

On Some Advantages of Constitutionalizing the Right to Secede¹

By

Daniel Weinstock

My aim in this paper is to argue that there is a strong case to be made for incorporating a qualified right to secede into the constitutions of multinational states. I will proceed as follows. First, I will attempt to clear up some conceptual confusions which in my view plague current discussions of secession. I will be particularly concerned with establishing the importance of keeping the fundamental question of whether a right to secede exists from the further question of whether such a right should be *institutionalized* (I). Second, I will suggest a three-pronged test, including both a moral threshold condition and a prudential condition, which might be employed by the designers of constitutions and other legal institutions in order to decide whether or not to institutionalize a right (II). I will give some attention to the moral threshold condition (III), and will briefly consider an objection according to which there may be an *a priori* incompatibility between constitutionalism and a right to secession (IV). I will then provide some reasons to think that the legal enshrinement of a right to secession might be justified prudentially both in societies in which members of majority and of minority groups are (stipulated by theorists as being) negatively disposed toward one another (V), and in cases where majorities and minorities are possessed of more mixed motives toward one another (VI).

I

An adequate normative theory of secession would have to provide answers to *at least* the following six questions:

1) *The abstract question* :Is there a moral right for a group to secede from a larger political association, and if so, what are its grounds?

- 2) *The agency question*: Under what circumstances is it appropriate for a group to exercise the right in question?
- 3) *The identity question*: Which kinds of groups can avail themselves of the right to secede?
- 4) *The internal legal question*: Should a political association legally provide for the right to secede, and if so, what form should such a legal provision take?
- 5) *The external legal question*: Should the international law which governs the relations among sovereign states provide for the right to secede, and if so, what form should this recognition take?
- 6) *The territorial question*: Does a group which exercises its right to secede have a right to the territory it inhabits simply in virtue of its having decided to secede?

The relations which these questions bear to one another are quite complex. Answering some of these questions in certain ways rather than others constrains the answers that can be given to others. For example, if it turns out that the answer to the abstract question invokes properties specific to *nations* as grounding the right to secede, then obviously this severely constrains the way in which we can plausibly answer the identity question.² But the logical relations between different possible answers to these questions can also often be looser: for example, one might think that answering the abstract question affirmatively settles the internal legal question. But this is not so. The reckoning of the consequences which might arise from legally enshrining a right properly enters into the thought we give to the internal legal questions, though we might think such considerations out of place in answering the abstract question. Similarly, one might think it inconceivable that the internal and external legal questions receive different answers. But closer attention reveals that they may. Consequentialist considerations which might seem essential to consider when one is designing national institutions may very well seem completely out of place when imagining international arrangements. For example, concerns to do with incentives which the creation of a right to secede in country A might generate among the citizens of country B belong to the purview of international institutions rather than domestic institutions. Finally, none of the questions thus far alluded to settle the question of when it is appropriate, morally and/or prudentially, for the members of a minority group to *exercise* the right.

The failure to distinguish between these questions has led to much confusion in recent debates about the morality of secession. Some authors who, I take it, are best viewed as answering the abstract question, have been taken to task because their views cannot be accepted as answers to the internal and external legal questions.³ And rather than insisting upon a clear distinction among the questions, some of them have responded to critics by similarly fudging the issues.⁴

Now in some cases, the elision of the distinction between the abstract question and the internal and external legal questions is deliberate. Some authors believe that rights are institutional artifacts, and that we properly design our institutions with an eye to the consequences which they might have.⁵ Thus, for these authors, the reckoning of consequences enters into the determination of the rights we have at the theoretical ground-floor. Both Allen Buchanan and Wayne Norman affirm what one might call, following Norman, “institutional moral reasoning”, according to which, as Norman writes, we should “evaluate political principles in large part by evaluating the institutions they would justify, taking into consideration the dynamic effects of the institutions in society”.⁶ Buchanan’s view is substantially similar: “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”.⁷

Buchanan and Norman would thus have us deciding whether a right to secession exists on the basis of whether or not it would be prudent to design social institutions that would grant such a right, where prudence is seen as encompassing the full range of envisageable consequences which might follow from it. Call this the *one-stage view*, to indicate that on this view the question of whether a right exists and whether it ought to be *granted* are not distinguished, or rather, the latter question is taken as disposing of the former.

Contrast this with a view which states that while the rights we have are determined more narrowly, for example by reference to individuals’ abstract interests, their *recognition* is predicated upon the foreseeable consequences lining up in the right ways. Here, the abstract question and the internal and external questions are cleanly distinguished. And the answer to the abstract question is

not taken to dictate an answer to the legal questions. A society can in certain cases legitimately decide that the social costs of recognizing certain rights are simply too high. For example, one might hold that in some small set of rare cases, people afflicted with irreversibly debilitating terminal illnesses should be allowed to avail themselves of the services of a physician in order to commit suicide, but that any provision granting the right, no matter how carefully worded and procedurally constrained, would perforce, given the limits of human language, be invoked in cases outside the small set in ways which the language of the provision could not prevent. Given the state's interest in preserving and protecting life, it could be argued that it ought under such circumstances not to grant the right to physician-assisted suicide even to those people within the small set who, morally, should have the right.⁸ Let me call this the two-stage view, since it invokes different considerations to determine, on the one hand, whether a right exists, and on the other, whether it ought to be recognized.

Now, it might be held at this point that I have just formulated a distinction without a difference. For, surely, at the end of the day, whether an individual is able to avail herself of a right will depend upon whether her legal institutions grant her the right. And so, in practice, there is likely not to be much of a difference between the one-stage and the two-stage views.

Looking at the matter more closely, however, it is clear that the two views are different, and that the two-stage view is superior, both morally, and from the point of view of the prudent lawmaker, to the one-stage view. Let me attend first to the two-stage view's *moral* advantages.

