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Beyond Political Legitimacy: Reframing the Normative Question of Secession

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BEYOND POLITICAL LEGITIMACY:
REFRAMING THE NORMATIVE QUESTION OF SECESSION

by

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The final copy of this thesis has been examined by the signatories, and we find that both the content and the form meet acceptable presentation standards of scholarly work in the above mentioned discipline.

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Beyond Political Legitimacy: Reframing the Normative Question of Secession

Thesis directed by Professor Alison Jaggar

I shift the current philosophical debate on secession by arguing for a new framework to analyze the normative question of secession. The normative question of secession asks under what conditions it is morally permissible for a group to secede. I argue that an adequate normative theory of secession ought to be based primarily not on the question of political legitimacy, but on the prior, more fundamental values most salient in the normative question of secession, namely self-determination, justice, and flourishing. I show that this axiological approach, which I develop in this project, yields a morally more plausible answer to the normative question of secession.

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CHAPTER 1

Introduction: Situating the Normative Question of Secession

1. The normative question of secession

Since 1945, the number of independent states has more than doubled, from less than a hundred to almost two hundred. This is partly the result of decolonization processes, through which former European colonies gained their independence, and partly the result of the dissolution of states such as the USSR and Yugoslavia, the partition of states such as India and Czechoslovakia, and the secession of states such as Bangladesh and Eritrea. Many current states also contain secessionist movements, for example Catalonia in Spain, Flanders in Belgium, and not so long ago, Quebec in Canada (Beran 1998, 43).

These events and the violence that has at times accompanied them have generated an increased interest in the topic of secession. Philosophical literature on the subject has developed especially since the 1990's. Through this literature, political philosophers have tried to answer the normative question of secession, i.e. to identify the conditions under which secession is morally permissible. As will become clearer in the rest of this chapter, this project will contribute to the current philosophical debate on secession by developing a new, and I will argue, more successful approach to the normative question of secession, which I call the *axiological* approach. Before introducing this new approach (sections 4-6), it will be useful to clarify some central concepts (section 2) and to set the normative question of secession against some historical background (section 3).

2. Some terminological clarifications

Secession occurs when a territorially concentrated group of people (usually a national minority) unilaterally decides to break away from an existing state to form its own independent state, thereby taking away that part of the existing state's territory which it occupies. This, for example, would be the case if Quebec were to break away from the rest of Canada and to form its own independent state on its current territory. The fact that the group's decision is unilateral means that secession occurs without the consent of the existing state and without constitutional sanction.

As a unilateral decision, secession is controversial because it calls into question both the existing state's sovereignty and its legitimacy. The concepts of state, sovereignty, and legitimacy are of course essentially contested ones. Conceptually, there are multiple competing interpretations of what it means for a state to be sovereign or legitimate. Normatively, there are likewise numerous challenges to how such claims to sovereignty or legitimacy might be morally justified, independently of the specific interpretation of those concepts one might adopt. It is not my goal here to review these conceptual interpretations or normative challenges. Rather, my present goal is simply to offer some working definitions of those concepts, which are neither exhaustive nor definitive, but which are nonetheless useful in addressing the normative issues that secession raises. With this in mind, I offer the following definitions of some central concepts in the normative question of secession.

A *state* is a politically organized, politically independent, and territorially bounded entity that is sovereign. State *sovereignty* refers to a state's *territorial integrity*, or a state's

claim to and exercise of supreme control over its territory, and to a state's *political authority*, or a state's claim to and exercise of supreme control over its people. Secession calls a state's sovereignty into question because it challenges both its territorial integrity (by removing part of that state's territory – the territory that is breaking away – from that state's control) and its political authority (by removing part of that state's population – the residents of the territory that is breaking away – from that state's control).

State *legitimacy* refers to what the moral grounds are for state sovereignty. Thus a state is legitimate “if and only if it is morally justified in wielding political power, where to wield political power is to attempt to exercise a monopoly, within a jurisdiction, in the making, application, and enforcement of laws” (Buchanan 2002, 689-690). Secessionists challenge a state's legitimacy because they deny that the grounds on which the state bases its sovereignty are morally justified.

Secession, which is the result of a unilateral decision of a territorially concentrated group to break away from an existing state to form its own independent state, should be distinguished from partition, irredentism, and separatism. *Partition* is a process whereby an existing state splits into two new states, the split being the result of a mutually consensual decision between the two new states (as in the case of the partition of Czechoslovakia into the Czech Republic and Slovakia in 1993). *Irredentism* is a process whereby one state claims part of the territory of a neighboring state because that territory is occupied by a minority in the neighboring state that belongs to the same national group as the majority in the state claiming the territory (as in the case of Germany claiming the territory occupied by ethnic Germans living in Poland at the beginning of the Second World War). *Separatism* is a process whereby a group (usually a national minority)

demands a certain degree of political autonomy while remaining within the boundaries of the existing state, that is, short of independent statehood (as in the current case of Quebec in Canada), though separatist demands can sometimes lead to secessionist claims (as in the current case of Flanders in Belgium). Thus secession is different from partition in that the latter is the result of a mutually consensual, rather than unilateral, decision; from irredentism in that the latter is an external, rather than internal, initiative; and from separatism in that the latter seeks political autonomy within existing, rather than new, state borders.

In connection to the definition of secession offered above, two particular types of cases might be noted. First, imagine a group that is territorially concentrated but, because of the way borders were drawn, is spread across several different states. This group could collectively decide that each portion of the group is going to secede from the state in which it is currently included, so that the group as a whole can form a new independent state of its own. This, for example, would be the case if the Kurdish population of Turkey, Syria, Iraq, and Iran seceded from those states to form their own independent state of Kurdistan. Second, though secessionists typically aim to create their own independent state, they could also, upon seceding, join another already existing neighboring state, if both the seceding group and the neighboring state agreed to merge. This, for example, would be the case if the Flemish seceded from Belgium and then joined their northern neighbors in The Netherlands.

These two types of case are variations of the case of secession described above with the example of Quebec (if it were to break away from the rest of Canada to form its own independent state), and they may or may not be morally equivalent to this latter type of

case. For the purposes of this project, I will leave this question open. As cases of secession, they certainly raise the normative issues on which this project will focus. Still, seceding from multiple existing states to form one new independent state or seceding from a state to merge with an already existing independent state might raise additional normative issues. This project will not be concerned with these. For brevity's sake, however, I will hereafter continue to refer to secessionist claims as claims from a group in one existing state to create its own independent state.

Finally, secessionists often justify their claims by invoking the right of peoples to self-determination. This principle is recognized in several major international legal documents. Article 21 (3) of the Universal Declaration of Human Rights states that “The will of the people shall be the basis of the authority of government” (*Universal Declaration of Human Rights*), and Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights states that “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development” (*International Covenant on Civil and Political Rights*; *International Covenant on Economic, Social and Cultural Rights*). Articles 1 (2) and 55 of the U.N. Charter likewise both refer to “the principle of equal rights and self-determination of peoples” (*Charter of the United Nations*). What “self-determination” means and who the “peoples” are to which it applies are, as the next section will show, once again contested matters, both in international law and in political philosophy. What should be noted for the time being is that the right of peoples to self-determination is

sometimes also referred to as the right to national self-determination (Margalit and Raz 1990).

Having clarified the main concepts secession involves and explained why secessionist claims are likely to be controversial, I now offer some historical background for the normative question of secession.

3. Some historical background

Though secessionist claims abound in the real world, international law is far from having adequately resolved the question of when secession should be permissible, and much normative work remains to be done to answer this question. The conditions for articulating the normative question of secession indeed arose only relatively recently. First, a shift in the mid-twentieth century in the conception of the moral status of states and their interrelations took place, within which normative issues of secession made sense for the first time. Second, processes of decolonization, which appealed to the principle of self-determination of peoples, raised the question of the applicability of the principle of self-determination to justify secessionist claims. I will look at each of these of these two shifts in turn.

3.1. The shift in the conception of states and their interrelations

From the mid-sixteenth up until the mid-twentieth century, states and their interrelations were conceived according to the Westphalian model (Held 1992). On the Westphalian model,¹ states have absolute sovereignty or control over their own territories and peoples. No higher political authority (and often no higher moral authority) is recognized.

¹ Based on the Treaty of Westphalia, signed in 1648, bringing an end to the Thirty Years' War.

International relations are characterized by minimal cooperation between states, motivated exclusively by self-interested concerns, and by the principle of “might makes right,” which equates effective power with legitimate power. Thus the Westphalian model reflects the realist (or *Realpolitik*) view that interstate relations are characterized by a Hobbesian state of nature² (though, in the background, just war theory did postulate some minimal international moral order, derived from an earlier, pre-modern view of God’s kingdom on earth supposedly reflecting a higher moral order). Conflicts between states are resolved through force, the use of which, in the absence of any higher authority, is not regulated. Thus state sovereignty is the primary principle, and rulers’ power is left unchecked by any universal principle (except sometimes by historically specific and nationally limited agreements, such as Magna Carta). The Westphalian maxim “*Cuius regio, eius religio*” (“Whose realm, his religion”) indicates that unless the state willingly chose otherwise, there would be no room on the Westphalian model for minority religious (or cultural) rights, let alone secessionist claims: both types of demand could be domestically repressed, and the international “community,” being not only virtually nonexistent but essentially nonsensical in this context, would have no authority, moral or legal, to intervene.

As a result of the First and Second World Wars, however, states became increasingly aware of the enormous costs and dangers of war, and of the need for greater interstate cooperation and for the international regulation of some aspects of sovereign states’ conduct. This realization gave rise to the United Nations Charter model of states and their interrelations (Held 1992). The United Nations Charter model of international relations

² Hobbes’ *Leviathan* was published in 1651, just three years after the Treaty of Westphalia.

introduces normative considerations of legitimacy and accountability, both of which were virtually absent on the Westphalian model. On the United Nations Charter model, states are sovereign but may subject themselves voluntarily to certain norms of international law by signing treaties, and thereby become accountable to international institutions (for example, the International Criminal Court). International law and institutions are concerned with the preservation of peace and the protection of human rights, both of which entail the regulation of the use of domestic and interstate force, as had been anticipated in just war theory. Colonized peoples are granted rights of recognition and self-determination. Thus legitimate power is no longer equated with effective power. The United Nations Charter model therefore provides a context for raising the normative question of secession, even if it does not thereby automatically provide a clear answer to that question.

3.2. The shift in the conception of self-determination

Secessionists usually argue that the right to secede is grounded in the right of peoples to self-determination, as secession, they claim, constitutes one way of exercising self-determination. But many international lawyers and political theorists dispute the claim that the right of peoples to self-determination automatically entails that peoples have a right to secede. The principle of self-determination of peoples, recognized in articles 1(2) and 55 of the Charter of the United Nations, was originally invoked to justify the right of colonized peoples to free themselves from the rule of colonial powers. Based on the premises that “it is as essential to abolish slavery of peoples and nations as of human beings” and that “such slavery exists where an alien people hold power over the destiny of a people,” the right of peoples to self-determination, in the context of decolonization,

was defined as “the right [for peoples] freely to determine their political, economic, social, and cultural status” (Commission on Human Rights, quoted in Buchheit 1978, 78). This formulation of the principle of self-determination seems at first glance to imply that national groups in multinational states have a right to secede. But this would be a hasty and decontextualized reading of the principle of self-determination as formulated above. Indeed, the principle was originally intended to apply only to the case of colonized peoples and territories. National minorities in existing multinational states were to be protected, not by a general right to secede from an existing state, but by specific minority rights implemented within the existing state, such as the right “to enjoy their own culture, to profess and practice their own religion, or to use their own language” (Moskowitz, quoted in Buchheit 1978, 84). Thus the right of peoples to self-determination, as set forth by the United Nations, is to be understood as the right of *colonized* peoples to self-determination, which rules out the possibility of a secessionist interpretation of the principle of self-determination (Buchheit 1978, 76-94; Welengama 2000, 255-288).

This latter point is made even clearer by the historical shift in the understanding of who “the peoples” are in the right of *peoples* to self-determination (Moore 1998). To some extent, this shift follows the shift from the Westphalian model to the United Nations Charter model. Throughout the nineteenth century and up until the end of the First World War, the peoples who could exercise self-determination were understood to be ethnic groups (i.e. groups sharing a common language, history, culture, etc.) who were nationally mobilized (i.e. who wished to be self-governing in virtue of their ethnic or national identity).³ This ethnic or national conception of peoples gave rise, after the First

³ In this context, I am using “ethnic” and “national” interchangeably.

World War, to the creation of new states, such as Austria and Hungary, whose boundaries were fixed along ethnic or national lines. Thus the principle of self-determination of peoples was then understood as a principle of *national* self-determination which entails political independence (i.e. independent statehood in virtue of a national identity). By contrast, after the Second World War, the peoples who could exercise self-determination were no longer taken to be ethnic or national communities. Instead, they were understood to be multiethnic or multinational peoples under colonial rule, or majorities within discrete political units whose boundaries were drawn regardless of ethnic or national criteria. Thus the principle of self-determination of peoples became understood as a principle of *civic* self-determination which entails political independence. In other words, in the case of *national* self-determination, the (ethnic or national identity of the) people determines where the boundaries of the political unit should be drawn; whereas in the case of *civic* self-determination, the boundaries of the political unit determine who the people is (regardless of ethnic or national identities). Otherwise put, in the case of *national* self-determination, the people exercising self-determination is an ethnos, and ethnos and demos are made to coincide; whereas in the case of *civic* self-determination, the people exercising self-determination is a demos, and this demos often comprises various ethne.

Thus the shift from a national to a civic understanding of self-determination reinforces the point made earlier that, from the international legal point of view at least, the principle underlying the self-determination or political independence of colonized peoples (civic self-determination) neither entails nor can be invoked to justify the self-determination or political independence of national peoples (national self-determination).

That is, as far as international law is concerned, the principle of self-determination is to be understood as civic self-determination, or self-determination by a demos, and not as national self-determination, or self-determination by an ethnos. In other words, self-determination can be invoked only by peoples in political units whose boundaries are already established, not to change the boundaries of existing political units, as is the case in secession.

3.3. The historical and normative importance of self-determination

That the principle of self-determination was originally intended to apply only to colonized peoples and territories, however, does not mean that it could not plausibly be extended to apply to secessionist claims. Indeed, the situation of some national minorities in existing multinational states is strikingly similar to that of colonized peoples under alien rule prior to decolonization: domination by a foreign government, lack of political autonomy, economic exploitation, and human rights violations (Buchheit 1978, 18). If this is the case, it is unclear why such minorities should not be able to invoke the principle of self-determination to free themselves from such rule. As Lee Buchheit puts it:

One searches in vain [...] for any principled justification of why a colonial people wishing to cast off the domination of its governors has every moral and legal right to do so, but a manifestly distinguishable minority which happens to find itself, pursuant to a paragraph in some medieval territorial settlement or through a fiat of the cartographers, annexed to an independent State must forever remain without the scope of the principle of self-determination. [...] International law is thus asked to perceive a distinction between the historical subjugation of an alien population living in a different part of the globe and the historical subjugation of an alien population living on a piece of land abutting that of its oppressors. The former can apparently never be legitimated by the mere passage of time, whereas the latter is eventually transformed into a protected status quo. (1978, 17-18)

Much of the literature on secession suggests that the restricted use of the principle of self-determination endorsed by international lawyers and political theorists is motivated mainly by the fear of the chaos and violence that would supposedly ensue were secessionist claims satisfied (Lehning 1998; Macedo and Buchanan 2003; McKim and McMahan 1997; Moore 1998). Thus international lawyers and political theorists tend to favor a strong presumption against secession because secessions have historically been extremely violent affairs. This is true (at least partly), of course. Still, several things should be noted in response to this claim.

First, there have also been instances of peaceful secession or partition, such as the secession of Norway from Sweden in 1905, or the partition of Czechoslovakia in 1993. In other words, though secession has in some instances led to much violence (as in the case of the dissolution of former Yugoslavia), it need not do so. Second, where the risk of violence is real, it is unclear that preventing a group from seceding will cause much less violence (as the contemporary case of Sudan illustrates). Third, the creation of new international institutions, or the ascription of new functions to existing ones, to arbitrate or regulate secession claims, could possibly prevent such violence (Copp 1998). That is, the risk of violence might be due less to the mere possibility of satisfying secessionist claims when warranted than to the lack of appropriate international institutions and processes to handle secessionist claims adequately. Fourth, the question of whether a group *has* a right to secede is distinct from the question of whether it would be permissible for that group to *exercise* that right. That is, the right to secede may in certain circumstances be overridden by certain considerations that would make it impermissible for the group to exercise that right. Thus even if secession is not inherently violent, the

risk of violence should be taken into account when determining the permissibility of secession. This latter observation, however, does nothing to undermine the claim that international lawyers' and political theorists' recommendations regarding secession tend to be too restrictive, and might even reinforce it. Indeed, in cases where the risk of violence is minimal or altogether absent (as it would presumably be in the event of Flanders' secession from the rest of Belgium, for example), opposing secession seems simply to amount to a lack of respect for a group's right to self-determination and becomes much more difficult to justify.

What appears from this historical overview is that much normative work remains to be done to determine when, if ever, secession is permissible. Such normative work could then serve as a guide to international institutional reform, in order to make secessionist processes as morally uncontroversial and as peaceful as possible. It is precisely with this normative work that I will be concerned in this project. To introduce it, I now turn to its methodological underpinnings.

4. Methodology

4.1. Project overview

My goal in this project is to develop a normative theory of secession, i.e. a theory that offers a systematic or principled answer to the normative question of secession. As mentioned above, secession occurs when a territorially concentrated group breaks away from an existing state to form its own independent state, thereby taking away that part of the existing state's territory which it occupies. The normative question of secession, then, asks when it is morally permissible for a group to secede.

Current normative theories of secession frame this question as one of political legitimacy: i.e. they take it to ask what the moral grounds are for state sovereignty, understood as political authority (a state's supreme control over its people) and territorial integrity (a state's supreme control over its territory). This is because these theories focus on the challenges that secession raises with regard to state sovereignty, insofar as secession removes part of a sovereign state's territory and population from that state's control, to form a new sovereign state. Thus current theories assume that the normative question of secession is reducible to the question of political legitimacy, or that determining when it is morally permissible for a group to secede depends on determining what makes a state legitimate or illegitimate.

In this project, I challenge the approach taken by all these theories by showing that reducing the question of secession to a matter of political legitimacy fails to consider the deeper moral values most salient in secession, and therefore yields unconvincing answers to the normative question of secession. In contrast to current theories, I argue that an adequate theory of secession ought to be based primarily not on the question of political legitimacy, but on the moral significance of the more fundamental values most salient in the normative question of secession, namely self-determination, justice, and flourishing. This is the axiological approach I develop in this project. Through my axiological analytical framework, I reframe the normative question of secession in the following way: In order to answer the question "When is it morally permissible for a group to secede?" I ask not, as current theories of secession do, "What makes a state legitimate or illegitimate?" but rather "What deeper moral values are most salient in the normative

question of secession?” This will become clearer in the rest of this chapter and in Chapter 2.

Having briefly described how my axiological approach differs from current normative theories of secession, I now turn to the criteria I use to critique these theories, and then proceed to my critique of these theories.

4.2. Criteria for a successful theory of secession

A philosophical theory of secession seeks to identify the conditions under which it is morally permissible for a group to secede. To be successful, such a theory should be normatively plausible. I contend that to be normatively plausible, a philosophical theory of secession should meet two criteria: comprehensiveness and normative support.

The criterion of *comprehensiveness* is a logical requirement. By it, I mean that the theory should address all the specific normative questions raised by secession, and not leave out any significant issues. Thus the theory should take into account the relevant parameters in secession, or be consistent with what secession involves, namely the taking of territory to form a new, viable state. This means that a theory of secession should address the questions of territorial justification and state viability (both the political and economic aspects of state viability). I will return to these questions in more detail in Chapter 2.

The criterion of *normative support* is a substantive requirement. By it, I mean that the theory should be consistent with, and perhaps even derivable from, core normative principles and values of liberal political philosophy. In the case of a normative theory of secession, it will be useful to draw from liberal normative principles already embodied in international law but whose implications have not yet been fully articulated, and from

liberal normative values whose significance is already generally acknowledged, but whose scope has not yet been fully clarified. For example, some of the reasons that justify decolonization further seem to justify certain secessionist claims; framing the issue of secession in terms of human rights makes some of its salient aspects more evident when determining its permissibility. Similarly, emphasizing the value of self-determination, to name but one, further helps to establish the permissibility of secession. This is true even if principles and values such as human rights and self-determination are essentially contested ones, subject to multiple and sometimes divergent interpretations.

Thus in order to be successful, or normatively plausible, a philosophical theory of secession will have to meet the criterion of comprehensiveness (i.e. be consistent with what secession involves) and the criterion of normative support (i.e. be consistent with key principles and values of liberal political philosophy). In light of these criteria, I now turn to the critical assessment of current theories of secession.

5. Critical assessment of current theories

Political philosophers have so far offered three main types of normative theory of secession: choice theories, just-cause theories, and nationalist theories.⁴ In order to identify the conditions under which it is morally permissible for a group to secede, all three types of theory start from an account of political legitimacy. Thus all current theories reduce the question of secession to the question of legitimacy.

For choice theories, a state is legitimate if it is viable and respects human rights. Thus according to choice theories, *any* territorially concentrated group that wishes to do so

⁴ For an example of choice theory, see Wellman 2005. For an example of just-cause theory, see Buchanan 1991. For an example of nationalist theory, see Margalit and Raz 1990.

may secede, regardless of national, ethnic, religious, or other form of identity, *provided that* the new state is viable and respects human rights, i.e. is *legitimate*. For example, if San Fernando Valley wanted to become its own independent state and were able to be viable and respect human rights, it would be allowed to secede, because it would form a legitimate state. From this we can see that in their account of legitimacy, choice theories emphasize the value of political self-determination, or the right a group has to decide who will govern it. Thus choice theories approach the question of secession from the point of view of the seceding group. This is by far the most permissive type of theory, as it asserts that any territorially concentrated group in general (potentially) has a right to secede.

For just-cause theories, a state is illegitimate if it commits a major injustice, namely, severe human rights violations, forcefully seized territory, or discrimination in redistribution of resources. Thus according to just-cause theories, a group may secede only if it has suffered such an injustice under the larger state, i.e. only if the state from which the group wishes to secede is *illegitimate*. For example, if the Baltic States had wanted to secede while they were forcefully included in the former USSR, they would have been allowed to do so, because their territory had been forcefully seized by the former USSR. Just-cause theories are also called *remedial* theories because they allow secession in order to remedy an unjust situation created by the larger state. Thus just-cause theories approach the question of secession from the point of view of the remainder state, and whether or not it is acting justly. From this we can see that in their account of legitimacy, just-cause theories emphasize the value of justice, or the right not to suffer tyranny. This is the most restrictive type of theory, as it asserts that only under very special circumstances would a group have a right to secede.

For nationalist theories, a state is legitimate if the state and its citizens share a common national identity. Thus according to nationalist theories, any *national* group⁵ that wishes to do so may secede, in order to create a state whose cultural and political boundaries coincide, i.e. to create a *legitimate* state. For example, if Quebec wanted to secede from Canada, it would be allowed to do so, because the Québécois share a national identity. From this we can see that in their account of legitimacy, nationalist theories emphasize the value of flourishing, which national identity is said to foster. Thus nationalist theories approach the question of secession from the point of view of the seceding group. Nationalist theories are more restrictive than choice theories (because they ground secessionist claims specifically in nationality) but they are more permissive than just-cause theories (because they regard some secessionist claims as legitimate even in the absence of major injustice).

Based on the criteria of normative support and comprehensiveness laid out above, a successful or plausible normative theory of secession must be (1) consistent with the basic principles and values of liberal political philosophy; and (2) consistent with what secession involves.

In light of these criteria, choice theories offer two main advantages. First, they emphasize the value of self-determination (criterion of normative support: key principle of liberal political philosophy). Second, they require that the state be viable (criterion of comprehensiveness: consistent with what secession involves, namely the creation of a

⁵ Nationalist theories offer several definitions of a national group; but some overlap may be captured by understanding a national group as a group that shares a common language, culture, history, territory – though all of these elements may not be exhaustive or sufficient, and each of these elements may not be necessary. Examples of national groups include the Québécois in Canada, the Flemish in Belgium, or the Catalans in Spain.

viable state) and respect human rights (criterion of normative support: key principle of liberal political philosophy). The main problem of choice theories is that they cannot justify the seceding group's claim to appropriate the territory that it is taking away (criterion of comprehensiveness: inconsistent with what secession involves, namely taking a territory; and criterion of normative support: territorial integrity as key principle of liberal political philosophy).⁶

Just-cause theories offer two main advantages. First, they emphasize the value of justice, understood as respect of human rights (criterion of normative support: key principle of liberal political philosophy). Second, they are able to justify the territorial claim of the seceding group, by arguing that, because of its injustice, the current state loses jurisdiction over the territory (criterion of comprehensiveness: consistent with what secession involves, namely taking a territory; and criterion of normative support: territorial integrity as key principle of liberal political philosophy). The main problems of just-cause theories are (1) their neglect of the question of state viability (criterion of comprehensiveness: inconsistent with what secession involves, namely the creation of a viable state); and (2) their reliance on a very minimal or narrow definition of justice to determine when it is permissible for a group to secede. Only when a group has suffered a major injustice (such as major human rights violations) is its secession permissible. This means that the secessionist claims of groups that have *not* suffered that kind of injustice (for example, the Québécois) are automatically dismissed as unwarranted. Yet to claim that those groups have not suffered an injustice is to beg the question, since precisely

⁶ One might suggest that territorial integrity is not necessarily a liberal principle, i.e. that it might likewise be claimed by other philosophical traditions. This observation is compatible with my present analysis, as the criterion of normative support requires consistency with principles that are (*also*) liberal, not necessarily with principles that are *only* liberal.

what is at issue is whether such groups might have suffered an injustice in being denied the right to secede. Thus the minimal or narrow conception of justice that just-cause theories use is arguably inconsistent with the liberal principle of self-determination (criterion of normative support: self-determination as key principle of liberal political philosophy).

Nationalist theories offer two main advantages. First, they emphasize the value of flourishing (criterion of normative support: widely recognized value). Second, they are able to justify the territorial claim of the seceding group, by legitimating acquisition of the land on the grounds of having lived on it and shaped it (criterion of comprehensiveness: consistent with what secession involves, namely taking a territory; and criterion of normative support: territorial integrity as key principle of liberal political philosophy). The main problems of nationalist theories are: First, their neglect of the question of economic viability, which undermines a group's ability to flourish, for example through the creation or maintenance of cultural or political institutions (criterion of comprehensiveness: inconsistent with what secession involves, namely the creation of a viable state; and criterion of normative support: flourishing as key principle of liberal political philosophy). Second, nationalist theories risk encouraging nationalist extremism, for example ethnic cleansing or forced assimilation of minorities – both of which violate the principle of protection of universal human rights (criterion of normative support: human rights as key principle of liberal political philosophy).

