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Theories of Secession

After a long period of neglect, political philosophers have turned their attention to secession. A growing number of positions on the justification for, and scope of, the right to secede are being staked out. Yet, so far there has been no systematic account of the *types* of normative theories of secession. Nor has there been a systematic assessment of the comparative strengths and weaknesses of the theoretical options.

Indeed, as I shall argue, there is even considerable confusion about what sorts of considerations ought to count for or against a theory of the right to secede. Although some writers pay lip-service to the distinction between arguments to justify a moral right to secede and arguments to justify prescriptions for how international law should deal with secession, they have not appreciated how great the gulf is between their moral justifications and any useful guidance for international law. This article begins the task of remedying these deficiencies.

I. The Institutional Question

Most existing theories either fail to distinguish between two quite different normative questions about secession, or fail to appreciate that the two questions require quite different answers.

1. Under what conditions does a group have a moral right to secede,

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independently of any questions of *institutional* morality, and in particular apart from any consideration of international legal institutions and their relationship to moral principles?

2. Under what conditions should a group be recognized as having a right to secede as a matter of international *institutional* morality, including a morally defensible system of international law?

Both are *ethical* questions. The first is posed in an institutional vacuum and, even if answerable, may tell us little about what institutional responses are (ethically) appropriate. The second is a question about how international institutions, and especially international legal institutions, ought (ethically) to respond to secession.

Those who offer answers to the first question assume that answering it will provide valuable guidance for reforming international institutions. Whether this is the case, however, will depend upon whether the attractive features of noninstitutional theories remain attractive when attempts are made to institutionalize them. I shall argue that they do not: Otherwise appealing accounts of the right to secede are seen to be poor guides to institutional reform once it is appreciated that attempts to incorporate them into international institutions would create perverse incentives. In addition, I shall argue that moral theorizing about secession can provide significant guidance for international legal reform only if it coheres with and builds upon the most morally defensible elements of existing law, but that noninstitutional moral theories fail to satisfy this condition. I contend that unless institutional considerations are taken into account from the beginning in developing a normative theory of secession, the result is unlikely to be of much value for the task of providing moral guidance for institutional reform.

Which question one is trying to answer makes a difference, because different considerations can count for or against a theory of the right to secede. Because I believe that the more urgent and significant task for political philosophy at this time is to answer the second question, I will concentrate on theories of the right to secede understood as answers to it.[1]

The chief reason for believing that the institutional question is the

1. There is another question that a comprehensive normative theory of secession ought to answer: Under what conditions, if any, ought a constitution include a right to secede, and what form should such a right take? See Allen Buchanan, *Secession: The Morality of Political Divorce From Fort Sumter to Lithuania and Quebec* (Boulder, Col.: Westview Press, 1991), pp. 127–49.

more urgent one is that secession crises tend to have international consequences that call for international responses. If these international responses are to be consistent and morally progressive, they must build upon and contribute to the development of more effective and morally defensible international institutions, including the most formal of these, the international legal system.

Because secessionist attempts are usually resisted with deadly force by the state, human rights violations are common in secession. Often, the conflicts, as well as the refugees fleeing from them, spill across international borders. Recent events in the former Yugoslavia demonstrate both the deficiencies of international legal responses and the lack of consensus on sound ethical principles to undergird them.[2]

Some, perhaps most, recent writers offering accounts of the right to secede do not even state whether, or if so how, their proposals are intended to be incorporated into international legal regimes.[3] They refer only to "the right" to secede, without making it clear whether this means a noninstitutional ("natural") moral right or a proposed international legal right. Others signal that they are proposing changes in the way in which the international community responds to secession crises, and this presumably includes international legal responses, but they appear unaware of the gap between their arguments concerning the justification and scope of a moral right to secede and the requirements of a sound proposal for reforming international law.[4] Finally, some analysts

2. International law recognizes a "right of all peoples to self-determination," which includes the right to choose independent statehood. However, international legal practice has interpreted the right narrowly, restricting it to the most unambiguous cases of decolonization. The consensus among legal scholars at this time is that international law does not recognize a right to secede in other circumstances, but that it does not unequivocally prohibit it either. Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1990), pp. 27–39; W. Ofuatey-Kodjoe, *The Principle of Self-Determination in International Law* (New York: Nellen Publishing Co., 1977); Christian Tomuschat, ed., *Modern Law of Self-Determination* (Dordrecht: Martinus Nijhoff Publishers, 1993).

3. Harry Beran, *The Consent Theory of Political Obligation* (London: Croom Helm, 1987); David Copp, "Do Nations Have a Right of Self-Determination?" in Stanley G. French, ed., *Philosophers Look at Canadian Confederation* (Montreal: Canadian Philosophical Association, 1979), pp. 71–95; David Gauthier, "Breaking Up: An Essay on Secession," *Canadian Journal of Philosophy* 24, no. 3 (1994): 357–72.

4. Daniel Philpott, "In Defense of Self-Determination," *Ethics* 105 (January 1995): 352–85; David Gauthier, "Breaking Up: An Essay on Secession," *Canadian Journal of Philosophy* 24, no. 3 (1994): 357–72; Michael Walzer, "The New Tribalism," *Dissent* 39, no. 2 (Spring 1992): 165–69.

acknowledge this gap and cautiously note that their theories are only intended to provide general guidance for the latter enterprise, but provide no clues as to how the gap might be bridged.[5] None of these three groups has articulated or even implicitly recognized the constraints that are imposed on accounts of the right to secede, once it is clearly understood that what is being proposed is an international legal right.

Keeping the institutional question in the foreground, I will first distinguish between two basic types of theories of the right to secede: *Remedial Right Only Theories* and *Primary Right Theories.* All normative theories of secession can be classified under these two headings. In addition, I will distinguish between two types of Primary Right Theories, according to what sorts of characteristics a group must possess to have a Primary Right to secede: *Ascriptive Group Theories* and *Associative Group Theories.*

Then I will articulate a set of criteria that ought to be satisfied by any moral theory of the right to secede capable of providing valuable guidance for determining what the international legal response to secession should be, and explain the rationale for each criterion.

Finally, after articulating the main features of what I take to be the most plausible instances of Remedial Right Only Theories and Primary Right Theories of secession, I will employ the aforementioned criteria in their comparative evaluation. The chief conclusion of this comparison will be that Remedial Right Theories are superior. Whatever cogency Primary Right Theories have they possess only when viewed in an institutional vacuum. They are of little use for developing an international institutional response to problems of secession.

II. Two Types of Normative Theories of Secession

All theories of the right to secede either understand the right as a *remedial* right only or also recognize a *primary* right to secede. By a right in this context is meant a *general,* not a *special,* right (one generated through promising, contract, or some special relationship). Remedial Right Only Theories assert that a group has a general right to secede if and only if it has suffered certain injustices, for which secession is the

5. Avishai Margalit and Joseph Raz, "National Self-Determination," *The Journal of Philosophy* 86, no. 9 (1990): 439–61. Christopher Wellman, "A Defense of Secession and Political Self-Determination," *Philosophy & Public Affairs* 24, no. 2 (Spring 1995): 357–72.

appropriate remedy of last resort.[6] Different Remedial Right Only Theories identify different injustices as warranting the remedy of secession.

