

Democratic Secession from a Multinational State*

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When Woodrow Wilson advanced the principle of self-determination in a series of speeches in 1918–19, his assumption seemed to be that acknowledging the claims of self-determination was a simple corollary of respect for democracy. Contemporary secessionists, and many who write and theorize about secession, share Wilson’s intuition about this. It is widely claimed that a ‘people’ has the right to determine democratically its own political status, so long as any change is peaceful and orderly, consistent with standard liberal rights, and does not involve any unjust taking of territory or unfair terms of separation.¹ Whatever the considerations are that count in favor of making decisions democratically in

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1. Recent scholarly defenses of a democratic right to secession can be found in David Gauthier, “On Breaking Up: An Essay on Secession,” *Canadian Journal of Philosophy* 24 (1994): 357–72; Daniel Philpott, “In Defense of Self-Determination,” *Ethics* 105 (1995): 352–85, and “Self-Determination in Practice,” in *National Self-Determination and Secession*, ed. Margaret Moore (Oxford: Oxford University Press, 1998), pp. 79–102; Christopher Wellman, “A Defense of Secession and Political Self-Determination,” *Philosophy & Public Affairs* 24 (1995): 142–71; Harry Beran, “A Democratic Theory of Political Self-Determination for a New World Order,” in *Theories of Secession*, ed. Percy Lehning (London: Routledge, 1998), pp. 32–59; and David Copp, “Democracy and Communal Self-Determination,” in *The Morality of Nationalism*, ed. R. McKim and J. McMahan (Oxford: Oxford University Press, 1997), pp. 277–300.

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general—be they equality, autonomy, justice, or so on—count, on this view, in favor of settling a secession dispute in the same way.²

A standard objection to this way of thinking about secession maintains that the entrenchment of a ‘democratic’ or ‘plebiscitary’ right to secede in international law and practice would have a number of undesirable consequences.³ It would lead to a proliferation of secessionist crises and of the outbreaks of violence and war that sometimes result from such crises. It would also create perverse incentives for existing states, including an incentive to avoid otherwise beneficial schemes of regional autonomy and federalism where such schemes raise the probability that secessionists would be able to organize and win a referendum on independence. In addition, it is argued, a plebiscitary right to secession would undermine the practice of democracy by making exit too easy and thereby discouraging the exercise of voice.

Those who make this objection against the plebiscitary right typically do not want to prohibit secession outright. Instead, they argue that the right to secede is, in Allen Buchanan’s words, a “remedial right only”: a group should be said to possess such a right only if it is clearly demonstrable that the group has been the victim of injustice at the hands of the state.⁴ In Buchanan’s influential version of this theory, a right to secede is given only to those groups that can (i) justifiably complain of a pattern of serious human rights violations at the hands of the state or (ii) establish that they were unjustly incorporated into the state.⁵

In reply to the objections raised by remedialists, plebiscite theorists emphasize the various qualifications they attach to the plebiscitary right.⁶ Groups only have a valid claim to independence when there is reason to believe that the standard liberal rights of all concerned will be respected, when the danger to peace and security is minimal, and so on. One recent proponent of a democratic right to secession, Daniel Phil-

2. For example, Philpott, “In Defense of Self-Determination,” bases his democratic right to secede in the considerations of individual autonomy that he thinks ground democracy more generally, and Copp, “Democracy and Communal Self-Determination,” pp. 291–92, pursues a similar strategy in appealing to considerations of equal respect.

3. See, e.g., Alfred Cobban, *The Nation State and National Self-Determination* (London: Collins Clear Type Press, 1969), p. 138; Allen Buchanan, “Theories of Secession,” *Philosophy & Public Affairs* 26 (1997): 31–61, and “Democracy and Secession,” in Moore, ed., pp. 14–33; Wayne Norman, “The Ethics of Secession as the Regulation of Secessionist Politics,” in Moore, ed., pp. 34–61. All three of the arguments referred to in the remainder of the paragraph are from Buchanan’s two articles.

4. Buchanan, “Theories of Secession,” pp. 34–37.

5. *Ibid.*, p. 37.

6. See, e.g., Philpott, “In Defense of Self-Determination,” pp. 353, 371–85, and “Self-Determination in Practice,” pp. 80–90; see also Kai Nielsen, “Liberal Nationalism and Secession,” in Moore, ed., pp. 103–33, at pp. 110–15.

pott, after noting various qualifications to the right, goes so far as to say, "I doubt that there are many cases to which my own theory would give a green light, but to which Buchanan's would grant a red or yellow light."⁷ Plebiscite theorists also point to some of the adverse consequences that might flow from rejecting a plebiscitary right to secede.⁸ Groups that (could) organize and win a referendum on secession but are denied independence under the remedial right only theory might themselves pose a danger to peace and security. And a rule that makes exit too difficult might undermine the practice of democracy on the part of a nonsecessionist national majority. With the threat of secession out of the way, such a majority might feel little incentive to listen to alternative perspectives and legitimate grievances advanced by a minority group.⁹

It is rather difficult to know who has the stronger position in this disagreement. The question seems to turn on a judgment about whether it would be possible to institutionalize a heavily qualified plebiscitary right and on conjectures about the likely consequences of recognizing such a right (in comparison with a remedial right) in domestic and international contexts. Although I will return to some of these difficult issues at the end of the article, my main purpose will be to develop a different objection to the plebiscitary theory of secession. I will exploit this objection to propose a moderate account of secession that lines up in between the two main existing approaches.

A striking feature of both of these approaches is that neither directly engages with the concerns of nationalists. Although secessionist movements are typically expressions of nationalism, and recent work on secession has to some extent been intertwined with a renewed scholarly interest in the normative questions posed by nationalism, neither approach appeals directly to considerations of nationality either to ground or to limit the right of secession. The present article will seek to insert nationality back into our thinking about the relationship between democracy and secession. An important problem with existing democratic accounts, I will show, is that they permit secessions that have the effect of undermining arrangements for the equal recognition of the different identities found in a multination state.

To avoid this possibility, the plebiscitary theory should accept a qualification that I shall call the 'failure-of-recognition condition'. This condition requires that the secessionist group be able justifiably to claim

7. Philpott, "Self-Determination in Practice," p. 90.

8. For example, *ibid.*, p. 92.

9. This point is made, in a slightly different context, by Daniel Weinstock, "Constitutionalizing the Right to Secede," *Journal of Political Philosophy* 9 (2001): 182–203, at p. 203.

that the state has failed to introduce and respect institutional arrangements that adequately recognize the distinct national identity of (some of) the group's members. With the help of this condition, I try to chart a middle course between the democratic approach to secession, on the one hand, and the remedial approach, as formulated by Buchanan, on the other. Unlike Buchanan's, my proposal does not require that the seceding group be able to demonstrate that it has been the victim of human rights abuses or that it was involuntarily incorporated into the state. A right to secede can be claimed against 'minimally just' states (i.e., states that satisfy Buchanan's two conditions). Against the democratic approach, however, I argue that, under certain fairly common conditions, a democratic mandate does not generate a right to secede from a flawless state. For such a right to be generated, there must be either a violation of Buchanan's conditions of minimal justice or a distinct failure by the state, a 'failure of recognition'. Where a state avoids both of these kinds of flaws, it need not worry about secession: a democratic mandate does not, on its own, generate a right to secede.