To review, assessed in terms of comprehensiveness and normative support, current theories offer two main types of advantage. First, they respectively emphasize *certain moral values*: namely, self-determination (choice theories), justice (just-cause theories),

and flourishing (nationalist theories). Second, they respectively attend to *certain normative constraints*: namely, state viability (choice theories), respect of human rights (choice and just-cause theories), and territorial justification (just-cause and nationalist theories). Each theory focuses on one of those moral values and on one or two of those normative constraints. The problems of current theories are that they each neglect at least one of the normative constraints and thereby yield inadequate answers to the normative question of secession (choice theories neglect territorial justification; just-cause theories neglect state viability and non-remedial claims; and nationalist theories neglect state viability and human rights).

6. Beyond political legitimacy: The axiological approach

In this project, I argue that the problems the theories face are due to their misconstruing the moral values on which they respectively rely; and that this in turn is due to the fact that they reduce the normative question of secession to the question of political legitimacy, which they associate with only *one* moral value. In other words, by starting from the question of political legitimacy, each theory focuses primarily on only one particular moral value, and thus either ignores or does not give due weight to the other two values. As a result, each theory ends up with an inadequate conception of the particular moral value it does invoke. This inadequate conception in turn gives rise to the problems each theory faces, i.e. pushes each theory to neglect at least one of the normative constraints.

This points to the desirability of reframing the philosophical debate on secession. In other words, in starting from the question of political legitimacy, the respective perspectives of

current theories are partial and incomplete, and this is why they yield morally inadequate answers to the normative question of secession. Thus we need a theory that takes all three values into account, and gives due weight to each of them. That is, we need an account that treats the normative question of secession within a more comprehensive and adequate moral framework. In this project, I argue that developing such an account, i.e. providing a morally more plausible answer to the normative question of secession, requires starting not from an account of political legitimacy, but instead from the three values of self-determination, justice, and flourishing (even if an account of political legitimacy might subsequently be derived from them).

Thus in this project I develop an axiological theory of secession, which focuses primarily on the values of self-determination, justice, and flourishing as they relate to the normative question of secession. In providing its answer to the normative question of secession: “When is it morally permissible for a group to secede?” this axiological analytical framework shifts the focus away from the question: “What makes a state legitimate or illegitimate?” to the prior, more fundamental question: “What deeper moral values are most salient in the normative question of secession?”

Chapter 2 specifies the way in which the three values of self-determination, justice, and flourishing are most salient in the question of secession. It identifies the conditions under which it would be permissible for a group to secede (territorial justification, adequate protection of basic rights, and economic viability); and it articulates the link between these three permissibility conditions and the three values. It shows that the three conditions are ultimately grounded in the three values, and that, conversely, fulfilling the permissibility conditions in turn promotes those three values.

Because the normative question of secession should be analyzed primarily in terms of those three values, Chapters 3, 4, and 5 focus primarily on the values of self-determination (choice theories), justice (just-cause theories), and flourishing (nationalist theories) as they relate to the normative question of secession. My axiological approach analyzes all three values in terms of two guiding questions: (i) What is the adequate *conception* of each value as it relates to the normative question of secession? (ii) What is the appropriate *weight* of each value vis-à-vis the other two as it relates to the normative question of secession? Chapters 3, 4, and 5 show that the answer to (i) is contingent on the answer to (ii): i.e. that adequately conceptualizing each value, in order to offer a morally plausible answer to the normative question of secession, requires balancing it against the other two, so that no one value is ever prioritized over the other two. More precisely, these three chapters show that focusing on any one of the three values without also considering the other two results in the unequal treatment of certain groups or people. In other words, self-determination, justice, and flourishing, in the context of secession, are most adequately conceived as requiring equal consideration of different groups' rights and interests.

Thus in conceptualizing the three values most salient in secession in a morally more plausible way, Chapters 3, 4, and 5 show that equal participation and consideration in a group's decision-making process provides a criterion for assessing competing interpretations of self-determination, justice, and flourishing. In Chapter 6, I sketch a democratic axiological theory of secession, i.e. suggest that a democratic framework, because of its fundamental commitment to equality, seems most promising to give due

weight to the three values that justify secession, as they are conceptualized in the previous chapters.

CHAPTER 2

Determining the Permissibility of Secession: Toward an Axiological Approach

1. The desirability of a new analytical framework

The critical assessment of current theories of secession in Chapter 1 showed that the philosophical debate on secession ought to be reframed, i.e. that the normative question of secession ought to be analyzed in different terms. I suggested that a normative theory of secession ought not to start from the question of political legitimacy, because this type of approach provides only a partial and incomplete perspective on the question of secession. Instead, I suggested that a normative theory of secession ought to start from the deeper moral values that are most salient in secession (self-determination, justice, and flourishing), because this axiological approach offers a more comprehensive and adequate perspective on the question of secession.

In this chapter, I turn to the axiological approach and show how the three values of self-determination, justice, and flourishing are most salient in the normative question of secession. To do so, I go back to this question, which asks under what conditions it is morally permissible for a group to secede. I argue that there are three conditions that are each necessary and jointly sufficient for secession to be permissible: territorial justification, adequate protection of basic rights, and economic viability. In other words, I argue that it is morally permissible for a group to secede if and only if it has a valid territorial claim and is able to protect its citizens' basic rights and to be economically viable, without undermining the remainder state's ability to protect its citizens' basic rights and to be economically viable. I show that these three conditions are required because if we do not require them, we will hinder certain groups' ability to exercise self-

determination and to flourish in just circumstances. In other words, the three conditions that determine the permissibility of secession are grounded in the three values of self-determination, justice, and flourishing. That is what I mean when I say that those three values are most salient in secession.

Let's start with my thesis in this chapter, namely that it is morally permissible for a group to secede if and only if it has a valid territorial claim and is able to protect its citizens' basic rights and to be economically viable, without undermining the remainder state's ability to protect its citizens' basic rights and to be economically viable. This thesis is justified by the two criteria of comprehensiveness and normative support, introduced in Chapter 1. I start with the criterion of comprehensiveness, and then turn to the criterion of normative support.

2. Comprehensiveness: The logical relevance of the permissibility conditions

Recall that according to the criterion of comprehensiveness, a successful theory of secession must address all the relevant parameters in secession, i.e. start from what secession logically involves. Because secession by definition involves the taking of *territory* to form a new, viable *state*, a theory of secession should address the questions of territorial justification and state viability (and both the political and economic aspects of state viability). Following the criterion of comprehensiveness, then, secession cannot be permissible unless three conditions are met:

(1) Territorial justification: The seceding group must show that it has a legitimate claim to the territory it is taking, which the remainder state does not have. Without such a claim, it would violate that state's territorial integrity by taking away part of its territory.

(2) Adequate protection of basic rights: Both new and remainder states must provide adequate protection of their citizens' basic rights. This protection requirement is grounded in the equal moral value of individuals. It is the equal moral value of individuals that grounds their basic rights, and these rights warrant protection. Because each individual deserves to have her rights protected, justice requires the equal protection of all individuals' basic rights.

(3) Economic viability: Both new and remainder states must be economically viable. Adequate protection of rights requires appropriate institutions to ensure effective protection of all citizens' rights. This in turn requires economic means. It would therefore be morally unacceptable for a group to secede, if by seceding it undermined its own or the remainder state's economic viability.

I want to argue that the three conditions of territorial justification, adequate protection, and economic viability are each necessary and jointly sufficient for secession to be permissible, not only because (1) requiring those three conditions meets the criterion of comprehensiveness, i.e. addresses the relevant parameters in secession (namely the territorial, political, and economic aspects of secession); but also because (2) requiring those three conditions meets the criterion of normative support, i.e. ensures that different groups are able to exercise self-determination and to flourish in just circumstances.

This will become clearer in the next section, which is concerned with elucidating the substantive meaning (as opposed to the mere logical relevance) of each of the three conditions. Doing so will show how requiring those three conditions fosters those three values, or how the three conditions (territorial justification, adequate protection, and

economic viability) are grounded in the three values (self-determination, justice, and flourishing). For logical progression purposes, I begin with economic viability, then turn to adequate protection, and finally to territorial justification.

3. Normative support: The substantive meaning of the permissibility conditions

3.1. Economic viability

Secessionists must show that by seceding, they undermine neither their own nor the remainder state's economic viability. This is because justice or adequate protection of rights requires appropriate institutions to ensure effective protection of all citizens' rights, and this in turn requires economic means. Economic viability is further required by a group's ability to exercise self-determination, for example with regard to the creation or maintenance of political or cultural institutions, on which a group's flourishing directly depends.

Economic viability means that the state is able to have an economy that allows it to sustain the institutions needed for adequate protection. Thus economic viability should not be understood as economic autarky (economic independence and self-sufficiency). Economic autarky would be both a mostly unrealistic and unnecessary expectation. Even if the remainder state's *economy* will almost inevitably be affected by secession, since secession involves the taking of territory and thus of people and resources, this will not necessarily affect the remainder state's economic *viability*. This is important because, as Buchanan explains, there is no right to any particular economic status quo (1991, 92). If there were such a right, then secession would hardly ever be permissible: such a condition would automatically bias the procedure for determining the permissibility of

secession in favor of the status quo. Likewise, Gauthier argues that changes in economies of scale are to be expected after secession, but that such changes, by themselves, do not warrant opposing secession (1994, 366). Similarly, a drop in overall levels of economic well-being would not in itself constitute a valid reason against the permissibility of secession. Only in cases where drops in overall levels of wealth are such that the state is thereby unable to sustain the institutions required for adequate protection should secession be impermissible, at least until arrangements have been made to prevent the remainder state's economic and political non-viability. Finally, even if the remainder state is economically viable, it should be given economic compensation if it invested many resources in the territory that is now breaking away (for example, building a port in a coastal area that now wishes to secede), much like a couple getting a divorce would have to split between both spouses all assets acquired during marriage as fairly as possible.

One important qualification to the condition of economic viability might arise when the seceding group has suffered a major injustice under the larger state (for example, severe human rights violations). To show why such circumstances might warrant qualifying the requirement of economic viability, let's again use the analogy between secession and divorce. If a wife seeks a divorce in order to escape an abusive husband, it would seem absurd to say that she may get a divorce only if her husband will be able to make it financially on his own after the divorce, *and* only if she will be able to make it financially on her own after the divorce. Yet requiring both new and remainder states to be economically viable *even* in cases where the seceding group has been the victim of a major injustice in the state it is seeking to leave would be tantamount to forcing a wife to

remain with an abusive husband on the grounds that either one or both of them would not be able to make it financially on their own after the divorce – and this clearly seems mistaken.

Therefore, in cases where the seceding group has suffered a major injustice under the larger state, the requirement of economic viability needs to be approached differently, both for the new and for the remainder state. I want to suggest that in such circumstances, international institutions should play a special role if the new state were to be economically non-viable on its own after secession. One reasonable option in this case would be for international institutions to lend economic support appropriately to the new state for a given period of time, during which the new state would have to make every effort possible to become economically viable. Such a temporary arrangement would avoid forcing the victims of injustice to remain at the hands of their abuser, while at the same time securing their economic viability, which is crucial since it is necessary for adequate protection.

What about the economic viability of the remainder state, which in this case would have committed a major injustice toward the secessionist group? As was just mentioned, in cases of remedial secession, requiring that the remainder state be economically viable on its own after secession for secession to be permissible, would amount to forcing an abused partner to remain with an abusive partner on the grounds that the latter's finances would be precarious after the divorce. At the same time, however, extending international support to the (injustice-perpetrating) remainder state, in the same way as was just suggested for the new state, would seem to reward the remainder state's injustice in a "perverse-incentive" sort of way. In order to avoid both of these types of problematic

situation, one reasonable exception to the condition of economic viability must be made, even if this might undermine the remainder state's economic viability. The lack of international assistance might here be compared to the way that individual states punish individual citizens for violating the rights of others, or to the use of certain economic sanctions in the international arena.⁷

3.2. Adequate protection of basic rights

For a state to provide adequate protection is for it to protect all its citizens' basic rights equally. As mentioned earlier, because those basic rights are grounded in the equal moral value of individuals, they warrant protection and such protection is a matter of justice. However, individuals whose basic rights are violated not only suffer an injustice, but an injustice that hinders them in their ability to flourish and to exercise self-determination. Western liberal political philosophers further overwhelmingly consider adequate protection of basic rights to be the primary justification and function of an entity like the state.⁸ Because seceding involves creating a new state, secessionists must show that by seceding, they undermine neither their own nor the remainder state's ability to provide adequate protection of rights.

Given this requirement, what are we to make of cases where a group's secession results in rendering minorities left behind in the remainder state particularly vulnerable to oppression by the remainder state? If the minority left in the remainder state belongs to

⁷ This is not to say that economic sanctions as an international mechanism do not themselves raise a host of issues. One important such issue arises when such sanctions have an impact only on an innocent population rather than on the actual target of such sanctions, namely the regime in power. If a similar situation were to present itself in the case of remedial secession, international support of the remainder state might then be justifiable, perhaps contingent on a change of regime.

⁸ See all social contract theories from Hobbes and Locke to Rawls and Nozick; Mill 1972 (1861), 1989 (1859); Buchanan 1991, 2002; Christiano 2006; Wellman 2005; Wellman and Altman 2009.

the same group as the one that seceded, or if there is at least no hostility between the minority and the seceded group, then a possible, if not ideal, solution would be for the minority to join the seceded group in its new independent state, and thereby escape oppression from the remainder state. If, however, there also is hostility between the minority and the seceded group, or if the minority is otherwise unable to join the seceded group in its new independent state, then matters become more complicated. On the one hand, if the minority's situation in the remainder state gets worse *as a result* of the group's secession, then it would seem that the seceding group is at least indirectly (or causally) responsible for worsening the minority's situation in the remainder state. On the other hand, however, it would seem unjust to prevent a group from seceding because of what the remainder state might do to the minority left behind (this would seem to be a problem between the remainder state and the minority, not involving the seceding group), *especially* if the seceding group is itself trying to escape oppression in the larger state. This sort of considerations should be taken into account when determining the permissibility of secession, especially with regard to adequate protection, which, in the type of case under consideration, is not being properly provided by the state.

In such circumstances, one reasonable option would be that it would still be morally permissible for the group to secede (especially if it is trying to escape oppression), but that international institutions would have a responsibility to ensure that the situation of the minority left behind in the remainder state does not get worse.⁹ And perhaps the seceding group, which presumably would be in the international spotlight, would have a special obligation to call international attention to the situation of the minority in the

⁹ This is not to say that the R2P doctrine has been fully worked out or might not be problematic in some respects.

remainder state. This type of solution (international support in providing adequate protection) is consistent with Article 24 of the UN Charter, which confers upon the Security Council the “primary responsibility for the maintenance of international peace and security,” in order “to ensure prompt and effective action by the United Nations” (*Charter of the United Nations*). We moreover find similar international involvement in the transitional UN administration of Kosovo; NATO’s K-FOR peacekeeping force in Kosovo (started in 1999 with 10,000 troops); and the European Rule of Law Mission in Kosovo (EULEX) to assist Kosovo in its rule of law (started in 2008 with 2,000 civilians).¹⁰ This type of solution would avoid forcing the secessionists to remain within a state they wish to leave (especially if they are being oppressed) while at the same time securing adequate protection for minorities left behind in the remainder state.

Having clarified this aspect of the condition of adequate protection, I now turn to another aspect of that condition, namely the relation between adequate protection and statehood. As mentioned in Chapter 1, a state is a politically organized, politically independent, and territorially bounded entity that is sovereign; and state sovereignty refers to a state’s supreme control over its territory and the people who live on that territory. Thus there is a central territorial dimension to the state, and this territorial dimension is directly related to the state’s function of adequate protection.

Indeed, to be able to enforce respect of rights effectively, the state must be territorially defined. This is because disputes often arise between parties within a certain spatial proximity, and to adjudicate between the claims of the parties involved, the competent entity must have legitimate authority over both parties. Thus territoriality circumscribes

¹⁰ For more on K-FOR and EULEX see <http://www.nato.int/kfor/> and <http://www.eulex-kosovo.eu/en/front/>

the legitimate jurisdiction of the state, or the territory within which the state can legitimately enforce respect of rights, thereby making it possible for the state to provide adequate protection. That is, the territoriality of the state is not a mere incidental contingency, it is a necessary condition for the state to be able to provide adequate protection (Wellman 2005, 14-15).¹¹

To review, the state's function is to protect all its citizens' basic rights, and such protection in turn requires that states be territorially defined. Therefore, if secessionists wish to create their own state, they will have to show that their new state is able to provide adequate protection, which requires having a legitimate claim to the territory. The fact that adequate protection requires territoriality of course does not mean that the ability to justify the territorial claim necessarily entails the ability to provide adequate protection, nor that, conversely, the ability to provide adequate protection necessarily entails the ability to justify the territorial claim.¹²

3.3. Territorial justification

Secession is controversial importantly because it challenges a state's territorial integrity. Yet in a post-Westphalian state order, a state's territory is no longer viewed as belonging to the ruler (the king or the prince), but rather to the people (Bishai 2004, 74-75). The state, then, with regard to its territory, is acting merely as the *agent* of the people (Buchanan 1991, 108-109). In this sense, territorial integrity should be understood not as a state's property right, but as a state's jurisdictional power over its territory, a power *granted* to the state by the people. Thus what grounds legitimate control over the *territory*

¹¹ This is why even a libertarian like Nozick turns the dominant protection agency into the minimal state (see Nozick 1974).

¹² For more on this question, see Chapter 3.

is legitimate authority over the *people*. In other words, if a state does not have legitimate authority over some of its people, it also does not have legitimate control over some of its territory. If it can be shown that the state does not have legitimate authority over some of its people, then it would seem that this group should be able to leave with its territory if it so wishes. I now offer two different justifications for taking part of a state's territory, each corresponding to one way in which a state does not have legitimate political authority over some of its population: one is the argument from injustice, the other the argument from self-determination and flourishing.

3.3.1. The argument from injustice

According to the argument from injustice, when the state commits a severe injustice toward a territorially concentrated part of its population, the state fails to fulfill its function or to provide adequate protection to that group. The state therefore loses legitimate political authority over that group, and thus its control over the territory that this group occupies. Because the territory really belongs to the people, the group in turn acquires or recovers legitimate control over its territory, and so would be able to justify its territorial claim, should it want to secede (Buchanan 1991, 44-45).

Here one might ask whether groups that are not territorially concentrated but that are the victims of state-perpetrated injustice might also have certain legitimate territorial claims, as a result of the injustice suffered (consider, for example, the argument made in the 1960's by Black Power advocates that a separate Black State should be established in the US South). Thus far I have been assuming that the secessionist group is an already territorially concentrated group. Insofar as the argument from injustice relies on the

injustice suffered by the group, however, it seems that the argument from injustice could also apply to non-territorially concentrated groups who have been the victims of similar injustice. Indeed, it is the injustice suffered, rather than the fact that the group happens to be territorially concentrated, that gives the group a legitimate territorial claim.

To this one might object that it is the injustice suffered *in addition to* the fact that the group is territorially concentrated, that gives the group a legitimate claim to a certain territory. To see why this objection is mistaken, that is, why it is only the injustice suffered, *regardless* of the fact that the group is territorially concentrated, that gives the group a legitimate claim to a certain territory, it is useful to frame the issue from the position of the existing state, rather than from the position of the group. That is, it is first and foremost because the state *commits* a major injustice toward a part of its population that it loses legitimate political authority over that group, and thereby forfeits its right to the territory which that group occupies. Whether or not the group is territorially concentrated does not in any way alter the fact that the injustice committed by the state means that the state loses legitimate political authority over that group.

Of course, if the group is already territorially concentrated, that is, if it already occupies a discrete portion of the existing state's territory, this will make it easier to determine to which part of the state's territory the group has a legitimate claim, should it wish to secede due to major injustice. But it is important to keep in mind that the state sometimes commits major injustice toward non-territorially concentrated groups, and that if, as a result of this injustice, such a group wished to form its own independent state in order to enjoy adequate protection, the state, having lost its legitimate authority over that group which occupies parts of its territory, would thereby forfeit its right to a contiguous part of

its territory equivalent to the different non-contiguous parts of its territory occupied by the group toward which it has committed an injustice. This is because, as explained under the condition of adequate protection, independent statehood requires adequate protection, which in turn requires territorial contiguity. Thus if a group that has been the victim of state injustice wished to form its own independent state in order to enjoy adequate protection, it would (at least in theory) be owed a contiguous part of that state's territory, since adequate protection requires territorial contiguity.

This is not to say that this will always be actually feasible in practice, however. One obvious major difficulty is that no (minimally attractive or viable) territory today is unoccupied, and that the interests of current occupants also need to be taken into account. This means that finding a piece of territory on which the non-territorially concentrated victims of state-perpetrated injustice might create their own independent state might turn out to be impossible. Still, this empirical, contingent fact should not make us lose sight of the normative issue presently at stake: namely, that for a state to lose legitimate authority over a part of its population means for it to forfeit its right over the territory, whether contiguous or not, which that group occupies. The lack of practical applicability just mentioned by no means erases the injustice that non-territorially concentrated groups may have suffered, nor does it imply that these groups are therefore not owed other forms of compensation or reparation. Rather, this lack of practical applicability simply means that these groups' territorial claim, legitimate though it may otherwise be, is overridden by current occupants' territorial claim.

In any event, a territorially concentrated group that has *not* suffered a major injustice (e.g. Quebec) might nonetheless deem that it should no longer be included in the larger state,

for example because it would better flourish if it had its own independent state, because independent statehood would allow the group more fully to enjoy self-determination. This brings me to the argument from self-determination and flourishing.

3.3.2. The argument from self-determination and flourishing

Even in the absence of major human rights violations, the state arguably may not have legitimate authority over such groups. Here one might point to an important similarity between the situation of such groups and that of colonized peoples: namely, being prevented from fully exercising political self-determination because of questionable boundaries. In other words, both types of groups are being prevented from exercising the fullest degree of political self-determination because of the way boundaries were drawn.

Here it might be objected, following a passage from Rawls' *Law of Peoples* regarding the character and role of boundaries, that:

It does not follow from the fact that boundaries are historically arbitrary that their role [...] cannot be justified. On the contrary, to fix on their arbitrariness is to fix on the wrong thing. In the absence of a world-state, there *must* be boundaries of some kind, which when viewed in isolation will seem arbitrary, and depend to some degree on historical circumstances. (1999, 39, emphasis in original)

But note that Rawls' argument is merely a justification for the existence of boundaries *in general* ("there *must* be boundaries..."), *not* a justification for any *specific* set of boundaries ("...boundaries of *some* kind"). By contrast, my present point regarding the analogy between non-remedial secessionists and colonized peoples targets not the very existence of boundaries in general, but rather specific current boundaries. Indeed, secession involves redrawing boundaries, not dispensing with them altogether. Moreover, Rawls seems to conflate the historically contingent character of boundaries with their

arbitrary character, suggesting that the former automatically results in the latter. Yet different historical circumstances may yield different sets of boundaries that are more or less arbitrary. Indeed, at least some (historically contingent) cases of secession can plausibly be viewed as attempts to redraw boundaries in a less arbitrary or morally more justifiable way. Thus the Rawlsian objection is both irrelevant and inaccurate in the context of my analogy.

In light of this analogy between non-remedial secessionists and colonized peoples, the secessionist group might have a valid claim to the territory it currently occupies if it already occupied it before the current political unit was formed.¹³ In this case, the state loses its authority over the territory not because of a major injustice, but because that portion of territory was “always” that group’s to begin with, and that group now wishes to be self-governing in that territory. This is the principle that the territory really belongs to the people, rather than to the state (Bishai 2004, 74-75; Buchanan 1991, 108-109).

But does this principle mean that the entire territory belongs to the entire population, in virtue of the political union, or rather that each portion of territory belongs to each portion of the population that occupies it? If the latter, secessionists could easily justify their territorial claims; but if the former, then secessionists might be unable to justify

¹³ Here one might ask what makes a secessionist group the “same” group over time. The individual members of a group may of course change without thereby affecting the existence of the group over time. This is clear if one looks at the continuity of various groups over time, such as states (the United States), universities (the University of Colorado), corporations (AT&T), or sports teams (the Rockies). These groups persist despite the changing composition of their membership. The same is true of secessionist groups (Quebec or Flanders). Now one might point out that membership in a state, university, corporation, or sport team depends on certain objective criteria or relations such as living in, studying at, working for, or playing for; and ask what the equivalent criteria or relations would be for secessionist groups. I want to suggest that the relevant criterion or relation in this case is mutual recognition as members of group X (ancestry, birth, residence, or cultural identity may be additional factors, but I believe that none of them are necessary or sufficient to determine membership in a group X through time).

their territorial claims, as it is highly unlikely that the remainder of the population will let them leave with a part of territory that also belongs to them.

Since secession is famously referred to as political divorce, we might illuminate this question by looking at marriage. The claim is that because of the political union, the entire territory belongs to the entire population. This is much like the principle of community property in marriage, which regards the property acquired in marriage as belonging to both spouses. But the principle of community property also stipulates that whatever property was acquired respectively by each spouse before their union remains their separate property, *even if* they may otherwise decide to enjoy it jointly in virtue of their union. Thus if the couple were to divorce, they may have to split as fairly as possible all property acquired during marriage, but whatever they had respectively acquired on their own before their union would remain theirs and they would have the right to exit the union and go their separate ways with their respective pre-marriage property.¹⁴

Thus even if the entire territory is said to belong to the entire population in virtue of the political union, if secessionists can show that they *already* occupied their territory before entering the political union, then it is unclear that the remainder of the population would have a right to prevent the secessionists from taking a piece of territory that was already

¹⁴ One might object that using the principle of community property to build this analogy is question-begging: Why pick this principle rather than other possible principles of marriage contracts? Here I can only point to the fact that, in liberal democracies, the principle of community property is most often the default type of marriage contract, because it constitutes a middle-ground between the two extremes of complete merging and complete separation of assets. Thus the burden of proof here is on those claiming that a more extreme principle should be used. (Of course, opting for complete separation of assets would only reinforce the secessionists' case.)

theirs before the political unit was formed. Secessionists, then, would have a valid territorial claim.