A problem with the one-stage view is that it does not distinguish between different *kinds* of consequences which we can expect to arise when a right is recognized. In particular, the one-stage view does not possess the resources to prevent the determination of whether or not a right exists from being affected by considerations of how *others* would act in the presence of such a right. And this is morally problematic. We do not want to say to a woman that she cannot take a walk in the park after dark because the dangers posed to her by potential assailants make it the case that she has no *right* to. Similarly, in the case of the right to secession, for example, one of the perverse consequences which is often hypothesized by opponents of the right is the behaviour which *others*

might engage in were the right to be recognized. It is claimed that if minority groups are granted a right to secede, then majority groups might be tempted to behave oppressively toward them so as to make it less likely that the minority will develop the institutional wherewithal necessary to actually attain sovereignty. Buchanan writes in this context that: “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”.⁹ Now these may be cruel facts of *Realpolitik*, but it strikes me as perverse to make the rights we can legitimately take ourselves to possess hostages to the potential bad behaviour of others. The point is of course reminiscent of Ronald Dworkin’s arguments against utilitarianism: we deny people their standing as moral agents of equal worth when we allow the rights they have to be determined by how others are disposed toward them.¹⁰

The two-stage view will therefore also make a difference to the way in which we regard individuals whose rights have, for prudential reasons, not been recognized. According to the one-stage view, the person whose right goes unrecognized because of the regrettable but unavoidable bad dispositions of others has absolutely no moral claim. She is doubly slighted: the foreseen bad behaviour of others has meant both that her right cannot be granted, *and* that no moral loss has occurred in her not being granted the right. And this seems morally problematic: surely we want to be able to say that of people whose legitimate moral claims have not been recognized by the appropriate institutions that they have suffered some kind of inevitable but regrettable moral injury. The two-stage view allows us to recognize what seems intuitively plain, namely, that when the circumstances are just too hostile to grant the right, or when, as in the physician-assisted suicide case, the necessity of framing the right sufficiently narrowly simply defeats the power of human expression, then there will have been some moral loss inflicted upon the persons whose rights have been overridden, some good which ought to have been conferred upon her, and thus there will be some balancing of the moral ledger that will still have to be done. The one-stage view, while tidier, occludes this quite obvious moral fact.

The two-stage view is also practically superior to the one-stage view, as it presents the would-be institutional designer with a clearer picture of the challenge he faces. By separating out the question of whether a right exists from the assessment of the consequences which might ensue from the recognition of the right, it renders perspicuous the two quite different tasks which are before him. On the one hand, he faces the task of designing institutions which enshrine the rights which we have independent moral grounds to want to see protected by our legal institutions; and on the other hand, he can confront the challenge of formulating the specific *provisions* which give legal expression to the right, and which can be tailored so as to offset the likelihood of the bad behaviour foreseen as a result of the recognition of the right. The defender of the one-stage view tends to forget that in drafting laws, constitutional provisions, and the like, the prudent institutional designer is not limited to merely stating the rights that the legal system in question will recognize in a completely coarse-grained manner. At the same time as he is giving legal expression to the right, he can, through a judicious use of sanctions and rewards, affect the utility-schedules of relevant actors in ways which will increase the likelihood that the goods underpinning the right will be realized, and lessen the chances that the foreseen negative consequences will ensue. By making the mere *antecedent likelihood* of negative consequences sufficient to deny agents rights to which they have a good moral claim, the one-stage view throws out the moral baby with the prudential bathwater

I conclude that we therefore have both moral and practical reasons to treat separately the moral question of whether a right to secession exists, and the pragmatic question of whether, and how, it ought to be given institutional and juridical expression.

II

As I mentioned in the previous section, the relation between the abstract question on the one hand, and the internal and external legal questions on the other, is far from being straightforward. A positive answer to the abstract question hardly disposes of the legal questions. For example, I

have a moral right against you that you be on the corner of Broadway and 116th street at 4 today if it turns out that you promised that you would be there then. But absent special circumstances, I cannot expect my moral right to give me any *legal* claim against you. Conversely, and more relevantly for the purposes at hand, it could be that there are good reasons to *create* legal rights that are not related to any corresponding moral rights. I take it, for example, that there is no irreducible moral right use drugs, or to purchase or sell sex. But it is entirely possible that there exist weighty social interests militating in favour of creating carefully constrained legal provisions allowing morally problematic behaviour under certain well-specified conditions. The underlying idea is that it is better for morally problematic behaviour that is going to occur *anyway* to be permitted and regulated rather than prohibited and uncontrolled.

Many commentators on secession argue that, when a secession would break up a peaceful and fairly just state, it should be morally condemned. Just and prosperous multinational federations which deal fairly with their constituent minorities embody goods which we have reason to pursue for their own sake, and also because of the imitative effect that they might have on other multinational states.¹¹ What's more, the problem of interethnic conflict which secession is meant to resolve simply reappears once boundaries have been redrawn, as the seceding territory will itself more than likely include a minority group.¹² And finally, it is felt by some that the only *reasons* a national minority might have to quit a federation in which they are well-treated and prosperous stem from a nationalist political morality according to which it is the "normal" *telos* of a nation to control the levers of a state, and which takes it to be the case that special obligations bind conationals in a way which does not connect them to their *concitoyens* in a broader multination state.¹³ Given the goods which multination states realize, and the ills which flow from their break-ups, it is felt that no moral right to secede should be taken to exist in the case of national sub-units which are part of just multination states. Such a right exists, it is claimed, only in cases where the larger state is unjust, and where the sub-unit therefore has "just cause" to want to secede.¹⁴

If what I have said above about the lack of any entailment between answers to the abstract question and answers to the legal questions is correct, however, it would follow that there may be a

case for making legal provisions for secessions, *even if* it turns out that “just cause” theorists (rather than “just ‘cause” theorists) are right about the abstract question.

I would argue as a general rule that there is a case to be made for making legal provision for people to engage in behaviour they have no moral right to engage in when the following three conditions are satisfied:

1) *The inevitability condition*: it is overwhelmingly likely that people will engage in the behaviour in question regardless of whether or not they have a legal right to.

2) *The moral threshold condition*: the behaviour in question does not involve the violation of an absolute moral prohibition.

3) *The consequentialist condition*: the consequences of legally unregulated behaviour of the kind in question are likely to be worse than the same behaviour engaged in within legal-procedural parameters designed to offset the foreseeable perverse consequences of granting the right.

I take it that we can safely accept that the inevitability condition is satisfied in the case of secession. Secessionist activity has occurred in countries lacking any constitutional provision for secession.¹⁵ Now, one might want to argue that such activity would have been even more widespread had multination states actually made legal provision for secession. But I take it that the empirical basis of such a counterfactual would be very difficult to provide. Thus, the case for a constitutional right to secede rests upon the moral threshold and consequentialist conditions.

