A Nationalist Theory of Secession

Ruairí Maguire

Nuffield College

University of Oxford

Thesis submitted in partial fulfilment of the requirements of the degree of

Doctor of Philosophy in Politics in the Department of Politics and

International Relations

Trinity Term 2022

Word count: 75,448

Abstract

In this thesis I argue that nations can have a right to unilaterally secede from a legitimate, non-usurping state. In addition, I argue that they are special in this regard. I argue that there is a presumption in favour of collective autonomy by nations, establishing this claim by showing that co-nationality can be an intrinsically valuable relationship and that this grounds a strong claim to self-determination. I then argue that there are no considerations that *always* defeat the presumption in favour of collective autonomy by nations—for example, unilateral secession from a legitimate state need not wrong citizens of the remainder state by wrongfully taking territory. As such, nations can have an undefeated claim right to unilaterally secede from a legitimate state.

I establish the second part of the claim above—that nations are special in this regard—in two ways. First, I argue against more permissive accounts of self-determination; accounts that attempt to ground a right to secede for any territorially concentrated group capable of performing the basic functions of statehood and governing in a satisfactory manner. Secondly, I argue that despite the fact that other kinds of group—such as religious groups—share the features in virtue of which nations have a claim to self-determination, the content of these groups' identities is too narrow to be the basis of a pluralistic political identity, and such, they would wrong members of minority groups within their territory by seceding. This is not true of nations, I argue.

Contents

A note on section numbering: sections appear numbered with chapter number in the contents, but without in the main text. For example, 5.2.1 appears as 2.1 in Chapter 5, and is referred to as such.

Acknowledgements

I would like to thank my supervisors, Daniel Butt and David Miller, for their feedback and advice. Both of them have been generous with their time, and have given me much useful criticism and direction. I have greatly benefited from their supervision.

Cécile Laborde has been extremely helpful in her role as College advisor, having read several of my chapters and provided incisive and helpful comments. I am also grateful for her role in facilitating Political Theory in Nuffield College. I have benefitted from being in such a congenial environment in which to do Political Theory.

The following people have given me written or verbal feedback on parts of this thesis: Maxime Lepoutre, Elise Roumeaus, Lynnea Schuck, Daniel McDermott, Shai Agmon, Charlie Richards, Zofia Stemplowska, and anonymous reviewers for *Philosophy, Politics and Economics* and *The Journal of Moral Philosophy*. I am grateful to them.

I presented various parts of this thesis at the following events and seminars: The 2019 Oxford Graduate Conference in Political Theory, the Nuffield Workshop in Political Theory and the Oxford Work in Progress Political Theory Seminar. I am grateful to the audiences and the organisers of these events.

I received full funding and a maintenance grant during the first three years of my DPhil from Nuffield College and the Oxford Department of Politics and International Relations. I am grateful to both institutions.

Finally, I would like to thank Dónal and my family for their support. I am particularly grateful to Dónal for lending me his laptop during the closing stages of writing this dissertation.

Introduction

Since 1945, 131 sovereign states have come into being.[1] Taking the long view, our era is one of state proliferation. This is a contrast with earlier eras, where, through conquest, dynastic unions, and so on, the general pattern was one of state consolidation.[2] A good deal of this proliferation, especially since the Soviet Union and Yugoslavia collapsed, has been through secession. Secessionist movements are active in every part of the world today, and around half of all civil wars involve secessionism.[3] Secessionist crises are not limited to the less stable parts of the world—several developed democracies, including the United Kingdom and Spain, have secessionist movements with strong popular support.

Given the prevalence of secessionism, we have an interest in knowing how to respond to secessionist demands and secession crises in a coherent and principled way. In other words, we need a moral theory of secession; an account of the circumstances in which secession is and isn't permissible, and an explanation of why it is or isn't. We don't need this theory solely to guide our moral reactions to secessionism. We also need this theory so that our institutions and our laws (constitutional and public international law), can better conform to moral principles.

Our views about secessionism and self-determination, especially insofar as these views are expressed in public international law, seem to be muddled. On the one hand, the self-determination of "peoples" is an important principle in international law: as James Crawford notes, both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights state that all peoples

[1] Ryan D. Griffiths, *The* Age *of Secession* (Cambridge University Press, 2017), p. 1.
[2] *Ibid*, pp. 2-3.
[3] p. 4.

have the right to self-determination.[4] Nevertheless, outside the colonial context, the international community has typically strongly opposed unilateral secession.[5] Unilateral secession has been thought to be incompatible with the principle of territorial integrity, one of the lynchpins of the international legal order. [6]

But how does this square with the purported right to self-determination of "peoples"? And what counts as a "people" in the first place? In other words: what is the content of the right to self-determination, and which groups have this right? It's one thing to have a coherent account of what international law says about these questions. As I've said, we also want to know whether the status quo in international law is *justified* from a moral point of view. And in order to know that, we need to know, *inter alia*, whether there is a moral principle corresponding to the legal right of self-determination, what its content is, and to whom it applies. As I've said, we need a moral theory of secession and self-determination.

There are indeed existing moral theories of secession. Some of them are what we might call "restrictive" theories: they hold that *unilateral* secession is permissible only in a very limited set of circumstances. Others are very permissive: they allow unilateral secession whenever a group of people is capable of running a state in an adequate way. In this thesis, I set out a *nationalist* theory of the right to secede. I argue that nations have a presumptive claim to unilaterally secede from a legitimate, rights-respecting state, and that this claim is not always defeated. Nations are the only kind of group of which this is true, I argue. In that respect, my theory—like all Ascriptivist theories—is a middle-ground position. My theory entails a more permissive approach to secession than the

---

[4] James Crawford, *Brownlie's Principles of Public International Law* (9th edition) (Oxford: Oxford University Press, 2018), p. 618.
[5] James Crawford, *The Creation of States in International Law* (2nd edition) (Oxford: Oxford University Press, 2007), p. 388).
[6] *Ibid*, p. 390.

status quo in international law, but it does not license a free-for-all. Instead, I articulate a theory that allows greater room for self-determination while respecting important goals of the international legal order, such as stability and respect for minority rights.

Section 1: Subject of the Thesis

The subject of this thesis is the right to unilaterally secede from a *legitimate* state. My thesis aims to provide the first thesis-length defence of a nationalist theory of the right to secede. The primary question I will answer is "Who has the general *claim right* to unilaterally secede from a legitimate, *non-usurping state*?" Let me explain why I ask *this* question, before giving an outline of my answer to it.

First, why *general* right? General right is used in contradistinction to *special* rights—that is, rights held in virtue of particular acts or undertakings (such as promises). A general right, by contrast, does not "arise out of" any particular undertaking, transaction or relationship.[7] In the case of secession, a group might have a special right to unilaterally secede because the constitution of the state it wishes to leave contains a clause that permits unilateral secession, or because it was granted such a right by an ordinary piece of legislation. The question I am asking is whether a group has the moral right to unilaterally secede *independently* of any such special right. The question of which groups have the special right to secede is question for scholars of domestic constitutions and international law.

Secondly, why claim-right? If I say that a group has a claim-right to unilaterally secede, I mean not merely that they have a liberty-right or permission to do so, but that others are under a correlative obligation to allow them to do so. Legitimate states are ordinarily thought to have the right to self-determination—this is a bundle of rights,

[7] H. L. A. Hart, "Are there any natural rights?" in Jeremy. Waldron (ed) *Theories of Rights* (Oxford: Oxford University Press, 1984).

including claim-rights against interference by outsiders. When I am asking whether a group can have the claim-right to unilaterally secede, in effect, I am asking whether a secessionist group can have a claim to self-determination that is as strong, morally speaking, as that of a state.

Thirdly, why do I focus on unilateral secession? States claim rights to self-determination and territorial integrity. These claims are, for legitimate states, plausible. Having these rights gives them, *prima facie*, a claim against interference in the exercise of their jurisdictional rights over their territory, and a claim against the unilateral taking of their territory. Unilateral secession *prima facie* involves a violation of these rights. By contrast, consensual secession raises no such issues—the state from which the secessionists are attempting to secede has voluntarily relinquished its rights over the seceding territory.

Finally, why do I restrict the scope of the question to legitimate, non-usurping states? It is standard in the literature to distinguish between a remedial right to secede and a primary right to secede. A group has the remedial-right to secede if and only if it has been subject to serious injustices by its state (such as mass-killing, ethnic cleansing and so forth) and secession is the only way to escape these injustices.[8] Unjust annexation is typically thought to be a ground of the remedial right to secede, and so this explains the "non-usurping" clause. A primary right to secede is independent of whether the group has been subject to serious injustices. A group's claim to a primary right to secede is grounded, not in its interest in escaping serious injustices, but in its claim to self-determination (where this is grounded by some interest or claim that is not based on escaping serious injustice).[9] In short, a primary right could be held against a legitimate,

[8] Allen Buchanan, *Justice, Legitimacy and Self-Determination*, (Oxford: Oxford University Press, 2004).
[9] I should point out that I do not think that a group that has an active secessionist movement is, just in virtue of not being independent, the victim of serious injustices.

non-usurping state. Now it is far more controversial whether a group can have a primary right to secede than whether a group can have a remedial right. And it seems to raise deeper philosophical questions; for example, which groups or entities have a claim to self-determination, and why? Can legitimate states' rights to their territory be overridden? In short then, in this thesis I am concerned with whether there is a primary right to secede.[10]

To recap, the primary question I want to answer in this thesis is "Who has the general *claim right* to unilaterally secede from a legitimate, *non-usurping state*?" My answer is that *nations* have a presumptive claim to unilaterally secede, that this claim is not always defeated, and that nations are special in this regard. As such, there are three things I need to explain in this thesis: the first is (i) why nations have a presumptive claim to unilaterally secede, the second is (ii) why this presumptive claim is not always defeated, and the third is (ii) why nations are special in this regard.

With respect to (i) and(ii), I need to further argue that (a) there can in general be a primary right to secede, and (b) argue that *nations*, as such, have a presumptive claim to secede. As I mentioned above, accounts of the right to secede are standardly distinguished into two categories: *remedial right only* and *primary right* theories. According to remedial right only theories, there is no primary right to secede.[11] On this view, a group can have a right to unilateral secession only if the group has been subject to serious injustices by the state, and secession is a means of escaping those injustices. The right to secede, on this view, is a *remedial* right, not a primary right. Primary Right views do not make suffering from serious injustices by one's state a necessary condition of the right to unilaterally secede. There are two kinds of Primary

[10] Note that endorsing a primary right theory is compatible with accepting that there can be a remedial right to secede, including a right held by groups with no primary right to secede.
[11] Allen Buchanan, "Theories of Secession", *Philosophy and Public Affairs*, 26 (1), 1997, pp. 31-61; *Justice, Legitimacy and Self-Determination.*

Right theory: *Ascriptivism* and *Voluntarism*. According to Ascriptivism, groups with a shared culture have a claim to secede. The classic statement of Ascriptivism is Margalit and Raz's "National Self-Determination".[12] Margalit and Raz, like most ascriptivists, focus on nations. Nationalist theories of secession are a sub-set of ascriptivist theories. A further family of answers to (i) and (ii) is Voluntarism. There are two types of Voluntarism: individualist and non-individualist versions. According to individualist versions, the right to secede is reducible to individual rights; e.g., to freedom of association.[13] According to non-individualist versions, any territorially concentrated *group* can have the primary right to secede. For these latter theories, the right to secede is *irreducibly collective*.[14] I shall defend a Nationalist answer to (i): that is, I want to argue that there is a presumption that nations have the right to secede, and no such presumption in favour of other kinds of groups, such as non-national sub-state regional groups (e.g. Albertans) or religious or ethnic groups.

There is a major challenge to *primary right theories* in general. This is the objection that unilateral secession from a legitimate state requires the *wrongful* taking of territory, because legitimate states have the right to rule their territory.[15] To defuse this objection, I will look at *statist* theories of territorial rights, which attribute territorial rights to states, and hold that these rights are *primitive*—that is, states' rights to territory are not reducible to the property rights of their members, nor to the collective rights of the

---

[12] Avashai Margalit and Joseph Raz, "National Self-Determination", *Journal of Philosophy*, 87 (9), 1990, pp. 439-61.
[13] Eric Cavallero, "Value Individualism and the Popular-Choice Theory of Secession", *Social Theory and Practice*, 43 (1), 2017, pp. 125-153; Harry Beran, "A Liberal Theory of Secession", *Political Studies*, 32 (1), 1984, pp. 21-31; David Gauthier, "Breaking Up: An Essay on Secession", *Canadian Journal of Philosophy*, 24 (3), 1994, pp. 357-71.
[14] Andew Altman and Christopher Wellman, *A Liberal Theory of International Justice*, (Oxford: Oxford University Press, 2011), p. 11.
[15] Lea Brilmayer, "Secession and Self-Determination: A Territorial Interpretation". *Yale Journal of International Law*, 16, 1991, pp. 177-202; Allen Buchanan, *Secession: the morality of political divorce from Fort Sumter to Lithuania*, (Boulder, CO: Westview Press, 1991); *Justice, Legitimacy and Self-Determination*; Anna Stilz, "Nations, States and Territory", *Ethics,* 121 (3), 2011, pp. 572-601.

nations that make them up. I will reconstruct these theories and show that the most plausible version of the statist theory does not have the theoretical resources to rule out unilateral secession. The objection from wrongful taking, I conclude, fails. This again is an important gap in the literature on the two topics; while many theorists of territorial rights discuss secession, there has been little systematic attempt to link the two and to relate the implications of different accounts of territorial rights to the different three types of responses to question (i) and (ii) distinguished above.

This brings me to (iii). There are two challenges to *nationalist* theories in particular that have not been fully addressed in existing literature. The first challenge is from voluntarism—that is, voluntarist theories of secession, on which any capable group has the right to secede, provide alternative accounts of the value of collective self-determination from the accounts that nationalists rely on. These accounts appeal to widely shared liberal values, such as democratic autonomy,[16] freedom of association,[17] and equal respect.[18] Nationalists need to explain why we should prefer their conception of self-determination. The second challenge is that the interests that nationalists pick out as grounding a right to self-determination for nations are also shared by religious and ideological groups.[19] Nationalists need to explain why we should privilege nations when it comes to rights of self-government. In this thesis, I want to take up both of these challenges. Thus, the central aim of the thesis is to fill a gap in the literature about the right to secede—the literature lacks a comprehensive and plausible nationalist account of the right to secede, one that, as well as giving a satisfactory account of nations' claims to secede, explains why nations are to be privileged.

---

[16] Daniel Philpott, "In Defense of Self-Determination", *Ethics*, 105 (2), 1995, pp. 352-385.
[17] Beran, *op. cit.*
[18] Cavallero, *op. cit.*
[19] Allen Buchanan, "What's So Special about Nations?" *Canadian Journal of Philosophy*, 26, 1997, pp. 283-309.

To give a rough outline of my strategy in the thesis, I want first to establish a strong presumption in favour of self-determination for nations, before explaining why this presumption is not always defeated in the case of unilateral secession. Along the way I explain why nations are normatively special when it comes to the right to secede.

A final point: I do not argue that *all* nations have the claim-right to unilaterally secede. All, in fact, that the propositions I defend in this thesis entail is that there is at least *one* possible instance where a nation has the claim-right to unilaterally secede from a legitimate, non-usurping state, and that nations are special in this regard. As I argue throughout the thesis, there are number of considerations that can defeat a nation's claim to self-determination—for example, being unable to give credible guarantees of the fair treatment of minorities, or leaving the remainder state without the capacity to protect its citizens' basic rights.

2: An Outline of the Thesis

Chapter 1: Theorising Secession

In chapter 1, I give an overview of the concept of secession, give an outline of the different theories of the right to secede, and discuss the distinction between institutional and non-institutional theories of secession. I shall defend a non-institutional approach to theorising about secession.

Taxonomy of Theories and the Right to Secede

The now standard taxonomy of theories of justified secession was developed by Allen Buchanan in his "Theories of Secession". He distinguishes between Remedial right only theories and Primary right theories, the latter of which he further divides into into Ascriptivist and Voluntarist theories.[20] I then categorise theories of secession by their

[20] "Theories of Secession", pp. 37-8.

degree of *permissiveness* with respect to the right to unilaterally secede. I point out that the nationalist theory I defend is intermediate between the remedial right only view and more permissive voluntarist views.

Institutional versus Non-Insitutional Theories

The main argument of this chapter will be around the debate between institutionalists and non-institutionalists about theorising secession. To introduce this debate, we should first ask the question: why do we need a theory of the right to secede? There are two functions a theory of secession can fulfil. One function is to guide our political responses to secessionist activity. Citizens of secessionist regions, citizens and leaders of countries with secessionist minorities and citizens and leaders of other states need to be able to respond to secessionist activity in a principled way. To do this, they need to know the conditions (if any) under which secession is justified.[21] This type of theory, following Miller, we can call a *political* theory of secession.[22] This kind of theory tries to work out the basic principles that should govern secession. Buchanan[23], Wayne Norman[24] and David Lefkowitz[25] strongly criticise this way of theorising secession, claiming that secession is an "inherently institutional" concept. Buchanan argues that because secession is such a concept, *institutional moral reasoning is* the appropriate way to theorise secession.[26] He claims that a theory of secession should answer questions such as: under what conditions, (if any) should it be legal under international law to unilaterally secede from a state? We can call this an *institutional* theory of secession.[27]

---

[21] Cf. David Miller, "Secession and the Principle of Nationality", in Margaret Moore (ed) *National Self-Determination and Secession* (Oxford: Oxford University Press, 1998), pp. 63-4.
[22] *Ibid*, p. 64.
[23] "Theories of Secession"; *Justice, Legitimacy and Self-Determination*, pp. 15, 213-16.
[24] Wayne Norman "The Ethics of Secession as the Regulation of Secessionist Politics", in Margaret Moore (ed) *National Self-Determination and Secession* (Oxford: Oxford University Press, 1998).
[25] David Lefkowitz, "International Law, Institutional Moral Reasoning, and Secession"*, Law and Philosophy*, 37 (4), 2014, pp. 385-413.
[26] *Justice, Legitimacy and Self-Determination*, pp. 345-8.
[27] "Theories of Secession", pp. 31-2.

For Buchanan, institutional moral reasoning requires that we consider how the incorporation of a right would affect morally defensible elements of existing institutions.[28] There are three major criticisms of Buchanan's methodological approach. The first criticism is that it entrenches the status quo in a way that preserves existing injustices.[29] One way that proponents of the non-institutional approach to secession characterise what they are doing is finding the basic principles that should govern secession and self-determination.[30] In order to know whether Buchanan's way of thinking about secession then *would in fact* preserve objectionable features of the status quo, I argue, we need to know how weighty people's interest in collective self-determination is, what grounds this interest, and *which entities* (states, nations, sub-national units) have a claim to it. So, in this sense, non-institutional considerations are prior. A related objection is that Buchanan's conception of institutional reasoning is unduly narrow or conservative because it puts an undue emphasis on the impact of the incorporation of moral principles on *existing institutions*, rather than their effects *tout court*.[31] A third objection, which I develop, is that Buchanan overlooks the possibility of a more contexual approach to institutionalising secession, one that considers the incentive effects that regional agreements and organisations such as the European Union, or NAFTA, can bring to bear on both secessionists and states dealing with secessionists. Indeed, this approach is suggested by Buchanan's own later work in just-war theory, where he argues that the permissibility of, for example, preventive war, depends on the institutional context in which states go to war, and argues for the adoption of certain

[28] Cf. Hsin-wen Lee, "Institutional Morality and the Principle of National Self-determination." *Philosophical Studies*, 172 (1), 2015, pp. 207-226, at p. 210.
[29] Margaret Moore, *The Ethics of Nationalism*, (Oxford: Oxford University Press, 2001), p. 204; Kai Nielsen, "Liberal Nationalism and Secession", in Margaret Moore (ed) *National Self-Determination and Secession*, (Oxford: Oxford University Press, 1998), p. 112.
[30] Miller, *op. cit.*, p. 64; Moore, *op. cit.,* pp. 205-6; cited Lee, *op. cit*., p. 224.
[31] Lee, *ibid.*

institutional mechanisms for regulating preventive war.[32] I close this sub-section with a discussion of the relationship between institutional and non-institutional theorising and ideal/non-ideal normative theory.[33]

In the following section, I clarify the taxonomy of theories of secession. I argue that the usual distinction between remedial and primary right theories of secession is not exhaustive; there is a third kind of a theory, which I call the alleviative theory of secession. I make this distinction not because I believe my theory falls under this heading, but because I think it is important to be clear about the conceptual space available for theorists of secession. Finally, I explain how and why my theory is a *nationalist* theory of secession.

Chapter 2: Against Voluntarism

As I've mentioned, one challenge for nationalist theorists is to explain why *nations* are special. An important part of meeting this challenge is to show that the more permissive theories of secession—voluntarist theories—are not plausible. In Chapter 2, I give an overview of these theories, and argue that none of the different voluntarist accounts are satisfactory.

Individualist Voluntarist Theories

Individualist voluntarist theories hold that a group's right to secede is *reducible* to the rights of the individuals who make it up. The right to secede, then, is grounded by *individual* freedom of association, or, alternatively, by individuals' rights to equal treatment by the political institutions to which they are subject. Critics of the freedom of association angle argue that (i) it is not plausible that people have a right to political

[32] Allen Buchanan, *Institutionalizing the Just War,* (Oxford: Oxford University Press, 2018). This might be thought to be a *tu quoque* objection, but really what I am trying to show is that an institutionalist approach to secession needn't entail a restrictive (e.g. remedial right only) view.
[33] For discussion of this issue, see Buchanan, "Theories of Secession", pp. 60-1.

association such that they are permitted to disassociate from a state *tout court*, or to form new states that are not able to serve states' basic functions and that (ii) giving individuals the mere freedom to choose between different jurisdictional units is not sufficient for freedom of association.[34]

Collectivist Voluntarist Theories

Christopher Wellman and Andrew Altman defend a voluntarist account of the right to secede.[35] On their view, the right to secede is grounded by an "irreducibly collective" right of group self-determination.[36] Wellman believes that there are deontological reasons to respect group autonomy.[37] He notes, however, that if we hold that there are deontological reasons to respect group self-determination, then these duties must be *ultimately* owed to the group itself, or to the individuals who are members of the group. The problem with the first approach is that it is incompatible with *Value Individualism;* roughly, the thesis that only individuals, their lives and states of their lives matter morally.[38] On the second approach, we have to find some way in which to explain how the duties to respect group autonomy are actually owed to groups. Wellman's preferred account of our duties to respect group autonomy is a *Respect-based Account*, whereby to violate a group's right to self-determination is to wrongfully disrespect its members, who are owed a duty of respect on the basis of their collective achievement in having the capacity to be self-determining.[39]

I argue that Wellman's argument overlooks the fact that for most sub-state groups, the group's having achieved the ability to govern in a satisfactory way is an achievement

[34] Cavallero, *op. cit.,* pp. 131-2.
[35] Altman and Wellman, *op. cit.;* Christopher Wellman, *A Theory of Secession* (Cambridge: Cambridge University Press, 2005).
[36] Wellman, *op. cit.,* pp. 34-8.
[37] *Ibid*, pp. 38-43.
[38] *Ibid*, pp. 42-44.
[39] *Ibid*, pp. 56-7.

of the *people of the state as a whole,* and so Wellman cannot ground a special respect-based claim by a sub-state group to self-determination. Wellman's theory then cannot generate the permissive results he thinks it can. I shall argue, however, that Wellman is right to hold both that the right to secede is an *irreducibly collective* right and that a plausible theory of secession must ground duties to respect group autonomy in duties owed ultimately to the *members* of groups.

Turning to another collectivist voluntarist theory, Daniel Philpott argues that *individual autonomy* can ground a collective right to secede.[40] His argument is that individuals are self-governing under democracy, because of their ability to participate and to shape laws and public institutions. If a group with a particular political identity (it need not be a national identity) is forced to share state with those with whom they do not share that political identity, the individuals in that group are less self-governing than they would be if they had an independent state. Therefore, a group has the right to self-determination on the basis of the interests that its members have in personal autonomy. Margaret Moore has defended a similar conception of self-determination, arguing that collective autonomy promotes the individual personal autonomy of its members.[41] This line of argument has been thoroughly critiqued by Allen Buchanan , who argues that it is mistaken that individuals are made more self-governing by virtue of living in a democracy—they are governed by the majority.[42] Continuing in this vein, I argue that Philpott and Moore's account of self-determination rests on an implausible conception of personal and moral autonomy.

[40] Daniel Philpott "In Defense of Self-Determination".
[41] Margaret Moore, *A Political Theory of Territory* (Oxford: Oxford University Press, 2015).
[42] Buchanan, "Democracy and Secession", in Margaret Moore (ed) *National Self-Determination and Secession* (Oxford: Oxford University Press, 1998), p. 18.

Anna Stilz's new account of the value of collective self-determination is similar to Philpott and Moore's.[43] Stilz argues that individuals have an interest in *political autonomy,* which she characterises as: "[...] being subject to political institutions that in some way reflect their judgements and priorities."[44] On her view, sub-state groups have a claim to greater self-determination if (i) they find themselves over a long period, alienated from and unable to subjectively affirm their current state, (ii) they have territorially based and popularly affirmed representative institutions and (ii) they have the capacity to form minimally just institutions.[45] Stilz, however, does not think that a group that meets these conditions always has an all-things-considered right to secede. She thinks that this depends on the assessment of contextual factors. She does concede, however, that a group with an overwhelming desire for independence, where there is no prospect of violence or human rights violations, may have a claim right to secede.[46] I argue that Stilz's view falls prey to the same objections as Philpott's and Moore's—it rests on an implausible account of the relationship of politics and personal autonomy. I further argue that her account makes the *bearer* of a claim to collective self-determination a relatively small sub-group of members of a secessionist region, rather than the entire people of this region.

Chapter 3: Grounding National Self-Determination

In chapter three, I move on to develop and defend my account of the value of collective self-determination. I argue that co-nationality is a relationship—like friendship and familial relations—that makes an intrinsic contribution to individual welfare. I then set

[43] Anna Stilz, *Territorial Sovereignty* (Oxford: Oxford University Press, 2019).
[44] *Ibid,* p. 104.
[45] *Ibid*, p. 135.
[46] *Ibid*, pp. 136-7.

out three arguments that move, cumulatively, from this claim to the claim that nations have a presumptive claim against interference with their affairs.

Nations, Self-Determination and Standard Nationalist Accounts

In the first part of this chapter, I set out what I mean by "nation". Political theorists who write about nationality have broadly converged on a definition of nationhood, with the following elements broadly agreed upon:

(i) They are a kind of human community;

(ii) They are not identical to either states or ethnic groups; [47]

(iii) A stable desire for self-determination on the part of (at least a large number of) its members is a necessary condition for nationhood;

(iv) They have some kind of attachment to a territory (a homeland)[48]

(v) They have a shared sense of their own history; and[49]

(vi) They have a distinct public culture.[50]

I then set out the common features of what I call "standard nationalist accounts", such as Avishai Margalit's and Joseph Raz's,[51] Will Kymlicka's[52] and Chaim Gans'.[53] These accounts pick out some interest that people have in the flourishing of their national culture, and then move to the claim this interest requires some institutional protection—some form of self-government. After explaining why these accounts are unsatisfactory, I turn to my own account of the ground of national self-determination. I argue that co-

[47] Wayne Norman, *Negotiating Nationalism* (Oxford: Oxford University Press, 2006), p. 3.
[48] *Ibid*.
[49] Miller, "Secession and the Principle of Nationality", p. 65.
[50] *Ibid*.
[51] "National Self-Determination".
[52] *Multicultural Citizenship* (Oxford: Oxford University Press, 1995).
[53] *The Limits of Nationalism* (Cambridge: Cambridge University Press, 2003).

nationality is an intrinsically valuable relationship. I set out a conditional argument for this claim—my argument is that if one accepts that friendship and familial relationships can be intrinsically valuable, then one should accept that co-nationality can be also.

I then set out three arguments from the intrinsic value of co-nationality that, cumulatively, ground a strong presumption in favour of national self-determination. What this presumption amounts to, I argue, is a *presumptive claim* to collective autonomy for nations. That is, nations have a claim-right to do what they have collectively decided to do unless one can demonstrate that they would commit *wrongful harm*. With this presumption in place, I will turn to the question of whether this presumption is *always* defeated—that is, does unilateral secession, by a national group, always involve wrongful harm?

Chapter 4: Secession, Minorities and Religious Groups: Why Nations are Special

In chapter four, I consider the objection that unilateral secession by a national group (e.g. the Scots) from a legitimate, non-usurping state would wrong minority nationalities within the seceding territory. I show first of all, that most proponents of this objection assume that the ground of the right to national self-determination is the protection of the group's culture. As my account of the right to national self-determination grounds the right to national self-determination in a different way, it is not vulnerable to this objection. I then set out a version of this objection that does not rely on this claim; on this objection, a national minority that seceded and created its own state would commit an expressive wrong against minorities within the territory over which it claimed jurisdiction. I show that this objection is undermotivated—only under a specific set of circumstances would the minorities of the secessionist region be subject to an expressive

harm. Finally, I show that the correct way to think about the claims of minorities in secessionist regions is in terms of a claim to secure access to equal civic status, such that they are not at risk of becoming justifiably alienated from their new state. If a secessionist group cannot provide this guarantee to their minority residents of their territory, then their seceding would commit wrongful harm, and the presumption in favour of collective autonomy is defeated. I call this defeater the *Alienation Defeater*.

With this in hand, we are now in a position explain why nations are normatively special. Responding to the objections broached above by Allen Buchanan and others, I show that even if other kinds of groups, such as religious groups, have the features in virtue of which nations have a claim to self-determination, this does not entail that those groups also have the right to secede.[54] This is because an account of self-determination needs a list of defeaters: features in virtue of which a group's claim to self-determination is defeated. I argue that religious groups are the strongest candidate for having a claim to collective autonomy in virtue of sharing many features with nations. I then argue that religious groups will fall afoul of the Alienation Defeater—religious identity is too narrow to be the basis of the dominant collective identity of a state. This does not apply to nationality. This, I explain, is because of qualitative differences between religious groups, qua religious groups, and nations.

This chapter therefore helps to accomplish two things: to explain why nations' claims to collective autonomy are not always defeated by the claims of minority groups, and to explain why it is not arbitrary for a theory of secession to single out nations.

Chapter 5: Unilateral Secession and Territorial Rights

[54] See Buchanan, "What's So Special about Nations?" and Hsin-wen Lee, The Identity Argument for National Self-Determination, *Public Affairs Quaterly*, 26 (2), 2012, pp. 123-139.

In chapter five, I discuss one of the major objections to the permissibility of unilateral secession from a legitimate, non-usurping state. This is the objection from territorial rights—the *Wrongful Taking Objection*. According to this objection, legitimate, non-usurping states have rights over their territory. To unilaterally take territory from them, which unilateral secession requires, is to wrong them (or their people). If this is true, then unilateral secession from a legitimate, non-usurping state commits wrongful harm, and so the presumption in favour of collective autonomy is defeated. To see whether or not this objection goes through, we need to look at whether the underlying theory of territorial rights is correct. Statist (or functionalist) theories of territorial rights attribute territorial rights to states, provided they meet a certain minimum standard (whether of justice, or other goods such as security). Statist accounts are most closely associated with Allen Buchanan[55] and Anna Stilz.[56] I argue that the most plausible versions of statist theories of territorial rights do not have the theoretical resources to rule out unilateral secession.

In section one, I discuss the relationship between questions about territorial rights and questions about the right to secede. In section two, I first describe what I call the "simple statist view", according to which territorial rights are primitive to states, and cannot be had by any other type of entity, whether individuals or collectives such as nations. I then run through a well-known objection to this class of views, and canvass a more sophisticated statist view, according to which the "peoples" of states have residual rights over their territory. In section three I show proponents of this revised statism cannot explain why unilateral secession from a legitimate, non-usurping state, is always

[55] *Justice, Legitimacy and Self-Determination,* pp. 209-210.
[56] Anna Stilz, "Why do states have territorial rights?" *International Theory*, 1 (2), 2009, pp. 185–213; "Nations, States and Territory".

impermissible, because they cannot explain why other types of entity—such as sub-state nations, for example, cannot have rights to territory. This opens the door to the permissibility of unilateral secession.

In the course of this, I discuss the considerations that make exit from a state just or unjust, and set out how a secessionist national group can unilaterally secede without wronging the people of the remainder (rump) state. I discuss the division of the national debt and collective assets, migration rights for citizens of the new state and the remainder state, and defence and security considerations. I argue, in common with other defenders of primary right theorists of secession, that a secessionist group must leave the remainder state able to uphold the basic rights of its citizens.[57]

In effect, I argue, a nationalist theorist of secession can remain neutral between most accounts of territorial rights—there is no need for a nationalist to endorse nationalist theories of territory, as developed by David Miller,[58] Tamir Meisels[59] and Chaim Gans.[60] This allows us to sidestep the well-known objections to these accounts, as set out in by Anna Stilz.[61]

In section four, I briefly discuss the relationship between theories of territorial rights and the question of how to settle claims to territory in the event of secession. I argue that theories of territorial rights have relatively little to tell us about how to do this.

Continuing on from the previous chapter, I give an account of how territory should be divided up in the aftermath of secession, arguing that there is no single principle that enables us to determine the boundaries of the new state—there is a whole host of

---

[57] Cf. Wellman, *A Theory of Secession.*
[58] David Miller, "Territorial Rights: Concept and Justification", *Political Studies*, 60 (2), 2012, pp. 252-268.
[59] Tamar Meisels, *Territorial Rights* (2nd edition) (Dordrecht: Springer, 2009).
[60] *The Limits of Nationalism*.
[61] "Nations, States and Territory".

considerations, such as ensuring the viability (both economic and defensive/strategic) of both the new state and the remainder state, minimising the creation of enclaves and minimising the number of people trapped on the "wrong" side of the new border.[62]

Section 3: Conclusion

My thesis, therefore, defends the following claims:

(i) There is a presumption in favour of collective autonomy for nations;

(ii) The presumption in favour of collective autonomy for nations is not *always* defeated, in the case of secession, by the Alienation Defeater and the Wrongful Taking objection;

(iii) Nations are the only kind of group that satisfy (i) and (ii).

(iv) There are no other considerations that *in all cases*, defeat a nation's presumptive claim to secede.

(v) Nations can have an undefeated presumptive claim to secede, and are normatively special in this regard.

As I noted above, this set of claims does not entail that *all* nations have a claim to secede. All it entails is that there is at least *one* possible instance in which a nation has an undefeated claim to unilaterally secede from a legitimate, non-usurping state and that this is not true of any other kind of group. This is a limited, but theoretically important conclusion. It shows that the remedial right only theory of the right to secede is false, and that nations are normatively special when it comes to the right to secede. It does not have the drastically permissive consequences of some other theories of secession, such as

[62] For an argument along similar lines, see David Miller, "Boundaries, Democracies and Territory", *American Journal of Jurisprudence*, 61 (1), 2016, pp. 33-49.

Wellman's voluntarist account. Endorsing this theory does not commit one to thinking that we should liberalise, to any great extent, international law surrounding states' rights to territorial integrity, or states' recognitional practices. As I show in the thesis, secession is a complicated business—there are a number of ways in which unilateral secession can wrong people on either side of the new border. But at the same time, states have no claim to the territorial status quo in every instance. National self-determination should be given its proper place in our political morality—it is neither of negligible value, nor the be-all-and-end-all.

Chapter 1: Theorising Secession

Introduction

In this chapter I will set out and defend my approach to theorising about the morality of secession. In the first part, I will defend this approach from the criticisms of proponents of "institutional moral reasoning" with respect to secession, who argue that we should not engage in moral theorising about secession without considering the likely consequences of the enshrinement of principles to regulate secession in international law. Specifically, the proponents of institutional moral reasoning claim, we should consider the likely consequences of the enshrinement of principles to regulate secession on existing, morally defensible aspects of the international legal order. In this chapter, I will argue that institutional moral reasoning is not the correct approach to normative theorising about secession. Following this, I clarify the taxonomy of theories of secession and situate my theory.

In section 1 of this chapter, I first clarify what I mean by "secession", and then give an account of the concept of secession. I then consider whether secession is an "inherently institutional concept". I argue that it is not.

In section 2, I aim to defend a particular approach to theorising about the morality of secession. I outline Allen Buchanan's account of institutional moral reasoning as applied to secession, and assess his desiderata for a theory of the right to secede. I show that institutional moral reasoning is not the correct approach to normative theorising about secession. I argue that we cannot morally assess the existing "morally defensible aspects of international law" without considering how to weight the value of collective self-determination. The starting point for a theory of secession, therefore, should be some

account of the ground and value of collective self-determination. Once we see this, the institutional approach to normative theorising about secession is no longer distinctive; it boils down, ultimately, to adding to the list of considerations that must be taken into account by a theory of justified secession.

In section 3, I set out a typology of theories of secession, distinguishing not only between primary right and remedial right only theories, but also between them and a third theory of secession that has not been noticed in the literature. I then point out that theories of secession can be placed on a scale of *permissiveness*, or how many possible cases they admit into the set of the justified secession claims.

Section 1: The Concept of Secession

1.1 *The Meaning of "Secession"*

The first question I need to answer is: "what do I mean by secession"? After all, there are many different kinds of secession: for example, secession from a church, secession by a suburb from a unit of local government, and secession by a state from an international organisation. In this thesis, however, I am only concerned with one kind of secession: secession *from* a *state,* for the purposes of either (i) creating a new state or (ii) joining another state. So far I have only narrowed the scope of the *kind* of secession I am concerned with. I have not said what secession *is*. To get a grasp on what secession is, we can, following Allen Buchanan, contrast secession with, as he puts it, "other ways in which individuals or groups can challenge political authority or change their relations with the state: revolution […] and emigration".[1] As Buchanan points out, unlike in the case of revolution, secessionists are not attempting to overturn the legal and constitutional order of a

[1] Allen Buchanan, *Secession: the morality of political divorce from Fort Sumter to Lithuania* (Boulder, CO: Westview Press, 1991), p. 9.

particular state: they are trying to *remove themselves* from its jurisdiction. They may be wholly indifferent as to the post-secession regime of the state from which they have seceded. Secondly, unlike with emigration, they do not remove themselves from the jurisdiction of a state by removing themselves from that state's territory: *they take a portion of the territory* of the state with the intention of removing that territory from the jurisdiction of the state from which they have seceded.

So far we have established two things: that secessionists are not trying to overturn a particular regime or constitutional order, but to remove themselves from the jurisdiction of a state and place themselves under the jurisdiction of a new one, and that secession involves the taking of territory. At first blush, this language of "taking" territory might seem obscure. However, once we describe the jural relationship between states and their territory, this should clear up. States enjoy *jurisdictional rights* over particular geographic areas; in these areas they have the right to create, enforce and interpret law.[2] When a group secedes, they exercise a *meta*-jurisdictional power: that is, the power to remove a piece of territory from a state's jurisdiction, and to either create a new jurisdictional unit or to place that territory under the jurisdiction of an existing state.[3]

Notice here that I have shifted from talking about individuals to talking about groups. The subject of this thesis is secession by *groups,* not individuals. There are two reasons for this. The first is that addressing this subject would take me too far afield into the question of whether individuals may remove themselves from the authority of *any* state

[2] For an overview of the normative and jural relations involved in jurisdictional rights see Anna Stilz, "Why do States have Territorial Rights?" *International Theory,* 1 (2), 2009, pp. 185-213, at pp. 194-7.
[3] Allen Buchanan, "The making and unmaking of boundaries: what liberalism has to say", in A. Buchanan and Margaret Moore (eds), *States, Nations and Borders* (Cambridge: Cambridge University Press, 2003), pp. 231-61, at p. 233.

and become, in Robert Nozick's phrase "independents".[4] This is not the subject of this dissertation. A second reason I wish to avoid this problem is because it is not the standard case of secession—indeed, there is even question-mark over whether the concept of secession includes this kind. The standard cases of secession involve large groups—territorial societies, such as Quebec, Eritrea, and so on, attempting to set up a new jurisdiction.[5]

One final clarification: it not sufficient for secession from a state for a group to remove just *some* of a state's jurisdictional powers.[6] For example, it is not that the case that a group secedes from a state when it removes the power to regulate licensing laws from the central government, and vests it in its local government. We should not conflate devolution of powers to a lower-level of government with secession.