This of course would only apply to cases where it is relatively clear which group occupies (and *has* occupied) which part of the territory – for example, the Québécois occupy the province of Quebec, the Flemish the region of Flanders (and the same was true of Norway before it seceded from Sweden in 1905, or of the Czechs and the Slovaks before they parted ways in 1993). Such groups already occupied their territory before the larger country in which they were included was formed, and have continuously occupied the same territory, which makes those territorial claims much easier to justify. In cases where populations are intermingled, or where more ancient and more recent occupants each claim to have a valid claim to the same territory, matters become more complicated. If possible, the two groups might try to divide the territory as fairly as possible, perhaps through the help of international mediation. Where territorial division is no longer feasible (as in the case of the entire American continent), compensation or reparation toward the native populations is probably the next best option. This is not to say that the native group does not have a legitimate claim to the territory it once occupied, but simply that its claim is overridden by the interests of the people who currently live on the land, namely, all the descendants of European and other migrants for whom that land is the only home they know and have. This in turn is not to say that the injustice the group suffered is thereby erased, or that it no longer warrants compensation or reparation; but rather that restitution of the exact territory is, for better or worse, no longer a feasible option.

3.3.3. Some objections

To review, then, legitimate authority over the people is what grounds legitimate control over the territory. In the two previous sections, I offered two types of justification for taking away part of an existing state's territory: the argument from injustice and the argument from self-determination and flourishing. Each argument corresponds to one way of denying the legitimacy of a state's authority over part of its population. According to the argument from injustice, the territorial claim is justified because perpetration by the state of a major injustice toward a group makes the state forfeit its authority over that group and thereby over the territory that this group occupies. According to the argument from self-determination and flourishing, the territorial claim is justified because the group has continuously occupied that portion of territory since before the political unit in which it is currently included was formed, and this group now wishes to be self-governing in that territory, because independent statehood would allow the group better to flourish and more fully to enjoy self-determination.

Looking at these two possible types of justification of territorial claims (the argument from injustice and the argument from self-determination and flourishing), one might object that the latter, according to which a group that has suffered no major injustice would have a legitimate claim to its territory if it already occupied it before the current political unit was formed, seems to rely on a rather weak conception of sovereignty. I will call this objection the weak-sovereignty objection. According to the weak-sovereignty objection, state sovereignty can be viewed in either one of two ways. Either the state acts as a landlord and the people, then, are just the tenants of the land, in which case a group seeking to secede would automatically be unable to justify its territorial claims; or the

people are the owners of the land and the state, then, simply acts as a steward or watchman, in which case a group seeking to secede would automatically be able to justify its territorial claims (as seems to be the case with the argument from self-determination and flourishing). Each account, then, seems automatically biased either against or in favor of secession. On either account, the problem of secession is automatically solved. In other words, the “problem” of secession is not truly a problem.

I want to argue that the weak-sovereignty objection fails, for three reasons. First, I rebut the claim that, if the objection is correct, the problem of secession turns out to be a non-problem. Second, I address the claim that the conception of sovereignty invoked to support the argument from self-determination is problematically weak. Third, I refute the claim that the “weak” conception of sovereignty automatically settles the question of territorial justification. Let’s look at each of these three reasons in turn.

First, recall that the question of sovereignty arises in the context of justifying territorial claims. Yet territorial justification is but one of three conditions which I have argued must be met for secession to be morally permissible. Thus even if the question of *territorial justification* seems to be automatically settled by accepting a “weak” conception of sovereignty, this would not yet establish the permissibility of secession, as the two further conditions of adequate protection and economic viability must equally be fulfilled for secession to be permissible. This means that even on a “weak” conception of sovereignty, the question of *secession* would *not* automatically be settled. Thus the problem of secession remains.

Second, as mentioned above, the landlord model of the state, according to which the land belongs to the ruler or ruling entity, corresponds to a Westphalian conception of sovereignty. By contrast, the steward-watchman model of the state, according to which the land really belongs to the people, and the state is just the agent of the people, corresponds to a post-Westphalian conception of sovereignty. Moreover, as mentioned in Chapter 1, a post-Westphalian model introduces normative considerations of legitimacy and accountability, which are virtually absent on the Westphalian model. I therefore favor the post-Westphalian model over the Westphalian model. That a consequence of the post-Westphalian conception of sovereignty, or of the steward-watchman model of the state, is that it makes it possible or easier for secessionists to justify their territorial claims, does not seem to warrant rejecting that model. Of course, within the post-Westphalian model, we must specify under what conditions the land is said to belong to the people, or under what conditions a people can claim that a land belongs to them. A group's ability to show that it already occupied that portion of the land before the political unit was formed (as is required in the argument from self-determination and flourishing, which is the target of the weak-sovereignty objection), however, seems to provide one plausible such condition.¹⁵

¹⁵ Here it might be asked whether people who occupied the land before the political unit was formed but who have since then been displaced or otherwise been the victims of injustice (as in the case of the native populations of North America) would have a legitimate claim to the land that was once theirs. My answer here would have to be both affirmative and negative. It is affirmative because, as I explained earlier (see section 3.3.1. on the argument from injustice), having been the victims of a major injustice (regardless of whether the group is currently territorially concentrated), is a sufficient condition for the justification of territorial claims. It is negative because what the affirmative part shows is that the group would have a legitimate claim to *a* part of the state's territory. In cases where the group is still currently territorially concentrated, the territory to which it would have a legitimate claim might be easier to determine. In cases where the group is no longer territorially concentrated, determining whether the group would have a right to take back the *exact* part of territory it once occupied requires taking into account the interests of the people who currently live on the land (in North America, all the descendants of European and other migrants for whom that land is the only home they know and have). This is not to say that the group does

Perhaps more importantly, questioning the post-Westphalian conception of sovereignty as a weak model of sovereignty would commit the objector to reject not just the argument from self-determination, but also the argument from injustice. Both arguments are indeed equally grounded in the post-Westphalian conception of sovereignty. The argument from injustice (according to which a state that commits a major injustice toward a part of its people loses legitimate authority over those people and the territory they occupy) relies on the understanding that state sovereignty is not inalienable, because sovereignty is contingent upon the state treating its citizens justly. This is a post-Westphalian understanding of sovereignty, as it relies on normative considerations of legitimacy and accountability. Likewise, the argument from self-determination and flourishing (according to which a group that has suffered no major injustice, but that nonetheless deems that it should no longer be included in the larger state, might have a legitimate territorial claim if it already occupied the territory before the political unit was formed) also relies on a post-Westphalian understanding of sovereignty, as it views a state's territory not as belonging to the ruler (the king or the prince), but rather to the people. This means that the state, with regard to its territory, is only acting as the agent (steward-watchman) of the people. This in turn means that a state's territorial integrity should be understood as a jurisdictional power over the territory, a power *granted* to the state by the people – not as the state's inalienable property right. In other words, what grounds legitimate control over the *territory* is legitimate authority over the *people*. So the conception of sovereignty underlying each type of justification of territorial claims is no

not have a legitimate claim to the territory it once occupied, but simply that its claim is overridden by other considerations, including current inhabitants' territorial claims. This in turn is not to say that the injustice the group suffered is thereby erased, or that it no longer warrants compensation or reparation. Rather, it is simply to say that restitution of the exact territory is, for better or worse, no longer a feasible option.

weaker for the second type (the argument from self-determination and flourishing) than it is for the first type of justification (the argument from injustice), since it is the same, post-Westphalian conception in both cases. And if this conception is an asset for the first argument, there is no reason why it should suddenly become a liability for the second argument.

Still, I would like to suggest one reason why the weak-sovereignty objection might at first seem like a valid concern. Even in a post-Westphalian state order, sovereignty retains some of its sacrosanct aura, maintaining emphasis on the importance of respecting existing borders. Yet I want to suggest that this emphasis on respecting borders has more to do with a concern to prevent undue external interference in a state's internal affairs, than with a concern to prevent part of a state's population from attempting to change their situation in that state's internal affairs, which are also their own. This is reflected in the intuition, underlying the argument from injustice, that it is morally permissible for a group to secede when it has suffered a major injustice under the larger state. This shows that state sovereignty is not inalienable, but contingent upon the state treating its citizens justly. And arguably, such just treatment would consist not merely in not committing any major human rights violations, but also in respecting a group's right to self-determination, including secession, if the group can show that it already occupied the territory before the political unit was formed (and meet the further conditions of adequate protection and economic viability).

Of course, the argument from injustice is particularly compelling because of the sense of urgency that it conveys, a sense of urgency that is perhaps not as powerful in the argument from self-determination and flourishing. The weak-sovereignty objection,

however, is not about which argument conveys a stronger sense of urgency; it is about the claim that the argument from self-determination and flourishing relies on a weak conception of sovereignty. But as I explained a moment ago, the conception of sovereignty underlying the argument from self-determination and flourishing is the same as that underlying the argument from injustice. Thus however weak or strong the post-Westphalian conception of sovereignty is taken to be, what should matter is that it introduces normative considerations of legitimacy and accountability, and if those considerations legitimize the argument from injustice, there is no reason why the same considerations should count against the argument from self-determination and flourishing.

Third, and perhaps most importantly, the weak-sovereignty objection seems to rely on a misunderstanding of the justification of territorial claims. According to the weak-sovereignty objection, if the people are seen as the owners of the land and the state simply as a steward or watchman, then a group seeking to secede would automatically be able to justify its territorial claims. Thus, the objection goes, this approach seems automatically biased in favor of secession. Yet not only is the question of *secession* not settled (as the two further conditions of adequate protection and economic viability must equally be fulfilled for secession to be permissible), the question of *territorial justification*, contra the objector, is not settled either. Indeed, what a post-Westphalian conception of sovereignty ultimately shows is that the question of territorial justification arises not so much between the state and the people as between the people and the people, that is, between the different parts of the people or between the different parties to the political union (as suggested by the divorce analogy). In other words, even if a

post-Westphalian conception of sovereignty precludes the automatic impermissibility of secession, it does not thereby entail the automatic permissibility of secession, because the question of territorial justification remains to be settled between the different parts of the people (as would the division of assets between both spouses in the case of a divorce).

To sum up, according to the weak-sovereignty objection, to argue (as does the argument from self-determination and flourishing) that it is morally permissible for a group to secede even when it has not been the victim of any major state-perpetrated injustice is to rely on a weak conception of sovereignty, a conception so weak indeed that it turns the problem of secession into a non-problem, because the secessionist group would automatically be able to justify its territorial claims and thus to secede. I have argued that the weak-sovereignty objection fails, for three reasons. First, the question of sovereignty arises in the context of justifying territorial claims, which is but one of three necessary conditions to determine the permissibility of secession; adequate protection and economic viability are equally required. Thus even if the question of *territorial justification* seems to be automatically settled, the question of *secession* would *not* automatically be settled. Thus the problem of secession remains. Second, however weak or strong the post-Westphalian conception of sovereignty is taken to be, what should matter is that it introduces normative considerations of legitimacy and accountability, and if those considerations legitimize the argument from injustice, there is no reason why the same considerations should count against the argument from self-determination and flourishing. Third, what a post-Westphalian conception of sovereignty ultimately shows is that the question of territorial justification arises not so much between the state and the

people as between the people and the people, which means that even the question of territorial justification remains to be settled, between the different parts of the people.

One final point should be noted with regard to the weak-sovereignty objection. As I have already suggested and as the next section will make even clearer, the core argument underlying the axiological approach I develop in this project is that the normative question of secession is primarily not so much about the question of political legitimacy or state sovereignty as it is about certain deeper moral values (namely, self-determination, justice, and flourishing). If this argument is correct, then a normative theory of secession ought to be guided by those values, rather than by the question of political legitimacy or state sovereignty. Indeed, a normative account of secession ought to be guided by those values, *whatever* the implications for the question of political legitimacy or state sovereignty might be. In other words, instead of proceeding from a certain conception of political legitimacy or state sovereignty to a normative account of secession, we should proceed from the latter to the former. This, then, gets rid of the weak-sovereignty objection altogether.

4. The axiological approach

4.1. The logical priority of the three values

To review, I have argued that it is morally permissible for a group to secede if and only if it has a valid claim to the territory it is taking, and if it is able to provide adequate protection and to be economically viable without thereby undermining the remainder state's ability to provide adequate protection and to be economically viable. According to my theory, then, those three conditions of territorial justification, adequate protection,

and economic viability are each necessary and jointly sufficient for secession to be permissible. This is because (1) requiring those three conditions meets the criterion of comprehensiveness, i.e. addresses the relevant parameters in secession (namely the territorial, political, and economic aspects of secession); and because (2) requiring those three conditions meets the criterion of normative support, i.e. ensures that different groups are able to exercise self-determination and to flourish in just circumstances.

This in turn is because all three conditions are indeed grounded in all three values. Thus the condition of territorial justification is required because a group claiming a territory to which it does not have a legitimate claim interferes with another group's exercise of self-determination and constitutes an unjust taking, both of which would likely affect this other group's ability to flourish. The condition of adequate protection of basic rights is required because of the equal moral value of individuals. It is the equal moral value of individuals that grounds their basic rights, and these rights warrant protection. Because each individual deserves to have her rights protected, justice requires the equal protection of all individuals' basic rights. Individuals whose basic rights are violated not only suffer an injustice, they are thereby also hindered in their ability to flourish and to exercise self-determination. Finally, the condition of economic viability is required because effectively providing adequate protection requires creating and maintaining certain institutions, and this in turn requires economic means. Economic viability is further required to protect a group's ability to exercise self-determination, for example with regard to the creation or maintenance of political or cultural institutions, on which a group's flourishing directly depends.

In other words, if we do not require the three conditions of territorial justification, adequate protection, and economic viability, we will end up with a theory that hinders certain groups' ability to exercise self-determination and to flourish in just circumstances (as current theories do). By requiring the three conditions, my axiological approach is able to incorporate the three values (self-determination, justice, flourishing), because the three values are logically prior to (or motivate) the three conditions. Meeting the three conditions thus respects and fosters the three values.

4.2. Some challenges

Because the conditions that determine the permissibility of secession are grounded in the three values of self-determination, justice, and flourishing, a theory of secession ought to analyze the normative question of secession primarily in terms of those three values, i.e. ought to be axiological. Section 5 will outline how this axiological commitment will be carried out in the remainder of this project. But first, in light of this axiological commitment, it will be useful to address certain challenges regarding the questions of statehood and political legitimacy.

Some might suggest that addressing the question of secession in empirically relevant terms entails working within the framework of statehood, i.e. recognizing that the international order is made up of states and that what defines secessionist claims to begin with is a desire for independent statehood. Others may argue that concepts such as the state or sovereignty are obsolete, and that one ought instead to consider alternative frameworks to contain issues of secession. An axiological approach, however, avoids this apparent conflict altogether; it renders it irrelevant. Indeed, since the focus is on the

importance of the three values of self-determination, justice, and flourishing, what matters first and foremost is that they be respected or fostered, whether this be through the apparatus of a state or, say, some anarchist community. Therefore, the present project is simply not concerned with assessing the respective merits of the statehood model versus the anarchist or other types of model, and it need not be.

None of this is to say that we may or should therefore ignore the fact that secessionists formulate their claims in terms of statehood. Rather, it is simply to say that if the aim of secessionists is to create their own state, then, in light of the axiological analysis of secession, that state will first have to meet the three conditions of territorial justification, adequate protection, and economic viability (so as to ensure groups' ability to exercise self-determination and to flourish in just circumstances). Here an account of political legitimacy might be derived from the axiological analysis of secession, but this is only because, following the secessionists' aim of independent statehood, we would be "plugging" the statehood model into our matrix of conditions. (An anarchist model or community – which by definition does away with the state, and thereby with the very question of political legitimacy – would also have to satisfy the three conditions, because they are necessary to respect and foster the three values.)

Still, because secessionist claims are formulated in terms of independent statehood, I will in the remainder of this project assume the empirical framework of statehood. As I suggested a moment ago, however, the reference to the statehood framework should not be interpreted as normative. That is, this project purports to remain neutral with regard to the normative assessment of the statehood framework (though we might derivatively use an axiological account of political legitimacy in assessing the question of secession).

Thus the use of terms such as state, sovereignty, etc., should not be understood as prescriptive, but rather as descriptive. That is, the use of statehood terminology should merely signal that we are “plugging” the statehood model into our normative matrix of conditions, not that the latter require the former (as I suggested above, we might imagine an anarchist community meeting the three conditions).

Otherwise put, even if such questions as whether we should do away with the state system altogether, or whether a state can ever be legitimate, or whether there even are such things as land rights, are good and interesting ones to consider, they also are, ultimately, irrelevant to this project. Thus claiming that it is pointless or problematic to argue for a normative theory of secession because we should do away with the state system altogether, or because a state can never be legitimate, or because there are no such things as land rights, would be tantamount to claiming that it is pointless or problematic to argue for gender justice because gender is a social construction or because we should undo gender altogether. Some of these observations might be correct, but until we are altogether rid of gender or the state system, we are going to have to work within certain parameters (namely, gender or the state system).

To put this yet another way, letting skepticism or doubts about the very possibility of state legitimacy or land rights stop our attempts to formulate a normative theory of secession would be akin to letting skepticism or doubts about the very possibility of the external world stop our attempts to know anything at all. Much like one can recognize that it is not a settled question whether we can ever know there is an external world, but nonetheless assume that we can know something about the external world; one can likewise recognize that it is not a settled question whether a state can ever be legitimate,

or whether there even are such things as land rights, and yet assume that both are possible for the purposes of formulating a normative theory of secession.

Having addressed those potential challenges to the axiological approach, I now outline how it will be carried out in the rest of this project.

5. Chapter outline

In this chapter, I have argued that the three conditions of territorial justification, adequate protection, and economic viability are each necessary and jointly sufficient for secession to be permissible. This is not only because (1) requiring those three conditions meets the criterion of comprehensiveness, i.e. addresses the relevant parameters in secession (namely the territorial, political, and economic aspects of secession); but also because (2) requiring those three conditions meets the criterion of normative support, i.e. ensures that different groups are able to exercise self-determination and to flourish in just circumstances. This in turn is because all three conditions are grounded in all three values, i.e. because the three values are logically prior to the three conditions. That is, if we do not require the three conditions of territorial justification, adequate protection, and economic viability, we will end up with a theory that hinders certain groups' ability to exercise self-determination and to flourish in just circumstances, as current theories do.

In the next three chapters, I develop my axiological approach further. I look at the way in which each current type of theory, based on its respective account of political legitimacy, has addressed or failed to address the three conditions, and at the way in which each current type of theory has thereby conceptualized one of the three values in its relation to the question of secession.

Chapter 3 examines the value of self-determination, and how choice theories have conceived it as it relates to secession and the three conditions. It shows that a normative theory of secession based exclusively on self-determination is too permissive, and that the significance of self-determination must therefore be balanced against the significance of the other two values of justice and flourishing. The result of this critical analysis is a more plausible conception of the value of self-determination as it relates to the question of secession.

Chapter 4 examines the value of justice, and how just-cause theories have conceived it as it relates to secession and the three conditions. It shows that that a normative theory of secession based exclusively on justice is too restrictive, and that the significance of justice must therefore be balanced against the significance of the other two values of self-determination and flourishing. The result of this critical analysis is a more plausible conception of the value of justice as it relates to the question of secession.

Chapter 5 examines the value of flourishing, and how nationalist theories have conceived it as it relates to secession and the three conditions. It shows that that a normative theory of secession based exclusively on flourishing is too permissive, and that the significance of flourishing must therefore be balanced against the significance of the other two values of self-determination and justice. The result of this critical analysis is a more plausible conception of the value of flourishing as it relates to the question of secession.

In conceptualizing the three values most salient in secession in a morally more plausible way, Chapters 3, 4, and 5 show that equal participation and consideration in a group's decision-making process provides a criterion for assessing competing interpretations of

self-determination, justice, and flourishing. In Chapter 6, I sketch a democratic axiological theory of secession, i.e. suggest that a democratic framework, because of its fundamental commitment to equality, seems most promising to give due weight to the three values that justify secession, as they are conceptualized in the previous chapters.

CHAPTER 3

Self-Determination

1. Introduction

This chapter examines the way in which choice theories, based on their account of political legitimacy, have addressed or failed to address the three conditions of territorial justification, adequate protection of rights, and economic viability, as well as the way in which choice theories have thereby conceptualized the value of self-determination in its relation to the question of secession.

Thus this chapter examines how choice theories have conceived the value of self-determination as it relates to secession and the three conditions. It shows that a normative theory of secession based exclusively on self-determination (as choice theories are) is too permissive, because relying only on the value of self-determination when developing a normative theory of secession yields an implausible conception of the value of self-determination, and thereby an implausible answer to the normative question of secession.

In this chapter, I argue that reaching a morally more plausible conception of the value of self-determination (and thereby a more plausible answer to the normative question of secession) requires introducing considerations of justice and flourishing, in addition to considerations of self-determination. In doing so, I show that balancing the value of self-determination against the other two values of justice and flourishing requires starting not from an account of political legitimacy (as choice theories do), but directly from the three values of self-determination, justice, and flourishing.

2. Political vs. cultural self-determination

Two distinct senses of “self-determination” are used in the philosophical literature on secession: political self-determination and cultural self-determination.

- *Political self-determination* refers to a group’s ability to decide freely its political status. Political self-determination is a matter of degree, and does not necessarily require full political independence or sovereignty: political self-determination may also be exercised within the borders of a larger state. This is the case in federalism, whereby different regional units within the larger state enjoy some degree of self-government regionally (for example, the different states within the United States, or the different provinces in Canada). Thus for a group to exercise political self-determination is for that group to determine the degree of political autonomy it will enjoy.

- *Cultural self-determination* refers to a group’s ability to set and pursue freely its cultural aspirations. Cultural self-determination might take the form of certain cultural events, celebrations, holidays, and symbols, as well as the language in which official administration and business are conducted, and the primary language used and taught in education and the media (for example, the three different linguistic-cultural communities in Belgium). Thus for a group to exercise cultural self-determination is for that group to determine the degree of cultural autonomy it will enjoy.

For a group to exercise (political or cultural) self-determination *freely* means (1) that the group has a reasonable range of available options, and (2) that the group is not coerced to choose one option over another. By (1), I mean that in the case of political self-determination, the group should be able to choose between different levels of government

(e.g. central, regional, or both); and that in the case of cultural self-determination, the group should be able to benefit from a certain degree of cultural protection (e.g. minority or cultural rights). By (2), I mean that the group further should not have to choose between more (political or cultural) autonomy and, for example, a continued exchange of goods and services between the region and the rest of the state. This would simply amount to a form of blackmail by the central government, and would compromise the group's ability to exercise self-determination freely.

When choice theories invoke self-determination in developing their normative account of secession, they refer to political self-determination. Some political philosophers argue that cultural self-determination motivates or justifies political self-determination,¹⁶ but choice theories are not concerned with the relation between cultural and political self-determination. Indeed, choice theorists explicitly exclude cultural self-determination from the morally relevant criteria to be taken into account when determining the permissibility of secession.¹⁷ Choice theorists thus focus solely on political self-determination to make their philosophical case for secession. In this chapter, I will therefore likewise focus solely on political self-determination, and I will refer to it simply as self-determination.

3. Choice theories' normative account of secession

For choice theories, a state is legitimate if it is viable and respects human rights. Thus according to choice theories, *any* territorially concentrated group that wishes to do so

¹⁶ For more on this type of argument on the relation between cultural and political self-determination, see Chapter 5.

¹⁷ Cultural identity is neither necessary nor sufficient for secession to be permissible, on a choice account. Thus if it is morally permissible for a cultural group to secede on a choice account, it will be because it meets certain necessary conditions, and not in virtue of the fact that it is a cultural group (Beran 1998, 42; Copp 1997, 278, 289; Copp 1998, 224-225; Philpott 1995, 365-366; Wellman 2005, 112; Wellman and Altman 2009, 47).

may secede, regardless of national, ethnic, religious, or other form of identity, *provided that* the new state is viable and respects human rights, i.e. is *legitimate*. For example, if San Fernando Valley wanted to become its own independent state and were able to be viable and respect human rights, it would be allowed to secede, because it would form a legitimate state. From this we can see that in their account of legitimacy, choice theories emphasize the value of political self-determination, or the right a group has to decide who will govern it. Thus choice theories approach the question of secession from the point of view of the seceding group. This is by far the most permissive type of theory, as it asserts that any territorially concentrated group in general (potentially) has a right to secede. Contemporary proponents of choice theories include Andrew Altman (2009), Harry Beran (1998), David Copp (1997, 1998), Daniel Philpott (1995, 1998), and Christopher Wellman (2005, 2009).

Based on the criteria of normative support and comprehensiveness laid out in Chapter 1, in order to be successful or normatively plausible, a philosophical theory of secession must be (1) consistent with the basic principles and values of liberal political philosophy; and (2) consistent with what secession involves.

In light of these criteria, choice theories offer two main advantages. First, they emphasize the value of self-determination (criterion of normative support: key principle of liberal political philosophy). Second, they require that the state be viable (criterion of comprehensiveness: consistent with what secession involves, namely the creation of a viable state) and respect human rights (criterion of normative support: key principle of liberal political philosophy). The main problem of choice theories is that they cannot justify the seceding group's claim to appropriate the territory that it is taking away

(criterion of comprehensiveness: inconsistent with what secession involves, namely taking a territory; and criterion of normative support: territorial integrity as key principle of liberal political philosophy). These advantages and problems will become clearer in the rest of this chapter.

In what follows, I look at the way in which choice theories, based on their account of political legitimacy, have addressed or failed to address the three conditions of territorial justification, adequate protection of rights, and economic viability spelled out in Chapter 2, and at the way in which choice theories have thereby conceptualized the value of self-determination as it relates to secession. Because choice theorists' views on the question of territorial justification depend directly on their views on the questions of adequate protection and economic viability, I begin with the latter and then turn to the former.

4. Choice theories and the three permissibility conditions

4.1. Adequate protection and economic viability

As mentioned above, in light of the criteria of normative support and comprehensiveness, the advantages of choice theories are their emphasis on the value of self-determination and their requirement that the new state be viable and respect human rights (this requirement corresponds to their account of political legitimacy). These two advantages are connected: Choice theorists should indeed require the new state to be viable and to respect human rights, because of their emphasis on the value of self-determination. That is, it would be extremely difficult, if not impossible, for a group to exercise self-determination if, in its new state, it did not have sufficient political or economic resources, or suffered major human rights violations. In this section, I look at the way in

which choice theories, based on their account of political legitimacy, have addressed the conditions of adequate protection of rights and economic viability, and at the conception of the value of self-determination that they adopt as a result.