III

As I noted above, some theorists have argued that secession absent any just cause is immoral. It would upset existing reasonable patterns of expectations, recreate on a smaller scale the very problems it was meant to rectify, and provide those leaders within newly democratized states in Africa, Eastern Europe and Latin America with arguments against negotiating federal arrangements with minority groups, as these could be shown to have constituted springboards for secession rather than bulwarks against it.¹⁶

The argument for the moral wrongness of secession from just states is premised in part on the idea that a just *multination*state will necessarily involve generous power-sharing arrangements which will provide minority nations with all of the levers of power they need in order to secure their group-specific interests. If such arrangements are on the table, then it follows that secessionists gain very little by taking the extra step of suing for full independence. The aforementioned harms to which secession gives rise stand alone in the moral scales, and are not offset by any identifiable benefit.

But this is to suppose that there are no goods attached to statehood that are not in the end reducible to the kinds of powers which the power-sharing arrangements which characterize federalism and confederalism make possible.¹⁷ Let me call this the *reduction assumption*. This assumption is however questionable. People's interests are at least in part formed contextually. There are many things (cars, computers, etc.) that we only need *given* the fact that our society has been organized in such a manner as to attach a premium to them. Now, the world could very well have been organized without the sovereign state system as we presently know it. But the fact is that it has, and in the Westphalian order as we know it, statehood is perceived by many people as bringing with it important symbolic goods which are *not* reducible to any identifiable powers. For better or for worse, it is seen as betokening the political maturity of the national group which has succeeded in constituting itself as a state, whereas the status of national minority is perceived as indicating a kind of arrested political development.¹⁸ So as long as the sovereign state system endures, there will be some benefits to statehood which cannot be attained simply by the transfer of powers to minority nations.¹⁹

Now one might claim in response that it is irrational for people to be exercised by questions of status and symbols. After all, as long as they have at their disposal actual political levers with which to implement policies they think essential to their well-being as a distinct community, it can't *really* be in the interest of the members of a national minority to pursue full statehood.

Determining whether it is rational or not for people to attach value to symbols and status plunges us into very murky philosophical waters indeed. For example, in *The Nature of*

Rationality, Robert Nozick has argued that actions might bear symbolic value irreducible to the values which decision theorists have traditionally imputed to them.²⁰ We should be wary in general of conceptions of excessively substantive conceptions of rationality. By labeling some kind of behaviour which we want to condemn on moral or prudential grounds as “irrational”, we run the risk of stipulating where we should be arguing.²¹

Fortunately, we needn't take this plunge in the present context. For whatever the impartially determined rationality and/or morality of pursuing full statehood even if one belongs to a just and prosperous multinational state, I take it that, first of all, it does not violate an absolute moral prohibition. It would not necessarily lead to a violation of people's basic human rights. If it did, it would be hard to see how even “just cause” theorists could justify even in the case of less-than-just states. And second, the nation-states of the present day, and the international institutions which govern their relations, are in a very awkward position from which to make the judgment. For those nations that happen to control the levers of state power would in so doing be enjoying the benefits of statehood while holding that others ought not so to enjoy them. There is no real rhyme or reason to the state system having shaken out the way it did. One can well imagine slightly different historical developments which would have given rise to quite radically different sets of borders. To continue to affirm the sovereignty of existing states while denying the claims to statehood of minority nations smacks of moral hypocrisy, like an attempt to apply a thin veneer of principle to the results of an entirely arbitrary and unprincipled process, all the more galling when the veneer is being applied by those who happen to have ended up on the winning side of the process. Thus, whatever its plausibility considered from “the view from nowhere”, the argument against the irreducible value of statehood cannot be made from within the state system by those who hold the reins of power within the system, or by those institutions whose function it is to protect states in the enjoyment of their power. I conclude that though the case for the irreducible benefits of statehood may very well be undecided, present states and the institutions which govern their relations can't but act as if the benefits are real, and as if the reduction assumption is false. Secessionism thus must be taken to pass the moral threshold condition.

IV

Before turning to the consideration of the consequentialist condition, I must address an objection according to which the very enterprise of determining whether there are grounds for making legal provision for secession of a national sub-unit is vitiated from the start. The argument runs as follows:

- 1) Liberal democracies distinguish between ordinary legislation, which can be adopted and overturned by simple legislative majorities, and constitutional principles, which set forth the “rules of the game” within which the legislative process is to occur.
- 2) Were a legal provision allowing secession to exist, it would by its very nature be one of the “rules of the game”, and thus be part of the constitution..
- 3) But a right to secession is incompatible with key features of constitutionalism.
- 4) There cannot, for conceptual reasons, be a legally recognized right to secession.

The soundness of this argument clearly rests upon the justification of premise 3, the claim that there is something about constitutionalism that precludes a right to secession. In this connection, Rainer Bauböck has written that “[T]he basic individual and collective rights entrenched in a constitution should correspond as closely as possible to moral claims which can be defended in a liberal and democratic theory”.²² In Bauböck’s view, a constitution should set forth a political association’s ideals, rather than compromises and bargains which may from time to time be necessary to keep the machinery of government oiled. And if a right to secede is included in a constitution not because it embodies a society’s most elevated ideals, but rather because it corresponds to unavoidable behaviour which does not fall below a minimal moral threshold, it will definitely not be an ideal of the required kind.

Now on the face of it, this claim is clearly false. The entire Madisonian tradition of constitutionalism is predicated on precisely the opposite understanding of what constitutions are for. Given a basic understanding of the passions and interests to which humans are prey, the role

of a constitution is to create institutions which block the destructive potential of these passions and interests, and ideally, channels them in socially productive directions.²³ In the case of the American constitution, the separation of powers, federalism, and even considerations to do with the size of the republic, the Founders defined mechanisms which, far from expressing the society's loftiest ideals, devised institutional mechanisms which might offset the all-too-human passions for faction and power which were taken by the Founders to characterize human beings.²⁴ In Canada, the 1982 Constitution and Bill of Rights was very much perceived by its principal defenders as a mechanism designed to neutralize the rift between English and French Canada which had been seen as an obstacle to national unity.²⁵ So in principle, there is no inconsistency between constitutionalism and a recognition of potentially anti-social human foible, and of the corresponding need for devising what might, from the loftiest peaks of ideal theory, look like remedial institutions. A constitutional provision allowing for the right to secession, on the understanding that secessionism often embodies less admirable human impulses, does not seem contrary to the spirit of constitutionalism.