In sum, secession from a state is when an individual or group removes a portion of territory from the state's jurisdiction and either (i) establishes a new state, or (ii) places that territory under the jurisdiction of another existing state. In the case of (i), secession also involves a claim to the *territorial integrity* of this new jurisdictional unit. Allen Buchanan calls these two kinds of secession *classic* and *irredentist* secession, respectively.[7] In this dissertation, I will be mainly concerned with classic secession. This is for two

---

[4] Robert Nozick, *Anarchy, State and Utopia* (New York, NY: Basic Books, 1974), pp. 54-6; cited Buchanan, *Secession*, p. 24 n. 20.

[5] It is for this reason that I avoid extended discussion of a family of theories of territorial rights—individualistic Lockean accounts, on which individual consent to a state is a necessary condition of state jurisdiction. Theorists of this sort, such as Hillel Steiner, hold that individuals may secede from a state; see Hillel Steiner, "Territorial Justice", in S. Caney, *et al*. (eds) *National Rights, International Obligations* (Boulder, CO: Westview Press, 1996), pp. 139-48, at p. 144. David Miller calls Steiner a "super-Lockean", because he is willing to countenance individual secession, whereas Locke was not; "Property and Territory: Locke, Kant and Steiner", *Journal of Political Philosophy*, 19 (1), 2011, pp. 90-109.

[6] An important exception is the jurisdiction of the state for prosecuting crimes against humanity. This is covered by the principle of universal jurisdiction.

[7] Buchanan, Allen and Elizabeth Levinson, "Secession", *The Stanford Encyclopedia of Philosophy* (Winter 2021 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/win2021/entries/secession/>.

reasons. The first is that, as I try to illustrate, the creation of a new state involves distinctive and more pressing normative issues than the absorption of territory by an existing state. The second is that most major and active secessionist movements aim at full independence, not merely the transfer of territory to another state. As such, a theory whose focus is on classic secession will have more practical relevance.

1.2 *Is Secession an Inherently Institutional Concept?*

Among theorists of secession, there is a major divide between *institutional* and *non-institutional* theorists. Roughly speaking, the disagreement is between those (the institutionalists) who think that a theory of secession should give priority to the effect that the institutionalisation of any claimed right to secede would have on existing international institutions. Non-institutionalists deny this claim. In this dissertation, I will defend a *non-institutional* theory of the right to secede. I need to head off, therefore, at this early stage, one of the main arguments for institutional theorising—the argument that secession is an *inherently institutional concept*. Allen Buchanan, using the example of Chechnya, explains this claim as follows:

> [I]f we understand their assertion as they do, to say that the Chechens have a right to secede—in the claim-right sense of 'right'—is at the very least to say that (1) they are morally justified in attempting to establish Chechnya as a legitimate *state* and that (2) others are morally prohibited from interfering with this attempt to create this new legitimate *state*. Both (1) and (2) are institutional statements, because they both employ the concept of a state, which is an institutional concept—not just in the sense that states are institutions—but because to be a legitimate state is to be an institutionally defined entity, an entity that has a certain status according to the institutions of international law.[8]

[8] Allen Buchanan, *Justice, Legitimacy and Self-Determination*, (Oxford: Oxford University Press, 2004), p. 15.

If this claim were true, how would it motivate institutional theorising? The argument is roughly this: because the right to secede entails a right to establish a particular kind of legal entity (a state), theory of the right to secede necessarily has something to say about the norms—in this case international legal norms—that surround that particular kind of legal entity.[9] Moreover, a theory of the right to secede cannot simply aim to provide guidance on *particular* cases—it must aim to give us general guidance about how to respond to secessionism.[10] And so, theorists of the right to secede must consider the consequences for those norms of the adoption of their favoured right to secede.

Is it true, however, that secession is an inherently institutional concept? Let's examine the argument that it is more closely. First, let's try to get a clearer grip on what it means for the concept of secession to be inherently institutional. David Lefkowitz claims that:

> "[…] one agent's challenge to another's rule over it counts as secession only if the party mounting the challenge claims the right to exercise itself the very same panoply of rights, liberties, powers, and immunities enjoyed – or that it maintains ought to be enjoyed – by the current ruler. As I explain in the next section, the content of that set of rights, liberties, powers, and immunities depends on the particular institutional form political order takes at the point in time in which a particular group engages in secession. It follows that in a world in which states play the central role in the institutional realization of political order, international political secession necessarily involves a claim to that set of rights, liberties, powers, and immunities states enjoy under international law, or that the secessionists maintain states ought to enjoy as a matter of international law. In other words, in such a world secession necessarily involves a claim to recognitional legitimacy."[11]

Lefkowitz notes that a secessionist group may not want to claim the "full panoply of rights, liberties, powers and immunities enjoyed"—as he concedes, a group may claim fewer rights than the state from which it is trying to secede. Imagine, for example, a

[9] *Ibid*, p. 16.
[10] pp. 14-15.
[11] David Lefkowtiz, "International Law, Institutional Moral Reasoning, and Secession", *Law and Philosophy*, 37 (2018), pp. 385-413, at p. 388.

secessionist liberal region of a state that claims the right to determine the religion of its subjects. In the next sentence, however, he asserts that the content of the right claimed by a secessionist group must be determined by the "particular institutional form political order takes" when the secessionist group makes its claims. But this must rest on an equivocation, for surely the content of the right that a secessionist group *may* claim is independent of the rights that states *do* enjoy under international law at present. A secessionist group may assert its right to secede, and its claim to territorial integrity having established statehood, but may demur from claiming the other rights that states enjoy under international law. Consider the following partly hypothetical example:

> *Free Fiume:* Fiume is a city on the Adriatic sea. Formerly part of the Austro-Hungarian Empire, it became an independent city-state in 1920, only to be annexed by Italy in 1924. At the end of the Second World War, the formerly Italian city of Fiume was occupied by Yugoslav troops. The Yugoslavs, surprisingly, agree to restore the independence of Fiume in exchange for Fiume becoming a demilitarised zone. The pro-independence majority in Fiume agree to waive the new country's right to raise a military and to enter into military alliances with other states.

The new state of Fiume does not enjoy sovereign equality with other world states, in Lefkowitz's terms. It does not claim the "full panoply" of rights possessed by other states—it explicitly waives some of these. Yet, it is clearly a state, and this is clearly an instance of secession. Lefkowitz is unwilling to concede, however, that a group that claims less than the full panoply is making a claim to secede. According to him:

> For secessionists to refrain from claiming recognitional legitimacy, then, would require either that they govern both people and territory but assert no entitlement to do so—no right to territorial integrity, to border control, to exclusive jurisdiction over their subjects vis-à-vis a wide range of conduct, etc.—or that they assert a right to rule but reject the entire institutionalized political order constituted by international law.[12]

As we have seen, this is a false dichotomy. As the hypothetical example of Free Fiume shows, a secessionist group can make a recognisable claim to secede without making a claim to the full panoply of rights enjoyed by states under international law. What seems more plausible is that a recognisable claim to secede must involve some claim to legitimacy, to territorial integrity and so on. It must, in other words, involve a claim about a right to rule, and a claim about the wrongness of interfering with its territory. These are rights that existing international law assigns to states. But that does not show that the *content* of the right to secede is *fixed* by international law; merely that it, for the most part, *overlaps* with it.[13]

In summary, then, the claim that the right to secede is an inherently institutional concept is undermotivated. This does not put to bed the arguments for institutional theories of secession, however. As we shall see in the next section, there is another central argument to be dealt with.

---

[12] *Ibid*, p. 389.

[13] For a similar point, see Andrew Altman and Christopher Wellman, *A Liberal Theory of International Justice* (Oxford: Oxford University Press, 2011), pp. 56-7. But for an objection to the claim that secession involves a claim to legitimacy, see Christopher Wellman, *A Theory of Secession* (Cambridge: Cambridge University Press, 2005), p. 170. Wellman gives two examples that he claims refute the proposition that secession is conceptually tied to legitimacy; the first is the hypothetical example of a group of anarchists who want to secede to live in a state of nature, and the second is the example of irredentist secession—when a group secedes in order to unite with another, existing state. With respect to the second example, Lefkowitz could reply that the secession claim here involves a claim that the state with which the separatists have united are legitimate with respect to them, and that this new state has a claim over the territory. With respect to the first example, I am less sure about what to say—a possible reply to this example is that this is in fact not a clear case of secession, or that "secession" is polysemous, and that Altman and Wellman are guilty of equivocation here. In any case, I have no real desire to stake a position on this. I should be construed as saying that even *if* secession involves a claim to legitimacy, this is not an inherently institutional claim.

Section 2: Institutional vs Non-Institutional Theories

One of my aims in this chapter is to defend a particular *approach* to theorising about secession. I will defend a *non-institutional* approach to theorising about the morality of secession. I briefly explained the distinction in the previous sub-section. I now want to discuss in more detail the arguments for the institutional approach to theorising about secession. The main proponent of institutional approaches to the morality of secession is Allen Buchanan. In this section, I will give an overview of Buchanan's approach to theorising about secession. I will conclude that Buchanan has not given us good reasons to prioritise institutional to non-institutional theorising about secession.

Before I begin, however, I should just again briefly point out the distinction between two kinds of theory of secession, as it will be relevant for the discussion that follows in this section. Normative theories of secession are standardly divided into two camps: remedial right only and primary right theories. Remedial right theories hold that suffering from serious injustices is a necessary condition of having the right to secede. Primary right theories, according to the literature, just deny this claim. I will have something to say about this in section 3, where I argue that this distinction is not fine-grained enough. For now, however, it will do.

2.1: *Buchanan on Secession*

We should first try to get a stronger grip on what institutional theorising about secession involves. Let's begin, following Buchanan, by distinguishing between two questions: (1) under what conditions does a group have the right to secede independently of any considerations about the international legal order?, and (2) under what conditions should have a group have the right to secede under a morally defensible international legal

order?[14] According to Buchanan, the second question has priority over the first. This is for two reasons: the first is that secession is an inherently institutional concept. I have already dealt with this claim above. The second reason is that secession crises have an international dimension and international consequences, and "call for international responses".[15] According to Buchanan:

> If these international responses are to be consistent and morally progressive, they must build upon and contribute to the development of more effective and morally defensible international institutions, including the most formal of these, the international legal system.[16]

Now Buchanan believes that we should assess theories of secession against the following criteria:

(1) *Having a cogent theory of territorial rights*: Buchanan points out that secession involves a claim over territory. Unilateral secession requires taking territory without permission from the state that lays claims to it. Accordingly, in order to know whether unilateral secession is permissible, we must have a cogent account of territorial rights.[17]

(2) *Progressive conservatism*: the institutionalisation of the theory must result in an improvement of the current regime.[18] In comparing two theories, when one theory are roughly on a par with respect to the degree of improvement they would bring about, but one theory is more compatible with the best aspects of the current regime, then we should prefer that theory.

---

[14] Buchanan, "Theories of Secession", *Philosophy & Public Affairs*, 26 (1), 1997, pp. 31-61, at pp. 31-2.
[15] *Ibid,* pp. 32-3.
[16] *Ibid.*
[17] *Justice, Legitimacy and Self-Determination*, p. 216.
[18] *Ibid.*

(3) *Moral accessibility*: it should be possible to implement the theory without excessive costs: for example, a theory whose implementation led to large-scale, disruptive changes in state borders, risking ethnic violence, would fail to satisfy this desideratum.[19]

(4) *Incentive compatibility*: implementation of the theory should not create perverse incentives. Buchanan illustrates this requirement by claiming that a right to secede for federal sub-units would encourage states to prevent the creation of federal sub-units.[20]

(5) *Moral convergence*: the theory should be capable of being affirmed by people with different ethical perspectives. It should not depend on premises that rely on very controversial ethical or metaphysical claims.[21]

I will now discuss these purported desiderata in turn, setting aside for now *moral accessibility* and *moral convergence.* I will have more to say about moral accessibility in section 2.3 below, where I discuss the relationship between institutional theorising and ideal/non-ideal theory. With respect to the first desideratum, it is not at all clear how the fact that having a cogent account of territorial rights is a desideratum of a theory of secession should weigh in favour of institutional theories of territorial rights. There are plenty of plausible theories of territorial rights that are non-institutional theories, and which, moreover, have quite permissive implications for secession.[22] We can set this aside for now.

---

[19] *Ibid.*
[20] *Ibid*.
[21] *Ibid*.
[22] For example, David Miller's nationalist account of territorial rights, or Margaret Moore's "political theory" of territory. See Miller, "Territorial Rights: Concept and Justification", *Political Studies,* 60 (2), 2012, pp. 252-68; Margaret Moore, *A Political Theory of Territory* (Oxford: Oxford University Press, 2015).

The second desideratum—progressive conservatism—needs more exposition. In his earlier "Theories of Secession", Buchanan set down at more length a similar desideratum for a theory of secession:

> A proposal should build upon, or at least not squarely contradict, the more morally acceptable principles of existing international law, when these principles are interpreted in a morally progressive way. If at all possible, acceptance and implementation of a new principle should not come at the price of calling into question the validity of a well-entrenched, morally progressive principle.[23]

To illustrate how this desideratum affects theory-choice in practice, Buchanan argues that it would favour remedial right only theories over more permissive theories, on the basis that the remedial right only theory is compatible with the principle of the territorial integrity of states. Buchanan believes that territorial integrity is a "morally progressive" principle. What Buchanan means by this is that the principle of territorial integrity serves certain morally significant interests: the protection of individuals' interest in personal security and their interest in "the integrity of political participation".[24] The problem for Buchanan, however, is that we cannot just assume that these are the only interests that are relevant for assessing the moral progressiveness or otherwise of the theory. In fact, the principle of territorial integrity may well be in *tension* with other important interests, such as self-determination. As Margaret Moore points out:

> [O]ne might argue that a right to self-determination is a morally legitimate right of groups, and that it should be included, because such a right would protect individuals' interests as members of groups. On that view, the interest in collective self-determination should be included in the list of fundamental interests that then generate the analysis on which Buchanan's institutional morality rests.[25]

---

[23] "Theories of Secession", p. 42.
[24] *Ibid*, p. 49.
[25] Margaret Moore, "The Moral Value of Collective Self-Determination and the Ethics of Secession", *Journal of Social Philosophy*, 50 (4), 2019, pp. 620-41, at p. 633.

There are two implications of this objection. The first is that Buchanan cannot so blithely assume that the principle of progressive conservatism will favour a more restrictive account of the right to secede. The second is that we need to know how much moral weight to attach to collective self-determination, and, indeed, whether respecting self-determination requires, in principle, permitting secession. In other words, *we need a moral theory of secession*, before we can assess whether the principle of territorially integrity is morally progressive. We simply cannot know whether or not existing aspects of international law are morally progressive without having a moral theory of secession. An institution or a practice may appear to be morally progressive—that is, it may, in Buchanan's terms, appear to protect all the relevant interests. But it is the role of moral theorising to find out whether the appearance is deceptive.

Buchanan's fourth desideratum is "incentive compatibility". As I mentioned above, Buchanan illustrates how this desideratum is supposed to work in practice. Buchanan is quite clear that remedial right only theories are superior with respect to incentive compatibility:

> Third, the Remedial Right Only Theory gets the incentives right. On the one hand, states that protect basic human rights and honor autonomy agreements are immune to legally sanctioned unilateral secession and entitled to international support for maintaining the full extent of their territorial integrity. On the other hand, if, as the theory prescribes, international law recognizes a unilateral right to secede as a remedy for serious and persisting injustices, states will have an incentive to act more justly. The incentives for just behavior will be strongest if the remedial right to secede is understood to coexist with a right to recognition on condition that the normative criteria for legitimacy are satisfied—in other words, if recognition is not left, as it now is, to the discretion of states.[26]

The problem with Buchanan's claim that the remedial right only theory gets the incentives right is that this claim only seems when plausible when other features of existing practices

[26] *Justice, Legitimacy and Self-Determination*, p. 229.

around state sovereignty and self-determination are taken as fixed. We can illustrate this by looking at what Buchanan says about a more permissive account of the right to secede, Margalit and Raz's national self-determination account of secession:

> [T]he right endorsed by Margalit and Raz would give states incentives to embark on (or continue) all-too-familiar "nation-building" programs designed to obliterate minority group identities-to eliminate all "encompassing groups," within their borders save the one they favor for constituting "the nation" and to prevent new "encompassing groups" from emerging. Instead of encouraging states to support ethnic and cultural pluralism within their borders, Margalit and Raz's proposal would feed the reaction against pluralism.[27]

In reply to Buchanan, we should point out that a state would only have an incentive to prevent sub-groups from becoming "prosperous and politically well-organised"[28] because they are empowered to do this by the international legal order and surrounding practices. If there were more powerful norms around the protection of internal minorities—similar to the norms against external aggression by states—then states would have not have incentives to act in the way that Buchanan describes. Whether or not the implementation of a particular right to secede would create perverse incentives, therefore, depends on what states are empowered to do. And perhaps states *should not be* empowered to do some of things they currently are empowered to do. It is odd to circumscribe the terms of the debate around self-determination and secession by assuming that certain possibly unjust practices and norms must be taken as fixed.

Buchanan seemingly pre-empts this objection. He puts in the mouth of the proponent of a more permissive theory of secession—the primary right theorist—the following reply:

> [F]rom the fact that in our imperfect world attempts to implement their principles would create perverse incentives or would be rejected by states genuinely

[27] "Theories of Secession", p. 55.
[28] *Ibid.*

> concerned to prevent violations of human rights that might arise from making state borders much less resistant to change is quite irrelevant. None of these adverse consequences would occur under conditions of perfect compliance with (all) valid principles of justice.[29]

Buchanan's reply to this objection is that the assumption of perfect compliance makes Primary Right theories practically useless. Our international legal institutions, he says, are designed to deal with the practical problems of our world.[30] A theory that assumes away these problems cannot give us guidance about how those institutions should look. This reply is too quick, however. In my formulation of the original objection above, I pointed out that states only have certain incentives because of the way in which certain norms and practices empower them to behave. Assuming away some of these norms and practices does not require the assumption of perfect compliance *at all*.[31]

2.2: *Levels of Institutional Theorising*

Now let's suppose, *arguendo*, that Buchanan is right about the desiderata for a theory of secession. The question then is why he believes that a theory of secession must be institutionalised at the level of *international law.* States operate in very different regional and institutional contexts. Some states—such as members of the European Union—are subject to serious constraints on the way they can treat internal minorities or react to domestic dissent. These states have serious disincentives against improper treatment of their people. Why, when thinking about the morality of secession, can we not ask about how the European Union, or similar organisations, might institutionalise a right to secede, or

---

[29] *Ibid*, p. 60.
[30] *Ibid.*
[31] Hsin-wen Lee makes a similar point when she argues that Buchanan assumes that nationalist theories of secession are based on an assumption of perfect compliance *in general*; Hsin-wen Lee, "Institutional Morality and the principle of national self-determination", *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition*, 172 (1), 2015, pp. 207-226, at p. 223. Lee points out that some proponents of the nationalist theory, such as Kai Nielsen, reject the assumption of full compliance.

otherwise respond to secessionist activity?[32] Buchanan might be right to say that institutionalising a permissive right to secede at the level of the international legal system might have adverse consequences. But that does not mean that the right to secede cannot be institutionalised in more local ways.

This undercuts one of Buchanan's strongest arguments for his way of theorising secession—the argument that only an institutional theory—theorised at the level of the international legal system—can give us practical guidance for dealing with the issue of secession.[33] It might well be the case that a theory of the right to secede is difficult to institutionalise in international law, and that we might find it hard to imagine a roadmap to the adoption of an international legal right that gives flesh to the moral rights the theory purports to discover. But that does not mean that the theory cannot offer practical guidance: it can guide more local responses to secession; both at the level of regional supra-national organisations like the European Union, and at the level of third-party states. The institutional context in which secessionists and those who would resist them operate is more variegated than Buchanan allows. Why then, should reasoning at the level of the international legal order have the priority that Buchanan assigns it?

In summary, it would seem that the priority for theorists of secession is to establish, as Margaret Moore puts it, "basic principles first", and then think about how these principles might be institutionalised.[34] Before I proceed to the next section, however, I will say

[32] The European Union is a particularly important example here, given the track record of European secessionist movements appealing to Brussels for recognition; for an overview see Bart Maddens, et. al, "The European Union in the Narratives of Secessionist Parties: Lessons from Catalonia, Flanders, and Scotland", in R. D. Griffiths and D. Muro (eds) *Strategies of Secession and Counter-Secession*, (London: ECPR Press, 2020), pp. 122-142.
[33] "Theories of Secession", pp. 32-3.
[34] Margaret Moore, *The Ethics of Nationalism*, (Oxford: Oxford University Press, 2001), p. 206.

something about the relationship between non-institutional theorising and ideal/non-ideal theory.

2.3: *Secession and Ideal Theory*

The discussion in this section so far has raised some questions about the relationship between non-institutional theorising and ideal/non-ideal theory. As such, it is necessary for me to clarify where my theory stands. I think the most fruitful way of understanding non-institutional theories—certainly the theory I am to defend in this dissertation—is as *end state* theories.[35] That is, they are theories concerned with identifying ideals of conduct and of institutions. As John Rawls puts it, the aim of developing an ideal theory in this sense is to "guide […] well-ordered peoples in their conduct toward one another and in their designing common institutions for their mutual benefit."[36] Non-ideal theories, in contrast, are theories about how to practically realise the ideals discovered by ideal theories.[37] Insofar as ideal theory has priority over non-ideal theory, then, non-institutional theories have priority over institutional theories.

As I noted in sub-section 2.1 above, primary right theories of secession do not need to make any assumption of full compliance with justice. It's important to note this, because this assumption of full compliance is how Buchanan, and others writing about secession, draw the distinction between ideal and non-ideal theory.[38] This is not the way that I understand the theory defended in this dissertation to be an ideal theory. Instead, I see this theory as describing and defending an ideal of conduct and of institutions. In addition, I do

---

[35] See Laura Valentini, "Ideal vs. Non-Ideal Theory: A Conceptual Map", *Philosophy Compass*, 7 (9), 2012, pp. 654-664, at pp. 660.
[36] John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), p. 89.
[37] *Ibid,* pp. 89-90.
[38] *Justice, Legitimacy, and Self-Determination,* p. 55. See also Wellman, *A Theory of Secession*, p. 160.

not do much here to give a sketch of how the ideal I describe should be institutionalised, or the steps that might be required in order to do this.

Section 3: Taxonomising Theories of Secession

3.1: *The Standard Taxonomy*

In this section, I want to suggest that the typical way of taxonomising theories of secession is incorrect. Normative theories of the right to secede, as I've mentioned, are standardly divided into *remedial right only* theories of the right to secede and *primary right* theories.[39] According to remedial right theories, a group has the right to unilaterally secede if and only if it has been subject to serious injustices by its state, and secession is the best way to escape from these injustices.[40] Standard examples of serious injustices that would ground a remedial right to secede are genocide, ethnic cleansing, systematic targeted killing, and unjust annexation. Two examples are useful here: the first is Kosovo, which seceded from the rump Yugoslav state in 1999 after a campaign of ethnic cleansing and systematic killing by the Serb-dominated federal government. The second is the Baltic republics: Estonia, Latvia and Lithuania. These states were unjustly annexed by the Soviet Union in 1940. They seceded in 1991 and reclaimed their lost statehoods.[41]

Remedial right only theories share the following structure: they stipulate that a state *forfeits* its right to govern a portion of its territory as a result of committing *serious injustices*. In this respect, as Allen Buchanan points out, these theories "conceive of the right

---

[39] Allen Buchanan, "Theories of Secession", Amandine Catala, "Secession and distributive justice", *Philosophical Studies*, 174 (2), 2017, pp. 529-55, at p. 532; Wayne Norman, "The Ethics of Secession as the Regulation of Secessionist Politics", in Margaret Moore (ed) *National Self-Determination and Secession*, (Oxford: Oxford University Press, 1998), pp. 34-56.

[40] "Theories of Secession"; Buchanan, *Justice Legitimacy and Self-Determination* (Oxford: Oxford University Press, 2004), pp. 351-3.

[41] *Ibid,* p. 353. Buchanan also argues that violation of intra-state autonomy agreements (as in the cases of Kosovo and Chechnya) can be a ground for a remedial-right to secede; pp. 356-7.

to secede as analogous to the right to revolution […] as a remedy of last resort for persistent grave injustices".[42]

Primary right theories, on the other hand, do not make suffering serious injustices a necessary condition for having a right to secede. To get a stronger grip on what primary right theories are, we should distinguish between the two kinds of primary right theory: *ascriptivist* theories and *voluntarist* theories. Ascriptivist theories hold that groups defined by certain ascriptive features—ethnicity, nationality—can have the right to secede. According to nationalist versions of ascriptivism, *nations* can have a (non-remedial) right to secede. Nationalist theorists typically ground this claim by picking out some interest that members of nations (especially presently stateless nations, such as the Quebecois) have in their nation having statehood. Simon Caney, for instance, argues that members of nations have an interest in the symbolic recognition of their nationality that attaches to independent statehood.[43] Kai Nielsen claimed that nations provide a context of choice for their members, and that self-determination is instrumentally valuable in protecting the vitality of the national culture.[44] Nations, in short, have a claim to secede *because of the kind of group they are*—they always have some claim to self-determination, even if in particular cases the claim is outweighed by other considerations—for instance, concerns about viability, or wrongful taking of territory, or minority rights.

Voluntarist theories, in contrast, do not restrict the (primary) right to secede to nations. According to these theories, *any* group, can have the right to secede. There are different versions of this kind of theory: some ground the right to secede in an individual

[42] *Ibid,* p. 351.
[43] Caney, *op. cit*.
[44] Nielsen, *op. cit*..

rights to choose which jurisdiction one wishes to live under.[45] Other accounts ground the right in the value of collective autonomy—according to Christopher Wellman, groups that are capable of and willing to govern in a satisfactory fashion have a claim to secede—they have a respect-based claim to self-determination, grounded in their collective capacity to govern well.[46] One way of summing this up is to say that some voluntarist theories ground the right to secede in *deontic* considerations that apply *generally*. Others, as we will see, ground a group's claim to secede on the claim that secession can promote individual autonomy.[47] On both these views, the history of a state's relationship with an internal sub-group, and the overall character of the state (whether it governs in a reasonably just way, etc.), have no bearing on whether or not a group has the (primary) right to secede.

It might seem hard then, to say what characterises primary right theories, except in negative terms. But characterising them this way, as I'll show, leaves us with a crude carving-up of the conceptual space. So what can we say are the distinctive features of primary right theories? Firstly, they hold that having the right to secede isn't conditional on either suffering serious injustices or on one's state being dysfunctional. Primary right theories, crudely speaking, hold that a group can have the right to secede from a perfectly just, well-functioning state.

A second distinctive feature of primary right theories is that they are motivated by a concern for self-determination. As we've noted, theories explain the importance of self-determination in different ways—some appeal to deontic considerations such as respect,

---

[45] See Eric Cavallero, "Value Individualism and the Popular-Choice Theory of Secession." *Social Theory and Practice*, 43, (1), 2017, pp. 125–53; Harry Beran, "A Democratic Theory of Political Self-Determination for a New World Order", in Percy Lehning (ed), *Theories of Secession*, (London: Routledge, 1998), pp. 33-59. Note here that Beran grounds the right to secede in freedom of association, whereas Cavallero grounds it in the right to have one's jurisdictional preferences respected.

[46] Christopher Wellman, *A Theory of Secession* (Cambridge: Cambridge University Press, 2005). See also Andrew Altman and Christopher Wellman, *A Liberal Theory of International Justice* (Oxford: Oxford University Press, 2011).

[47] Daniel Philpott, "In Defense of Self-Determination", *Ethics,* 105 (2), 1995, pp. 352-385.

or the importance of individual associational preferences. Nationalists give accounts of the relationship between self-determination and people's interests *qua* members of a national group. But insofar as primary right theories have a unifying theme, it is self-determination and its value.

3.2: *Revising the Taxonomy*

In this sub-section, I show that one can reject both primary right theories and remedial right only theories, while holding that some groups have a right to secede. This third type of theory I outline is like the remedial right only theory in that it holds that the right to secede is a remedy for some shortcoming or failing of a state. It is like primary right theories in that it denies that secession need be a remedy against serious injustices. Indeed, in the case I consider, there is no injustice by the state against the relevant group, and yet they will incur serious costs by remaining in their state. Unlike primary right theories, this theory grounds the right to secede on there being serious costs to not seceding. This theory is not grounded on the value of national self-determination, or on any deontic considerations to do with respecting individual's associational preferences, or their collective autonomy. Indeed, the theory has nothing to say about the value of self-determination as such—it is primarily about the costs and benefits of staying versus remaining in a state. The theory is grounded in the interests that individuals have in enjoying certain goods—goods that states typically provide, such as collective defence, physical security and co-ordination with respect to collective action problems. The theory says that when the state fails to provide these goods to its citizens, or some sub-set of them, and there is a sub-unit of that state that could provide them, the people of that sub-unit have a claim to secede. Importantly, the failure of a state to provide these goods need not be caused by, or even constitute, an injustice. So the

Alleviative Theory is conceptually distinct from both Primary Right theories and Remedial Right theories.

An important note: one can endorse the Alleviative Theory and the claims that groups can have a remedial right to secede or a primary right to secede. There is no incompatibility between this theory and the primary right theory, but one can endorse the Alleviative Theory without endorsing a primary right theory or (less plausibly) the claim that there can be a remedial right to secede. It is, however, incompatible with the remedial right only theory. Secondly, the theory I defend in this dissertation is a *primary right*, not an alleviative theory. I am trying to revise the standard taxonomy because I think it is important to have a proper understanding of the available conceptual space, not because the theory I want to defend is an alleviative theory. It is important not only for its own sake, but it will also help us to better understand the alternative theories of secession I canvass.

To illustrate the conceptual possibility of this third kind of theory, consider the following scenario:

> *Unitaria*: Unitaria is a federation made up of three provinces; Northland, Midland and Southland. Southland is the largest of the three provinces, and the most populous, with 5 million people to Midland's 4 million and Northland's 2.5 million. Midland has unilaterally seceded from the federation, leaving Northland disconnected from Southland. The discontiguity of the state raises serious logistical and defence problems for Unitaria—the state cannot effectively defend all of its territory due to the fact that the majority of the country is cut off from Northland. In addition, Northland's economy is strongly integrated with that of Midland. The Northlanders fear both serious supply-chain problems the loss of their markets in Midland. The Northlanders now fear that Unitaria is no longer workable as a state.

> Northland would be viable as an independent state, and many Northlanders are now turning their minds to the question of secession.

Do the Northlanders have the right to secede? It's important to note here that the Northlanders cannot, as of yet, claim a remedial right to secede. They are not at risk of serious injustice from their state—the Southlanders might be numerically dominant, but they have no desire to violently suppress the Northlanders. What the Northlanders are at risk of is the loss of the political goods that their state is supposed to provide them, and economic hardship as a result of remaining with Southland.

One important public good that states provide to their people, as per the example, is collective defence. Where the state is no longer contiguous, it is difficult for it to provide this good to people who live in areas cut off from the major portion of its territory. It may lack a land, sea or air corridor to allow its forces to access the enclave. In this case, the people of Northland may be better off from a defence point of view either becoming an independent state, or unifying with one of their neighbours. Of course, this is not always an especially salient issue—where a country has peaceful relations with its neighbours, or is part of a larger security pact, a state's inability to defend all of its territory mightn't matter too much. But in circumstances where the security situation isn't so favourable, inability to provide collective defence is a serious matter.[48] In these circumstances, the fact that a sub-region would be better able to defend itself, either as an independent state or through merger with another state, gives it a good claim to the right to secede. And this is true even when the state is able to maintain the immediate physical security of the people of the

[48] Buchanan discusses a case similar to the fictional one described—the breakup of Yugoslavia. He argues that the secession of Croatia and Slovenia could be seen as case of sauve qui peut secession*; Justice, Legitimacy and Self-Determination*, p. 227. There are differences between this case and the fictional scenario. In the fictional scenario, the would-be secessionists are not under threat from their central government, but from potentially hostile foreign powers.

enclave from lower-level threats such as crime and disorder—it is the inability to defend from higher-level threats to security, such as invasion or displacement, that is at play here.

The second consideration that supports the Northlanders' claim to secede is the fact that continued union with Southland will be seriously costly for them—they face a drastic decline in their standard of living, and widespread hardship. Merging with Midland, or setting up their own state and entering into economic union with the Midlanders, is the only way to stave off this threat. This too motivates the conclusion that the Northlanders have a claim to the right to secede.

Buchanan, however, argues that the remedial right only theory can handle cases of state collapse, which he calls instances of "sauve qui peut" separatism:

> With only minor modification, a Remedial Right Only Theory can properly recognize the normative force of the distinction between secession from a functioning state and sauve qui peut separation under conditions of state breakdown. According to the Remedial Right Only Theory, secession from a basic rights-protecting state is not justified (absent agreement or constitutional process), but is justified as a remedy of last resort for violations of basic rights. Such a theory can be extended to justify sauve qui peut separation by adding the principle that where there is no functioning state, and a situation of radical uncertainty exists in which basic rights are seriously at risk, groups are justified in attempting to form their own states in order to protect their basic human rights. *This addendum coheres with the fundamental idea of a Remedial Right Only Theory: that unilateral secession from a rights-respecting state is not permissible and that only the need to protect basic rights can justify something so radical as unilateral secession* [my italics].[49]

In the italicised section here, Buchanan makes two conflations: first, between a rights-violating state and a state that (non-culpably) fails to protect basic rights, and secondly, between being subject to serious injustices by a state and not having one's basic rights protected. In a case like Unitaria, state actors are not (systematically) carrying out serious injustices—the state has simply ceased to function, and no longer provides people with

[49] *Justice, Legitimacy and Self-Determination*, pp. 367-8.

basic protection of their rights. This is quite unlike a situation where the state is actively perpetrating grave injustices against its people—the cases around which Buchanan builds his remedial right only theory. Moreover, the analogy with the right to revolution simply does not hold in this case—there is no government to overthrow, and if there were it is not clear that it would have forfeited its right to rule, if carrying out grave injustices is a necessary condition of this forfeiture. So, it is quite hard to see how claiming that secession is justified in the Unitaria case "coheres with the fundamental idea of a Remedial Right Only Theory".[50]

But even if Buchanan is right to say that remedial right only theories can be extended to cover cases where the state no longer protects people's basic rights (though not through deliberate wrongdoing), it would not cover cases of this sort, provided the basic rights of the people of Northland are being protected. But it is hard to argue that collective security of the sort at play in this case could be a basic right—after all, the claim that is not being protected is not a claim against direct physical risk to individuals, but against involuntary annexation or occupation by another state. The basic rights of the Northlanders would only be threatened if they were subject to what David Rodin calls "major aggression"—where their aggressors pursue enslavement, ethnic cleansing or genocide, etc., as opposed to "lesser", purely political aggression.[51]

Summing up: when a state is in the process of dissolution, its ability to provide important political goods, such as collective defence, to all of its remaining constituent parts is seriously compromised. In addition, there may be significant costs to some of the

[50] I should note here that there are other attempts to widen the scope of the remedial right theory by adding to the list of potential triggers for secession; see, most prominently, Allen Patten, *Equal Recognition* (Princeton, NJ: Princeton University Press, 2014), pp. 232-268. Patten argues that when there is a "failure of recognition" of a national minority's identity by a state, this can trigger a right to secede.

[51] David Rodin, "The Myth of National Defence", in Cécile Fabre and Seth Lazar (eds) *The Morality of Defensive War* (Oxford: Oxford University Press, 2013), pp. 69-89, at pp. 80-81.

constituent parts to remaining in the state, because, for example, they are economically integrated with the seceding regions. There is a good case for saying that regions caught in this situation have the right to secede. Neither remedial right theories nor primary right theories satisfactorily explain this, however. In the example of Northland above, the people of Northland are not being subjected to, nor at risk of, serious injustices. Nor does Northland's claim to secede have anything to do with its inherent right to self-determination—its claim to secede is best explained by the fact that (i) Unitaria can no longer provide some important public goods to it and that (ii) it is extremely costly for Northland to remain in Unitaria, because it is economically integrated with a seceding region. If Northland has a right to secede, this is neither a remedial right nor a primary right.

3.3: *Nationalist Theories of Secession*

One important thing about the alleviative theory of secession is that it is intermediate in what I call "permissiveness" between the remedial right only and primary right theories. That is to say, it entails that more groups have the right to secede than the remedial right only theory, but it does not entail that as many groups have the right to secede as on primary right theories. With this notion in mind, we can now characterise the kind of theory that I want to defend in this dissertation. As I've said, I am defending a nationalist theory of the right to secede. My primary claim is that nations, but not other kinds of groups, have a presumptive claim to unilaterally secede. Part of the task, then, of establishing this is to explain why other kinds of group do not have this presumptive claim.

There are, as I said in the introduction, two strands to this problem. The first strand is to explain why more permissive theories of secession—that is to say, voluntarist theories—are unsatisfactory. That is the task I take up in the following chapter. The second strand is to explain why the reasons that one gives for saying that nations have the right to

secede don't also apply to other kinds of groups. As I've said, my strategy here is not to deny that other kinds of groups—e.g., religious groups—can't have the features in virtue of which nations have a strong claim to secede. My strategy is instead to argue that there are considerations militating against permitting secession by these other kinds of groups that do not apply to nations. Nations are, as such, normatively special.

This does not mean, however, that the bare fact of nationality alone is what grounds a group's claim to secede. Nationalist theories should not be thought to be committed to this claim.[52] Nor should we think that nationalist theories are committed to the claim that the features that ground nations' claims to self-determination are unique to nations. A theory of secession needs not just an account of what rules groups in, but an account of what rules groups out also. It needs, in other words, a list of defeaters. Knowing this helps us to better understand just exactly what is required of a nationalist theory of secession.

Conclusion

To summarise, the theory I am defending in this dissertation is non-institutional, ideal, primary right nationalist theory of the right to secede. I have defended the priority of non-institutional theorising over institutional theorising, and have clarified the meaning both of primary right theories and of nationalist theories. In the next chapter, I set about trying to show that the more permissive accounts of the right to secede—voluntarist accounts—are unsatisfactory.

[52] For an example of this mistake, see Buchanan, *Justice, Legitimacy and Self-Determination,* p. 218.

Chapter 2: Against Voluntarism

Introduction

As I outlined in the previous chapter, and in the Introduction, this dissertation is intended to be a defense of a nationalist theory of secession. As part of this defense, I must show why alternative accounts of the right to secede are false. As I explained in the previous chapter, accounts of the right to secede can be arranged on a scale of "permissiveness", with the nationalist theory lying somewhere intermediate. In this chapter, I will argue against the more permissive theories: the theories that I call "*voluntarist*" theories. Voluntarist accounts are best introduced by contrast with ascriptivist or nationalist accounts of the right to self-determination. Ascriptivis (usually nationalist) accounts hold that groups that possess certain ascriptive features (such as a shared culture or nationality) have the right to secede.[1] Voluntarist accounts, on the other hand, hold that any group that satisfies certain minimal conditions (such as the ability to govern itself, and to leave the remainder state capable of governing itself), has the right to secede.[2]

In section 1, I shall give an outline of what I shall call the *Individualist Voluntarist* accounts; that is, accounts that ground the right to secede in *individual*, as opposed to *collective* or group rights. I shall explain the significance of this distinction before canvassing some objections to these theories. I shall first canvass objections to the claims that the right to secede can be grounded by either (a) the individual right to freedom of

[1] Buchanan, A., *Justice Legitimacy and Self-Determination* (Oxford: Oxford University Press, 2004), p. 218. For an example of such a theory, see Avishai Margalit and Joseph Raz, "National Self-Determination", *Journal of Philosophy* 87 (9), 1990, pp. 439-61.
[2] See, for instance: Daniel Philpott, "In Defence of Self-Determination", *Ethics* 105 (2), 1995, pp. 352-385; Christopher Wellman, *A Theory of Secession* (Cambridge: Cambridge University Press, 2005).

association, and (b) an individual's right to have their jurisdictional preferences respected.