Primary Right Theories, in contrast, assert that certain groups can have a (general) right to secede in the absence of any injustice. They do not limit legitimate secession to being a means of remedying an injustice. Different Primary Right Theories pick out different conditions that groups must satisfy to have a right to secede in the absence of injustices.

Remedial Right Only Theories. According to this first type of theory, the (general) right to secede is in important respects similar to the right to revolution, as the latter is understood in what may be called the mainstream of normative theories of revolution. The latter are typified by John Locke's theory, according to which the people have the right to overthrow the government if and only if their fundamental rights are violated, and more peaceful means have been to no avail.[7]

The chief difference between the right to secede and the right to revolution, according to Remedial Right Only Theories, is that the right to secede accrues to a portion of the citizenry, concentrated in a part of the territory of the state. The object of the exercise of the right to secede is not to overthrow the government, but only to sever the government's control over that portion of the territory.

The recognition of a remedial right to secede can be seen as supplementing Locke's theory of revolution and theories like it. Locke tends to focus on cases where the government perpetrates injustices against "the people," not a particular group within the state, and seems to assume that the issue of revolution arises usually only when there has been a persistent pattern of abuses affecting large numbers of people throughout the state. This picture of legitimate revolution is conveniently simple: When the people suffer prolonged and serious injustices, the people will rise.

6. Some versions of Remedial Right Only Theory, including the one considered below, add another necessary condition: the *proviso* that the new state makes credible guarantees that it will respect the human rights of all those who reside in it.

7. John Locke, *Second Treatise of Civil Government* (Hackett Publishing Co., 1980), pp. 100–124. Strictly speaking, it may be incorrect to say that Locke affirms a right to revolution if by revolution is meant an attempt to overthrow the existing political authority. Locke's point is that if the government acts in ways that are not within the scope of the authority granted to it by the people's consent, then governmental authority ceases to exist. In that sense, instead of a Lockean right to revolution it would be more accurate to speak of the right of the people to constitute a new governmental authority.

In some cases however, the grosser injustices are perpetrated, not against the citizenry at large, but against a particular group, concentrated in a region of the state. (Consider, for example, Iraq's genocidal policies against Kurds in northern Iraq.) Secession may be justified, and may be feasible, as a response to selective tyranny, when revolution is not a practical prospect.

If the only effective remedy against selective tyranny is to oppose the government, then a strategy of opposition that stops short of attempting to overthrow the government (revolution), but merely seeks to remove one's group and the territory it occupies from the control of the state (secession), seems both morally unexceptionable and, relatively speaking, moderate. For this reason, a Remedial Right Only approach to the right to secede can be seen as a valuable complement to the Lockean approach to the right to revolution understood as a remedial right. In both the case of revolution and that of secession, the right is understood as the right of persons subject to a political authority to defend themselves from serious injustices, as a remedy of last resort.

It was noted earlier that Remedial Right Only Theories hold that the *general* right to secession exists only where the group in question has suffered injustices. This qualification is critical. Remedial Right Only Theories allow that there can be *special* rights to secede if (1) the state grants a right to secede (as with the secession of Norway from Sweden in 1905), or if (2) the constitution of the state includes a right to secede (as does the 1993 Ethiopian Constitution), or perhaps if (3) the agreement by which the state was initially created out of previously independent political units included the implicit or explicit assumption that secession at a later point was permissible (as some American Southerners argued was true of the states of the Union). If any of these three conditions obtain, we can speak of a *special* right to secede. The point of Remedial Right Only Theories is not to deny that there can be special rights to secede in the absence of injustices. Rather, it is to deny that there is a *general* right to secede that is not a remedial right.

Because they allow for special rights to secede, Remedial Right Only Theories are not as restrictive as they might first appear. They do *not* limit permissible secession to cases where the seceding group has suffered injustices. They *do* restrict the general (as opposed to special) right to secede to such cases.

Depending upon which injustices they recognize as grievances suffi-

cient to justify secession, Remedial Right Theories may be more liberal or more restrictive. What all Remedial Right Only Theories have in common is the thesis that there is no (general) right to secede from a just state.

A Remedial Right Only Theory. For purposes of comparison with the other basic type of theory, Primary Right Theories, I will take as a representative of Remedial Right Only Theories the particular version of this latter type of theory that I have argued for at length elsewhere.[8] According to this version, a group has a right to secede only if:

1. The physical survival of its members is threatened by actions of the state (as with the policy of the Iraqi government toward Kurds in Iraq) or it suffers violations of other basic human rights (as with the East Pakistanis who seceded to create Bangladesh in 1970), *or*

2. Its previously sovereign territory was unjustly taken by the state (as with the Baltic Republics).

I have also argued that other conditions ought to be satisfied if a group that suffers any of these injustices is to be recognized through international law or international political practice as having the right to secede.[9] Chief among these is that there be credible guarantees that the new state will respect the human rights of all of its citizens and that it will cooperate in the project of securing other *just terms* of secession.[10] (In addition to the protection of minority and human rights, the just terms of secession include a fair division of the national debt; a negotiated determination of new boundaries; arrangements for continuing, renegotiating, or terminating treaty obligations; and provisions for defense and security.) This bare sketch of the theory will suffice for the comparisons that follow.

Primary Right Theories. Primary Right Theories fall into two main classes: *Ascriptive Group Theories* and *Associative Group Theories.* The-

8. Allen Buchanan, *Secession*, pp. 27–80.

9. Allen Buchanan, "Self-Determination, Secession, and the Rule of International Law," in *The Morality of Nationalism*, Robert McKim and Jeffrey McMahan, eds. (Oxford: Oxford University Press, forthcoming).

10. This proviso warrants elaboration. For one thing, virtually no existing state is without some infringements of human rights. Therefore, requiring credible guarantees that a new state will avoid *all* infringements of human rights seems excessive. Some might argue, instead, that the new state must simply do a better job of respecting human rights than the state from which it secedes. It can be argued, however, that the international community has a legitimate interest in requiring somewhat higher standards for recognizing new states as legitimate members of the system of states.

ories that include the Nationalist Principle (according to which every nation or people is entitled to its own state) fall under the first heading. Those that confer the right to secede on groups that can muster a majority in favor of independence in a plebiscite fall under the second.

Ascriptive Group Theories. According to Ascriptive Group versions of Primary Right Theories, it is groups whose memberships are defined by what are sometimes called ascriptive characteristics that have the right to secede (even in the absence of injustices). Ascriptive characteristics exist independently of any actual political association that the members of the group may have forged. In other words, according to Ascriptive Group Theories of secession, it is first and foremost certain *nonpolitical* characteristics of groups that ground the group's right to an independent political association.

Being a nation or people is an ascriptive characteristic. What makes a group a nation or people is the fact that it has a common culture, history, language, a sense of its own distinctiveness, and perhaps a shared aspiration for constituting its own political unit. No actual political organization of the group, nor any actual collective choice to form a political association, is necessary for the group to be a nation or people.