According to choice theorists, a state's legitimacy depends on its viability and respect of human rights. Thus Beran argues that "a community's right of secession, if exercised in order to oppress minorities in its midst, may be overridden by the right of these minorities not to be oppressed" (1998, 54). He further argues that for a group to have the right of self-determination, the group must be viable as an independent entity, both politically and economically, because "rights presuppose the ability to exercise them" (1998, 36):

It is unclear how a community can have the right of self-determination if it is permanently unable to govern itself. [...] There is some plausibility to the claim that for a community to have the right of self-determination it must not only be able to govern itself but also to sustain itself economically; it must be economically viable [because] a community ought to be able to meet at least the basic needs of its members to have the right to form an independent political entity. (1998, 37)

Beran therefore concludes that "A group has the right of political self-determination if it is [...] politically and economically viable as an independent entity" (1998, 37).

Likewise, Copp argues that a "plausible" normative theory of secession should require that, in order to be able to secede, "the group have sufficient resources [...] to be capable of constituting a viable state" (1998, 224). He adds:

A society lacking a stable and widespread desire to form a state might well have difficulty achieving the kind of stable support for the new legal system and other state institutions that the longevity of the new state will require. And to justify forcing the original larger state to undergo the kind of institutional change that would be required to enable secession, the seceding group would have to have some significant chance of success in building a new state for itself. (1998, 230)

According to Copp, such success or state viability requires that the group be both politically united (i.e. wish collectively to exercise political self-determination in virtue of a shared political identity)¹⁸ and territorially bounded (i.e. share a contiguous territory). Therefore, groups that have suffered a major injustice under the larger state but that are not either politically united or territorially bounded do not have a right to secede:

The interesting question is whether my account needs to recognize a remedial right to secede in certain cases where a group that has suffered injustice does *not* qualify as a political and territorial society. I believe it does not, for I believe that even if a group has suffered injustice, it does not have a right to secede unless it is a territorial and political society. (Copp 1998, 230, emphasis in original)

I take issue both with Copp's political requirement that a group that has suffered a major injustice under the larger state must have a shared political identity in order for its secession to be permissible, and with his territorial requirement that a group that has likewise suffered an injustice under the larger state must be territorially concentrated in order for its secession to be permissible. Both requirements betray a lack of consideration for the value of justice, i.e. for the adequate protection of the secessionists' basic rights, since both requirements would force a group that has suffered a major injustice in the larger state to remain within that state, unless the secessionist group formed a "territorial and political society." I begin with Copp's territorial requirement and then turn to his political requirement. In each case, I show that considerations of justice need to be introduced and balanced against considerations of self-determination.

Against Copp's territorial requirement, I argued in Chapter 2 that groups that are not territorially concentrated but that are the victims of state-perpetrated injustice might also have certain legitimate territorial claims, as a result of the injustice suffered (and I cited,

¹⁸ Copp does not specify what he means by "political identity."

as an example, the argument made in the 1960's by Black Power advocates that a separate Black State should be established in the US South). I argued that it is the injustice suffered, rather than the fact that the group happens to be territorially concentrated, that gives the group a legitimate territorial claim. I considered the objection that it is the injustice suffered *in addition to* the fact that the group is territorially concentrated, that gives the group a legitimate claim to a certain territory. In order to show why it is only the injustice suffered, *regardless* of the fact that the group is territorially concentrated, that gives the group a legitimate claim to a certain territory, I framed the issue from the position of the existing state, rather than from the position of the group. I argued that it is first and foremost because the state *commits* a major injustice toward a part of its population that it loses legitimate political authority over that group, and thereby forfeits its right to the territory which that group occupies. Whether or not the group is territorially concentrated does not in any way alter the fact that the injustice committed by the state means that the state loses legitimate political authority over that group. Thus if a group that has been the victim of state injustice wished to form its own independent state in order to enjoy adequate protection, it would (at least in theory) be owed a contiguous part of that state's territory, since adequate protection requires territorial contiguity.

Of course, I also added in Chapter 2 that this will not always be actually feasible in practice, because of one obvious difficulty, namely that no (minimally attractive or viable) territory today is unoccupied, and that the interests of current occupants also need to be taken into account. This means that finding a piece of territory on which the non-territorially concentrated victims of state-perpetrated injustice might create their own

independent state might turn out to be impossible. Still, this empirical, contingent fact should not make us lose sight of the normative issue presently at stake: namely, that for a state to lose legitimate authority over a part of its population means for it to forfeit its right over the territory, whether contiguous or not, which that group occupies. The lack of practical applicability just mentioned by no means erases the injustice that non-territorially concentrated groups may have suffered, nor does it imply that these groups are therefore not owed other forms of compensation or reparation. Rather, this lack of practical applicability simply means that these groups' territorial claim, legitimate though it may otherwise be, is overridden by current occupants' territorial claim.

Having addressed Copp's territorial requirement that a group that has suffered an injustice under the larger state must be territorially concentrated in order for its secession to be permissible, I now turn to his political requirement that a group that has likewise suffered a major injustice under the larger state must have a shared political identity in order for its secession to be permissible.

Copp requires that a group that is seeking to secede in order to escape a major injustice in the state in which it is currently included (or remedial secession) form a "political society," or wish collectively to exercise political self-determination in virtue of a shared political identity. Though he does not specify what such a political identity might consist in, Copp suggests that it is this political identity that motivates the group's claim to political self-determination, and indeed "guarantees" the new state's stability or viability. More precisely, Copp suggests that a shared political identity constitutes the only valid justification, or is a necessary condition, for permissible secession. Yet this requirement amounts to a taxonomic confusion.

Remedial cases of secession by definition arise because the group suffers a major injustice under the larger state, and secession constitutes the only or most effective way to escape such injustice. Thus the group's motivation in cases of remedial secession arises first and foremost from the urgency of trying to escape severe oppression, and not necessarily from some political identity that the group might (incidentally) share and in virtue of which the group wishes to exercise political self-determination. In other words, self-determination in the form of secession is in this case a *means* for the group to escape injustice and to secure for itself more just circumstances in its new state, not an *end* that the group pursues in light of a shared political identity. (The end, here, would rather be to secure justice in the minimal sense of adequate protection of basic rights.) To argue that remedial secession is impermissible because it does not stem from a shared political identity is tantamount to arguing that seeking divorce in order to escape an abusive partner is impermissible because the victim does not have the right sort of personal character (whatever that might be). This type of consideration (political identity of the secessionist group; personal character of the abused partner) is simply irrelevant to the type of case under discussion (remedial secession; fault divorce). To introduce such considerations as necessary conditions for remedial secession is to be taxonomically confused. Thus requiring (as Copp does) that a group that has suffered a major injustice share a political identity for its secession to be permissible is unwarranted.

Copp, however, introduces this political requirement in order to secure the new state's stability or viability. As Chapter 2 showed, the concern for state viability should be taken seriously since secession by definition aims at creating a viable state. Yet state viability need not be understood as requiring a shared political identity. A weaker or thinner

formulation of the political requirement might consist in requiring the adequate protection of citizens' basic rights. As mentioned in Chapter 2, Western political philosophers overwhelmingly consider adequate protection of basic rights to be the primary function of an entity like the state. Thus on this account, state or political viability consists in the state's ability to perform its function, i.e. to protect its citizens' basic rights adequately. We might then replace Copp's strong political requirement of state viability understood as shared political identity by a more minimal political requirement of state viability understood as adequate protection of citizens' basic rights. Would *this* conception of the political requirement, unlike Copp's, be compatible with cases of remedial secession?

By drawing an analogy with fault divorce (involving an abusive partner and an abused partner), I argued in Chapter 2 that the condition of economic viability is compatible with cases of remedial secession, even when the secessionist group might be economically non-viable on its own after secession, and this thanks to the possibility of international support. The same is true of the condition of adequate protection. This condition is likewise compatible with cases of remedial secession, even when the new state might be unable to provide adequate protection on its own after secession, because of the possibility of international support. Without thereby asserting that the Responsibility to Protect (or R2P doctrine) has been fully worked out or might not be problematic in some respects, I noted in Chapter 2 that this type of solution (international support in providing adequate protection) is consistent with Article 24 of the UN Charter, which confers upon the Security Council the "primary responsibility for the maintenance of international peace and security," in order "to ensure prompt and effective action by the United

Nations” (*Charter of the United Nations*). We moreover find similar international involvement in the transitional UN administration of Kosovo; NATO’s K-FOR peacekeeping force in Kosovo (started in 1999 with 10,000 troops); and the European Rule of Law Mission in Kosovo (EULEX) to assist Kosovo in its rule of law (started in 2008 with 2,000 civilians).¹⁹ Thus a more minimal political requirement of state viability understood as adequate protection of citizens’ basic rights is compatible with cases of remedial secession, and thereby avoids forcing the victims of injustice to remain within a state in which they are suffering abuse or oppression while at the same time securing political viability.

Thus Copp’s requirements that a group that has suffered a major injustice under the larger state form a “territorial and political society” for its secession to be permissible ignore certain considerations of justice, i.e. neglect the adequate protection of secessionists’ basic rights, since these requirements would force a group suffering abuse to remain at the hands of its abusers unless it formed a territorial and political society. This lack of consideration for remedial secessionists’ basic rights is also inconsistent with choice theorists’ own emphasis on the protection of human rights. Thus we need to introduce considerations of justice in cases of remedial secession that do not yield the implausible conclusion that a group suffering abuse must remain at the hands of its abusers unless it forms a territorial and political society. Factoring in the possibility of international assistance avoids this problematic result.

Philpott endorses Copp’s political requirement that to qualify for permissible secession a group should have a certain political identity, i.e. an identity in virtue of which the group

¹⁹ For more on K-FOR and EULEX see <http://www.nato.int/kfor/> and <http://www.eulex-kosovo.eu/en/front/>

wishes to govern itself (1995, 358). Like Copp, Philpott requires a shared political identity as a necessary condition for self-determination or permissible secession, to bolster the chance of the new state's viability (1995, 361), and like Copp, Philpott does not specify what a shared political identity might consist in. Philpott adds that to be viable as an independent entity, "there are certain functions that a state must perform: maintain its roads and utilities, educate its children, preserve minimal domestic order, and provide basic public goods" (1995, 366).

Philpott is concerned not only with the new state's viability, but also with the remainder state's. Not only may a group not secede if it itself would not be viable; in addition, it may not secede if, by doing so, it undermined the remainder state's viability. This is because, Philpott contends, undermining the remainder state's viability would interfere with the remainder state's exercise of self-determination. In order to avoid the latter situation, Philpott explains, economic arrangements should be made for secession to be permissible, otherwise secession would be unjust (1995, 363-364, 368, 377-378, 382). Thus Philpott considers not only the value of self-determination but also that of justice. All groups have a right to self-determination, and when two different groups' rights to self-determination seem to conflict, considerations of justice must be introduced to resolve the conflict. In other words, though the value of self-determination is still the primary concern, the value of justice is introduced when that of self-determination alone leads to the apparent dilemma of having to choose between two groups' rights to self-determination. At that point, the value of justice must be taken into account to determine the proper scope of each group's exercise of self-determination, thereby dissolving the apparent dilemma. In other words, an adequate understanding of the value of self-

determination requires taking into account the value of justice. This is confirmed in another one of Philpott's passages: "Self-determining groups are required to be at least as liberal and democratic as the state from which they are separating, to demonstrate a majority preference for self-determination, to protect minority rights, and to meet distributive justice requirements" (1998, 80).

Among choice theorists, Wellman and Altman perhaps most explicitly emphasize the requirement of adequate protection of citizens' basic rights: "a moral right of self-determination is held by groups that are willing and able to protect and respect human rights" or what Wellman and Altman call "the requisite political functions" (2009, 43, 45) This requirement applies to both new and remainder states:

The larger state that contains the secessionist territory has a right of self-determination based on the ability and willingness of its population to perform the requisite political functions. But the population of the secessionist territory has the same right if it too is willing and able to perform those same sorts of functions within its narrower borders. (2009, 53) A legitimate state's right to political self-determination is, accordingly, qualified and limited by the right to secede of internal populations that are able and willing to perform the requisite political functions, while the right to secede is itself qualified by the condition that the remainder state must be able to continue to perform the requisite functions. (2009, 46)

Thus it would be morally impermissible for a group to secede if it thereby left the remainder state "in a condition of political instability" or "in a harmful state of affairs" (Wellman 2005, 13, 30). Therefore, "a group has a right to secede just in case it and its remainder state would be able and willing to perform the requisite political functions" (Wellman 2005, 36). This is because, according to Wellman, "states derive their legitimacy from the crucial functions they perform" (2005, 36). In other words, Wellman

frames the normative issue of secession as one of political legitimacy, understood as adequate protection of rights:

To ignore reliable predictions about whether a new, secessionist state would uphold rights, then, would have the effect of treating the legitimacy or illegitimacy of the new state as irrelevant to the question of whether the secessionist group has a right to form the state. That position does not seem plausible to us. [...] Rather, the justification [of the right to secede] lies in the moral importance of human rights and the role that such rights play as a basis for political legitimacy. The rights requirement is justified because adequate protection of, and respect for, human rights is necessary for the legitimacy of any state. [...] The human rights requirement is a way of ensuring that secession does not result in a state – either the new state or the rump state – that lacks legitimacy. (Wellman and Altman 2009, 51)

What is problematic about framing the question of secession as one of political legitimacy (here understood simply as adequate protection of basic rights and associated only with the value of self-determination) is that it makes it impossible for choice theorists to recognize the condition of territorial justification. This is because, according to choice theorists, (i) a state is legitimate if it protects its citizens' basic rights, and (ii) any group has the right to political self-determination, or the right to decide who will govern it. More precisely, (ii) is contingent on (i): that is, the justified exercise by a group of its right to political self-determination through secession is contingent upon that group's ability to protect citizens' basic rights in its new state, i.e. upon the legitimacy of the new state. Thus as long as adequate protection of basic rights would be secured in the new state, the secessionist group has a right to exercise political self-determination through secession, and thereby to take a certain territory. This is because choice theorists focus solely on the self-determination of the *seceding* group.

Yet if it is certainly necessary for a group to demonstrate ability to protect basic rights, it is also not sufficient. To make a compelling moral case for secession, a group must further show that it has a valid claim to the territory that it is taking away to form its new state. Without this further condition, the seceding group will be interfering with another group's exercise of self-determination in its own territory. A secessionist group taking a territory to which it does not have a valid claim further constitutes an unjust appropriation, which would likely hinder another group's ability to flourish.

By focusing on political legitimacy and associating it only with the value of self-determination, choice theories offer an implausible answer to the normative question of secession. Providing a plausible answer to this question thus requires adequately addressing the condition of territorial justification. This in turn will require introducing considerations of justice and flourishing, in addition to considerations of self-determination. Though Philpott's, along with Wellman's and Altman's, requirement that the new state not undermine the viability of the remainder state introduces considerations of justice to balance competing claims to self-determination, these same considerations of justice are, surprisingly, and inconsistently, entirely absent from their account of territorial claims, as will become apparent in the next section.

4.2. Territorial justification

As mentioned above, the main problem of choice theories is that they cannot justify the territorial claim by definition centrally involved in secession. This lack of territorial justification is the result of two related beliefs: first, the belief that adequate protection of basic rights automatically creates a valid territorial claim, i.e. the belief that political

legitimacy is sufficient to have a valid claim to the territory; and second, the belief that the normative question of secession is therefore one of self-government, rather than one of territory.

According to Beran, if a secessionist group (i) is territorially concentrated, (ii) contains a majority in its territory in favor of secession, and (iii) would protect basic rights in its new state, *i.e. would be legitimate*, it has a right to secede (1998, 32, 36, 38-39). The problem with Beran's account is that it conflates a group's rightful occupation of a given territory with that group's rightful claim to that territory, should the group want to secede: "Any theory of rightful secession has to specify what sorts of groups have the right not only to leave their state but to leave it with their territory: in other words, have the right of continuing occupation of their territory (the right of habitation)" (1998, 39). It is clear from this passage that Beran equates legitimate territorial occupation (the right of habitation) with legitimate territorial claim (the right to secede).

Yet it is just as clear that simply because a group has a right to live on a certain territory does not automatically give that group the right to exit the existing state with that portion of territory. For example, if a group of recent immigrants to the U.S. or U.S. permanent residents settle in Nevada's Great Basin Desert, they may very well have the right to live on that territory (the right of habitation), but it is unclear how that right of habitation therefore gives them the further right to create their own independent state in that territory (the right to secede).

It might be objected that the seceding group in this example is not made up of U.S. citizens, and that is why their secession on U.S. land would be impermissible. Yet if the

entire population of Vermont suddenly moved to the Great Basin Desert, and then likewise decided to secede, thereby taking away the Great Basin Desert from legitimate U.S. jurisdiction, it is unclear that their being U.S. citizens would make their secessionist claims any more legitimate. Thus rightful habitation does not entail rightful secession.

But what if the current population of the current state of Vermont wanted to secede from the U.S. and become its own independent state? This, perhaps, is closer to what Beran has in mind when equating rightful habitation with rightful secession. To back up his claim that rightful habitation entails rightful secession, Beran refers to Buchanan's argument that in a post-Westphalian world the state, with regard to its jurisdiction over its territory, is only the agent of the people that live on that territory, i.e. that the territory really belongs to the people, rather than to the state:

[I]n liberal theory it cannot plausibly be claimed that this agency relationship is irrevocable. Therefore, all rights the state holds, including the right to the state's territory, must be derived from the people whose agent it is. There are no good arguments to show that this right is irrevocably held collectively by all the people of an existing state. Therefore, if a substantial part of a state's population no longer wishes the present state to be its agent, it may terminate the agency relationship and remove itself from the state with its land. (Beran 1998, 35)

Yet contra Beran, I argued in Chapter 2 that even if one agrees with Buchanan's claim that a state's territory belongs to the people, rather than to the state, it still remains to be established what this latter claim means: Does it mean that the entirety of the territory belongs to the entirety of the population, in virtue of the political union, or does it mean that each portion of territory belongs to each portion of the population that occupies it? By drawing an analogy with divorce and the principle of community property in marriage, I argued in Chapter 2 that only in cases where secessionists can show that they

already occupied that portion of territory before they entered the political union, does it become unclear that the remainder of the population would have a right to prevent the secessionists from taking away a piece of territory that was already theirs before the political unit was formed.

In other words, even if Buchanan is correct in arguing that a state's territory really belongs to the people rather than to the state (in virtue of an agency relationship between the two), it does not automatically follow that any group rightfully living on a certain territory therefore has the right to take away that territory to form its own independent state. Otherwise put, rightful habitation (or the right of habitation) does not necessarily entail rightful secession (or the right to secede) – *even if* the secessionist group would otherwise protect basic rights in its new state, i.e. meet Beran's (and choice theories') criterion of political legitimacy. Thus Beran's choice account, because it reduces the problem of secession to a matter of political legitimacy, falls short with respect to territorial justification, and therefore runs the risk of validating unjustified territorial claims. These would result in an unjust taking, and thereby likely wrongly interfere with some other group's ability to flourish.

Copp, like Beran, argues any "territorial and political group," that is, any territorially concentrated group whose majority has a "stable and widespread desire" to form its own independent state, has a right to secede (1997, 278, 293):

If a part of an existing state has a right to secede, it has a right over the territory in which it lives that is of the same nature as the right of the state over the territory; in particular, it has a liberty to conduct a plebiscite regarding the establishment of a state in that territory and a power to acquire the right to government over the territory. (1997, 282)

Like Beran, Copp mentions that in order to be able to secede, the group “must rightfully occupy that territory, or have a right of some relevant kind to occupy it” (1998, 229). But “a right of some relevant kind” is rather vague language, and Copp’s descriptions of that right are rather vague as well: a group may rightfully occupy a territory, he guesses, “perhaps on the ground that it has long resided there, or perhaps on the ground that it has a special claim of some other kind to that part of the state’s territory, such as that that area is the group’s historical homeland” (1998, 227). It is surprising that, while seemingly recognizing the importance of territorial justification, given that “secession involves the removal of a proper part of a state’s territory from the jurisdiction of the state” (1998, 227), Copp should remain so vague with respect to what exactly constitutes a rightful territorial claim. His hints that it may have something to do with having occupied the land for a certain amount of time, or with having once occupied the land a long time ago, are rather unhelpful. Indeed, in light of Copp’s vague criteria, what are we to make of cases such as Israel and Palestine, or the Baltic States and the former USSR, or native populations and descendants of European and other immigrants in the entire American continent? In all those cases, to cite but them, territorial claims become an issue *precisely because* one part of the population has long resided there and another part of the population either has “always” resided there or used to reside there a very long time ago. In other words, in all those cases, Copp’s two criteria are in conflict, since according to them, each side of the territorial debate is entitled to the very same territory. Like Beran’s, Copp’s choice account falls short with respect to territorial justification. Philpott’s account faces the same criticism.

Philpott explicitly asserts that “[no] special territorial arguments are needed to establish [a case for self-determination through secession]” (1995, 355); and asks “In what sense is land an issue beyond the sense in which government is an issue?” (1995, 370). For Philpott, as for Beran, Buchanan’s description of the relation between the state and its people and territory as one of agency is enough to provide the secessionists with a valid territorial claim:

If a self-determining group, then, justly claims a new government, this government (state or regional) becomes the new agent of its land. And just as the larger state may not prevent the separatists from governing themselves, neither may it prevent them from placing new borders, state or regional, around themselves. Land is only an issue because [...] the world is such that people living under the same government live together. [...] Only by asserting some sort of illiberal organic connection or mystical tie could a group claim land that is justly governed by someone else. It’s a matter of government, not land. (Philpott 1995, 370)

Anticipating the objection that the agency relation between the state and the people “does not show that the group is necessarily entitled to the land on which it lives,” Philpott asks the objector “to show why a group may not exercise self-determination on the piece of land on which it lives:”

It seems that only a special claim of some other authority to the land could defeat its own claim. But as I have argued, beyond the claim to govern justly a piece of land, groups and governments have no right to call it theirs in any meaningful way. (1995, 370-371, footnote 37)

Philpott’s claim, in effect, is that if a group provides adequate protection, i.e. meets the condition of political legitimacy, it has a valid claim to the land it occupies. Thus, “land is only relevant to the extent that a people under a common government live on it; and self-government, not a legal argument about the history of one’s land, is the central issue” (Philpott 1995, 376).

Yet from the accurate observation that a state must be territorially defined in order to be able to provide adequate protection, it does not follow that (i) the ability to provide adequate protection (or political legitimacy) necessarily entails the ability to justify the territorial claim, any more than that, conversely, (ii) the ability to justify the territorial claim necessarily entails the ability to provide adequate protection. While choice theorists would agree that the latter claim (ii) is false, they do hold that the former (i) is true. And while Philpott does say that one group's exercise of self-determination should not hinder another group's ability to exercise its own self-determination, that is, that risks of injustice can qualify a group's exercise of self-determination (1995, 362, 364), he does not extend these considerations of justice to territorial claims, since territorial justification, in his view, is essentially a non-issue – or at least, territorial justification is taken to follow automatically from a group's ability to provide adequate protection.

Thus Wellman and Altman assert that “a state can rightfully impose itself upon a separatist territory *if and only if* this imposition is required to secure the essential benefits of political society, that is, if it is necessary to perform the requisite political functions involved in protecting human rights” (2009, 46, emphasis added). This means that, if a group is able to provide adequate protection of basic rights and does not wish to remain part of the larger state, it has a valid claim to the territory it is taking away from the larger state. This is because, according to choice theorists, from the fact that state territoriality is a necessary condition for the state to be able to provide adequate protection, it follows that a group's ability to provide adequate protection therefore means that this group is entitled to taking away the land from the larger state. Thus Wellman explains that

a state's claim to jurisdiction over its territory stems from the necessity of the state's performing its political function. Therefore, when a separatist group is politically viable, it is not true that the state as a whole is necessary to create a politically secure environment, and thus the state does not have a justification for denying the separatist group's political self-determination. (2005, 37)

Wellman compares this way of limiting a state's political liberty to the way in which one's liberty to drive a car is limited, as both liberties, he explains, depend on the ability to fulfill a certain function (providing adequate protection; driving safely and responsibly). Thus, much like, in order to avoid harming many people, one's liberty to drive a car is limited by the requirement that one be able to drive safely and responsibly, likewise, in order to avoid harming many people, a group's liberty to form its own independent state is limited by the requirement that the group be able to provide adequate protection (Wellman 2005, 37-38). Yet this analogy works only if the ability to drive safely and responsibly (the seceding group's ability to perform the political function) thereby involves the liberty to take someone else's car, or a car one has been sharing with others (the seceding group's liberty to take the territory). But clearly, from the mere fact that I can drive your car at least as well as you do (that the seceding group is able to provide adequate protection at least as well as the larger state), it hardly follows that I am therefore entitled to it (that the seceding group is entitled to the territory it is taking away from the larger state).

Thus choice theorists' focus on the question of political legitimacy makes them unable to justify the seceding group's territorial claim. This is because, in building their case, choice theorists emphasize only the value of self-determination, and consider only the self-determination of the secessionists. This yields an implausible conception of self-determination, one that unwarrantedly legitimates interfering with another group's

exercise of self-determination by appropriating its own territory, which constitutes an unjust taking and is likely to hinder this other group's ability to flourish.²⁰ Correcting this requires equally considering the self-determination of both groups involved, and therefore introducing considerations of justice and flourishing.

5. Conclusion

The main problem for choice theories is their lack of territorial justification. This problem is the result of choice theorists' reducing the question of secession to the question of political legitimacy, which they associate only with the value of self-determination. In doing so, choice theories neglect the other two values of justice and flourishing, and end up with an implausible conception of self-determination. This implausible conception of self-determination then gives rise to choice theorists' lack of territorial justification.

By focusing solely on the value of self-determination, and more precisely on the self-determination of the *seceding* group, choice theorists effectively ignore the self-determination of the other main group concerned in any case of secession, namely the remainder state. But a seceding group taking a territory to which it does not have a legitimate claim interferes with another group's exercise of self-determination in its territory, and also constitutes an unjust appropriation, both of which might hinder this other group's ability to flourish. This is problematic because it fails to consider this other group's rights and interests equally. This means two things: (1) Arbitrating between conflicting claims of self-determination (between the seceding group and the remainder

²⁰ This is true even if the remainder state's viability is not undermined by the seceding group's taking of part of its territory, population, and resources. This is because the mere fact that I might not need a particular thing that I happen to have to survive does not make it available for everyone else to take rightfully.

state), i.e. equally considering the rights and interests of all groups exercising self-determination, requires introducing considerations of justice and flourishing. (2) By introducing considerations of justice and flourishing, we reach a more plausible conception of the value of self-determination, one that takes into account different groups' exercise of self-determination, and one that shows that valuing self-determination in fact *requires* territorial justification, because if there is no territorial justification, the seceding group is interfering with another group's exercise of self-determination, by taking its territory.