In section 2, I shall discuss Andrew Altman and Christopher Wellman's voluntarist theory of the right to secede. On their account, the right to secede is an "irreducibly collective" right—that is, it is a right that can only be held by groups, not by individuals. I shall set out this theory in more detail and argue against competing interpretations of it. I shall then canvass what I take to be two unsuccessful criticisms of Altman and Wellman's account, before presenting my own objection to it.

In section 3, I canvass a group of theories that attempt to ground the right to secede (and more generally, the right to collective self-determination), in the value of individual autonomy. I reconstruct the views of, in particular, Daniel Philpott and Anna Stilz. I argue that both of these theories are unsatisfactory.

Section 1: Individualist Voluntarism

1.1: *Individualism and Secession*

To start off, what do we mean by individualist voluntarism? By this, I mean theories that ground a right to secede in individual rights. There are two preliminary things to note here. The first is that individualist voluntarist theories are not committed to the claim that *individuals* have the right to secede in the sense of, as Allen Buchanan puts it: "[denying] the authority of the state, but [remaining] *in situ* within the borders of the state".[3] The second thing to note is that non-individualist theories are committed to the claim that the rights, interests and claims of individuals are not relevant to grounding the right to secede; they are merely committed to the claim that the right to secede is an

[3] Allen Buchanan, *Secession*: *the morality of political divorce from Fort Sumter to Lithuania and Quebec* (Boulder, CO: Westview Press, 1991), p. 13.

irreducibly collective right: it cannot be reduced to the rights of the individuals who make up the group. This does not mean, however, that the interests and claims of individuals are irrelevant to the justification of the right. Altman and Wellman hold that the claim that the right to secede is irreducibly collective, is fully compatible with *value individualism*, or the proposition that only individuals, or states of their lives, ultimately matter morally.[4] They argue that their theory can give an account of how individuals are *wronged* when groups of which they are part are denied their right to secede. This is in spite of the fact that individuals do not have their rights violated when their group is denied the right to secede—it is the group, not the individuals, that has its rights violated.

Individualist theories, then, simply hold that the right to secede ultimately reduces to rights held by individuals. When someone denies a group the right to secede, they potentially violate the rights of the individuals who make up that group. I will canvass two attempts to explain this claim in sub-sections 2.1.2 and 2.1.3, below. First, however, I should make a crucial caveat. Individualist voluntarist theories of the right to secede, like all theories of the right to secede, lay down a number of limiting conditions on the right to secede. Exactly what these conditions are vary by theory, but we can single out a number of conditions that are broadly agreed upon:

a. The secessionist group must be capable of assuming the "basic responsibilities" of statehood.[5]

[4] Altman and Wellman, *A Liberal Theory of International Justice,* (Oxford: Oxford University Press, 2011), pp. 37-9. I should note here that Altman and Wellman are quite wrong to think that someone who denies that groups as such have intrinsic value need be committed to value individualism. Someone might deny that groups have intrinsic value while admitting that, for example, beautiful objects or states of affairs have intrinsic value.

[5] Harry Beran, "A Liberal Theory of Secession", *Political Studies,* 32, 1984, pp. 21-31, p. 30.

b. The secessionist group must leave the remainder state capable of assuming the basic responsibilities of statehood.[6]

c. There must be credible guarantees of minority rights, and human rights more broadly.[7]

Some other possible conditions on the right to secede include a requirement that the seceding group be willing to undertake a fair division of collective assets and liabilities with the remainder state,[8] that the new secessionist state would not be an enclave,[9] and that the new secessionist state's territory does not take territory that is necessary for the military defense of the remainder state.[10] A brief further question here is whether the failure to satisfy these conditions means that the would-be secessionists have no right to secede, or that their right to secede may be justifiably infringed. I set this question aside here, as I do not wish to stake a position on it. I will return to discuss the conditions that must be satisfied by a seceding group in Chapter 5.

1.2: *Freedom of Association*

One of the earliest attempts to justify a right to secede on individualistic grounds is Harry Beran's theory of the right to secede, on which the right follows from the individual right to freedom of association.[11] According to Beran, the liberal commitment to freedom

---

[6] *Ibid.*
[7] *Ibid,* Eric Cavallero "Value Individualism and the Popular-Choice Theory of Secession", *Social Theory & Practice,* 43 (1), 2017, pp. 125-153, pp. 125-6.
[8] Cavallero, *op. cit.,* p. 130.
[9] Beran, *op. cit.,* p. 30.
[10] *Ibid*.
[11] David Gauthier has defended a similar view. See his "Breaking Up: An Essay on Secession", *Canadian Journal of Philosophy*, 24, 1994, pp. 357-372. Cavallero distinguishes Gauthier's account of the right to secede from Beran's, claiming that Gauthier's account does not rely on the assumption of "a right of freedom of political association", but on the assumption of a "weak right" to co-ordinate with others such that as many people as possible have their choice of jurisdiction satisifed. Cavallero claims that Gauthier does not defend the assumption of this weak right, and goes on to say that his individualist account of the right to secede can be considered an explication of the ground of this weak right; see Cavallero, op. cit., p. 138, n.31.

motivates the view that all associations "among sane adults" should be voluntary.[12] Beran notes that this principle, though widely held among liberals, has seldom been applied to the case of the state. He claims that this is an oversight:

> [I]t seems that a commitment to the freedom of self-governing choosers to live in societies that approach as closely as possible to voluntary schemes, requires that the unity of the state itself be voluntary and, therefore, that secession by part of a state be permitted where it is possible.[13]

For Beran, then, the right to secede is ultimately the right of individuals to associate as they see fit. The fact that there are limiting conditions on the exercise of the right to secede is not at odds with this claim.

The central objection to Beran's account of the right to secede is that the right to freedom of association is neither "perfectly general", nor absolute.[14] The central context in which association is said to be morally mandatory is the political context; we simply do not have a choice, morally speaking, about whether to associate in certain ways with others.[15] To put things another way, if states have the moral right to coerce us without our consent, then the right to freedom of association simply cannot be perfectly general. In this thesis, I assume that states have the moral right to coerce individuals without their consent. I am reluctant to commit myself to any particular account of state legitimacy, and I am even more reluctant to devote space here to adjudicating between different

---

[12] Beran, *op. cit.*, p. 24.
[13] *Ibid*, p. 25.
[14] Wellman, *op. cit.,* p. 32. Of course, this does not entail that we no have right to emigrate; see John Rawls, *Political Liberalism* (New York, NY: Columbia University Press, 1993), p. 222.
[15] One issue I set aside here is the potential gap between the legitimacy of the state—that is, its right to rule us, and our corresponding lack of a right against its coercion—and our obligation to obey the state's commands. What I say here about political association being morally mandatory implies that we have a duty to politically associate, and to obey the state's commands, etc. This should not be taken to commit me to any particular view about the relationship between legitimacy and obligation, however; everything I say can be re-phrased to avoid this implication.

theories.[16] It suffices, then, to note that the foregoing assumption is incompatible with an absolutely general and absolute right to freedom of association.

One possible reply to this is to note that Beran does not seem to assume an absolutely general and absolute right to freedom of association in the first place. As we've noted, he qualifies the right to secede with several conditions, including a condition that the seceding individuals be capable of satisfying the basic requirements of statehood. On this view, individuals have a duty to associate politically *in general,* but have the right to decide who they want to politically associate *with*. Now, laying down this viability condition is going to dramatically shrink the number of potential permissible secessions. Some individuals will not have the right to secede at all, because there is no viable state that could be formed by the number of people prepared to exercise this right with them. Other individuals will have the choice of whether to join one or the other state. Some of them will be happy with their choices—others will have to settle for second or third best. Most importantly, some individuals will be forced to associate politically with particular other individuals in ways that they reject. This seems like an unfortunate implication for a view that is supposed to be grounded by the right of freedom of association. It seems that what Beran's account really amounts to is something like the view that David Gauthier describes:

> I find it helpful to think of each person as having a weak right to enter into and continue political association with those with whom she wishes to associate and who wish to associate with her, and to avoid or exit from association with those with whom she wishes not to associate. By a 'weak right' I intend one whose exercise must be coordinated with that of other persons in such a way that, other things equal, as many persons as possible will find themselves in mutually desirable association.[17]

[16] In contrast to Wellman, for example, who devotes considerable space to a discussion of his "Samaritan" account of political legitimacy; see *op. cit.*, pp. 6-33.
[17] Gauthier, *op. cit.,* 360.

Now this certainly looks very different from the right to freedom of association. Our rights to freedom of association, especially our rights to disassociate, do not need to be exercised in co-ordination with others. Indeed, if I may only exercise my right to leave a club in conjunction with others, then it seems true to say that I do not have the right to freedom of disassociation with respect to that club. The point of freedom of association is not to maximise the number of people who have their associational preferences satisfied; it is give individuals sovereignty with respect to the way in which they associate with others. And in the political context, they cannot have this sovereignty.

1.3: *Individual Associational Preferences*

Eric Cavallero argues that only the voluntarist theory of secession gives proper weight to respect for individual's associational preferences—that is, their "preferences to associate, or not to associate, with specific others, in the shared pursuit of specific ends, of any kind."[18] Cavallero accepts that there is no right to individual right to freedom of political association; everyone must be compelled to associate with a state.[19] He notes, however, that some people are not satisfied with being forced to associate with the particular state whose jurisdiction they are under. And, according to him, they are owed a special justification for being forced to associate under unsatisfactory terms.[20] He argues that only the iterative referendum model of the implementation of the voluntarist theory meets this burden of justification. This is because it gives equal weight to the associational preferences of all, and provides an impartial means of resolving conflicts of associational preferences.[21] After this iterative referendum process has been gone through, there will inevitably still be individuals who are on the wrong side, as they see it, of the boundaries

[18] Cavallero, *op. cit.*, p. 135.
[19] *Ibid*, p. 137.
[20] *Ibid*.
[21] *Ibid*.

of states. Cavallero argues that the proponent of his model can offer them the following justification for their situation:

> "Your situation is regrettable. But your basic rights are secure, and your morally significant political-associational preferences are of no greater value than anyone else's. Every outcome that is preferable to you either (i) would fail to protect everyone's basic rights, or else (ii) would leave more people in your regrettable situation than the present outcome does. These facts have been established publicly, through a referendum process in which you were at liberty to participate as an equal."[22]

The first question for Cavallero is why we should care about individual associational preferences in the first place, and what weight they have. Cavallero begins by noting that that liberals value individual associational preferences insofar as (a) the association is not for the purposes of wrongdoing, and (b) the desire to associate is either mutual or is negative—that is, liberals do not place any value on an associational preference to associate with someone against their will.[23] He also notes, correctly, that individual associational preferences do not have always trump other considerations: individuals can be justifiably compelled to associate with others. Where a failure to associate with others would lead to the violation of the rights of others—say, by leaving them unable to form a viable state capable of protecting their rights—individuals may be compelled to associate.[24]

So far, this seems reasonable enough. But note that Cavallero concedes that individual associational preferences do not have the same degree of moral *weight*. As he says:

---

[22] *Ibid*.
[23] *Ibid*, p. 135.
[24] *Ibid.*

> [y]our preferences not to associate with me as a patron of your restaurant, or as a guest in your hotel, carry less weight than your preferences not to associate with me as a dinner companion, or as a guest in your home.[25]

Cavallero then goes on to argue that individual *political* associational preferences are weighty, because the jurisdiction under which a person lives makes a good deal of difference to their ability to pursue a "life plan".[26] States, as Cavallero notes, enforce "terms of social interaction" on their subjects, terms that can limit and shape their ability to pursue their ends. But while Cavallero is right to point out that the fact that are subject to a state matters a great deal for our ability to pursue a life plan, he is wrong to assume that the choice of different jurisdictions will *always*--or even generally--make a difference to individuals in this regard. Suppose Kent seceded from the United Kingdom. The odds are it would be a broadly liberal-democratic polity, governed in probably a very similar way to the United Kingdom. The choice, to Kentish people, of remaining in the UK or seceding will most likely not make that much difference to their ability to pursue a life plan.

Cavallero is quick to point out that nationalist theorists of secession pinpoint a significant interest that members of national minorities have in having their associational preferences respected: Raz and Margalit, for example, argue that the vitality of national cultures matters for individuals' abilities to live autonomous lives.[27] In this case, individuals' political associational preferences track their interest in living in one jurisdiction over another. He argues, however, that that there are other kinds of interests at stake in the assignment of individuals to different jurisdictions. At no point, however, does Cavallero explain what these might be. As we have seen, the observation that state

---

[25] *Ibid*, p. 136.
[26] *Ibid*.
[27] *Ibid.*

policy affects people's ability to pursue a life plan does not entail that in each case, or even the typical case, the choice of jurisdiction matters for individuals' ability to pursue a life plan.

Under what circumstances might the choice of jurisdiction matter for individuals' personal autonomy? Let's set aside the case of national minorities for now. I can think of two *straightforward* kinds of cases where being a member of one state rather than another matters a great deal for personal autonomy. These are cases where would-be secessionists can set up a viable and well-functioning state that would protect and promote their personal autonomy and, either (a) their current state restricts the options open to its members by curtailing freedoms of religion, association, expression, and so on; or (b) their current state is unable to provide its citizens with the basic requirements for personal autonomy. But in these cases, it seems, if some members of this state have the right to secede this is either, in the case of (a) a remedial right, or in the case (b) an alleviative right. In these cases, if individuals want to secede, their political associational preferences track important interests. It is much harder to see how this would be true in the hypothetical Kent secession case, however.

If Cavallero wants to motivate the claim that individuals *generally* have an important interest in being allowed a choice of jurisdiction, then he gives us some account of what this interest is. As it is, we have only a placeholder. The upshot of this discussion is that Cavallero has not succeeded in motivating the claim that we must always assign a great deal of weight to individuals' political associational preferences. Remember that Cavallero concedes that individual associational preferences do not always have decisive weight—he concedes that individuals may be compelled, not merely to politically

associate in general, but to politically associate with particular individuals.[28] Now there are typically costs to members of the remainder state associated with secession. In the absence of an account of the value of individuals' political associational preferences, we have no way of knowing how to weight these costs against preferences for secession. Cavallero has identified, at best, a trivial *pro tanto* reason to permit secession. This is nowhere near to being a *theory* of the right to secede.

There is a further problem here with Cavallero's view, and this is that by giving such weight to individuals' associational preferences, we may frustrate the ability of certain groups to achieve self-determination. Suppose, for example, that a dozen individuals occupy a border region of a would-be secessionist state that neighbours the territory of the potential remainder state. This border region is vitally important to the viability of the would-be state; this may be because it contains some valuable resource, or is strategically important. These dozen holdouts, however, refuse to associate politically with the secessionists, and frustrate their ability to secede. If we think that the secessionists have a good claim to secede, that their collective self-determination is important, then we should be reluctant to that these hold-out individuals have the right to effectively veto a collective decision to secede. Of course, to get this objection off the ground, we must establish that collective self-determination is important in the first place. But individualist voluntarist accounts preclude even setting up a clash between the claims of the larger group and the claims of the hold-out in this way.[29]

---

[28] *Ibid*, p. 135.

[29] Frank Dietrich makes a similar point in relation to individualist Lockean theories of territorial rights; "Changing Borders by Secession: Normative Assessment of Territorial Claims" in A. Pavkovic & P. Radan (eds) *The Ashgate Research Companion to Secession* (Aldershot: Ashgate, 2016), p. 85. See also my discussion of these theories in Ch. 5.

Section 2: Collectivist Voluntarism I: Altman and Wellman

In this section I shall look at the voluntarist theory of self-determination defended by Andrew Altman and Christopher Wellman. This theory holds that any group with the ability and willingness to fulfill the state's political function of protecting rights has the right to secede from the state (and, a fortiori, the right to self-determination), provided it leaves the remainder state capable of doing the same. Altman's and Wellman's theory grounds the "irreducibly collective" right to secede by arguing that to fail to respect the autonomy of groups that can fulfill the state's political functions is to disrespect the *individual members* of the group.[30]

In the next sub-section, I shall outline Altman and Wellman's theory in greater detail. I shall then move one to discussing two objections to Altman and Wellman's account of the right of self-determination, both of which I believe can be overcome. In the final sub-section I shall discuss my own objections to Altman and Wellman's theory.[31]

2.1: *Reconstructing the Account*

Altman and Wellman believe that the right to group self-determination is held by the group as a whole, and is not simply the aggregate of the rights of the individual members.[32] They believe that the right is not reducible to the rights of the members that make up the group. Nonetheless, they want to remain committed to "value individualism", the claim that only individuals and states of their lives ultimately matter morally. At first blush, as they point out, there seems to be a conflict between these two commitments.[33]

---

[30] Andrew Altman and Christopher Wellman, *A Liberal Theory of International Justice* (Oxford: Oxford University Press, 2011), p. 39.
[31] A brief point: some of my discussion of the view will be centred on Wellman's single-authored earlier work, *A Theory of Secession,* where he develops the view in more detail.
[32] *Ibid*, p. 11.
[33] *Ibid*, pp. 37-9.

So how do they square this? They argue that our duties to respect group autonomy are ultimately owed to the individuals who make up the group. Although the right to self-determination is irreducibly collective, it is *grounded* by duties to individuals.

Altman and Wellman claim that when we fail to respect the autonomy of groups that are capable of being self-governing (that is, of fulfilling the state's political function of protecting rights) we wrongfully disrespect the members. But they distinguish between two kinds of case. The first kind of case involves groups that already are self-governing. They say that the people of "legitimate states" are owed respect because of their ability and willingness to carry out the state's function of protecting rights.[34] That the state has the ability and willingness to protect rights is a collective achievement of the members. So, Altman and Wellman say, the respect that is owed to the state is "ultimately owed" to its individual members.[35] But how exactly are individuals disrespected when we violate the autonomy of their legitimate state? They do not believe that an individual member of a legitimate state has their *own* autonomy violated when the autonomy of their state is violated. So where is the disrespect? Wellman says in his earlier, *A Theory of Secession*:

> It is true that violations of autonomy and equality are central forms of moral disrespect, but not all respect is due to people in virtue of their standing as free and equal persons. In many cases, people are owed various types and levels of respect because of their special roles, standing, or achievements. A student could be culpably disrespectful to Amartya Sen, for instance, if she did not exhibit the type of deference to which Sen is entitled because of his remarkable accomplishments [. . .] [S]ome forms of moral respect are owed to people because of the particular roles they occupy or for the things they achieve or accomplish.[36]

[34] *Ibid*, p. 39.
[35] *Ibid*.
[36] *Op. cit*, pp. 56-7.

So legitimate states are owed respect in virtue of something they have accomplished, and this accomplishment is a collective accomplishment on the part of the state's individual members. Ultimately, therefore, the respect is owed to those individual members, in virtue of their participation in a collective accomplishment.

This isn't the end of the story, however. What about groups that have not managed to form legitimate states, because, for instance, they have been colonised? Altman and Wellman believe that to violate the autonomy of groups that have the *capacity* to form legitimate states is to wrongfully disrespect the members of the group. In this case, they say "the respect is not owed for something already achieved but for something within the capabilities of the group to achieve."[37] When we fail to extend the respect to individuals that they are owed in virtue of their capabilities, Altman and Wellman say, we express the attitude that they do not have those capabilities: "Aside from its violations of human rights, […] imperial domination is an affront to the colonized in the form of an attitude that says, "You cannot govern yourselves properly, and so we must govern you.""[38] To illustrate this point, they make an analogy to a fictional legal system that did not allow women to drive. Having such a law would "disrespect those women able and willing to drive in a safe fashion, as it would fail to acknowledge their capacities as competent drivers."[39] The only difference between this case and the case of the colony is that in the first, the woman as disrespected as individual competent drivers, while in the second the people of the colony are disrespected as members of a group with a collective capacity.[40]

---

[37] *Op. cit.*, p. 40.
[38] *Ibid*.
[39] Wellman, *op. cit.,* pp. 56-7.
[40] *Ibid*.

Let's now summarise Altman and Wellman's claims about collective self-determination. Their theory can be boiled down to the following claims:

Irreducible Collectiveness: the right to group self-determination is irreducibly collective—that is, the bearer of the right is the group, and this right is not reducible to the rights of the individual members.

The Basic Grounding Claim: the right to group self-determination is grounded in a way that is compatible with value-individualism.

The Accomplishment Respect Grounding Claim: To violate the self-determination of a legitimate state is to wrongfully disrespect the members of that state, by failing to show them the respect that they are owed, qua members of a legitimate state, in virtue of their collective achievement in sustaining a legitimate state.

The Sub-State Group Claim: To violate the self-determination of any sub-state group within a legitimate state that has the capacity and willingness to form a legitimate state is to wrongfully disrespect its members.[41]

The Capacity Respect Grounding Claim: To violate the self-determination of a colonised group who have the capacity and willingness to form and sustain a state of their own is wrongfully disrespect the individual members of that group qua members of that group, by failing to acknowledge the group's collective capacity to form and sustain a legitimate state.

[41] I will explain below why I do not specify whether Altman and Wellman think that this right is grounded by a Capacity Respect or Accomplishment Respect. They claim that the form of respect their argument picks out is "recognition respect", as identified by Stephen Darwall; *op. cit*., p. 39.

Completeness: The conjunction of the previous five claims expresses all the basic facts about the ground and bearers of the right of collective self-determination.[42]

I have distinguished in this list between A*ccomplishment Respect* and C*apacity Respect.* As should be obvious, Accomplishment Respect is respect owed to someone in virtue of an accomplishment of theirs, whether individual or collective, whereas Capacity Respect is respect owed to someone in virtue of some capacity of theirs, whether to achieve or do something individually or as part of a collective. Both forms of respect can be owed to someone qua member of a group.

I have already mentioned that I endorse **Irreducible Collectiveness** and the **Basic Grounding Claim**. In the remainder of this section, I want to show that:

(i) the **Capacity Respect Grounding Claim** cannot ground a right to self-determination for groups within a legitimate state.

(ii) the **Accomplishment Respect Grounding Claim** can generate a right to self-determination for existing states, but we have no reason to think it can generate such a right for (at least most) sub-state groups within legitimate states (such as the Scots).

(iii) The **Sub-State Group Claim** is not grounded by Wellman's theory.

(iv) Altman's and Wellman's voluntarist account of the right of self-determination does not generate as permissive a right to self-determination as they think it does.

[42] I should note that Wellman himself does not use the expressions "Accomplishment Respect" or "Capacity Respect".

In conclude by saying that if we do think there is a right to self-determination for sub-state groups like the Scots (and I argue in the next chapter that we should), then Altman's and Wellman's is an incomplete theory of self-determination, and so we should reject it.

2.2: *Some Questions*

Briefly, I want to raise some questions for Altman's and Wellman's account. Saying that a state's ability and willingness to discharge its function of protecting rights is a collective achievement of its members obviously raises some questions about collective responsibility. What must be true of members of the state before they can be credited with being part of this collective achievement? Some prima facie answers include, obeying the law over a sufficiently long period, being politically active to some degree, paying taxes, etc. Secondly, only those who are politically active *in the right way* can be credited with this collective achievement; those who advocate gravely unjust policies such as racial discrimination or persecution of religious minorities are excluded. You can't be credited with a collective achievement if you work against it.[43]

But if violating the self-determination of legitimate states is wrong because it fails to respect the achievements of those who share in the collective achievement, then those who do not share in this collective achievement are not wronged when the autonomy of

[43] When talking about collective responsibility in relation to the actions or achievements of states or nations is important to keep in mind here the distinction between outcome responsibility and moral responsibility; cf. David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007), Chs. 4, 5. I don't want to commit myself against the claim that members of a society can be *outcome* responsible for things their society does or has achieved, but when we say that *respect* that is owed to people in virtue of collective achievements, it seems that it is the notion of moral responsibility that is doing the work. To lend some weight to this view, suppose that Miller's like-minded group model of collective responsibility is true—that is, that one can be held outcome responsible for the actions of a group whose aims and outlooks you share. If I am an active Liverpool F.C. supporter, it's not plausible to suppose that I am entitled to additional respect if the club wins the English Premier League, even if I can held be outcome responsible for violent behaviour by other supporters.

their legitimate state is violated. If we take our prima facie list as being broadly accurate this means that children, recent immigrants, the apolitical and criminals are not wronged when their state's autonomy is violated. Put in simple terms, if America were to forcibly annex Canada, the only people who would be wronged would be good, active and long-established citizens.

There are two responses a defender of Altman and Wellman could make to this point. The first is just to accept that violating the self-determination of a legitimate state only wrongs its good, active citizens and long-established citizens. It is not one of our considered intuitions that children, immigrants and advocates of unjust policies also share in the right of collective self-determination. Partly this is because self-determination is under-theorised. But partly also it is because we might believe that the value of democratic participation is one of the things underlying the importance of self-determination. On the other hand, it is at least plausible that people who are future active citizens are harmed by their group's being denied self-determination. But future active citizens can't be credited with present collective achievements.

The point I am trying to make in this sub-section is that, if we think that individuals are owed respect in virtue of a collective achievement, we have to flesh out what these individuals, individually, have to do before they can be credited with the collective achievement. Whatever story about we tell about this generate different answers to the question: "who is wronged by the violation of collective self-determination?" And this might make the underlying account of the value of collective self-determination more or less plausible. If we think that children, recent immigrants, and bad or inactive citizens *are* wronged by the violation of their group's self-determination, then Altman and Wellman's account of self-determination (assuming what I said about being part of a

collective achievement above is correct) will come out as underinclusive, and therefore incomplete.

I won't press this problem any further here, however. As I have said above, I think our intuitions about self-determination are too underdeveloped for this to be a fruitful point. Instead I want to focus on other objections to Altman's and Wellman's theory. I will canvass two unsuccessful objections in the following sub-sections.

2.3: *Cavallero's Objection*

Recall that Altman and Wellman implicitly distinguish between two kinds of respect; *accomplishment respect* and *capacity respect*. Showing someone accomplishment respect involves according them a status that they have earned in virtue of an achievement, whether collective or individual. Showing someone accomplishment respect involves recognizing a capacity that they have. Remember that, for Altman and Wellman, in the case of residents of a colony, violating their self-determination does not involve a wrongful breach of *accomplishment* respect, but of capacity respect. As Wellman says: "Aside from exploitation and unjust policies, colonization is an affront to the colonized in the form of an attitude that says, "You cannot govern yourselves properly, and so we must govern you."".[44]

To get a bit clearer on this, let's reconstruct this part of Altman's and Wellman's argument more formally:

[44]Wellman, *op. cit.*, p. 57.

The Capacity Respect Argument

P1. If a group has a valuable capacity, then failing to respectfully recognize that they have such a capacity is to wrongfully disrespect the individual members of that group.

P2. To fail to allow the members of a group to exercise a valuable capacity that they have is to fail to respectfully recognize that they have that capacity.

P3. To fail to allow the members of a group to exercise a valuable capacity that they have is to wrongfully disrespect them. (From P1, P2)

P4. The capacity to form and maintain a legitimate state is a valuable capacity.

Therefore:

C. To fail to allow the members of a group that has the capacity to form and maintain a legitimate state to exercise this capacity is to wrongfully disrespect them.

Now to start with, Eric Cavallero doesn't think we should interpret Altman and Wellman as being committed to this argument.[45] He believes that Altman and Wellman begin from the presumption that capable groups have a right of collective self-determination, and that, *granted this presumption*, to fail to recognise a group's right is to wrongfully disrespect the members.[46] His argument for this interpretation just seems to be that moving from the claim that to deny that a group has a valuable capacity involves wrongful disrespect to the claim that a group has the right to exercise that capacity begs the

[45] Cavallero, *op. cit*., p. 134. I should note here that Cavallero draws his references to Wellman's theory from Wellman's later, co-authored book (with Andrew Altman), *A Liberal Theory of International Justice*.
[46] *Ibid*.

question, and so we should avoid attributing such a move to Altman and Wellman. He makes the following point about this move:

> To be sure, if a group demonstrably has a valuable capability, then it may be wrongfully disrespectful of its individual members to deny that the group has it. But respectful recognition of the fact that a group has a certain capability need not involve recognizing a right of the group to exercise it. For example, it might be wrongfully disrespectful toward individual members of the medical staff of Yale-New Haven Hospital for me to deny that they are, collectively, capable of safely removing my tonsils. That does not, however, imply that they have a collective right to do so.[47]

There are three points to make here. The first is that Cavallero's medical example presupposes an implausibly fine-grained account of valuable capacities: we don't ordinarily credit people with the ability to remove *my tonsils*, but tonsils in general, just as we don't credit people with the ability to drive a Toyota Avensis saloon car, but the ability to drive in general. So while it might be illicit, if we consider the capacity to remove my tonsils, to move from the claim that we have a duty to recognize that a group has a certain capacity to the claim that a group has a right to exercise this capacity, it seems less plausible that this is an illicit move in the case of removing tonsils in general. There is a significant difference between failing to allow someone to remove my tonsils and refusing to allow someone to remove tonsils in general, despite being capable of doing so safely.

The second point to make about this argument is to note that Cavellero does not distinguish between the claims that (a) in failing to allow the medical staff to remove my tonsils I wrongfully disrespect them, and (b) in failing to recognise that the medical staff's right to remove my tonsils I wrongfully disrespect them. (a) can be true even if (b) isn't. We can illustrate this with another example. Suppose that I own one of two astro-turf pitches in town, and I allow only football five-a-side teams of a certain standard to play

[47] *Ibid*, n. 27.

on it. There are twelve teams of a good enough standard, but I only allow ten of them to play. The other two, out of sheer caprice, I refuse to allow on my pitch. In this example I think we would say that I wrongfully disrespect the members of the two teams that I don't allow to play. For I fail to respectfully recognise their capacities, even if I pay public lip-service to their standard of play. But note that I am the owner of the pitch—it's my private property. The two teams I don't allow have another astro-turf pitch to play on, and its owner allows them to use it. So, it's not clear that I have violated the rights of the players, even though I have wrongfully disrespected them. And if the players don't have a *right* to play on the pitch, because it's my property, then refusing to *recognise* their right to play on the pitch doesn't wrongfully disrespect them. But refusing to allow them to play on the pitch does.

At first glance, it might look like what I've just said supports Cavallero's criticism of Altman and Wellman. Altman's and Wellman's account leaves the link from respectful recognition to rights unclear. However, we should note that both the astro-turf example and the medical example share something in common: they both involve something like rights of ownership. In the medical case, a person's right to bodily autonomy would seem to trump any rights arising out the possession of valuable capacities. Likewise, in the astro-turf case, my property rights act as trumps. We need to make space for these kinds of cases. I shall return to this later in this sub-section.

The third point I want to make is that Cavallero could distinguish between cases where a group or person has both a valuable capacity and the legitimate expectation that they should be allowed to exercise it, and cases where there is no such expectation. To return to the hospital case, certain background facts make a difference as to whether refusing to allow the medical staff to remove your tonsils counts as wrongful disrespect.

If you don't live anywhere near the hospital, have never undergone any procedures at the hospital, or the hospital has failed to provide you with competent care in the past, then not allowing the staff to remove your tonsils will not count as disrespectful. But if you have a long relationship with the hospital's current medical staff—they have previously treated you—and they have consistently provided you with excellent medical care, it's quite plausible that not allowing them to remove your tonsils, assuming you need them removed, would count as disrespectful.

Again, we should reformulate the *Capacity Respect Argument*. We should amend P2 to:

> (P2*) To fail to allow the members of a group to exercise a valuable capacity that they have, when they have legitimate expectations of being able to exercise that capacity, is to fail to respectfully recognize that they have that capacity.

and premise (4) to:

> (P4*) The capacity to form and maintain a legitimate state is a valuable capacity that groups with this capacity have a legitimate expectation of exercising.

It's important to note here that if we want to ground the right to self-determination in Capacity Respect, then we will have to stipulate that groups with the capacity to govern in a satisfactory way have a legitimate expectation of exercising it. But this is a reasonable stipulation.

To conclude this sub-section, I want to come back to cases involving property rights or rights of bodily autonomy. Remember, first of all, that none of the premises (nor the conclusion) of the *Capacity Respect Argument* refers to rights. But we can formulate the following principle to get to the right of self-determination:

Capacity Respect Principle: If failing to allow some entity *x* to exercise some valuable capacity *c* would wrongfully disrepect *x*, then *x* has an interest in having the right to exercise *c*.

This principle has the advantage that it is both plausible on its own merits and can handle cases like Cavallero's medical example. For the interest that people have in being respectfully recognised for their capacities can be overridden by concern for the rights of others—e.g, for their property rights. So while Cavallero is right to say that we cannot move from the claim that it would be wrong to deny that someone has a valuable capacity to the claim that the same person has the right to exercise this capacity, it is easy enough to come up with a bridging principle. To bring the issue back to self-determination, we should note two kinds of case where a group's interest in self-determination is overridden, or its claim is defeated—cases that involve the wrongful taking of territory and cases where the seceding group leaves the remainder state unable to function. Cavallero's objection leaves the **Capacity Respect Grounding Claim** untouched. In the next sub-section, I will consider another objection to Altman's and Wellman's account, from Steven Weimer.

2.4: *Weimer's Objection*

Weimer's objection doesn't concern cases involving colonies, but cases involving secession by sub-state groups *within* legitimate, democratic states—e.g., Scotland or Catalonia. In this kind of case, the members of the seceding group are stipulated to have extensive rights of democratic participation. Weimar's point is that refusing to permit a group to secede does not always prevent them from exercising their capacity for democratic participation, because they already exercise this capacity, as citizens of a democratic state:

> As the analogy to the law prohibiting women from driving makes clear, Altman and Wellman's claim is at bottom that the state wrongs the members of such a group because it fails to acknowledge what they can do—namely, that they can be contributing members of a legitimate, self-governing political group. But if those individuals already are contributing members of such a group and will remain so after the bid for secession is denied, their claim to have been so disrespected appears to be undermined.[48]

Now Weimer's objection presumes a different account of the relevant valuable capacities than the one at play in my formulation of the *Capacity Respect Argument*. Premise (P4*) mentions the capacity to *form* and maintain a legitimate state. As with Cavallero earlier, perhaps this is too fine-grained an account of capacities. It does seem plausible that the capacity to *form* a state is only derivatively valuable—that it derives its value from being sometimes essential to exercise of other, intrinsically valuable, capacities, like the capacity for democratic self-government. In that case, we can amend Premise (P4*) to:

> (P4**) The capacity to be contributing members of a legitimate self-governing political group is a valuable capacity that individuals with this capacity have a legitimate expectation of exercising.

Weimer's point is that members of a democratic, legitimate state are not prevented from exercising this capacity, and so are not wrongfully disrespected in the relevant way. Weimer seems to be correct about this. The upshot of this, according to Weimer, is that Altman's and Wellman's theory of self-determination cannot ground a primary right to secede for groups in legitimate democratic states.[49] I think this conclusion is too hasty. Not permitting a sub-state group within a legitimate state to secede doesn't involve any violation of Capacity Respect. But remember that Altman and

[48] Steven Weimer, "Autonomy-Based Accounts of the Right to Secede", *Social Theory and Practice* 39 (4), 2013, pp. 639-40.
[49] *Ibid*, p. 639.

Wellman does not explicitly ground the right to self-determination for sub-state groups in legitimate states in Capacity Respect. They just say that this is what grounds the right to self-determination in the colonization case: "As for the colonization cases, the respect is not owed for something already achieved, but for something within the capabilities of the group to achieve."[50] But this leaves open another way to ground the right of self-determination for sub-state groups in legitimate states.

The obvious way for Altman and Wellman to do this would be to ground the right in *Accomplishment Respect*. Remember that Accomplishment Respect is owed to people in virtue of their achievements, whether individual or collective. Altman and Wellman note that "a political community's ability and willingness to govern in a satisfactory fashion is a collective achievement […]".[51] What Altman and Wellman could say is that any group that has the ability and willingness to govern in a satisfactory fashion *and is part of a legitimate state* is owed Accomplishment Respect not just qua members of the legitimate state, but *qua members of a group that is able and willing to govern in a legitimate way.* So the people of Scotland are owed respect, not just *qua* citizens of the United Kingdom in virtue of contributing to the collective achievement of being able to govern in a satisfactory fashion, but also *qua* members of a group (the Scottish people) that is also able and willing to govern in a satisfactory way. By way of analogy, suppose that the members of an orchestra are owed Accomplishment Respect in virtue of the fact that they have the ability to play at a word-class level. Suppose some members of the orchestra have the ability to form a world-class string quartet. They are owed respect not just in virtue of contributing to the first collective achievement, but also to the second.[52]

---

[50] *Op. cit.*, p. 40.
[51] *Ibid*, p. 39.
[52] The way he puts this is quite confusing in the light of the quote above concerning the colonization cases; after all, a necessary condition of colonized groups having the right to self-determination is that

The point I am trying to make is that in order to ground a right to self-determination for secessionist groups in legitimate states, Altman and Wellman could, *prima facie*, appeal to Accomplishment Respect. More importantly, they have *no other resources* to ground such a right, because they cannot ground the right in Capacity Respect, as Weimer shows. If they can ground the right in Accomplishment Respect, then the fact that the concern for Capacity Respect cannot ground such a right will not be a problem for his theory.

2.5: *The Limits of Accomplishment Respect*

In this sub-section I shall raise my own objection to Altman and Wellman's theory, and show that his theory is not anywhere near as permissive as they think it is. Earlier, in section 2.2, I raised some problems about collective responsibility and Accomplishment Respect. The thought was that, in cases where the achievement in virtue of which Accomplishment Respect is due is a collective achievement, we need some account of who is collectively responsible for the achievement before we can work out who is due Accomplishment Respect. This problem arises in a particular way for Altman's and Wellman's theory. To set this problem up, however, I shall say a bit more about Accomplishment Respect that is due to people for collective achievements.

Suppose there were an accomplished group of musicians, who were for a long time denied the critical and official recognition they deserved, for, say, political reasons. The state broadcaster decides to honour them by devoting half a day's air-time to their work, and to commentators talking about their achievements, etc. The members of this group,

---

they be able and willing to govern in a satisfactory fashion, and yet he says that respect to colonized groups is *not* owed for something already achieved. So either no colonized group has the right to self-determination, or they are owed Accomplishment Respect. It would seem that all Wellman needs for his theory of self-determination is Accomplishment Respect.

qua members of the group, are owed Accomplishment Respect in virtue of their achievements, and honouring them in this way would seem to be a good way to extend this respect to them. But now suppose that one member of the group demands that she get a separate programme devoted entirely to *her* work. Because Accomplishment Respect is due to her *qua* member of the group, rejecting her demand would not wrongfully disrespect her. When one is owed respect *qua* member of a group, in virtue of a collective achievement, one is not owed the same kind of things that one would be owed if the achievement were a personal achievement. The same goes for groups and sub-groups. Maybe the members of a FIFA World Cup-winning team are owed certain recognition in virtue of their collective achievements—but the defenders, or any individual member of the team, are not owed the same degree of respect as the team as a whole is due.