Thus Margalit and Raz appear to embrace the Nationalist Principle when they ascribe the right to secede to what they call "encompassing cultures," defined as large-scale, anonymous (rather than small-scale, face-to-face) groups that have a common culture and character that encompasses many important aspects of life and which marks the character of the life of its members, where membership in the group is in part a matter of mutual recognition and is important for one's self-identification and is a matter of belonging, not of achievement.[11]

Associative Group Theories. In contrast, Associative Group versions of Primary Right Theories do not require that a group have any ascriptive characteristic in common such as ethnicity or an encompassing culture, even as a necessary condition for having a right to secede. The members of the group need not even believe that they share any characteristics other than the desire to have their own state. Instead, Associative Group Theorists focus on the *voluntary political choice* of the members of a group (or the majority of them), their decision to form their own inde-

11. Avishai Margalit and Joseph Raz, "National Self-Determination," pp. 445–47.

pendent political unit. Any group, no matter how heterogeneous, can qualify for the right to secede. Nor need the secessionists have any common connection, historical or imagined, to the territory they wish to make into their own state. All that matters is that the members of the group voluntarily choose to associate together in an independent political unit of their own. Associative Group Theories, then, assert that there is a right to secede that is, or is an instance of, *the right of political association.*

The simplest version of Associative Group Primary Right Theory is what I have referred to elsewhere as the *pure plebiscite theory* of the right to secede.[12] According to this theory, any group that can constitute a majority (or, on some accounts, a "substantial" majority) in favor of secession within a portion of the state has the right to secede. It is difficult to find unambiguous instances of the pure plebiscite theory, but there are several accounts which begin with the plebiscite condition and then add weaker or stronger *provisos.*

One such variant is offered by Harry Beran.[13] On his account, any group is justified in seceding if (1) it constitutes a substantial majority in its portion of the state, wishes to secede, and (2) will be able to marshal the resources necessary for a viable independent state.[14] Beran grounds his theory of the right to secede in a *consent theory of political obligation.* According to Beran, actual (not "hypothetical" or "ideal contractarian") consent of the governed is a necessary condition for political obligation, and consent cannot be assured unless those who wish to secede are allowed to do so.

Christopher Wellman has more recently advanced another variant of plebiscite theory.[15] According to his theory, there is a primary right of political association, or, as he also calls it, of political self-determination. Like Beran's right, it is primary in the sense that it is not a remedial right, derived from the violation of other, independently characterizable rights. Wellman's right of political association is the right of any group that resides in a territory to form its own state if (1) that group consti-

12. Allen Buchanan, "Self-Determination, Secession, and the Rule of International Law."

13. Harry Beran, *The Consent Theory of Political Obligation,* p. 42.

14. Beran, *ibid.,* p. 42, adds another condition: that the secession not harm the remainder state's essential military, economic, or cultural interests.

15. Christopher Wellman, "A Defense of Secession and Self-Determination," p. 161.

tutes a majority in that territory; if (2) the state it forms will be able to carry out effectively what was referred to earlier as the legitimating functions of a state (preeminently the provision of justice and security); and if (3) its severing the territory from the existing state will not impair the latter's ability to carry out effectively those same legitimating functions.

Like Beran's theory, Wellman's is an Associative Group, rather than an Ascriptive Group variant of Primary Right Theory, because any group that satisfies these three criteria, not just those with ascriptive properties (such as nations, peoples, ethnic groups, cultural groups, or encompassing groups) is said to have the right to secede. Both Beran and Wellman acknowledge that there can also be a right to secede grounded in the need to remedy injustices, but both are chiefly concerned to argue for a Primary Right, and thus to argue *against* all Remedial Right Only Theories.

According to Primary Right Theories, a group can have a (general) right to secede even if it suffers no injustices, and hence it may have a (general) right to secede from a perfectly just state. Ascriptive characteristics, such as being a people or nation, do not imply that the groups in question have suffered injustices. Similarly, according to Associative Group Theories, what confers the right to secede on a group is the voluntary choice of members of the group to form an independent state; no grievances are necessary.

Indeed, as we shall see, existing Primary Right Theories go so far as to recognize a right to secede even under conditions in which the state is effectively, indeed flawlessly, performing all of what are usually taken to be the *legitimating functions* of the state. As noted above in the description of Wellman's view, these functions consist chiefly, if not exclusively, in the provision of justice (the establishment and protection of rights) and of security.

Notice that in the statement that Primary Right Theories recognize a right to secede from perfectly just states the term 'just' must be understood in what might be called the uncontroversial or standard or theory-neutral sense. In other words, a perfectly just state here is one that does not violate relatively uncontroversial individual moral rights, including above all human rights, and which does not engage in uncontroversially discriminatory policies toward minorities. This conception of justice is a neutral or relatively uncontroversial one in this sense: We may assume that it is acknowledged both by Remedial Right Only Theorists and Pri-

mary Right Only Theorists—that both types of theorists recognize these sorts of actions as injustices, though they may disagree in other ways as to the scope of justice. In contrast, to understand the term 'just' here in such a fashion that a state is assumed to be *unjust* simply because it contains a minority people or nation (which lacks its own state) or simply because it includes a majority that seeks to secede but has not been permitted to do so, would be to employ a conception of the justice that begs the question in this context, because it includes elements that are denied by one of the parties to the debate, namely Remedial Right Only Theorists. To repeat: the point is that Primary Right Theories are committed to the view that there is a right to secede even from a state that is perfectly just in the standard and uncontroversial, and hence theory-neutral sense.[16]

III. Criteria for Evaluating Proposals for an International Legal Right to Secede

With this classification of types of theories of the right to secede in mind, we can now proceed to their comparative evaluation. Special attention will be given to considerations that loom large, once we look to these theories for guidance in formulating proposals for a practical and morally progressive international legal approach to dealing with secession crises. The following criteria for the comparative assessment of competing proposals for how international law ought to understand the right to secede are not offered as exhaustive. They will suffice, however, to establish two significant conclusions. First, theories of the moral right to secede that might initially appear reasonable are seen to be seriously deficient when viewed as elements of an institutional morality articulated in a system of international law. Second, some current theories of the right to secede are much more promising candidates for providing guidance for international law than others. Others fail to take into account some of the most critical considerations relevant to the project of

16. It is advisable at this point to forestall a misunderstanding about the contrast between the two types of theories. Remedial Right Only Theories, as the name implies, recognize a (general) right to secede only as a remedy for injustice, but Primary Right Theories need not, and usually do not, deny that there is a remedial right to secede. They only deny that the right to secede is only a remedial right. Thus a Primary Right Theory is not necessarily a Primary Right Only Theory.

providing a moral foundation for an international institutional response to secession crises.

1. *Minimal Realism.* A proposal for an international legal right to secede ought to be morally progressive, yet at the same time at least minimally realistic. A *morally progressive* proposal is one which, if implemented with a reasonable degree of success, would better serve basic values than the *status quo.* Preeminent among these values is the protection of human rights.