Thus in reducing the question of secession to a matter of political legitimacy, choice theorists neglect the question of territorial justification, and thereby yield a morally implausible answer to the question of secession, one that fails to consider all concerned groups' rights and interests equally. Avoiding this problem requires introducing considerations of justice and flourishing, in addition to considerations of self-determination. Proceeding in this way yields a more plausible conception of the value of self-determination, one that by definition accounts for the condition of territorial justification and thereby considers all concerned groups' rights and interests equally. In other words, reaching a plausible answer to the question of secession requires adopting an axiological approach, i.e. starting not from an account of political legitimacy, but directly from the three values of self-determination, justice, and flourishing.

CHAPTER 4

Justice

1. Introduction

Chapter 3 showed that choice theorists provide an extremely permissive but also morally implausible answer to the normative question of secession, because they reduce the question of secession to the question of political legitimacy, which they associate primarily with the value of self-determination to the detriment of the values of justice and flourishing.

Interestingly, just-cause theorists rely on the same account of political legitimacy, but unlike choice theorists, advance a very restrictive answer to the normative question of secession. Thus just-cause theorists also hold that a state is legitimate if it protects its citizens' basic rights, but from this they conclude not that any group that is able to provide such protection is therefore justified in seceding if it so wishes, but rather that as long as an existing state provides such protection, i.e. is legitimate, no group can justifiably secede from it. This is because central to just-cause theorists' normative account of secession is not only (i) their definition of political legitimacy in terms of basic rights protection, but also (ii) their emphasis on the value of justice understood only in those same terms. Otherwise put, (i) is contingent on (ii): that is, as long as a state protects its citizens' basic rights, it is just and therefore legitimate. What defines legitimacy, according to just-cause theorists, is justice, understood as basic rights protection. Thus whereas choice theorists, in emphasizing a group's self-determination, view political legitimacy as a necessary condition to form a new independent state, just-

cause theorists, in emphasizing an existing state's justice, view political legitimacy as a sufficient condition not to break up an existing state.

This chapter examines the way in which just-cause theories, based on their account of political legitimacy, have addressed or failed to address the three conditions of territorial justification, adequate protection of rights, and economic viability, as well as the way in which just-cause theories have thereby conceptualized the value of justice in its relation to the question of secession.

Thus this chapter examines how just-cause theories have conceived the value of justice as it relates to secession and the three conditions. It shows that a normative theory of secession based exclusively on justice (as just-cause theories are) is too restrictive, because relying only on the value of justice when developing a normative theory of secession yields an implausible conception of the value of justice, and thereby an implausible answer to the normative question of secession.

In this chapter, I argue that reaching a morally more plausible conception of the value of justice (and thereby a more plausible answer to the normative question of secession) requires introducing considerations of self-determination and flourishing, in addition to considerations of justice. In doing so, I show that balancing the value of justice against the other two values of self-determination and flourishing requires starting not from an account of political legitimacy (as just-cause theories do), but directly from the three values of self-determination, justice, and flourishing.

2. Just-cause theories' normative account of secession

For just-cause theories, a state is illegitimate if it commits a major injustice, namely, severe human rights violations, forcefully seized territory, or discrimination in redistribution of resources. Thus according to just-cause theories, a group may secede only if it has suffered such an injustice under the larger state, i.e. only if the state from which the group wishes to secede is *illegitimate*. For example, if the Baltic States had wanted to secede while they were forcefully included in the former USSR, they would have been allowed to do so, because their territory had been forcefully seized by the former USSR. Just-cause theories are also called *remedial* theories because they allow secession in order to remedy an unjust situation created by the larger state. Thus just-cause theories approach the question of secession from the point of view of the remainder state, and whether or not it is acting justly. From this we can see that in their account of legitimacy, just-cause theories emphasize the value of justice, or the right not to suffer tyranny. This is the most restrictive type of theory, as it asserts that only under very special circumstances would a group have a right to secede. Contemporary proponents of just-cause theories include most prominently Allen Buchanan (1991), and to a certain extent Thomas Christiano (2006) and Wayne Norman (1998).²¹

Based on the criteria of normative support and comprehensiveness laid out in Chapter 1, in order to be successful or normatively plausible, a philosophical theory of secession

²¹ As I will explain below, Christiano develops a just-cause answer to the normative question of secession as a result of his conception of democratic legitimacy. Norman is principally concerned with the question of institutionalizing (i.e. legalizing) a right to secede and minimizing risks of violence or chaos, and therefore suggests that institutionalizing the remedial right to secede offered by just-cause theories would provide an incentive for states to treat their populations justly (otherwise the latter would have a legal right to secede).

must be (1) consistent with the basic principles and values of liberal political philosophy; and (2) consistent with what secession involves.

In light of these criteria, just-cause theories offer two main advantages. First, they emphasize the value of justice, understood as respect of human rights (criterion of normative support: key principle of liberal political philosophy). Second, they are able to justify the territorial claim of the seceding group, by arguing that, because of its injustice, the current state loses jurisdiction over the territory (criterion of comprehensiveness: consistent with what secession empirically involves, namely taking a territory; and criterion of normative support: territorial integrity as key principle of liberal political philosophy). The main problems of just-cause theories are (1) their neglect of the question of state viability (criterion of comprehensiveness: inconsistent with what secession involves, namely the creation of a viable state); and (2) their reliance on a very minimal or narrow definition of justice to determine when it is permissible for a group to secede. Only when a group has suffered a major injustice (such as major human rights violations) is its secession permissible. This means that the secessionist claims of groups that have *not* suffered that kind of injustice (for example, the Québécois) are automatically dismissed as unwarranted. Yet to claim that those groups have not suffered an injustice is to beg the question, since precisely what is at issue is whether such groups might have suffered an injustice in being denied the right to secede. Thus the minimal or narrow conception of justice that just-cause theories use is arguably inconsistent with the liberal principle of self-determination (criterion of normative support: self-determination as key principle of liberal political philosophy). These advantages and problems will become clearer in the rest of this chapter.

In what follows, I look at the way in which just-cause theories, based on their account of political legitimacy, have addressed or failed to address the three conditions of territorial justification, adequate protection of rights, and economic viability spelled out in Chapter 2, and at the way in which just-cause theories have thereby conceptualized the value of justice as it relates to secession. Because just-cause theorists' views on the question of territorial justification depend directly on their views on the questions of adequate protection and economic viability, I begin with the latter and then turn to the former.

3. Just-cause theories and the three permissibility conditions

Given that they have at their core the value of justice, understood as human rights protection, one might expect just-cause theories to support, and indeed to require, the permissibility conditions of adequate protection of basic rights and economic viability. I indeed explained in Chapter 2 that adequate protection of individuals' basic rights requires economic viability. While they do take into account the question of the *remainder* state's viability when assessing the permissibility of secession, just-cause theorists surprisingly do not consider the question of the *new* state's viability (and by state viability I mean to include both the political and economic aspects of state viability). Thus Buchanan, the most prominent just-cause theorist, spends much time examining different types of cases regarding the remainder state's economic and political viability, but never specifies any conditions regarding the new state's viability. Likewise, Christiano, one of the most prominent contemporary democratic theorists, argues for a remedial-right-only theory of secession based on the political viability or democratic legitimacy of the existing state, but fails entirely to consider the question of the new state's political viability or democratic legitimacy. I start by looking at Buchanan's

account, which focuses first on the economic aspect of state viability, and then turn to Christiano's account, which focuses mainly on the political aspect of state viability.

3.1. Economic viability

Buchanan first considers the argument that the mere fact of affecting the remainder state's economy in itself constitutes a valid reason against the permissibility of secession, or that secession can only be permissible if it does not affect the remainder state's pre-secession economic levels. This argument, Buchanan responds, "is quite unconvincing for the simple reason that there is no right to the economic *status quo* as such" (1991, 92, emphasis in original). Buchanan does add that the remainder state may nonetheless be due compensation by the secessionist group either if the secessionist group's wealth or resources are partly the result of certain investments by the remainder state in the territory that is now breaking away, or if there somehow was a preexisting agreement regarding compensation in case of a break-up of the political union. Aside from these two specific types of circumstances, however, Buchanan makes very clear that there is no right to pre-secession economic levels (1991, 92). Thus Buchanan argues that a secessionist group would have no obligation to ensure that such "adequate level" or "decent minimum" is preserved in the remainder state (1991, 93). All this is consistent with the condition of economic viability spelled out in Chapter 2.

I indeed argued in Chapter 2 that only in cases where drops in overall levels of wealth are such that the remainder state is thereby unable to sustain the institutions required for adequate protection should secession be impermissible, at least until arrangements have been made to prevent the remainder state's non-viability. I then specified an important

qualification to the condition of economic viability, in cases where the seceding group has suffered a major injustice under the larger state (for example, severe human rights violations). In those cases, I suggested that international institutions should play a special role if the new state were to be economically non-viable on its own after secession. I suggested that one reasonable option would be for international institutions to lend economic support appropriately to the new state for a given period of time, during which the new state would have to make every effort possible to become economically viable. Such a temporary arrangement would avoid forcing the victims of injustice to remain at the hands of their abuser, while at the same time securing their economic viability, which is crucial since it is necessary for adequate protection of basic rights.

Buchanan agrees that, in cases where the secessionist group is trying to escape major injustice suffered under the larger state, it should not be prevented from seceding even if its secession were to undermine the remainder state's economic viability, because the larger state would then be a "culpable aggressor:"

[I]f the state violates the rights of a group within its jurisdiction and the members of that group seek to secede, the state or those who support it cannot justify crushing the secession movement by claiming that they are only exercising the right of self-defense, even if it happens to be true that if secession succeeded the remainder state would not survive. (1991, 95)

According to Buchanan, however, even in cases where the secessionist group has *not* suffered any major injustice under the larger state, it should not be prevented from seceding even if its secession were to undermine the remainder state's economic viability (1991, 94).²² Buchanan indeed explains that if the remainder state is able to annex itself

²² Here it might seem as though Buchanan is arguing for more than a merely remedial right of secession. In fact, Buchanan is simply reviewing and rejecting competing arguments for why secession might not be

to another neighboring state without thereby endangering its citizens' basic rights, the secessionist group should be allowed to secede, even if its secession directly undermines the remainder state's economic viability (1991, 94).

But what if the remainder state were to find itself in exactly the opposite situation? That is, what if a group's non-remedial secession rendered the remainder state vulnerable to annexation by another neighboring state, which would threaten its citizens' basic rights? Buchanan argues that, unless there was a preexisting agreement between the secessionist group and the remainder state to the effect that the two formed a political union for the purpose of their common defense (1991, 96), the secessionist group should still be allowed to secede, because much like

there is a very weighty presumption that an individual may *not* use coercion against an innocent individual in order to protect himself against a culpable aggressor [likewise] there is at the very least a strong presumption that a state may not use force to block an otherwise justified secession in order to secure its own survival against a lethal threat from an aggressor. (1991, 95, emphasis in original)

This type of case is very similar to the type of case, considered in Chapter 2 when specifying an important qualification to the condition of political viability, where a group's secession results in rendering minorities left behind in the remainder state particularly vulnerable to oppression by the remainder state. In those cases, I suggested in Chapter 2 that if the minority left in the remainder state belongs to the same group as the one that seceded, or if there is at least no hostility between the minority and the seceded group, then a possible, if not ideal, solution would be for the minority to join the seceded

permissible. In other words, according to Buchanan the reason why secession is impermissible beyond remedial cases is not because of any considerations of economic viability, but because non-remedial cases of secession go against his functional account of political legitimacy. Even though I reject both Buchanan's account of legitimacy and his remedial-right-only account of secession, it is still useful in the context of this chapter to consider his insights into the question of state viability.

group in its new independent state, and thereby escape oppression from the remainder state. If, however, there also is hostility between the minority and the seceded group, or if the minority is otherwise unable to join the seceded group in its new independent state, then I suggested a different type of solution. On the one hand, if the minority's situation in the remainder state gets worse *as a result* of the group's secession, then it would seem that the seceding group is at least indirectly (or causally) responsible for worsening the minority's situation in the remainder state. On the other hand, however, it would seem unjust to prevent a group from seceding because of what the remainder state might do to the minority left behind (this would seem to be a problem between the remainder state and the minority, not involving the seceding group), *especially* if the seceding group is itself trying to escape oppression in the larger state.

In such circumstances, I suggested in Chapter 2 that one reasonable option would be that it would still be morally permissible for the group to secede (especially if it is trying to escape oppression), but that international institutions would have a responsibility to ensure that the situation of the minority left behind in the remainder state does not get worse.²³ And perhaps the seceding group, which presumably would be in the international spotlight, would have a special obligation to call international attention to the situation of the minority in the remainder state. This type of solution would avoid forcing the secessionists to remain within a state they wish to leave (especially if they are being oppressed) while at the same time securing adequate protection for minorities left behind in the remainder state.

²³ This is not to say that the R2P doctrine has been fully worked out or might not be problematic in some respects.

Thus to Buchanan's treatment of this question, described above, we might add that if international support would be warranted in cases of remedial secession (where the remainder state has committed a severe injustice toward the secessionist group), surely it would also be warranted in cases of non-remedial secession (where the remainder state has not committed a severe injustice toward the secessionist group).

Given his concern for the remainder state's viability, it is surprising that Buchanan does not consider the question of the new state's viability. Buchanan's neglect of the question of the new state's viability, moreover, is even more surprising given that he relies on a functional account of political legitimacy. According to a functional account, political legitimacy depends on the state's performing a certain function adequately. What this function consists in might of course vary across different conceptions. However, one important implication of all functional conceptions of legitimacy is that whenever the state does *not* perform its function adequately, the state commits an *injustice* toward some of its population and becomes *illegitimate*, i.e. forfeits its authority over that group. This in turn opens up the question of secession, or the possibility of remedial secession.

Just-cause theories by definition rely on a functional account of political legitimacy, because they require that any secessionist group have a "just cause" for secession. That is, just-cause theories argue that a secessionist group must not only have suffered an injustice, but an injustice in virtue of which the state loses its authority over the group, i.e. an injustice whereby the state becomes illegitimate – and this requires a functional account of legitimacy. Thus according to just-cause theories, a group may secede only if it has suffered such an injustice under the larger state, i.e. only if the state from which the group wishes to secede is *illegitimate*.

According to Buchanan's functional account of political legitimacy, a state has legitimate authority over its people as long as it respects human rights, protects all citizens equally, and redistributes resources justly. This is why, according to Buchanan's just-cause theory, it is permissible for a group to secede *only if* it has suffered a major injustice under the larger state, namely, severe human rights violations, forcefully seized territory, or discriminatory redistribution of resources. If the secessionist group has not suffered such major injustice, then the state retains legitimate political authority over the group, and the group's secession would not be permissible.

But if just-cause theorists rely on a functional account of political legitimacy to justify the right to secede, then it would seem that they should require the new state to be viable, both politically and economically, so that it can protect its citizens' basic rights adequately, and thereby acquire and maintain its own political legitimacy. Yet just-cause theorists do not specify this. Thus there is an asymmetry between the requirement that the existing state have political legitimacy and the lack of the same requirement for the new state.

This neglect of the question of the new state's viability is not just a problem of internal inconsistency; it also runs directly counter to the value of justice understood as protection of human rights that just-cause theories have at their core. If the new state turns out not to be viable, then adequate protection of human rights will therefore be impossible – and this should be unacceptable on a just-cause account: if the reason a group has a *remedial* right to secede in the first place is because it has suffered a severe injustice or major human rights violations, which its secession is supposed to *remedy*, then it must be

required that the new state be viable, given that state viability is necessary for justice or adequate protection of human rights.

3.2. Political viability

As mentioned above, this asymmetry concern applies not only to Buchanan's account but also to Christiano's. Like Buchanan, Christiano answers the normative question of secession in terms of political legitimacy. Christiano relies on a somewhat different functional conception of political legitimacy, which he construes as democratic authority. Like Buchanan, however, Christiano focuses strictly on the legitimacy, or political viability, of the existing state and not once considers the legitimacy or political viability of the new state. The problem with this asymmetry or neglect of the question of the new state's political viability is that it results in an incomplete and inconsistent assessment of the permissibility of secession.

According to Christiano, a state is legitimate if it has democratic authority, that is, if it realizes public equality or treats all its citizens as equals:

It is in virtue of the fact that democracy publicly realizes equality that it has authority over its citizens. (2006, 89) So the thought is that liberal democratic states satisfy certain essential prerequisites of legitimacy where legitimacy is to be understood as treating persons publicly as equals in the political society. (2006, 93)

So conceived, the (democratic) state is needed to ensure justice: "I contend that the state is a necessary *instrument* for the establishment of justice among persons [...] I also want to say for the most part that the state is the only such instrument available" (Christiano 2006, 92, emphasis in original).

Because democratic states equally protect their citizens' basic rights, they help achieve justice and therefore have legitimacy. From this, Christiano concludes that secession is permissible only to remedy a severe injustice: "[T]he territorial boundaries of democratic states ought to remain as they are except in the cases of serious injustice" (2006, 82). Christiano adds that examples of such serious injustice include the disenfranchisement, violation of individual basic rights, or severe impoverishment of a portion of the population, as well as the production of persistent minorities (2006, 82). In each of these cases, Christiano explains, "the democratic assembly that decides these things loses its authority over the abused population [...]. Under these circumstances, the population acquires a right to alternative political arrangements in order to protect against these abuses. The standard kinds of remedies in this context [include] secession [...]" (2006, 82).

But from this conception of democratic legitimacy, why should it follow that seceding from a democratic state in the absence of severe injustice is impermissible, rather than that as long as the new state is in turn democratic and thereby legitimate, it would be permissible for a group to secede from a democratic state regardless of whether the seceding group has suffered any major injustice under the existing state? I will come back to this question in the next section, when considering the question of territorial justification in relation to just-cause theories. For now, let's just note that Christiano's exclusive focus on the question of the political viability or legitimacy of the existing state obscures the question of the new state's political viability or legitimacy, and therefore provides an incomplete and inconsistent picture when assessing the permissibility of secession.

Given the importance of political and economic viability to the adequate protection of individuals' basic rights, that is, to just-cause theorists' conception of justice and political legitimacy, just-cause theorists' neglect of the question of the new state's political and economic viability weakens their argument. In the next section, I look at the implications of just-cause theorists' conception of justice and political legitimacy for the question of territorial justification.

3.3. Territorial justification

As mentioned in Chapter 2, in a post-Westphalian state order, a state's territory is no longer viewed as belonging to the ruler (the king or the prince), but rather to the people (Bishai 2004, 74-75). And as Buchanan points out, if the territory really belongs to the people and not to the state or ruling entity, the state, with regard to its territory, is only acting as the *agent* of the people (1991, 108-109). In this sense, a state's territorial integrity should be understood not as the state's property right, but as a jurisdictional power over the territory, a power *granted* to the state by the people. In other words, what grounds legitimate control over the *territory* is legitimate authority over the *people*. This is why, according to just-cause theorists, it is morally permissible for a group that has suffered a major injustice under the larger state to secede.

As Buchanan explains, "*failure to satisfy this fundamental condition* [to perform its function adequately] *in effect voids the state's claim to the territory in which the victims reside*, whereas the fact that they have no other recourse to avoid this fundamental injustice *gives them a valid title to it*" (1991, 44-45, emphasis in original). Thus on just-cause theories' functional account of legitimacy, when the state commits a severe

injustice toward a territorially concentrated part of its population, the state fails to fulfill its function or to provide adequate protection to that group. It therefore loses legitimate political authority over that group, and thus its control over the territory that group occupies. The group in turn thereby acquires legitimate control over its territory, and so would be able to justify its territorial claim, should it want to secede.

Thus according to just-cause theorists' functional account of political legitimacy, a group may secede only if it has suffered a major injustice under the larger state. That is, there is only a *remedial* right to secede. If the existing state has not committed any major injustices toward the secessionist group, then the state retains legitimate authority over the secessionist group and the group's secession would not be permissible. Otherwise put, if there is no injustice to remedy, the secessionist group does not have the right to secede – *even if* it were able to fulfill the requirements of the functional account of legitimacy in its own state after seceding.

In other words, just-cause theorists seem to rely implicitly on the following claim: If two different governing bodies (one already existing: the existing state; the other potentially emerging: the secessionist group) are able to fulfill the requirements of the functional account of legitimacy, preference should be given to the status quo, i.e. to the existing state rather than to the secessionist group. This claim in turn seems to rely implicitly on a political interpretation of Ockham's razor: "Do not multiply states or political entities beyond necessity," where necessity is understood as severe injustice or human rights violations. But why adopt this narrow understanding of necessity, which seems to amount to little less than a strange fetishism of the status quo, to the detriment of considerations

of self-determination?²⁴ I want to suggest that just-cause theorists' functional account of legitimacy, which is based on the value of justice, in fact supports other cases of secession besides remedial cases, because a more plausible conception of the value of justice requires balancing it against the values of self-determination and flourishing. In showing this, however, we will see that we start not from an account of political legitimacy, but instead from the deeper moral values most salient in the question of secession – namely self-determination, justice, and flourishing. To see how, let's take a closer look at Christiano's and Buchanan's respective accounts of political legitimacy.

3.3.1. Christiano's account of legitimacy

Christiano's view that secession from a democratic state is impermissible except in the case of a severe injustice is grounded in two principles: the conservation principle (do not alter the current borders of democratic states) and the remedy principle (unless such alteration is necessary to remedy injustice). According to the conservation principle,

²⁴ Here it might be replied that one significant reason to favor a strong presumption against secession is that secessions have historically been extremely violent affairs. This is true (at least partly), of course – though it is unclear that it is this particular concern that guides just-cause theories (if that were the case, just-cause theories would have to allow for non-violent cases of non-remedial secession, yet they do not). Still, several things should be noted in response to this objection. First, there have also been instances of peaceful secession or partition, such as the secession of Norway from Sweden in 1905, or the partition of Czechoslovakia in 1993. In other words, though secession has in some instances led to much violence (as in the case of the dissolution of former Yugoslavia), it need not do so. Second, where the risk of violence is real, it is unclear that preventing a group from seceding will cause much less violence. Third, the creation of new international institutions, or the ascription of new functions to existing ones, would likely largely prevent such violence (see for example Copp 1998). That is, the risk of violence is due less to the mere possibility of satisfying secessionist claims when warranted than to the lack of appropriate international institutions and mechanisms to handle secessionist claims adequately. Fourth, the question of whether a group *has* a right to secede is distinct from the question of whether it would be permissible for that group to *exercise* that right. That is, the right to secede may in certain circumstances be overridden by certain considerations that would make it impermissible for the group to exercise that right. Thus even if secession is not inherently violent, the risk of violence should be taken into account when determining the permissibility of secession. This latter observation, however, does nothing to undermine the claim that just-cause theories are too restrictive, and might even reinforce it: In cases where the risk of violence is minimal or altogether absent (as it would presumably be in the event of Flanders' secession from the rest of Belgium), opposing secession seems simply to amount to a lack of respect for a group's right to self-determination and becomes much more difficult to justify.

“there is a strong moral presumption in favor of the current territorial borders of democratic states” (Christiano 2006, 82). According to the remedy principle, “the moral presumption in favor of the current territorial boundaries of democratic states can be defeated only when the alteration of those boundaries is necessary to remedy serious injustice occurring within the democratic state” (Christiano 2006, 82). Christiano explains that the conservation principle is in turn supported by two main arguments: the capacity for justice argument and the common world argument.

According to the capacity for justice argument, “the modern democratic state is the only current entity we have that includes a capacity to judge the justice or injustice of a social and political order in a way that publicly treats persons as equals” (Christiano 2006, 91). Democratic states, moreover, “are capable of doing this for the jurisdiction defined by their territories.” Issues of secession, Christiano explains, would have to be arbitrated by international institutions, and the latter, he believes, “are currently and for the foreseeable future not capable of doing this in a defensible and legitimate manner that treats all participants as equals.” From this, Christiano concludes that “any attempt to alter territorial boundaries [...] would therefore be illegitimate” (2006, 92). He later adds that “To the extent that secession must take place outside of any system of settled law, and the only way to establish justice is through settled law, there must be at least a presumption against such action as militating against the establishment of justice” (2006, 97).

The capacity for justice argument thus rests on the following claims: (1) The democratic state is the only entity on which we can currently rely to adjudicate questions of justice. (2) Secession disputes would have to be arbitrated by international institutions, but the latter are currently unable to do so in a just manner. (3) Because secession cannot

currently be handled through settled law, and the establishment of justice depends on settled law, secession by definition goes against justice. In response to the capacity for justice argument, let's now review each of these three claims.

It should first be noted that, depending on how the first claim is specified, appealing to the democratic state as the only reliable instrument for justice either begs the question against the secessionists, or proves too much, at least for the just-cause theorist. If the claim is that only the current state can arbitrate the secession dispute justly, then Christiano is simply begging the question against the secessionists.²⁵ If the claim is rather that the democratic state in general is the only reliable instrument for justice within any given state, once its boundaries are established, then Christiano is now proving too much for a remedial theory of secession. On the first understanding, appealing to the democratic state as the only reliable instrument for justice begs the question against the secessionists, because any secessionist claim, including non-remedial ones, is motivated by the belief that the current state is, in some way or other, not doing the secessionist group justice, or that the group would be better off in its own independent state – for example because the group might thereby be able more fully to exercise self-determination and to flourish. On the second understanding, appealing to the democratic state as the only reliable instrument for justice proves too much for the just-cause theorist, because the secessionist group might in turn create its own democratic state, capable of administering its own territory and population justly. In other words, if Christiano's concern is that states be democratic in order to achieve justice, the

²⁵ To be fair, though, Christiano seems to be aware of this, since he also states that secession disputes would have to be arbitrated by international institutions – presumably because relying on the current state to adjudicate issues of secession would simply beg the question against the secessionists.

secessionists might very well be able to achieve just that in creating their own democratic state. Thus the first claim in the capacity for justice argument does little to support Christiano's case.

The second claim in the capacity for justice argument is twofold: It states that (i) secession disputes would have to be arbitrated by international institutions, but that (ii) international institutions are currently unable to do so in a just manner. The latter statement (ii) may be true as a matter of contingent fact, but there is no reason to believe (unless one adopts a realist view) that this is necessarily so. The creation of new international institutions or the ascription of new functions to existing ones, for example, might alleviate this concern. In other words, the current inability of international institutions to arbitrate secession disputes justly has less to do with some inherent or permanent feature of those institutions themselves than with the fact that they still lack both the form and the content to be able to do so.

It is unclear, moreover, that the former statement (i) is correct: Why would secession disputes *have* to be arbitrated by international institutions, especially given that, as Christiano points out, the latter are not yet equipped to do so, neither in form nor in content? Presumably, Christiano suggests international arbitration for secession disputes because he realizes that leaving them up to current states would beg the question against secessionist groups. But why not consider the possibility of the secessionists negotiating with, or peacefully seceding from, the current state? This, after all, happened in the case of Norway's secession from Sweden in 1905, and in the case of the partition of Czechoslovakia in 1993. If this sounds too optimistic, then this only points not to the

impermissibility of non-remedial secession, but to the need to develop institutions that are able to arbitrate secession disputes both in form and in content.