But what does this have to do with the Accomplishment Respect that Altman and Wellman are concerned with? The point is that if the ability and willingness to govern is a collective achievement, and individuals and sub-groups are owed respect *qua* members (or constituent parts) of the group, then they are not entitled to the same degree of respect as the group is. So it does not follow that if the group's collective achievement entitles it to the right to self-determination, any individual or sub-group is entitled to that right.

But doesn't this contradict what I said in the previous sub-section? There, I said that Altman and Wellman could say that, "the people of Scotland are owed respect, not just qua citizens of the United Kingdom in virtue of contributing to the collective achievement of being able to govern in a satisfactory fashion, but also qua members of a group (the Scottish people) that is also able and willing to govern in a satisfactory way."

The problem with this claim is that it is not just the Scottish people who are collectively responsible for the fact that the Scottish people are able and willing to govern is a satisfactory way. The people of Scotland are part of a co-operative scheme that encompasses all the citizens of the United Kingdom. They benefit from fiscal transfers, common defense, well-functioning shared institutions and a civic culture that makes it possible for them to govern in a satisfactory way, if they so choose. The point here is that, if we are asking who is collectively responsible for the fact that the Scottish people are able and willing to govern in a satisfactory way, no plausible answer will say *only the Scottish people themselves*. What makes it possible for them to govern in a satisfactory way is in no small part due to British norms and British institutions. *If* the Scottish people were solely, or even mostly, responsible for this achievement, then what I said in the previous sub-section would be true. Now one reply is to say that had Scotland remained self-governing its citizens today would be capable of governing in a satisfactory way—but counter-factual judgements of this sort don't have much relevance when it comes to assigning credit for accomplishments. For instance, for any member of our musical group above we could say that had they never joined the group but opted for a solo career instead they would be equally well-esteemed, but this doesn't seem to make any difference to how much respect they are owed in virtue of their accomplishments.

To sum up, the problem for Altman and Wellman is that if people are entitled to Accomplishment Respect in virtue of the collective achievement of being able to govern in a satisfactory way, this won't generate a right to secede for sub-groups who are able to govern in a satisfactory way, for the following two reasons:

(i) Individuals and sub-groups are not entitled to the same degree of respect in virtue of a collective achievement as the group that is responsible for the achievement;

(ii) For any sub-group (e.g. Mancunians) within a legitimate state, the fact that Mancunians can govern themselves in a satisfactory way is a collective achievement on the part of the citizens of the state as a whole, not just Mancunians.

It's only when we can say that a group can govern itself in a satisfactory way, and *this is a collective achievement of that group alone* (or mostly so), that we can generate a right to self-determination out of Accomplishment Respect. This will be a rare case. It might be true of recently annexed societies, or sub-state societies with a highly distinctive culture and fiscal autonomy. At the very least, the problem for Altman and Wellman is that it won't generate anything like as permissive as right to self-determination as he thinks his theory can generate. Remember that Wellman says in his earlier work that his theory of self-determination grounds the right to secede for any group whose secession "will leave it and the remainder state in a position to perform the requisite political functions."[53] Altman's and Wellman's theory doesn't do what they think it does. That doesn't mean that their theory of the ground of group self-determination is false. What it means is that Altman's and Wellman's theory can't ground a right of self-determination for groups like the Scots or Quebecois, not to mention non-national groups like Albertans or people from Lower Saxony. If we think that some of these groups do have a morally significant interest in self-determination, then we should abandon Altman's and Wellman's theory. In the next chapter, I will argue that national minorities *do* have a morally significant interest in rights of self-determination.

[53] *Op. cit.*, p. 1.

To conclude this section: Altman and Wellman are correct on two points: (i) the right to secede is irreducibly collective, and (ii) the ability and willingness to govern a rights-respecting way—that is, to protect individuals' basic rights—and to leave the remainder state capable of doing so—is a necessary condition for a group to have the right to secede. A group that secedes only to fail to protect the basic rights of its citizens, or to leave the people of the remainder state so unprotected, commits a grievous wrong. Any plausible theory of secession must concede this point.

Section 3: Collectivist Voluntarism II: Autonomy and Self-Determination

I will now turn to address a sub-group of theories that attempt to ground a right to secede for groups in the contribution that political self-determination makes to individual autonomy. I will first discuss Daniel Philpott's account of the relationship between self-determination and individual autonomy, before moving on to Anna Stilz's more recent attempt to draw this connection. I will argue that both accounts fail to offer plausible theories of self-determination.

3.1: *Philpott on Self-Determination*

The most prominent autonomy-based account of the right to secede is due to Daniel Philpott. For Philpott, self-determination, like democracy, is a means to individual autonomy. His conception of autonomy is Kantian: he regards autonomy not merely as the "opportunity for choice", but acting according to one's practical reason.[54] For Philpott, democracy is a means of self-governing—both direct participation and holding representatives accountable allow individuals to shape the conditions of their lives.[55] How does this relate to self-determination? Philpott claims that self-determination

[54] Daniel Philpott, "In Defense of Self-Determination", *Ethics*, 105 (2), 1995, pp. 352-85, at p. 356.
[55] *Ibid*, p. 357.

promotes both participation and representation. He gives us the fictional example of a group called the Utopians, a group with a distinct political identity who do not at present govern themselves. He asks us to imagine how the Utopians would benefit from self-determination:

> Let's say that they attain full control over all of their affairs except for defense and monetary policy, which they have agreed to govern jointly with the older, larger state. What have they gained? In sum, they may now more directly pursue their Utopian causes as Utopians, without outside interference or burden. Participatory Utopians now participate more effectually in Utopian affairs, their efforts no longer truncated or attenuated. Utopians content with representation now find that their interests are represented, not the interests of themselves plus a hoard of strangers. Better able to participate, better represented, better able to deliberate and legislate in common, rather than constantly combat or be drowned in the dissonance of foreign ways, the Utopians now more directly shape their political context and are thus more autonomous.[56]

Before I discuss objections to Philpott's account of self-determination, I should first point out that in saying that the Utopians have a distinct "political identity", Philpott does not mean to say that they must be a nation. He is quite clear that the content of the identity does not make a difference to a group's claim to self-determination—all that seems to be involved in the notion of a "political identity" is a shared desire to rule as a particular group.[57] A second point: Philpott, although often identified as a proponent of a voluntarist theorist of secession, is quite wary of secession—he claims, in fact, that there should be a presumption against it, and that more limited forms of self-determination should be preferred.[58] We can set this aside, however; Philpott's prefers weaker forms of self-determination to secession because he adopts a particular view about how to weight

---

[56] *Ibid*, p. 360.
[57] *Ibid,* p. 358, n. 14.
[58] *Ibid*, p. 382. See also his "Self-Determination in Practice", in Margaret Moore (ed) *National Self-Determination and Secession* (Oxford: Oxford University Press, 1998), pp. 79-102, at p. 90. For examples of Philpott being cited as a voluntarist theorist of secession, see Allen Buchanan, "Democracy and Secession", in Margaret Moore (ed) *National Self-Determination and Secession* (Oxford: Oxford University Press, 1998) and p. 16, Wellman, *A Theory of Secession*, p. 34.

the goods that he argues follow from self-determination against the possible adverse consequences of exercising it. First, he discusses the possibility of ethnic conflict arising from secession. Secondly, he argues that secessionism will negatively impact the citizens of the remainder state, by restricting their opportunities for freedom of movement, and so on. And thirdly, he argues that institutionalising a right to secede may allow would-be secessionists to blackmail the central government.[59] But notice that these claims, and Philpott's preferred weighing of benefits and possible harms, are logically independent of his account of the ground of self-determination. We might endorse Philpott's account of the value of self-determination, and reject his reasons for endorsing only a limited right to secede. As such, his account of the value of self-determination is a candidate theory of the right of the secede, and is a rival to the theory I am defending in this thesis. As such, we should canvass the objections to it.[60]

The central objection to Philpott's view is that he misconstrues the relationship between autonomy, democracy and self-determination. Democracy is not, contrary to what he says, the "activity of governing oneself."[61] As Allen Buchanan points out, citizens of democracies do not govern themselves—they are governed by majorities.[62] Majority rule over a given domain or aspect of a person's life *excludes* individual control over that domain. There are two ways in which Philpott could repair his argument to respond to this objection. The first is to say that democracies *tend to promote individual autonomy*

[59] *Op. cit.*, pp. 381-2.
[60] Margaret Moore has defended a very similar account of self-determination in her *A Political Theory of Territory* (Oxford: Oxford University Press, 2015). For Moore, the self-determination promotes individual autonomy by allowing individuals to "shape the context in which they live" (p. 64). Moore, like Philpott is a non-nationalist; she does not restrict the right to self-determination to nations (p. 61). Moore's account of self-determination has been subject to very similar objections to the ones I canvass against Philpott below. See Ian Carter, "Territory, Self-Determination and Individual Autonomy", *Philosophy and Public Issues,* 6 (2), 2016, pp. 35-54.
[61] *Ibid,* p. 357.
[62] *Op. cit.*, pp. 17-18. See also Altman and Wellman, *op. cit.*, pp. 18-19 and Weimer, *op. cit.*, p. 629.

better other types of regime—say, by allowing individuals a greater degree of choice over how to run their lives. But this claim does nothing to motivate the further claim, as Buchanan notes, that self-determination promotes individual autonomy.[63] Philpott does not provide us with any reason to think that jurisdictions that match up with the jurisidictional preferences of their inhabitants will be better from this point of view. The second way that Philpott could repair his argument is by dropping the claim about the relationship between autonomy, democracy and self-determination, and simply claiming that self-determination promotes participation and more effective representation. Given that these are widely thought to be valuable, he need not then stake out a position on what explains the value of these goods. But again, Philpott gives us no reason to think that states that match up with the jurisdictional preferences of their inhabitants would do better on these dimensions. As Buchanan points out:

> Other things being equal, a smaller state may provide more opportunities for participation at the highest levels of decision-making, but larger states, if they have considerable decentralization, with various levels of government, may in fact provide more opportunities for participation or for a greater variety of meaningful opportunities for participation.[64]

In summary, Philpott has not given us a plausible account of the value of self-determination, and as such, his theory, when construed as a theory of the right to secede, should be rejected.

3.2: *Stilz on Self-Determination*

Anna Stilz has recently set out an autonomy-based account of self-determination, one grounded on what she calls "political autonomy". Now, like Philpott, Stilz is wary of secessionism; she says that a moral claim to self-determination does not necessarily

[63] *Ibid,* pp. 18-19.
[64] *Op. cit.*, p. 19.

imply a right to secede.[65] Like Philpott, Stilz runs through a list of (defeasible) considerations that, she claims, may defeat a group's claim to self-determination: these include the threat of ethnic conflict, the cost of secession to the citizens of the remainder state, and the probability of human rights violations.[66] In addition, she is quite clear that a permissive right to secede should not be institutionalised in international law.[67] Nevertheless, as with Philpott, these claims are logically independent of her account of the ground of collective self-determination. As such, her theory can be interpreted as a candidate theory of the right to secede.

Firstly, how does Stilz explain the value of collective self-determination? Stilz begins with the claim that individuals are wronged when they are subject to the imposition of a public scheme of rights that does not reflect their judgments about how and by whom they should be ruled. That is, they are wronged when they are subject to *unilateral* coercion. To subject someone to coercion on these terms, she claims, is *pro tanto* wrong.[68] It involves removing the coerced individual's agency, and, according to Stilz, replaces the coerced individual's judgement with that of the coercer. Coercion, she says, "presumptively threatens autonomy".[69] States, she notes, are "comprehensively coercive institutions".[70] Being subject to a web of coercive rules that one does not endorse, and which are imposed on one in a manner that one rejects makes it difficult for us to see ourselves as autonomous. When there is a correspondence between our judgements about how we ought to be ruled and the way we are in fact ruled, this threat to our autonomy recedes. For Stilz, then, a state has the right to rule only when it:

---

[65] Anna Stilz, *Territorial Sovereignty* (Oxford: Oxford University Press, 2019), p. 136.
[66] *Ibid.*
[67] *Ibid,* p. 137.
[68] *Ibid*, p. 100.
[69] *Ibid,* p. 107.
[70] *Ibid.*

> (i) protects certain essential private rights (including security, subsistence, core elements of personal autonomy, and deliberative freedom) for all its subjects and respects these rights in outsiders, and (ii) it reflects the shared will of its population as to how (and by whom) they should be ruled. [71]

It's important to note here that the required correspondence between the wills of the citizens and state policies need not involve a unanimous approval of all state policies—it merely requires a shared will to co-operate together, and an approval of the terms on which co-operation is carried out.[72] Stilz is also quick to note that the state's legitimacy does not require that it reflect the shared will of *all*. Some groups are unwilling to co-operate to protect essential private rights at all. Other groups, despite having a legitimate alternative conception of how the state should be run, are too small or territorially dispersed to be able to form a feasible state. In both these case, the fact that the state and its institutions does not reflect the wills of the members of these groups does not threaten its legitimacy.[73]

Now what are the implications of this account of state legitimacy for secession and self-determination? Firstly, Stilz believes that her account can explain the wrongs of annexation and colonialism.[74] Secondly, Stilz claims that under certain conditions, groups that are unable to affirm participation in their state have a *pro tanto* claim to further autonomy. The group in question must be capable of forming "minimally just" political institutions, and must have "territorially-based" practices of political co-operation that its members are willing to affirm.[75] Stilz notes that some groups may be unwilling to affirm their present state for reasons of past injustice or oppression, or simply because

---

[71] *Ibid,* p. 90.
[72] *Ibid,* p. 108.
[73] *Ibid*, p. 94.
[74] *Ibid,* p. 101-105.
[75] *Ibid,* p. 135.

they do not share the "political priorities" of the majority in their state.[76] There are two things to note here: the first is that this is most certainly not a nationalist account of self-determination. Although many national minorities may enjoy a right to self-determination on this account, the account can ground a right to self-determination for any kind of territorially concentrated group whatsoever. Secondly, as I noted above, Stilz is wary of secession. But as we've seen, her reasons for being so are logically independent of her account of the ground of self-determination. As such, her theory is a possible rival theory to mine.

The first step to rejecting this account of self-determination is to notice what Stilz says about the conditions under which correspondence between the will of the subjects of a state and their governing institutions is valuable. To begin with, Stilz notes, the will of the subjects must be "freely formed in a manner that is accountable to their own deliberative processes".[77] Correspondence brought about through manipulation, deceit and psychological control does not make subjects politically autonomous.[78] What Stilz is getting at here is that, to preserve political autonomy, subjects' judgements about their political institutions must have certain causal histories, and certain qualitative features.[79] Their judgements about their political institutions must be autonomous. If those judgements are non-autonomous then correspondence won't render subjects politically autonomous. But similarly, if non-correspondent judgements are non-autonomous, then it is not clear that non-correspondence entails a loss of political autonomy. A group's sense of alienation from their state might be brought about by manipulation or other

[76] *Ibid.*
[77] *Ibid,* p. 109.
[78] *Ibid.*
[79] For a general account of the conditions under which judgements and preferences are non-autonomous, see David Enoch, "False Consciousness for Liberals, Part I: Consent, Autonomy, and Adaptive Preferences", *Philosophical Review*, 129 (2), 2020, pp. 159-210. See especially pp. 184-5.

forms of injustice, in which case it is not obvious what the normative significance of their alienation is.

A more complicated case is where there is something faulty about a judgement or preference that does not relate to its causal history. Consider David Enoch's contrast between our intuitive judgements about the permissibility of administering a blood transfusion to a Christian Scientist and someone who is merely afraid of needles. Enoch claims that there is something much more clearly morally objectionable about administering the blood transfusion to the Christian Scientist than to the anxious patient.[80] He explains this intuitive difference by pointing out that a Christian Scientist's commitment to Christian Science (which requires avoiding blood transfusions) is likely to be one of her central commitments. On the other hand, she is not likely to regard her fear of needles in this way.[81] Enoch employs the metaphors of depth and centrality to distinguish between these cases. The upshot is that forcing a Christian Scientist to undergo a blood transfusion is to set back their autonomy—their ability to live their life on their own terms. This is not true of administering a blood transfusion to the anxious patient.[82]

What is the relevance of this discussion for alienation and self-determination? The point is that the inference from the fact that subjects of a state suffer from a lack of correspondence between their judgements and their political institutions does not straightforwardly imply that they are thereby less autonomous. It might be true that their

[80] David Enoch, "Hypothetical Consent and the Value of Autonomy", *Ethics*, 128 (1), 2017, pp. 6-36, at p. 23.
[81] I*bid,* pp. 24-5.
[82] One way in which Enoch cashes out these metaphors is to speak of higher-order desires: the Christian Scientist has a higher-order desire to endorse their desire to avoid blood transfusions, but the person with the fear of needles does not. I am unconvinced that this is always the right way to explain a preference's lack of depth or centrality, however. As I describe below, most individuals' political preferences are shallow and lacking in centrality, but it is unclear whether or not they would have a higher-order desire for different preferences.

political judgements have the wrong causal history, or lack depth and centrality. What I now want to suggest is that most individuals' political judgements are not deep or central to their life.

Let's begin by looking at the social-scientific evidence about ordinary peoples' political judgements and preferences. The first thing to notice is that public opinion is remarkably unstable. This is true not just in the sense that it changes over time, but that it changes in response to *framing effects.* Christopher Achen and Larry Bartels summarise the relevant findings as follows:

> […] [E]xpressed political attitudes can be remarkably sensitive to seemingly innocuous variations in question wording or context. For example, 63% to 65% of Americans in the mid-1980s said that the federal government was spending too little on "assistance to the poor"; but only "20% to 25% said that it spending too little on "welfare" […] [I]n three separate experiments conducted in the mid-1970s, almost half of Americans said they would "not allow" a communist to give a speech, while only about one-fourth said they would "forbid" him or her from doing so […] In the weeks leading up to the 1991 Gulf War, almost two-thirds of Americans were willing to "use military force," but fewer than half were willing to "engage in combat", and fewer than 30% were willing to "go to war".[83]

As they go on to say, the "psychological indeterminacy" that these framing effects demonstrate cast doubt on the claim that citizens have definite political preferences.[84] In addition, political preferences among *individuals* are remarkably unstable over even relatively short periods of time.[85] Although there is evidence that certain "core values", such as belief in equal opportunity, limited government, "family values" and moral tolerance are more stable, they are significantly less stable than, and strongly influenced

[83] Christopher Achen and Larry Bartels, *Democracy for Realists* (Princeton, NJ: Princeton University Press, 2016), pp. 30-1.
[84] *Ibid,* p. 31.
[85] *Ibid, pp.* 33-4.

by, partisan attachments.[86] Summarising these findings, Achen and Bartels quote Donald Kinder and Nathan Kalmoe:

> Genuine ideological identification—an abiding dispositional commitment to an ideological point of view—turns out to be rare. Real liberals and real conservatives are found only in the higher echelons of political society, confined to the comparatively few who are deeply and seriously engaged in political life.[87]

What this evidence suggests is that, for most people, their political judgements do not have the kind of depth and centrality that, for example, religious attachments often do. This should make us sceptical of Stilz's claim that being subject to a coercive institutions that one that does not subjectively affirm is a serious threat to personal autonomy. If those institutions are objectively just, then it seems that a person who is subject to them but does not affirm them—and whose political judgements are unstable and shallow as described above—is closer to our anxious patient in the example above than a Christian Scientist who is forced to undergo a blood transfusion. The whole problem with Stilz's account of self-determination and political autonomy can be summed up simply: she overstates the importance of politics to most people's lives.

One reply that Stilz could make here is that although people's first-order commitments and values are unstable and lack depth, their commitment or rejection of political co-operation is arguably a much more central commitment. But the instability and shallowness of first-order political judgements casts doubt on the stability of these second-order commitments. It is not as if the second-order judgements concern an entirely different domain to the first-order judgements. The upshot of the social-scientific evidence I have discussed here is that most people do not have very stable or deep

---

[86] See Paul Goren, "Party Identification and Core Political Values", *American Journal of Political Science*, 49 (4), 2005, pp. 881-896.

[87] Donald Kinder and Nathan Kalmoe, *Neither Liberal nor Conservative: Ideological Innocence in the American Public* (Chicago, IL: University of Chicago Press, 2017); cited by Achen and Bartels, *op. cit.,* p. 34.

political commitments. Why should this not cast doubt on their second-order political judgements? Secondly, we have good reason to think that ordinary people are ignorant of the details of the institutions they are subject to.[88] If most people know little about the institutions they are subject to, are generally ignorant politically, and have few stable or deep political judgements, then how can we say that their political commitments have the same kind of role in their lives as their religious beliefs, or their preference for romantic partners?

But surely there are some people with deep political commitments? There are of course: does it then follow that they are wronged when they are subject to institutions they cannot affirm? Possibly they are, but this cannot be the explanation of why certain groups have the right to self-determination. Remember that Stilz's account is supposed to explain the wrongs of colonialism and annexation. Now let's grant that most societies are as I have described: few people have deep political judgements or preferences, but there is a small number of highly politically committed individuals. Suppose now that a society that fits this description is bloodlessly annexed by another state that then proceeds to implement an objectively just scheme of public rights. Stilz's account of self-determination, if I am right about the philosophical implications of the social-scientific evidence presented above, would entail that *only* these highly politically engaged individuals are wronged by this. They are, after all, the only ones who suffer a loss of political autonomy. This is a highly implausible implication. Isn't it true that all (or at least most) of the people of this society have been wronged by the involuntary loss of their political independence? Stilz's theory, supposing I am right, cannot explain why this is so.

[88] Achen and Bartels, *op. cit.,* p. 37.

If the theory cannot why most individuals are wronged by involuntary annexation or colonialism, then it is not a satisfactory account of self-determination.

Conclusion

In this section, I have argued against voluntarist theories of the right to secede. I first canvassed individualist voluntarist theories, on which the right to secede is reducible to individual rights. Finding these theories unsatisfactory, I re-constructed Altman and Wellman's collectivist voluntarist theory. I argued that the theory was incapable of explaining our judgements about self-determination in certain important cases. Following this, I canvassed two collectivist theories that attempted to explain the value of self-determination in terms of individual autonomy. I found that these theories were unsatisfactory—both theories overstated the relationship between individual autonomy and politics. In this chapter, I have treated the voluntarist theories discussed on a case-by-case basis. I have not tried to argue that there is any shared structural feature of voluntarist theories that renders them unsatisfactory. Any attempt to do this would, in my view, be doomed to fail. The voluntarist theories I have canvassed are heterogeneous: what unifies them is that they are permissive, though non-nationalist, theories of secession. In terms of the overall aim of this dissertation, this chapter has the role of knocking out more permissive competitor theories of secession. This goes part of the way to answering one of the questions for nationalist theorists that I identified in the Introduction: "why are nations special?"

Chapter 3: Self-Determination and the Value of Nationality

Introduction

In the previous chapter I argued against voluntarist accounts of secession and self-determination. In this chapter I will set out own my own, positive account of collective self-determination. I argue that because co-nationals have an intrinsically valuable relationship, they have a *presumptive claim* against interference in their collective affairs.[1] I argue that thinking of nations as groups of people who share an important relationship with one another leads us to a different way of thinking about national self-determination, one that contrasts with the usual way of thinking about national self-determination, where both national self-determination and national membership are construed as instrumental to securing certain goods.[2]

In section one, I clarify what I mean by "self-determination" and what I mean by "nation". I distinguish between two senses of "a right to self-determination". The first sense is a right to some form of self-government. The second sense is a claim to *collective autonomy*. A claim to collective autonomy is a stronger notion than self-government; it is a claim against any kind of interference by an outsider individual or group. I will then

[1] I say "presumptive claim", as will be clear, because I accept that there can be permissible interferences against a national group.

[2] For sustained discussion of the two main claims that I canvass in this chapter: that co-nationality is intrinsically valuable and that nations have a strong claim to self-determination, see Margaret Moore, *The Ethics of Nationalism* (Oxford: Oxford University Press, 2001). Moore, however, tends to treat these two claims in isolation. Although she says at some point that self-determination is a way of giving "expression to moral communities" (p. 165), she does not elaborate on this claim, or expand on the relationship between the two claims. In her later *A Political Theory of Territory* (Oxford; Oxford University Press, 2015), Moore argues that people have relationship-dependent interests in collectively shaping the conditions of their existence (pp. 64-5). There are two ways in which my argument differs from Moore's: first, Moore does not believe that the relevant unit of self-determination is the nation, but rather a "people", defined as a group with a shared aspiration to collective self-government. Secondly, my account does not rely on the claims that Moore makes about the relationship between collective and personal autonomy; for an expansion of this point, see n. 70, *infra*. For a critical discussion of Moore's account of collective autonomy, see Ian Carter, "Territory, Self-Determination and Individual Autonomy", *Philosophy and Public Issues*, 6 (2), 2016, pp. 35-54.

contrast the usual way of thinking about national self-determination with the account I defend in this chapter. On what I call the standard view (among theorists who are sympathetic to nationalism), nationality is instrumentally valuable to securing certain goods. Nations (or their members) have, on this view, a *pro tanto* claim to whatever collective rights will allow them to secure these goods.[3] I outline the ways in which my account of national self-determination contrasts with the standard view, both in terms of the justificatory account of national self-determination it offers, and in terms of the content of the claim to self-determination. In section two, I defend the claim that co-nationality is an intrinsically valuable relationship. My argument is that if we think that familial relationships and friendship can be intrinsically valuable, we have just as much reason to think the same of co-nationality.

My argument from the claim that co-nationals have an intrinsically valuable relationship to the presumptive claim against interference is threefold, and I set it out in section three: first, parties to an intrinsically valuable relationship have a *respect-based* claim to autonomy. Secondly, the relationship between co-nationals realises some important goods, and collective autonomy is internally related to these. Finally, the fact that co-nationals have an intrinsically valuable relationship and affective attachments means that they have a strong interest in carrying out certain activities together, without interference from outsiders. In section four, I argue that these three grounds cumulatively amount to a presumptive claim to collective autonomy. I outline the implications for the issue of secession.

---

[3] Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995), pp. 82-84; Avashai Margalit and Joseph Raz, National Self-Determination, *The Journal of Philosophy*, 87 (9), 1990, pp. 439-61, Kai Nielsen, "Liberal Nationalism and Secession", in Margaret Moore (ed) *National Self-Determination and Secession* (Oxford: Oxford University Press, 1998), pp. 103-132, Yael Tamir, *Liberal Nationalism*, (Princeton, NJ: Princeton University Press, 1993), Simon Caney, Self-Government and Secession: the Case of Nations, *Journal of Political Philosophy*, 5 (4), 1997, pp. 351-372.

Section 1: Nations, Self-Determination and the Standard Account

1.1 *Nations*

There is broad agreement among political philosophers and theorists who write on the topic on the following claims about nations:

(i) They are a kind of human community;

(ii) They are not identical to either states or ethnic groups; [4]

(iii) A stable desire for self-determination on the part of (at least a large number of) its members is a necessary condition for nationhood;[5]

(iv) They have some kind of attachment to a territory (a homeland);[6]

(v) They have a belief in a shared group history, and[7]

(vi) They have a distinct public culture.[8]

Now nationalist theorists of self-determination have also characterised nations as "encompassing groups". Encompassing groups are groups with a "pervasive culture". Membership shapes individuals' tastes and habits and provides a source of self-

[4] Wayne Norman, *Negotiating Nationalism*, (Oxford: Oxford University Press, 2006), p. 3.
[5] Some might object that this condition rules out nations like Wales or Scotland, which had no stable desire for self-determination before the last quarter of the 20th century. I would say three things in reply to this: first, the desire for self-determination need not be a desire for statehood. Both Wales and Scotland had large Home Rule movements in the 19th and 20th century, and also had (especially Scotland) distinctive institutions that gave their civil societies a degree of autonomy from that of England. Secondly, nations are not historically immutable entities—they go in and out of existence all the time. Thirdly, this condition may be interpreted not as a necessary condition for nationhood, but as merely an *evidential*—or, to use a stronger, Wittgenstenian notion—a *criterial* one. For an explanation of this notion see Eric Loomis, "Criteria", in K. D. Jolley (ed) *Wittgenstein: Key Concepts* (Slough: Acumen Publishing, 2013), pp. 160-68.
[6] Ibid. See also Chaim Gans, *The Limits of Nationalism* (Cambridge: Cambridge University Press, 2003).
[7] David Miller, "Secession and the Principle of Nationality", in Jocelyne Couture, Kai Nielsen and Michel Seymour (eds), *Rethinking Nationalism* (Calgary: University of Calgary Press, 1996), p. 266.
[8] *Ibid.*

identification.[9] Nations are a *type* of encompassing group, but not the only type. Other types include indigenous peoples, or certain religious communities, such as the Amish. According to Margalit and Raz, encompassing groups have the following six features:

1. They have a common public culture.[10]
2. People growing up among members of this group will acquire this culture.[11]
3. Members of the group recognise each other as members of the group.[12]
4. Membership of these groups has a high social profile—it is one of the "primary facts" that people notice about each other.[13]
5. Membership is "a matter of belonging, not achievement."[14]
6. The groups in question are large and impersonal, not face-to-face.[15]

Some or all of these features typically play a role in arguments for national self-determination, so it's important to keep them in mind here. Some of these features will play a role in my arguments. In this chapter I am trying in particular to ground the right to collective autonomy for *sub-state* nations, or *national minorities*. Examples of sub-state nations are the Scots and the Quebecois. This does not mean, however, that I think that

[9] Margalit and Raz, *op. cit.*, p. 448.

[10] *Ibid*, pp. 443-4.

[11] *Ibid*, p. 444.

[12] *Ibid*, p. 445.

[13] *Ibid*, pp. 445-6.

[14] pp. 445-6.

[15] p. 447.

the account I offer here does not also ground the right to collective autonomy of, e.g., the French.

1.2 *Self-Determination*

In this chapter, self-determination means *collective* self-determination. That is, rights of self-determination are held and exercised by groups, not by individuals.[16] Now there are two senses of collective self-determination that feature in the literature. The first sense is collective self-determination as *self-government*. What do I mean by this? Self-government means significant *independent* political control by a group of at least some of its own affairs.[17] There are degrees of self-government, and self-government doesn't require independent statehood.[18] For example, a group with its own federal unit might exercise political control over cultural and educational policy, but not over foreign policy. In addition, self-government is usually understood to require *territorial jurisdictional rights;* a self-governing group usually has jurisdictional rights within a particular geographical area.[19]

The second sense of collective self-determination is best described as "collective autonomy". To say that a group has a claim to collective autonomy is just to say that it has a (defeasible) claim to do what it (collectively) wants to do. This entails both a set of liberty rights and a claim *against interference*. For instance, suppose a tennis club decides to serve alcohol in its clubhouse. If the tennis club says that no-one should interfere in its

---

[16] Cf. Andrew Altman and Christopher Wellman, *A Liberal Theory of International Justice* (Oxford: Oxford University Press, 2011), pp. 11-15. But I do want to claim that the group's claim to autonomy is "irreducibly collective". That is, it is not reducible to the claims to the rights of its individual members.
[17] Allen Buchanan, *Justice, Legitimacy and Self-Determination* (Oxford: Oxford University Press, 2004), p. 206.
[18] *Ibid.*
[19] Cf. Christopher Wellman, "A Defence of Political Self-Determination and Secession", in *Liberal Rights and Responsibilities,* (Cambridge: Cambridge University Press, 2013), p. 99.

decision, and that others have reason to respect the decision *just because it is the club's decision*, this is an appeal to the value of collective autonomy.[20]

These two ways of thinking of thinking about self-determination are not just two sides of the same coin. If I say that a group has a claim to some form of self-government, it doesn't at all follow that I think they have a claim against interference *simpliciter*. Consider: if I say the Scots have a claim to self-government, construed as above, what that entails is that they have a right to certain institutions over which they exercise significant independent control, and that those institutions have jurisdictional rights over some domain. It doesn't entail that *any* interference by outsiders would be presumptively *pro tanto* wrong. Saying that the Scots have a right to self-government doesn't specify which areas Scots should have jurisdiction over. The right to self-government might be satisfied without giving Scots jurisdiction over, for example, licensing laws. As such, there is no relation of entailment between the claims that the Scots have the right to self-government and the claim that the central government imposing licensing laws against the opposition of the Scottish people would be *pro tanto* wrong. By contrast, saying that the Scots have a claim to collective autonomy entails that *any* interference whatsoever by outsiders with the Scots' internal affairs is presumptively *pro tanto* wrong.

In this chapter, I will argue that collective autonomy is the best way to understand national self-determination. Specifically, I will argue that nations have a *presumptive claim* to collective autonomy. This claim is only defeated where the group would violate the rights of either members or non-members. In other words, their claim to collective

[20] For an example of this way of thinking about self-determination, see Christopher Wellman, *A Theory of Secession* (Cambridge: Cambridge University Press, 2005), pp. 41-42, Wellman, "The Paradox of Group-Autonomy", in E. F. Paul, F. D. Miller and J. Paul (eds) *Autonomy* (Cambridge: Cambridge University Press, 2010), pp. 265-285 and Ian Carter, "Territory, Self-Determination, and Individual Autonomy", *Philosophy and Public Issues* (*New Series*), 6 (2), 2016, pp. 35-54, at p. 45.

autonomy is not defeated by the fact that a collective action would set back the interests of others—the action must *wrongfully* harm others. To make this clearer, to say that a group, *x*, has a *presumptive claim* to collective autonomy entails:

(P) It is permissible for *y* to prevent *x* from φ-ing *only if* (and because) *x*'s φ-ing would be to commit wrongful harm; and

(Q) If *y* prevents *x* from φ-ing, *y* wrongs *x* unless *x*'s φ-ing would be to commit wrongful harm.[21]

1.3 *The Standard Picture and its Alternative*

On the standard way of thinking about self-determination, national self-determination is instrumental in protecting the interests that are realised by national membership. Theorists of national self-determination fill in the details of this account in different ways. Will Kymlicka and Margalit and Raz argue that our national culture provides us the range of meaningful options we need to live an autonomous and flourishing life.[22] Some theorists, such Kai Neilsen and Yael Tamir argue that various psychological goods—for example, self-respect—are well-served by the flourishing of our national culture.[23] The next step of this account is to argue that certain institutional arrangements are necessary to secure these interests.[24] National cultures are, after all, vulnerable to decay and to out-competition by other cultures. Here again, theorists differ. Some, such as Nielsen, argue that independent national statehood is the optimal institutional arrangement from the

[21] I have distinguished these two claims because (P) does not entail (Q); interfering with *x* may be impermissible even though it does not wrong *x*. For instance, it might be impermissible for country *A* to invade country *B* even though country *B,* because it is a serious rights-violator, for instance, does not have a claim against interference.
[22] Kymlicka, *op. cit.,* pp. 82-84; Margalit and Raz, *op. cit.*
[23] Nielsen, *op. cit*., pp. 109-110, Tamir, *op. cit*., p. 73; both cited by Hsin-wen Lee, "The Identity Argument for National Self-Determination", *Public Affairs Quarterly,* 26 (2), 2012, pp. 123-139, at p. 125.
[24] Lee, *op. cit.,* pp. 126-8.

point of view of protecting people's interests in their national membership.[25] Others argue that sub-national autonomy, or even group cultural rights, are sufficient to protect these interests.[26] Painting in broad brush strokes, however, we can say that what is common to these accounts is they are committed to at least the weak claim that:

> *Self-government:* Nations have a *pro tanto* claim to the form of self-government that is necessary to protect their members' interest in their national identity.

Now so far we might think this is a fairly natural way to think about national self-determination. After all, it's perfectly consonant with the typical starting point for thinking about group rights in political theory—the Raz-ian theory of group rights. But on further examination, this account generates a puzzling question. To start with, the account makes the actual *content* of a nation's right to self-government contingent on certain empirical facts—facts about which institutional arrangements are necessary to secure the interests in national identity. At first blush, this mightn't seem to be a problem at all. We should want a theory of self-determination to be sensitive to this kind of empirical fact, we might think. But notice that we don't typically think the same thing about the right to self-determination of *states,* or their "peoples".[27] Philosophers and political theorists who write about self-determination go to great pains to argue that the "peoples" of states have a claim to statehood that is independent of the empirical facts such as whether having their own state is necessary to secure certain important interests, or whether another state could better protect those interests.[28] Indeed, this claim is so

[25] Nielsen, *op. cit.,* p. 120; cited Lee, *op. cit*., p. 128.
[26] See Gans, *op. cit.,* pp. 67-96.
[27] I am using "peoples" here in a neutral way to describe the collectives of citizens of states, or the collectives of citizens of states that have ceased to exist (such as Germany in 1945).
[28] See for example, Anna Stilz, "Nations, States and Territory", *Ethics*, 121 (3) 2011, pp. 572-601, esp. at pp. 590-95. and Cécile Fabre, *Cosmopolitan Peace* (Oxford: Oxford University Press, 2016), pp. 130-5.

strong that the peoples of states can permissibly go to war over it.[29] So how do we explain this contrast?

There are two possible explanations. The first is to do with territorial rights. States, or their peoples, have a much stronger claim against outside interference because they have rights over territory. But notice that this reply just pushes the question about the normative difference between states and nations back a step: why do states, or their peoples, have these rights, but nations do not? Notice that we are not asking about which entities actually *do* enjoy territorial rights, but about which entities have the moral right to enjoy them.[30] The other explanation is that the rights of states are enshrined in international law. At first sight we might think this is a simple-minded explanation. But there is a good case for the claim that our normative theorising about self-determination should run parallel to the morally defensible aspects of international law—those features of it that realise certain important values, such as stability.[31] The problem with this explanation, however, is that we can't know whether or not international law in respect of self-determination is morally defensible without doing the normative work of fleshing out a theory of self-determination. There might be a serious moral cost to the current regime, a cost that only becomes apparent to us after we have a worked-out account of self-determination.

So the standard view must either explain the fact that the content and strength of nations' claims to self-determination are sensitive to a particular set of facts, whereas

[29] See for example the essays in the C. Fabre and S. Lazar (eds) *The Morality of Defensive War* (Oxford: Oxford University Press, 2014), in particular Cécile Fabre, "Cosmopolitanism and Wars of Self-Defence", and Anna Stilz, "Territorial Rights and National Defence". For a dissenting view see David Rodin's contribution to the volume, "The Myth of National Self-Defence".

[30] One might think that if "functionalist" or statist theories of justified territorial rights are correct, then there is a normatively salient difference between states and other kinds of groups. I discuss this in Chapter 5.

[31] As we saw in Chapter 1, Allen Buchanan is the most prominent defender of this view.

those of states aren't, or we should regard it as an *incomplete* account of collective self-determination. As I've said, I'm sceptical that the first option is viable. If we take the second option, we need a separate account of self-determination as it applies to states and their peoples. But whatever explanation this account offers will, I've suggested, probably apply to nations as well, in which case this new account, and not the standard view, will explain the ground of national self-determination.

All this should make us open to an alternative account of the right to national self-determination. On the account I offer, the most important normative fact about nations is that co-nationality is (or can be) an *intrinsically valuable relationship*. This has three implications for self-determination:

Respect-based claim against interference: the value of the co-national relationship entitles nationals to respect *qua* nationals. This gives them a *pro tanto* claim against any interference with their collective affairs.

Internal relationship between the goods realised by the relationship and self-determination: There are certain goods that can only be realised within highly significant or valuable relationships. Nationals have an interest in attaining the goods that are realised by their relationship with their co-nationals. There is an *internal*, or constitutive, relationship between self-determination and these goods.

Personal autonomy and collective actions: when people have an intrinsically valuable relationship with their co-nationals, they have a special interest—grounded in personal autonomy—in being able to carry out certain collective activities with them. They have a claim to carry out these activities with their co-nationals even where the activities themselves are not especially valuable, or where they could carry them out with other people.

I outline and defend these claims in section three. Cumulatively, I argue in section four, they generate a presumptive claim to *collective autonomy* for nations. So, as well as having a different justificatory structure to the standard account, my account differs with respect to the *content* of the right to national self-determination. The core of my account is therefore the following claim:

> *Collective Autonomy:* A nation has a presumptive claim to collective autonomy *if and only if,* and because, its members have an intrinsically valuable relationship with one another *qua* co-nationals.

