of 1965, national armies failed to defend East Pakistan. Awami politicians from the eastern region cited this wartime neglect in the political campaign of 1970.[231] When electoral returns favored the Awami League, the armed forces of West Pakistan turned from casual disregard to brutal attention by attacking Hindi populations and Awami supporters. Soldiers from Karachi slaughtered children, raped women, tortured activists, destroyed villages, and looted property in the eastern wing. The unprecedented suffering shifted international support to the Bengali cause.[232]

Popularized by the Ibos and the Bengalis, the argument from security can boost the presumption for secession. By declaring independence and erecting governments, separatists can establish the organizational apparati to defend themselves against lethal aggressors. By taking natural resources and manufactured goods, victimized groups can also acquire the physical geography and the economic capacity for effective protection. When militant governments threaten the bodily integrity of citizens, then the interest in security will supply a rationale for secession.

Depending on the gravity of the threat and the solutions short of independence, the security plea can override countervailing duties and establish secessionist rights. Iraqi Kurds have recently claimed Muslim lands to escape physical genocide, since Saddam Hussein has

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[231] Bhyiyan, *The Emergence of Bangladesh*, 96-110.

[232] Islam, "Secessionist Self-Determination"; Sisson and Rose, *War and Secession.*

refused political compromise and neighboring countries still persecute Kurdish minorities.[233] Intuition suggests that Sunni aggressors forfeited property rights by perpetrating grievous injustices. If legitimate entitlements remain, then the security interests of innocent Kurds should supersede the property rights of Muslim populations. The Kurdish example demonstrates that appeals to security can justify rights to secede.

Regardless of the level of violence and the alternatives to independence, the security plea may not strengthen the separatist presumption under three conditions. First, the right of separatist self-defense does not extend to culpable aggressors. If the Bengalis had launched an offensive war against West Pakistan, then the former could not use security pleas to justify self-government. Likewise, parties who incite attacks may not qualify for secessionist relief, unless retaliation proves disproportionate to the provocation.[234] Finally, the security plea will not benefit separatist movements that intend to threaten internal minorities and geopolitical neighbors.

Most liberals will agree that the interest in freedom, distinct from the value of security, grounds moral rights. In Chapter Two, I argued that multifaceted liberty plays a crucial role in promoting human flourishing. Freedoms of association, participation, religion, and speech permit adults to evaluate and undertake projects that will make life intrinsically better. The same freedoms also allow rational choosers to reap the benefits of valuable activities. From the liberal

[233] Neighbors include Syria, Turkey, and Iran. For a recent discussion of the Kurdish problem, see Black, *Genocide in Iraq*.

[234] Sloan, *The Law of Self-Defense*, chap. 3.

perspective, people could not achieve human excellences without copious liberties.

Separatists have often demanded new borders to regain basic liberties. In eastern Pakistan and southern Sudan, civil warriors battled military governments that had restricted privileges to speak openly and participate fully in the political process. The oppressed populations sought independent states as alternatives to the repressive regimes. Similarly, the Nigerian government insulated itself from the political influence of the Biafran region, home of the ethnic Ibo. Biafrans cited the injustice and other offenses when declaring independence. Finally, Katangan separatists vowed to restore the basic liberties that the Lumumban government had abolished.[235]

Less frequently, secessionists have maintained that independence could safeguard the basic liberties of *neighboring* populations. During the 1960s, many countries feared that communists had established a foothold in the Congo and would make radical inroads on the continent. Katangan leaders pledged to rescue the heart of Africa from the clutches of communism. Self-professed advocates of western democracy, the leaders of Katanga portrayed themselves as conservative alternatives to Lubumba's legacy. By seceding, these Katangans could reclaim territory for the free world. Persuaded by the anti-communist rhetoric, policy-makers in London, Paris, and Washington supported the Katangan cause.[236]

Sometimes the cry for liberty will justify a right to secede. If independence movements

[235] See the cases of Bangadesh, Sudan, Biafra, and Katanga in Heraclides, *The Self-Determination of Minorities*.