In any case, one final point should be noted with regard to the arbitration of secession disputes. Christiano's account does allow for cases of remedial secession. Christiano further makes clear that international institutions are currently unable to arbitrate secession disputes justly. Why, then, should the lack of adequate international arbitration count against non-remedial cases of secession, but not against remedial ones? Perhaps the urgency of the situation in remedial cases sets them apart from non-remedial cases, and therefore warrants action (secession) regardless of adequate arbitration. But if anything, this suggests that non-remedial cases of secession ought likewise to be permissible. Indeed, international mediation would seem to be more urgently needed in remedial cases of secession than in non-remedial cases. If the former cases are nonetheless permissible in the absence of adequate international arbitration, then the same should be true of the latter cases. Thus the second claim in the capacity for justice argument does not do much to help Christiano's case.

The third claim in the capacity for justice argument asserts that because secession cannot currently be handled through settled law, and the establishment of justice depends on settled law, secession by definition goes against justice. This claim is obviously false if one considers cases of remedial secession. In those cases, the establishment of justice requires acting (seceding) outside of settled law. The same may be true, however, in cases of non-remedial secession. Secessionists indeed often invoke the right of peoples to self-determination to justify their claims, and as will be argued below, central international texts such as the International Covenant on Civil and Political Rights, the

International Covenant on Economic, Social and Cultural Rights, as well as the Charter of the United Nations and the Universal Declaration of Human Rights all suggest that the right of peoples to self-determination is a human right. If that is the case, then cases of non-remedial of secession either become remedial, in light of the fact that justice requires respect of human rights, *including* the right of peoples to self-determination; or likewise warrant secession outside of settled law for the establishment of justice, understood as including respect of the human right of peoples to self-determination. Thus the third claim in the capacity for justice argument does little to bolster Christiano's case.

Upon closer examination, then, the capacity for justice argument is not as compelling as might at first appear. What about the second argument supporting Christiano's conservation principle? According to the common world argument,

Modern democratic states and many other states, for the most part, constitute common worlds for their participants. A common world for a group of individuals is a world in which all or nearly all the individuals' fundamental interests are intertwined with each other. What happens in this common world overall affects the fundamental interests of all the members. [...] The main idea behind the importance of a common world is the idea that in a common world individuals have roughly equal stakes in the world they live in. Their interests are roughly equally at stake in such a world as a result of the idea that all or nearly all of their fundamental interests are at stake for each person. [...] The common world consideration provides support for the principle of conservation of the territorial boundaries of liberal democratic states because only in the case of a common world can the principle of equality have a clear and defensible public realization. Only when the stakes people have in a particular association are roughly equal can the principle of public equality have a clear hold. (Christiano 2006, 97-98)

The common world argument thus rests on the following claims: (1) A common world is one in which all participants have roughly equal stakes with regard to their fundamental interests. (2) A common world is needed for the public realization of equality. (3) The

territorial boundaries of a common world should not be altered. In response to the common world argument, let's now review each of these three claims.

The conflict between the idea of a common world and the context of secession is not that secession would result in breaking up a common world, but rather that the very presence of secessionist claims signals, precisely, that there is no common world to begin with between the secessionist group and the rest of the state. Indeed, if a group seeks to secede from an existing state, this is presumably because it deems that its interests are not being given due weight or protection within the current state, i.e. that its stakes are unequal. Thus even if we adopt Christiano's idea of a common world, appealing to this idea as providing a reason against the permissibility of secession simply does not make sense.

Here it might be objected that the remainder state should have an equal say in determining the permissibility of the group's secession in virtue of the fact that its "fundamental interests are equally intertwined" with those of the secessionist group, i.e. that there actually is a common world between the secessionist group and the remainder state. But this would be like claiming that a person seeking to divorce or to break up with her partner should not be allowed to do so unless her partner has an equal say in the decision on the grounds that, after all, two partners' "fundamental interests are equally intertwined" with each other. Yet this clearly seems mistaken.

What this shows, then, is that even if we granted that there might be such a common world between the secessionist group and the remainder state, the idea of a common world, in the context of secession, becomes irrelevant altogether. Thus Buchanan's point that in cases of remedial secession, the culpable aggressor (the current state) should not

have a say in determining the permissibility of secession (1991, 159) extends to the case of non-remedial secession. As Wellman and Altman further illustrate, if Germany wanted to annex Poland, it would be absurd to claim that in order to determine the permissibility of the annexation, Germany's population should be polled as well as Poland's, because Germany's "fundamental interests are equally intertwined" with Poland's: as they explain, "without Polish consent, the preferences of the Germans about annexing Poland simply do not count; they are irrelevant" (2009, 52-53). Here it might be objected that annexation of an *already* existing legitimate state is not on a par with non-remedial secession, because the secessionist group is only *potentially* a legitimate state. I will respond to this objection below, when I turn to Buchanan's account of legitimacy.

For now, let's look at the second claim in the common world argument, namely that a common world is needed for the public realization of equality. This second claim may be correct, but it does nothing to undermine the permissibility of non-remedial secession. On the contrary, it would seem to provide an argument in favor of this type of cases. Though Christiano specifies that a common world does not necessarily depend on a common culture or nationality (2006, 98), in the reverse a common culture or nationality, or some other form of collective identity, might nonetheless strengthen a common world. Indeed, sharing a collective identity would make it more likely that all citizens' "fundamental interests are equally intertwined with each other" and that all citizens will "have roughly equal stakes in the world in which they live." Because secessionists usually do share such a collective identity in virtue of which they wish to form their own independent state, and because such a collective identity would only strengthen a common world, the claim that

a common world is needed for the public realization of equality seems to support, rather than undermine, the permissibility of non-remedial secession.

Christiano's concern with the public realization of equality, moreover, also seems to provide a reason in favor of the permissibility of cases of non-remedial secession. Indeed, treating all citizens as equals would seem to require that the secessionist group have the right to decide who will govern it, or to select its political representatives. Treating all citizens as equals in the type of democratic state that Christiano has in mind would further seem to require allowing citizens to advocate secession, to form secessionist parties, and to have these parties form local governments and hold democratic referenda. If allowing all of this is not only consistent with, but required by, the public realization of equality, then it is difficult to justify why, in the case of a significant majority favoring secession, negotiation of secession should not be granted to the secessionist group. Not to grant secessionists negotiations after allowing all previous steps would be to make a mockery of the democratic process (Norman 2003, 207). Thus once again, the claim that a common world is needed for the public realization of equality seems to support, rather than undermine, the permissibility of non-remedial secession. In other words, the second claim in the common world argument proves too much for the just-cause theorist.

Given that the first two claims (a common world as one of equal stakes, needed for the public realization of equality) do not undermine the permissibility of non-remedial secession, the third claim that the territorial boundaries of a common world should not be altered likewise does not undermine the permissibility of non-remedial secession. In other words, if secession is consistent with the idea of a common world, then the claim that the

territorial boundaries of a common world should not be altered does nothing to undermine the permissibility of secession.

To review, then, Christiano's view that secession from a democratic state is impermissible except in the case of a severe injustice is grounded in two principles: the conservation principle (do not alter the current borders of democratic states), and the remedy principle (unless such alteration is necessary to remedy injustice). The conservation principle is in turn supported by two main arguments: the capacity for justice argument and the common world argument. But the critical assessment of those two arguments showed that they bolster, rather than undermine, the permissibility of non-remedial secession. What this means, then, is that Christiano's account of legitimacy in fact supports other cases of secession besides remedial cases. I now want to argue that the same is true of Buchanan's account of legitimacy. Doing so will also address Christiano's remedy principle.

3.3.2. Buchanan's account of legitimacy

Buchanan defines political legitimacy in terms of three conditions. In order to be legitimate, a state must respect its citizens' fundamental rights both in content (substantially) and in form (procedurally), and must not be a usurper (Buchanan 2002, 703). Yet this third condition is necessary but non-sufficient. Buchanan indeed defines a usurper as an entity "wrongly deposing a legitimate wielder of political power" (2002, 703). Presumably, the problem with a usurper is that it coercively substitutes a therefore illegitimate wielder of political power to a legitimate one, i.e. that it prevents a legitimate one from wielding power. If this is correct, then the third condition also needs to include

as illegitimate attempts to maintain an existing wielder of power when another potential legitimate one questions its legitimacy, i.e. the third condition needs to include as illegitimate attempts to prevent a legitimate power wielder from wielding power. Such prevention indeed turns a previously legitimate power wielder into an illegitimate one.

In other words, if what is ultimately problematic is the prevention of legitimate power wielding, then it is simply irrelevant whether the legitimate power wielder is actual or potential, i.e. whether it is already in existence when the illegitimate one takes over, or whether the legitimate one is merely emerging (or trying to emerge) when the other one is stifling it and thereby becoming illegitimate. Thus I am suggesting that the case of the former USSR forcibly integrating the Baltic States is, in the relevant respects, on a par with, for example, Canada opposing the secession of Quebec. In both cases, a legitimate power wielder is prevented from wielding power by a competing power wielder which thereby becomes illegitimate.

It might be objected, of course, that the Baltic States would have been justified in seceding from the former USSR because they were suffering a fundamental injustice, whereas Quebec is not. But note that to claim that the Baltic States were suffering an injustice whereas Quebec is not, simply begs the question against Quebec: what is at issue is precisely whether Canada's opposition to the secession of Quebec constitutes a violation of Quebec's right to self-determination, that is, constitutes an injustice. Article 21 (3) of the Universal Declaration of Human Rights does state that "The will of the people shall be the basis of the authority of government" (*Universal Declaration of Human Rights*), and Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights states

that “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development” (*International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights*). Articles 1 (2) and 55 of the U.N. Charter likewise both refer to “the principle of equal rights and self-determination of peoples” (*Charter of the United Nations*). These texts suggest that a group’s right to political self-determination is a human right, and therefore that Canada’s opposition to the secession of Quebec might constitute a violation of human rights – something that just-cause theorists such as Buchanan and Christiano should be concerned about.

What this means, then, is that a concern for justice requires taking into account considerations of self-determination, whose exercise directly contributes to a group’s flourishing. Thus a territorially concentrated part of a state’s population that has suffered none of the injustices listed under the just-cause account, but that nonetheless deems that it should no longer be included in the larger state (for example, Flanders in Belgium) might have a right to secede, in virtue of the fact that it would better flourish if it had its own independent state, because independent statehood would allow the group more fully to enjoy self-determination.

If what grounds legitimate control over the territory is legitimate authority over the people, then self-determination is prior to territorial integrity, or territorial integrity is grounded in self-determination. As I argued in Chapter 2, if secessionists can show that they already occupied that portion of territory before they entered the political union, then it is unclear that the remainder of the population would have a right to prevent the secessionists from taking away a piece of territory that was already theirs before the

political unit was formed.²⁶ Secessionists, then, would have a valid claim to the territory, and would thus be able to meet the condition of territorial justification.²⁷ In this case, the seceding group has a valid claim to the territory it occupies (and already occupied before the political unit was formed) not because the state committed a major injustice, but because that portion of territory was “always” that group’s to begin with.

Thus a closer look at Buchanan’s functional account of legitimacy shows that it, like Christiano’s, in fact also supports non-remedial cases of secession, when it is defined not merely in terms of the value of justice minimally or narrowly construed, but in terms of the value of justice balanced against the values of self-determination and flourishing.

²⁶ This of course would only apply to cases where it is relatively clear which group occupies (and *has* occupied) which part of the territory – for example, the Québécois occupy the province of Quebec, the Flemish the region of Flanders (and the same was true of Norway before it seceded from Sweden in 1905, or of the Czechs and the Slovaks before they parted ways in 1993). Such groups already occupied their territory before the larger country in which they were included was formed, and have continuously occupied the same territory, which makes those territorial claims much easier to justify. In cases where populations are intermingled, or where more ancient and more recent occupants each claim to have a valid claim to the same territory, matters become more complicated. If possible, the two groups might try to divide the territory as fairly as possible, perhaps through the help of international mediation. Where territorial division is no longer feasible (as in the case of the entire American continent), compensation or reparation toward the native populations is probably the next best option. This is not to say that the native group does not have a valid claim to the territory it once occupied, but simply that its claim is overridden by the interests of the people who currently live on the land, namely, all the descendants of European and other migrants for whom that land is the only home they know and have. This in turn is not to say that the injustice the group suffered is thereby superseded, or that it no longer warrants compensation or reparation; but rather that restitution of the exact territory is, for better or worse, no longer a feasible option. Thus Buchanan’s objection to the secession of Québec on the grounds that Québec does not necessarily have a rightful claim to its territory given that Native Canadians also live on it (Buchanan 1991, 64) is flawed, because it proves too much: if his objection is the rule, then Canada – and all other current states in the entire American continent and many other parts of the world – also fails to have a rightful claim to its territory. Yet Canada does have a rightful claim to its territory according to Buchanan, and so he should extend the same logic to Québec, should it want to secede. For more on this question, see Buchanan 1991, 87-91, and Waldron 1992.

²⁷ Of course, as in the case of marriage, any assets acquired in common during the political union should be divided as fairly as possible, and if the political unit as a whole invested many resources in the territory that is now breaking away, compensation arrangements should be made for secession to be permissible.

4. Conclusion

The main problems for just-cause theories are their neglect of the new state's viability and their lack of regard for non-remedial claims. These problems are the result of just-cause theorists' reducing the question of secession to the question of political legitimacy, which they associate only with the value of justice. In doing so, just-cause theories neglect the other two values of self-determination and flourishing, and end up with an implausible conception of justice. This implausible conception of justice then gives rise to just-cause theorists' neglect of the new state's viability and lack of regard for non-remedial claims.

One problem for just-cause theories is their inattention to the question of the new state's viability. But if we understand justice as the adequate protection of citizens' basic rights (as just-cause theories do), then justice requires state viability, since a non-viable state would be unable to adequately protect its citizens' basic rights, and those citizens' ability to exercise self-determination and to flourish would thereby be seriously hindered. The other problem for just-cause theories is their failure to account for non-remedial cases of secession (like Quebec, which has not suffered any major human rights violations). This is because, in their account of legitimacy, just-cause theories adopt a very narrow or minimal conception of justice, which focuses solely on justice, and more precisely on the justice of the *remainder* state. Only when the remainder state has committed a major injustice (such as major human rights violations) is a group's secession permissible. This means that the secessionist claims of groups that have *not* suffered that kind of injustice (for example, the Québécois) are automatically dismissed as unwarranted. This is problematic because in practice it might hinder certain groups' (like Quebec) ability to

exercise self-determination and to flourish, which would be unjust. Thus introducing considerations of self-determination and flourishing allows us to arbitrate between conflicting claims of justice (of the secessionists and the remainder state) and to reach a more plausible conception of justice, one that shows that valuing justice requires respecting other groups' right to self-determination, which contributes to their flourishing.

Thus in reducing the question of secession to a matter of political legitimacy, just-cause theorists neglect non-remedial claims, and thereby yield a morally implausible answer to the question of secession, one that fails to consider all concerned groups' rights and interests equally. Avoiding this problem requires introducing considerations of self-determination and flourishing, in addition to considerations of justice. Proceeding in this way yields a more plausible conception of the value of justice, one that by definition accounts for non-remedial claims and thereby considers all concerned groups' rights and interests equally. In other words, reaching a plausible answer to the question of secession requires adopting an axiological approach, i.e. starting not from an account of political legitimacy, but directly from the three values of self-determination, justice, and flourishing.

CHAPTER 5 Flourishing

1. Introduction

Chapter 3 showed that choice theorists provide an extremely permissive but also morally implausible answer to the normative question of secession, because they reduce the question of secession to the question of political legitimacy, which they associate primarily with the value of self-determination to the detriment of the values of justice and flourishing. Chapter 4 showed that just-cause theorists provide an extremely restrictive but likewise morally implausible answer to the normative question of secession, because they reduce the question of secession to the question of political legitimacy, which they associate primarily with the value of justice to the detriment of the values of self-determination and flourishing.

Nationalist likewise reduce the question of secession to the question of political legitimacy, though they rely on a different account of political legitimacy, which relies primarily on the value of national flourishing. According to nationalist theorists, “members of a group are best placed to judge whether their group’s prosperity will be jeopardized if it does not enjoy political independence” (Margalit and Raz 1990, 457), such that, for example, even though “the English may have an interest in being part of Great Britain, rather than mere Englanders [...] that interest can be justified only with the willing cooperation of, e.g., the Scots” (Margalit and Raz 1990, 460). This gives rise to the duty on behalf of the larger state “not to impede groups in their attempts to decide whether appropriate territories should be independent [...]” (Margalit and Raz 1990, 460). In other words, nationalist theorists argue that “differences in nationality provide a

valid basis for determining the location and function of boundaries” (Kymlicka 2001, 265) and that “the boundaries of nation-states [...] define a body of citizens—a political community—which is seen as the bearer of sovereignty, and whose will and interests form the standards of political legitimacy” (Kymlicka 2001, 254). Otherwise put, nationalist theorists contend that a state is legitimate if its national group(s) can sufficiently identify with it in terms of nationality, or if those groups deem that they are able to flourish within it. Thus the right to secede is grounded in the increased group flourishing (and thereby increased individual flourishing) that independent statehood based on nationality is said to bring. According to nationalist theorists, then, as long as a majority within it so wishes, and as long as it has a valid territorial claim, any national group has the right to secede.

This chapter examines the way in which nationalist theories, based on their account of political legitimacy, have addressed or failed to address the three conditions of territorial justification, adequate protection of rights, and economic viability, as well as the way in which nationalist theories have thereby conceptualized the value of flourishing in its relation to the question of secession.

Thus this chapter examines how nationalist theories have conceived the value of flourishing as it relates to secession and the three conditions. It shows that a normative theory of secession based exclusively on flourishing (as nationalist theories are) is too permissive, because relying only on the value of flourishing when developing a normative theory of secession yields an implausible conception of the value of flourishing, and thereby an implausible answer to the normative question of secession.

In this chapter, I argue that reaching a morally more plausible conception of the value of flourishing (and thereby a more plausible answer to the normative question of secession) requires introducing considerations of self-determination and justice, in addition to considerations of flourishing. In doing so, I show that balancing the value of flourishing against the other two values of self-determination and justice requires starting not from an account of political legitimacy (as nationalist theories do), but directly from the three values of self-determination, justice, and flourishing.

2. Nationalist theories' normative account of secession

For nationalist theories, a state is legitimate if the state and its citizens share a common national identity. Thus according to nationalist theories, any *national* group²⁸ that wishes to do so may secede, in order to create a state whose cultural and political boundaries coincide, i.e. to create a *legitimate* state. For example, if Quebec wanted to secede from Canada, it would be allowed to do so, because the Québécois share a national identity. From this we can see that in their account of legitimacy, nationalist theories emphasize the value of flourishing, which national identity is said to foster. Thus nationalist theories approach the question of secession from the point of view of the seceding group. Nationalist theories are more restrictive than choice theories (because they ground secessionist claims specifically in nationality) but they are more permissive than just-cause theories (because they regard some secessionist claims as legitimate even in the absence of major injustice). Contemporary proponents of nationalist theories include

²⁸ Nationalist theories offer several definitions of a national group; but some overlap may be captured by understanding a national group as a group that shares a common language, culture, history, territory – though all of these elements may not be exhaustive or sufficient, and each of these elements may not be necessary. Examples of national groups include the Québécois in Canada, the Flemish in Belgium, or the Catalans in Spain.

Avishai Margalit and Joseph Raz (1990), Daniel Kofman (1998), David Miller (1998, 2000), and Will Kymlicka (2001).

Based on the criteria of normative support and comprehensiveness laid out in Chapter 1, in order to be successful or normatively plausible, a philosophical theory of secession must be (1) consistent with the basic principles and values of liberal political philosophy; and (2) consistent with what secession involves.

In light of these criteria, nationalist theories offer two main advantages. First, they emphasize the value of flourishing (criterion of normative support: widely recognized value). Second, they are able to justify the territorial claim of the seceding group, by legitimating acquisition of the land on the grounds of having lived on it and shaped it (criterion of comprehensiveness: consistent with what secession involves, namely taking a territory; and criterion of normative support: territorial integrity as key principle of liberal political philosophy). The main problems of nationalist theories are: First, their neglect of the question of economic viability, which undermines a group's ability to flourish, for example through the creation or maintenance of cultural or political institutions (criterion of comprehensiveness: inconsistent with what secession involves, namely the creation of a viable state; and criterion of normative support: flourishing as key principles of liberal political philosophy). Second, nationalist theories risk encouraging nationalist extremism, for example ethnic cleansing or forced assimilation of minorities – both of which violate the principle of protection of universal human rights (criterion of normative support: human rights as key principle of liberal political philosophy). These advantages and problems will become clearer in the rest of this chapter.

In what follows, I look at the way in which nationalist theories, based on their account of political legitimacy, have addressed or failed to address the three conditions of territorial justification, adequate protection of rights, and economic viability spelled out in Chapter 2, and at the way in which nationalist theories have thereby conceptualized the value of flourishing as it relates to secession.

3. Nationalist theories and the three permissibility conditions

3.1. Territorial justification

As mentioned in Chapter 2, in a post-Westphalian state order, a state's territory is no longer viewed as belonging to the ruler, but rather to the people (Bishai 2004, 74-75). The state, then, with regard to its territory, is acting merely as the *agent* of the people (Buchanan 1991, 108-109). In this sense, territorial integrity should be understood not as a state's property right, but as a state's jurisdictional power over its territory, a power *granted* to the state by the people. Thus what grounds legitimate control over the *territory* is legitimate authority over the *people*. In other words, if a state does not have legitimate authority over some of its people, it also does not have legitimate control over some of its territory. If it can be shown that the state does not have legitimate authority over some of its people, then it would seem that this group should be able to leave with its territory if it so wishes. I then offered two different justifications for taking part of a state's territory, each corresponding to one way in which a state does not have legitimate political authority over some of its population: the argument from injustice and the argument from self-determination and flourishing.

According to the argument from injustice, when the state commits a severe injustice toward a territorially concentrated part of its population, the state fails to fulfill its function or to provide adequate protection to that group. The state therefore loses legitimate political authority over that group, and thus its control over the territory that this group occupies. Because the territory really belongs to the people, the group in turn acquires or recovers legitimate control over its territory, and so would be able to justify its territorial claim, should it want to secede (Buchanan 1991, 44-45).

According to the argument from self-determination and flourishing, the state may not have legitimate authority over groups that have not suffered a major injustice. The argument pointed to an important similarity between the situation of such groups and that of colonized peoples: namely, being prevented from fully exercising political self-determination because of questionable boundaries. In other words, both types of groups are being prevented from exercising the fullest degree of political self-determination because of the way boundaries were drawn. In light of this analogy between non-remedial secessionists and colonized peoples, the secessionist group might have a valid claim to the territory it currently occupies if it already occupied it before the current political unit was formed.²⁹ In this case, the state loses its authority over the territory not because of a major injustice, but because that portion of territory was “always” that group’s to begin

²⁹ Here one might ask what makes a secessionist group the “same” group over time. The individual members of a group may of course change without thereby affecting the existence of the group over time. This is clear if one looks at the continuity of various groups over time, such as states (the United States), universities (the University of Colorado), corporations (AT&T), or sports teams (the Rockies). These groups persist despite the changing composition of their membership. The same is true of secessionist groups (Quebec or Flanders). Now one might point out that membership in a state, university, corporation, or sport team depends on certain objective criteria or relations such as living in, studying at, working for, or playing for; and ask what the equivalent criteria or relations would be for secessionist groups. I want to suggest that the relevant criterion or relation in this case is mutual recognition as members of group X (ancestry, birth, residence, or cultural identity may be additional factors, but I believe that none of them are necessary or sufficient to determine membership in a group through time).

with, and that group now wishes to be self-governing in that territory. This is the principle that the territory really belongs to the people, rather than to the state (Bishai 2004, 74-75; Buchanan 1991, 108-109).

Nationalist theorists likewise rely on the principle that the territory belongs to the people, rather than to the state, but they specifically justify the territorial claim of the seceding (national) group on the grounds that the group has lived on it and shaped it over time. (Note that this Lockean argument is different from the argument from self-determination and flourishing I offered above, because (1) the former argument does not necessarily require that the group had already occupied the territory before the political unit was formed, though this might of course often also be the case; and (2) the latter argument does not necessarily require any shaping of the land, though this will of course almost always be the case.)

Let's now unpack the principle that the territory belongs to the people, in the context of nationalist theories of secession. I begin with the notion of people, then turn to that of the relevant portion of land or territory, and finally to that of belonging.

For nationalist theories, the "people" is specifically a *national* group. Though nationalist theorists offer different definitions of a national group (Margalit and Raz 1990; Kofman 1998; Miller 1998, 2000; Kymlicka 2001), my present goal is not to provide a review or a critique of those definitions. Rather, my aim for the purposes of this chapter is simply to offer a working definition of national group that might nonetheless be useful in discussing nationalist theories of secession. Thus one might roughly capture nationalist theorists' definitions in a working definition of a national group as a group of individuals

(1) sharing over time a common language, history, culture, territory, race, ethnicity, or religion, and (2) mutually identifying as members of group X in virtue of some set of those factors – though none of those factors taken individually or jointly are necessary or sufficient for a group to qualify as a nation. The relative vagueness of this working definition need not be worrisome as, fortunately for the theorist of secession, her task is not to go about in the world and identify the groups that might qualify as national groups according to a set list of objective criteria. Rather, the subjective self-identification of national groups as such will usually be sufficient to theorize about the permissibility of secession. With all this in mind, examples of national groups include the Québécois, the Flemish, the Catalans, or the South Sudanese.

Having clarified the notion of people, how might one determine what portion of land belongs to it? As mentioned above, nationalist theorists adopt a Lockean (or “mix one’s labor”) view of land acquisition. Thus the portion of land that belongs to the group is that portion of land which the group has occupied and shaped over time.

This notion of the relevant portion of land also gives us some insight into the notion of (rightful) belonging. That the land belongs to the people means not that the people owns it as private property, but rather that the people has collectively acquired it over time by living on it and shaping it. Thus Kymlicka suggests that “the claim that the state and its territory belong to the titular nation is not a claim about the allocation of private property rights, but about control over public space” (2001, 257). Similarly, Miller argues that to say that a territory belongs to a people does not mean that the people owns the territory as property but rather that the people has a valid claim to exercise political authority over the territory (1998, 68). Miller specifies what corresponds to such legitimate political

authority by suggesting that such a claim comes from the group's shaping of the territory that it inhabits (1998, 68).