A proposal satisfies the requirement of *minimal realism* if it has a significant prospect of eventually being adopted in the foreseeable future, through the processes by which international law is actually made. As we shall see, it is important to keep in mind one crucial feature of this process: International law is made by existing states (that are recognized to be legitimate by the international community).[17]

Minimal realism is not slavish deference to current political feasibility. The task of the political philosopher concerned to provide principles for an international legal response to secession crises is in part to set moral targets—to make a persuasive case for trying to transcend the current limits of political feasibility in pursuit of moral progress. Nevertheless, moral targets should not be so distant that efforts to reach them are not only doomed to failure, but unlikely to produce any valuable results at all.

To summarize: A theory is morally progressive and minimally realistic if and only if its implementation would better serve basic values than the *status quo* and if it has some significant prospect of eventually being implemented through the actual processes by which international law is made and applied.

2. *Consistency with Well-Entrenched, Morally Progressive Principles of International Law.* A proposal should build upon, or at least not squarely contradict, the more morally acceptable principles of existing international law, when these principles are interpreted in a morally progressive way. If at all possible, acceptance and implementation of a new principle should not come at the price of calling into question the validity of a well-entrenched, morally progressive principle.

17. The statement that it is states that make international law requires a qualification: nongovernmental organizations (NGOs) are coming to exert more influence in the international legal arena. However, their impact is limited compared to that of states.

3. *Absence of Perverse Incentives.* At least when generally accepted and effectively implemented under reasonably favorable circumstances, a proposal should not create perverse incentives. In other words, acceptance of the proposal, and recognition that it is an element of the system of international institutional conflict resolution, should not encourage behavior that undermines morally sound principles of international law or of morality, nor should it hinder the pursuit of morally progressive strategies for conflict resolution, or the attainment of desirable outcomes such as greater efficiency in government or greater protection for individual liberty. (For example, an international legal principle concerning secession whose acceptance encouraged groups to engage in ethnic cleansing, or that encouraged states to pursue repressive immigration policies, or discriminatory development policies, would fail to meet this criterion.)

The chief way in which acceptance as a principle of international law creates incentives is by conferring *legitimacy* on certain types of actions. By doing so, international law reduces the costs of performing them and increases the cost of resisting them. (These costs consist not only of the risk of tangible economic or military sanctions, but also the stigma of condemnation and adverse public opinion, both domestic and international.) Hence, by conferring legitimacy on a certain type of action, international law gives those who have an interest in preventing those actions from occurring an incentive to act strategically to prevent the conditions for performing the actions from coming into existence.

To illustrate this crucial legitimating function of international law and the incentives to which it can give rise, suppose that a principle of international law were to emerge that recognized the legitimacy of secession by any federal unit following a majority plebiscite in that unit in favor of independence. Such a principle, or rather *its acceptance* as a valid principle of international law, would create an incentive for a state that wishes to avoid fragmentation to resist efforts at federalization. For if the state remains centralized, then it will not face the possibility of a secessionist plebiscite, nor have to contend with international support for secession if the plebiscite is successful. As we shall see, some theories of secession create just such an incentive. The incentive is perverse, insofar as it disposes states to act in ways that preclude potentially beneficial decentralization.

Among the various benefits of decentralization (which include greater efficiency in administration and a check on concentrations of power that can endanger liberty) is the fact that it can provide meaningful autonomy for territorially concentrated minorities without dismembering the state. In some cases, federalization, rather than secession, may be the best response to legitimate demands for autonomy by groups within the state. Thus a theory of secession whose general acceptance would create incentives to block this alternative is defective, other things being equal.

4. *Moral Accessibility.* A proposal for reforming international law should be morally accessible to a broad international audience. It should not require acceptance of a particular religious ethic or of ethical principles that are not shared by a wide range of secular and religious viewpoints. The *justifications* offered in support of the proposal should incorporate ethical principles and styles of argument that have broad, cross-cultural appeal and motivational power, and whose cogency is already acknowledged in the justifications given for well-established, morally sound principles of international law. This fourth criterion derives its force from the fact that international law, more so than domestic law, depends for its efficacy upon voluntary compliance.

Although these four criteria are relatively commonsensical and unexceptionable, together they impose significant constraints on what counts as an acceptable proposal for an international legal right to secede. They will enable us to gauge the comparative strengths of various accounts of the moral right to secede, at least so far as these are supposed to provide guidance for international institutional responses to secessionist crises.

IV. Comparing the Two Types of Theories

Remedial Right Only Theories have several substantial attractions. First, a Remedial Right Only Theory places significant constraints on the right to secede, while not ruling out secession entirely. No group has a (general) right to secede unless that group suffers what are uncontroversially regarded as injustices and has no reasonable prospect of relief short of secession. Given that the majority of secessions have resulted in considerable violence, with attendant large-scale violations of human rights

and massive destruction of resources, common sense urges that secession should not be taken lightly.

Furthermore, there is good reason to believe that secession may in fact exacerbate the ethnic conflicts which often give rise to secessionist movements, for two reasons. First, in the real world, though not perhaps in the world of some normative theorists, many, perhaps most, secessions are by ethnic minorities. But when an ethnic minority secedes, the result is often that another ethnic group becomes a minority within the new state. All too often, the formerly persecuted become the persecutors. Second, in most cases, not all members of the seceding group lie within the seceding area, and the result is that those who do not become an even smaller minority and hence even more vulnerable to the discrimination and persecution that fueled the drive for secession in the first place.[18] Requiring serious grievances as a condition for legitimate secession creates a significant hurdle that reflects the gravity of state-breaking in our world and the fact that secession often does perpetuate and sometimes exacerbate the ethnic conflicts that give rise to it.

Minimal Realism. Remedial Right Only Theories score much better on the condition of minimal realism than Primary Right Theories. Other things being equal, proposals for international institutional responses to secessionist claims that do not pose pervasive threats to the territorial integrity of existing states are more likely to be adopted by the primary makers of international law—that is, states—than those which do.

Primary Right theories are not likely to be adopted by the makers of international law because they authorize the dismemberment of states even when those states are perfectly performing what are generally recognized as the legitimating functions of states. Thus Primary Right Theories represent a direct and profound threat to the territorial integrity of states—even just states. Because Remedial Right Only Theories advance a much more restricted right to secede, they are less of a threat to the territorial integrity of existing states; hence, other things being equal, they are more likely to be incorporated into international law.

At this point it might be objected that the fact that states would be unlikely to incorporate Primary Right Theories into international law is

18. Donald Horowitz, "Self-Determination: Politics, Philosophy, and Law," forthcoming in *NOMOS XXXIX.*

of little significance, because their interest in resisting such a change is itself not morally legitimate. Of course, states will not be eager to endanger their own existence. Similarly, the fact that a ruling class of slaveholders would be unlikely to enact a law abolishing slavery would not be a very telling objection to a moral theory that says people have the right not to be enslaved.[19]

This objection would sap some of the force of the charge that Primary Right Theories score badly on the minimal realism requirement *if* states had no morally legitimate interest in resisting dismemberment. However, it is not just the self-interest of states that encourages them to reject theories of the right to secede that makes their control over territory much more fragile. States have a *morally legitimate interest* in maintaining their territorial integrity. The qualifier "morally legitimate" is crucial here. The nature of this morally legitimate interest will become clearer as we apply the next criterion to our comparative evaluation of the two types of theories.