[236] Heraclides, *The Self-Determination of Minorities,* 63, 66, 71-76.

promise to restore basic liberties, then the separatist case may seem attractive enough to trump political obligations and economic rights.[237] Promises, unfortunately, do not guarantee results. Despite his democratic propaganda, the first elected president of the Katangan separatist movement scorned western liberties and longed for an absolute monarchy.[238] More recently, separatist leaders in Georgia, Latvia, and Uzbekistan have transformed liberation movements into ethnocratic dictatorships which have outlawed the opposition and muzzled the press.[239] When separatists use democratic rhetoric to mask autocratic intentions, the plea for liberty will not augment the presumption for secession.

I have shown how secessionists can secure basic liberties by leaving unfree states; more difficult issues arise when separatists abandon liberal communities to expand participatory freedoms. Suppose that a representative government upholds the dictates of justice by safeguarding the liberties of citizens. Suppose also that a radical group within the state's jurisdiction desires a deliberative democracy. Instead of empowering elites to craft policies, deliberative democracies resolve disputes through discussions. Members convene publicly to debate alternatives and forge compromises which appeal communally. Finally, suppose that deliberative democrats cannot realize their radical vision within the present state. Can democratic desires affect the morality of secession?

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[237] Stromseth, "Self-Determination, Secession and Humanitarian Intervention by the United Nations," 371.

[238] Heraclides, *The Self-Determination of Minorities*, 63.

[239] Alksnis, "Suffering from Self-Determination"; Etzioni, "The Evils of Self-Determination," 21, 24.

A necessity plea for deliberative democracy may augment the presumption for secession. Some theorists have argued that deliberative schemes will cultivate rationality by educating the electorate about political issues. The schemes might also induce participants to behave communally. In public fora, people cannot propose narrowly self-regarding actions. Instead, interlocutors must launder preferences to persuade their peers. Finally, the deliberative ideal might accord with the liberal intuition that all humans have intrinsic value and should participate equally in collective decision-making.[240] If valid, such democratic arguments will strengthen the secessionist presumption.

Far more vexing problems surface when separatists dream of leaving free societies and establishing illiberal states, rather than participatory democracies. For political or religious reasons, some people deny the value of freedom and the limits of government that have remained hallmarks of liberalism for two-hundred years. Some religious fundamentalists, for instance, believe that human excellence requires strict adherence to the will of God. These religious zealots do not regard multifaceted freedom as an essential component of human well-being, let alone the highest-order human interest. Unhappy in secular environments, certain fundamentalist groups may try to carve theocratic states out of liberal territories.

If strong-minded liberals resist the separatist dream, then fundamentalist groups might threaten liberalism itself. More precisely, religious enthusiasts could overthrow social

[240] I cannot give these democratic arguments the attention they deserve. Fuller discussions appear in J. Cohen, "Deliberation and Democratic Legitimacy," Dahl, *Democracy and Its Critics*, chap. 8, Deitz, "Context is All," Miller, "Deliberative Democracy and Public Choice" and *Market, State, and Community*, chap. 10, and Phillips, *Engendering Democracy*, esp. 162-65.

institutions that guarantee basic freedoms. Liberals sometimes assume, quite naively, that free polities will sustain precious constitutions and libertarian cultures indefinitely. On the contrary, liberalism's tolerant framework allows fundamentalist groups to gather loyal followers and forge strong communities. In time, illiberal enclaves could achieve critical mass and dismantle fundamental rights. Without the option to secede, religious groups might impose comprehensive doctrines on the lovers of freedom.[241]

Liberal rhetoric will not rescue free institutions from theocratic threats. Following Rawls, liberals could ask fundamentalists to renounce religious doctrines in the political realm.[242] Unfortunately, the violent row over Salman Rushdie's *Satanic Verses* demonstrated that innocent requests will carry little clout in certain fundamentalist circles.[243] Many Christians and Muslims refuse to separate church and state according to the fundamental tenets of liberal theory. Arguably, ardent fundamentalists cannot distinguish the private realm from the public sphere without offending God's word and risking eternal salvation.

When persuasion fails, the champions of freedom could defend liberal institutions by suppressing fundamentalist threats. For starters, legislators could restrict basic privileges to speak and associate. Without expressive and associative freedoms, religious communities could not propagate their messages and swell their ranks. Simultaneously, the state could require a

[241] Political movements, whether Marxist or Fascist, might also use basic freedoms to destroy the liberal state. From an empirical perspective, religious and political movements have proven far more capable of killing fledgling democracies than upsetting mature polities with long trajectories of liberal governance.