Thinking about nations primarily as groups of people that have valuable relationships with one another *qua* co-nationals allows us both to develop a richer account of the benefits of national identity, and to compare co-nationality with other kinds of valuable relationship, such as friendship, and familial relationships.

Section 2: The Intrinsic Value of Co-Nationality

2.1 *Introduction*

The first step of my argument for national self-determination is to establish that co-nationality, *qua* co-nationality can be intrinsically valuable.[32] I say "can be", because there

[32] Two points are in order here: first, sometimes theorists who write about special relationships—such as friendship, familial relationships, etc., make the weaker claim that these relationships, rather than being intrinsically valuable, are intrinsic sources of welfare. That is, they make the lives of their participants better just in virtue of being part of them; see Seth Lazar, "The Justification of Associative Duties", *Journal of Moral Philosophy*, 13 (1), 2016, pp. 28-55, at pp. 30-1. Sometimes theorists fail to distinguish between the claim about intrinsic value and the claim about welfare; see, for example, Andrew Mason, "Special Obligations to Compatriots", *Ethics*, 107 (3), 1997, pp 427-447, at pp. 441. If you find this strong claim about intrinsic value implausible, I believe that my arguments in this chapter can be re-formulated such that they begin from the weaker premise that co-nationality makes an intrinsic contribution to *welfare*. I am confident that the substitution of the weaker claim for the stronger claim will make no difference to the arguments of this chapter because the substitution of the weaker claim for the stronger claim has not been thought to make a difference to the argument that the value of special relationships grounds special (associative) duties. The second point: Christine Korsgaard has objected that theorists have failed to distinguish between the claim that something has intrinsic value— in her view, that its value is a function of its non-relational, intrinsic property—and the claim that something has *final value*—that is, that it is valued for its own sake; Christine Korsgaard, "Two Distinctions in Goodness", *The Philosophical Review,* 92

might be national identities that have objectionable content. As I note below, we want to rule out the claim that certain relationships with objectionable terms of association or content—between Mafiosi, say, can be a source of value.[33] However, I believe that often the co-national relationship is intrinsically valuable. Now sometimes this claim about co-nationality is taken to mean that the relationship between people who share *a state,* can have intrinsic value. But it can also be understood to mean—and this is the version I want to defend—that the bonds between people who share a *nationality* can be valuable.[34] The two are different. The second version implies that Scots can have a valuable relationship with fellow Scots, one that is different to the relationship they share with English, Welsh and Northern Irish people.[35] The first step of this argument is already controversial, so it mightn't buy me any dialectical advantage. But I think anyone who is already attracted to the nationalist view will be sympathetic to it. In any case, I will argue for this claim.[36] How do we establish that the co-national relationship can be intrinsically valuable? First, I argue for the claim that co-nationality shares an important feature with intrinsically valuable relationships such as family and friendship: it involves the production-in-common of goods that contribute to human flourishing. I then introduce grounds for scepticism that having this feature is a sufficient condition for a relationship to have intrinsic value. I argue for a conditional claim: if you think that friendship and familial relationships can be intrinsically valuable, the burden of proof is on you to explain why

(2), 1983, pp. 169-195. By "intrinsic value", I mean "having final value", or being valuable for its own sake. In this I follow the literature on special relationships and value; e.g. Joseph Raz, Liberating Duties, *Law and Philosophy*, 8 (1), 1989, pp. 3-21, at p. 19; Mason, *op. cit*. For an exception see Jonathan Seglow, *Defending Associative Duties* (London: Routledge, 2017), p. 31.

[33] Cf. David Miller, "Reasonable Partiality Towards Compatriots", *Ethical Theory & Moral Practice*, 8 (1/2), 2005, pp. 63-81, at p. 66.

[34] This claim can be true even where the nation has no separate, nation-wide political (more exactly, legislative) institutions of its own—as was the case with Scotland and Wales before devolution.

[35] Cf. Mason, *op. cit*., pp. 437-8.

[36] For an overview of attempts to ground this claim see Margaret Moore, *The Ethics of Nationalism* (Oxford: Oxford University Press, 2001), Ch. 2.

co-nationality can't be. Our reasons for thinking that co-nationality can be intrinsically valuable are about as strong as our reasons for thinking that friendship and familial relationships can be. I then defend my focus on nations, before concluding by discussing two historically-based objections to the intrinsic value of co-nationality.

2.2: *Co-nationality and flourishing*

How do we establish that co-nationality can be an intrinsically valuable relationship? One way to get this claim off the ground is to compare co-nationality with other relationships, relationships whose intrinsic value is less controversial. Thomas Hurka pursues this strategy in arguing that co-nationals can permissibly be partial to one another. Let me first say that Hurka might appear to be considering a separate question from mine. But the question of whether a relationship is intrinsically valuable and whether parties to it can be partial to one another are interlinked. The ground of partiality, and of the duties associated with the relationship, for most theorists, *is the value of the relationship.*[37] So, for present purposes, we can treat partiality and intrinsic value as inter-substitutable.[38] Hurka compares national partiality to a widely accepted form of partiality—partiality to one's family members. He notes that sceptics of the justifiability of national partiality often emphasise the differences between families and nations. Nations don't have the features that justify partiality between family members, they claim. Hurka's response is to point out that there are other factors that seem to justify partiality on which nations sometimes do as well as families. There are, for Hurka, *two* relevant factors to consider.

[37] For an overview see Lazar, *op. cit.,* pp. 30-1. For a more recent example of this strategy in action, see Jonathan Seglow, *op. cit.,* pp. 30-43. As Lazar points out, there is a gap between an account of the value of special relationships and the justification of partiality or of associative duties connected to the relationship.
[38] That said, I don't want to commit myself to any views about the permissibility of partiality, or the existence of associative obligations, between co-nationals here. My point is that Hurka's argument is just as good an argument for the intrinsic value of the co-national relationship as for the claim that co-nationals may be partial to one another.

The first is the "degree of closeness" between the individuals. On this dimension, nations do much worse than families. The second factor is the amount of good the interaction between a group of people produces. The greater the good, the greater the degree to which to which they can be partial to one another.[39] And, as Hurka, notes, nations do very well on this second dimension:

> "In the 1960s Canadians created a national health care system that continues to provide high-quality medical care to all citizens regardless of their ability to pay. The benefit this system provides any one citizen is probably less than that provided by his family, but it is still substantial, and it is one Canadians have provided together. Canadians derive equally substantial benefits from many other aspects of their political activity. When these benefits are added together, they constitute a significant counterweight to the weakness of national relations on the first dimension, that of closeness of contact.[40]

Hurka's example in this passage—a national health care system—is a benefit that is provided by the people of the *state* as a whole. But there are other kinds of benefits that even national minorities can provide to their members. These are intangible benefits such as:

> (i) *The development of valuable capacities and dispositions*: regarding yourself as belonging to a nation is a way for you to develop valuable capacities, such as your capacity for reciprocity and fellow-feeling.[41] In addition, it may lead you to develop appreciation for, for example, pieces of music, landscape and works of art, by virtue of regarding them as part of your national heritage, where you would not have appreciated them otherwise.[42]

---

[39] Thomas Hurka, "The Justification of National Partiality", in Robert McKim and Jeff McMahan (eds), *The Morality of Nationalism* (Oxford: Oxford University Press, 1997), p. 153.
[40] *Ibid.*
[41] Cf. Mason, *op. cit.*, pp. 439-441. Mason thinks that this shows only that nationality is instrumentally valuable.
[42] For a similar claim as applied to other valuable relationships, see Harry Brighouse and Adam Swift, "Parents' Rights and the Value of the Family", *Ethics*, 117 (1), 2006, pp. 80-108, p. 95. Harry Brighouse and

(ii) *Providing a secure source of self-respect and esteem:* nationality, as mentioned above, is usually a matter of belonging, not of choice. The achievements and positive features of nations are a source of self-respect and esteem for their members.[43] Because membership is a matter of belonging, national membership, provided things are going well for the nation itself, is a highly secure source of self-respect and esteem.

(iii) *Inter-personal projects and trans-generational value*: a person's relationship to their co-nationals is a way for them to put their lives in the context of a larger project, one that extends across generations.[44]

(iv) *Cultural goods*: nationality provides people with cultural goods such as a historical narrative, music, national literature, folk customs etc. Part of the benefit that people derive from having these goods as elements of *their* national culture, as opposed to the common heritage of the world, is dependent on the fact of their relationships with their co-nationals.[45]

To recap, Hurka's strategy has two components: (i) he identifies a shared feature of nationality and family membership, i.e., a history of beneficial interaction; and (ii) he argues that this shared feature grounds moral facts about the relationships. I have argued that the relationship between members of sub-state nations, such as between Scots, can also have this feature. But we should stop here to ask what the nature of the grounding relationship is between this feature and the intrinsic value of the relationship. A history

---

Adam Swift claim that parents have an interest in parenthood that is partially grounded by allowing them to exercise and develop valuable capacities.

[43] Of course, we should think of this a bad thing in cases where either the content of the group identity is unpalatable (as in the case of Mafiosi or Aryans, to give non-national examples), or where the self-respect is grounded by the nations' success in, say, subordinating other groups or waging aggressive war.

[44] Miller, *op. cit.*, pp. 68-9; Gans, *op. cit.*, pp. 52-4.

[45] Cf. Jeff McMahan, "The Limits of National Partiality" in Robert McKim and Jeff McMahan (eds), *The Morality of* Nationalism (Oxford: Oxford University Press, 1997), p. 130.

of valuable interaction isn't a sufficient condition for the intrinsic value of a relationship. My relationship with my bank (or properly put, with the people who work for the bank), or my insurance company is mutually beneficial, but it is only instrumentally valuable.[46] Secondly, we don't think that relationships that provide only trivial benefits are, for this reason, intrinsically valuable. Imagine that, not knowing each other beforehand, two people sign a contract where they agree to provide each other an endless list of trivial benefits—e.g., the participants will mow one square foot of one another's gardens, will "like" or otherwise promote one another's social media activity, will mildly praise one another's dress-sense to third parties, etc. This relationship is at most instrumentally valuable. So there are two questions we must answer: (i) what is the nature of the relationship between the history of valuable interaction and the intrinsic value of the relationship? and (ii) what *kind* of benefits or goods does a relationship have to produce for it to be intrinsically valuable?

2.3: *The Flourishing Condition*

To answer (i), a history of valuable interaction is a *necessary* condition for the intrinsic value of a relationship. Why should we think this? For two reasons: one, all the straightforward examples of intrinsically valuable relationships satisfy this condition—friendship and family are both characterised by a history of valuable interaction between members. The second reason is that it is hard to account for the special place that relationships such as friendship and family have in our lives and in morality without appealing to our interest in being part of them—in the contribution they make to our *flourishing*. This brings me to (ii): the relationship must promote *core* human interests, such as interests in autonomy, warranted self-respect, the need for companionship, etc.

[46] See e.g, Andrew Mason, *op. cit.,* p. 441.

It must, in other words, promote human flourishing. This is a further necessary condition for the intrinsic value of a relationship: the *right kind* of valuable interaction. Let's lump these two conditions together under the label of the *Flourishing Condition.*

Where does this leave co-nationality? Above I listed some benefits (i)-(iv) of nationality. Now at least some of these goods are connected in the right way to human flourishing: cultural goods, self-respect and the valuable capacities I identified above all, *inter alia*, plausibly contribute to flourishing. If this is true, then nationality satisfies the *Flourishing Condition*.

But is satisfying the *Flourishing Condition* sufficient for intrinsic value? The following case suggests that it isn't:

> *Ominicorp*: Anarchia is a deeply dysfunctional country; its security services are ineffective and corrupt, its schools are overcrowded and understaffed, it has no public health service, and its government is kleptocratic and incompetent. Its citizens are demoralised by its failures and have no real sense of pride in their national identity. The more well-off of them rely on Omnicorp for their services. For a yearly subscription fee, Omnicorps' customers get competent and trustworthy private security, well-run schools for their children and quality health-care in Omnicorps' private clinics. Most of its customers own shares in Omnicorp and take an active part in its shareholder meetings.

In this scenario, membership in Omnicorp benefits its members across a range of core human interests: in physical security, in education, etc. Is their relationship with Omnicorp intrinsically valuable? Their relationship with Omnicorp, let's stipulate, is not exploitative or coerced. Ominicorp charges a reasonable price for membership, and it looks after its customers well. Furthermore, Omnicorp is not responsible for its members'

reliance on its services—it has no role in the state's dysfunction, and actively tries to promote the development of state capacity, against its own interest. Finally, its members, through share-holding, have a say in Omnicorp's running. So there doesn't seem to be anything that would disqualify the relationship from being intrinsically valuable. But I think most of us would resist saying that the relationship between Omnicorp and its members is intrinsically valuable. It seems like Omnicorps' shareholders would have nothing to regret if the Anarchian government got its act together and set up an inclusive welfare state instead. If we are right about this, then satisfying the *Flourishing Condition* is not sufficient to make a relationship intrinsically valuable. This opens the door for the nationalism-sceptic to say, once again, that co-nationality, despite its contribution to human flourishing, is merely instrumentally valuable. But, *prima facie*, this goes just as well for friendship and family. *If* the nationalism-sceptic believes that these relationships have intrinsic value they must find some feature of these relationships that both (a) nationality doesn't have and (b) could plausibly be, in conjunction with the *Flourishing Condition*, a sufficient condition of intrinsic value. What could this be?

2.4*: (Conditionally) reversing the burden of proof*

There's one putative difference between co-nationality and friendship and family: friends and relatives have affective ties such as personal love and filial affection. But is it plausible that these could be a ground of intrinsic value? The contribution that these ties make to the value of the relationships seems to be accounted for already. We have said that a necessary condition of the intrinsic value of a relationship is that it contributes to human flourishing. Now being involved in relationship that involve affective ties both contributes to, and is partly constitutive of, human flourishing. This is the contribution it makes to the value of these relationships; what more is there to say? Nationality also has

features that contribute to or are partly constitutive of, human flourishing. There's no relevant difference here. Secondly, there is a range of affective ties, appropriate to different kinds of relationships, and some of these are like the attitudes that co-nationals tend to have towards one another. Not all our personal relationships, even the ones with intrinsic value, are characterised by loving affection, or playful camaraderie. Our affective ties to our closest friends are based on our desire to spend time with one another, our enjoyment of each other's company, and our sharing interests, a sense of humour and so on. Our affective ties to our taciturn and humourless uncles, say, are grounded in loyalty, family solidarity and gratitude. These are not so different from the attitudes that people tend to have towards their co-nationals. Subsuming all the different attitudes that friends and close family bear each other under the rubric of "affective ties" obscures more than it enlightens. Once we disaggregate these, we see that some family ties, for example, are more like impersonal relations such as co-nationality than they are like intimate relationships like friendship. This doesn't mean that they aren't valuable.

So, what next? Do we try to find a list of jointly sufficient conditions for the intrinsic value of relationships? Even if there was space here, I doubt this would be a promising strategy. Instead what I'll do is to point out a further similarity between co-nationality and other intrinsically valuable relationships. And I will try to show that, conditional on believing that friendship and familial relationships can be intrinsically valuable, the burden of proof is on the nationalism-sceptic to show that co-nationality cannot be intrinsically valuable.[47]

[47] Once again, it is not true that *all* friendships or familial relationships are intrinsically valuable. Some friendships are mutually destructive, or are based on a shared enjoyment of the suffering of others.

One way to get started with this would be to claim that nationality and friendship share another feature: that is, part of what is to be someone's friend/co-national is to be under certain duties (associative duties) to one another. Although I haven't been arguing for the claim that co-nationals have any duties to one another, but for the claim that their relationship is intrinsically valuable, to argue for the intrinsic value of the co-national relationship on the grounds that co-nationals have associative duties would be question-begging. On most accounts of associative duties, the claim about intrinsic value grounds the claim about duties.[48] But it is true that both friends and co-nationals typically *believe* themselves to be under certain duties to one another. Indeed, a pattern of beliefs of this sort is partly constitutive of nations, just as it is of friendship. I am not saying that this pattern of beliefs is the sufficient condition for intrinsic value. It does, however, reflect an important difference between the co-national/friend relationship and the relationship between Omnicorp and its customers: that is, that the parties relate to each other in a particular way. Co-nationals and friends tend to treat their relationship as though it had more than just instrumental value, and this typically reflects beliefs about the relationship's value. That people believe this is (defeasible) evidence of intrinsic value. Indeed, it's the best kind of evidence we can have for the claim that something is intrinsically valuable: that people believe it is and treat it like it is.

To summarise: I have argued that contribution to human flourishing is a necessary condition for the intrinsic value of a relationship. I have argued that co-nationality can, and typically does, satisfy this condition. Secondly, I have argued that co-nationals, like friends and like relatives, typically act as though, and believe that, their relationship has intrinsic value. This, I've said, is evidence that the relationship does have intrinsic value.

---

[48] Lazar, *op. cit.*, pp. 30-31.

Where does this leave the case for co-nationality's intrinsic value? It leaves it about as good as the case for the intrinsic value of friendship or family. As I've said, proponents of the claim that family and friendship are intrinsically valuable almost uniformly appeal to the contribution that these relationships make to human flourishing. Co-nationality, I've argued, also contributes to human flourishing. And even if contribution to human flourishing is only a necessary and not a sufficient condition of intrinsic value, this leaves nationality no worse off than friendship or family. If we think that friendship and family can be intrinsically valuable, we should think the same of co-nationality.

Of course, establishing that co-nationality can be intrinsically valuable does not straightforwardly have any bearing on the other central issue of this chapter: the justification of national self-determination. In the next section, I demonstrate the link between the value of the co-national relationship and the right to self-determination. First, however, let me say something about why I am singling out nations.

2.5: *Why Nations?*

At this point, a natural question is why I am singling out nations for a special claim to collective autonomy. After all, isn't it true that many other kinds of groups—neighbourhoods, cities, supra-national groups, religious groups, etc—have many of the features that I attribute to nationality? And don't these other kinds of relationships help us to realise many of the intangible goods that I attributed to co-nationality?

First of all, let me repeat me again that I am *not* committed to the claim that only nations have the features in virtue of which they have a presumptive claim to self-determination. I am prepared to concede that, for example, co-religionists might have an intrinsically valuable relationship too. As we shall see in the next chapter, however, I

think there are considerations that militate against allowing religious groups (*qua* religious groups) to secede that don't apply to nations.

What about people who happen to share a city or a region? Don't they have the same kind of intrinsically valuable relationship as co-nationals? After all, in many cases sharing a city or a region means, for example, sharing a public culture, and thus standing to each other in an analogous relationship to the one that I have described co-nationals as standing. We should distinguish, however, between sharing a public culture, and sharing a *distinct* public culture. In the first instance, the fact that people share a particular culture will typically be derivative, not of their living in the same region or city, but of their having the same nationality. It would be odd therefore to say that they have a claim to self-determination *against their fellow co-nationals*.

It is true that some regions and cities have public cultures that are distinctive from that of the rest of their nation. They might have, for example, a distinctive dialect, or a native literary tradition, or a distinct set of political values. The question, however, is whether this public culture can be said to be distinctive enough such that (i) being a part of it is an important part of one's *flourishing*, as opposed to a trivial benefit, and (ii) those who share it can be said to enjoy an intrinsically valuable relationship to one another. Let's note that not every distinctive identity is particularly valuable or important. Going to one school rather than another shapes our tastes and attitudes in many ways, but we don't typically consider our school-membership to contribute to our flourishing (as opposed to the fact of having being educated at all). And we certainly don't consider ourselves to have an intrinsically valuable relationship with our former schoolmates, *qua* schoolmates. To hammer the point home: suppose we are randomly assigned to particular class groups with a school. This assignment, by making a difference to who our

peers are, might make a difference to our lives. But, again, it's not an important or valuable identity. The point here is that many forms of local identity are like this: the difference they make to our lives is relatively trivial, and much shallower than the difference that our national identity typically makes. To give an example: what is more significant? The fact that a person is born in Lincolnshire or the fact that a person is born in England?

A further point: many forms of local identity wouldn't have enough content to count as meaningful identities at all were it not for the over-arching national identity of which they are sub-types. Would being from Kent be a significant identity at all were it not for the fact that it is subsumed under English identity? It's hard to imagine what this identity would look like. How can we then say that the local identity is such that it grounds an intrinsically valuable relationship—one that then gives parties to it a claim against their non-local co-nationals?

Of course, none of this refutes the claim that local identities may contribute to flourishing, or be the focus of intrinsically valuable relationships. When a local identity does have that kind of depth, however, it is very hard to distinguish it from a nation. We noted that nations are territorial societies with a distinctive public culture, a shared sense of history and (typically) a stable desire of self-determination. A regional or municipal identity with a rich and distinctive identity, then, becomes very hard to distinguish from a nation. I think the right answer here is just to loosen our grip on the term "nationality". A nationality does not need to coincide with a distinct ethnicity, nor need it be particularly old: nations are historical entities, and they come in and out of existence all the time. But they are a kind of human community distinguished by a public culture, and a particular territorial link. It's a common objection to the idea of a nationalist theory of secession to

say "group *x* has many of the features you say ground a right of self-determination for nations. But it clearly isn't a nation." I think the appropriate reply here is: "isn't it?" Our interlocuter owes us an answer. Nothing in this theory rules out a capacious definition of nationhood.

2.6: *Nationality and History*

There is a final group of objections to the claim to co-nationality can be intrinsically valuable that I must deal with here. We might call this group *objections from history.* There are two main strands of this group of objections. The first strand we can call the *objection from mystification*; this is the objection that nationality is an artificial and recent phenomenon, and (on stronger versions), that nationality is the product of elite manipulation, or otherwise serves elite interests, and that, therefore, the idea that co-nationality is an intrinsically valuable relationship is not credible. The second strand we can call the *track record objection*. Proponents of this objection allege that we have good reasons to give up on nationality as a form of collective identity because nationalist sentiments have had very destructive consequences in the past.

Let me first deal with the objection from mystification. First, why should we think that the antecedent historical claim is true? Some historians of nationalism do indeed endorse something like the historical claim above—proponents of this line are known as *modernists*.[49] According to the modernists, nationalism is a recent phenomenon, dating from no earlier than the late 18th century.[50] Some modernists take the stronger

[49] See Azar Gat, *Nations: the long history and deep roots of political ethnicity and nationalism* (Cambridge: Cambridge University Press, 2013), p. 8.

[50] See, for example, Benedict Anderson, *Imagined Communities*: *reflections on the origins and spread of nationalism* (London: Verso, 1983); Ernest Gellner, *Nations and Nationalism* (Oxford: Blackwell Press, 1983), pp. 34-5, cited Gat, *op. cit.*, Eric Hobsbawm, *Nations and Nationalism since 1780* (Cambridge: Cambridge University Press, 1990); Elie Kedourie, *Nationalism* (London: Hutchinson, 1960). Modernists, of course, differ among themselves in their account of the historical causes of national mobilization: Gellner, for example, emphasises the interests and needs of industrialising elites in 19th century Europe; other

instrumentalist line that not only is nationality is a recent phenomenon, it is a product of elite manipulation.[51]

Strikingly, defenders of nationalism in political philosophy have been concessive to these claims—David Miller is a good example of this:

> Rather than dismissing nationality out of hand once we discover that national identities contain elements of myth, we should ask what part these myths play in building and sustaining nations. For it may not be rational to discard beliefs, even if they are, strictly speaking, false, when they can be shown to contribute significantly to the support of valuable social relations.[52]

Miller doesn't tell us here what these false beliefs might be, but they might include a belief in the antiquity of one's nation, or in an organic and genuinely popular origin for national mobilization. But there is simply no need to be so deferential to the modernists; it is very likely that they are completely wrong. Let's take the instrumentalist thesis first. This is highly implausible on the face of it—in the last century or so alone, most of the great world empires—some of the most powerful states the world has ever seen—have collapsed as a result of nationalist upheaval; surely if any had the ability to manipulate national attachments, these states did? As Anzar Gat notes:

> The near universal process of imperial disintegration belies the so-called instrumentalist thesis, according to which manipulation of the masses by the elite is the cause of nationalism. Although all the major instruments of manipulation and nation-building—schools, universal military service, and, in totalitarian empires, also the media—were tightly controlled by the imperial state, a single *imperial* nation scarcely emerged even after centuries of imperial rule. It appeared barely at all in the Habsburg domain and very weakly in the Russian-Soviet state. By contrast, the slightest crack in the imperial wall of suppression was sufficient

---

emphasise the importance of state-and-national-building movements, and the influence of nationalist movements—for some modernists, *nationalism* predates nations; cf. Adrian Hastings, *The Construction of Nationhood: ethnicity, religion and nationalism* (Cambridge: Cambridge University Press, 1997), pp. 9-10.

[51] For discussion see Gat, *op. cit*., pp. 14-15.

[52] *On Nationality* (Oxford: Oxford University Press), pp. 35-6; cited Wellman, *A Theory of Secession*, pp. 103-4.

> to spark nationalist eruptions and political secessionism, even though the leaders of the national movements lacked all the above instruments of state power.[53]

As Gat remarks, elites need material which is, in the first place, "manipulable".[54] They cannot conjure attachments out of thin air. What about the weaker thesis, that nationality is a very recent phenomenon? Here again there is good reason to be sceptical. As Gat argues, there is evidence of the political significance of ethnicity going back to the earliest states and earliest recorded history.[55] Adrian Hastings argues for a medieval origin to many modern day nations, including England, and for the importance to nationality of the emergence of vernacular literatures, a process which began long before the late 18th century.[56] And Susan Reynolds has argued that for medieval historians, the main problem with modernist precepts about nationalism is:

> not that the idea of the permanent and objective real nation is foreign to the middle ages, as so many historians of nationalism assume, but that it closely resembles the medieval idea of the kingdom.[57]

It is not just that there is a direct historical evidence that contradicts the modernist thesis, there are also plausible alternative accounts of the origins of nationalism and nationality, such as Anthony Smith's ethno-symbolist account, and Gat's sociobiological theory.[58] There is simply no need for the nationalist to be so concessive to modernism.

A final point, however: framing a nationalist response to the objection from mystification in terms of how nationalists can reconcile the falsehood of certain beliefs

---

[53] Gat, *op. cit.*, p. 257. As Gat notes, even modernists like Hobsbawm are at pains to downplay the importance of elite manipulation; pp. 14-15.
[54] *Ibid*.
[55] *Ibid,* p. 3, *et passim*.
[56] Hastings, *op. cit*.
[57] *Kingdoms and Communities in Western Europe* 900-1300 (Oxford: Oxford University Press, 1984), p. 252; cited Gat, *op. cit.*, p. 234.
[58] Anthony D. Smith, *The Antiquity of Nations* (Cambridge: Polity Press, 2004); Gat, *op. cit*.

with the value of a relationship is to set the nationalist case on the back foot from the get-go—as we have seen, the instrumentalist thesis is discarded easily. The issue is whether nationalism is "deeply rooted" in human nature and history, or whether it is recent or not. But what difference could this recency make to whether or not the relationship between co-nationals is valuable or not? Suppose we discovered that relationships such as friendship, parenthood and marriage would be, in their current form, unrecognisable to people in the near-past. Would this undermine the claim that these relationships are valuable? Of course not—we do not think relationships are valuable merely because they are deeply rooted. If being deeply rooted were a sufficient condition, then all kinds of exploitative and needlessly hierarchical relationships would be valuable. If it were a necessary condition, then perhaps love-marriages would not be.

Let me now turn to the second objection, the *track record objection*. According to this objection, although the co-national relationship may be of benefit to individuals, we would be better off without it in light of the bad historical track record of nationalism. Nationalism, this objection goes, has been responsible for many of the worst atrocities in human history, and as such, the risks associated with it outweigh any potential benefits. To begin with, we should note that nationalist mobilization often arises *out of,* or in response to, repressive, exploitative and criminal regimes—it is hard to imagine the advent of pan-African nationalism, or Indonesian nationalism, without the background of colonial violence and oppression. Insofar as nationalist movements have helped to rid the world of at least most overt imperialism, we ought to credit nationalism's column. A second point: it is very difficult to identify causality with respect to historical events, especially when the purported *explanans* is something as nebulous as "nationalism". What we assign to nationalism might just as well be explained by the vagaries of great

power politics or the internal political needs of elites—nationalism may drop out of the picture on further analysis.[59]

A final point: nationalists, and highly mobilised ethnic minorities, are very often *victims* of state violence. Until recently, few people lived in nation-states (as opposed to multi-national empires, colonies, dynastic kingdoms, and so on). States have used their power and resources to suppress nationalist opposition—indeed, they still do so. What we may attribute to nationalism, as such, is often states *reacting to* nationalism. What we often attribute to nationalism is instead the fault of states being empowered to act in certain ways, or having weak incentives against violent repression.

In summary, then, both the historical arguments canvassed here are undermotivated.

Section 3: From Intrinsic Value to Self-Determination

Let's grant that co-nationals, such as Scots, have an intrinsically valuable relationship with one another. How does this bear on their claim to self-determination? In this section, I outline the three implications of the claim that co-nationality is intrinsically valuable.

3.1 Self-Determination and Respect

People are entitled to respect in virtue of being free and equal persons. To fail to treat them in a way that accords with this is to wrong them. As Christopher Wellman points out, however, sometimes we are owed respect in virtue of our occupying particular roles, or in virtue of our achievements.[60] Sometimes, too, we are owed respect for *collective*

[59] For a similar point see Will Kymlicka, "The Sources of Nationalism: Commentary on Taylor", in R. McKim and Jeff McMahan (eds) *The Morality of Nationalism* (Oxford: Oxford University Press, 1997), pp. 56-65, at p. 64; cited Wellman, *A Theory of Secession*, p. 125.
[60] *A Theory of Secession*, pp. 56-7.

achievements. For example, suppose I'm part of a crew of workmen that skilfully restores an old country house. The restoration of the country house is something for which I, *qua* member of the crew, deserve respect. If someone disparages the job my crew did on the house, they disrespect me *qua* crew member.

The fact that the co-nationals have an intrinsically valuable relationship to each other is a collective achievement. Through their social practices, and through a history of co-operation, they have created and sustained a relationship that contributes to the flourishing of its participants, one that its members value non-instrumentally, and that is characterised by affective ties. Relationships such as this, like great works of art or beautiful landscapes, have a special place in the world of value. They are properly valued for their own sake. To create and sustain something like this is an achievement. Nationals, *qua* nationals, are owed respect for this achievement.

But what exactly is the link between self-determination and respect? After all, there are lots of ways to respect people's nationality. Imagine a case where a member of a sub-state nation (a Scot, say), is complaining that the central government interferes in its internal affairs, and that this expresses a lack of respect. The central government might respond that it shows respect for the sub-state nationality in other ways. It might invest significant amounts of money in conserving the group's heritage, give over airtime on the national broadcasting service to programmes about the group and its culture, or give symbolic recognition of the nation in various other ways. If there are other ways to demonstrate respect, it's hard to see the necessary connection between respect for achievement and self-determination.

To answer this challenge, consider the following cases:

Overbearing Conductor: Tina is the conductor of a brass band. She is a gifted but authoritarian bandleader. The members of the brass band have no say in what music they perform, because Tina selects all the music herself. The members all have an excellent musical sensibility, and would be well able to choose their own music. Thanks both to Tina's skill as a conductor, and to their natural talent, the brass band becomes one of the best marching bands in the country, and is selected to perform at many official occasions and concerts. The members of the brass band have earned a certain standing in virtue of their achievements. Tina praises the group, and acknowledges their talents, but continues to deny them any input into the choice of music.

Tyrannical Teacher: Tom is a science teacher. Last year, a group of his students won the first prize in a national science competition. Tom chose the subject of their entry, gave them access to the school's labs, and helped the students with their project outside of normal school hours. Most of the work, however, was done by the students independently. Tom acknowledges this and praises the students for their success. This year, the same group of students wants to enter the competition again and have come up with their own idea for an entry. They also want another student, who wasn't involved last year, to join their team. Their idea is promising, and the students are clearly competent to carry it out. The new student they have selected would be a good addition to the team. Tom refuses to help out in any way unless he chooses the entry for the competition and refuses to allow the new student to participate.

Let me first clear up some things about these cases. In each case, we feel that the person who prevents the group or individual from acting autonomously is acting wrongly. But

why? The science group have no claim to Tom's help or time, beyond his normal obligations as a teacher. The members of the band, likewise, have consented to join the band. They could easily ditch Tina and set up their own band without her. So we must account for the wrongness of these cases: respect seems like it will do the job. The second thing to note is that the disrespect doesn't lie in wrongly denying that the wronged party has a valuable capacity. Tom and Tina both acknowledge the talents and capacities of the wronged parties; they don't deny that the groups are able to do the things they want to do. The disrespect lies in failing to treat the wronged parties in a way that befits their standing. The two groups have *earned* a right to run things their way, and *with whom they choose*. And the fact that Tom and Tina voluntarily benefit their respective groups in lots of different ways doesn't change that. This pair of cases illustrates the connection between achievements, respect and autonomy.

Does the same thing apply to nations? One common feature of the groups in the examples above is that they have the capacity to exercise their autonomy. If they didn't, we wouldn't think that not respecting their autonomy was disrespectful. So let's say that a necessary condition for a group to have a claim to autonomy is that it has the relevant capacities—i.e., to govern, and to do in a satisfactory way.[61]

Let me now put the argument from moral bonds to national self-determination more formally:

[61] For an elaboration of this point see Wellman's *A Theory of Secession*, pp. 57-8. Unlike Wellman, however, on my account it is not the fact that the group has the *capacity* to govern in a satisfactory way that grounds its claim to self-determination. My claim is that it is the value of the relationship between members of the group that grounds it claim to respect, not the mere fact of having a capacity. Having a capacity for governing in a satisfactory way is a necessary but not sufficient condition for having a respect-based claim to autonomy.

P1. That co-nationals have an intrinsically valuable relationship *qua* co-nationals is a collective achievement.

P2. People are entitled to respect, *qua* group members, for collective achievements and to disrespect them *qua* group members is to wrong them.

P3. In some contexts, the appropriate way to respond to people's achievements (collective or individual) is to respect their autonomy (collective or individual) regarding their internal affairs. To fail to do so is to wrongfully disrespect them.

P4. In the context of a sub-state nation, if the nation has the capacity to run its own affairs in a satisfactory way, the appropriate way to respond to the nation's collective achievements is to respect the autonomy of the sub-state nation regarding its internal affairs.

C. To fail to respect the autonomy of a sub-state nation in matters connected to its achievements, where the members of that nation have an intrinsically valuable relationship *qua* co-nationals and where they are able to govern themselves in a satisfactory way, is to wrongfully disrespect the members of that nation.

One thing to note here is that "internal affairs", mentioned in P4, does not refer solely to the group's *cultural* life. Territorially concentrated national groups are not merely cultural groups—they are *societies*. The Quebecois, for example, are not merely a cultural group, but are the major part of a society—a large group of people sharing a territory, and with a distinctive economic, administrative and cultural life. To construe "internal affairs", therefore, as involving merely the cultural life of a national group would be too

narrow.[62] An objection at this point might be to point out that societies typically have minority groups who do not share the majority nationality. As such, the claim that national groups have a claim to non-interference against outsiders with respect to the management of their society entails the disenfranchisement of minority groups. Of course, it does not entail that. National majorities are not permitted to disenfranchise minority groups, or deprive them of any of the political rights they need to participate politically. To say that national groups have a claim to govern the collective life of their society does not mean that they are entitled to deprive minorities of an equal say. Just as the Quebecois have a claim against interference with their internal affairs, minorities in Quebec have a claim to equal civic rights. The way to reconcile these two claims is to say that the Quebecois are entitled that the people of Quebec as a whole are entitled to non-interference, and that minorities in Quebec are entitled to participate fully in Quebec's collective decision-making.

Let me briefly illustrate this with an example. Suppose there is a majority Italian-speaking city in an English-speaking region. The Italian-speaking city comprises three regions, North, Mid, and South. North and South are almost exclusively Italian-speaking, while Mid, which is fully enclosed by North and South, is majority English-speaking. There are obvious good reasons—administrative, political and so on—to give the city as a whole local self-determination from the wider region. The reasons for this are connected to the interests of the Italian-speaking population. To say that the city should be given self-determination for these reasons, however, does not entail that the English-speaking residents should be deprived of political rights. The obvious solution is to say that the

[62] For a similar point, see Hsin-wen Lee, "An examination of the Feasibility of Cultural Nationalism as Ideal Theory", *Ethical Perspectives*, 22 (1), 2014, pp. 199-224, at p. 212. Lee makes a distinction between cultural and political affairs. Territorially-concentrated groups, she argues, have an interest in controlling their political affairs.

primary unit of self-determination should be the city as a whole, with the English-speaking population enjoying full political rights and possibly some degree of local self-determination within the city.

3.2 Self-Determination and Societal Excellence

People have an interest in achieving certain kinds of excellence: creating works of art, carrying out certain sporting feats, becoming a Chess grand master. They also have an interest in seeing people with whom they have important relationships achieve excellence. Parents, for example, don't just have an interest in their child learning to read and write. They have an interest—a morally weighty one—in their child achieving excellence, learning the guitar, excelling at sport, mastering a craft.

The same thing, I claim, goes for our co-nationals. We can have an interest in seeing our co-nationals achieve excellence in sport, culture or science.[63] If co-nationality is an intrinsically valuable relationship, then how our lives go for us is affected by how the lives of our co-nationals go. We have an interest in seeing our co-nationals live flourishing lives, just as we do our children, or our close friends.

Not only, however, can people have an interest in seeing their co-nationals achieve great things, they have an interest in having some share of *responsibility* for these achievements. The parenthood example is useful again here: parents don't just have an

[63] I don't want to commit myself to any *particular* explanation or justification of this claim. It is meant to be free-standing. One possible explanation, however, is that this interest is an interest in warranted self-respect (WSR). Matthew Kramer develops an account of states' duties to promote "societal excellence"—cultural and scientific achievements, etc.—that is grounded in our interest in warranted self-respect. He claims that our WSR is related to the achievements of people with whom we share "sundry relationships"; Matthew Kramer, *Liberalism With Excellence,* (Oxford: Oxford University Press, 2017), Ch. 8.

interest in their children achieving excellence—they have an interest in being (partly) *responsible* for their children's achievements.[64]

This is where national self-determination comes into the picture. Contrast the following three hypothetical societies:

> *Culture Vultures*: The Culture Vultures tend to have strong cultural interests—in music, painting, sculpture, literature, etc. They collectively decide to invest heavily in cultural education and promotion. The Culture-Vultures are aware of the opportunity cost of these policies. Over time, the policies succeed in promoting cultural activity, and their society produces many fine musicians, artists, novelists, and so on.
>
> *Talentia:* In 1970, Talentians begin putting a new chemical in their water supply that, unbeknownst to them, causes genetic mutations in unborn children when drunk by pregnant women. This genetic mutation causes the children, when grown, to be much stronger and physically fitter than they would be otherwise. Talentia begins to produce an unusually large number of gifted athletes, with its footballers, gymnasts, boxers, swimmers, and so all, frequently winning international competitions and achieving world-wide fame. Talentia, although it is an affluent society, under-invests, both publicly and privately, in sporting facilities and the promotion of sport compared to other countries. The Talentians prioritise social services over the promotion of sport, and its world-famous athletes are given little recognition in their own country—doctors and teachers enjoy much more social prestige.

[64] Of course, parents also have an interest in their child achieving excellence through their own efforts and talents. This is quite compatible, however, with what I've said so far.

> *Provincia*: *Provincia* is a small, comparatively poor region of a large and wealthy state, Affluentia. The Provincians are a national minority within Affluentia. To stave off the Provincian demands for autonomy, the central government begins to subsidise the promotion of Provincian culture. It sets up literary prizes in the Provincian language, sets up a state-funded TV channel in the Provincian language and funds various cultural associations. These policies help bring about a resurgence in Provincian culture, and the following decades see many Provincians achieve excellence in the arts.