In developing this proposal, I will start by formulating and explaining the failure-of-recognition condition (Sec. I). I set out the context in which the condition is relevant, and I explain what I mean by 'recognition' and give a sense of the kinds of institutional arrangements that recognition involves. Two arguments are then developed in favor of incorporating this condition into a democratic account of secession: the 'equality argument' (Secs. II–III) and the 'democracy argument' (Sec. IV). After considering two possible objections to my account (Sec. V), I return, in the final section of the paper (Sec. VI), to some of the institutional issues frequently raised by remedialists. Whereas the main body of the article sets out the contours of a moral right to secede, I now argue that the entrenchment of my proposal in international law and practice would not generate consequences that are obviously inferior to the entrenchment of a remedial right defined in terms of 'minimal justice'.¹⁰

I. THE FAILURE-OF-RECOGNITION CONDITION

On the simplest version of the plebiscitary theory, victory in a referendum held in the secessionist unit on a clear question about independence is sufficient to generate a right on the part of that unit to secede. Following much of the literature on democratic secession, I will

10. Here I follow David Miller's methodological suggestion that "we should establish the basic principles first, then ask what effect the public promulgation of these principles might have on the behaviour of different political actors"; see Miller, "Secession and the Principle of Nationality," in *Citizenship and National Identity* (Cambridge: Polity Press, 2000), pp. 110–24, at p. 112.

assume that this simple plebiscitary theory is too permissive. It fails to account for the possibility that citizens of the secessionist unit may not have a valid claim on the territory of the unit (in which case it is not up to them to decide in a referendum what should happen to that territory),¹¹ and it ignores the possibility that the terms of secession proposed by the secessionist unit might be unfair. More seriously still, the simple theory implausibly allows secessions that lead to serious violations of standard liberal rights (e.g., the rights of new minorities formed by the secession),¹² as well as secessions the predictable consequence of which would be a significant likelihood of violence and war.¹³ Finally, the simple theory departs from an assumption made by almost every plebiscitary theorist: that the right to secede is limited to certain eligible groups. For instance, it ignores the assumption made by some that only 'nations' or 'peoples' can be holders of the right, and it also clashes with the less demanding view that the seceding unit must be able to form a viable state.¹⁴

These conditions all raise difficult and interesting issues, which, for the most part, I ignore in this article. I am proposing an objection, and then an alternative, to existing democratic accounts of secession, and so it is most appropriate to assume a moderate and plausible version of the democratic view, one which enjoys a degree of actual support in the current literature on secession and among secessionists themselves. With this in mind, I will assume that any rights claimed under the plebiscitary theory satisfy the following conditions:¹⁵ (1) The citizens of

11. Copp, "Democracy and Communal Self-Determination," p. 280, insists on a qualification of this kind.

12. For the claim that a democratic right to secession is qualified by a requirement to respect standard liberal rights, see, e.g., Philpott, "In Defense of Self-Determination," pp. 372–75, and "Self-Determination in Practice," p. 83; Nielsen, pp. 111, 115; Wellman, pp. 164, 166; Copp, "Democracy and Communal Self-Determination," p. 280; Beran, p. 54.

13. Philpott, "In Defense of Self-Determination," pp. 381–82, and "Self-Determination in Practice," pp. 83, 91–92, argues that the democratic right to secede may be restricted in these cases, as does Copp, "Democracy and Communal Self-Determination," p. 280.

14. For the claim that nonnational groups are ineligible for secessionist rights, see, e.g., Nielsen, p. 115. For the view that unviable groups are ineligible, see, e.g., Philpott, "In Defense of Self-Determination," p. 366; Beran, pp. 36–38; and Wellman, pp. 160–64. An even less demanding requirement would be the following: either the seceding group must be able to form a viable state or it must be prepared to join together with another group to form a viable state. Copp, "Democracy and Communal Self-Determination," pp. 290–97, proposes an eligibility requirement that combines elements of the nationality and viability views into the requirement that the group form a 'society'.

15. Other conditions could be mentioned too. For instance, as Copp, "Democracy and Communal Self-Determination," p. 280, points out, the right to secede may be limited by a duty not to worsen the position of the remainder state in certain ways—e.g., not to cripple its capacity to govern effectively and justly.

the secessionist unit collectively have a valid claim to the territory of that unit;¹⁶ (2) the terms of secession proposed by the secessionists are fair; (3) the creation of the new state is unlikely to generate serious violations of standard liberal rights, or to conflict with the realization of other standard elements of liberal justice; (4) the citizens of the secessionist unit form a group eligible for secession; and (5) the secession will not pose a serious threat to peace and security.

My claim is that the plebiscitary theory, even in this moderate and qualified form, is too permissive. A further condition should also be accepted by plebiscitary theorists as restricting the democratic right to secede: the failure-of-recognition condition. (In fact, as I indicated earlier, my view is that either the failure-of-recognition condition must be met or the state must be violating the conditions of minimal justice. To focus attention on the failure-of-recognition condition, however, I will assume that the state is not violating the conditions of minimal justice.) Acceptance of the failure-of-recognition condition would constitute a fairly fundamental amendment of plebiscitary theories. In their existing form, those theories could, in principle, license a secession from a perfect state. By contrast, on my proposal, there is no right to secede from a perfect state: the state must be either violating the conditions of minimal justice or guilty of a failure of recognition.¹⁷

The failure-of-recognition condition is met when the state has failed to introduce meaningful constitutional arrangements that recognize the distinct national identity of (some) members of the secessionist group. In the remainder of this section, I will try to clarify this condition by setting out the context in which it is relevant and by explaining and illustrating what I mean by constitutional arrangements that recognize a national identity.

The failure-of-recognition condition is relevant to cases where there are a plurality of national identities among citizens of the would-be secessionist unit (T). In particular, it is concerned with cases where, although some citizens of T have a strong, even exclusive, substate national identity focused on T, others maintain a national identity focused on the state as a whole (S). To have a national identity focused on S or T, I shall assume, is to have a set of attitudes and dispositions with respect to (a majority of) the group of citizens who live in S or T. These attitudes

16. Or, more weakly, no one else has a competing claim on all or part of the territory that is sufficiently strong to defeat the presumption that citizens of the territory collectively have a valid claim on it.

17. Although my proposal requires a failure on the part of the state, strictly speaking it is not a remedial theory. Such a theory views secession as a 'remedy' for injustice. On my view, by contrast, the satisfaction of the failure-of-recognition condition indicates the absence of a constraint on a plebiscitary right to secede rather than the presence of an injustice that must be remedied.

and dispositions include identification with the group, a propensity to feel pride and shame about actions on behalf of the group, and the identification with some territory (typically the territory of S or T) as the 'homeland' of the group. One of the most important attitudes associated with national identity is a more or less settled desire that the group should enjoy some significant degree of collective self-government as a group: it is this desire—shared by most members of the group—that helps to distinguish a national identity from other forms of identity that people might share.¹⁸

To say that a plurality of national identities are found among citizens of T, then, is to say that some of the citizens of T have these attitudes and dispositions with respect to all citizens of S and that others have them with respect only to fellow citizens of T (and some will have the relevant attitudes and dispositions with respect to both groups, since it is possible to have multiple identities). Although identity pluralism of this kind may not be found in all regions containing secessionist movements, it is relatively common. For example, in Quebec there are significant numbers of citizens whose national identity is mainly focused on Quebec, but also significant numbers who have a strong sense of Canadian national identity.¹⁹ Likewise, in Scotland and Catalonia, one finds people with Scottish and Catalan national identities, but also people with British and Spanish national identities.²⁰ Of course in all these cases it is common for people to have dual identities: they identify with both the national minority and the larger statewide community.

The failure-of-recognition condition requires that, under conditions of identity pluralism such as those found in the above-mentioned cases, priority be given to accommodating minority national identities within a set of multinational constitutional arrangements—arrangements that recognize the substate, as well as the statewide, national identity. A national identity is recognized, I shall say, to the extent that bearers of that identity enjoy self-government. This in turn requires that the constitutional arrangements of the state provide a democratic forum in which people associated with that identity form a majority and to

18. David Copp, "Do Nations Have the Right of Self-Determination?" in *Philosophers Look at Canadian Confederation*, ed. Stanley French (Montreal: Canadian Philosophical Association, 1979), pp. 71–95, at pp. 74–75.