[242] Rawls, "Justice as Fairness."

unitary civic pedagogy in primary and secondary schools.[244] By fostering certain beliefs and character traits, civic curricula could shape fundamentalist children into liberal citizens. Through these and other measures, the state could regulate political-cultural marketplaces to favor liberal values over ideological competitors.

Defensive coercion would not betray the liberal principle of moral neutrality, properly understood.[245] Liberals sometimes say that governments should provide impartial frameworks for moral diversity and should not favor particular conceptions of the good life.[246] Nevertheless, liberals cannot remain indifferent to justice. As long as fundamentalists behave consistently with the liberal institutions that protect basic freedoms, political leaders must countenance religious practices.[247] When burgeoning fundamentalism threatens the liberal state, then the advocates of freedom should retaliate accordingly. Notwithstanding neutral rhetoric, political liberalism is a fighting creed.

Although consistent with the proper notion of liberal neutrality, defensive coercion would precipitate moral tragedy. By limiting basic freedoms and mandating civic education, liberals would compromise the autonomy of certain religious groups. More baldly, the champions of

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[243] Taylor, "The Rushdie Controversy."

[244] Gutmann, *Democratic Education*.

[245] For deeper analysis than I can supply here, see Galston, *Liberal Purposes*, Kymlicka, "Liberal Individualism and Liberal Neutrality," Nagel, "Moral Conflict and Political Legitimacy," Rawls, *A Theory of Justice*, 216-21, Raz, *The Morality of Freedom*, sec. II, and Waldron, "Legislation and Moral Neutrality."

[246] Dworkin, "Liberalism."

[247] My minimalist position does not require fundamentalist groups to accept liberal values.

freedom would impose a secular order on unreceptive fundamentalists. From a universalist perspective, the liberal imposition seems necessary but unfortunate. All people, including the most fervent Christians and Muslims, should enjoy the freedom to base their own lives on their own convictions. Liberal governments may find good reasons to suppress fundamentalist threats, but coercive measures will still entail moral costs.

My analysis suggests a paradoxical conclusion: The interest in liberal freedom can strengthen the presumption for illiberal secession.[248] Instead of attacking free institutions and provoking coercive responses, fundamentalists could leave secular states and establish theocratic polities. In religious republics, competent adults could discard their own rights. Meanwhile, liberal states could sustain multifaceted freedoms without employing coercive measures. Secession would enhance associative freedoms by allowing fundamentalists and liberals to forge their own relationships and pursue their own projects according to their own lights.

The paradoxical conclusion will not hold if religious separatists deny exit rights.[249] In some cases, Christian or Muslim territories will contain adult minorities who prefer basic freedoms to theological rule. In other cases, fundamentalists will raise children who yearn to desert their religious communities. Liberals might permit competent adults to curtail their own

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[248] A similar argument appears in Buchanan, *Secession*, 34 and Galston, "Pluralism and Social Unity," 717.

[249] The seemingly weak requirement of exit rights could support a full range of liberal advantages. For example, religious communities cannot provide *formal* exit rights without respecting liberal prohibitions on slavery and coercion. *Substantial* exit rights might also require freedoms of speech and association, as well as entitlements to education and income. Armour, "Human Rights: A Canadian View," 201-2; Kukathas, "Are There Any Cultural Rights?" 128 and "Cultural Rights Again," 676-78; Kymlicka, "The Rights of Minority Cultures," 143.

freedoms, but theorists should not allow illiberal groups to trap innocent populations. If fundamentalists prohibit secession and emigration, then the interests of minority populations and future generations will militate against the paradoxical conclusion.

When neither recursive secession nor free emigration seems feasible,[250] illiberal separatists must respect minority rights. Religious fundamentalists need not grant a full range of liberal freedoms, but they should offer strong safeguards for dissenting adults and unorthodox children. In particular, theocratic communities should protect minority rights of speech and association, as well as elemental claims to bodily integrity.[251] Although limited rights may jeopardize the fundamentalist project, the paradoxical conclusion requires such rights. Fundamentalists who justify secession on the grounds of liberty must also respect the diverging interests of dissenting minorities.