Consistency with Well-Entrenched, Morally Progressive Principles of International Law. Unlike Primary Right Theories, Remedial Right Only Theories are consistent with, rather than in direct opposition to, a morally progressive interpretation of what is generally regarded as the single most fundamental principle of international law: the principle of the territorial integrity of existing states.

It is a mistake to view this principle simply as a monument to the self-interest of states in their own survival. Instead, I shall argue, it is a principle that serves some of the most basic morally legitimate interests of *individuals.*

The interest that existing states have in continuing to support the principle of territorial integrity is a morally legitimate interest because the recognition of that principle in international law and political practice promotes two morally important goals: (1) the protection of individuals' physical security, the preservation of their rights, and the stability of their expectations; and (2) an incentive structure in which it is reasonable for individuals and groups to invest themselves in participating in the fundamental processes of government in a conscientious and coop-

19. This example is drawn from Christopher Wellman, "Political Self-Determination," unpublished manuscript.

erative fashion over time. Each of these benefits of the maintenance of the principle of territorial integrity warrants explanation in detail.

Individuals' rights, the stability of individuals' expectations, and ultimately their physical security, depend upon the effective enforcement of a legal order. Effective enforcement requires effective *jurisdiction*, and this in turn requires a clearly bounded territory that is recognized to be the domain of an identified political authority. Even if political authority strictly speaking is exercised only over persons, not land, the effective exercise of political authority over persons depends, ultimately upon the establishment and maintenance of jurisdiction in the territorial sense. This fact rests upon an obvious but deep truth about human beings: They have bodies that occupy space, and the materials for living upon which they depend do so as well. Furthermore, if an effective legal order is to be possible, both the boundaries that define the jurisdiction and the identified political authority whose jurisdiction it is must persist over time.

So by making effective jurisdiction possible, observance of the principle of territorial integrity facilitates the functioning of a legal order and the creation of the benefits that only a legal order can bring. Compliance with the principle of territorial integrity, then, does not merely serve the self-interest of states in ensuring their own survival; it furthers the most basic morally legitimate interests of the individuals and groups that states are empowered to serve, their interest in the preservation of their rights, the security of their persons, and the stability of their expectations.

For this reason, states have a morally legitimate interest in maintaining the principle of territorial integrity. Indeed, that is to indulge in understatement: states, so far as their authority rests on their ability to serve the basic interests of individuals, have an *obligatory* interest in maintaining territorial integrity.

The principle of territorial integrity not only contributes to the possibility of maintaining an enforceable legal order and all the benefits that depend on it; it also gives citizens an incentive to invest themselves sincerely and cooperatively in the existing political processes. Where the principle of territorial integrity is supported, citizens can generally proceed on the assumption that they and their children and perhaps their children's children will be subject to laws that are made through the

same processes to which they are now subject—and whose quality they can influence by the character of their participation.

For it to be reasonable for individuals and groups to so invest themselves in participating in political processes there must be considerable stability both in the effective jurisdiction of the laws that the processes create and in the membership of the state. Recognition of the principle of the territorial integrity of existing states contributes to both.

In Albert Hirschman's celebrated terminology, where exit is too easy, there is little incentive for voice—for sincere and constructive criticism and, more generally, for committed and conscientious political participation.[20] Citizens can exit the domain of the existing political authority in different ways. To take an example pertinent to our investigation of secession, if a minority could escape the authority of laws whose enactment it did not support by unilaterally redrawing political boundaries, it would have little incentive to submit to the majority's will, or to reason with the majority to change its mind.[21]

Of course, there are other ways to escape the reach of a political authority, emigration being the most obvious. But emigration is usually not a feasible option for minority groups and even where feasible is not likely to be attractive, since it will only involve trading minority status in one state for minority status in another. Staying where one is and attempting to transfer control over where one is to another, more congenial political authority is a much more attractive alternative, if one can manage it.

Moreover, in order to subvert democratic processes it is not even necessary that a group actually exit when the majority decision goes against it. All that may be needed is to issue a credible threat of exit, which can serve as a *de facto* minority veto.[22] However, in a system of states in which the principle of territorial integrity is given significant weight, the costs of exit are thereby increased, and the ability to use the threat of exit as a strategic bargaining tool is correspondingly decreased.

In addition, the ability of representative institutions to approximate the ideal of deliberative democracy, in which citizens strive together in

20. Albert O. Hirschman, *Exit, Voice, and Loyalty* (Cambridge, Mass.: Harvard University Press, 1970).

21. Cass R. Sunstein, "Constitutionalism and Secession," *University of Chicago Law Review* 58 (1991): 633–70.

22. Allen Buchanan, *Secession*, pp. 98–100.

the ongoing articulation of a conception of the public interest, also depends, in part, upon stable control over a definite territory, and thereby the effective exercise of political authority over those within it. This stability is essential if it is to be reasonable for citizens to invest themselves in cultivating and practicing the demanding virtues of deliberative democracy.

All citizens have a morally legitimate interest in the integrity of political participation. To the extent that the principle of territorial integrity helps to support the integrity of political participation, the legitimacy of this second interest adds moral weight to the principle.

To summarize: Adherence to the principle of territorial integrity serves two fundamental morally legitimate interests: the interest in the protection of individual security, rights, and expectations, and the interest in the integrity of political participation.

We can now see that this point is extremely significant for our earlier application of the criterion of minimal realism to the comparison of the two types of theories of secession. If the sole source of support for the principle of territorial integrity—and hence the sole source of states' resistance to implementing Primary Right Theories in international law—were the selfish or evil motives of states, then the fact that such theories have scant prospect of being incorporated into international law would be of little significance. For in that case the Primary Right Theorist could simply reply that the criterion of minimal realism gives undue weight to the interests of states in their own preservation.

That reply, however, rests on a misunderstanding of my argument. My point is that it is a strike against Primary Right Theories that they have little prospect of implementation even when states are motivated solely or primarily by interests that are among the most morally legitimate interests that states' can have. Thus my application of the minimal realism requirement cannot be countered by objecting that it gives undue weight to the interests of states in their own preservation.

Before turning to the application of the third criterion, my argument that the principle of the territorial integrity of existing states serves morally legitimate interests requires an important qualification. That principle can be abused; it has often been invoked to shore up a morally defective status quo. However, some interpretations of the principle of territorial integrity are less likely to be misused to perpetuate injustices and more likely to promote moral progress, however.