19. See, e.g., the surveys reported in Maurice Pinard, Robert Bernier, and Vincent Lemieux, *Un combat inachevé* (Sainte-Foy, Québec: Presses de L'Université de Québec, 1997), pp. 87–88, 119, 340; and in the *Montreal Gazette*, April 4, 1998, p. A6.

20. For survey evidence on the Scottish and Catalan cases, respectively, see Alice Brown, David McCrone, Lindsay Paterson, and Paula Surridge, *The Scottish Electorate: The 1997 General Election and Beyond* (London: Macmillan, 1999), chap. 3; and Luis Moreno, Ana Arriba, and Araceli Serrano, "Multiple Identities in Decentralized Spain: The Case of Catalonia," *Regional and Federal Studies* 8 (1998): 65–88.

that extent can think of themselves as making collective decisions together as a group.

With this conception of recognition in mind, I shall say that a multinational constitution is in place when formal and/or informal structures, norms, and practices are established that provide a democratic forum corresponding to each of the national identities found in the political community. When such arrangements are in operation, citizens with different national identities but living together in the same political community can each find and relate to a democratic forum for collective decision making in which their identity finds significant expression.

We should expect multinational constitutional arrangements to take very different forms depending on factors such as the community's political traditions and culture, how the different national identities to be recognized are territorially dispersed, and so on. Multinational federalism represents one important example of multinational constitutional arrangements.²¹ In a multinational federal system, the federal units are defined in such a way, and given such powers, as to allow bearers of substate national identities their own significant political communities, while at the same time preserving a significant role for the larger state which accords a degree of recognition to those who maintain a statewide identity. Under multinational federal arrangements, those sharing a substate national identity have a forum—one of the units of the federation—in which they form a majority and to this extent can think of themselves as making decisions together as a group—decisions which apply to the group and its territory. Their identity is recognized in the sense that political boundaries are drawn, and powers assigned, in such a way as to acknowledge the group as a group and give it a space in which to enjoy self-government. At the same time, those who retain a statewide identity also have a forum—the democratic processes of the central state—in which they can make binding collective decisions together with other members of the group with which they identify.

To avoid confusion, let me distinguish the conception of recognition I am proposing from other ways in which we talk of groups enjoying recognition. Most commonly, perhaps, the recognition of a group's national identity is said to involve the provision of government services, and the operation of public institutions, in the language and cultural medium associated with the group. A group is recognized in this important sense, for instance, when there are public schools that offer instruction in the language of the group and employ a curriculum in-

21. On the idea of multinational federalism, see Will Kymlicka, *Finding Our Way* (Toronto: Oxford University Press, 1998), chap. 10, and "Is Federalism a Viable Alternative to Secession?" in Lehning, ed., pp. 111–50.

formed by the group's culture and historical experience. I will not understand recognition in this cultural sense, however, because I take it that many proponents of the plebiscitary theory already acknowledge its importance. When moderate and qualified versions of the plebiscitary theory insist that democratic secession is only permissible if it respects standard liberal rights, they often intend this to include minority language rights and other rights associated with cultural recognition.²² In any case, this is how I will understand the 'standard liberal rights' requirement for the purposes of this article. On the view I will be taking for granted, cultural recognition is already a factor to be taken into account in considering secessionist claims, and the question is whether recognition in the self-government sense is also such a factor.

Recognition can also have a symbolic dimension. We might say that a group's identity is recognized in a set of constitutional arrangements, for instance, when the constitution and other official documents contain specific and explicit references to the group and when other aspects of the public face of the state—its flags, coats of arms, national anthem, and so on—incorporate symbols connected with the group. And recognition is sometimes thought to involve the enjoyment of international personality. A group is recognized in this sense when it can have its own direct relations with foreign states and other international bodies, when its leaders can act and speak on behalf of the group in international meetings and fora, when it can field its own sports teams in international competitions, and so forth. Although I will not assume that failure-of-recognition involves a failure to provide symbolic recognition or international personality, someone who thinks that these forms of recognition are normatively important can reinterpret the failure-of-recognition condition accordingly.

So the failure-of-recognition condition, as I shall understand it, involves a failure by the state to introduce and respect constitutional arrangements that provide space for self-government for members of a national minority. We cannot conclude that a democratic mandate won by a national minority generates a right to secede, I shall now argue, unless this condition is met. Two arguments will be offered in favor of this contention. The first—the equality argument—will contend that the plebiscitary theory can conflict with the equal recognition of national identity and should be rejected on this basis. The second—the democracy argument—will explore the plebiscitary theory's assumption that the secessionist region itself is the appropriate constituency in which to hold a democratic procedure to settle the secession controversy. The best reasons for adopting this assumption, it will be argued, turn out

22. See, e.g., Philpott, "Self-Determination in Practice," p. 83.

to be even better reasons for acknowledging the failure-of-recognition condition.

II. THE EQUAL RECOGNITION OF NATIONAL IDENTITY

The equality argument that I shall develop in favor of the failure-of-recognition condition has four main steps: (1) The recognition of a group is a 'fundamental good' for the members of that group; (2) since recognition is a fundamental good, arrangements that establish an equal distribution of recognition ought to be valued and respected; (3) the plebiscitary theory would license secessions that do not respect, but in fact dismantle, arrangements establishing equal recognition; and (4) the plebiscitary theory qualified by the failure-of-recognition condition would not have this implication.

Let us set aside for the moment the question of whether recognition is a 'fundamental' good and examine the simpler claim that recognition is a good. I offer two arguments for this claim. The first maintains that the value of recognition derives simply from the fact that the aspiration to collective self-government is one of the constituting features of a shared national identity. To have a national identity, as we saw earlier, is to have a set of attitudes and dispositions, one of the most important of which is the desire for some degree of collective self-government. The recognition of some particular national identity is a good for individuals in the simple sense that it accommodates, or gives expression to, the desire for self-government shared by people with that identity. Although it is not essential to the argument that follows, the accommodation of this desire may in turn be one of the sources of self-respect and self-esteem for some individuals.²³ Their respect and esteem for themselves may, in part, be a function of the respect and esteem that is publicly accorded their identity group through the creation of institutional-jurisdictional spaces in which the group can be self-governing.²⁴

23. Several readers have wondered whether it is essential to my argument to say more about why the desire for self-government is one that should be gratified. I am not persuaded, however, that this is the right question to ask. In other distributional contexts, it seems enough for the claim that some resource R should be distributed equally to say that R will be useful for satisfying desires (or mere possession of R will satisfy some desires). We do not, in general, think that one should get one's fair share of R only if one can show that the desire to be satisfied via R is one that 'should be gratified'. Suppose, for instance, that a state-run orphanage is given a shipment of candy. It seems intuitive to think that the candy should be distributed equally among the orphans even though candy is not a good in any respect other than that it gratifies desires.

24. On the connection between self-respect and self-government, see Charles Taylor, "Why Do Nations Have to Become States?" reprinted in *Reconciling the Solitudes*, by Charles Taylor (Montreal: McGill/Queens University Press, 1993), pp. 40–58; Avishai Margalit and Joseph Raz, "National Self-Determination," *Journal of Philosophy* 86 (1990): 439–61; and Copp, "Democracy and Communal Self-Determination," pp. 284–85.

The second argument has a more complex structure. It starts from the observation that groups defined by national identity typically have a distinctive culture. Their members speak a common language, share similar distinctive beliefs about value, are guided by distinctive traditions and ways of life, and have their own approaches to social and political problems.²⁵ They often also have the goal that their national identity (and the language and culture it is connected to) should be perpetuated from generation to generation into the indefinite future.²⁶ Of course, not every member of a national group will affirm the beliefs and practices associated with the group. But, for most national groups, the values and practices cluster around a distinctive center of gravity, and the outlook, priorities, and way of life of the majority are noticeably different from those which predominate in other such groups.