I have already presented several challenging arguments and will pause briefly to summarize my conclusions. I concede that separatists can override conflicting rights and justify political independence to avert genocide or escape repression. I regard as more controversial (but somewhat plausible) the notion that separatists can defeat moral rights to build deliberative democracies. I treat as most dubious (but highly interesting) the claim that fundamentalists can justify independence in the name of associative freedoms. The fundamentalist contention will not hold when religious separatists deny minority rights. The strongest argument for illiberal

[250] In the second and third chapters, I cited practical and sentimental barriers to secession and emigration.

[251] Taylor, *Multiculturalism and the Politics of Recognition*, 59-61. See also Walzer's "Comment" in the same book.

secession emphasizes the importance of culture, rather than the value of freedom. Before considering the cultural argument, I examine a final appeal to traditional rights: the necessity plea for economic justice.

Although liberals dispute the specific demands of economic justice, most theorists admit that people bear moral rights to material goods. I have explained that any reasonable theory of liberal persuasion should accommodate some form of welfare rights. Grounded in vital interests that promote human flourishing, welfare rights entitle every individual to a minimum quantity of basic goods. I have also maintained that liberal theories of economic justice should include some variant of property rights. By securing legitimate expectations, property rights protect life plans that deepen autonomy and promote well-being.

In recent decades, some groups have proposed independence to guarantee welfare rights. Bengali separatists complained that the Karachi government extracted valuable resources from eastern Pakistan but denied minimal levels of basic goods, including food and education, to the same region. Tension mounted in 1970 when Islambad displayed callous indifference toward 200,000 easterners, who lost their lives in a catastrophic flood. Ultimately, the Bengalis decided that political independence offered the only alternative to material destitution.[252]

The allure of separatist appeals to welfare rights will hinge on the detailed demands of distributive justice. My liberal vision entitles each person to an adequate minimum of material goods, but many stubborn questions remain. How much food, medicine, and education will seem adequate? Furthermore, may governments sacrifice minimal levels in the short-run to achieve

[252] Bhuiyan, *Emergence of Bangladesh*, 81-96; Heitzman and Worden, *Bangladesh*, 26-29.

general prosperity in the long-run? I cannot answer such complex questions within the confines of this brief essay. I merely submit that liberals will recognize economic injustice in many real-world situations, including the Bengali case that I just described.

More commonly, separatists have hailed independence as the only means of defending property rights. American revolutionaries asserted that royal mercantilism advantaged the motherland and disadvantaged the colonies in morally arbitrary ways. Biafrans similarly claimed that the Nigerian government exploited the ethnic Ibos to enrich rivals who floated well above the poverty line. Finally, Basques protested that Spanish officials exceed the minimal demands of economic justice by levying excessive taxes on the Euskadi region. In America, Nigeria and Spain, disaffected groups demanded political independence to secure private property from confiscatory taxation.

When economic injustice truly obtains, an appeal to necessity can support a right to secede. Initially, the dire need for material welfare will override both political obligations and property rights. No patriotic promise should become a starvation pact; no material entitlement should countenance abject poverty. Furthermore, property rights should outweigh political obligations. Neither pledges of allegiance nor duties of fairness require separatists to endure governments that confiscate property without moral warrant. Nevertheless, the economic plea will not always ground separatist rights. In particular, the interest in stable expectations should not trump the welfare of the materially destitute.

II. CULTURAL RIGHTS

From Quebec to Sri Lanka, minority groups have demanded political independence in the name of cultural rights.[253] Liberal theorists have responded to the cultural cries with profound ambivalence. On the one hand, liberals deny that cultures possess value independent of the benefits for particular members. In the moral ontology of liberalism, individuals alone deserve primary standing. On the other hand, liberals increasingly concede that healthy cultures improve human well-being. By creating contexts for choice and harbors for identity, cultural communities can promote flourishing lives. In this section, I examine the liberal case for cultural rights. Specifically, I argue that a necessity plea for culture can strengthen the moral presumption for secession.