Bauböck's worry can however be interpreted in another, more plausible way.²⁶ He could grant the point that constitutions contain both ideals *and* mechanisms designed to channel passions, but argue that, *given* that throughout its history the right to self-determination has been conceived of *as* an ideal, it would be difficult for a constitution to include a right to secede among its remedial mechanisms. But then, the inclusion of a right to secede among a constitution's ideals would be self-stultifying: it would commit the political association in question to pursuing the right to self-determination of its constituent peoples, rather than establishing the kind of unity which is required in order for the association in question to act as a unitary political agent. In this spirit, Cass Sunstein says of the contention of some scholars that American constitutional law tacitly includes a right to secede that "it is generally agreed that such a right would undermine the Madisonian spirit of the original document, one that encourages the development of constitutional provisions that prevent the defeat of the basic enterprise".²⁷

I don't think however that this worry need stand in the way of the recognition of a right to secede. For note that Bauböck's claim is that it is the right to *self-determination* which has

historically been viewed as a lofty ideal. What is at issue here however is a right *to secede*. And the latter can in no way be perceived as a simple entailment of the former. Historically, the political actors whose negotiations resulted in various international instrument including a right to self-determination were concerned to couch the concept in such a way as *not* to imply any connection with full statehood, and thus, with a right to secede.²⁸ Conceptually, the distinction is also very important. First, the right to self-determination and the right to secede are not geared toward the same *goal*. A people can determine the course of their own affairs if they have at their disposal sufficient levers of power. Whether this requires full statehood is an entirely contingent matter. Recent theorists of justice for multinational states have at any rate made plain that part of what justice toward national minorities *requires* is significant devolution of powers, so as to make self-government at least conceivable without the need for secession.²⁹ Secession can on the other hand actually *diminish* the powers which are at the disposal of a national group. For example, by diminishing the bargaining power of the erstwhile sub-unit relative to the power which it shared as part of a larger federation, one can imagine a secessionist state being less able to negotiate trade agreements in such a way as to shelter their distinct cultures from the effects of international trade and commerce. So the *goals* of self-determination and secession are logically distinct.

Their *justifications* are also importantly different. The right to self-determination was born in the context of the collapse of the great European empires and of the process of decolonization. The affirmation in various international legal instruments of the right to self-determination in part conveys the judgment on the part of the international community that the subjugation of peoples is morally unacceptable, and most importantly in the present context, that it would continue to be unacceptable even in cases in which no democratic mechanism was available through which the will of the subjugated people could be ascertained. The justification of the right to secession is the mirror image of the justification of the right to self-determination: the right to self-determination can be invoked on behalf of a people when they are being subjugated *as* a people, even when the desire to cast off its chains has not been expressed through recognizably democratic procedures. But the

right to secede that we are considering here is justified *in the absence* of any identifiable injustice *only by* a clear democratic expression of the will to secede.

So there are both historical and conceptual grounds for severing the link that connects the bare right to secede to the luster of the right to self-determination. Multination states whose constitutions and political practices provide national minorities with ample powers of self-government already implicitly affirm the right to self-determination, even if it is not explicitly inscribed in their constitutions. In the case of such states, the right to secede would not be a logical extension of the right to self-determination, but rather a constitutional provision wholly distinct both in aim and in justification. Framed as such, it will not take on the moral luster which it might otherwise inherit from the right to self-determination. What's more, there would be no historical or conceptual obstacle to its being placed squarely among the mechanisms of the constitution that reflect "non-ideal" theory, alongside, for example, constitutional provisions which provide for the removal of elected officials.³⁰

An advantage of severing the link between the right to secede and the right to self-determination is that secessionists within just multination arrangements would be deprived of the ability to make illegitimate rhetorical appeal to decolonization struggles in order to buttress their causes. Secession would have to be argued for on its merits, rather than by "borrowing" the moral legitimacy of campaigns to overturn injustice and colonial subjugation.³¹

I conclude that there is no *a priori* incompatibility between constitutionalism and the right to secede. We can now proceed to an examination of the third condition which I have argued must be satisfied to justify creating a constitutional right to secede. We must now consider whether the likely *consequences* of including such a right in a constitution would do more harm than good.

V

According to a number of authors, the presence of a right to secede in a constitution would have undesirable consequences, in large measure because it would generate perverse incentives both

among would-be secessionists and among the leaders of the state threatened with secession. Let me attend first to the former.

The existence of the right to secession would according to many commentators have a deleterious effect on the conduct of politics. The risk of secession would loom in every decision. As Sunstein puts it, “a threat to secede could under certain conditions be plausible at any given time, allowing the exit of the subunit from the nation to be a relevant factor in every important decision”.³² This feature of secession-tinged politics would moreover not be lost upon would-be secessionists, who would be tempted to use the threat of secession strategically as a way of discouraging policies which run against their interests, rather than engaging in more arduous and demanding democratic deliberation with their fellow citizens. Thus, Buchanan writes that “[i]f a plebiscitary right to secede were recognized [...] a territorially concentrated minority could use the threat of secession as a strategic bargaining tool”.³³ Rather than compromising and deliberating so as to arrive at common solutions to difficult policy questions, would-be secessionists would constantly be bringing out the heavy, conversation-stopping artillery: “accede to our demands on this policy issue completely unrelated to our group-interests, or we will secede!”. Call this the *blackmail threat*.

A recognized right to secede would moreover according to these authors generate perverse incentives among leaders and citizens of the larger state threatened with secession as well. They would be less inclined to grant the national sub-unit powers of self-government, since such powers could, given a legal provision allowing secession, legitimately be used as a launching-pad for secession. They would on the contrary have reason to nip any signs of autonomist stirring in the bud so as to diminish the likelihood of secessions. Referring to Carl Wellman’s theory, which would vest a right to secede in any group “capable” of forming a state, Buchanan writes that “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”.³⁴ A right to secession would thus provide states with a powerful incentive to act unjustly toward its minorities. Call this the *threat of oppression*.

The threats alluded to here are very real, and there can be no question that they have at times been carried out. But the first point to make in response to those theorists who view the threats as arguments *against* the recognition of the right to secession is that they have been carried out precisely in contexts in which the legal system is silent on -- or legally prohibits -- secessionist activity. No constitutional right to secession has been necessary to provide the Turkish government with the incentive to oppress its Kurdish minority, or various fledgling democracies in Eastern and Central Europe with perceived reasons to deny their national minorities powers of self-government. And, though Canada lacked any recognition of the right to secede until the recent Supreme Court reference on the legality of Québec's unilateral secession arguably created one, this has not prevented politics in Québec and Canada from being dominated by the secessionist question. To cite but one example, the three main political parties in Québec are defined according to their respective stands on Québec's constitutional status. Ordinary left-right political debates now take place *within* party caucuses, and the electorate is therefore effectively prevented from voting on anything but constitutional questions at the provincial level. Thus, the concern that secessionist politics might come to eclipse ordinary politics is fully realized in Québec, even in the absence of an explicit constitutional right to secede. Theorists who would invoke the blackmail and oppression threats as arguments *against* the recognition of such a right therefore greatly exaggerate the power which legal provisions might have in generating motivations *de novo*.