When a group enjoys recognition, as we have seen, it has a space in which it can exercise self-government. Self-government makes it easier for members of a group to express their distinctive culture in political decisions and outcomes. When a group is in the majority in a constituency, it has greater power to bring about decisions and outcomes that reflect its beliefs about value, cultural priorities, traditions, and so on, than it would if its members were thrown into a collective decision-making process dominated by a majority from another group. One of the arguments in favor of self-government for certain Native American groups, for instance, refers to the distinctive beliefs about value and approaches to social and political problems shared by members of such groups. Whereas carving out jurisdictional spaces in which such a group can be self-governing helps to ensure that laws and public decisions can more fully reflect its distinctive beliefs and approaches, this sensitivity to the group's particular concerns would be much less likely were its members to constitute only a tiny minority in a much larger jurisdiction. A similar argument was often made by Scots in favor of devolution. They maintained that Scottish political values were systematically thwarted during the Thatcher years (when the vast majority of Scottish MPs were in opposition) and that devolution would make it harder for this to happen again.

25. This view of the relationship between national identity and shared culture follows J. S. Mill, *Considerations on Representative Government*, in *On Liberty and Other Essays*, by J. S. Mill (Oxford: Oxford University Press, 1991), p. 427. Mill defines 'nationality' by reference to attitudes and dispositions, including common sympathies and a desire for self-government. He observes that nationality, in this sense, is often generated by a shared culture (linguistic, religious, political) but insists that the two ideas can be treated as analytically distinct.

26. The desire for cultural survival is emphasized by Charles Taylor, "The Politics of Recognition," in *Multiculturalism and the "Politics of Recognition,"* ed. Amy Gutmann (Princeton, N.J.: Princeton University Press, 1994), pp. 25–73, at pp. 40, n. 16, 52–53, 58–59.

All else being equal, it is good when individuals can be governed by political decisions and outcomes that ‘fit’ with their own values and traditions. Michael Walzer has referred to this ‘fit’ as “communal integrity.”²⁷ Individuals who enjoy the good of communal integrity are ‘at home’ in their public life and institutions. Public life is understandable and meaningful to them—familiar and comfortable.²⁸ For Walzer, communal integrity is something that foreigners should respect, one reason that states have some moral standing. The doctrine of state sovereignty, in his view, is partly grounded in the respect that foreigners ought to show for the communal integrity of peoples organized into states. While remaining agnostic about Walzer’s particular use of the community integrity argument to ground state sovereignty, I will be claiming, in effect, that respect for communal integrity represents a constraint on democratic secession.

So the recognition of national identity is a ‘good’ for individuals in two different ways. Recognition allows individuals to fulfill their aspiration to participate in collective self-government alongside members of the group with which they identify, and it promotes the value of communal integrity. It should also be clear that recognition is a good that can be distributed more or less equally depending on political arrangements. At one extreme, for instance, political arrangements might not provide any recognition of some national identity at all: boundaries might be drawn, and powers assigned, in such a way as to deny bearers of that identity any meaningful space in which they can conduct their affairs alongside other members of their identity group. By contrast, those with a different national identity may, in this situation, readily be able to identify with the political community in which collective decisions are made. It may be both the case, for instance, that they think of the entire state, and all fellow citizens, as forming their community of belonging and that it is at this statewide level that political decisions are made.

On the other hand, the recognition of national identity need not be so unequally distributed. Constitutional arrangements can be put in place, for example, that give recognition to the substate national identity—through federalism or devolution—while at the same time providing a degree of recognition to statewide national identity holders as well—through the retention of certain democratically controlled powers

27. Michael Walzer, “The Moral Standing of States: A Response to Four Critics,” *Philosophy & Public Affairs* 9 (1980): 209–29, pp. 211–12.

28. Yael Tamir emphasizes a similar point in her defense of what she terms ‘national self-determination’; see *Liberal Nationalism* (Princeton, N.J.: Princeton University Press, 1993), p. 72. See also John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), pp. 61, 111; and Thomas Christiano, “Democratic Equality and the Problem of Persistent Minorities,” *Philosophical Papers* 23 (1994): 169–90, pp. 170–71, 175, 186–87.

by the central state. Provided that significant functions and responsibilities are assigned to each level, a kind of rough equality in the recognition of different national identities is worked out. Consider, for instance, the devolution arrangements recently introduced in Scotland. These arrangements enhance the equality between those in Scotland whose identity is primarily Scottish and those whose identity is primarily British. Whereas the creation of uniquely Scottish institutions, including a Scottish parliament, gives public expression to the Scottish identity, retaining certain powers and responsibilities in London gives a public, political life to the British identity.²⁹

The recognition of national identity, then, is a good that can, in principle, be distributed more or less equally. But, when thinking about political institutions, how much importance should be attached to achieving an equal distribution of this good? Not every good that can be distributed equally ought to be so distributed through political arrangements. The distribution of some goods is appropriately left to the market and civil society. Where these goods are concerned, equality is achieved, not through a direct allocation by the state, but by ensuring that people have equal resources and opportunities to pursue their own ambitions and identity-commitments as they see fit. Let us call goods that should be distributed equally through political arrangements “fundamental” goods. Is recognition a fundamental good?

It is tempting to think that it is not. On this view, whereas some people may decide to devote their resources and energies to associations and movements in civil society that promote and celebrate some particular national identity, others will not. The key point from the perspective of equality is not whether different national identity groups have equal access to such fora for self-expression but whether different individuals start with equal resources and opportunities with which to pursue their own identity-commitments whatever they may be.

A powerful argument against the political recognition of national identity has recently been suggested by Allen Buchanan.³⁰ According to Buchanan, it is morally arbitrary to single out nations as such for rights of self-government. In a liberal society, individuals can quite reasonably have a plurality of different allegiances. For some, nationality will be of little or no importance relative to other sources of identification. The problem with the recognition of national identity is that it singles nations

29. On the Scottish case, see David Miller, *On Nationality* (Oxford: Oxford University Press, 1995), pp. 117–18, and “Nationality in Divided Societies,” in *Citizenship and National Identity*, pp. 125–41.

30. Buchanan, “What’s So Special about Nations?” in *Rethinking Nationalism*, ed. Jocelyne Couture, Kai Nielsen, and Michel Seymour, *Canadian Journal of Philosophy*, suppl. vol. 22 (Calgary: University of Calgary Press, 1998), pp. 283–310.

out and elevates their status above other identities. This, according to Buchanan, represents “nothing less than a public expression of the conviction that allegiances and identities have a single, true rank order of value, with nationality reposing at the summit.”³¹ It devalues other allegiances and identifications and shows less than equal respect to their bearers.

What is correct and important about Buchanan’s argument is the idea that political arrangements ought not to arbitrarily single out some particular identity for special recognition when it can treat the plurality of identities found in the community in a more egalitarian way. For instance, the fact that in most western countries the work week, and schedule of annual holidays, recognizes the identity and practices of the historic Christian majority, and not of various religious minorities, represents a moral blemish on those societies. For why should one particular religious identity, and not others, be singled out for special attention and promotion in this way?³²

But it does not follow from this that political arrangements ought never to be framed so as to give recognition to any identities that people might have. For notice that nonrecognition is not the only possible response to inequalities in the recognition of different identities. An alternative response would be to design social and political arrangements with a view to equally recognizing different identities. For instance, the work week, and schedule of annual holidays, might be structured in such a way as to recognize the identities of a plurality of different religious and nonreligious groups.