The Culture-Vultures can claim a greater degree of responsibility for the achievements of their co-nationals than the Provincians or the Talentians. They choose to invest in the promotion of art and culture, even at the opportunity cost of pursuing other social goals, and they execute their policies without outside interference. If nationals have an interest in being responsible for promoting excellence in their national societies, the Culture-Vultures are better off with respect to this interest than the Provincians or the Talentians. This is parallel to the parenthood case again. A parent who invests times and resources into their child and sees that child become a great musician, is better-off with respect to this interest than a parent whose child just happens to become a great musician, or where someone else deserves the credit for this. There are several things that follow from this—parents have a claim not only to assistance in developing their children's talents, but also *against* interference by outsiders with respect to the rearing of their children. They have a claim to rear their children in a way that allows them to claim a share of responsibility for their children's success; and not just because, for instance, they contribute through their taxes to the child's education and the like. They have an interest in playing a *specific* role in the development of these talents. Likewise, nationals can have a claim to the

collective autonomy and to the institutional arrangements that allow them to claim their share of responsibility for the achievements of their co-nationals.

A possible objection here is that members of national minorities already do have access to institutional arrangements that allow them to claim their share of collective responsibility for the achievements of their co-nationals—they have equal political rights to participate in the governing institutions of their state as a whole. To see the problem with this objection, imagine a group of people—say some other close relatives—usurp many parental functions from two competent parents. The parents still have some role in the child's upbringing, but it's fair to say that the child, rather than having two parents, has some kind of parenting committee. The parents claim that they are being deprived of their ability to control the child's upbringing, and in shaping her or her future trajectory. The usurpers respond that the parents still have some role in the child's upbringing, just in tandem with others. The parents could justifiably claim that they are entitled to play a *special* role in their child's life. They have an interest in the goods realized by fulfilling the role of parent in the child's life, not the role of member of the parental committee. The case of the national minority is analogous here. Members of national minorities have an interest in playing a *specific* role with respect to the achievements of their co-nationals, one that gives them a claim to a degree of exclusive control over their societies. Parents and co-nationals want to claim responsibility for their co-nationals' achievements *qua* parent, or *qua* co-national, not merely as participants in some broader co-operative scheme.

But does this generate a claim to national self-determination? There are many ways for a society to be responsible for cultural achievement. One way is for its government to co-ordinate things and provide money to artists, writers, etc. Another way

is for individuals and smaller groups within the society to put their own time and effort into promoting cultural achievement—running classes, setting up competitions and so on. Self-determination at the national level isn't needed for this. But some forms of cultural excellence *do* require national self-determination, because it's expensive to promote them, and they need a lot of co-ordination. Scientific research is one example. And even if self-determination isn't necessary, it certainly helps. The Culture Vultures are in a much better position to promote excellence with certain institutions behind them than if they had to rely just on individual effort and initiative, just as a parent with greater control and involvement in her child's life is in a better position to develop the child's talents and abilities.

The general point is this; there are some goods that people either (a) derive directly from their relationships with others or (b) can derive because they are related to others in a particular way. For some of these goods, there is a strong connection between the enjoyment of these goods and the absence of outside interference in the relationship. In other words, there is an internal, or *constitutive,* connection between these goods and autonomy or self-determination. Many of the other goods realised by the parent-child relationship, such as spontaneous affection and trust between parents and children, simply cannot be realised unless parents are sufficiently free from outside interference. Parents have an interest in playing a special role in their children's lives, and interference by outsiders undermines this. Likewise, co-nationals have an interest in playing a certain role in their co-national's lives—in having a share of responsibility for creating the conditions for them to flourish. And to be able to do this, they must enjoy significant freedom from interference from outsiders.

3.3 Self-Determination and Personal Autonomy

There are some activities and options such that, because of personal history and our psychology, to pursue them is part of what it means for us to live a life on our own terms. Imagine a talented young violinist who has spent years practising and wants to pursue a professional career in music. If this option is closed off for her—by an accident, or by someone else's malicious behaviour—this comes at a cost to her personal autonomy. We have a special interest in pursuing these options *because they are important to us*, over and above our interest in pursuing them because they are valuable. Following Steven Wall, we can call such options *vital options*.[65]

Now sometimes our vital options are options to do things *with particular people*—people with whom we have valuable relationships.[66] Imagine a group of close friends who meet every Friday evening to play carpet bowls. Taken by itself, playing carpet bowls mightn't mean very much to them, or mightn't be the kind of thing that can be a vital option. But it is the fact that they do this activity together that gives it significance. Moreover, even if they could pursue carpet bowls with other people, they have a special interest—a personal autonomy-based interest—in playing with one another.

As I've already indicated, some of our vital options are options that we pursue with other people. Some of these options are what we call *joint options*. Joint options, as Steven

[65] Steven Wall, "Collective Rights and Individual Autonomy", *Ethics,* 117 (2), 2007, pp. 234-264, at pp. 254-6. Wall gives a very detailed account of the relationship between options and personal autonomy—on his view, we need a large and varied number of options to be personally autonomous, even where only some of those options are individually necessary for personal autonomy. See also Wall's, *Liberalism, Perfectionism and Restraint* (Cambridge: Cambridge University Press, 1998), pp. 140-144.

[66] We might worry here that it is our affective attachments to those people, and not the value of our relationship with them, that ties our ability to do things with them to our personal autonomy. Taking this line would end us up in problems, however. We don't want to be committed to the claim that stalkers are less personally autonomous because they can't pursue certain options with the objects of their obsessions, or that I set back my elderly aunt's personal autonomy when I foil her wedding to a greedy conman. Whether or not our ability to pursue things with other people ties in with our personal autonomy should track the value of that relationship.

Wall says, are options to pursue ends that require co-ordinated action with other individuals.[67] Put another way, a joint option is an option to undertake a joint activity, such as going on a walk with another person. A necessary condition of an undertaking being a joint activity in the sense that Wall means is that it be "guided" by a shared intention.[68]

Some of our vital options are joint options. To give an example: imagine a group of people who have a strong personal investment in building a church in their village. It is not only that they have an interest in having a place to worship, but the activity of building the church together is very important to them; they see it adding to the significance of their lives, and as fulfilling some of their religious obligations. None of them can build the church on their own. This is something that requires co-ordinated group activity. There must be someone to design the church, or to outsource this work to someone reliable. Funds must be collected. Now it might be the case that in order to successfully build the church, the villagers need to vest some individual, or a group of people, with the authority to co-ordinate their activities. In this case, the villagers have an autonomy-based interest in having an institution that can do this. Another way of putting this is that the villagers have an interest in creating an institution that allows them to exercise *collective rights* with respect to their activities.

This is a small-scale example. Are there any examples of joint-options that can be undertaken by much larger groups, such as by nations? Language revival movements, such as those in Israel and Wales, movements to modernise agriculture or other important sectors of the economy, like the Danish co-operative movement of the 19th

[67] "Collective Rights and Individual Autonomy", pp. 245-50.

[68] *Ibid,* p. 246.

century, and movements for national self-determination are good examples. In each case, people act together in a co-ordinated way, not just to achieve some social goal, but because *they have an interest in so acting.* People who are involved in mass movements of this type are typically not solely interested in the social goal they have in mind. They also believe that participating in these movements gives their life meaning and purpose. Further than that, they often have a further interest in acting together *with a particular group of people*: people with whom they have a special relationship.

So we can see that members of a national minority can have an interest, grounded in personal autonomy, in pursuing certain joint-options together. Even if they could pursue those options with another group of people—the people of the state as a whole, for instance—they still have a claim to pursue them with their co-nationals. Moreover, as we have seen, even activities that aren't valuable in themselves can become so by being activities that we do with certain people.

Even an option as coarse-grained as exercising national self-determination together can be a vital option.[69] Often, however, people will have finer-grained options they want to pursue with their co-nationals: language revival and agricultural modernisation are good examples. Where people have special relationships, they can have a special interest in acting together, an interest grounded in personal autonomy. When they can't do this, it is a blow to their personal autonomy.

Let me put the point another way. Part of what it is for us to live a life on our own terms is for us to do things with people with whom we have significant relationships. Co-nationality is a significant relationship, and there are things that we can do, not just with a handful of our co-nationals, but as a nation. Even if none of these activities themselves

[69] *Ibid,* p. 253.

are particularly valuable, or if they don't relate to our other interests, acting *together* is important to us. This is another parallel with friendship and family. What this means is that when we are weighing up people's interests in being able to carry out certain activities, we don't just need to ask what their interest is in doing the thing itself, we need to ask whether there are any special relationships involved. Even if there is no independent interest in carrying out the activity itself, or the interest in carrying out the activity itself is already satisfied, we have a separate interest in carrying out the activity with particular people.

When a nation, whether self-governing or not, decides to do something, we can see this as either the outcome of the aggregation of a set of preferences, or we can see it as a group of people with a significant relationship committing to undertake a joint option. Even where the decision is a trivial one—e.g., a decision to beautify roundabouts—it can still be important to nationals that they carry out the decision together. If we look at this in a coarser-grained way, people typically have some desire to engage in joint-activities, and in doing so with people with whom they share significant relationships.[70] To re-iterate: part of what it is to live a life on one's own terms is not merely to do things that are important to us, but to do things with the people that are important to us. The fact that we have an intrinsically valuable relationship with someone, or with a group of people, gives us a claim to do things together, even when we have no interest in doing those things that is independent of the relationship.[71]

---

[70] It's important to note, here, however, that the relationship between personal autonomy and joint-activities is not one of *extension*: that is to say, this account does not rely on a claim about individuals having greater control over collective conditions in virtue of group membership, unlike, for example, Margaret Moore's or Daniel Philpott's accounts of collective self-determination; cf. Margaret Moore, *A Political Theory of Territory* (Oxford: Oxford University Press, 2015), pp. 62-65, Daniel Philpott, "In Defence of Self-Determination", *Ethics,* 105 (2), 1995, pp. 352-385.

[71] I don't deny that there are circumstances where a group of people who don't have valuable relationships with one another has an interest in self-determination. David Miller gives the example of the residents of a street; *Is Self-Determination a Dangerous Illusion?* (Cambridge: Polity Press, 2020), pp. 33-6. This kind of

Section 4: Grounding the Presumptive Claim

So far, I've argued that co-nationals have an intrinsically valuable relationship, and I have outlined the implications that this has for national self-determination. I said in section 1.3 that focusing on this aspect of nationality—the value of the co-national relationship—leads us to a different way of thinking about national self-determination than the standard account. On this line of thinking, nations, insofar as their members have valuable relationships with one another *qua* co-national, have a presumptive claim to collective autonomy. But what difference does this make to nations' claims to self-determination? And how, exactly, does the claim about the intrinsic value of co-nationality motivate the claim that nations have a presumptive claim to collective autonomy? On the first question, let's start with the following case:

> *Freedonia:* The Freedonians are a national minority of Centralia. They make up an overwhelming majority of one of Centralia's provinces. They have little cause for complaint about Centralia's treatment of them—Centralia is a liberal democracy, they have the gamut of minority cultural rights, and a devolved legislature with limited jurisdictional rights over certain aspects of domestic policy. However, they have a strong sense of national identity, with a separate language, cultural traditions, national historical narratives, and so on. They also have the capacity to run a successful state—Freedonia is a relatively wealthy province, and would certainly be viable as an independent country. An

---

case is explained by the standard account I described in section 1, without the emphasis on national identity. There are two important differences between this kind of case and national self-determination, however: (i) the content of the claim to self-determination will be fact-sensitive in a way that, I argue, is not true for nations, and (ii) members of groups like the street residents have no claim against, for example, residents of part of another street being formally included in their decision-making process for reasons of administrative efficiency, in a way that, e.g., the Scots would have a complaint if the people of the North-East of England were allowed to vote in elections to the Scottish Parliament.

> independent Freedonia would, all observers agree, be impeccably liberal and democratic—there would be no threat to minority rights from Freedonian statehood. Eventually, the Freedonians decide that their separate nationality entitles them to international statehood and vote overwhelmingly to secede and set up their own state, without the consent of the Centralian government. After three years of political gridlock, the Freedonians vote again on secession, and once again affirm their desire for independence.

If we think about national self-determination along the lines of the standard view, we might be unsympathetic to the Freedonian cause. We can concede that the Freedonians have an interest in self-determination (in the sense of self-government), but we might say that this interest can just be satisfied by devolution of powers to a federal sub-unit, or by some other institutional arrangement that falls short of statehood. If we think, however, that the Freedonians have a presumptive claim to collective autonomy, we will say that the Freedonians should be allowed to secede, provided that by doing so they don't commit wrongful harm. So the claim that the Freedonians have a presumptive claim to collective autonomy does not entail that they have the right to secede unilaterally—there is still the question of whether they would wrong anyone by doing so. This is true even where Freedonian statehood is viable—the Freedonians themselves would not be deprived of the rights-protecting functions of a functional state—and where minority rights would be secure in an independent Freedonia. The Freedonians might wrong the people of the rest Centralia by taking territory over which they have rights, or by leaving without coming to agreement on fair division of the national debt. These questions about territorial rights, and about fair terms of exit, are separate from questions about the value of self-determination, and I will deal with them in chapter 5. If the Freedonians don't have a right to secede, it won't be because they don't have a compelling enough interest in

independence, or because their political aspirations could be satisfied by alternative arrangements. It will be because, by seceding, they would be committing wrongful harm.

So much for the implications of the collective autonomy view. But why should we think about national self-determination in this way at all? Throughout this chapter I have been making analogies between the co-national relationship and other kinds of intrinsically valuable relationship, such as the parent-child relationship. Now if we were to think about parents' rights in the way that theorists think about national self-determination, we would start by describing the interests that both parents and children have in the parent-child relationship, and then demonstrate how parental autonomy is instrumental to realising those interests. Then, however, we would get into arguments about the arrangements this requires. Parents, some would argue, don't need any say in which schools their child attends, or what type of clothing their child wears, or what food to serve them. Some would go further: parents don't even have any claim that their child live with them—the interests that the parent-child relationship realises would be perfectly well-served by weekend access, or visits for a few hours every evening. This whole approach, we would think, gets things backwards. Here we seem to think that there's a *presumption* in favour of parental (or familial) autonomy. We don't expect parents to settle for just whatever arrangements will minimally protect their interests in the goods realised by the relationship, or that express an adequate degree of respect of their parenting abilities.[72] And this is not because, either we suspect that, more

[72] *Contra* Brighouse and Swift, *op. cit.*: "Insofar as the purpose of parental rights is to protect the parental interest in having and maintaining a relationship of that kind, parental rights are justified only insofar as they are required for protecting that relationship.", p. 102. In spite of their saying this, I do not think there is any deep contradiction between what I go on to say and their view of parental rights—they claim that the relationship, and the goods it involves, is one that parents have a fundamental right to, and that this right requires "associational rights", such as the right to live with their child, to determine whether they will attend a church or mosque, and so on, and to share and pass on hobbies and interest. They have these rights, "because these are what is required to protect that relationship", *ibid*. It is implausible that the set of rights they defend is the *minimum* required to protect the relationship.

often than not, interference by a third-party will make things worse for the child, or because we think the costs of alternative arrangements would be too great.[73] We think that parents and children are *wronged* by interference from third parties, except in a narrow range of circumstances. We should start, not by asking where parents' rights begin, but where they end. This isn't just an evidential claim—the direction of our theorising reflects the nature of parents' relationship with their children.[74] This is because we think that there are important costs to the relationship between parents and children resulting from outside interference and supervision, even in cases where parents have no fundamental right to control some aspect of their childrens' lives.[75]

Now, why shouldn't we think the same thing of nations? There are of course differences between the parent-child case and the co-national case. But there are important similarities too. Most importantly, as I've suggested throughout section 3, the considerations I canvassed in section three are the same, when described in a more general way, as those that ground the claim to parental autonomy. Respect for both parental autonomy and national self-determination is about recognising the value of the relevant relationships, and of the status of individuals *qua* participant in

[73] Of course, there are critics of the approach to parents' rights that I take for granted here; see, for example, Anca Gheaus, "Childrens' Vulnerability and Legitimate Authority over Children", *Journal of Applied Philosophy*, 35 (1), 2018, pp. 60-75.

[74] If we look at the purported limits of parents' rights over their children—for example, parents' rights to pass on their values to their children—we can see that the pattern of the arguments against parents having certain rights—say, to indoctrinate their children—is that theorists try to identify some serious harm that will come to children or others if parents are allowed to exercise unlimited parental prerogative. In the case of passing on values, for instance, some theorists claim that children have an interest in personal autonomy that is incompatible with indoctrination; see Brighouse and Swift, *op. cit*., p. 104; Jonathan Seglow, *op. cit*., pp. 65-7. Matthew Clayton argues that parental power is analogous to state coercion and as such, is subject to the same requirements of liberal legitimacy. As a Rawlsian, he therefore believes that parental conduct may not suppose the truth of any comprehensive doctrine; Matthew Clayton, *Justice and Legitimacy in Upbringing* (Oxford: Oxford University Press, 2006). In another case, the purported beneficiary of restrictions on parents' rights with respect with their children is not the children themselves, but third-parties—this is the case of conferring advantages on children. For discussion see Brighouse and Swift, *Family Values*, (Princeton, NJ: Princeton University Press, 2014), Ch. 5.

[75] As Brighouse and Swift put it: "there is no way to respect parents' right to do the things with their children that they do indeed have the right to do without also affording them the opportunity to do things that they have no right to do.", *Family Values*, p. 120.

them. Autonomy is internally related to many of the goods realised by both the parent-child and the co-national relationship. And finally, the value of our relationship with both our children and with our co-nationals, means we have a special interest—an interest grounded in personal autonomy—in pursuing certain options with them. In other words, there is a shared justificatory structure to parental rights and the right to collective autonomy as it concerns nations. That fact that we think about parental rights in terms of a presumptive claim to autonomy should motivate us to think the same of national self-determination.

To put the point in more general terms, when a group of people have an intrinsically valuable relationship, we shouldn't think about self-determination primarily in terms of coming up with institutional arrangements to protect some shared interest of theirs. We should think about self-determination in terms of a claim against any kind of outside interference. When we think about what follows from the fact that co-nationals have an intrinsically valuable relationship—that co-nationals have a respect-based claim against interference, that collective autonomy is internally related to the goods produced by the relationship, and that co-nationals have a content-independent interest in acting together—we see that, just as in the case of parents, there is always some moral cost to interference with a nation's internal affairs. And given the importance of the co-national relationship, and the goods it realises, we should set a high bar to accepting these costs. What this amounts to, I suggest, is a presumptive claim against interference. As in the parent-child case, this gets the direction of our theorising the right way around. Parties to a valuable relationship have a presumption in their favour. They do not need to establish that they have relationship-independent interests that can only be satisfied by whatever it is that they would like to do.

At this point someone might object that characterising the standard view of self-determination in terms of offering "minimal" protection to the relevant interests is unfair. Think back to the parenthood case again: perhaps a proponent of the analogous view to the standard view in the case of parenthood (that is, the anti-presumption view), could say that we ought to err on the side of protecting parents' interests, even at the expense of other goods—maybe there are empirical facts—such as informational constraints—that mean that it is too difficult to provide *minimal protection and no more* while still allowing the relationship to realise the relevant goods. My reply to this objection is structurally similar to Jonathan Quong's objection to Joseph Raz's justification of the harm principle. According to Quong, Raz grounds the harm principle on the following premises:

> Factual premise: There is no practical way for the state to use coercion to prevent people's pursuit of repugnant options without this coercion also preventing people's autonomous pursuit of the good.
>
> Normative premise: We should not reduce people's ability to autonomously choose the good in order to prevent them from choosing badly.[76]

Quong argues that the harm principle should apply even in cases where the factual premise is falsified; he gives the example of a state that is able to implant chips in the minds of its subjects to prevent them from choosing bad options, but which otherwise allows them to choose freely among a large and valuable set of options. In this case, the factual premise is falsified—yet Quong argues that the harm principle should apply in this case.[77] His calls his objection to Raz the "objection from contingency." I believe something similar applies to this more sophisticated version of the standard view—that is, in order to get to the right result, it relies on a contingent empirical premise. Where this premise

[76] Jonathan Quong, *Liberalism without Perfection* (Oxford: Oxford University Press, 2011), p. 54.
[77] *Ibid*, p. 55.

is false, it cannot get the right result, and so the contrast between the presumptive and the non-presumptive view remains.

As I mentioned in section 2.1, the presumptive claim to collective autonomy does not concern only a national group's *cultural* affairs. As I said there, territorially concentrated national minorities like the Scots and the Quebecois are the major part of *societies*. They are not merely cultural groups, any more than the people of Canada or of New Zealand are. Their internal affairs are the sum total of the economic, social, administrative, cultural and political life of the society. But having a presumptive claim to non-interference from outsiders with respect to these matters, as I have said, does not mean that they can disenfranchise minorities—those who live amongst them, but who do not share their nationality. They are under a duty to extend full political rights and equal opportunity for participation to minorities. None of this vitiates the claim to national self-determination.

A further point. In this chapter I have argued that because co-nationals have an intrinsically valuable relationship with one another, they have a presumptive claim to collective autonomy. One objection to this claim is that other kinds of groups, these critics point out, can have the features on the basis of which it is claimed that nations have the right to self-determination. Allen Buchanan, in his discussion of Margalit and Raz's account of national self-determination, puts the objection this way:

> Suppose we grant Margalit and Raz's premise that the *best* protection for those interests of individuals that are served by belonging to a nation is for the nation to have its own state. That might be true as well for a number of other types of groups—religious, political-ideological, ethnic, and so on.[78]

[78] Allen Buchanan, "What's so Special about Nations?" *Canadian Journal of Philosophy*, 26, 1997, pp. 283-308, at p. 302.

A full reply to this objection requires parsing the different features of nationality and religious and political-ideological groups. We might have good reasons to prevent religious groups, for example, from setting up their states: one reason is that the content of religious identity is too narrow and exclusionary to be the basis of the dominant identity of the people of a state, whereas this is sometimes not true for nationality. Nationality has certain features (for example, being primarily *territorial* in nation) in virtue of which it is sometimes possible for minority cultural markers to become part of the national identity. Establishing these differences is the task of the next chapter.

A final point: returning to my Freedonia example above, someone might object that the people of Freedonia have an intrinsically valuable relationship with their non-Freedonian Centralian compatriots, and as such, it is not clear why we should give priority to the Freedonian relationship over the Centralian one. In reply, why should we think that co-citizenship is intrinsically valuable? I don't want to come down one way or another on this point, but I will note that the argument I have given for the intrinsic value of co-nationality strongly motivates the claim that co-citizenship is intrinsically valuable. Let's just grant the claim the co-citizenship is intrinsically valuable. Why, then, should co-nationality take priority? I am not sure what to make of this question. It depends on what it meant by "priority"; if it is taken to mean that the co-national relationship is more valuable than the co-citizenship relationship, then I reject the claim that I am committed to this. All I am saying is that it is up to the Freedonians, collectively, to decide how to weight their desire for self-determination against the value of their relationship with their Centralian compatriots, just as it is the right of individuals to determine (within reason) the relative weight they wish to give to the claims of family, friendship or country.

Conclusion

In this chapter, I have argued that co-nationals can have an intrinsically valuable relationship *qua* co-nationals, and that the value of the co-national relationship gives nations a claim to self-determination. I have further argued that this claim should not be understood merely in terms of a claim to a set of governing institutions, but, primarily, in terms of a presumptive claim to collective autonomy, which I have distinguished from other forms of self-determination. I have also argued that thinking of the right to national self-determination as a presumptive claim to collective autonomy means that we can avoid the difficulties associated with the standard account. As such, I hope to have established one of the key propositions of the nationalist theory of secession: that nations have a presumptive claim to collective autonomy. In the next chapter, I try to settle the issue of why nations are normatively special when it comes to secession.

Chapter 4: National Self-Determination and Minorities: Why Nations are Special

1.1 *Introduction*

In this chapter I will attempt to answer the question of why nations are "special". I will do this by dealing with two related objections to nationalist accounts of the right to secede. The first objection is that setting up a state that is too closely identified with a particular national group violates the claim to minorities to equal civic status. The second objection is that it is arbitrary to single out *nations* for rights of self-determination because other types of groups can have the features that ground nations' claims to self-determination. This objection can be taken as either an attempted *reductio* of the nationalist theory of self-determination—by showing that the nationalist must be committed to statehood for religious groups, for example—or as trying to show that it is arbitrary for a theory of secession to single out nations.

In section 1, I will set out the first objection, distinguishing between different versions of it. I show first of all, that most proponents of this objection assume that the ground of the right to national self-determination is the protection of the group's culture. As my account of the right to national self-determination grounds the right to national self-determination in a different way, it is not vulnerable to this objection. I then set out a version of this objection that does not rely on this claim; on this objection, a national minority that seceded and created its own state would commit an *expressive* wrong against minorities within the territory over which it claimed jurisdiction. I show that this objection is undermotivated—only under a specific set of circumstances would the minorities of the secessionist region be subject to an expressive harm. Finally, I show that

the correct way to think about the claims of minorities in secessionist regions is in terms of a claim to secure access to equal civic status, such that they are not at risk of becoming *justifiably alienated* from their new state. If a secessionist group cannot provide this guarantee to their minority residents of their territory, then their claim to secede is defeated.

Following on from this, in section 2, I develop the Arbitrariness Objection. I show that even if other kinds of groups, such as religious groups, have the features in virtue of which nations have a claim to self-determination, this does not entail that those groups also have a claim to secede. This is because, as I explained in chapter 1, an account of secession needs a list of *defeaters*: features in virtue of which a group's claim to secede is defeated. I then argue that *merely religious* groups will fall afoul of the *Alienation Defeater*—religious identity is too narrow to be the basis of the dominant collective identity of a state. This does not apply to nationality. This, I explain, is because of qualitative differences between religious groups, *qua* religious groups, and nations. In summary, setting out the claims that minority groups have on secessionists allows us to see how nations, but not other kinds of ascriptive groups, can satisfy these claims; nations are special. I consider both of these objections to nationalist theories of secession here, therefore, because dealing with the first allows us to deal with the second: by showing *how* minority groups *can be wronged* by nationalist secession, we can show that they need not always be. National secession, because of the kind of group that a nation is, need not involve the wronging of minority, whereas secession by, in particular, a non-national religious group, does.

Section 1: Secession, Minorities and Equal Civic Status

Introduction

In the previous chapter, I argued that a nation's claim to collective autonomy is defeated only where the group would commit wrongful harm. In this section, I want to consider the possibility that a national minority seceding and setting up a new state would wrongfully harm a specific set of people: the residents of the new state who do not share the nationality of the majority. In this section, I canvass some candidate harms against these people, and set up two objections to what we can call *national* secession: that is, unilateral secession of a territory whose population has a preponderant, distinct nationality, and where secession is carried out with the explicit goal of achieving national self-determination.

In section 1.2, I set up the *Neutrality Objection* to national secession. On this objection, using a state as a vehicle for national self-determination is impermissible because it is impermissible for the state to promote one cultural identity as the expense of others. The problem with this objection is that national secession need not result in a state that promotes one cultural identity over others; implicit in the objection is the assumption that a claim to national self-determination must be grounded by an interest in the promotion of a national culture. The account of the ground of national self-determination I defend in this thesis, however, makes no reference to this interest.

In section 1.3, I set up a new objection to national self-determination; that it commits an *expressive wrong* against minorities resident in the seceding territory. In order to defuse this objection, I compare it to a similar argument against symbolic

religious establishment (SRE). As in the case of SRE, only in a particular context does national secession commit an expressive wrong against minorities resident in the seceding territory. Once this is cleared up, the focus on expressive wrongs seems misguided: instead, we should look at the background social context of the secessionist society to see whether there is anything objectionable about the position of minority groups.

In section 1.4, I describe the conditions under which national secession wrongs minority residents. I argue that when members of minority groups are put at risk of what I call *justified alienation* from their state, they are wronged by national secession. Justified alienation can result not only from outright persecution or discrimination, but from pervasive inequality of political influence, or an overly narrow or exclusionary public sphere. To conclude this section, I argue that putting minority groups at risk of justified alienation is a defeater for nations' presumptive claim to collective autonomy.

1.2 *Civic Equality and Neutrality*

Critics of liberal nationalism in political theory, such as, for example, Anna Stilz and David Copp, have argued that it is wrong for nationalists to treat a state as the vehicle of self-determination for their nation. On this line of thought, when a national group treats a state as the vehicle of *national* self-determination, it fails to treat minority residents of the territory it wishes to take—people who don't share the nationality of the majority—as civic equals. We can refine this line of criticism of liberal nationalism into an objection to secession, along the following lines:

> *The Civic Equality Objection:* For a national minority *N* in territory *T* to secede from a liberal-democratic state and set up their own state in *T*, where that national minority does not have a remedial right to secede, is to fail to treat the

> residents of *T* who do not share the *N*'s nationality as civic equals, and therefore to *wrong* them.

To give an example, if Scottish nationalists were, having secured majority support for independence, to unilaterally secede from the United Kingdom and set up an independent Scottish state, encompassing the whole of the Scottish territory, this would wrong residents of the Scottish territory who do not have a Scottish national identity, because it would fail to treat them as civic equals. But as it stands this objection seems to be merely a placeholder—the crucial notion, that of failure to treat a group of people as civic equals—is not fleshed out. How would setting up an independent Scottish state fail to treat people who don't share the dominant nationality as civic equals? One account goes like this: setting up an independent Scotland would privilege one identity over others, and thus fail to treat those who do not share that identity as civic equals. But this account still needs some explanation of how, exactly, setting up an independent Scotland would privilege Scottish national identity over others. At this point, the proponent of the objection might think I am being obtuse, but there is an implicit assumption behind this objection, namely that the justification for Scottish statehood is, precisely, to privilege and protect Scottish national identity, and to use the state as a vehicle for the promotion of Scottish culture, both symbolically and otherwise. Of course, on the traditional accounts of the justification of national self-determination I canvassed in the previous chapter (what I called the *standard view*), this would be true; the ground of the right to secede is precisely the interest that Scots have in the promotion of their national culture, and so the purpose of Scottish statehood is to privilege a particular national identity. The objection to national secession is set out by Anna Stilz:

> I believe it is objectionable for a dominant national group to organize political institutions in ways that preferentially reflect its own history and culture.

> Such nation building expresses the view that the state (or territorial subunit) specially belongs to that preferred national group, implicitly devaluing minorities.
>
> By symbolically establishing a particular cultural identity as defining the core of the political community and treating major institutions as instruments for the expression and reproduction of that identity, the state communicates to those who do not share this identity that they have a lower rank in the political community. This violates an important obligation of justice: the state should treat all its citizens as civic equals, adapting and formatting its institutions in ways that express their equal status.[1]

On the alternative account of the justification of national self-determination I offered, however, the ground of the (presumptive) right to secede (and the right to self-determination in general) is not the Scots' interest in promoting Scottish national culture. On the alternative account, what grounds a claim to national self-determination is, ultimately, the *value of the relationship between co-nationals*. Co-nationals, because they have an intrinsically valuable relationship with one another, have two claims against outsiders: (i) a respect-based claim against interference with their internal affairs, where this respect-based claim is grounded by the value of the relationship, and (ii) a claim to pursue certain joint activities together, just in virtue of the fact that they share a special relationship with one another. These activities need not be culturally specific to that national group, nor involve giving special privileges to their national culture. Cumulatively, these claims amount to a presumptive claim to collective autonomy. At no

[1] Anna Stilz, *Territorial Sovereignty* (Oxford: Oxford University Press, 2019), p. 142. Stilz, as we have seen, has allowed that groups that are unwilling to "subjectively affirm" their state have a claim to self-determination; "Decolonization and Self-Determination", *Social Philosophy and Policy*, 32 (1), 2015, pp. 1-24, at p. 15; "The Value of Self-Determination", *Oxford Studies in Political Philosophy*, 2, 2016, pp. 98-125, at pp. 122-24. For Stilz, alienation doesn't have to result from suffering serious injustices, as her discussion of the Quebecois and Scots shows (2015, p. 15) and so it shouldn't be thought of as a remedial right to self-determination. Nonetheless, she claimed that she remained agnostic about whether secession is the best means of" realizing self-determination", *ibid*, p. 4. In her most recent work, *Territorial Sovereignty*, Stilz claims that a state's rights over territory are conditional on the state reflecting the "shared will" of those it rules; *Territorial Sovereignty,* p. 90. That is, states must rule in a way that respects the "political autonomy" of the governed; it must govern in a way that reflects their judgements about they are to be governed. She accordingly adopts a more permissive view about the permissibility of secession, granting that there are circumstances where a group has a moral claim to secede. However, she says that a right to secede should not be institutionalized in international law, *ibid,* pp. 137-8. I discuss this in more detail in the next chapter.

stage does the justification rely on the importance to the group of preserving their *national* culture.

The problem for critics of nationalism like Stilz, then, is that they presume that a nationalist account of the right to secede must be grounded in a national group's interest in using a state as a vehicle for its cultural self-expression. But this needn't be the case.

1.3 *The Disenfranchisement Objection*

According to David Copp, there is a dilemma for proponents of nationalist accounts of the right to secede. In Copp's view, these accounts (he singles out Margalit and Raz's account of national self-determination) ground the right to secede in the interests of groups like the Quebecois, who form a "substantial majority" in a particular territory. But, Copp says:

> According to Margalit and Raz, if an encompassing group [nations are a type of encompassing group] forms a substantial majority in a territory, then it the group that has the right of self-determination; *it* has "the right to determine whether that territory shall form an independent state," not the overall population of the territory. Its members are entitled to decide whether a state shall be formed in the territory. Non-members are disenfranchised in the process by which the decision about statehood is made even if they reside permanently in the territory and are members of the overall society. Margalit and Raz's position therefore runs contrary to democratic and egalitarian considerations.[2]

If, however, nationalists want to resist the claim that non-members of the dominant group may be disenfranchised, then, according to Copp, they are no longer committed to the view that the right to secede belongs to nations as such; "[…] [I]n the amended scheme, people who are *not* members of an encompassing group have the same authority over a decision about self-determination as people who *are* members of the group"[3].

---

[2] "Democracy and Communal Self-Determination", in In R. McKim, & J. McMahan, *The Morality of Nationalism* (Oxford: Oxford University Press, 1997), pp. 277-300, at p. 285.
[3] *Ibid.*

Now again, this objection is an objection to the *nationalist account* of self-determination, rather than to secession itself. In any case, the objection is misguided. It might well be true that the bearer of the actual right to secede, in for example, the Quebec case, is the people of the province of Quebec as a whole, and not just the members of the Quebecois nation, but the *ground* of this right will be the claim that the members of the Quebecois nation have. It is not permissible to disenfranchise non-nationals—that does not mean that nationality is irrelevant to the right of Quebec to secede, nor does it mean that societies without a distinct national character, such as Alberta, have the right to secede.

1.4 *The Expressive Wrong of National Secession*

There might still be something to this general line of criticism regarding civic exclusion. Regardless of how the Scots justify their claim to secede, or what they intend to do with independence, doesn't the bare act of creating a *Scottish* state—that is, one where boundaries of the state and citizenship are defined by Scottish nationality—express to people in Scotland who don't share that nationality that they are not regarded as equal citizens? If the state is the vehicle of Scottish self-determination, then can non-Scots regard it as equally their own? To sharpen this point, let's put the *Civic Equality Objection* in revised form:

> *The Expressive Citizenship Objection:* For a national minority *N* in territory *T* to secede from a liberal-democratic state and set up their own state in *T*, where that national minority does not have a remedial right to secede, is to express to (inter-alia) the residents of *T* who are not members of *N* that (i) the new *T*-state *belongs* to *N* and (ii) non-members of *N* are not civic equals in *T*-state. For the *N*'s to express this message to non-*N* members of *T* would be to wrong them.

Now this claim is similar to claims made by opponents of symbolic religious establishment (SRE). Martha Nussbaum, for example, has objected to symbolic religious establishment on the basis that it sends a message that non-adherents of the established religion are second-class citizens:

> By throwing its support behind an orthodoxy, government makes a statement: this is the official doctrine of our nation. Such a statement, as Madison saw, suggests that non-adherents are not fully equal members of the political community, and they don't enter the public square "on equal conditions". Even if they are not coerced, the implication is that they exist at the sufferance of the dominant group, not as citizens of equal worth in their own right. [4]

The objection to symbolic religious establishment, at least in this form, does not straightforwardly apply to secession by a national group, however. Nussbaum's argument here relies on two claims: (i) by establishing a religion, government expresses the view that that religion is the official doctrine of the nation, and (ii) such a statement undermines the civic equality of non-adherents of that religion. The problem for transposing this objection to the secession case is that there is no clear analogue of (i) in the case of national secession. How would Scotland or Quebec declaring independence express the attitude that the Scots or the Quebecois are its *Staatsvolk*? One explanation goes like this: "the Scots or the Quebecois expressly set up a state on the basis that they are a separate nationality—that clearly sends a message that the new state belongs to them." The problem with this explanation, however, is that movements for national independence almost never appeal to the bare fact of nationality itself to explain why they should *exercise their right to secede*. Although on my account, and in the view of nationalists in general, the fact of their being a separate nationality (more precisely, the

[4] *Liberty of Conscience* (New York: Basic Books, 2008), p. 247. I should note that I am not endorsing Nussbaum's argument against SRE; I am saying that even if you accept this argument as applied to SRE, it doesn't work as an objection to national secession.

value of the relationship between its members that this usually involves) explains why a group has the (presumptive) right to secede, it does not explain why they should exercise it or not. Typically, national separatists appeal to, for example, economic and political subordination, differing political values, or a desire to escape a malfunctioning state to justify their claims that they should exercise their right to secede. There is a good example of this from Quebec: Manon Masse, the leader of the left-wing Quebec nationalist party Quebec Solidaire, often says that the province should break free of the "petro-state" Canada—an appeal to environmentalist values in the service of a nationalist cause.[5] This sort of justification for seeking independence is not inherently exclusionary towards people who don't share the dominant nationality. Their interests and values are, or can be, factored into the economic and political arguments for seeking independence.[6] The fact that separate nationality grounds the presumptive claim to secede says nothing about the political dynamics of secessionist movements, or the justifications they offer for *exercising* the right to secede. There might be a few Scottish nationalists who appeal to the Declaration of Arbroath to explain why Scotland should go it alone, but most appeal

---

5 https://montreal.citynews.ca/2018/10/02/left-wing-party-quebec-solidaire-turns-campaign-momentum-into-election-gains/. Accessed 10/3/2021.

6 This doesn't mean, of course, that one's views about the importance of national identity, won't factor into how one assesses these claims. Indeed, in the Quebec case, Paul Howe finds that positive or negative assessment of the economic and linguistic impact of possible independence is largely endogenous to national identification; Paul Howe, "Rationality and Sovereignty Support in Quebec", *Canadian Journal of Political Science*, 31 (1), 1998, pp. 31-59. Similarly, in the Welsh case, the assessments of how devolution would go were most strongly predicted by national identity; Richard Wyn Jones, "On Process, Events and Unintended Consequences: National Identity and the Politics of Welsh Devolution", *Scottish Affairs* 37, 2001, pp. 34-57. For the Scottish independence referendum in 2014, Charles Pattie and Ron Johnston find that policy preferences, partisanship and attitudes to risk, as well as national identity, were important factors in explaining voter choice—in their words, "[s]upport for Scottish independence in 2014 was not a simple function of national identity […]", "Stick to the Union? Nationalism, inequality and political disaffection and the geography of Scotland's independence referendum", *Regional and Federal* Studies, 27 (1), 2017, pp. 83-96, at p. 92. We should make a distinction here between the *justification* of national secession and the *explanation* for why movements for national secession arise. In addition, we need to make a further distinction between the explanation for the presence of support for national secession among a national minority and explanation for the *success* of a national secessionist movement. Clearly the fact that a large proportion of a particular group identify with a minority nationality is not sufficient for the success of a secessionist project. If we want to explain the success of secessionist movements, we will appeal to factors that make a marginal contribution to the popular support for secessionism (and to the willingness of elites in the central government to resist secessionism).

to Scotland's purported divergence in political values from England, or to the supposed economic benefits of independence.[7] The setting up of an independent national state might be an expression of ethnic chauvinism, but it also might be the expression of a collective desire to have a more robust (or a leaner) welfare state, a greener energy policy (or more direct control over oil and gas royalties) or simply to be rid of a self-serving political class. What really matters for whether the national minority expresses the attitude that the newly independent state "belongs to them", in a suitably objectionable way, is their behaviour towards minorities, both before and after independence. I will return to this near the end of the section.