But what if a usurper forcefully seizes a certain territory and subsequently lives on it and shapes it? Relying solely on the nationalist Lockean criterion would make it impossible in controversial territorial disputes to know whether the land rightly belongs to more ancient occupants or to more recent occupants. Thus the Lockean criterion needs to be used in tandem with the principles of restitution and prescription. According to the principle of restitution, in cases of territorial disputes between more ancient and more recent occupants, the land should be given back to the more ancient occupants (as in the case of the Baltic Republics, which were forcefully annexed by the former USSR). According to the principle of prescription, in cases of territorial disputes between more ancient and more recent occupants, the land belongs to the more recent occupants (as in the case of the entire American continent). There is no neat algorithm to determine which of the two (diametrically opposed) principles should apply in any given case. Time and numbers, however, both seem to come into play. Thus Margalit and Raz write:

Do historical ties make a difference? [...] Suppose that the group was unjustly removed from the country. In that case, the general principle of restitution applies, and the group has a right to self-determination and control over the territory it was expelled from, subject to the general principle of prescription. Prescription protects the interests of the current inhabitants. It is based on several deep-seated concerns. It is meant to prevent the revival of abandoned claims, and to protect those who are not personally to blame from having their life unsettled by claims of ancient wrongs, on the ground that their case now is as good as that of the wronged people or their descendants. Prescription, therefore, may lose the expelled group the right even though its members continue to suffer the effects of the past wrong. (1990, 459)

This passage suggests that both time and numbers are doing some work. The idea that “prescription protects the *interests* of the current inhabitants” points to an underlying utilitarian rationale, in virtue of which there are so *many* current inhabitants, with interests in the land, that the land therefore rightly belongs to them. Numbers, however, cannot be the only factor at play in determining whether restitution or prescription applies. To see why, imagine that the entire population of China suddenly moved to Canada. In terms of numbers alone, the new Chinese occupants would overwhelmingly outweigh the Canadian occupants. Yet it would be implausible to claim that, in virtue of numbers, Canada now rightly belongs to China. Indeed, this example illustrates a clear case calling for restitution, whereby Canada should rightly recover authority over its territory.

Thus time must also be at play in determining whether restitution or prescription applies. In the case of the entire American continent, very few people will deny that the land was initially unjustly seized by European colonists and settlers, against the will of the native or indigenous populations. A few centuries later, however, just as few people would argue that current occupants (descendants of European and other migrants) should be expelled and that the land should be fully restituted to native populations. The Lockean criterion of having lived on and shaped the land might partly be reentering the equation at this point, in favor of current occupants. But the question of where current occupants would (have a right to) go also seems to be guiding the intuition that prescription should apply, so that current occupants are not expelled.

Thus in cases of territorial disputes between more ancient and more recent occupants, the nationalist Lockean criterion should be complemented by the principles of restitution and

prescription, keeping in mind that no neat formula exists to determine whether restitution or prescription should apply. The argument from self-determination and flourishing presented in Chapter 2 and summarized at the beginning of this section, provides one way in which a national group might have a valid territorial claim. Thus Kymlicka asks:

What are the legitimate grounds or principles for determining the locations of boundaries? For liberals, the most obvious candidate here—as with any other issue—is freedom of choice, constrained by respect for the rights of others. If the majority on any particular territory does not wish to remain part of a larger state—perhaps because they were unjustly included in that state in the first place—why shouldn't they be allowed to secede [...]? (2001, 251)

Indeed, Kymlicka argues that liberal principles might in fact require satisfying nationalist secessionist claims, because doing so would foster democracy. This brings me to the next section.

3.2. Adequate protection

As mentioned above, one of the main problems nationalist theories of secession face is that they risk encouraging nationalist extremism, for example in the form of ethnic cleansing or forced assimilation of minorities. This would run directly counter to the condition of adequate protection of individuals' basic rights. In other words, nationalist ideals (if they involve extreme means such as ethnic cleansing or forced assimilation of minorities) may conflict with basic human rights or liberal democratic principles.

What do nationalist theorists have to say about human rights and democracy? Here nationalist theorists' appeal to the value of flourishing becomes interesting. On the one hand, nationalist theorists admittedly seem concerned with both human rights and democracy, which they suggest contribute to a national group's flourishing (Margalit and

Raz 1990; Kofman 1998; Miller 1998, 2000; Kymlicka 2001). On the other hand, however, their concern with human rights and democracy does not always go as far as their emphasis on the value of flourishing would seem to require. To see this, let's start with the nationalist argument for self-determination or secession, which is grounded in the value of flourishing.

3.2.1. The nationalist argument

Margalit and Raz put the nationalist argument for secession or self-determination as follows:

A group's right to self-determination is its right to determine whether a territory be self-governing (1990, 454). The right to self-determination derives from the value of membership in encompassing groups. It is a group right, deriving from the value of a collective good [...] (456). The right of self-determination so understood is not ultimate, but is grounded in the wider value of national self-government, which is itself to be only instrumentally justified (441). The point needs to be made to connect concern with the prosperity of the group with concern for the well-being of individuals. This tie between the individual and the collective is at the heart of the case for self-determination (444). [T]he key to the explanation [of the right to self-determination] is the importance of these [national] groups to the well-being of their members (448). [M]embership of such groups is of great importance to individual well-being, for it greatly affects one's opportunities, one's ability to engage in the relationships and the pursuits marked by the culture (449).

The nationalist argument can thus be summarized as:

- (1) Independent statehood is instrumental to national flourishing.
- (2) National flourishing is instrumental to individual flourishing.
- (3) Independent statehood is instrumental to individual flourishing.

Thus according to nationalist theorists, nations have the right to secede or form their own independent state because of the human flourishing they are said to foster. Let's look more closely at the first and second premises.

3.2.2. Independent statehood and national flourishing

Premise one states that national groups are (generally) better able to flourish when they have their own independent state. National groups usually invoke the right of peoples to self-determination to justify their claims, as secession, they argue, constitutes one way of exercising self-determination. The right is expressed as follows in article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights: "1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development" (*International Covenant on Civil and Political Rights; International Covenant on Economic, Social, and Cultural Rights*). It is important to note that the right of peoples to self-determination thus has both a political and a cultural aspect, as indicated by the conjunctive formulation and by the fact that the right is listed as the first article of both a covenant concerning political rights and a covenant concerning cultural rights. Though nationalist theorists of secession typically argue that cultural self-determination requires political self-determination, these two aspects of the right to self-determination are conceptually distinct and independent from each other (as briefly mentioned in Chapter 3).

Political self-determination refers to a group's ability to decide freely³⁰ its political status. Political self-determination is a matter of degree, and does not necessarily require full political independence or sovereignty: political self-determination may also be exercised within the borders of a larger state. This is the case in federalism, whereby different regional units within the larger state enjoy some degree of self-government regionally (for example, the different states within the United States, or the different provinces in Canada). Thus for a group to exercise political self-determination is for that group to determine the degree of political autonomy it will enjoy.

Cultural self-determination refers to a group's ability to set and pursue freely³¹ its cultural aspirations. Cultural self-determination might take the form of certain cultural events, celebrations, holidays, and symbols, as well as the language in which official administration and business are conducted, and the primary language used and taught in education and the media (for example, the three different linguistic-cultural communities in Belgium). Thus for a group to exercise cultural self-determination is for that group to determine the degree of cultural autonomy it will enjoy.

Here it is important to note that to speak of cultural self-determination is not at all to presume that cultural identities are fixed or unalterable. On the contrary, part of the point of cultural self-determination is precisely that it recognizes that cultural identities are

³⁰ For a group to exercise (political or cultural) self-determination *freely* means (1) that the group has a reasonable range of available options, and (2) that the group is not coerced to choose one option over another. By (1), I mean that in the case of political self-determination, the group should be able to choose between different levels of government (e.g. central, regional, or both); and that in the case of cultural self-determination, the group should be able to benefit from a certain degree of cultural protection (e.g. minority or cultural rights). By (2), I mean that the group further should not have to choose between more (political or cultural) autonomy and, for example, a continued exchange of goods and services between the region and the rest of the state. This would simply amount to a form of blackmail by the central government, and would compromise the group's ability to exercise self-determination freely.

³¹ See previous footnote.

malleable, in flux, and changing over time. In this respect, making cultural and political boundaries coincide, contingent on the democratic requirement mentioned above and spelled out below, means that all members of the national group can, if they so wish, participate in the articulation and revision of their national identity.

Political self-determination (for example, more autonomy achieved through federalism or devolution) constitutes one possible means to promote cultural self-determination (for example, the language used in public education or the amount of resources accorded cultural events). But this does not mean that cultural self-determination requires independent statehood, or that independent statehood is the necessary *telos* or natural end of all national groups. Just as political self-determination does not necessarily require independent statehood, neither does cultural self-determination. For example, a national group might decide, in exercising political self-determination, to create a regional government within an existing state; and a national group might likewise decide, in exercising cultural self-determination, to institute minority rights to protect its culture within the larger state. In both cases, the national group is freely exercising self-determination (political and cultural, respectively), but it is not claiming independent statehood, and indeed does not deem that exercising political or cultural self-determination requires independent statehood. To clarify, even if a national group claimed that *cultural* self-determination did require independent statehood, achieving independent statehood would be the result of *political* self-determination, even though this highest degree of political autonomy might in turn bring about the highest degree of cultural autonomy.

Having distinguished between the political and cultural aspects of self-determination, let's go back to the first premise, or the claim that independent statehood promotes national flourishing. I understand flourishing as encompassing two components: one objective, the other subjective. The objective component of flourishing corresponds to a set of basic human rights such as having access to food, clothes, shelter and not being exposed to violent assault, without which one would fall below a basic threshold under which it would objectively become very difficult to live. The subjective component of flourishing goes much further than these minimal objective requirements, to the extent that it consists in being able to pursue certain ends or goals one has chosen for oneself. Thus the objective component of flourishing consists merely in being able to live, whereas the subjective component consists in being able to live a fulfilling life. Here it is important to note two things. First, I am deliberately leaving open the question of what constitutes a fulfilling life. I am indeed wary of setting "strong" objective criteria (such as the full development of one's talents or abilities), or endorsing a thick eudaimonistic account (such as capabilities), to define fulfilling.³² Second, and relatedly, the objective component of flourishing does set "weak" objective criteria on which a fulfilling life depends and which the subjective component must therefore respect.

Thus the objective and subjective components of flourishing are connected: without meeting the basic threshold of certain objective criteria, it becomes impossible to pursue the subjective component of flourishing; and therefore, conversely, the subjective component must ensure that it does not run counter to the objective component. Moreover, because it is the case for everyone that the subjective component depends on

³² Such strong or thick accounts tend to carry a huge burden of proof, and to raise more questions than they solve, including problems of cultural imperialism.

the objective component, my own ends and goals (whose pursuing I consider makes for a fulfilling life) should not only *not* undermine my *own* ability to meet the objective component, but also *not* undermine *others'* ability to meet the objective component.

A national group flourishes when it is able to meet both the objective and the subjective components of flourishing spelled out above. Thus in order to flourish, a national group must first have access to food, clothes, shelter and not be exposed to violent assault. But there is nothing nationally specific about meeting this objective component: nations are much more than groups of fed and sheltered individuals. National self-determination is indeed more importantly about the subjective component of flourishing, namely about the national group's ability to pursue the ends and goals it has chosen for itself (for example, protecting its language or its cultural heritage), which the group deems important for its identity or source of meaningfulness. Thus it appears that national self-determination is instrumentally valuable for national flourishing, which nationalist theorists argue is in turn instrumentally valuable for a group's (and arguably its members') identity or source of meaningfulness (Margalit and Raz 1990; Kymlicka 1995, 2001).

Otherwise put, much as individual self-determination is valuable for the flourishing of individuals, that is, for those individuals to be able "to shape their circumstances to suit their aims and ambitions," likewise national self-determination is valuable for the flourishing of national groups, that is, for those national groups to be able "to organize their internal affairs and to dispose of their resources" (Miller 2000, 164). It is important to note that setting ends or goals automatically generates certain interests or means to achieve those ends or goals. For example, promoting a national group's culture and language (the national group's end or goal) might require establishing a public education

system, which in turn would require securing the appropriate funds (the national group's interest or means to achieve that end or goal). Thus flourishing, because it involves being able to pursue certain chosen ends or goals, requires fulfilling certain interests:

The value of national self-government is the value of entrusting the general political power over a group and its members to the group. If self-government is valuable then it is valuable that whatever is a proper matter for political decision should be subject to the political decision of the group in all matters concerning the group and its members. The idea of national self-government, in other words, speaks of groups determining the character of their social and economic environment, their fortunes, the course of their development, and the fortunes of their members by their own actions, i.e., by the actions of those groups [...]. (Margalit and Raz 1990, 440)

It is useful to point out that making cultural and political boundaries coincide, as nationalist secessionists attempt to do, is a common practice, even among democratic states:

If we examine the actual practice of liberal democracies, we see that questions about the function and location of boundaries are often resolved by reference to principles of *nationhood*. That is, the location of boundaries is intended to demarcate discrete national political communities, and the function of these boundaries is, in part, to protect national cultures. As a general rule, both the location and function of boundaries are determined by principles of nationality—that is, by the goal of creating, recognizing, empowering, and protecting “nations.” (Kymlicka 2001, 253, emphasis in original)

Of course, the question at hand is not whether this effort toward cultural-political coincidence *does* happen, but whether it *should* happen, or at least whether it is morally permissible, that is, whether a moral case can be made for it. Kymlicka and Miller suggest that such a moral case can be made, because making cultural and political boundaries coincide can foster democracy, to the extent that such cultural-political coincidence facilitates the realization of equality of opportunity, solidarity among

citizens, freedom of choice, and political participation (Kymlicka 2001, 265, 266, 269; Miller 2000, 62, 89, 105, 140). Speaking the language of dominant institutions will clearly advance the realization of equality of opportunity, for example by making it easier to have equal access to education and employment, which function in the dominant language. Likewise, belonging to the same national group and thus sharing a common language, ethnicity, culture, and history seems to provide a strong basis for solidarity among citizens, especially in welfare states (in this respect, the case of Belgium is quite telling).³³ Because one's national culture further forms the background which gives particular meanings to one's choices, discrimination against or atrophy of that culture means that "the options and opportunities open to its members will shrink, become less attractive, and their pursuit less likely to be successful" (Margalit and Raz, quoted in Kymlicka 2001, 266). Thus making cultural and political boundaries coincide can protect national flourishing and thereby foster the freedom of choice of its members. Finally, speaking the language of dominant institutions makes equal political participation more likely, and belonging to the same national group also makes trust between the participants in political deliberation more likely. Thus it appears that a moral case can be made for making cultural and political boundaries coincide, because doing so can foster democracy, to the extent that such cultural-political coincidence facilitates the realization of equality of opportunity, solidarity among citizens, freedom of choice, and political participation (Kymlicka 2001, 265, 266, 269; Miller 2000, 62, 89, 105, 140). Thus Kymlicka concludes:

³³ Indeed, in Belgium, Flemish nationalist secessionist claims are fueled both by long-standing tensions between the two main linguistic communities (Flemish- and French-speaking) and by the fact that the currently more well-off Flemish-speaking community feels as though it is subsidizing the welfare benefits of the entire country, including that of the French-speaking community, which has recently been struggling with a higher rate of unemployment.

[T]he principle would [...] be to create political units, wherever possible, which share a common national identity, since such units are likely to provide the best context for the achievement of people's interests in freedom, justice, and democracy. (2001, 267)

3.2.3. National and individual flourishing

Premise two states that the collective flourishing of a national group promotes the individual flourishing of its members. Recall that Margalit and Raz contend:

The point needs to be made to connect concern with the prosperity of the group with concern for the well-being of individuals. This tie between the individual and the collective is at the heart of the case for self-determination (1990, 444). [T]he key to the explanation [of the right to self-determination] is the importance of these [national] groups to the well-being of their members (448). [M]embership of such groups is of great importance to individual well-being, for it greatly affects one's opportunities, one's ability to engage in the relationships and the pursuits marked by the culture (449).

Likewise, Kymlicka asserts:

[T]he nation [...] is seen as having instrumental value. The nation is primarily valuable not in and of itself, but rather because it provides the context within which we pursue the things which truly matter to us as individuals—our family, faith, vocation, pastimes, and projects. (2001, 260)

Connecting the collective flourishing of a national group with the individual flourishing of its members raises the question of whether the flourishing of a national group is automatically conducive to that of its members. A national group may be able to flourish as a whole while some of its members do not so flourish. Indeed, it might even be the case that the flourishing of the group as a whole depends on or involves some of its members not flourishing. For example, a group's flourishing might involve the assignment of some of its members to a certain role or function that those members do not wish to perform or fulfill. This would be the case, for example, in a slave society. In

this case, the (illiberal) group as a whole might be flourishing, but clearly some of its members would not be flourishing. Thus the flourishing of a national group does not automatically entail that of its members, as the case of this illiberal group illustrates.

Here one might ask whether this implies that only liberal peoples have a right to secede. According to the nationalist argument, a group's right to secede rests on the claim that national flourishing is instrumental to individual flourishing. Thus the secessionists' case rests on a reasonable expectation that the group's secession would not hinder its individual members' ability to flourish. It seems clear that an outright illiberal group (which would severely violate some of its members' basic rights) would not foster the individual flourishing of all its members. However, non-liberal but yet decent peoples (to borrow Rawls' taxonomy) might qualify as plausible candidates for secession on the nationalist account. Rawls indeed defines a decent people as a non-liberal society whose "basic institutions meet certain specified conditions of political right and justice and lead its people to honor a reasonable and just law" (1999, 59-60). Decent peoples are not liberal because their public institutions do not recognize "the liberal idea that persons are citizens first and have equal basic rights as equal citizens" (66) nor do they recognize reasonable pluralism (i.e. they may be religious institutions) (64). Decent peoples are nonetheless "decent" because they recognize and protect human rights and allow their members to participate in political decisions through representatives, even though the society may be hierarchically organized and some members may be excluded from holding public office (64-65).

According to the nationalist argument, whether a decent people would have a right to secede depends on whether the people would be able to foster the individual flourishing

of its members.³⁴ As was suggested above, flourishing involves both an objective component (basic human rights) and a subjective component (personally set goals). By protecting human rights, decent peoples foster the objective component of flourishing. Determining whether decent peoples would likewise foster the subjective component depends on the type of specific possible goals one includes in one's account of the subjective component of flourishing. If, for example, one limits those goals to pursuing an education, then decent peoples would foster the subjective component, as nothing in their institutions precludes this possibility. If, however, those goals include holding public office, then decent peoples would not foster the subjective component, as they may explicitly exclude certain members from such functions.

To the extent that national self-determination fosters the flourishing of the national group, it will be difficult to make a moral case for national self-determination if the group's flourishing relies on morally problematic principles, such as that some of its members are not fully equals. Thus making a morally more plausible case for national self-determination might require, on the part of the national group, a commitment to equality between the members of that national group. If such a commitment exists, then arguably the flourishing of the national group will foster the flourishing of its members.

Indeed, such a commitment would mean that the group has as one of its goals the realization or preservation of equality. This means it will be one of the group's interests to ensure that social arrangements and institutions do not run counter to this goal (for example, by adopting a policy of equal opportunity in education and employment). This

³⁴ On the nationalist account, the group would also have to have a valid territorial claim, i.e. have occupied and shaped the land over time.

in turn seems to make it possible for members of the national group to determine and achieve their own ends or goals (for example, pursuing a certain education or career), and thereby to flourish. In this case, the respective goals of the national group (realizing or preserving equality) and of its members (pursuing a certain education or career) are different, but they are nonetheless aligned with each other: the former makes the latter possible. In other cases, the goals of the national group and of its members might be the same: for example, to be able to speak and live in the national group's language. In this case, the group's flourishing will directly coincide with its members' flourishing. What matters is that, in either case, the flourishing of the national group entails that of its members. This means that, to the extent that flourishing means being able to pursue certain chosen ends or goals, which in turn requires fulfilling certain interests, the national group and its members will share common interests.

To review, national self-determination allows and fosters the flourishing of the national group. Making a morally more plausible case for national self-determination requires, on the part of the national group, a commitment to equality between the members of that national group. This commitment in turn implies that the flourishing of the national group will foster the flourishing of its members. This in turn means that the national group and its members will share common interests. Thus, on this analysis, the *moral* case for *national self-determination* requires two things: a commitment to equality (the moral element) and the fulfillment of certain interests (the flourishing or national self-determination element). I now want to argue that democracy is particularly well suited to fulfill these two requirements, that is, that national self-determination requires a democratic commitment on the part of the national group.

With regard to the first requirement (equality), democracy by definition implies equality between the members of the demos as equal participants in the political decision-making process. With regard to the second requirement (interests), democracy further corresponds to government of the people, by the people, for the people, which means that the people and its interests will be represented and protected. Thus national self-determination, which fosters the flourishing of a national group and that of its members, requires a commitment to equality and the fulfillment of certain interests, and therefore requires democracy. This democratic requirement, moreover, puts to rest concerns regarding the risk of ethnic cleansing and forced assimilation of minorities.

To sum up, making a morally more plausible case for national self-determination requires, on the part of the national group, a commitment to equality between the members of the national group. This commitment in turn implies that the flourishing of the national group will foster the flourishing of its members. This in turn means that the national group and its members will share common interests, which need to be represented and protected. Democracy is particularly well suited to fulfill these two requirements. This democratic requirement puts to rest concerns regarding the risk of ethnic cleansing and forced assimilation of minorities, which is also required if a moral case for national self-determination is to be made.

In other words, the nationalist argument only works if it is supported by a serious and solid democratic commitment. Yet the democratic concern shown by current nationalist theorists does not seem sufficient to bolster their argument. In other words, current nationalist theorists do not recognize the extent of the democratic commitment required by the flourishing argument on which they rely. For example, Margalit and Raz, the most

prominent nationalist theorists, hold that if the seceding national group did not respect its members' basic rights, its case for secession in the name of national flourishing would be "weakened" and "may disappear altogether" (1990, 449), while Kofman holds that it would be "reasonable" to expect the new state to have democratic institutions (1998, 35). (Such lack of any real reservations toward secession despite the possible ill-treatment of the seceding national group's own members is surprising given that normative theories of secession in general – that is, not just nationalist ones – often raise the concern of the vulnerability of new national minorities within the remainder state or the new state as a clear reason to oppose secession.)

Yet this democratic concern is too weak, as the flourishing of the national group and that of its members, on which the nationalist argument relies, *requires* a democratic commitment (not merely that such a commitment would be "reasonable"). That is, if the seceding national group did not respect its members' basic rights, its case for secession in the name of national flourishing would be *obliterated* (not merely "weakened") and thus *would* (not merely "may") disappear altogether.

Having reviewed the first problem nationalist theories face, related to the question of political viability, I now turn to the second problem these theories face, related to the question of economic viability.

3.3. Economic viability

As was argued in Chapter 2, adequate protection of basic rights requires economic viability. Moreover, national self-determination would importantly require economic means, both to secure the democratic commitment on which the nationalist argument

ultimately relies, and to facilitate the creation of political and cultural institutions on which a group's ability to exercise political and cultural self-determination directly depends.

Surprisingly, however, nationalist theorists tend to neglect the question of economic viability, failing to see that it is required for their argument to hold. Miller is the only nationalist theorist even to mention that secession is permissible only if both new and remainder states are viable, though he does not say much more about the question (2000, 37). Kofman formulates the somewhat puzzling condition that "the secessionists cannot be *aiming* to deprive the former state of its most important resource base" (1998, 36, emphasis added). If, as was argued in Chapter 2, economic viability of both new and remainder states is a necessary condition for secession to be permissible, it seems hardly to matter whether economic non-viability of either state is an intentional or an incidental result of the other state's actions. Though it seems to signal some awareness of the question of economic viability, Kofman's condition falls short of what the nationalist argument would require for it to hold.

Margalit and Raz, for their part, are concerned about the economic viability of the remainder state, but against all expectations do not extend the same concern for the new state. Regarding the remainder state's economic viability, Margalit and Raz require that the creation of the new state not substantially damage the remainder state, and that, where this is likely to be the case, secession be permissible only contingent upon appropriate economic arrangements (1990, 459-460). By contrast, when it comes to the new state, Margalit and Raz paradoxically declare that "[Secessionists] may sacrifice their economic or other interests for the sake of group self-respect and prosperity. But such a sacrifice is,

given the circumstances of this world, often not unreasonable” (1990, 457), as if there were no link between group prosperity and economic viability.

In sum, whether they formally pay lip service to or neglect altogether the question of economic viability for both new and remainder states, nationalist theorists do not nearly show the concern that they should for their argument to be successful.

4. Conclusion

The main problems for nationalist theories are their lack of regard for the new state’s viability and their neglect of human rights. These problems are the result of nationalist theorists’ reducing the question of secession to the question of political legitimacy, which they associate only with the value of flourishing. In doing so, nationalist theories neglect the other two values of self-determination and justice, and end up with an implausible conception of flourishing. This implausible conception of flourishing then gives rise to nationalist theorists’ lack of regard for the new state’s viability and neglect of human rights.

One problem for nationalist theories is their omission of the question of the new state’s state viability. But if we understand flourishing as directly related to national identity (as nationalist theories do), then flourishing requires state viability, for example to create or maintain cultural and political institutions, on which a group’s national identity depends. The other problem for nationalist theories is that they neglect human rights, or risk encouraging ethnic cleansing and forced assimilation of minorities. This is because, in their account of legitimacy, nationalist theories focus primarily on the value of flourishing, and more precisely on the flourishing of the *seceding* group; thus they

effectively ignore the flourishing of the remainder state or other national groups. Yet major human rights violations would make it impossible for those other groups to exercise self-determination and to flourish in just circumstances. A more plausible conception of flourishing requires the ability to exercise self-determination and to live in circumstances of justice, including the adequate protection of basic rights. Thus again, by introducing considerations of self-determination and justice, we are able to reach a more plausible conception of flourishing, one that takes into account the flourishing of all groups involved, and one that shows that valuing flourishing precludes the risk of extremism.

Thus in reducing the question of secession to a matter of political legitimacy, nationalist theorists neglect human rights, and thereby yield a morally implausible answer to the question of secession, one that fails to consider all concerned groups' rights and interests equally. Avoiding this problem requires introducing considerations of self-determination and justice, in addition to considerations of flourishing. Proceeding in this way yields a more plausible conception of the value of flourishing, one that by definition accounts for human rights and thereby considers all concerned groups' rights and interests equally. In other words, reaching a plausible answer to the question of secession requires adopting an axiological approach, i.e. starting not from an account of political legitimacy, but directly from the three values of self-determination, justice, and flourishing.