Legally regulated secessionist politics might if anything be *less* vulnerable to these threats than their legally unregulated counterpart. Opponents of a right to secession often help themselves illegitimately to the assumption that any juridical expression of the right would necessarily be *coarse-grained*. By this I mean that they assume that once we have decided that there are reasons for a legal system to grant a right, it will simply state, without further qualification, that the right exists. And of course, such a coarse instrument as the simple recognition of a right can have quite disastrous consequences. But part of the *point* of creating a legal permission to engage in unavoidable-but-morally-problematic behaviour such as secession from just multination states is that, through judicious formulation of the procedure which must be followed to avail oneself of the

right, one can attempt to control a process which would otherwise go uncontrolled. Proponents of the constitutional recognition of a right to secession believe that secessionist politics will occur anyway, regardless of legal silences and prohibitions, and that its occurring in a legal vacuum will be more harmful than were it to occur within well thought out legal and procedural parameters. The prudential argument in favour of granting the right rests in large measure on the presumed ability of constitution drafters to foresee the potential dangers which *both* an unqualified right *and* the absence of a right might present and, in Madisonian spirit, to devise mechanisms which will steer clear of these perceived dangers.

How might this be done?³⁵ My claim is that the prudent constitution-drafter would match the perceived perverse incentives which an unqualified right might give rise to with appropriate counterweights. What is required is a decision procedure which will allow secession in cases where a stable, significant majority desires to go its own way, but which will make it difficult or more costly for would-be secessionists to engage in secessionist politics when such conditions are not in place. Thus, as we have seen, opponents of the right to secede point out that would-be secessionists might be tempted to use the threat of secession as a bargaining chip in all negotiations. This temptation might be hard to resist if the right to secede is couched in a coarse-grained manner. But it becomes less likely when certain procedural hurdles are placed in the way of secessionists. Supermajorities might for example be required. Such a requirement is moreover not arbitrary, as it is commonly used in constitutional democracies for the purposes of constitutional amendment. Such a requirement might make the threat of secession less credible, and its use therefore less effective. In a fairly just multinational state, it will be quite difficult to generate the required support for secession over just *any* policy disagreement. The tendency that secessionist politicians might have to view secession-triggering referenda as cost-free might also be lessened by imposing a waiting period *between* referenda. They will have reason to view referenda as scarce resources to be employed sparingly if, for example, a ten-year waiting period is constitutionally required. One could also imagine a significant waiting period being required between the calling of a referendum

and its actual occurrence, so as to forestall politicians calling snap referendums to capitalize on sudden circumstantial spikes in pro-secessionist sentiment.

Constitutional mechanisms diminishing the incentives of would-be secessionists to engage in secessionist politics will moreover alter the utility schedules of the leaders of the state threatened with secession. If the threat of secession recedes, then so will the reasons which they have to oppress national minorities so as to prevent them from developing the institutional wherewithal required to secede.

Creative constitution drafters can thus avail themselves of numerous mechanisms which, by affecting the relevant actors' cost/benefit calculations, will increase the likelihood that the positive effects of a right to secede are attained while neutralizing perverse incentives. Now, it could be argued that the kinds of procedural hurdles I have just described undercut the granting of the right to secede. Constitution-drafters who crafted a secession provision might be accused of bad faith. They could be taken as wanting to give off the *appearance* that they are liberal about secession, while in *reality* making it almost impossible.

I would respond to this perception by making two remarks: first, constitution-making requires a fund of trust among those parties joining themselves together under common laws. Provisions such as the ones that I have described should be negotiated and drafted by willing partners looking down the road at temptations and grievances that might get the better of them when the political climate is more difficult. They may be tempted to protect themselves against destructive motives which they know they may come to have, but which they antecedently do not want it to be too easy to act on. They might therefore find it rational in such occasions to "bind themselves" in such a way as not to make it too easy to quit the association they are constituting on a whim.³⁶ Such provisions are much more difficult to make acceptable to all parties in cases where, as it were, the political rot has already set in. Then, the obstacles and hurdles to secession which might seem like prudent safeguards when good will reigns will appear as unfair and cynical attempts by the majority to block the will of a minority while keeping up the appearance of fairness.

Here, as in many things, timing is everything: the time to entrench a secession provision is probably when secession seems at most a distant possibility, rather than an imminent threat.

I would suggest, second, that the reasonable nature of a right to secede of which it is hard but not impossible to avail oneself can be appreciated by reflecting on the matter from a cultural “original position”. Imagine a group of hypothetical agents who are asked to negotiate the terms of their political association, knowing that they will be members of a multinational state, but not knowing which particular group they belong to. The epistemic constraints imposed upon them, combined with a motivation assumption of risk-aversion, would have them reflect upon these terms from the point of view of the “least favoured national group”, that is, from the point of view of a group which, perhaps because of its minority status, assumes some risks in joining in political union with a larger national group, along with the advantages which come from being part of the larger political association. From this point of view, I would argue, hypothetical negotiators would want to make it difficult for a national group to quit the union, as too easy a secession procedure would make the attainment of the goods of political union precarious. For example, a multinational federation will almost by definition be one in which richer regions will often be called upon to transfer resources to poorer regions. If secession were too easy, richer groups might be tempted to wield the secessionist stick to lessen their distributive burden. The threat of secession might, as opponents of a constitutional right to secede have noted, unacceptably infect the process of everyday politics, in particular by making just policies more difficult to implement when they place unequal burdens upon a particular group.³⁷

At the same time, such negotiators would, I believe, not want entirely to forfeit the right to quit the political union. This is because, focussing on the situation of the “least favoured nation”, they could imagine multinational political association posing risks to the fundamental, group-specific interests³⁸ of such a national group (for example by making it difficult or unacceptably costly for the group’s specific culture to survive) in a way which might come to be seen as outweighing the benefits of continued association.