To this suggestion, it might be objected that it is impossible to design the calendar in a way which equally recognizes all the possible identifications and allegiances that people might have. Nonrecognition—for instance, letting people choose their own holidays, or choosing them by lot—is thus the superior response to identity pluralism. Suppose that this objection is correct. There is still a further consideration of importance to thinking about identity and recognition. In some cases, it will be difficult, or even impossible, not to recognize at least one identity. This is true of language—a society must have at least one public language—and, most relevantly for Buchanan’s case, of political boundaries—a society must have some set of political boundaries or other. When it is impossible not to recognize at least one identity, then it seems

31. *Ibid.*, p. 294.

32. For discussion of this case, see Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995), pp. 114–15; Veit Bader, “The Cultural Conditions of Transnational Citizenship: On the Interpenetration of Political and Ethnic Cultures,” *Political Theory* 25 (1997): 771–813, pp. 793–94; Joseph Carens, “Two Conceptions of Fairness: A Response to Veit Bader,” *Political Theory* 25 (1997): 814–20, pp. 818–19.

reasonable to think that equal recognition of the different identities—as far as this is possible—becomes the response most in tune with the principle of equal respect from which Buchanan starts.

This conclusion undermines Buchanan's argument. To see this more fully, consider again the case for Scottish devolution referred to earlier. Advocates of a Scottish parliament argue that such an institution gives public expression to the Scottish half of the dual national identities found among the Scots. For Buchanan, it would seem, this form of argument unfairly singles out one particular identity for special attention and consideration. But notice how defenders of the Scottish parliament might respond. They might say: "We're not looking for any special attention or consideration, but just the same kind of attention and consideration that is already given to bearers of the British identity in Scotland. When you accuse us of seeking special consideration for the Scottish identity, you ignore the fact that the present boundaries and institutional set-up already give special consideration to one particular identity—namely, the British identity." The thought behind this response is that all of the major constitutional possibilities for the Anglo-Scottish case—and this is true elsewhere as well—involve recognizing particular identities: there is no recognition-free option. In this context, the principle of equal respect requires us not to avoid recognition altogether—this would probably just amount to exclusively recognizing the majority identity—but to seek, as best we can, equal recognition for the different national identities found in the community.

This objection to Buchanan's argument reveals the problem with the view that the distribution of national identity recognition ought to be left to civil society rather than directly entering in as a consideration in the design of political institutions. The problem, in short, is that the recognition of national identity is by its very nature a good whose achievement is bound up with political arrangements. The recognition of national identity cannot be detached from political institutions and relegated to civil society, because those institutions necessarily involve language, boundaries, symbols, and so forth, and to make any decision about these matters is already to recognize or fail to recognize some particular national identity. It is misleading at best, and, in some contexts, hypocritical, to suggest to some group that is denied recognition that they should seek it in civil society. It is misleading because it is in the nature of national identity that its full expression cannot be achieved in civil society but requires political recognition. It is hypocritical when this suggestion is made from the perspective of a national identity that is already comfortably recognized in the prevailing constitutional arrangements of the community.

III. EQUALITY AND SECESSION

It should be obvious that, under certain conditions, secession would upset multinational constitutional arrangements. Where these conditions obtain, secession is objectionable in at least one important way not acknowledged by existing plebiscitary theories: it fails to respect arrangements that establish an equal distribution of recognition between the different national identities found in the community.

To see this conflict more concretely, consider the case of a secessionist unit in which two main national identities are prevalent: a substate minority national identity focused on the secessionist region and a statewide identity shared with citizens in other parts of the state. To keep things simple, let us imagine that all of the qualifications embraced by plebiscitary theorists are satisfied: the secession of this region would not lead to the violation of standard liberal rights, it would not threaten peace and security, and so on. Let us also assume, for the sake of argument, that multinational constitutional arrangements are in place—for instance, a multinational federation. There is a federal unit with significant powers in which bearers of the substate identity are in the majority and can to this extent collectively make decisions for the group together as a group. At the same time enough significant powers are retained by the central state to enable those with a statewide identity also to enjoy a degree of collective self-government.

Now suppose that those with a particularly strong substate national identity are able to organize and win a referendum in favor of secession. According to the plebiscitary theory, this result would generate a right to secession, since, by assumption, all of the usual qualifications are satisfied. But this implication highlights a clear objection to the plebiscitary theory. In the case being considered, this theory gives the go-ahead to a secession that dismantles arrangements providing for equality in the recognition of the different national identities prevalent in the secessionist region and replaces them with a new set of arrangements that exclusively recognize the substate identity. Prior to the secession a multinational federation was in place which provided institutional space for the expression of both the substate and statewide identities. By putting together a majority in a referendum on secession, however, those bearing the substate identity are able to obtain a monopoly on the good of recognition and shut the minority statewide identity out completely.

When the specific conditions assumed above obtain, we should question whether there really is a right to secede. Under the stated conditions, there is a direct conflict between the considerations of democracy appealed to by the plebiscitary theory and the equality-disabling outcome of the democratic procedure. Looking at other areas in which this kind of conflict arises, we sometimes come down on the side of

equality: we think it legitimate to limit the authority of some particular democratic procedure—through judicial review, for instance, or other checks and balances on the will of the majority—in order to achieve better, more equal outcomes. More importantly, the plebiscitary theory already accepts outcome-based limitations on the authority of a democratic mandate in favor of secession. As we saw in Section I above, in cases where the secession is likely to produce violations of standard liberal rights, or conflict with the realization of other standard elements of liberal justice, the more moderate and plausible versions of the theory hold that the democratic decision in favor of secession does not generate a right to secession. Others do not have an obligation to facilitate a profound political change that will lead to violations of individual or group rights, or undermine schemes promoting equality of opportunity or distributive justice, even when that change is supported by a democratic procedure within the secessionist region.

The equality argument against the plebiscitary theory claims that these outcome-based limitations on the authority of a democratic mandate should be extended to include equality in the recognition of national identity. Just as the authority of a democratic mandate in favor of secession is restricted or nullified when rights violations seem likely, so the authority of such a mandate is restricted or nullified when secession would dismantle arrangements providing for the equal recognition of the different national identities prevalent in the secessionist region.

The situation is quite different if the failure-of-recognition condition is met. If multinational constitutional arrangements have not been established in the first place, and the central state is stubbornly refusing to implement them, then clearly the secessionists cannot be accused of undermining equality in the recognition of national identity. If anyone has undermined equality, it is the central state, with its refusal to recognize the substate identity prevalent in the secessionist region. Were the plebiscitary theory to embrace the failure-of-recognition condition, it follows, it would avoid the kind of equality-diminishing outcome I have been describing. It would not license secessions that fail to respect arrangements establishing an equal distribution of recognition among different national identities.

IV. THE DEMOCRACY ARGUMENT

Given that plebiscitary theorists already accept some outcome-based qualifications on the authority of democratic procedures to settle secession controversies, they cannot easily dismiss the equality argument. They would need to provide principled reasons for thinking that the kinds of harms involved in a failure to respect equality of recognition are importantly different from the harms involved in those cases where

they do favor qualifying the democratic right to secession. They would have to show, for instance, that the violations of civil, political, and social rights that give rise to such qualifications represent much more serious harms to individuals than the loss of communal integrity, and the frustration of the aspiration to self-government, involved in dismantling arrangements for the equal recognition of national identity.

Let us now suppose, however, that some such distinction can be defended: to the extent that conflicts between equality and democracy of the form described in Section III arise, those conflicts should always be settled in favor of democracy.³³ There is still an important reason for supplementing existing plebiscitary theories with the failure-of-recognition condition. This reason, as we shall now see, does not confront the implications of plebiscitary theories with an external, equality constraint but instead maintains that such a constraint is implicit in the defense of those theories themselves.