There is another way to put the *Expressive Citizenship Objection.* On this version, the analogue of Nussbaum's (i), is something like: making salient ethnic divisions, where this is at the expense of minorities with socially vulnerable identities. For an explication of this line of criticism, we can look again at critics of symbolic religious establishment; specifically the case of what Cécile Laborde and Sune Laegaard call "neo-establishment"; that is, when a political community decides to symbolically re-affirm the position of the majority or "historically dominant" religion.[8] The example they give of neo-establishment is the decision by the government of Bavaria to have the crucifix displayed in all classrooms. Neo-establishment is contrasted with "vestigial establishment", where the prominence of the historically dominant religion in various areas of public life is a

[7] In reality, the difference in political values between Scotland and England is (or at least was recently) quite modest. See John Curtice and Rachel Ormston, "Devolution: On the Road to Divergence? Trends in Public Opinion in Scotland and England" in Park et. al. (eds) *British Social Attitudes: the 28th report* (London: Sage, 2011). It has been a long-term political tactic of the secessionist Scottish National Party to emphasise purported ideological differences between Scotland and England, for the purposes of mobilising left-wing voters behind independence; see Maria Sobolewska and Rob Ford, *Brexitland* (Cambridge: Cambridge University Press, 2020), pp. 260-1.

[8] "Liberal Nationalism and Symbolic Religious Establishment" in In G. Gustavsson, & D. Miller, *Liberal Nationalism and its Critics: Normative and Empirical Questions* (Oxford: Oxford University Press, 2019), pp. 172-187, at p. 184.

historical holdover. They give the examples of the practice of putting crosses beside dead authors' names, or the ubiquity of church spires and Christian religious symbols in medieval university-towns such as Oxford and Cambridge. Neo-establishment, unlike (at least typically) the vestigial kind, aims at the affirmation of a particular religious identity. This unavoidably sends a message of exclusion to minorities.[9] The point of similarity, on this objection, between national secession and neo-establishment is that both make ethnic or religious more salient and exacerbate the social vulnerability of minorities.

There are two problems for this analogy between national secession and neo-establishment, however. The first is that unlike neo-establishment, national secession may not be a move from relative neutrality in terms of state support for certain identities towards non-neutrality—it may involve merely a change in *which* identities are promoted. We cannot assume a background situation where the state does not promote a particular national identity, at the expense of the secessionist group. A critic of national secession might have the following background picture in mind: most liberal democratic states, even if they at one time actively promoted the symbols and culture on one dominant ethnic group, are gradually having their symbols and the collective identity of their citizenries drained of any ethnic content. We might illustrate this process with the example of Canada. At its foundation, Canada was dominated by two ethnic groups: British-Canadians and what were then referred to as French-Canadians. Canada's symbols and institutions were mostly reflective of its British heritage: its original flag bore the Union Jack, its head of state was the British monarch, and *God Save the Queen* was sung at official functions. Gradually, however the British element in Canadian identity receded in importance. A new national flag, the Maple Leaf, was adopted in 1965,

[9] *Ibid,* pp. 184-5.

the title of "Dominion" fell out of official usage, and, from the 1960s, large-scale immigration meant that Anglophone Canada no longer had a dominant ethnic group. But most states are not like this. Even multi-national states, like Britain, typically have a preponderant national group, and the state's symbols and civic identity are infused with the heritage of this group. In other words, there is usually no background of neutrality from which national secession departs. The second problem is that the examples of neo-establishment described by Laborde and Laegaard—the Bavarian crucifixes and the Swiss minaret ban—were both motivated by anti-Muslim sentiment. In their telling, neo-establishment "[…] is not a benign cultivation of vestigial traditions and symbols but, rather, a distinctively reactive movement motivated by fear of migration, globalization, and Muslims".[10] But national secession might not take place in a context like this. The profiles of separatist movements are quite different in this respect. We can't assume that every movement for national independence has ethnic chauvinism festering under its skin, and so the suggestion that national secession will always have an expressive meaning of exclusion to minorities is unfounded.

Let's now step back and see if we can get to the root of the *Expressive Citizenship Objection*. Continuing with the analogy between SRE and national secession, let's try to see if we can find a more general statement of the problem with SRE, and see if it carries over to the case of national secession. In *Liberalism's Religion*, Cécile Laborde argues that what is wrong with SRE is not the failure of neutrality towards competing conceptions of the good, but the constitution and perpetuation of "social relations of hierarchy, subordination and domination".[11] On her view, "[…] symbolic establishment is wrong if religious identity independently functions as a marker of social vulnerability and

[10] *Ibid,* p. 184.
[11] *Liberalism's Religion* (Cambridge, MA: Harvard University Press, 2017), p.126.

domination in the society in question, or if such establishment can reliably be predicted to increase the social salience of religious identity".[12] We might be tempted to reason straightforwardly from this argument against SRE to an argument against national secession. But again, there are two crucial disanalogies. The first is that in the SRE case, the state actively promotes one religious identity over others. As I've argued, this needn't be true of national secession. Secondly, the social vulnerability of members of minority ethnic groups might have nothing to do with movements for national independence, and the increased salience of say, Scottish-vs-British identity mightn't have consequences for ethnic minorities on either side of the divide. There are no good grounds for thinking that the position of Scots of Asian ethnic background, for example, would be put in worse position by Scottish independence. If certain national-cum-ethnic distinctions are made more salient by secession or by secessionist movements, it does not follow that the social vulnerability of a given ethnic or national minority will be exacerbated where the divisions are between people whose primary political identity is that of the larger state and those whose primary political identity is that of the secessionist region. As David Miller points out (in his criticism of Laborde's objection to SRE), "it is not enough to point to the fact that having a religious identity may be a source of vulnerability: it must also be shown that the presence of an established church magnifies that effect".[13]

Collecting the various strands of the analogy between objections to SRE and the *Equal Citizenship Objection*, it seems clear that the objection to national secession is dependent, first, on the salience of certain ethnic or national distinctions, and secondly, on some causal connection between national independence, or moves towards it, and the

[12] *Ibid*.
[13] "What's Wrong with Religious Establishment." *Criminal Law and Philosophy*, 15, (1), 2019, pp. 75-89, at p. 88.

exacerbation of the vulnerable position of minorities. Let's say, then that national secession might be taken to express a wrongful attitude towards internal minorities when the following condition is in place:

> *The Alienation Condition*
>
> There is a high degree of mistrust and friction between non-members of the majority group and members of the minority *or* there is a recent history of persecution, discrimination or ethnic conflict *or* negative attitudes towards *internal* non-members of the majority national group play a major part in mobilising support for independence *or* are publicly and frequently expressed by leading supporters of independence.

As with SRE, then, national secession need not involve the expression of objectionable attitudes towards non-members of the majority national group. If we want to find out whether an instance of national secession does involve the expression of this attitude towards minorities, we will have to look at the social context in which that secession takes place.[14]

1.5 *The Alienation Defeater*

Having specified the *Alienation Condition*, notice that the *Expressive Citizenship Objection*, even as directed against cases where both conditions are satisfied, seems, if not mis-directed, then misplaced. The primary problem from the point of view of ethnic minorities with the new secessionist state doesn't seem to be with what it expresses symbolically. Rather, it seems to be that a large proportion of people in their state are

[14] Cf. Sune Laegaard's discussion of symbolic religious establishment; "What's the Problem with Symbolic Religious Establishment?" In C. Laborde, & A. Bardon, *Religion in Liberal Political Philosophy* (Oxford: Oxford University Press, 2017), pp. 118-133.

actively hostile to them or disregard their interests and preferences. Even if they are not likely to be subject to active persecution or discrimination, it is unlikely that they will be treated as full members of the political community: their concerns and interests will not be taken seriously in public debate, and the state will not make much effort to ensure that they are represented or included in public institutions. Subjecting one's fellow citizens to this kind of insecurity seems to be the most important objection in this case. There will still be a further expressive wrong attaching to national secession in cases where the two conditions are satisfied, just as there is an expressive wrong when Fred assaults Johns and steals his wallet. But John will be more concerned with his broken bones and his missing debit card than the expressive meaning of Fred's actions.

What I suggest, then, is that we change the focus of the worry about equal citizenship from symbolic equality to something like (justified) *alienation*. The thought is that minority members of a secessionist region are wronged when it is very likely they could reasonably become justifiably alienated from their new state. What do I mean by justified alienation? As I mean it here, it has both a cognitive and an affective component. Firstly, minority members of the secessionist group come to believe (reasonably) that their state does not represent them. Secondly, they come to feel attitudes of resentment and distrust towards their state and their compatriots, and these attitudes are fitting. But what are the circumstances under which they could reasonably form this belief, and under which these attitudes would be fitting? The most straightforward examples are cases of outright persecution, where either the state is the persecutor or deliberately or negligently fails to protect the group from persecution. Serious discrimination—for example, formal or informal dis-preferment in jobs, housing, education and various public services—is another example. There is a more difficult kind of case, however—cases characterised not by persecution or discrimination, but by a justified sense by

members of minorities that they are not considered full members of the public sphere. Although there may be no pattern of discrimination in essential services or employment, the members of the group are not well-represented in politics or the media, do not have their concerns or interests taken seriously, or are treated with suspicion or resentment by compatriots. Let me flesh this out with the following example:

> *Devoutia:* The overwhelming majority of Devoutia's citizens are observant members of theologically and socially conservative denominations of Christianity. There are small minority groups of liberal Christians, atheists and non-Christians. Devoutia's politics are dominated by theologically conservative Christians; it has conservative laws on bioethics and matters of public morality, Christian religious symbols are prominent in public places and at state occasions, and non-Christian religious or secularist views are not given much public discussion. Although there is no overt persecution or discrimination against them, liberal Christians, the non-religious and members of other religions encounter mild hostility when they express views that depart from the societal consensus, and few public representatives are willing to align themselves with them, or to attempt to defend their policy preferences. They participate in politics at much lower rates and generally keep to themselves as much as possible. They have a sense that they should "keep their heads down".[15]

In this case, the elements of persecution and discrimination are missing. Furthermore, there is no complaint about the legitimacy of Devoutia's conservative policies on

[15] One complicating factor here is that the content of the minority group's identity may in fact be objectionable, and so there is nothing amiss with the members of the group feeling alienated. For example, neo-Nazis might feel alienated from a society that is publicly committed to racial equality, and where expressions of racism are stigmatised. But we would not consider the neo-Nazis' alienation an objectionable feature of this society, nor consider their alienation justified.

bioethics and other matters of social morality.[16] These are publicly justified, even if religiously motivated. The problem in this case is not that any *particular* measures or elements of public life in Devoutia are objectionable at the bar of liberal political morality, but that, in the round, the members of minority religious groups have inferior civic status. Now it would be useful here to describe their condition in a more general way. One way to characterise an aspect of their condition is to say that public life in Devoutia is carried out on terms that are, to use Patti Lenard's term "*inaccessible*" to religious minorities.[17] The values that are appealed to in public debates and the modes and norms of public engagement cannot be adopted by these people without serious cost to their own group identities. A Devoutian Muslim, for example, could not expect a sympathetic or receptive hearing in a public debate over abortion, for example, unless they were to express their arguments in terms acceptable to theologically conservative Christians. Part of the cost of participating in public life is demonstrating one's fidelity to important group attachments, and the religious minorities of Devoutia will not be able to do so without serious cost. Another aspect of the condition of Devoutia's minorities is that they are a "sticky" minority; there is, as Philip Pettit puts it, "[…] *ex ante* reason, associated with their independently fixed identity, to think that certain individuals will be in the minority on given issues: their identity pre-commits them, as we might say, on those issues".[18] They are in a position of *unequal influence*, as Pettit puts it, with respect to democratic decisions.

---

[16] As Cécile Laborde points out, these laws, even if religiously inspired, will not be illegitimate as long as the justification for them is "accessible"—that is, that can be understood and assessed by those who are subject to them, *Liberalism's Religion,* pp. 151-6. She defends this criterion as a condition of the legitimacy against competing accounts such as Jonathan Quong's, who relies on a distinction between justificatory and foundational disagreements; pp. 120-3.

[17] "Inclusive Identities: the Foundation of Trust in Multi-Cultural Communities". In G. Gustavsson, & D. Miller, *Liberal Nationalism and its Critics* (Oxford: Oxford University Press, 2019), pp. 155-171, at p. 160.

[18] *On the People's Terms* (Cambridge: Cambridge University Press, 2012), p. 213.

Can we put a name on their general condition? Should we think of them as being *dominated*, for example? I will remain neutral about this. I think it's enough for my purposes just to say that religious minorities are, with *good reason*, alienated from Devoutia, without specifying what it is in the most general terms that makes their alienation justified. I want to leave my account such that others can fill in the details with respect to what exactly is objectionable about the religious minorities of Devoutia's situation. It's for this reason that I've chosen to focus on the justified alienation—which some might say is a by-product of a wrong-making feature such as domination.

I will now try to sharpen this account of justified alienation. Let's say that alienation from a state *S* is justified for a member, *m,* of a minority group *N* if:[19]

(i) *S* persecutes, or culpably fails to prevent, serious systematic rights violations against members of *N*; or

(ii) *S* formally discriminates against members of *N* in matters of education, housing, employment or access to public services, or *S* culpably fails to prevent informal systematic discrimination against members of *N;* or

(iii) *m* has the correct belief that his membership of *N* makes him a "second-class citizen" of *S,* as evidenced by the fact that:

(a) There is an *ex ante* reason to think that, because *m* is a member of *N*, he will be in the minority on some important political questions (*Inequality of Influence)*;[20] and

[19] These conditions are meant to be (individually) sufficient, but not necessary. I leave open the possibility that there might be other grounds for justified alienation, but these are not relevant in this context.

[20] I leave open the possibility that this condition might not do any independent normative work—for the purposes of my argument, it will make no difference if it's seen as a epistemically justifying the sense of alienation. To make an analogy, John's true testimony that Frank stole my wallet is not wrongful, it is evidence for there having been wrongdoing.

(b) Public life in *S* is dominated by norms, values and political practices that are not, by virtue of *m*'s membership of *N*, accessible to *m*;

or

(c) There is widespread hostility towards members of *N*, and this hostility is either encouraged or tolerated by *S*.[21] and

(iv) The content of the *N*'s collective identity is not itself such as to make identification with *N* impermissible (e.g, the *N*'s are neo-Nazis).

The religious minorities in Devoutia have a claim against their compatriots to be put on more equal terms of citizenship. But now suppose that Devoutia were not an independent state, but *on the verge* of independence from a more pluralist liberal democracy. What can we say about the religious minorities of Devoutia in that case? They might have no complaint against their current state, but they know that their position will change once Devoutia achieves independence. Their condition on the verge of Devoutian independence is this: if Devoutia becomes an independent state, they will be at high risk of *becoming* justifiably alienated. Plausibly, people have a claim against being exposed to this risk. They will have formed their life plans, and attachment to the places in which they live, in reasonable expectation of continuing to enjoy equal civic status. Once their status is threatened, they may wish to substantially revise their life plans, or simply to pack up and leave.

Another important point: a group may be at risk of becoming alienated without there being an expressive wrong at all. The religious minorities in Devoutia might never

[21] This condition, unlike (a) and (b), is individually sufficient.

be the target of hostility, and their social position completely irrelevant to the move for independence in Devoutia. Yet they are still at risk of becoming justifiably alienated. If the content of the dominant collective identity in Devoutia is such that members of religious minorities cannot adopt elements of it without serious cost, then they are unlikely to be able to participate in the public sphere on equal terms. They will be second class citizens, even without being the target of active persecution.

Conclusion

My argument in this section has been that (i) the neutrality objection to national secession is misguided, and that (ii) in order for the *Expressive Citizenship Objection* to go through, it must be shown that the group that is claimed to be disrespected by national secession has, or is at risk of having, inferior civic status. Expressive wrongs of this sort that feature in the *Expressive Citizenship Objection* are typically dependent on some objectionable features of the broader social context. From this, I argue that the focus on expressive wrongs is misguided: if there is an objection to national secession that is connected to the equal civic status of minorities, it is that them at risk of what I have described as justified alienation from the state in which they live.

Importantly, this justified alienation objection won't be an objection to national secession in all circumstances. All the objection says that is that members of minority groups have a strong claim against being put at risk of being justifiably alienated from the state in which they live. For their compatriots to put them in this position is *pro tanto* to wrong them. We can now give a clearer statement of a candidate defeater for the presumption in favour of collective autonomy for nations:

> *The Alienation Defeater*: If a national minority *N* in territory *T* secedes from a liberal-democratic state to set up their own state in *T*, and if non-*N* residents of

T have a reasonable prospect of being justifiably alienated from the new state in *T*, then the people of *N pro tanto* wrong the non-*N* members of *T*.

This formulation best expresses the thought behind the civic equality objection to national secession. We can see that it isn't a *blanket* objection—the failure to secure the equal civic status of minority groups is a possible defeater of the presumption in favour of collective autonomy for nations. Now I have chosen to offer a relatively minimal account of justified alienation—as I use the term here it is effectively a placeholder. But I think it's clear that, on my view, the bare fact of national secession doesn't undermine the civic status of minorities; the worry about symbolic equality can only get a grip against a background of more tangible inequalities of status. In connection with this, I have argued that we need to look at the broader social context, rather than whether individual policies fall afoul of specific principles of liberal political morality, to see whether national secession will undermine the equal civic status of minorities.

Section 2: The Arbitrariness Objection

2.1 *Introduction*

In the last section, I hope to have defused the objection the national secession always infringes on the equal civic status of minorities. I argued that national secession only infringes on the equal civic status of minorities in certain social and political contexts. This response, however, opens me up to two related objections. The first objection is an objection to my general approach to the right to secede—that is, that nations are *normatively special* in relation to secession. This is the objection that it is arbitrary to single out nations for the right to secede, when another kind of group—religious groups—has many of the features in virtue of which nations have a presumptive claim to collective autonomy. I call this the *Arbitrariness Objection*. The second objection is the

objection that my account of the ground of national self-determination, in conjunction with my reply to the *Civic Equality Objection*, entails that religious groups have a presumptive claim to unilaterally secede. This is intended to be a *reductio* of my account of the right to secede.

In this section, I show that it is not arbitrary to single out nations for the right to self-determination; there are important differences between nationality and religious identity. Following on from my discussion of the *Alienation Defeater* in the last section, I argue that the multi-stranded nature of nationality means that national secession is less likely to fall afoul of the *Alienation Defeater* than secession by a religious group. Religion is too narrow in content to be acceptable as a basis for a political identity, I argue.

2.2 *The Objection*

One common criticism of the "first-wave" of nationalist accounts of the right to secede is that these accounts arbitrarily single out nations for the right to self-determination. Other kinds of groups, these critics point out, can have the features on the basis of which it is claimed that nations have the right to self-determination.[22] Allen Buchanan puts the objection this way:

> Suppose we grant Margalit and Raz's premise that the best protection for those interests of individuals that are served by belonging to a nation is for the nation to have its own state. That might be true as well for a number of other types of groups—religious, political-ideological, ethnic, and so on.[23]

There are two ways to take this objection. One way is to take it as a reductio of nationalist theories of self-determination in general; "nationalist theories entail that not only nations, but also religious groups and political-ideological groups

[22] Hsin-wen Lee, "The Instrumental Value Arguments for National Self-Determination." *Dialogue: Canadian Philosophical Review*, 58(1), 2019, pp. 65-89, at p. 78; Allen Buchanan, "What's so Special about Nations? Canadian Journal of Philosophy," 26, 1997, pp. 283-308, at p. 297.
[23] *Ibid*, p. 302.

have the right to set up their own state.[24] But then nationalist theories can't be right, because those groups certainly don't have the right to set up their own state." The other way to read it is as an objection to the claim that nations are special; "Fair enough, nations have the right to set up their own state, but then so do religious and political-ideological groups." We can take both versions together.

To start, it's not clear at all that political-ideological groups have the interest that, on the nationalist theory, grounds the right to secede. Members of political-ideological groups typically want (or at least claim to want to) gain political power and steer the state in their direction. If they have a distinct culture, it is usually neither as all-encompassing nor as important as national culture, and it not typically valued except insofar as it contributes to the political objectives of the group.

It is true, however, that nationalist theories entail that some *religious* groups have many of the features in virtue of which I have argued nations have a claim to self-determination. Let's take the account of national self-determination I set out in the previous chapter. I argued that the basis of national self-determination was the intrinsic value of the bonds between co-nationals, and the interests that co-nationals thereby have in collective autonomy. I defended the claim that co-nationals can have an intrinsically valuable relationship with one another *qua co-nationals*. My defense of this claim was two-pronged: first, I argued that the co-national relationship can contribute to human flourishing. My second argument was conditional: if you accept that friendship and familial relationships can be intrinsically valuable, you should accept that co-nationality can be intrinsically valuable also. There are two reasons for this: first, all the alleged differences between friendship and familial relationships are either (i) not, upon closer

[24] I set aside ethnic groups here—what I say about religious groups below applies even more strongly to ethnic groups, *qua* ethnic group. I think the reasons for this should be fairly obvious.

examination, differences at all, or (ii) not sufficient, individually or jointly, to ground the intrinsic value of these relationships. Co-nationality is in just as good a shape as these other kinds of relationship. But what make co-nationality a plausible candidate for intrinsic value in the first place is (a) its contribution to human flourishing and (b) the fact that people typically regard as intrinsically valuable.

The important point here is that (a) and (b) can be true of the relationship between co-religionists also. Co-religionists can derive significant benefits from their relationship with one another *qua* co-relationships and also often do regard their relationships with one another as intrinsically valuable. So by the lights of my account, then, shouldn't I regard religious groups as having a presumptive claim to collective autonomy, and so a *prima facie* right to unilaterally secede? Again, this objection can be taken either as a reductio of my account of self-determination, or as a criticism of its specifically nationalist bent. If my account entails that some religious groups also have the right to secede, then how is my theory a nationalist theory of secession?

But it doesn't follow that someone who is committed to the account of the value of collective self-determination I've defended has to say that religious or political-ideological groups have a right to set up their own state. A complete theory of secession will also have a list of defeaters—that is, conditions such that, when a group satisfies them, their claim to self-determination is defeated. We can bring the Alienation Defeater to bear here again.

2.3 *Religious Groups and the Alienation Defeater*

In which cases will the Alienation Defeater apply? Compare the following cases:

> *Divinitia With Symbolic Establishment*: Divinitia secedes from Secularia, and re-constitutes itself as the "Apostolic State of Divinitia". The new state gives

expression to its Catholic identity through its symbols, holidays, etc. However, the state does not enforce Catholic social teaching—divorce, artificial contraception and blasphemy are all permitted, but the state recognises in law "the special position of the Catholic Church".

Divinitia Without Symbolic Establishment: Divinitia secedes from Secularia and constitutes itself as the "Republic of Divinitia". The new state does not symbolically establish its majority religion, and protects the religious and political liberty of religious minorities.[25]

Now even granting that Divinitia With Symbolic Establishment fouls afoul of the Alienation Defeater, what grounds do we have for thinking that it applies to Divinitia Without Symbolic Establishment? Let's distinguish between two further cases:

Pious Divinitia: The Catholics of Secularia are intensely religious. Their collective identity is entirely defined by their religious identity. They have no attachment to any particular region of Secularia; they are scattered throughout the country. At some point, there is a movement among them to move to sparsely populated region of Secularia, Divinitia, where they will form a majority. They do this, and then vote to secede from Secularia. They will settle for some form of autonomy if Secularia refuses to allow them to secede. They do not intend to symbolically establish their religion, but they are seceding with the explicit aim of creating a majority Catholic state.

[25] These examples are inspired by Cécile Laborde's example of "Divinitia" in *Liberalism's Religion*; see pp. 151-2.

> *Lax Divinitia*: The Catholics of Secularia are concentrated in and make up a majority of the population of one region, Divinitia. They are from the same ethnic group as the rest of the Secularia, and share a language and many of the same traditions. The majority of them practice their faith, but their collective identity also has a cultural dimension, and some non-Catholics also identify with the broader culture of Divinitia. Divinitia votes to secede. They do not intend to symbolically establish their religion.

Here I think that the Pious Divinitians fall afoul of the Alienation Defeater, for the following reason; even though the Pious Divinitans might have no intention even of symbolically establishing their religion, it is clear that (a) a separate religious identity is the whole rationale for independent statehood and that (b) the political significance of religion and religious identity is likely to be high in this new state. Whatever collective political identity emerges in Pious Divinitia will draw heavily from the religious identity of the majority there. And this collective identity will be too narrow in content to sustain a genuinely pluralistic society.[26]

But it's not clear that the Lax Divinitians fall afoul of the Alienation Defeater. They haven't gone out of their way to exclude non-Catholics, and their collective identity has enough cultural content to be accessible to non-believers. Does this mean that we have to abandon the nationalist theory of self-determination? My response is to note that Lax Divinitia looks suspiciously like a nation. It is a territorially-concentrated group

[26] Some might say that what is doing the work in this case is the fact that the Catholics of Secularia were territorially scattered and decided to move en masse to a region in order to secede. I don't think this is the case, however: contrast the case of a territorially scattered national group who do the same thing. My intuition is that the religiously motivated secession is much more objectionable than the one motivated by nationality.

whose members share an ascriptive characteristic—religion. Remember that one of the defining characteristics of nations is that they have a public culture. Religion can be one of the elements of a public culture. Indeed, in some cases it may be the most salient difference between two nationalities. Think, for example, of the Bosniaks. Until quite recently they were not regarded as a separate nationality at all, but merely as Muslim Serbs or Muslim Croats. In Yugoslav-era censuses, there was no category of "Bosniak", but only of "Muslim". But we can perfectly well think of the Bosniaks as a nation—certainly, they now think of themselves in this way. Having a different religious identity to your neighbours makes you different in lots of ways. For one, it colours a group's sense of its history—who it regards as hero or a villain, which battles it counts as victories or defeats, and so on. And a shared sense of history is another defining characteristic of nationhood. The Bosniaks, to continue the example, have a strong sense of continuity with the people of Bosnia before the conversion to Islam; there is a strongly-held myth that the Bosniaks converted to Islam partly in rejection of the Catholic and Orthodox Churches, who had persecuted the Bosnians for their adherence to the sect of Bogomilism.[27] We can make a distinction between a merely territorially-concentrated religious groups, (e.g., Nonconformist Protestants in the North of England) and groups where religion is perhaps the dominant feature of religious identity, but there is enough distinctive non-religious content to the collective identity that we can regard them as a nation as well. And it is precisely because we can regard groups like this—like the Lax Divinitians—as a nation, that they can avoid falling afoul of the Alienation Defeater.

[27] Some Bosniak historians and nationalists also tried to demonstrate the historical continuity between modern-day Muslim Bosnians and medieval Bosnian states, as well as claiming that the medieval Bosnians were Bogomilists; see Francine Friedman. *The Bosnian Muslims: Denial of a Nation*. (Boulder, CO: Westview, 1996), pp. 11-13.

2.4 *National Identity and the Alienation Defeater*

What exactly does the fact of nationality have to do with whether or not a group can avoid the Alienation Defeater? Nations have, I will argue, certain qualitative features such that they are less likely than religious groups to fall afoul of the Alienation Defeater.[28]

The first of those features is *territoriality*. Nations are typically geographically bounded communities. There are two germane implications of this. The first is that a national identity will typically accumulate over time features of the identities of those who live in the national territory, even if they are not initially members of the national group itself. Many European national identities, for example, have elements drawn from the cultures of their immigrant-descended populations. In addition, even though there might be a formerly ethnic core to a national identity, that identity will also include elements drawn from the national minorities living on the territory. The second implication is that connection to particular region is usually one of the core components of national identity. Although political theorists who write about nationalism have noticed this connection between nationality and territory, they have failed to distinguish

[28] There is a long-standing distinction in the literature on nations between "ethnic" and "civic" nations—ethnic nations are said to have their membership defined by a sense of common descent, and perhaps attachment to a particular religion or language, whereas membership in a civic nation requires only commitment to some political principles and institutions; Lenard, *op. cit.*, p. 158; Anthony Smith, *National Identity* (Reno, NV: University of Nevada Press, 1991), pp. 9-13; Michael Ignatieff, *Blood and Belonging* (London: Vintage Books, 1993), pp. 11-13. This distinction has come in for criticism from two separate directions: firstly, as Steven Shulman points out, from theorists and empirical scholars of nationalism who have argued that national identities are typically a blend of both "ethnic" and "civic" elements, ("Challenging the Civic/Ethnic and West/East Dichotomies in the Study of Nationalism", *Comparative Political Studies*, 35 (5), 2002, 554-585, at p. 558), and secondly, from theorists who argue for an intermediate category of "cultural" components of national identity; *ibid*, pp. 558-9; Kai Nielsen, "Cultural Nationalism: neither ethnic nor civic" in Ronald Beiner (ed) *Theorizing Nationalism* (Albany, NY: State University of New York Press, 1999), pp. 58-70; P. T. Lenard & David Miller, "Trust and National Identity" in E. M. Uslaner (ed), *The Oxford Handbook of Social and Political Trust* (Oxford: Oxford University Press, 2018), pp. 57-76, at pp. 70-71. Many of the features of nationality that I discuss here clearly are better classed as cultural than as ethnic or civic, respectively. I do not claim that the content of a particular national identity must be purely civic in order to survive the alienation defeater; however certain cultural components of a national identity might be too narrowly ethnic in content, or might be otherwise inaccessible to certain groups (for instance, if the National Day celebrates a victory in battle against what is now an internal sub-group of the nation); cf. Lenard, "Inclusive Identities".

between two modes of territorial attachment.[29] The first mode is where the territory is seen as either the *ethnic homeland* or the *ethnic birth-right* of a nation—that is, where the national territory is seen as belonging to a particular ethnic group, either because they are believed to originate there or because they have some special entitlement to it by virtue of conquest or divine favour.[30] We might call this mode *ethnic attachment*. The second mode, however, we might call *affective attachment.* On this mode, there will be either no sense of ethnic attachment to a particular territory, or it will not be prominent. Instead, nationals will have certain affective ties to their national territory and will regard it as the object of pride and will value things because they come from that territory. This mode of attachment is similar to the attitudes that people sometimes feel towards their towns or cities. For example, a Londoner or a New Yorker might feel strongly attached to their city and wish to learn about its history and distinctive cultural traits, despite having no ethnic attachment to their city—indeed, they might not even have been born there. Many nations—particularly multi-ethnic nations or nations formed out of former settler colonies—have affective, but not ethnic attachment to their territory.[31] The point of distinguishing between these two modes of territorial attachment is to illustrate that the bedrock of a national identity may simply be a sense of attachment to a particular place, its character and history. Just as people may freely adopt and discard the local "patriotisms" of the cities or the towns in which they live, so, in many cases, do people with national identity, without serious cost to the other aspects of their identity.

---

[29] For accounts of the relationship between nationality and territory see Chaim Gans, *The Limits of Nationalism* (Cambridge: Cambridge University Press, 2003), pp. 97-123; Tamar Meisels, *Territorial Rights* (Dordrecht: Springer, 2009) and David Miller, "Territorial Rights: Concept and Justification", *Political Studies*, 60 (2), 2011, pp. 252-268.

[30] Anthony Smith usefully distinguishes between two kinds of "sacred homeland"; "one is the promised land, the land of destination; the other the ancestral homeland, the land of birth.", *Chosen Peoples* (Oxford: Oxford University Press, 2003), p. 137.

[31] Although some of their people will have an ethnic attachment to the territory from which their ancestors came.

The second feature is that national identities are, in liberal-democratic societies, subject to *deliberation and contestation*. Features of national identity that are not accessible to certain groups, or which are outright insulting to them, may be discarded after public debate.[32] One common example of this sort of thing is debates over which historical figures the nation ought to celebrate. For example, consider the public debate in Canada regarding John A. MacDonald, the country's first Prime Minister. MacDonald was once celebrated as one of the country's founders. In recent years, however, there has been greater public attention to his governments' treatment of Canada's indigenous First Nations peoples and his introduction of racist legislation against Chinese migrants. MacDonald has become a figure of increasing controversy and is less often celebrated as a positive figure in Canadian history. This feature of national identity—its openness to contestation with respect to content—can be contrasted with religious identity, where the terms of contestation are narrowed by the sharper boundaries between members and non-members, and the frequently hierarchical character of deliberation within religious groups.

The third feature is that national identities are often *nested*—e.g., Scottish and British, or Canadian and Quebecois. Having one national identity does not preclude having another. The national identity of a seceding group will often contain much content that is shared with the people of the remainder state. To make a slightly different point, national identities can share the same content with other forms of identity, such as regional identity. For some, their Quebec or Scottish identity is a regional identity. For others, it is a national identity. It is often the case that minorities of secessionist states who identify with their former state, regard the national identity of the secessionists as

[32] *Ibid*, p. 176; David Miller, *On Nationality* (Oxford: Oxford University Press, 1995), p. 96.

their own regional identity. Often the national identity has content that the regional identity doesn't have. But there is usually a good deal of shared ground. In the case of religion, however, there is typically a clearer boundary between the identity of a religious group and other forms of identity, such as regional attachment. The sharper boundary—indeed incompatibility—between membership of different religious groups is paradigmatically explained by the fact that religious belonging requires affirming certain *propositions*, and that some of these propositions are contradictory of the propositions affirmed by other religions—think for example, of the incompatibility of Catholic and Lutheran Eucharistic doctrine. Of course, however, as is well known, not all religious practices or religious identities can be characterized in this way.[33]

The point of elaborating these three features of national identity is to argue that nationality need not be too narrow and exclusionary a basis of majority collective identity to sustain a pluralistic society—one in which members of minority groups have equal standing in and access to the public sphere. My argument is, in summary, that to secure substantive civic equality, minorities will have to adopt aspects of the dominant collective identity; this will be too costly for them if the dominant collective identity is primarily religious in character, but this need not be true of national identity, for the reasons I have outlined.

One objection to this line of argument is that religious groups can have the features of territoriality, deliberativeness and nestedness. Many religious groups, after all, have a strong attachment to a particular place: think of Jews and Israel, for example.[34] Others

[33] See Laborde, *Liberalism's Religion*, pp. 21-4. See also Jeff Spinner-Halev's argument that it is wrong to characterise Hinduism in creedal terms: "Hinduism, Christianity, and Liberal Religious Toleration", *Political Theory*, 33 (1), February 2005, pp. 28-57.

[34] For an overview of Jewish perspectives on territory, see David Novak, "Land and People", in D. Miller and Sohail Hashmi (eds) *Boundaries and Justice: Diverse Ethical Perspectives* (Princeton, NJ: Princeton University Press, 2001), pp. 213-236.

have elements of deliberation and contestation: Quakers are a good example of this. And some religious identities can be nested: Shintoism and Buddhism come to mind here. I have two replies to make here: the first is to note that I am not saying that religious groups cannot have these features taken in isolation. But they rarely have all three. Most importantly, when a religious group does have all three, it is hard to explain why it does not count as a nation. This is particularly true I would note, for religious identities that can be characterised as more "practice-based", and which do not appear to be incompatible with other religious identities.

A final objection is that my view of nationality is too rosy. A critic could claim that most nations' claims to self-determination wouldn't survive the Alienation Defeater. I am perfectly happy to accept this claim. My goal in this chapter has been to point out that nationality can have certain features that make it acceptable from the point of view of liberal political morality as a basis for majority collective identity. If a given national identity doesn't have those features—if it is narrowly ethnic in content and closed to outsiders—then it isn't acceptable from the point of view of liberal political morality, and so doesn't have the right to unilaterally secede.

Conclusion

I have argued that it is not arbitrary for a theory of secession to single out nations. Unlike religious identity, nationality can serve as a basis for collective political identity without being impermissibly exclusionary towards minorities. My main goal in this chapter overall has been to outline the conditions under which the setting up of a new state is compatible with substantive equality of citizenship for people who do not share the dominant identity of the new state—whether that be national or religious. My argument has been that a state where the dominant identity is purely religious in character will not produce social and political conditions that are compatible with this substantive equality,

whereas states where the state's dominant identity is a national identity (including national identities that have religious membership as a substantial component), may well be satisfactory from the point of view of minority citizens. I have outlined some features of nationality that explain why that is the case. My conclusion, therefore, is two-pronged: (i) national secession can be compatible with the claims of minority groups and (ii) nationality is special, in this regard. With this chapter I hope to have answered Allen Buchanan's question: "what's so special about nations?".

Chapter 5: Territorial Rights, Unilateral Secession and Fair Exit

Introduction

In this chapter, I want to address one of the most common objections to the claim that unilateral secession from a legitimate state is permissible. This is the objection that unilateral secession would wrong a legitimate state by wrongly taking territory over which it has rights. Statist (or functionalist) theories of territorial rights have often been thought to rule out the permissibility of unilateral secession from a legitimate, non-usurping state—if states have rights over their territory, the thought goes, then it is impermissible to unilaterally take any portion of this territory. In this chapter, I argue that the most plausible versions of statist theories of territorial rights do not have the theoretical resources to rule out unilateral secession.

In section one, I discuss the relationship between questions about territorial rights and questions about the right to secede. In section two, I first describe what I call the "simple functionalist view", according to which territorial rights are primitive to states, and cannot be had by any other type of entity, whether individuals or collectives such as nations. I then run through a well-known objection to this class of views, and canvass a more sophisticated statist view, according to which the "peoples" of states have residual rights over their territory. In section three I show proponents of this revised statist view cannot explain why unilateral secession from a legitimate, non-usurping state is always impermissible, because they cannot explain why other types of entity—such as sub-state nations—cannot have rights to territory. In the course of this, I consider some other objections to the permissibility of unilateral secession: most importantly, the objection

from legitimate expectations and the objection from majority rule. At this stage I say something about the conditions of fair exit, and the manner in which a decision to secede should be conducted. I conclude that both objections fail. This opens the door for primary right theories of secession. In section 4, I consider a more permissive theory of territorial rights—one that makes realising self-determination a necessary condition of enjoying territorial rights. I argue that this theory entails a much a more permissive account of the right to secede than it would first appear. Finally, in section 5, I briefly discuss the relationship between theories of territorial rights and the question of how to settle claims to territory in the event of secession.

Section 1: Territory, Self-Determination, and Secession

One of the central questions of this thesis is whether it is permissible for a group (a sub-state nation, say) to unilaterally secede from a legitimate, non-usurping state. First, what reasons do we have for thinking that this can be permissible? That argument I have canvassed so far is that certain groups have a claim to collective self-determination. In its strongest sense this means the *presumptive* right of a group to run its own affairs without interference from outsiders. If we think that a group has a claim to self-determination in this sense, we might think that this grounds a *presumptive* claim to secede.

To briefly recap some of the earlier discussion in this thesis, another central question I have addressed is: why should we think that certain groups have such a claim to self-determination? First, we need to ask what grounds the value of collective self-determination—what interest is served by collective self-determination. Importantly, what interests or claims *of the individual members of the group* are served by the group having rights of self-determination? We don't normally think that groups matter in themselves. And even if we do think that groups have some impersonal value, it's hard to

see how this impersonal value is such to generate obligations on others to respect the group's self-determination that are independent of the interests of the members of the group.[1] Moreover, people can be members of many different groups—only for some of them, however, do they have an interest in the group being self-determining.