The Morally Progressive Interpretation of the Principle of Territorial Integrity. What might be called the *absolutist* interpretation of the principle of the territorial integrity of existing states makes no distinction between legitimate and illegitimate states, extending protection to all existing states. *Any* theory that recognizes a (general) right to secede, whether remedial only, or primary as well as remedial, is inconsistent with the absolutist interpretation, since any such theory permits the nonconsensual breakup of existing states under certain conditions. This first, absolutist interpretation has little to recommend it, however. For it is inconsistent with there being *any* circumstances in which other states, whether acting alone or collectively, may rightly intervene in the affairs of an existing state, even for the purpose of preventing the most serious human-rights abuses, including genocide.

According to the *progressive* interpretation, the principle that the territorial integrity of existing states is not to be violated applies only to *legitimate* states—and not all existing states are legitimate. There is, of course, room for disagreement about how stringent the relevant notion of legitimacy is. However, recent international law provides some guidance: States are *not* legitimate if they (1) threaten the lives of significant portions of their populations by a policy of ethnic or religious persecution, or if they (2) exhibit institutional racism that deprives a substantial proportion of the population of basic economic and political rights.

The most obvious case in which the organs of international law have treated an existing state as illegitimate was that of Apartheid South Africa (which satisfied condition [2]). The United Nations as well as various member states signaled this lack of legitimacy not only by various economic sanctions, but by refusing even to use the phrase "The Republic of South Africa" in public documents and pronouncements. More recently, the Iraqi government's genocidal actions toward Kurds within its borders (condition [1]) was accepted as a justification for infringing Iraq's territorial sovereignty in order to establish a "safe zone" in the North for the Kurds. To the extent that the injustices cited by a Remedial Right Only Theory are of the sort that international law regards as depriving a state of legitimacy, the right to secede is consistent with the principle of the territorial integrity of existing (legitimate) states.

Here, too, it is important to emphasize that the relevance of actual international law is conditional upon the moral legitimacy of the interests that the law, or in this case, changes in the law, serves. The key point is that the shift in international law away from the absolutist interpretation of the principle of territorial integrity toward the progressive interpretation serves morally legitimate interests and reflects a superior normative stance. So it is not mere conformity to existing law, but consonance with morally progressive developments in law, which speaks here in favor of Remedial Right Only Theories. Moreover, as I argued earlier, the principle that is undergoing a progressive interpretation, the principle of territorial integrity, is one that serves basic moral interests of individuals and groups, not just the interests of states.

In contrast, any theory of secession that recognizes a primary right to secede for any group within a state, in the absence of injustices that serve to delegitimize the state, directly contradicts the principle of the territorial integrity of existing states, *on its progressive interpretation.*[23] Accordingly, Remedial Right Only Theories have a singular advantage: Unlike Primary Right Theories, they are consistent with, rather than in direct opposition to, one of the most deeply entrenched principles of international law on its morally progressive interpretation. This point strengthens our contention that according to our second criterion Remedial Right Only Theories are superior to Primary Right Theories.

So far, the comparisons drawn have not relied upon the particulars of the various versions of the two types of theories. This has been intentional, since my main project is to compare the two basic *types* of theories. Further assessments become possible, as we examine the details of various Primary Right Theories.

23. Here it is important to repeat a qualification noted earlier: the progressive interpretation of the principle of territorial integrity operates within the limits of what I have called the relatively uncontroversial, standard, or theory-neutral conception of justice, as applied to the threshold condition that states must be minimally just in order to be legitimate and so to fall within the scope of the principle of territorial integrity. Therefore, it will not do for the Primary Right Theorist to reply that his theory is compatible with the progressive interpretation of the principle of territorial integrity because on his view a state that does not allow peoples or nations to secede or does not allow the secession of majorities that desire independent statehood *is* unjust. The problem with this reply is that it operates with a conception of justice that goes far beyond the normative basis of the progressive interpretation and in such a way as to beg the question by employing an understanding of the rights of groups that is not acknowledged by both parties to the theoretical debate.

V. Primary Right Theories

Avoiding Perverse Incentives. Remedial Right Only Theories also enjoy a third advantage: If incorporated into international law, they would create laudable incentives, while Primary Right Theories would engender very destructive ones (criterion 3).

A regime of international law that limits the right to secede to groups that suffer serious and persistent injustices at the hands of the state, when no other recourse is available to them, would provide protection and support to just states, by unambiguously sheltering them under the umbrella of the principle of the territorial integrity of existing (legitimate) states. States, therefore, would have an incentive to improve their records concerning the relevant injustices in order to reap the protection from dismemberment that they would enjoy as legitimate, rights-respecting states. States that persisted in treating groups of their citizens unjustly would suffer the consequences of international disapprobation and possibly more tangible sanctions as well. Furthermore, such states would be unable to appeal to international law to support them in attempts to preserve their territories intact.

In contrast, a regime of international law that recognized a right to secede in the absence of any injustices would encourage even just states to act in ways that would prevent groups from becoming claimants to the right to secede, and this might lead to the perpetration of injustices. For example, according to Wellman's version of Primary Right Theory, any group that becomes capable of having a functioning state of its own in the territory it occupies is a potential subject of the right to secede. Clearly, any state that seeks to avoid its own dissolution would have an incentive to implement policies designed to prevent groups from becoming prosperous enough and politically well-organized enough to satisfy this condition.

In other words, states would have an incentive to prevent regions within their borders from developing economic and political institutions that might eventually become capable of performing the legitimating functions of a state. In short, Wellman's version of Primary Right Theory gives the state incentives for fostering economic and political dependency. Notice that here, too, one need not attribute evil motives to states to generate the problem of perverse incentives. That problem

arises even if states act only from the morally legitimate interest in preserving their territories.

In addition, a theory such as Wellman's, if used as a guide for international legal reform, would run directly contrary to what many view as the most promising response to the problems that can result in secessionist conflicts. I refer here to the proposal, alluded to earlier and increasingly endorsed by international legal experts, that every effort be made to accommodate aspirations for autonomy of groups *within* the state, by exploring the possibilities for various forms of decentralization, including federalism.

Wellman might reply that the fact that the implementation of his theory would hinder efforts at decentralization is no objection, since on his account there is no reason to believe that decentralization is superior to secession. There are two reasons, however, why this reply is inadequate.

First, as we saw earlier, decentralization can be the best way to promote morally legitimate interests (in more efficient administration, and in avoiding excessive concentrations of power) in many contexts in which secession is not even an issue. Hence, any theory of secession whose general acceptance and institutionalization would inhibit decentralization is deficient, other things being equal. Second, and more importantly, according to our second criterion for evaluating proposals for international legal reform, other things being equal, a theory is superior if it is consonant with the most well-entrenched, fundamental principles of international law on their morally progressive interpretations. The principle of territorial integrity, understood as conferring protection on legitimate states (roughly, those that respect basic rights) fits that description, and that principle favors first attempting to address groups' demands for autonomy by decentralization, since this is compatible with maintaining the territorial integrity of existing states. It follows that the Primary Right Theorists cannot reply that the presumption in favor of decentralization as opposed to secession gives too much moral weight to the interests *of states* and that there is no reason to prefer decentralization to secession. The point, rather, is that decentralization has its own moral attractions and in addition is favored by a well-entrenched, fundamental principle of international law that serves basic, morally legitimate interests of individuals (and groups).