Consider, to begin with, the following feature of plebiscitary theories to which attention has not yet been directed. Those theories do not just say that, so long as certain conditions are met, secession controversies are authoritatively settled by a democratic procedure. They say, more precisely, that, so long as the relevant conditions are met, such controversies are authoritatively settled by a democratic procedure *involving the citizens of the secessionist unit*.

The italicized qualifier does not itself follow from any principle of respect for democratic procedures. One could affirm the principle of respect for democratic procedures without endorsing the view that the boundaries of the unit of decision making should be drawn in some particular way.³⁴ For all that the principle of respect for democratic procedures tells us, the boundaries of the unit of democratic decision making could be drawn anywhere: they might coincide with the territory seeking secession, but they might alternatively be defined to include all of the citizens of the state or to include only the citizens of particular subregions of the secessionist territory, each having the authority to determine its own political status.

Depending on how the unit of decision making is defined, the outcome of the secession-determining democratic procedure might be very different. If the secessionist region is the unit of decision making,

33. An intermediate possibility, it is worth noting, is that democracy should be given priority in some cases, equality in others. Existing plebiscitary theories implicitly assume that democracy should always take priority.

34. See Brian Barry, "Is Democracy Special?" in *Philosophy, Politics and Society*, 5th ser., ed. Peter Laslett and James Fishkin (Oxford: Blackwell, 1979), pp. 155–96, at pp. 167–70; Lea Brilmayer, "Secession and Self-Determination: A Territorial Interpretation," *Yale Journal of International Law* 19 (1991): 177–202, p. 185; Margaret Moore, "The Territorial Dimension of Self-Determination," in Moore, ed., pp. 134–57.

then a majority might vote in favor of secession. If, on the other hand, the whole state were defined as the relevant unit of decision making, then a majority might vote against secession. Or, if individual subregions of the secessionist region were considered the appropriate units of decision making, then some might decide in favor of secession and others against it. Someone who rejects a democratically mandated secessionist claim cannot automatically be accused of refusing to show respect for democratic procedures. She can always say: "It is not that I refuse to respect democratic procedures. It is just that I do not accept the assumption that the secessionist region is the unit of democratic decision making relevant to settling this issue. If the unit of decision making is defined in some other way, then respect for democratic procedures may actually call for the rejection of the secessionist claim at issue."

A defense of a plebiscitary theory, then, must vindicate the assumption that the democratic procedure to be consulted should involve all and only the citizens of the would-be secessionist unit. The most promising way of defending this assumption invokes considerations of autonomy. This is the strategy suggested by Daniel Philpott, for instance, who is one of the few defenders of a democratic right to secession directly to confront the problem. Asking "why everyone in a state should not vote on the separation of a group within its borders," Philpott suggests that the answer is clear:

The nature of autonomy makes clear the reason: one does not have the autonomy to restrict another's autonomy simply because she wants to govern the other. The larger state's citizens cannot justly tell the separatists: "My autonomy has been restricted because, as a member of our common state, I once had a say in how you were governed—in my view, how we were governed—which I no longer enjoy." A right to decide whether another self can enjoy self-determination would make a mockery of the concept. I am entitled to govern myself with others who govern themselves according to principles of justice; I may not decide who will and will not be included in my state, or how another group governs its own affairs.³⁵

Although Philpott's argument is not as explicit here as it might be, the central thrust of his position is clear enough: to allow the whole state to vote would undermine the autonomy of citizens in the secessionist region. In the remainder of this section, I will explore a version of this argument and argue that it does not provide support for existing plebiscitary theories. In a context of identity pluralism, the argument lends support, not for giving the secessionist region a democratic authority to settle the controversy, but for recognizing such authority only

35. Philpott, "In Defense of Self-Determination," pp. 362–63.

when the failure-of-recognition condition is taken into consideration as well.

Consider, then, the following argument. It is reasonable to suppose that respecting an individual's autonomy means allowing the individual the freedom to associate with whomever she chooses, so long, of course, as the chosen associates are willing to associate with her.³⁶ This freedom of association, in turn, involves the freedom to disassociate from groups to which she no longer wishes to belong. Moreover, it would make a mockery of this latter freedom, the freedom to disassociate, to say that other members of the group could—in the name of their own freedom to associate with whomever they choose—veto an individual's decision to disassociate herself from the group or should even have a say in it. If respect for individual autonomy implies respect for the freedom to disassociate, then it also implies that the act of disassociation is not something the group as a whole should have a right to decide upon but is a decision to be left up to the individual whose continued membership in the association is in question. If the individual can govern her own life only in the ways that others allow her to, then she is not really free to govern her own life at all.

I am not sure if this is the argument Philpott intends but it seems consistent with what he actually says and has a degree of independent appeal. Unfortunately, except for the special case of unanimity that Philpott initially focuses on, the argument breaks down when it is generalized from the single individual to a group of individuals. To see this, consider the secession of T from S. Would it be violating anybody's individual autonomy if citizens of S – T were to be consulted in a referendum meant to settle this question authoritatively? It might seem that it would. Suppose that secession is unanimously supported by citizens of T. Under these conditions, the secession of T does not seem relevantly different from the individual disassociation of each individual member of T with the territory they can validly claim (assuming that the sum total of those territories is the territory of T itself). As has been argued, it would be violating the autonomy of an individual to give other members of an association a veto over her decision to disassociate. But then, by the same logic, it would be violating the autonomy of each individual citizen of T to give a veto, or even a vote, to citizens in S – T over their decision to secede.

The argument of the previous paragraph assumes, as Philpott initially does, that citizens of T are unanimously in favor of secession.³⁷ The problem arises, however, when there is disagreement about seces-

36. Gauthier, p. 360, also bases his argument in the idea of freedom of association. See also Beran, pp. 35, 39.

37. Philpott, "In Defense of Self-Determination," p. 355.

sion among the citizens of T and it is not feasible for territorial reasons for each individual to go his or her own way.³⁸ Some citizens want to associate exclusively with other citizens of T; others want to be associated with all other citizens of S; and many want to be part of associations at both the S and T levels.

When support for secession is less than unanimous, Philpott thinks that the issue should be settled by a majoritarian democratic procedure involving all and only the citizens of T.³⁹ Notice, however, that this contention is no longer clearly supported by considerations of individual autonomy and free association. The winners (the majority) get to associate with the people they want (and only those people). But the losers (the minority) are forced to associate with some people they would rather not associate with or are prevented from associating with certain people they would like to associate with. And this is exactly as it would be if the vote were held in all of S rather than only in T. Proponents of holding the vote in T cannot reasonably complain that a vote in S would involve some people deciding for others who they will associate with, thus violating their individual autonomy. For the same is true of a vote in T: in a vote in T, the majority will decide for the minority.

To this objection, it might be replied that by making T the decision-making constituency it is at least ensured that a majority of citizens of T can realize their associational preferences.⁴⁰ Making S the relevant constituency, by contrast, would open up the possibility that antisecessionist sentiment in S – T could swamp the associational preferences of the vast majority in T. Because of the territorial dimension of secession, it cannot possibly be guaranteed that everyone can realize their preferences with respect to association. But a democratic procedure in T at least gets as close as possible to this ideal and T should therefore be considered the appropriate constituency for settling the issue.

Although this may be a compelling argument against holding a statewide referendum on secession, it is less persuasive as a defense of existing plebiscitary theories. Allowing a suitably qualified democratic

38. Beran, p. 38, suggests that a reiterated use of the majority principle can resolve the problem of disagreement. In general, however, it is unlikely that iterations of the secession process will arrive at a result in which no individual is required to go along with the associational preferences of those around him (Miller, *On Nationality*, p. 112). People with different associational preferences are typically territorially intermingled, and no number of iterations will prevent some people from being left on the wrong side of a boundary.