So my hypothetical negotiators would want their constitution to include a right to secede which balanced these two concerns. They would not want it to be too destabilizing, aware as they are of the advantages which a well-functioning, prosperous multination state affords; yet they would not want it to be unduly restrictive, conscious as they are of the risks of finding themselves in the position of the “least favoured nation”, and of finding their most fundamental, group-specific interests compromised with no possibility of exit.

Ideally, they would want a constitutional provision that would make secession possible *only* in those cases in which fundamental group-specific interests are *really* at risk. But such a procedure is difficult to imagine. What body could legitimately step in to determine what a group’s fundamental interests are? What authority could it claim to issue judgments on when a group’s interests are *really* imperilled? Clearly, we find ourselves in the domain of “imperfect procedural justice”: we know the criteria we would want to see applied to distinguish legitimate and illegitimate instances of appeal to the right to secede, but we can’t devise a procedure which would track these criteria perfectly.³⁹ The best we can do is to raise the procedural bar in such a way as to make likely that only those groups with a pressing grievance to do with their fundamental group-specific interests will think it worth their while to attempt to reach this bar. Though the procedural hurdles are, intensionally, unrelated to the criteria we would want to see groups restrict themselves to in invoking a right to secede, the hope is that there will be significant extensional overlap between the set of cases which a direct application of the criteria would have generated, and the set given rise to by the procedure.⁴⁰

I conclude that given the dual concerns which hypothetical deliberators would want to reconcile in thinking about the terms of union for a multination state from the perspective of a cultural “original position”, and given the impossibility of direct application of the criteria they would arrive at, a constitutional provision allowing secession under fairly strenuous procedural conditions would end up being agreed to.

The discussion of the consequentialist condition has thus far operated under the assumption that constitution-makers should be planning for the worst-case scenario, namely one in which

leaders of would-be secessionist sub-units are poised to pull the secessionist trigger at the slightest sign of even short term political advantage, and in which the leaders of the state threatened with secession are unconstrained by either fellow-feeling or a sense of justice from oppressing national minorities when they feel that it is in their political advantage to do so. We have seen that even in such cases, the case against recognizing a duly constrained right to secession are not as strong as some have claimed, partly because the causal story that opponents of such a right tell connecting an explicit provision allowing secession is unconvincing, and partly because a legal provision allows prudent constitution-makers to block or deflect centrifugal motives which would otherwise operate unconstrained.

We have thus seen that a well-crafted provision allowing secession might make certain *centrifugal* motives more difficult or costly to act on. I want, in the final section of this paper, to examine cases in which the motivations of the relevant actors are more mixed, that is, in which centrifugal motives vie for contention with *centripetal* ones. These cases correspond more closely to the reality of those prosperous and fairly stable and just multination states which in my view constitute the most interesting test-cases for a theory of secession (Canada, Spain, Great Britain, Belgium). And in such cases, not only will it be the case that a well-crafted secession provision will make secessionist motives more costly to act on, it will also give them more reason to focus on, and to seek to realize, the goods that multinational cooperation makes possible.

VI

Members of minority nations in states like Canada, Spain, Belgium and Great Britain are possessed of genuinely mixed motives which interact in complex ways. On the one hand, they fear that their political association with a much larger cultural group⁴¹ will pose a risk to their continued survival as a distinct cultural group. More positively, they feel that, as national groups, they have a legitimate claim to a high degree of self-government, and are frustrated, rightly or wrongly, with perceived infringements by central authorities of their jurisdictions. Let me call these *centrifugal motives*. On the other hand, they are aware of the many advantages of living in a prosperous and

fairly just multinational state: the resources of each can be put at the disposal of all, economies of scale are achieved, and the symbolic good of displaying the possibility of close interethnic cooperation is realized. Also, partly, (but not exclusively) because of the material advantages of political association, many people's identities are mixed. They feel loyalty to both the sub-unit and the larger political association, and would rather not be asked to choose between them. They often speak both the language of the minority and of the majority nation, and form marriages and friendships across national boundaries with much greater frequency than in more troubled multinational states. These are goods which they are reluctant to give up. Let me call them *centripetal goods*

My claim is that in cases such as these, a right to secede would have the following beneficial effect on political unity. Given the presence in all of these cases of centripetal goods, it is not the case that a lot of citizens willing to consider secession actively want to leave more than they want to continue to enjoy the aforementioned centripetal goods. What they want is for the choice of whether or not to remain in political union to be up to them. Secessionists are not all simply engaging in cost/benefit calculations which give rise to the conclusion that the costs of union outweigh the benefits. Rather, what they want is to be *able* to engage in such cost/benefit analyses, and most importantly to be free to act on the result of such calculations, whatever it may be.

In fairly just and prosperous multinational states, it is quite clear that centripetal goods outweigh centrifugal motives. Minority nations in such countries enjoy a high standard of living, wield considerable self-government powers, and are faced with considerable uncertainty if they decide to secede. What a right to secede does is changes the perspective which the members of the minority nation have *vis à vis* this cost/benefit calculation. Without a right to secede, their perspective upon it, and upon the alternatives it presents, is conditional: they would undoubtedly choose to remain in political association, were they free to act on the result of the relevant cost/benefit calculation. But they are not free, and this lack of freedom looms large in their assessment of their overall situation. The important point in the present context is that the disvalue that the lack of freedom involves offsets the result which this calculation independently carried out

would yield. A right to secede as it were takes this disvalue off the scales, and allows the result of the cost/benefit analysis of the secession to be considered on its merits.

Now, some might claim that the thumbnail sketch I have given of the preference schedule of the member of a minority nation is irrational. If she already *knows* that the result of the relevant cost/benefit calculation will be favorable to remaining in political association within a multinational state, what does it *matter* whether or not this calculation is carried out in a context in which she is in *principle* free to make a choice which she knows in *practice* she will not be inclined to make?

I would argue that the charge of irrationality would be misplaced. First, because there is *prima facie* disvalue to obstacles being put in our way by others' political agency.⁴² And second, and perhaps less obviously, because the fact of unfreedom unavoidably *dampens* the enjoyment we can derive from those goods that we are provided with in our captivity. Imagine prisoners living on a beautiful, commodiously appointed island compound, whose needs were perfectly well catered for, but who were prevented from leaving the island, and who were made to understand that, for some reason, their continued enjoyment of the resources placed at their disposal was conditional upon their acceptance of their captive condition. I think we would agree that, not only would they have reason to resent their unfreedom and to want to resist it, but they would also find the goods that they were provided with less satisfying than they would have had they been able to enjoy them in a condition of full freedom. Unfreedom enters into the utility schedule of my imagined island captives twice, as it were: once as a source of frustration and disvalue in and of itself, and once as a factor dampening the utility derived from the goods they have at their disposal. For reasons made familiar to philosophers through the reasons of Amartya Sen, it is an unjustified prejudice of some rational choice theory that it would have us ascribe utilities to options without regard to considerations of context and contrast class.