On some accounts, the right to culture rests on the interest in freedom.[254] By supplying meaningful contexts for individual choice, cultures promote liberty and enhance well-being. First, cultures highlight options. From a limitless array of diverse alternatives, cultural narratives make certain lifestyles particularly salient. Second, cultures promote harmony. More precisely, cultural networks connect otherwise discrete goals into coherent plans that provide continuity within lives and across generations. Without cultures to contextualize choices, many people would develop paralyzing anomie; they would conclude that nothing is worth doing, because

[253] I understand cultural rights as moral claims to protect the health and durability of cultural communities.

[254] See, e.g., Kymlicka, *Liberalism, Community, and Culture*, pt. 3.

everything is possible and unconnected.[255] Liberals who recognize rights to pursue projects and forge relationships should also acknowledge claims to protect cultures that facilitate freedom.

Plainly, the argument from individual freedom does not support rights to repressive cultures. As my discussion of fundamentalism revealed, some cultures insist that neither critical reflection nor individual choice contribute significantly to the good life. Whether political or religious, illiberal cultures subordinate the volition of the individual to the strictures of the community or the revelation of God. Rituals and punishments teach obedience and conformity; indoctrination and brainwashing limit informed choice. If the advocates of cultural rights appeal to the value of human freedom, then illiberal cultures will merit no special protection.[256]

A more versatile argument grounds cultural rights in human dignity.[257] Many individuals anchor their personal identities in cultural harbors. These people define themselves as Christian or Muslim, Cherokee or French based on the encompassing groups with which they associate.[258] Individuals also derive self-images, in part, from the statuses of cultures in the eyes of other people. The thirst for cultural recognition, a source of self-respect, seems almost universal.[259]

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[255] Taylor, *Hegel and Modern Society*, 157.

[256] Kymlicka concedes this point in *Liberalism, Community and Culture*, 195-96 and "The Rights of Minority Cultures," 142. See also Carens, "Migration and Morality," 36-40 and Kukathas, "Are There Any Cultural Rights?" 120-24.

[257] Margalit and Raz, "National Self-Determination," 445-46; Tamir, *Liberal Nationalism*, 35-36, 72-74.

[258] For an eloquent argument connecting identity and community, see Sandel, *Liberalism and the Limits of Justice*, chap. 1.

[259] Taylor, *Multiculturalism and the Politics of Recognition*, 33-37.

When a fragile culture decays or disappears, its longstanding members can lose personal identities and self-esteem. When a more robust culture suffers social ridicule, then its adherents can internalize deprecatory stereotypes and begin doubting themselves.[260] Consequently, the interest in human dignity justifies the right to preserve cultures, both liberal and illiberal.

Although versatile, the appeal to human dignity affords no safety to pernicious cultures.[261] Some illiberal groups exist far beyond the moral pale. For instance, racist communities of Nazis, Klansmen, and skinheads build personal identity and self-esteem by asserting ethnic superiority and persecuting dissimilar cultures. Fascist groups similarly whip patriotic pride through gross deception, ruthless exploitation and lawless force. Certain religious communities generate solidarity and self-righteousness around the common goal of liquidating theological competitors. Whether racial, political, or religious, such repugnant cultures lack the bare legitimacy to condition moral rights.

Before connecting the right to culture with the morality of secession, I want to allay a potential misunderstanding. Some philosophers might protest that my theory of cultural rights could open the floodgates to trivial claims by groups like National Rifle Association and the Chicago Rotary Club. In reply, I doubt that either Riflemen or Rotarians achieve full autonomy and deep identity through hunting expeditions and service projects. Unlike interest groups and social cliques, cultural communities assume special importance by penetrating beyond a few areas of human life to encompass a broad array of important activities--everything from food and

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[260] May, *The Morality of Groups*, chaps. 5-6.