Even if Wellman's view were never formally incorporated into inter-

national law, but merely endorsed and supported by major powers such as the United States, the predictable result would be to make centralized states even less responsive to demands for autonomy within them than they are now. Allowing groups within the state to develop their own local institutions of government and to achieve a degree of control over regional economic resources would run the risk of transforming them into successful claimants for the right to secede. Beran's version of Primary Right Theory suffers the same flaw, because it too gives states incentives to avoid decentralization in order to prevent secessionist majorities from forming in viable regions.

If either Wellman's or Beran's theories were implemented, the incentives regarding *immigration* would be equally perverse. States wishing to preserve their territory would have incentives to prevent potential secessionist majorities from concentrating in economically viable regions. The predictable result would be restrictions designed to prevent ethnic, cultural, or political groups who might become local majorities from moving into such regions, whether from other parts of the state or from other states. Similarly, groups that wished to create their own states would have an incentive to try to concentrate in economically viable regions in which they can *become* majorities—and to displace members of other groups from those regions.

There is a general lesson here. Theories according to which majorities in regions of the state are automatically legitimate candidates for a right to secede (in the absence of having suffered injustices) look more plausible if one assumes that populations are fixed. Once it is seen that acceptance of these theories would create incentives for population shifts and for the state to attempt to prevent them, they look much less plausible.

The same objections just noted in regard to the Primary Right Theories of Wellman and Beran also afflict that of Margalit and Raz, although it is an Ascriptive Group, rather than an Associative Group, variant. On Margalit and Raz's view, it is "encompassing groups" that have the right to secede.

Like the other Primary Right Theories already discussed, this one scores badly on the criteria of minimal realism and consistency with deeply entrenched, morally progressive principles of international law. Also, if incorporated in international law, would create perverse incentives.

First, it is clear that no principle which identifies all "encompassing

groups" as bearers of the right of self-determination, where this is understood to include the right to secede from any existing state, would have much of a chance of being accepted in international law, even when states' actions were determined primarily by the pursuit of morally legitimate interests. The reason is straightforward: most, if not all, existing states include two or more encompassing groups; hence acceptance of Margalit and Raz's principle would authorize their own dismemberment. Second, the right to independent statehood, as Margalit and Raz understand it, is possessed by every encompassing group even in the absence of any injustices. Consequently, it too runs directly contrary to the principle of the territorial integrity of existing states on its most progressive interpretation (according to which just states are entitled to the protection the principle provides).

Third, if accepted as a matter of international law, the right endorsed by Margalit and Raz would give states incentives to embark on (or continue) all-too-familiar "nation-building" programs designed to obliterate minority group identities—to eliminate all "encompassing groups," within their borders save the one they favor for constituting "the nation" and to prevent new "encompassing groups" from emerging. Instead of encouraging states to support ethnic and cultural pluralism within their borders, Margalit and Raz's proposal would feed the reaction against pluralism.

Moral Accessibility. The last of the four criteria for assessment, moral accessibility, is perhaps the most difficult to apply. None of the accounts of the right to secede under consideration (with the possible exception of the Nationalist Principle in its cruder formulations) clearly fails the test of moral accessibility. Therefore, it may be that the comparative assessment of the rival theories must focus mainly on the other criteria, as I have done.

Nevertheless, it can be argued that Remedial Right Only Theories have a significant advantage, so far as moral accessibility is concerned. They restrict the right to secede to cases in which the most serious and widely recognized sorts of moral wrongs have been perpetrated against a group, namely violations of human rights and the unjust conquest of a sovereign state. That these are injustices is widely recognized. Hence if anything can justify secession, surely these injustices can. Whether *other* conditions also justify secession is more controversial, across the wide spectrum of moral and political views.

Recall that according to all Primary Right Theories, a group has the right to form its own state from a part of an existing state, even if the state is flawlessly performing what are generally taken to be the legitimating functions of states—even if perfect justice to all citizens and perfect security for all prevail. Presumably the intuitive moral appeal of this proposition is somewhat less than that of the thesis that the most serious injustices can justify secession.

VI. Political Liberty, the Harm Principle, and the Constraints of Institutional Morality

The Primary Right Theories advanced by Beran, Wellman, and Margalit and Raz share a fundamental feature. Each of these analysts begins with what might be called the *liberal presumption in favor of political liberty* (or freedom of political association). In other words, each develops a position on the right to secede that takes as its point of departure something very like the familiar liberal principle for *individuals*, which is so prominent in Mill's *On Liberty* and which Joel Feinberg has labeled "The Harm Principle."

According to the Harm Principle in its simplest formulation, individuals (at least those possessed of normal decision-making capacity) ought to enjoy liberty of action so long as their actions do not harm the legitimate interests of others. Wellman is most explicit in his application of the Harm Principle to the justification of secession:

> We begin with liberalism's presumption upon individual liberty, which provides a *prima facie* case *against* the government's coercion and for the permissibility of secession. . . . [T]his presumption in favor of secession . . . is outweighed by the negative consequences of the exercise of such liberty. But if this is so, then the case for liberty is defeated only in those circumstances in which its exercise would lead to harmful conditions. And because harmful conditions would occur in only those cases in which either the seceding region or the remainder state is unable to perform its political function of protecting rights, secession is permissible in any case in which this peril would be avoided.[24]

24. Christopher Wellman, "A Defense of Secession and Self-Determination," p. 163.

Margalit and Raz similarly note that harmful consequences of the exercise of the right to secede can override the right, when they caution that the right must be exercised in such a way as to avoid actions that fundamentally endanger the interests either of the people of other countries or the inhabitants of the seceding region.[25] And Beran at one point complicates his theory by acknowledging that the right to secede by plebiscite is limited by the obligation to prevent harm to the state from which the group is seceding, as when the seceding region ". . . occupies an area which is culturally, economically, or militarily essential to the existing state."[26]

What these theorists have failed to appreciate is that even if the Harm Principle is a valuable principle to *guide* the design of institutions (if they are to be liberal institutions), it cannot itself serve as an overriding principle *of* institutional ethics. An example unrelated to the controversy over the right to secede will illustrate this basic point.

Suppose that one is a physician contemplating whether to administer a lethal injection to end the life of a permanently unconscious patient whose autonomic functions are intact and who will continue to breath unassisted for an indefinite period of time. Suppose that after careful consideration one correctly concludes that giving the injection will produce no harm to the patient (since the patient has no interests that would suffer a "setback" as a result of ending his permanent vegetative existence) or to the family or anyone else. As a matter of the morality of this individual decision—apart from any consideration of what might be an appropriate set of principles of institutional ethics, it may be permissible to administer the injection.