I obviously do not want to push the analogy between island prisons and multinational states which do not permit secession too far. But even when appropriate qualifications are made, I think that the basic point still stands: a right to secede would make national minorities in fairly just and prosperous multinational states *less* likely to secede. It would take away one of the principal sources

of dissatisfaction they have with the state to which they belong, namely that it denies them the status that would allow them to decide for themselves whether to stay or go, thus neutralizing a factor which tends to offset the otherwise positive cost/benefit reckoning that they might be inclined to make of their situation, and it would make the centripetal goods which they already enjoy shine more brightly.

Conclusion

I have argued in this paper that we must distinguish between the narrowly moral question of whether, in the present international order, there actually *is* something like a right to secession, and the broader prudential question of whether such a right ought to be granted to national sub-units in multinational states. Focussing on the latter question, I have argued that, contrary to a growing consensus including such thinkers as Rainer Bauböck and Cass Sunstein, there is actually quite a case to be made for constitutionalizing a duly constrained right to secede. Making legal provision gives prudent constitution-makers a way of controlling a process which would otherwise happen anyway in a much less manageable, and potentially more destructive manner. It does so by allowing them to apply pressure at appropriate points on the motives and incentives of the relevant actors. Such a provision could through its constraints make secessionist longings more costly to act on, by imposing procedural hurdles which might steady the hand of trigger-happy secessionists. And by making centrifugal motives more difficult to act on, it might allow the centripetal motives on both sides to operate in a more untrammelled manner. Indeed, though I have for the purposes of this paper focussed on the motives and incentives of would-be secessionists, analogous analyses could be made of the ways in which the incentive structure of leaders of the state threatened with secession. For example, a right to secede might make it seem more costly for leaders of the state simply to pander to the desires of the national majority by turning a deaf ear to the minority nation's complaints.

As I mentioned above, there are occasions in the political history of a community when the fund of good will and trust is sufficient to make or amend a constitution in such a way as to

incorporate a right to secede, and there are times when all suggestions will be viewed with suspicion. It may be too late for some multination states to embark upon the course of constitutional change suggested here. Prudent constitution-makers of the multination states of the future would however be well advised to give the granting of a constitutional right to secede serious thought.

¹ A version of this paper was read at a conference on “Secession and Stability” at the University of Western Ontario, April 30, 1999. Thanks to participants for helpful comments and discussion. Thanks in particular to Rainer Bauböck and Wayne Norman for abundant written comments. The paper was written while I was a Laurence S. Rockefeller Visiting Fellow at the Center for Human Values, Princeton University. The Center provided ideal conditions in which to do research. Thanks to Sayumi Takahashi for her diligent research assistance.

² I will remain officially agnostic on this question for the purposes of this paper, though I have argued in the past that it is more difficult than nationalist writers have supposed to identify without begging the question a property which uniquely qualifies nations as opposed to other groups as collective rights bearers. See my “How can Collective Rights and Liberalism be Reconciled?”, in R. Bauböck and J. Rundell (eds.), *Blurred Boundaries: Migration, Ethnicity, Citizenship*, (Avebury: Ashgate, 1998). Similar views has been put forward by Allen Buchanan, “What’s so Special About Nations?”, in *Rethinking Nationalism. Canadian Journal of Philosophy Supplementary Volume 22*, (ed. Jocelyne Couture, Kai Nielsen and Michel Seymour); and Thomas W. Pogge, “Groups Rights and Ethnicity”, in I. Shapiro and W. Kymlicka (eds.), *Ethnicity and Group Rights* (New York: The NYU Press, 1997).

³ For recent example of answers to the basic question, see D. Philpott, “In Defense of Self-Determination”, in *Ethics*, 105 (1995), pp. 352 - 385; C. Wellman, “A Defense of Secession and Political Self-Determination”, in *Philosophy and Public Affairs*, 24 (1995), pp. 142 - 171; D. Gauthier, “Breaking Up: An Essay on Secession”, in *Canadian Journal of Philosophy*, 24 (1994), pp. 357 - 372. For some examples of arguments taking authors concerned with the basic question to task for not answering the legal questions, see Allen Buchanan, “Theories of Secession”, in *Philosophy and Public Affairs*, 26 (1997), pp. 31 -61; and W. Norman, “The Ethics of Secession as the Regulation of Secessionist Politics”, in M. Moore (ed.), *National Self-Determination and Secession*, (Oxford: Oxford University Press, 1998), pp. 34 - 61.

⁴ Thus, for example, Daniel Philpott defends his autonomy-based defense of a right to secession against his critics by joining in the debate over such a right’s supposed perverse effects. See his “Self-Determination in Practice”, in M. Moore (ed.), *National Self-Determination and Secession*.

⁵ For a useful discussion of institutional design, see Robert Goodin, “Institutions and their Design”, in R. Goodin (ed.), *The Theory of Institutional Design*, (Cambridge: Cambridge University Press, 1996).

⁶ Norman, “Ethics of Secession”, p. 44.

⁷ Buchanan, “Theories of Secession”, p.32.

⁸ This is one of the lines of reasoning which was taken by the majority opinion of the Canadian Supreme Court in denying Sue Rodriguez’ appeal of a British Columbia decision denying that she be granted a right to physician-assisted suicide. See [1993] 3 S.C.R. Rodriguez v. British Columbia (Attorney General).

⁹ Buchanan, “Theories of Secession”, p. 52. See also Rainer Bauböck, “Self-Determination and Self-Government”, unpublished ms., p. 28.

¹⁰ Ronald Dworkin, “Rights as Trumps”, in J. Waldron (ed.), *Theories of Rights*, (Oxford: Oxford University Press

¹¹The advantages and disadvantages of federalism as a response to interethnic conflict are surveyed in Will Kymlicka, “Is Federalism a Viable Alternative to Secession?”, in P. Lehning (ed.), *Theories of Secession*, (London: Routledge, 1998).