[261] Buchanan, "Individual Rights and Social Change," 70-73; Rule, "Tribalism and the State".

festivals to literature and leisure. Stretching into the past, cultures profoundly affect choice and dignity in the present.[262]

Under four scenarios, the plea for culture *could* strengthen the presumption for secession. First, separatists could demand self-rule to protect cultural rights from hostile governments. During the 1950s and 60s, the Abboud regime in Khartoum, Sudan launched a national campaign of Arabization and Islamization. To assimilate southern tribes into the northern fold, the government closed Christian missions, built imposing mosques, and established Islamic schools. A brief return to civilian rule did not stem the Islamic drive. When all traces of national goodwill evaporated, southern tribes decided that political independence would provide an effective source of cultural security.[263]

Second, communities might strengthen the presumption for secession by stressing the cultural need to seal porous borders. French-speaking Quebeckers complain that English-speaking immigrants will destroy the "distinct society" extending from the Hudson Bay to the Gaspé peninsula.[264] Basques similarly predict that the "invasión de maketos" will extinguish the unique culture in northern Spain, just as wagons of settlers destroyed Red communities in North

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[262] On the distinction between cultural communities and lesser groups, see Addis, "Individualism, Communitarianism, and the Rights of Ethnic Minorities," 1259-60 n. 99, Margalit and Raz, "National Self-Determination," 442-47, and Tamir, *Liberal Nationalism*, 58-69.

[263] Russell and McCall, "Can Secession Be Justified?" 105-8. Likewise, Ethiopian separatists pursued self-government to escape Selassie's policy of enforced Amharization. See Mayall and Simpson, "Ethnicity is Not Enough," 16-17.

[264] Armour, "Human Rights," 197-98; Carens, "Immigration, Political Community and the Transformation of Identity".

America.[265] Other groups fearing foreign intruders include the Christians in the southern Philippines, the Buddhists in southern Thailand, and the Kurds in northern Iraq. If valid, anxiety over immigrants might justify the drive to secede.

Third, cultural communities could excuse secession as political relief from negative recognition. Sudanese Muslims charge that southern "slaves" cannot perform advanced tasks or display valuable traits. In south Asia, the Burmese insist that the Karens lack raw intelligence and economic motivation. Over time, both the southerners of Sudan and the Karens of Burma have incorporated unflattering stereotypes into self-perceptions. For members of both communities, self-deprecation has impeded personal advancement.[266] To liberate themselves from attitudinal discrimination that violates cultural rights, both Sudanese southerners and Burman Karens have tried to secede.

Finally, separatists might demand independence to protect their cultural rights from indifferent majorities. Instead of propagating negative stereotypes, dominant parties sometimes display apathy or ignorance toward their cultural counterparts. Without intending to behave aggressively, indifferent majorities could out-vote weaker minorities and commandeer the resources necessary for cultural survival.[267] Dominant groups could also suppress diversity by implicitly defining the norms of humanity. Craving unconditional acceptance, cultural minorities

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[265] Horowitz, *Ethnic Groups in Conflict*, 175-78, 264.

[266] Horowitz, *Ethnic Groups in Conflict*, 167-71; Heraclides, *Self-Determination of Minorities*, 109-11. For a similar conclusion about colonial subjects, see Fanon, *The Wretched of the Earth.*

[267] For instance, an indifferent Australian majority could threaten the weak aboriginal minority by converting sacred land into mining towns. Different examples appear in Kymlicka, *Liberalism,*

may feel ashamed of their religious views, deviant accents, and other differences.[268] To secure a sphere of mutual recognition and preserve the vestiges of self-respect, minority cultures might seek political independence.

In the four scenarios that I have just described, the plea for culture might ground a right to secede. When neither individual freedom nor human dignity hang in the balance, separatists should not infringe political obligations or economic rights to achieve surplus benefits for cultural communities. Grave threats to cultural integrity and personal identity, on the other hand, can tip the moral balance toward political independence. Where communities are disappearing and esteem is evaporating, the cultural plea can override political obligations, which I consider less vital than communal survival. Economic justice will resist cultural pleas more strongly, but property rights may yield to cultural rights in dire situations.[269]

Two alternatives to secession could deprive the cultural plea of any moral force. First, people could abandon one culture and affiliate with another. Unlike physical handicaps, cultural identities admit gradual change. For instance, German-Americans and Italian-Americans have mainstreamed by exchanging national heritages for ethnic hybrids. In many cases, the road to cultural conversion will prove arduous or impassable, because dominant groups will bar assimilation or minority members will refuse change. Where conversion proves feasible and

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Community, and Culture, chap. 9.