39. Philpott, "In Defense of Self-Determination," pp. 379–80.

40. Gauthier, p. 360, is explicit that it is the majority who are able to realize their associational preferences and argues that this is as close as we can get to the ideal in which all are able to do so. See also Philpott, "In Defense of Self-Determination," p. 379; Beran, p. 39.

procedure in T authoritatively to settle the secession question does not necessarily come as close as possible to the ideal in which everyone can find themselves in their preferred association. To see this, recall that we are focusing on secessionist claims that are made in a context of identity pluralism. In these cases, some people have an exclusively substate national identity and so desire only to associate themselves with fellow citizens of T. Others have an exclusively pan-state identity and would be happiest belonging to an association that includes all citizens of S. Many people, perhaps, have dual identities: they desire to be part of associations at both the S and T levels. In this context, a referendum in T might lead to the following kind of result: it might turn out that those having strong substate associational preferences are able to win the majority required for secession, even though a significant minority strongly prefers to remain part of the statewide association and would be shut out of their preferred association by secession.

This kind of result does not come very close to the ideal in which everyone finds themselves in their preferred association. Although it is true that the majority are able to put themselves in exactly the association they most prefer, the minority are excluded from their preferred association altogether. In general, however, a distribution in which all get some of what they want should be regarded as superior to one in which a majority gets all of what they want while the minority get none.⁴¹ And where this is true, a closer approximation to the ideal would seek to give everyone some degree of membership in their preferred association. But this is exactly what multinational constitutional arrangements seek to do. When such arrangements are in place, each citizen is, in effect, part of two associations: one which includes all and only the citizens of T; the other encompassing all and only the citizens of S. Although some might prefer not to be part of one of these associations at all, nobody would be shut out from at least some degree of preferred association.

We have, in effect, arrived back at the main thesis of the article, albeit via a different route than was taken with the equality argument. With the equality argument, existing plebiscitary theories were criticized for ignoring the possibility of a conflict with the ideal of equal recognition of national identity. The argument now—the democracy argument—points to a different problem with those theories: their assumption that the secessionist region itself is the appropriate constituency in which to hold a democratic procedure to settle the secession controversy. One leading justification for adopting this assumption maintains that

41. This assumption might be supported, in turn, by the contractarian principle of giving priority to the worse off or by utilitarian considerations of diminishing marginal utility.

defining the constituency in this way best respects the associational preferences and hence the autonomy of individual citizens of the territory. Under conditions of identity pluralism, however, this justification provides an even better reason for respecting and upholding multinational constitutional arrangements. Such arrangements come closest to achieving the ideal in which all have their associational autonomy respected. As with the equality argument, this conclusion suggests that plebiscitary theories ought to accept the failure-of-recognition condition. Where the central state has failed to introduce a set of arrangements providing for the recognition of the substate national identity, associational preferences are already being ignored, and secession would not be a setback from that point of view. Where multinational constitutional arrangements are in place, however, the best reason for thinking that the secessionist unit is the appropriate constituency to hold a referendum about secession is also a reason for thinking that such a referendum would not generate a right to secede.

V. THE CONFEDERAL OPTION

Before turning to some of the practical implications associated with the failure-of-recognition condition, I want to respond to a pair of possible objections to the argument I have just been making. Both objections suggest that taking seriously the equal recognition of national identity would have a broader range of institutional implications than has so far been acknowledged. According to one of the objections, these implications should lead us to reconsider how much priority should be assigned to equality of recognition in the first place. According to the other, it shows that a (somewhat) more permissive approach to secession can be adopted than the one being proposed. In response to both objections, I will argue that equality of recognition need not have the broader range of institutional implications, once certain other considerations connected with institutional change are acknowledged.

The first objection draws attention to a difficult case for proponents of equal recognition of national identity: the case of irredentist national minorities.⁴² These are groups whose members share a national identity with their perceived kinfolk on the other side of an international boundary. The troublesome feature of groups of this kind is that their recognition cannot be achieved simply through arrangements internal to the state in which they live. Their national identity involves a desire to be self-governing with their perceived kinfolk, and this desire is not accommodated through federalism, devolution, or other such schemes offering local autonomy. Some kind of rough equality of recognition might be worked out through confederal arrangements that created a

42. I am grateful to Will Kymlicka for presenting this objection to my argument.

cross-border democratic forum in which members of the national minority could participate in self-government arrangements with their conationals. But this possibility brings us to the objection. For some will doubt that multinational states have any kind of duty to enter into such cross-border arrangements. It will normally be permissible, and will sometimes be praiseworthy, for them to do so, but it is not required. And this calls into question whether equal recognition of national identity really should be accorded the high priority presumed by the argument so far.

The second objection also points to the possibility of confederal arrangements, but this time to argue that the failure-of-recognition condition is too restrictive. The argument here is that secession from a state that has equality-respecting multinational constitutional arrangements need not lead to a net loss of equal recognition. It is possible that the postsecession states could enter into confederal arrangements with one another in which the original statewide national identity borne by some citizens of the secessionist group finds significant expression and recognition. The requirement that there be ‘failure of recognition’ in the precession state ignores this possibility of a postsecession reestablishment of equal recognition and to this extent is too restrictive.

Both objections draw attention to significant and difficult issues in thinking about institutional responses to identity pluralism. The first objection raises the interesting question of when, if ever, states have a duty to enter into confederal arrangements with one another. The second objection does, in my view, identify a relevant question to be asked in the moral assessment of a secessionist movement: Is that movement willing to enter into postsecession confederal arrangements with the remainder state in order to provide some form of recognition to citizens bearing a statewide national identity?

The problem with the objections is that they both ignore the difficulties inherent in constructing meaningful and democratic multinational institutions. To get such institutions up and running requires a degree of genius at institutional design, together with a high level of trust and cooperative commitment on the part of the major parties.⁴³ There is no guarantee that an intention, however sincere, on the part of one or more of the parties concerned to build institutions providing for the recognition of different national identities will meet with success. Meanwhile, the attempt to build such institutions may have significant costs. It may mean weakening or compromising existing democratic

43. For instance, as David Miller has suggested to me, multinational institutions seem more likely to succeed where the national identities in question are ‘nested’—citizens can, and generally do, affirm both at once—than where they are rivalrous. For Miller’s distinction between nested and rival nationalities, see “Nationality in Divided Societies.”

institutions that are working tolerably well (despite failing to establish equality of recognition).

Once the difficulty and costliness of multinational institution building is taken into account, it becomes important to distinguish between a requirement to respect existing multinational constitutional arrangements, on the one hand, and a duty or promise to build such institutions, on the other. We can agree with the first objection that there is no duty to enter into equality-enhancing multinational confederal arrangements because, and to the extent that, (*a*) the prospects of success are low, and (*b*) doing so may weaken or compromise existing democratic institutions that are working tolerably well. But it does not follow from this that there is no requirement to respect existing multinational constitutional arrangements where they have been successfully implemented. Similarly, once the difficulty of constructing multinational confederal arrangements is acknowledged, it becomes important to recognize—against the second objection—that there is a significant difference between respecting existing multinational constitutional arrangements and dismantling them with a promise to resurrect equality of recognition later via confederal arrangements. Given the difficulty of implementing such arrangements, there is simply no guarantee that the promised scheme will ever come to fruition.