¹²For a recent reformulation of this point, see John McGarry, “ ‘Orphans of Secession’: National Pluralism in Secessionist Regions and Post-Secession States”, in M. Moore (ed.), *National Self-Determination and Secession*.

¹³I have surveyed and criticized arguments attempting to establish the latter point in my “National Partiality: Confronting the Intuitions”, forthcoming in *The Monist*.

¹⁴Buchanan, Norman and Bauböck are all just-cause theorists. So is Cass Sunstein, in his “Constitutionalism and Secession”, in *University of Chicago Law Review* 58 (1991) pp. 633 - 670. Theorists who argue for a primary right to secede include Wellman and Philpott, as well as Kai Nielsen, “Liberal Nationalism and Secession”, in M. Moore (ed.), *National Self-Determination and Secession*. The accepted nomenclature labels these theorists “choice theorists”, though it is tempting to mark the distinction between them and “just cause” theorists by calling them “just ‘cause’” theorists.

¹⁵Only the Constitution of the former Soviet Union and of the tiny island federation of Saint Kitts - Nevis provide a mechanism for secession. Arguably, the recent Canadian Supreme Court reference on the legality of Québec’s unilateral secession creates a quasi-constitutional right to secession.

¹⁶The latter point is made in an unpublished paper by Will Kymlicka entitled “Federalism and Secession: Comparing Western Democracies and Eastern Europe” presented to the conference on *Secession and Stability*, University of Western Ontario, May 1, 1999.

¹⁷For a classic discussion of the various forms such arrangements can take, see Arend Lijphart, *Democracy in Plural Societies* (New Haven: Yale University Press, 1977).

¹⁸The link between nationalism, statehood and the quest for status forms the core of Liah Greenfield’s *Nationalism: Five Roads to Modernity* (Cambridge: Cambridge University Press, 1992).

¹⁹Rainer Bauböck has suggested to me in private correspondence that the symbolic goods of statehood can be fairly distributed. Symbols like flags and national anthems can be devised in such a way as to reflect all component nations, and state prerogatives such as national participation in international sports competitions can be granted minority nations. Generally, the symbols of the *state* can and ought to be radically divorced from nationality. I would respond to this by invoking what might be called the “national open question argument”, adapted loosely from G.E. Moore’s celebrated argument against reductionist accounts of the meaning of “goodness”. As long as it makes sense for a member of a national minority to say, “we have powers x, y and z and a share in symbols a, b and c, but we don’t have a state”, then it will still be plausible to claim that *some* goods of statehood cannot be captured by any reductive analysis.

²⁰Robert Nozick, *The Nature of Rationality*, (Princeton: Princeton University Press, 1993), pp. 26 - 35.

²¹I thus share T. M. Scanlon’s worries about substantive conceptions of rationality. See his *What we Owe to Each Other*, (Cambridge, MA.: Harvard University Press, 1998), pp. 26 - 35.

²²Bauböck, “Self-Determination and Self-Government”, p. 32.

²³For an exemplary collection of articles on constitutionalism in a Madisonian spirit, see Jon Elster and Rune Slagstad (eds.), *Constitutionalism and Democracy*, (Cambridge: Cambridge University Press, 1988).

²⁴On this point, see Morton White, *Philosophy, The Federalist, and the Constitution*, (Oxford: Oxford University Press, 1987), esp. parts V and VI.

²⁵For recent discussions of this point, see Samuel V. Laselva, *The Moral Foundations of Canadian Federalism*, (Montreal: McGill-Queens Press, 1996), ch. 5; and Kenneth McRoberts, *Misconceiving Canada*, (Toronto: Oxford University Press, 1997), pp. 176 - 177.

²⁶I thank Rainer Bauböck for having suggested that his argument be read in this light.

²⁷Cass Sunstein, "Constitutionalism and Secession", p. 633.

²⁸On this point, see Allen Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Québec*, (Boulder: Westview Press, 1991), pp. 48 - 52. For a much more complete treatment of the history of the legal concept of the right to self-determination, see Antonio Cassese's magisterial *Self-Determination of Peoples: A Legal Reappraisal* (Cambridge: Cambridge University Press, 1995).

²⁹The standard argument has been made by Will Kymlicka in *Liberalism, Community and Culture* (Oxford: Oxford University Press, 1989), and *Multicultural Citizenship*, (Oxford: Oxford University Press, 1995). Bauböck, Buchanan and Sunstein all affirm the importance of self-government arrangements in the papers mentioned thus far.

³⁰I thank Wayne Norman for having suggested this example to me.

³¹For example, one of the classic texts of the early secessionist movement in Québec was entitled *White Niggers of America*. It borrowed heavily from theorists of African decolonization such as Frantz Fanon.

³²Sunstein, "Constitutionalism and Secession", p. 648.

³³Buchanan, "Democracy and Secession", p. 21.

³⁴Buchanan, "Theories of Secession", p. 52.

³⁵For an analogous discussion to which I am broadly sympathetic, see Wayne Norman, "Ethics of Secession", pp. 50 - 56.

³⁶On constitutions as self-binding mechanisms, see Stephen Holmes, "Precommitment and the Paradox of Democracy", in Elster and Slagstad (eds.), *Constitutionalism and Democracy*. On the trust-enhancing potential of constitutionalism, see my "Building Trust in Divided Societies", in *Journal of Political Philosophy*, forthcoming.

³⁷This is a particular concern of Sunstein's. See his "Constitutionalism and Secession", p. 649.

³⁸By "group-specific interests", I mean those interests which members of a group have *qua* members of that group. Aside from whatever generic human interests they may have, I assume that they also have interests pertaining to the conditions for the viability and flourishing of the groups with which they identify them, among which the *national* group to which they belong looms large. The distinction as depicted here is very rough. My purposes here do not require that it be more finely drawn. I merely need to make plausible that such a distinction exists.

³⁹John Rawls, *A Theory of Justice*, (Cambridge, MA. : Harvard University Press, 1971), pp. 85 - 86.

⁴⁰For a parallel discussion of these matters, see Buchanan, *Secession*, p. 138, and Norman, "Ethics of Secession", p. 50.

⁴¹Though the disproportion between the Flemish and Walloon is not as great, the Walloon are perceived, rightly or wrongly, as sharing a culture with France

⁴²The *locus classicus* for the argument for the *prima facie* disvalue of unfreedom is of course Isaiah Berlin's "Two Concepts of Liberty", in *Four Essays on Liberty*, (Oxford: Oxford University Press, 1969).