However, it is a quite different question as to whether the principles of the institution within which the action is to occur, whether as a matter of law or in some less formal way, ought to permit physicians to exercise their judgment as to whether to administer lethal injections to permanently unconscious patients. For one thing, a consideration of what would be the appropriate institutional principles requires that we look, not just at the harmful consequences *of this particular action*, but at the harmful consequences *of legitimizing actions of this sort.* The first, most obvious worry is that by legitimizing acts of active nonvoluntary

25. Avishai Margalit and Joseph Raz, "National Self-Determination," pp. 459–60.
26. Harry Beran, *The Consent Theory of Political Obligation*, p. 42.

euthanasia when no harm is expected to result we may encourage killings in situations that are in fact relevantly unlike the ideal case described above. For example, there may be factors (such as pressures of cost-containment or bias against certain ethnic groups or against the aged) that will lead some physicians to engage in active nonvoluntary euthanasia under circumstances in which a net harm to the patient or to others will result. Second, legitimizing the practice of physician-administered nonvoluntary euthanasia may encourage some individuals to engage in *other* acts that have bad consequences. For example, if it became expected that physicians would administer lethal injections to elderly patients when their quality of life was very poor, a significant number of physicians might shun the practice of geriatric medicine, either because they have moral scruples against killing or because geriatric practice would come to be regarded as having a lower professional status. The result might be that geriatric medicine would either not attract a sufficient number of physicians or would attract the wrong type of individuals. Whether or not such consequences would occur and, if they would occur, how much moral weight they should be accorded is controversial. The point, however, is that they are relevant considerations for determining whether, as a matter of institutional morality, physicians ought to be empowered to engage in nonvoluntary active euthanasia.

Similarly, one cannot argue straightaway from hypothetical or actual cases in which secession harms no one's legitimate interests to the conclusion that, as a matter of international law, or even of informal political practice, we should recognize a right to secede whenever no harm to legitimate interests can be expected to result from the exercise of the putative right in the particular case. And we certainly cannot argue, as Beran and Wellman do, that the only legitimate interests to be considered are those of the two parties directly involved. (Margalit and Raz, at least, recognize that the legitimate interests of the inhabitants of all countries are relevant to determining the scope and limits of the right to secede, whereas Beran considers only the legitimate interests of the remainder state and Wellman only the legitimate interests of the people of the remainder state and those of the members of the seceding group.)

The most fundamental problem, however, is not that these theorists have failed to consider all the harmful effects of the particular exercise of the putative right to secede. Rather, it is that they have failed to under-

stand that the institutionalization of an otherwise unexceptionable ethical principle that recognizes a right can create a situation in which unacceptable harms will result, even if these harms do not result from any particular exercise of the putative right. Unacceptable harms may result, not from exercises of the putative right, but rather from strategic reactions on the part of states that have an interest in preventing the conditions for exercising the putative right from coming about.

The chief mechanism by which this occurs, in the case of legal institutions, is by the encouragement to harmful behavior that can result from *legitimizing* certain actions. As I emphasized above, when a type of action is legitimized by international law, the costs of performing it are, other things being equal, lowered. But, for this very reason, those whose interests will be threatened by the performance of these actions have an incentive to prevent others from being in a position to satisfy the conditions that make performance of the actions legitimate.

For example, as was shown earlier, serious harms may occur as states apprehensive of their own dissolution take measures to prevent regions within them from developing the economic and political resources for independent statehood, or to prevent minorities from developing "encompassing cultures," or to bar groups from immigrating into an area where they might become a secessionist majority. In each case, the harms that would result from the incorporation of the putative right to secede into international law would *not* be caused by a particular group of secessionists who exercised the right so described. Instead, the harms would result from the actions of states reacting to incentives that would be created by the acceptance of this conception of the right as a principle for the international institutional order.

VII. Ideal Versus Nonideal Theory

I have argued that Primary Right Theorists have not appreciated some of the most significant sorts of considerations that are relevant to making a case that a proposed principle of rightful secession ought to be recognized as such in the international system. Because of a lack of *institutional* focus, Primary Right Theories fail to appreciate the importance of states, both practically and morally. Once we focus squarely on institutions, and hence on the importance of states, we see that Primary Right Theories (1) are deficient according to the criterion of minimal

realism (because they neglect the role of states as the makers of international law), (2) are not consistent with morally progressive principles of international law (because they contradict the principle of the territorial integrity even when it is restricted to the protection of morally legitimate states), and (3) create perverse incentives (because their proposed international principles would encourage morally regressive behavior by states in their domestic affairs). My contention has been that by failing to take institutional considerations seriously in attempting to formulate a right to secede these analysts have produced normative theories that have little value as guides to developing more humane and effective international responses to secessionist conflicts.

Before concluding, I will consider one final reply which those whose views I have criticized might make. The Primary Right Theorists might maintain that they and I are simply engaged in two different enterprises: I am offering a *nonideal* institutional theory of the right to secede; they are offering an *ideal*, but nonetheless, institutional theory. They are thinking institutionally, they would protest, but they are thinking about what international law concerning secession would look like under ideal conditions, where there is perfect compliance with all relevant principles of justice.[27] Thus, from the fact that in *our* imperfect world attempts to implement their principles would create perverse incentives or would be rejected by states genuinely concerned to prevent violations of human rights that might arise from making state borders much less resistant to change is quite irrelevant. None of these adverse consequences would occur under conditions of perfect compliance (all) valid principles of justice.

This criticism raises complex issues about the distinction between ideal and nonideal political theory that I cannot hope to tackle here. However, I will conclude by noting that this strategy for rebutting the objections I have raised to Primary Right Theories comes at an exorbitant price: If such theories are only defensible under the assumption of perfect compliance with all relevant principles of justice, then they are even less useful for our world than my criticisms heretofore suggest—

27. For a valuable discussion of the distinction between ideal and nonideal theory and for the beginning of a normative account of secession from the standpoint of domestic institutions (including constitutional provisions for secession), see Wayne Norman, "Domesticating Secession," unpublished paper. For a discussion of the idea of a constitutional right to secede, see Allen Buchanan, *Secession*, pp. 127–49.

especially in the absence of a complete set of principles of justice for domestic and international relations.

International legal institutions are designed to deal with the problems of our world. A moral theory of international legal institutions for dealing with secessionist conflicts in our world must respond to the problems that make secessionist conflicts a matter of moral concern for us, the residents of *this* world. A moral theory of institutions for a world that is so radically different from our world, not only as it is, but as it is likely ever to be, cannot provide valuable guidance for improving *our* institutions. The gap between that kind of "ideal" institutional theory and our nonideal situation is simply too great.[28] Moreover, unless the full ideal theory of justice is produced or at least sketched, it is unilluminating to deflect objections by declaring that they would not arise if there were complete compliance with all principles of justice.

This is not to say, however, that there is no room for ideal theory of any sort. The Remedial Right Only Theory that I endorse is in a straightforward sense an ideal theory: It sets a moral target that can only be achieved through quite fundamental changes in international legal institutions and doctrine. (If I am right, this target is morally progressive, but not disastrously utopian.) My skepticism, rather is directed only to theories that are so "ideal" that they fail to engage the very problems that lead us to seek institutional reform in the first place.

28. I am indebted to Harry Brighouse for his suggestion that the sort of ideal theory which would have to be assumed by Primary Right Theorists in order to escape my objections is so extreme as to be practically irrelevant.

[Footnotes]

[4] **In Defense of Self-Determination**
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