[268] Young, *Justice and the Politics of Difference*, chaps. 4 and 6.

[269] In this thesis, I cannot rigorously defend my intuitive ranking of moral rights. Other philosophers may assign different weights to political obligations, economic justice, and cultural claims.

voluntary, however, cultural minorities can gain fresh contexts for choice and new anchors for identity.[270] By assimilating incrementally and willingly, minority members could obviate political independence.

Second, political reforms short of full sovereignty could protect rights to culture and weaken appeals to necessity. Ethnically diverse countries like Canada, India, and Switzerland have developed federal arrangements and minority rights to protect cultural communities from dominant groups.[271] Sometimes the reforms have proven sufficient for cultural security; other times the schemes have vested excessive power in central authorities. In certain cases, political independence might offer the best protection for minority groups.[272] Nevertheless, non-separatist solutions could promote the multifaceted freedoms and the human dignity that ground cultural rights.

Having developed both traditional and cultural pleas, I return briefly to the lingering question of legitimate standing: Should liberals assign separatist rights to individuals or collectives? The reader will recall that collective rights belong to social pluralities and cannot reduce to the mere sum of individual rights. When justifying collective rights, liberals must demonstrate that individual advantages insufficiently promote the human interest in breaking politically from existing states. Minority problems, economic justice, and necessity pleas, I

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[270] Danley, "Liberalism, Aboriginal Rights, and Cultural Minorities," 175-81; Horowitz, *Ethnic Groups in Conflict*, 41-55, 64-70.

[271] For a short survey, see Commonwealth Legal Advisory Service, *Protection of Ethnic Groups*.

[272] Miller, "The Nation-State: A Modest Defense," 7; Margalit and Raz, "National Self-Determination," 450; Nielsen, "Secession," 32-33.

argue, might compel liberals to supplement individual rights with collective privileges.

Initially, minority problems could force liberal theorists to acknowledge collective rights. Bracketing considerations of political obligation and economic justice, each Quebecker holds a moral right to secede alone, but no francophone may declare independence for the entire province. Regional secession would upset the life-plans and future prospects of aboriginal and anglophone minorities. The vital interests of one francophone surely do not outweigh the cumulative interests of minority populations and ground an individual right to an independent Quebec. On the other hand, the aggregated interests of many francophones could outweigh the competing demands of cultural minorities and condition collective secessionist rights, which no francophone could exercise without the solidarity of others.[273]

Similarly, the dictates of economic justice could require collective supplements to individual rights. Assume that Katangan secession would neither disappoint minority groups nor breach political obligations, but regional independence would infringe economic rights by extracting critical resources and common property from the integrated state. Confronting the welfare rights and property entitlements of Congolese remainders, the interests of one rebel cannot justify an individual right to Katangan secession. Any right to regional self-determination, different from personal secession, must rest with the collective body of Katangan separatists, whose combined interests could trump economic rights in the rump state.

Finally, cultural pleas could warrant group rights to self-determination. Most people

[273] For a parallel argument regarding the Palestinian issue, see Raz, *The Morality of Freedom*, 207-9. See also Waldron, "Can Communal Goods be Human Rights?" sec. 3.

possess vital interests in the health of cultural communities, but no individual may protect cultures by imposing onerous duties on whole societies. The sum of individual interests in cultural welfare, on the other hand, grounds collective rights to regulate property, levy taxes, restrict voting, and control education for the sake of culture. As essentially collective appeals, cultural pleas support group rights to separate politically from an existing state. The same pleas would not endow an isolated francophone with an individual right to an independent Quebec.

I have summarized my conclusions in each chapter. Here, I will encapsulate my argument in a few sentences. The human interest in freedoms of association and participation supports a presumption for secession by individuals and groups. Where declarations of independence neither violate political obligations nor precipitate economic injustices, the rebuttable presumption will crystallize into a conclusive right. If breakaway movements infringe liberal rights, then necessity pleas can override competing obligations and ground separatist privileges for a person or a collective. Effective pleas could involve unconventional claims to cultural health, as well as traditional protections for liberty and property. This brief essay represents my preliminary thoughts on the morality of secession, a pressing issue at the close of the twentieth century.

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