CHAPTER 6

A Democratic Axiological Theory of Secession

1. The axiological approach

In Chapter 2, I argued that it is morally permissible for a group to secede if and only if it has a valid territorial claim and is able to protect its citizens' basic rights and to be economically viable, without undermining the remainder state's ability to protect its citizens' basic rights and to be economically viable. I showed that these three conditions of territorial justification, adequate protection of basic rights, and economic viability are grounded in the three values of self-determination, justice, and flourishing. That is, if we do not require those three conditions, we will end up with a theory that hinders certain groups' ability to exercise self-determination and to flourish in just circumstances, as current theories do. In other words, the three values of self-determination, justice, and flourishing are logically prior to, or motivate, the three conditions of territorial justification, adequate protection of basic rights, and economic viability.

Because the normative question of secession should thus be analyzed primarily in terms of those three values, Chapters 3, 4, and 5 focused primarily on the values of self-determination (choice theories), justice (just-cause theories), and flourishing (nationalist theories) as they relate to the normative question of secession. These three chapters showed that adequately conceptualizing each value, in order to offer a morally plausible answer to the normative question of secession, requires balancing it against the other two, so that no one value is ever prioritized over the other two. More precisely, these three chapters showed that focusing on any one of the three values without also considering the other two results in the unequal treatment of certain groups or people.

For example, choice theorists' primary focus on the value of self-determination, and more precisely on the self-determination of the seceding group, pushes them to neglect the question of territorial justification, and thereby the self-determination of the other main group concerned in any case of secession, namely the remainder state. Yet a seceding group taking a territory to which it does not have a legitimate claim interferes with another group's exercise of self-determination in its territory, and also constitutes an unjust appropriation, both of which might hinder this other group's ability to flourish. Thus arbitrating between conflicting claims of self-determination, i.e. treating all concerned groups' rights and interests equally, requires introducing considerations of justice and flourishing. In other words, balancing the value of self-determination against the other two values of justice and flourishing yields a morally more plausible conception of the value of self-determination.

Likewise, just-cause theorists' primary focus on the value of justice, and more precisely on the justice of the remainder state, pushes them to neglect non-remedial claims (such as Flanders, for example), and thereby justice for non-remedial secessionist groups. Yet this might hinder certain groups' (like Flanders) ability to exercise self-determination and to flourish, which would be unjust. Thus arbitrating between conflicting claims of justice, i.e. treating all concerned groups' rights and interests equally, requires introducing considerations of self-determination and flourishing. In other words, balancing the value of justice against the other two values of self-determination and flourishing yields a morally more plausible conception of the value of justice.

Similarly, nationalist theorists' primary focus on the value of flourishing, and more precisely on the flourishing of the seceding group, pushes them to neglect human rights,

and thereby the flourishing of other groups involved. Yet major human rights violations would make it impossible for those other groups to exercise self-determination and to flourish in just circumstances. Thus arbitrating between conflicting claims of flourishing, i.e. treating all concerned groups' rights and interests equally, requires introducing considerations of self-determination and justice. In other words, balancing the value of flourishing against the other two values of self-determination and justice yields a morally more plausible conception of the value of flourishing.

Thus self-determination, justice, and flourishing, in the context of secession, are most adequately conceived as requiring equal consideration of different groups' rights and interests. In this final chapter, I sketch a democratic axiological theory of secession, i.e. suggest that a democratic framework, because of its fundamental commitment to equality, seems most promising to give due weight to the three values that justify secession, as they are conceptualized in the previous chapters.

2. A democratic framework

In this section, I look at the conceptual and empirical connections between democracy and the three values of self-determination, justice, and flourishing. The concept of democracy indeed seems to centrally involve the notions of self-determination, justice, and flourishing. More precisely, democracy seems both to be grounded in and to promote those three values. First, the question of who the relevant *demos* should be when settling issues of secession seems to be most adequately answered by appealing to those values. That is, taking into account groups' ability to exercise self-determination and to flourish in just circumstances, when determining when a particular group is justified in seceding,

seems to yield a morally more plausible answer to the normative question of secession. Second, democracy in turn seems to cultivate those values. Indeed, as the rule of the people, by the people, and for the people, democracy seems by definition to foster self-determination; as the political instantiation of the idea of equality, it seems to be meant to foster justice; and as a decision-making process defined as equal participation and consideration, it seems most likely to foster flourishing. Thus my hypothesis is that adopting a democratic framework, i.e. drawing from democratic theory, when developing a normative theory of secession will most successfully give due weight to the three values of self-determination, justice, and flourishing. Democracy, equality, self-determination, justice, and flourishing, however, are essentially contested concepts. Testing my hypothesis, therefore, requires exploring the following questions:

1. In what specific ways are self-determination, justice, and flourishing, i.e. the most salient values in the normative question of secession, connected to democracy? This connection can be approached both ideally or conceptually as well as non-ideally or empirically:

2. Ideally or conceptually: How might a democratic perspective allow us, in developing a normative theory of secession, to give due weight to all three values, or to balance them against each other so as not to treat certain groups of people unequally, i.e. so as to reach a morally plausible conception of equality?

3. Non-ideally or empirically: How might the decision-making process about the possibility of a group's secession be handled democratically, for example through the use

of referenda? Can the process of redrawing boundaries, or determining who the *demos* should be, be done democratically?

Question 1 will be answered by looking at questions 2 and 3. In the next three subsections, I turn to question 2 by looking at the connection between democracy and self-determination (2.1), democracy and justice (2.2), and democracy and flourishing (2.3). In the fourth subsection, I turn to question 3 by looking at how boundaries might be democratically redrawn (2.4).

2.1. Democracy and self-determination

Secession is the result of a group exercising political self-determination. Democracy, likewise, is grounded in the value of political self-determination. Indeed, “Democracy, it is said, extends the idea that each ought to be master of his or her life to the domain of collective decision-making” (Christiano 2008b). This extension of personal self-determination to political self-determination can be understood in two different ways. First, it can mean that to the extent that “each person's life is deeply affected by the larger social, legal and cultural environment in which he or she lives [...], only when each person has an equal voice and vote in the process of collective decision-making will each have control over this larger environment” (Christiano 2008b). Second, it can mean that the *demos* is the self that is exercising political *self*-determination. It is with the modification of who the *demos* should be that secessionist claims are concerned, as modifying the territorial boundaries of an existing state and creating a new one entails modifying an existing *demos* and creating a new one. In the next two sections, I look at each of these two possible understandings in turn.

2.1.1. Democracy and personal autonomy

The first link between democracy and political self-determination attempts to justify democracy by appealing to personal autonomy, or by claiming that personal autonomy requires an equal say in collective decision-making, that is, that in order to have control over her own life, a person ought to have an equal say in the decisions that affect the larger environment in which she lives. There are several problems with this claim. First, as Buchanan points out, a person is not self-governing simply in virtue of the fact that she has an equal say in the voting process, because of the principle of majority rule:

[I]t is simply false to say that an individual who participates in a democratic decision-making process is self-governing; he or she is governed by the majority. Unless one (unpersuasively) defines self-government as government by the majority (perhaps implausibly distinguishing between the individual's apparent will and her 'real' will, which the majority is said to express), an individual can be self-governing only if he or she dictates political decisions. Far from constituting self-government for individuals, majority rule, under conditions in which each individual's vote counts equally, excludes self-government for every individual. (1998, 17-18)

Certain theorists attempt to justify a right to secede by drawing a parallel between political self-determination and democracy as required by individual autonomy (Philpott 1998). These theorists claim that, just as democracy is grounded in respect of individual autonomy, the right to political self-determination, including the right to secede, is likewise grounded in individual autonomy. As Buchanan points out, however, those theorists' argument is unsuccessful because democracy as defined by the principle of majority rule does not in effect necessarily result in individual autonomy.

Second, as Buchanan further points out, many things that importantly affect a person's environment and life (for example, the Constitution or market forces) are beyond the

scope of democratic voting, but this lack of control does not therefore signify a lack of equal respect of persons (1998, 21). Thus theorists who attempt to justify a right to secede by arguing that both political self-determination and democracy are required by equal respect of persons (Copp 1997) are unsuccessful in their attempt, because equal respect for persons is compatible with the fact that many factors that have significant consequences for a person's environment and life (including the drawing of boundaries) may not be decided democratically.

Of course, just because an argument for the right to secede cannot successfully invoke personal autonomy or equal respect for persons does not mean that there is no such right, or that its justification shares no commonalities with the justification of democracy. Likewise, the mere observation that not everything is democratically decided does not by itself tell us anything about whether the drawing of boundaries should be among those things that are, or among those things that are not, the object of a democratic vote. Thus the fact that not everything is democratically decided does not settle the question at hand, namely whether the drawing of boundaries can appropriately become the object of a democratic vote. In the next section, I consider one promising justification of the right to secede that is grounded in democracy.

2.1.2. Democracy and group self-determination

One compelling justification of a right to secede establishes a link between democracy and political self-determination that invokes group self-determination rather than personal autonomy. Wellman indeed argues that the right to democracy and the right to secede have the same justification, namely, the right people have to choose who will

politically represent them and make the laws to which they will be subject. Thus Wellman argues that because, in a democracy, it is the group as a whole, rather than each individual, that determines who the representatives will be, “what ultimately grounds democracy is *group* self-determination” (2005, 179, emphasis in original).

In this argument the entity that exercises self-determination is not the individual but rather the demos, or a group, as a collective exercising self-determination. This idea, the argument goes, is common to both democracy and secession. That is, democracy and secession are both about collective political self-determination. Indeed, secession consists in redefining the demos. Thus if one accepts the above justification of democracy, one must further accept a right to secede, as both are grounded in the very same right to collective political self-determination, or the right people have to choose who will politically represent them. Mill, in his *Considerations on Representative Government*, nicely captured this right: “One hardly knows what any division of the human race should be free to do, if not to determine with which of the various collective bodies of human beings they choose to associate themselves” (1972 (1862), 392).

Wellman points out that his own deontological justification of democracy (and of the right to secede) is further reinforced when one considers the cases of colonization, annexation, or benevolent monarchy (2005, 179). The reason why most contemporary political philosophers unambiguously reject these three types of rule as illegitimate is not because they typically yield bad outcomes. Indeed, one might imagine that, having established their rule, the colonizers, annexing forces, or beneficent monarchs do many things from which the population directly benefits, such as respecting and protecting each person and her basic rights equally, developing the economy, building roads, hospitals,

schools, etc. Rather, the reason for rejecting these three types of rule is that these rulers impose themselves on an unconsenting population, that is, that they violate that population's right to choose who represents them and makes the laws by which they have to abide. Thus, Wellman concludes, the right to secede and the right against colonization and annexation are both grounded in the democratic principle that a group has the right to choose its political representatives. These considerations of colonization and annexation bring me to the next section, which looks at the connection between democracy and justice.

2.2. Democracy and justice

As I argued in Chapter 2, justice requires the equal protection of individuals' basic rights. This protection requirement is grounded in the equal moral value of individuals. It is the equal moral value of individuals that grounds their basic rights, and these rights warrant protection. Because each individual deserves to have her rights protected, justice requires the equal protection of all individuals' basic rights.

Because democracy is premised on equality, as a political system it seems particularly well suited to realize justice. Buchanan, for example, even argues that justice *requires* democracy. Indeed, according to Buchanan, equal concern and respect for persons requires the existence of institutions to protect their fundamental rights, which are grounded in the moral value of human beings. Such institutions are thus a matter of justice: failing to help prevent the violation of persons' fundamental rights, when the cost of doing so would not be "excessive" or "unacceptable," is to fail to treat them with appropriate concern and respect, and therefore to wrong them. Thus Buchanan concludes:

“If justice requires recognizing the fundamental equality of persons and if this in turn requires that persons have an equal say over the most important decisions that determine the characteristics of the public order under which they live together, then justice requires democracy” (2002, 717).

If justice requires the protection of individuals’ basic rights, such as the right to physical security and to manage their own affairs, then, by the same token, justice would seem to require the protection of groups’ basic rights, such as the right to physical security and to manage *their* own affairs – indeed, a group’s right to determine who its political representatives will be, for which Wellman argues, is chief to that group’s ability to manage its own affairs. It is clear that the cases of colonization and annexation mentioned in the previous section violate a group’s right to select its political representatives and to manage its own affairs, which is one of a group’s basic rights. To the extent that a secessionist group’s efforts to exercise political self-determination by choosing its own political representatives are opposed and resisted, it too suffers a violation of one of its basic rights.

At this point, an important clarification is in order. The analogy between secessionist groups and colonized or annexed populations rests on their being similarly hindered in their ability to exercise the fullest degree of political self-determination. Though it is true that the situation of some national minorities in existing multinational states is sometimes strikingly similar to that of colonized peoples under alien rule prior to decolonization – domination by a foreign government, lack of political autonomy and control, economic exploitation, and human rights violations (Buchheit 1978, 18) – it would be absurd to claim that *all* secessionist groups *in general* (even when they are prevented from creating

their own independent state) suffer the same kind of oppression as many colonized or annexed peoples. For example, the current Québécois and Flemish may share with the Congolese under Belgian rule or the native Canadians under British and French rule certain limits on their ability to exercise political self-determination, but it would be preposterous to claim that the current Québécois and Flemish are deprived of self-determination or suffer injustice to the same degree as the Congolese under Belgian rule or the native Canadians under British and French rule. Thus the claim that all groups should have the right to select their political representatives in no way entails the separate claim that any group that is prevented from doing so through secession therefore suffers the same kind of oppression.

These observations, however, should not in any way weaken the argument that the main reason that prompts us to reject colonization or annexation as illegitimate types of rule (namely, the violation of a group's right to select its political representatives) is the same reason that supports a right to secede. Even if further violations of basic rights (such as physical security) might certainly add to the gravity of the situation, it is not those additional rights violations that make colonization and annexation illegitimate (though they are admittedly common occurrences in cases of colonization and annexation) – otherwise we would be committed to the implausible claim that beneficent colonizers or annexing forces are legitimate.

This point can be reinforced by looking at Buchanan's account of political legitimacy, introduced in Chapter 4. Buchanan sets forth the following three conditions. In order to be legitimate, a state must respect its citizens' fundamental rights both in content (substantially) and in form (procedurally) and must not be a usurper (Buchanan 2002,

703). Yet as I argued in Chapter 4, this third condition is necessary but non-sufficient. Buchanan indeed defines a usurper as an entity “wrongly deposing a legitimate wielder of political power.” Presumably, the problem with a usurper is that it coercively substitutes a therefore illegitimate wielder of political power to a legitimate one, that is, that it prevents a legitimate one from wielding power. If this is correct, then the third condition also needs to include as illegitimate attempts to maintain an existing wielder of power when another potential legitimate one questions its legitimacy. That is, the third condition needs to include as illegitimate attempts to prevent a legitimate power wielder from wielding power. Such prevention indeed turns a previously legitimate power wielder into an illegitimate one.

Thus I argued in Chapter 4 that the case of the former USSR forcibly integrating the Baltic States is, in the relevant respects, on a par with, for example, Canada opposing the secession of Quebec. In both cases, a legitimate power wielder is prevented from wielding power by a competing power wielder which thereby becomes illegitimate. In response to the objection that the Baltic States had suffered an injustice whereas Quebec has not, I argued that this objection simply begs the question against Quebec: what is at issue is precisely whether Canada’s opposition to the secession of Quebec constitutes a violation of Quebec’s right to self-determination, that is, constitutes an injustice. The argument presented above that a group has a fundamental right to select its political representatives suggests that such an opposition in fact *is* an injustice.

As it is formulated, Buchanan’s third condition for political legitimacy accounts for the case of the Baltic States, but not for that of Quebec. Yet including the latter is just as fundamental to respecting a group’s basic right to choose who its political representatives

will be. Thus in order to take democracy and its commitment to equality and justice seriously, Buchanan needs to modify his third condition for political legitimacy.

The moral significance of a group's right to select its political representatives can be further illuminated by looking at the problem of persistent minorities. This problem occurs when certain polity members' participation and consideration in the majoritarian decision-making process are systematically unequal. As Christiano explains:

Though this problem is often connected with majority tyranny, it is distinct from the problem of majority tyranny because it may be the case that the majority attempts to treat the minority well, in accordance with its conception of good treatment. It is just that the minority never agrees with the majority on what constitutes proper treatment. Being a persistent minority can be highly oppressive even if the majority does not try to act oppressively. [...] The conception of democracy as grounded in public equality can shed light on this problem. It can say that the existence of a persistent minority violates public equality [because] that minority is being treated publicly as an inferior because it is clear that its fundamental interests are being set back. Hence to the extent that violations of public equality undercut the authority of a democratic assembly, the existence of a persistent minority undermines the authority of the democracy at least with respect to the minority. This suggests that certain institutions ought to be constructed so that the minority is not persistent. (2008b)

These institutions can take the form of nonmajoritarian mechanisms (for example, disproportionate representation or veto rights), but also, I would argue, of a secession process.

What is useful in Christiano's description of the phenomenon of persistent minorities is that even when the majority attempts to treat the minority well, the latter might still have a valid secessionist case. This is because being a persistent minority corresponds to a violation of a group's right to select its political representatives and thereby the laws to

which it will be subject.³⁵ In other words, being a persistent minority constitutes an injustice that *undercuts the authority* of the democratic assembly, which might warrant secession, or the formation of a new demos. This in effect allows us to broaden the category of injustice (pace, for example, Buchanan's account of political legitimacy).

Thus the right to secede is grounded in the same democratic principle of a group's right to choose its political representatives as is the right not to be colonized, annexed, or a persistent minority. And because democracy is committed to equality or justice as the equal protection of individuals' and groups' basic rights, a commitment to democracy and justice would prevent the violation of a group's right to select its political representatives.

2.3. Democracy and flourishing

I argued in Chapter 5 that a national group flourishes when it is able to meet both the objective and the subjective components of flourishing. That is, in order to flourish, a national group must first have access to food, clothes, shelter and not be exposed to violent assault; but it must also be able to pursue the ends and goals it has chosen for itself (for example, protecting its language or its cultural heritage), which the group deems important for its identity or source of meaningfulness. Thus national self-determination is instrumentally valuable for national flourishing, which nationalist theorists argue is in turn instrumentally valuable not only for a group's but also for its members' identity and source of meaningfulness (Margalit and Raz 1990; Kymlicka 1995, 2001). Considering the case of illiberal groups and decent peoples, I suggested that

³⁵ Even if the minority were able to elect representatives, the problem of persistent minorities might still remain if those representatives were systematically outvoted in parliament.

to the extent that national self-determination fosters the flourishing of the national group, it will be difficult to make a moral case for national self-determination if the group's flourishing relies on morally problematic principles, such as that some of its members are not (fully) equals. Thus I suggested that making a morally more plausible case for national self-determination might require, on the part of the national group, a commitment to equality between the members of that national group. If such a commitment exists, then arguably the flourishing of the national group will foster the flourishing of its members. To the extent that flourishing means being able to pursue certain chosen ends or goals, which in turn requires fulfilling certain interests, the national group and its members will share common interests.

Thus as explained in Chapter 5, on this analysis, the *moral case for national self-determination* requires two things: a commitment to equality (the moral element) and the fulfillment of certain interests (the flourishing or national self-determination element). I then suggested that democracy is particularly well suited to fulfill these two requirements, that is, that national self-determination requires a democratic commitment on the part of the national group. With regard to the first requirement (equality), democracy by definition implies equality between the members of the demos as equal participants in the political decision-making process. With regard to the second requirement (interests), democracy further corresponds to government of the people, by the people, for the people, which means that the people and its interests will be represented and protected. Thus national self-determination, which fosters the flourishing of a national group and that of its members, requires a commitment to equality and the fulfillment of certain interests, and therefore requires democracy.

I now want to suggest that a further implication of the national group's democratic commitment is that the secession process should be democratically determined: that is, the decision to secede should be the result of a majority vote in a referendum or plebiscite in the territory occupied by the national group that wishes to secede (Beran 1998, 38-39). Indeed, all members (say, of at least eighteen years of age) of the national group should be able to voice their opinion in determining whether the flourishing of the national group requires independent statehood, that is, in determining the political status of their national group. But what about the larger state from which the national group wishes to secede: should its population not also get a say in this decision, which clearly will affect it as well? In other words, the secession process can be democratically determined only after it has been determined who the demos is in the first place (Jennings 1956, 56).

Thus, when democratically determining the secession process, one must first determine who the demos is, keeping in mind that defining the demos as the national minority seeking to secede might seem like begging the question against the larger state, much like defining the demos as the larger state might seem like begging the question against the national minority seeking to secede. If one is inclined to argue, as I am, that the demos is the national minority, simply in virtue of the fact that, as Mill says, "the question of government ought to be decided by the governed" (1972 (1862), 392), one must answer the charge that this seems to undermine the democratic principle of majority rule: the minority can use the threat of seceding as a way of undermining majority rule. But it seems fair to say that the principle of majority rule is justified only in those cases where the definition of the demos (or the boundaries of the political unit) is legitimate to begin with. Yet this is exactly what is in question in the case of secessionist claims; so the

majority rule objection would not hold. Moreover, nonmajoritarian mechanisms are already in place in many democracies (for example, special representation or veto rights), precisely to protect minorities, which protection, as will be suggested below, is required by democracy. In other words, nonmajoritarian mechanisms do not necessarily run counter to democracy, and might indeed be required by it. In any case, what should be noted here is that for the secession process to be democratically determined means that the decision to secede should be the result of a majority vote in a referendum or plebiscite in the territory occupied by the national group that wishes to secede.

Because another national group may also be living on the territory occupied by the national group wishing to secede (for example, the Anglophones living in Quebec), the referendum or plebiscite will also be an opportunity for the members of this other national group to voice their opinion about a potential secession. At the same time, however, because they form a minority on that territory (though they might actually belong to the main national group within the larger state, as with the Anglophones in Canada), the odds of having an actual impact on the decision to secede might be against them from the start (at least in cases where a very large majority of the main national group occupying the territory is in favor of secession). This means that, unless that other national group moves out of that territory, it will form a national minority within the new state, if secession actually occurs.

Of course, this national minority will be part of the demos of the new state, but unless certain nonmajoritarian mechanisms are put into place (such as special representation or veto rights), that national minority and its interests will not be properly represented and protected, as with its lack of impact on the decision to secede in the first place. Here it is

important to note that such nonmajoritarian mechanisms would not necessarily be antidemocratic, and indeed might be required by the democratic commitment of treating all members of the demos, including the members of the national minority, as equal members of the demos and thus as equal participants in political decision-making. Thus the very same equality requirement that applied with regard to the members of the main national group (that is, the group seeking to secede) also applies to the members of national minorities that would find themselves trapped in the new state after the main national group had achieved independent statehood. And fulfilling this equality requirement, that is, treating all members as equals, may in practice require unequal treatment (special representation or veto rights).

To sum up, making a moral case for national self-determination and flourishing requires that the democratic element be present throughout. First, it requires, on the part of the national group, a commitment to equality between the members of the national group. This commitment in turn implies that the flourishing of the national group will foster the flourishing of its members. This in turn means that the national group and its members will share common interests, which need to be represented and protected. Democracy is particularly well suited to fulfill these two requirements. A further implication of the national group's democratic commitment is that the secession process should be democratically determined through a referendum or plebiscite in the relevant territorial unit. Moreover, the very same equality requirement that applied with regard to the members of the main national group (that is, the group seeking to secede) also applies to the members of national minorities that would find themselves trapped in the new state after the main national group had achieved independent statehood.

2.4. Democratically redrawing boundaries

The claim that boundaries should be democratically redrawn strikes many as a mistaken or confused one, as illustrated by Jennings' oft cited words: "On the surface [self-determination] seemed reasonable: let the people decide. It was in fact ridiculous because the people cannot decide until somebody decides who are the people" (1956, 56).

Territorial boundaries, however, can and should be democratically redrawn by using referenda in settling questions of secession. Beran nicely explains how this might be done:

The reiterated use of the majority principle seems to be the only method of resolving such [secessionist] conflicts that is consistent with the voluntary association principle. According to this method, a separatist movement can call for a referendum, within a territory specified by it, to determine whether there should be a change in this territory's political status, e.g. whether it should secede from its state. If there is a majority in the territory as a whole for secession, then the territory's people may exercise its right of self-determination and secede. But there may be people within this territory who do not wish to be part of the newly dependent state. They could show, by majority vote within their territory, that this is so, and then become independent in turn, or remain within the state from which the others wish to secede. This use of the majority principle may be continued until it is applied to a single community (i.e. a community which is not composed of a number of communities) to determine its political status.

The reiterated use of the majority principle to settle disputes about political borders always yields a determinate result. [...] It also maximizes the number of individuals who live in mutually-desired political association, an ideal implicit in the right of freedom of association. (1998, 38-39)

Not everyone, however, is convinced by Beran's proposal. A strong opponent of applying the majority principle to determine territorial boundaries is Buchanan (2003, 245-247). Buchanan indeed argues that there is an important difference between using the majority principle once boundaries have been settled and using it to determine those very

boundaries; and that to use it for the latter when it was intended for the former is to make inappropriate use of a procedure meant for other purposes. Buchanan explains that there are two types of justification for the use of democratic procedures to make decisions within existing borders, neither of which applies to decisions about changing those borders.

The first, deontological, justification of a democratic decision-making procedure is the principle of equal respect for persons and consideration of their interests, which translates into having an equal say on the basic rules of the polity. The second, consequentialist, justification, is that a procedure that gives each citizen a vote is more likely to produce better results than a constitutional amendment. Buchanan then contends that the first justification cannot be invoked to redraw boundaries because, if anything, equality requires that *all* the citizens of the existing state, not just the secessionist group, be given an equal say in the question of secession. Likewise, the second justification, Buchanan asserts, cannot be invoked to redraw boundaries because opening up the question of secession to a vote would not be more likely to produce better results than a constitutional amendment.

In response to Buchanan's rejection of the first justification, I would reiterate the point made earlier that the principle of majority rule is justified only in those cases where the definition of the demos (or the boundaries of the political unit) is legitimate to begin with. Yet this is exactly what is in question in the case of secessionist claims; so Buchanan's argument simply begs the question. As for Buchanan's rejection of the second justification, it is mostly unsupported: unless Buchanan is simply begging the question again by assuming that opening up the question of secession to a vote would

automatically produce worse results than a constitutional amendment, we are given no reason to believe that this would actually be the case.

3. Conclusion

In developing the axiological approach, Chapters 3, 4, and 5 showed that the values of self-determination, justice, and flourishing, in the context of secession, are most adequately conceived as requiring equal consideration of different groups' rights and interests. Because democracy is fundamentally committed to equality, in this final chapter I sketched a democratic axiological theory of secession. I looked at the conceptual and empirical connections between democracy and the three values of self-determination, justice, and flourishing. Doing so showed how drawing from democratic theory might bolster the axiological approach for which I have argued in this project.

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