VI. PRACTICAL IMPLICATIONS

Up to this point, the focus of the argument has been on articulating and defending a fairly abstract proposal concerning the conditions under which a group ought to be regarded as possessing a right to secession. A great virtue of much recent work on secession is its realization that this exercise in abstract philosophizing does not, on its own, dispose of the question of how the international system (or domestic actors) ought to deal with secessionist claims. To have practical relevance, a theory of secession should, in addition to identifying various abstract normative principles, say something about who has the authority to adjudicate disputes about secession and what rules and procedures they should follow. It ought to consider whether the rules to govern secession should in some way be codified or constitutionalized. And the guidance it offers on these questions should reflect consideration of whether the entrenchment of some abstract proposal into international law and practice would have adverse consequences.⁴⁴

To some extent, secessionist disputes are currently resolved by the more-or-less ad hoc decisions of various international and domestic actors, including individual states and regional bodies. The proposal de-

44. This 'institutional turn' in the literature on secession is promoted by Buchanan, "Theories of Secession"; and Norman.

fended in this article offers some concrete guidelines for officials charged with making these decisions. In particular, my proposal suggests that the decision whether to grant a secessionist claim made by a substate national minority should take into account the degree of recognition enjoyed by the group within the existing state. Where a national minority does enjoy significant recognition, it should not normally be regarded as possessing a plebiscitary right to secede. Where multinational constitutional arrangements providing for recognition are not in place, a national minority should be regarded as having a plebiscitary right to secede, so long, at least, as the various conditions required by moderate and qualified versions of the democratic account are satisfied.

Like many commentators, I think that some of the uncertainty, instability, and arbitrariness that typically surrounds secessionist disputes might be mitigated by establishing an international adjudicative body with the authority to rule on secessionist claims.⁴⁵ The idea would be to take authority away from actors who are likely to be excessively influenced by a perception of their own national interests, or biased by their own involvement in the conflict, and put it into the hands of objective, third parties who are guided by publicly promulgated rules and principles. Individual states might consider establishing analogous practices at the domestic level: they might consider constitutionalizing various rules, bodies, and procedures for dealing with secessionist claims.⁴⁶ The proposal defended in this article offers some concrete guidelines concerning the kinds of factors that the designers of such international or domestic institutions, and those who sit on them, should take into account. It suggests that the rules and procedures for dealing with secession should be sensitive, as far as possible, to whether or not the secessionist group enjoys recognition within the existing state.

Having drawn these practical implications from my argument, however, it is now time to consider whether the proposed guidelines for dealing with secession would generate adverse consequences. As was noted at the start of the article, a major advantage claimed by remedial theories over standard plebiscitary theories is that the former, upon entrenchment in international law and practice, are less likely than the latter to produce such consequences. In considering whether my proposal is vulnerable to a similar objection, I will compare it with Buchanan's version of the remedial theory, which allows secession only in

45. See, e.g., Margalit and Raz, p. 142; Philpott, "Self-Determination in Practice," pp. 86–88.

46. On constitutionalizing a right to secede, see Allen Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder, Colo.: Westview, 1991), pp. 127–49; Cass Sunstein, "Constitutionalism and Secession," *University of Chicago Law Review* 58 (1991): 633–70; Norman; Weinstock.

those cases where minimal justice has been violated. Focusing on three kinds of adverse consequences identified by Buchanan, I will argue that it is far from obvious that Buchanan's proposal is superior to mine.

Proliferation, war, violence.—My proposal is more permissive than Buchanan's, since it permits some democratically approved secessions where there is no violation of minimal justice (i.e., those in which the failure-of-recognition condition is met). To this extent, it might be objected that my account will lead to a (relative) proliferation of secessions and therefore to more occasions for war and violence. Against this contention, it is worth emphasizing three points. The first is that recent plebiscitary theories acknowledge this risk explicitly and seek to counter it by insisting that any plebiscitary right to secede is conditional on respect for standard liberal rights and the maintenance of peace and security. My proposal is consistent with accepting these same guidelines. Second, it is also worth observing that the failure-of-recognition condition reduces the permissibility of secession (in comparison with existing plebiscitary theories) in precisely those kinds of cases that are most likely to generate instability and violence: cases, familiar from the recent break-up of Yugoslavia, in which members of the erstwhile national majority would be 'orphaned' on the territory of the seceding unit.⁴⁷ Members of the national majority can avoid this potentially explosive scenario, on my proposal, by ensuring that the national minority is adequately recognized in the constitution of the state.

Finally, my proposal should do a better job of limiting extralegal threats to peace and security than a remedial theory focused on minimal justice. A realistic theory of secession should acknowledge that secessionist groups sometimes opt to ignore the legal framework imposed by international (and domestic) law. They try to achieve a *de facto* secession of their unit in the hopes that, sooner or later, the unit will be recognized as a state by the international community. A full accounting of the consequences associated with the entrenchment in law of a proposed set of rules to govern secession should, therefore, examine not only (a) the consequences for peace and security brought about by actors playing by the rules but also (b) the probability that the proposed rules will be ignored by secessionists and (c) the consequences for peace and security of secessionist attempts outside the proposed legal framework. Although Buchanan's minimal justice remedial theory may perform relatively well under consideration *a*, there is reason to suspect it will do less well under *b*. A group that has, or could get, a democratic mandate in favor of secession, and whose distinct national identity is not adequately rec-

47. For a good discussion of the dynamics found in these kinds of cases, see John McGarry, "Orphans of Secession: National Pluralism in Secessionist Regions and Post-Secession States," in Moore, ed., pp. 215–32.

ognized in the constitutional arrangements of the state, does not necessarily have a right to secede on Buchanan's proposal. But it would hardly be surprising if the members of such a group were convinced of the legitimacy of their cause. For them, the "strains of commitment" to Buchanan's proposed legal framework would be very great, and the temptation to pursue secession extralegally might be considerable.⁴⁸ By contrast, my proposal reduces the strains of commitment to a legal framework for resolving secessionist disputes, because it does not shut the door completely on democratic secession, and because it is sensitive to demands for self-government often made by national minorities themselves. It should therefore have a better chance of being accepted by the various parties as a reasonable set of guidelines for handling the dispute in a legal and peaceful manner.

Perverse incentives.—Another criticism made by Buchanan against existing plebiscitary theories is that they create an incentive for the state to avoid federalism or other schemes providing for local autonomy for national minorities.⁴⁹ This perverse incentive is neutralized on my account by the failure-of-recognition condition. States that are careful to recognize the identity of national minorities through federal-style arrangements (and observe the conditions of minimal justice) are inoculated against democratic secession.

Practice of democracy.—Drawing on Albert O. Hirschman's work, Buchanan argues that theories of secession that make 'exit' too easy leave insufficient incentive for 'voice'.⁵⁰ Members of a territorially concentrated minority will be less inclined to "invest themselves in the practice of principled debate and deliberation" if they believe that they could secede easily instead.⁵¹ Since secession is somewhat more permissible on my proposal than on Buchanan's, it might seem that my proposal is less attractive from the standpoint of promoting democracy and democratic virtues. In assessing this objection, however, we need to consider not only the incentive of the national minority to invest themselves in the practice of principled democratic participation but also the incentive of the national majority. As Hirschman himself points out, where a minority's threat of exit is absent or very limited, members of the majority have little incentive to take seriously the minority's exercise of voice.⁵² The majority can complacently ignore the complaints and perspectives of the minority without any fear that its interests will

48. The phrase "strains of commitment" is from John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, Mass.: Harvard University Press, 1999), p. 153.

49. Buchanan, "Theories of Secession," pp. 52–55.

50. *Ibid.*, p. 22. For Hirschman's theory of exit and voice, see his *Exit, Voice, and Loyalty* (Cambridge, Mass.: Harvard University Press, 1970).

51. Buchanan, "Democracy and Secession," p. 22.

52. Hirschman, pp. 82–83.

be compromised. Encouraging principled democratic participation in the face of persistent majority/minority conflicts requires striking a balance between too much exit and too little. My proposal, it is reasonable to believe, gets this balance about right. It allows exit when there are persistent violations of minimal justice or a failure of recognition but not when the state is avoiding both of these kinds of problems.