We can sum all this up as follows—in order to know whether a group has the right to secede, we first need to know the answers to:

> *The self-determination questions*: what grounds a group's claim to self-determination in the strong sense described above? Which groups have this claim?

To answer the *self-determination questions*, we need to know in general what interest people have in collective self-determination. Some theories of the right of self-determination are *permissive*, and some are *restrictive*. We can divide up relevant theories of self-determination into the following three types:

> *Nationalist, or Ascriptivist theories* of self-determination hold that groups defined by shared cultural characteristics (e.g. nations), have the right to self-determination.[2] Nationalist theorists ground this right in different ways. Some, such as Avashai Margalit and Joseph Raz, hold that nationality (e.g.) is a cultural good whose flourishing is valuable to its members, and that therefore the

[1] Cf. Christopher Wellman's discussion of "value collectivism"; Wellman, *A Theory of Secession*, (Cambridge: Cambridge University Press, 2005), pp. 43-5. Wellman tries to offer a defence of the the value of collective self-determination that is compatible with what he calls "value individualism"—the claim that only individuals and states of their lives have value. We don't need to be committed to this to avoid being committed to value collectivism. We can admit impersonal value, and just deny that it attaches to groups.

[2] As discussed in chapter 3, there is a stronger and a weaker interpretation of the accounts grouped under this heading. On the weaker interpretation, these accounts ground a claim to self-determination only in the weak sense I distinguished above—a claim to some form of self-government. On the stronger interpretation, these accounts ground a *presumptive claim* to political independence. There are different ways of arriving at this stronger interpretation from within these theories. On one view, the interest that grounds the claim to self-determination is best protected by independent statehood; cf. S. Caney, "Self-Government and Secession: the Case of Nations", *Journal of Political Philosophy*, 5 (4), 1997, pp. 351-72, at pp. 361-9.

members have an interest in the group having institutional protection.[3] Others, such as Will Kymlicka, claim individuals need to be members of a secure, flourishing culture to be fully autonomous, and as such individuals have an interest in institutional protection for their cultural group (e.g. nation).[4] In this thesis, I have argued that the claim that nations have a presumptive claims to collective autonomy is grounded, ultimately, by the fact that co-nationality can be an intrinsically valuable relationship.

Voluntarist theories of self-determination hold that *any* group, provided it can fulfill the state's functions of protecting human rights, and the members of the group have some interest or claim in virtue of which the group has the claim to collective self-determination, have a claim to self-determination. Different versions of this type of account specify the interest or claim differently: Christopher Wellman, as we have seen, argues the members of groups with the ability and willingness to govern in a satisfactory manner have a respect-based claim to self-determination.[5]

Statist theories of self-determination hold that, outside of remedial circumstances, either (i) only states or the "peoples" of states have the presumptive right to self-determination or (ii) a non-state entity has the right to

[3] Margalit and Raz, "National Self-Determination", *Journal of Philosophy*, 87 (9), 1990, pp. 439-61.
[4] Kymlicka, *Multicultural Citizenship*, (Oxford: Oxford University Press, 1995).
[5] Wellman, *op. cit.*

> self-determination only if that entity is the "people" of a state that has gone out of existence and the "people" can re-constitute that state.[6]

Now what reason do we have to resist the claim that the sub-state group have the right to secede, even granting that they have a presumptive claim to self-determination? The most obvious answer has to do with *territory*. "Secession involves taking territory. If a state or some other entity has rights to the territory taken by a seceding group, then this is wrongful taking. Surely then the secession is impermissible."[7] Prominent proponents of this objection to unilateral secession include Allen Buchanan:

> "[…] to make a case that a group has a right to secede one must show that the group's claim to the territory in question is valid and therefore that it trumps or supersedes or negates the state's claim to that territory."[8]

and Anna Stilz:

> Or consider secession: often, secessionist groups forcibly appropriate territory, as during the secession of Eritrea from Ethiopia in 1993 or of Bangladesh from Pakistan in 1971. But if these groups had no right to the territory they seized, they may have committed an unlawful taking.[9]

Let's call this the *territorial rights objection*. But what constitutes wrongful taking of territory? For present purposes we can just settle on the weak candidate claim that:

---

[6] For a critical overview see Cara Nine, *A Global Theory of Territory* (Oxford: Oxford University Pres, 2012), pp. 53-6. Note that someone committed to a statist theory of self-determination need not deny that other entities, e.g., nations, have a claim to a weaker form of self-determination.
[7] Lea Brilmayer, , "Secession and Self-Determination: A Territorialist Interpretation", *Yale Journal of International Law,* 1991, pp. 177-202; Allen Buchanan, *Justice, Legitimacy and Self-Determination*, (Oxford: Oxford: University Press, 2004) pp. 337-8.
[8] *Op. cit.*, p. 337.
[9] Stilz, Anna, "Nations, States and Territory", *Ethics*, 121 (3), 2011 pp. 572-601, at p. 573.

> *Wrongful Taking*: A group *x* wrongfully takes some territory *Q* if there is some entity *y* that has territorial rights over that territory and *x* takes *Q* without permission from *y* or from some proxy of *y*.

If we want to work out when it is and when it isn't permissible for a group to unilaterally secede, we need to work out who has territorial rights*.* I will say more about territorial rights below, but as with theories of self-determination, we can distinguish between more permissive and less permissive theories of territorial rights. When we talk about territorial rights, we normally talk about the territorial rights of *states.* Statist theories say that state's territorial rights are *primitive*, whereas others say that territorial rights are reducible to the property rights of individuals, or to the collective rights of the constituent nations of the state.

It's important to distinguish accounts of the right to self-determination from accounts of territorial rights. The two are conceptually distinct. Endorsing a nationalist account of self-determination, for example, doesn't commit you to the claim that *nations* are the ultimate bearers of territorial rights, or that it's permissible for a national group to unilaterally take the territory in which it composes a majority from a state. One can say that nations have a strong, indeed presumptive claim, to collective autonomy, but still deny that they have, *as such,* any rights over territory.[10]

Summing up, to know whether a group has the right to secede, we also need to the answer the following questions:

[10] Cf. Cara Nine, *op. cit.,* p. 71.

The territorial rights questions: Which entities have territorial rights? Under what circumstances is it permissible to take territory from a state? What grounds a rightful claim to territory?

To step back for a second, I'm not trying to say that the s*elf-determination questions* and the *territorial rights questions* are the only questions we need to answer to know when a group has the right to secede. Obviously, there are other considerations, such as the protection of minority rights, strategic and defence considerations, considerations of distributive justice, and implications for the rule of law. But I focus on secession and territory because these are the most *basic* questions. That a secessionist group can't provide adequate guarantees of minority rights might defeat its claim to secede. That taking territory from a legitimate, non-usurping state is never permissible defeats *all* claims to secede from such a state. We can't get off the ground normatively without answering questions about self-determination and about territory.

Returning to territory, there are four main types of normative accounts of territorial rights. These are *Lockean*, *Statist, Nationalist* and *Permissive Collectivist* accounts.[11]

Lockean Accounts claim that the relationship between the territorial right-bearer and the territory is the same as the relationship between the bearer of a property right and her particular property. That is, a person or state *y* has a right

[11] With respect to statist accounts, some theorists use the expression "functionalist" to refer to these accounts. They are functionalist insofar as they hold that securing a minimum standard of justice in a territory is sufficient to have territorial rights over that territory; cf. Anna Stilz, *op. cit*., at p. 576. I discuss Stilz's theory of territorial rights below, taking it as representative of statist theories. Now Stilz denies that her theory is a purely functionalist view, claiming that her view incorporates an additional element about respecting the self-determination of "peoples", which purely functionalist views, which hold that securing a minimum standard of justice in a territory is sufficient for territorial rights, lack; see also Stilz, *Territorial Sovereignty,* (Oxford: Oxford University Press, 2019) pp. 90-1; but see n. 22, *infra*, for an account of Stilz's views have changed.

to a certain territory *s iff* they acquired *s* in a just manner, and, where *y*'s acquisition of *s* was not the first acquisition and there is an unbroken chain of just acquisitions beginning with a just or rights-bestowing first acquisition.[12]

Statist Accounts[13] are defined by the claims that (i) *states* are the bearers of territorial rights,[14] (ii) states' rights to territory are *primitive* and (iii) a state's claim over territory is rightful *iff* it satisfies certain standards of justice and is not a usurper.[15]

Nationalist Accounts assign territorial rights to *nations*. A nation holds a rightful claim to a particular piece of territory *p iff* (i) the nation's members have

---

[12] Individualistic Lockean accounts hold that states' territorial rights are derived from the property rights of the individuals who are subject to the state. See A. J. Simmons, *Boundaries of Authority,* (Oxford: Oxford University Press, 2016); H. Steiner, "Territorial Justice", in S. Caney, D. George and P. Jones (eds) *National Rights, International Obligations,* (Boulder, CO: Westview Press, 1996). I should note here that although, as noted in Ch. 1, Steiner allows for the possibility of individual secession, Simmons is less forthcoming on the matter; see David Miller, "Lockeans versus Nationalists on Territorial Rights", *Politics, Philosophy and Economics*, 18 (4), 2018, pp. 323-335, at p. 333. Cara Nine calls her account of a territorial rights a Lockean account, but she claims that *collectives'* territorial rights are *primitive,* not derived from the property rights of individuals; cf. Nine, "Territory is Not Derived from Property: A Response to Steiner", *Political Studies*, 56 (4), 2008, pp. 957-63*.* Her account is Lockean insofar as she claims that adding value to the land via collective decisions about land use, infrastructure, etc., ground a collective's claim to rights over the land (in this case jurisdictional rights); cf. Nine, *A Global Theory of Territory*, Ch. 4. With respect to the third condition—that there be an unbroken chain of just acquisitions ending with a just or rights-bestowing first acquisition—I should note that this formulation is compatible with different accounts of rights-supersession. For a sceptical look at the doctrine of rights supersession in relation to territorial rights, see Simmons, *op. cit*., ch. 7.

[13] Margaret Moore divides Statist accounts of territorial rights into two types: Kantian accounts and Hobbesian accounts; Margaret Moore, *A Political Theory of Territory* (Oxford: Oxford University Press, 2015), 90-93. On the first type of account, a state must achieve (or be capable of achieving) justice in order to qualify for territorial rights. On the second type, the achievement of goods such as stability suffices.

[14] Anna Stilz allows that in cases where a state collapses or is annexed, meta-jurisdictional rights may reside in the "people" of the former state; Anna Stilz, "Nations, States, and Territory,", p. 591. For Stilz, to qualify for "people-hood", a group must satisfy a condition called the "Political History Condition", ibid. Only by being subject to the authority of one state does a group qualify as a people. *Cf.* David Miller, "Neo-Kantian Theories of Self-Determination: A Critique," *Review of International Studies* 42 (5), 2016, pp. 858-875, at pp. 867-9. Statist accounts of territorial rights make a history of political co-operation a requirement of having territorial rights.

[15] Stilz, "Why Do States Have Territorial Rights?", *International Theory*, 1 (2), 2009, pp. 185-213, at p. 198. This condition is not incompatible with "pure" functionalism—Allen Buchanan, for instance, holds that the peoples of wrongfully annexed states, like the Baltic republics, have a remedial right to secession; see A. Buchanan, *Secession: the morality of political divorce from Fort Sumter to Lithuania and Quebec*, (Boulder, CO: Westview Press, 1991) pp. 158-9. But some pure statist accounts cannot explain why the peoples of states that were not wrongly occupied, such as Germany in 1945, have a right to re-constitute their state.

settled *p* and satisfy some further condition. Some candidate further conditions include: (ii) *p* is a "repository of value" for the nation,[16] or (iii) the nation's members were the first occupants of *p*,[17] or (iv) the nation has *formative ties* to the territory.[18]

Permissive Collectivist Accounts assign territorial rights to a particular piece of territory *p* to whichever group has both (i) occupancy rights[19] over *p* and (ii) has a claim to collective self-determination.[20]

Now that we have distinguished between theories of territory and theories of self-determination, we should start to look at the logical relationships between different theories. In this chapter I argue that although the conjunction of a statist theory of territory and a statist theory of self-determination is not compatible with right to secede, the conjunction of a statist theory of territory and a nationalist or permissive collectivist theory of self-determination is. At first glance this looks strange. Surely, if legitimate states' rights to their territory are primitive then no other entity can take that territory

---

[16] David Miller, "Territorial Rights: Concept and Justification," *Political Studies* 60 (2), 2012, pp. 252-268, at p. 258. Value here refers both to the material improvements the group has made to the territory and to the cultural or symbolic value embedded in the territory. David Miller cites activities such as a community's burying its dead in certain places, building shrines and monuments; *Citizenship and National Identity* (Cambridge: Polity, 2000), 116-17. He also notes that a piece of land's being the site of some historically important (for the group) event such a battle can make it symbolically valuable; "Territorial Rights: Concept and Justification," 258.

[17] Both Miller and Tamar Meisels agree that a claim generated by (*ii*) has priority over a claim generated by (*iii*); Tamar Meisels, *Territorial Rights* (Dordrecht: Springer, 2009), 129; Miller, *Citizenship and National Identity*, 117. For general difficulties with the notion of "first occupancy" see Moore, "The Territorial Dimension of Self-Determination", in Margaret Moore (ed) *National Self-Determination and Secession*, (Oxford: Oxford University Press, 1998), pp. 134-155, at pp. 142-5.

[18] Chaim Gans, *The Limits of Nationalism* (Cambridge: Cambridge University Press, 2003), 100-01. Gans explains this notion of formative ties as follows: "[. . .] the disputed territory is of primary importance in forming the historical identity of the group [. . .]." *ibid*.

[19] Occupancy rights are collective rights over territory. They are not jurisdictional rights, nor are they reducible to individual members of the collectives' residency rights. They give the group rights of non-dispossession and rights of return, and also a defeasible right to control the land in some way. These rights are grounded by the interests that individuals in the groups of which they are part remaining in particular places and retaining control in some respects over those places; see Moore, *A Political Theory of Territory*, pp. 36-45.

[20] See Moore, *A Political Theory of Territory,* p. 66.

without permission. In the next section, I argue against this claim.[21] I want to show that statist theorists of territorial rights *do not have the resources* to explain why the unilateral taking of territory is always impermissible, unless they endorse a statist theory of self-determination. But the statist account of *self-determination* is deeply implausible. This clears a serious hurdle for *any* primary right theory of secession—it means that the territorial objection cannot show that unilateral secession from a legitimate state is always impermissible.

Section 2: Statist Theories of Territory

As I've said, one immediate hurdle for primary right theorists of secession is the objection that unilateral secession from a legitimate state is ruled out from the beginning because of the impermissibility of wrongful taking of territory. In this section, I first set out what I call a "simple functionalist" view, and run through a well-known objection to theories of this type: that is, they are not compatible with our considered intuitions about territorial rights in cases involving non-wrongful annexation and loss of territory. I then move on to discuss revised statist views, that attempt to handle these cases. I take Anna Stilz's Kantian statist theory of territory as a test case.[22] I have singled out Stilz's theory because

[21] At the very least, I argue that a statist theory that recognises a meta-jurisdictional right attaching to "peoples", or some other non-entity, does not have this entailment.

[22] I should note that Stilz's view has undergone considerable change since her 2009 and 2011 chapters, which I discuss here. Stilz initially endorsed a remedial-right only account of the right to secede, and restricted the right of self-determination to states. Stilz has allowed that groups that are unwilling to "subjectively affirm" their state have a claim to self-determination; see Stilz, "Decolonization and Self-Determination", *Social Philosophy and Policy*, 32 (1), 2015, pp. 1-24, at p. 15; cited Miller, "Neo-Kantian Theories of Self-Determination: A Critique", p. 870; Stilz, "The Value of Self-Determination", *Oxford Studies in Political Philosophy, 2*, 2016, pp. 98-125, at pp. 122-124. For Stilz, alienation doesn't have to result from suffering serious injustices, as her discussion of the Quebecois and Scots shows ("Decolonization and Self-Determination", p. 15), and so it shouldn't be thought of as a *remedial* right to self-determination. Nonetheless, she claimed that she remained agnostic about whether secession is the best means of "realizing self-determination" (*ibid*, p. 4). In her most recent work, *Territorial Sovereignty*, Stilz claims that a state's rights over territory are conditional on the state reflecting the "shared will" of those it rules; see Stilz 2019, *Territorial Sovereignty,* Oxford: Oxford University Press, p. 90. That is, states must rule in a way that respects the "political autonomy" of the governed; it must govern in a way that reflects their judgements about they are to be governed. She accordingly adopts a more permissive view about the permissibility of secession, granting that there are circumstances where a group has a moral claim to

unlike "purely" statist (or functionalist) views, it holds that annexation is not just indirectly wrong—by, for instance, making wars of territorial conquest more likely, or weakening international institutions that are conducive to peace—but, as she says, *inherently wrong,* because it violates a "people's" rights to their territory.[23] In this section, I will re-construct her view, and then I will show, in section 3, why it doesn't have the resources to explain why unilateral secession from a legitimate state is always impermissible.

2.1 *The Simple Functionalist View*

We can start by describing what I refer to as a "simple" functionalist or statist view of territorial rights and self-determination. The elements of this view are the following claims:

(i) **The Primitiveness Claim**: States' rights over their territory, and states' right to self-determination are both *primitive*; that is, they are not derived from the anterior rights of either the individuals who reside in them, or any sub-state entity, such as its constituent nations.

(ii) **The Exclusiveness Claim**: no non-state entity can have a strong right to self-determination, or a right to territory.

(iii) **The Grounding Claim**: a state's claims over its territory are grounded by the state's achievement of either justice or other goods, such as security and stability.

---

secede. However, she says that a right to secede should not be institutionalized in international law; pp. 137-8. I would like to emphasise that I am only discussing Stilz's view of territorial rights as set out in her 2009 and 2011. I do this not to saddle Stilz with outdated views, but because her 2009 and 2011 view is the best developed statist account of territorial rights. I discuss her revised view in section 4 below.

[23] "Nations, States and Territory", p. 601.

What might motivate someone to endorse this type of theory? To begin with, on this theory, it is easy to identify the bearer of territorial rights: the state.[24] Secondly, there is on this theory (on either versions), a close congruence between what grounds the right of states over territory and the features in virtue of which states can claim legitimacy in general.

The problem for this theory, however, is that cannot generate plausible responses to a number of key cases. An obvious objection to simple functionalist views of this kind is that they cannot explain why a state that annexes another legitimate state, and then proceeds to govern in a way that secures justice (on the Kantian account), or goods such as security (on the Hobbesian account), does not have the right to rule that territory. In response to this objection, statists have added a further necessary condition for a state having territorial rights: that the state has not usurped or annexed that territory from another legitimate state, which had itself not annexed or usurped that territory. There are two problems with this response: the first is that it seems simply *ad hoc*. If the ground of territorial rights is simply that a state is able to secure certain goods in a territory, then why should we care about whether or not a state is a usurper? But even setting aside this *ad hoc*-ness problem, proponents of the simple functionalist view are vulnerable to the objection that they fail to generate the right answer in a number of cases that share a distinguishing feature. The problem for the simple functionalist is this: although they might be able to handle cases where a state loses territory or ceases to exist as a result of wrongdoing—wrongful annexation or invasion by another state—they cannot handle cases where the state loses territory or ceases to exist, and where this is *not* the result of wrongdoing by other states. Anna Stilz has presented the following case:

[24] Moore, *A Political Theory of Territory*, p. 95.

> *Annexation*: In 1945, the Allies occupied Germany in a legitimate use of force. Suppose that instead of restoring the territory to the German people, the United States had simply annexed their zone of occupation, turning it into an additional state of the union. After annexation, the United States governed legitimately, protecting the Germans' human rights and granting them rights of democratic participation in the now-unified polity. Could the annexed people of Germany rightly have attempted to recover their territory?[25]

Now Stilz claims that there is a widely shared intuition that the consent of the German people would have been required for this annexation to have been legitimate. But how can the simple functionalist, who believes that territorial rights are primitive to states, and that no other kind of entity can be a bearer of these rights, explain this? It can't explain it by invoking the non-usurpation condition; Germany lost its territory without wrongdoing by others. Maybe the simple functionalist can say something along the following lines: for reasons of political stability and efficiency, the Allied powers should, all things considered, restore German statehood. This wouldn't cohere with the intuition, however, that the Germans had a *claim* to re-establish their state. This is the crux of the issue. Because the simple functionalist view is committed to the **Exclusiveness Claim**, it cannot account for a collective right of the German *people* to re-establish a state. In the next sub-section, I will outline Stilz's revision to the functionalist/statist theory and her attempt to handle cases of this type.

2.2 *Stilz's Theory of Territory*

[25] "Nations, States and Territory", p. 590.

Stilz's response to the German annexation case above begins by employing the distinction between jurisdictional rights and meta-jurisdictional powers. She characterizes a territorial right over some land *k* as a bundle of rights, made up of the following incidents:

> (i) *Jurisdictional powers*, which includes incidents relating to (i) *legislative powers* to determine certain aspects of legal property rights as held over parts of *k*: that is, to decide whether such holdings are subject to taxation, inheritance, what the conditions on alienation, inheritance etc., are; (ii) *adjudicative powers* relating to the interpretation of boundaries of property holdings in *k* and the enforcement and interpretation of torts relating to property holdings in *k*; (iii) the right to enforce the boundaries of property rights over parts of *k*.[26]
>
> (ii) The *metajurisdictional power* to assign jurisdictional powers and to create or eliminate jurisdictional units. As Stilz puts it: "meta-jurisdictional powers are powers over powers".

We might say that Stilz's theory has two parts: the first part sets out the conditions under which an entity has jurisdictional powers and must include an account of how such powers are held over specific pieces of territory.[27] The second part provides an account of meta-jurisdictional powers. This notion is the crucial element of her account. She claims that non-consensual annexation violates the meta-jurisdictional rights of the *people* of the annexed state. The people of the state have formed a collective body by virtue of living under laws together, and in virtue of having shaped those laws and the institutions that enforce them by collective action. Over time, Stilz says, the people of a

[26] "Why do states have territorial rights", p. 195.

[27] *Ibid,* p. 187.

democratic society come to form a collective subject.[28] To get clearer on this notion of "peoplehood", Stilz says that peoples satisfy two necessary and jointly sufficient conditions:

> *Political History Condition*: the group has a shared history of political co-operation, under the same state.
>
> *Political Capacity Condition*: the people possess the ability to re-constitute sustain a legitimate state on their territory today.

There are two important things to note here. The first is that peoples are not, in Stilz's words "pre-political", like nations ("pre-institutional" would be more accurate).[29] They are constituted by a history of shared statehood, not by, for example, a shared culture. The second important thing to note is that Stilz believes that on her account there is only *one* people within each legitimate state. This is clear from what she says about secessionist movements within a legitimate state:

> "[I]f a people—the collective subject of a prior state—demonstrates the political capacity to recreate and sustain legitimate political institutions on their territory, they ought to be allowed to do so in the absence of interference from outsiders or potential secessionist movements.[30]
>
> "I […] agree with [Allen Buchanan's] view that subgroups ought not to unilaterally appropriate territory to which a legitimate state has a prior claim."[31]

Stilz's notion of peoplehood is crucial to her account. Her account attributes meta-jurisdictional rights to the *peoples of states as a whole*. For clarity's sake, let's refer to groups of this type as *U-peoples*, and set down the following requirement:

---

[28] "Nations, States and Territory", p. 592.

[29] *Ibid,* p. 591.
[30] *Ibid,* p. 597.
[31] *Ibid,* p. 601.

U-peoples: A group counts as a U-people only if it is the group that is made up of *all* the citizens of a state, or of a recently existing state, and not some sub-set of them.

The elements of Stilz's revised statist view, therefore, are:

(i) **The Jurisdictional Right Primitiveness Claim**: States' jurisdictional rights over their territory are *primitive*; that is, they are not derived from the anterior jurisdictional rights of either the individuals who reside in them, or any sub-state entity, such as its constituent nations.

(ii) **The Jurisdictional Exclusiveness Claim**: No type of entity other than a state can have jurisdictional rights.

(iii) **The Meta-jurisdictional Exclusiveness Claim**: U-peoples have meta-jurisdictional rights; they are the only type of entity that can have these rights.

(iv) **The Jurisdictional Right Grounding Claim:** a state's claims jurisdictional rights over its territory are grounded by the state's achievement of either justice or other goods, such as security and stability.

What does all this have to do with secession? If only U-peoples have meta-jurisdictional rights, then sub-state groups such as national minorities have no right to unilaterally remove themselves from the jurisdiction of their (legitimate, non-usurping) state and set up another jurisdictional unit. Because legitimate, non-usurping states have jurisdictional rights over their territory, unilateral secession would fall afoul of the *Wrongful Taking* principle. Unilateral secession, then, would only be permissible where the state had forfeited its rights over a portion of its territory—through committing serious

injustices—or where the state has wrongfully taken that territory from another state.[32] In other words, there is no *primary right* to unilaterally secede from a legitimate, non-usurping state.

The crucial claim for this objection is the **Meta-jurisdictional Exclusiv*eness Claim***. If this claim is false, and other groups—for example, national minorities—can have meta-jurisdictional rights, then unilateral secession from a legitimate, non-usurping state will not necessarily fall afoul of *Wrongful Taking*. In the next section I argue; that **Meta-jurisdictional Exclusiveness** is undermotivated. Accordingly, proponents of the revised statist view do not have a compelling explanation for the claim that unilateral secession from a legitimate, non-usurping state is impermissible.

Let's recap. So far, I've pointed out that if statist theorists of territory want to handle the *Annexation* case, they must attribute meta-jurisdictional rights to non-state entities. Stilz attempts to pick out a class of non-state entities—U-peoples—such that her statist account grounds meta-jurisdictional rights for the entire people of a state, and no sub-class of that people. If this strategy succeeds, she can say that Germans had the right to re-constitute their state while denying that would-be secessionists from a legitimate, non-usurping state can have meta-jurisdictional rights. The problem for statists views like Stilz's, however, is that this attempt to ground meta-jurisdictional rights for U-peoples, but not other kinds of group, just doesn't work. I will show this in the next section.

Section 3: Peoples and Self-Determination

3.1 *Peoplehood*

[32] Buchanan, *Justice, Legitimacy and Self-Determination*, pp. 353-4.

As mentioned above, Stilz gives two necessary and jointly sufficient conditions for "peoplehood":

> *Political History Condition*: the group has a shared history of political co-operation, under the same state.
>
> *Political Capacity Condition*: the people possess the ability to re-constitute and sustain a legitimate state on their territory today.

Stilz talks here as though her account of peoplehood entails that for any legitimate, non-usurping state, there exists one and only one people. But notice that the necessary and jointly sufficient conditions do not entail that. They entail that for each legitimate, non-usurping state that there is at least one people. But they also, *prima facie*, entail that there are as many peoples as can re-constitute and sustain a legitimate state. Notice here, however, that Stilz appears to have unfairly stacked the deck against secessionists: a necessary condition of "peoplehood", and thus the rights of collective self-determination that follow from it, is that one must have the ability not just to sustain, but to *reconstitute* a relatively recently existing legitimate state. Peoplehood exists in part because there are shared moral bonds arising out of the shared activities of constituting a state together. The bonds that exist between the people wane when the shared activity has ceased to occur; on Stilz's view, people living in the former territory of the Anglo-Saxon kingdom of Northumbria would have no right to re-constitute their state.

But in the Northumbrian case, it isn't the case that there are no moral bonds between the putative people: *they* are all subjects of the same state *now*. Stilz seems to move from the claim that the members of some group have shared moral bonds to the claim there is no sub-group the members of which have particular moral bonds to each other. For example, we could say that there are moral bonds arising out of being part of a

football team. All the members of this team share moral bonds with each other. But this doesn't mean that say, the defenders don't have a particular moral bond to one another, or the forwards, etc. Moreover, a history of co-operation plays an *evidential* role for Stilz; it demonstrates that the group has the moral bonds necessary to sustain statehood.[33] So Stilz moves illicitly from:

> (1) A group counts as a people only if they have a history of shared political co-operation, under the same state.
>
> to
>
> (2) A group counts as a people only if they have a history of shared political co-operation, under the same state and that group makes *up all* the people who are under that state.

Now this is a logical mistake, not a substantive one, given Stilz's formulation of the two conditions above. Stilz's conditions state that any group whose members bear the relation of sharing a state together satisfy the *Political History Condition*. But then Stilz apparently denies that any sub-group of a state satisfies the *Political History Condition*. This can only be because she assumes the truth of something like (2), which is not entailed by her formulation of the conditions.

One response that Stilz might make is that although the move from (1) to (2) might be illicit, the sub-groups who might make a claim to peoplehood aren't particularised. So although the move from, for example:

[33] Miller, in "Neo-Kantian theories of self-determination", p. 869 and Cavallero, "Value Individualism and the Popular-Choice Theory of Secession", *Social Theory & Practice,* 43 (1), 2017, pp. 125-153, at pp. 148-9, both read Stilz in this way.

(3) A group counts as a team if they work together for some shared purpose,

to

(4) A group counts as a team if they work together for some shared purpose and that group makes up all the people who work together for some shared purpose,

is illicit, if there aren't any sub-groups that we can pick out, then there will be only one team/people, and it will include all the people who are subject to the same state/work together for some shared purpose. But it is implausible to suggest that states don't have clearly defined sub-groups: the Scots are clearly a sub-group of the people of the U.K., Albertans clearly a sub-group of the people of Canada, and Dubliners clearly a sub-group of the people of Ireland. There are two things these groups have that can pick them out as sub-groups: (i) they have a shared basis of group identity and mutual recognition that is separate from the mutual recognition afforded to members of the nation as a whole, and from the identity that goes with being subject to the state. In plain English, Scots identify as and recognise each other as Scots, not just as (even if at all) British. (ii) These groups all have some form of local self-determination (even very limited forms, like Dubliners), and thus particular bonds. If the mere fact of sharing statehood is enough to generate moral bonds between people, then why isn't being subject to the same local government enough to generate moral bonds? If shaping laws and institutions and

sustaining just institutions generates moral bonds, then why does it only do so at the highest level of government?[34]

A further point here is that Stilz herself recognises the existence of important ties like nationality, shared language, etc. Her claim is that these ties are not *sufficient* to demonstrate the moral bonds required for statehood:

> Ties of culture or language may also give rise to important bonds, but these bonds do not necessarily show that a group can sustain a political authority in common. Since territorial jurisdiction is granted to recognize the role played by legitimate political authorities in securing individuals' freedom-as-independence, we will want to extend these rights only to groups that have demonstrated they can support such an authority.[35]

What Stilz is saying here is that the bare fact of a group's sharing a culture does not show that they can support a legitimate state. It is hard to disagree with this. But a sub-group within a legitimate state will often have demonstrated that they can support such an authority. Does anyone seriously think that Scotland, or Alberta, would not be able to sustain a legitimate state? The reasoning behind the claim that nationhood isn't *sufficient* for peoplehood doesn't at all motivate the further claim that there can't be distinct moral bonds between members of national minorities. Stilz's theory, then, does not support the claim that there is a one-to-one correspondence between peoples and (legitimate) states. And we have good reason to think that, by the lights of Stilz's own theory, there can be many peoples within an existing state. The problem for Stilz then is that if there can be many peoples in the same state, the *Political Capacity Condition* as formulated, on *either* reading, is also under-motivated. Take the case of defeated Germany in 1945. Now let's grant that the German people satisfied the *Political History Condition***.** Let's also grant that

---

[34] Both Margaret Moore and David Miller have made this criticism; see Moore, *A Political Theory of Territory*, pp.106-7, Miller, "Neo-Kantian theories of self-determination"*.,* p. 869. This is a substantive criticism, different from the logical point I made above.

[35] "Nations, States and Territory", p. 594.

they satisfied the *Political Capacity Condition*—they have the capacity to *re-constitute* a state. Now at this same point, the people of Slovenia satisfied the *Political History Condition* in relation to each other. And let's grant that they could sustain a just state by themselves. But they can't *re-constitute* a state, because the Slovenes, at this point, had never had a state of their own. If they were to secede from Yugoslavia, they would be *creating a new state, not re-constituting one*. But why do the Germans have the right to statehood just because they can *re-constitute* a state? It seems that all of the important normative work in establishing when a group has the right to statehood, on Stilz's view, is that the group has shared moral bonds and can sustain a just state.

At a first glance, it might look as though Stilz thinks that because a group of people satisfy the *Political History Condition* if they make up *all* of the people who shared a state, she thinks that a group can only break away from an existing legitimate state if it is *re-constituting* a previous state. Without this assumption about who satisfies the *Political History Condition*, as I have argued, there is no motivation for the *Political Capacity Condition* as Stilz has formulated it. This raises an interesting question. Functionalists about territorial rights (including impure functionalists, like Stilz), are often hostile to unilateral secession. But it is puzzling why this should be so. If a group is capable of securing justice over a portion of territory, then why shouldn't it have territorial rights over that portion? As I've said, Stilz thinks that only people who have shared statehood have demonstrated that they have the moral bonds needed to sustain a just political order. But many sub-sets of the people of a just state will have those moral bonds.

As we have seen, Stilz has not succeeded in motivating the **Meta-jurisdictional Exclusiveness Claim**. Can any alternative revised statist view do so? The problem isn't unique to Stilz's theory. The core of this problem is this: the **Meta-jurisdictional**

Exclusiveness Claim doesn't really belong in a theory of *territorial rights* at all. It's really about *self-determination*; it says that some entities—U-peoples—have a strong claim to self-determination, whereas other types of group don't. But this is a deeply implausible view. The problem for statist views is that they must either (i) pick out some interest or claim that *only* U-peoples can have, or (ii) they must identify something that *always* defeats the claims of other entities (such as sub-state nations), but does not does defeat the claims of U-peoples. Let me explain: if the interest or claim in virtue of which U-peoples have meta-jurisdictional rights is not unique to them, then, *prima facie*, there is no reason why, for example, sub-state nations shouldn't have meta-jurisdictional rights. If this interest or claim is *not* specific to U-peoples, then statists might make the following move, described in (ii); the peoples of states and other entities, such as nations, have the interest or claim that grounds a meta-jurisdictional right, but entities other than U-peoples are not permitted to exercise meta-jurisdictional rights, because they fall afoul of certain defeaters.

In the next sub-section, I argue that neither (i) nor (ii) is a viable strategy. The problem, in short, is this: in order to motivate the claim that unilateral secession from a legitimate state is never permissible, for reasons to do with the wrongful taking of territory, proponents of the revised statist view need to establish that U-peoples are normatively special in respect of the right to self-determination. They cannot do this. It is deeply implausible that U-peoples have interests or claims that, for example, nations or other sub-state groups cannot have, and it also implausible to that there are, independent of considerations to do with territory, considerations so weighty that they always defeat the claims of these other groups to secede.

3.2 *Self-Determination, Fairness, Majority Rule and Exit*

3.2.1 *Moral bonds between compatriots*

Stilz has arguments for restricting the right to self-determination. Her first argument for restricting self-determination relies on her claim about what grounds the right to self-determination—the morally significant interest that *peoples* have in preserving the valuable relationship that they have created with each other. Now Stilz says that:

> […] if a "people"—the collective subject of a prior state—demonstrates the political capacity to recreate and sustain legitimate political institutions on their territory, they ought to be allowed to do so in the absence of interference from outsiders or potential secessionist movements. Our respect for their residual claim to their territory is a way of honouring their valuable history of political association and the reasons it creates for those involved. Though by granting them collective autonomy we confer a claim on the group, our respect for this claim is grounded in the interests of individuals since individuals can have important interests in the continuance of a valuable relationship even when they did not voluntarily join it.[36]

Stilz runs together secession, dissolution, and annexation here. Annexation and dissolution usually have different implications for a people's political relationship than secession does. For example, it's hardly true that when Ireland seceded from the U.K. in 1922 the political relationship that the people of the rest of the U.K. had with each other was dissolved. Only in the case of a secession (or a series of secessions) where the state *dissolves*, as in the break-up of Yugoslavia, would this be true. Stilz's response, though, does raise an interesting point. When we are talking about why a "people" has a claim to self-determination, we have to think about what interest its members have in being self-

[36] *Ibid,* pp. 597-8.

determining. Stilz claims to have pinpointed an interest that the people of a state have in continuing to be self-determining—that is, that they should continue to bear a valuable relationship to one another. But she fails to see that even annexation *need not* involve the destruction of these relationships. For example, suppose that the U.S.A. annexed Canada, but allowed Canadians a high degree of collective autonomy. Distinctive Canadian political institutions and traditions like official bilingualism and multi-culturalism, a public health-care system and so on, stay as they are. In what sense has the political relationship that Canadians enjoyed with one another been discontinued? It has been altered, there is no doubt about that. But in most ways it remains substantially the same. So, Stilz must either say that annexation would not wrong Canadians, or she has to claim that the Canadian claim to independence is grounded by something else. That interest could be, for example, in having the valuable relationship not subject to outside interference in a dominating way. But once we've conceded that members of sub-groups also bear valuable political relationships to one another, it's hard to see why they don't have the same interest, and so a claim to independence.

3.2.2 *Protecting legitimate expectations*

Stilz has another objection to secessionism, however. Her second objection concerns citizens' obligations to one another in virtue of their mutual interdependence. When a *people* has created a scheme of social rights, people orient their behaviour in the expectation that these rights will be fulfilled. Individuals have a legitimate expectation that their rights will be honoured. In order for these rights to be honoured, citizens must continue to play their part:

> Where a group has a history of shared statehood, compatriots will have legitimate claims and expectations whose fulfilment depends on their continued political collaboration together […] To allow groups that share a distinct national

> culture to redraw the boundaries of political cooperation at will would disregard this interdependence. Important ties of political obligation will thus tell in favour of a people's re-establishing their state, as long as that is possible, rather than destroying it.[37]

The way Stilz phrases it, it seems as though this obligation exists because citizens' entitlements *depend* on no-one leaving the co-operative scheme. This is clearly overblown. The U.K. and Canada would both probably be able to provide for their remaining citizens' entitlements if Scotland or Quebec seceded. But if citizens' entitlements do not depend on everyone remaining in the co-operative scheme, it's hard to see why they have such a strong claim against secession. Why can't the group decide to leave, if they do so on fair terms (i.e. fair division of the national debt, compensation for assets, etc.)? Stilz seems to move from a claim about people's legitimate expectations to a claim about political obligation. But it's not true that in all cases of secession citizens' legitimate expectations will be frustrated. So the claim about legitimate expectations doesn't motivate the claim about political obligation.[38]

Considerations of legitimate expectations do not just concern collective assets and liabilities, however. There is also the matter of freedom of movement between the new state and the remainder state. Citizens may have formed stable expectations and attachments to places and people in what will become the new state—accordingly, they have a strong *pro tanto* claim to continue to access them. Again, this is not a serious stumbling block: depending on how one comes down on this issue, one can concede that secessionists must be willing to offer the same rights to citizens of the remainder state as

---

[37] *Ibid,* p. 594, n. 34.

[38] For a related discussion of whether reciprocity-based considerations of justice can ground restrictions on exit rights see F. Dietrich, "Secession of the Rich: A Qualified Defence", *Politics, Philosophy and Economics*, 13 (1), 2014, pp. 62-81.

before. The Common Travel Area between the United Kingdom and Ireland is a good example of this kind of arrangement.

What this objection from legitimate expectations does show, however, is that the secessionist group must be willing to offer fair terms of exit to the people of the remainder state: they must for example, agree on an equitable division of collective liabilities and assets. I do not wish to dwell on this point, but I accept that it is a limiting condition on the right to secede.[39]

3.2.3 *Majority Rule, Strategic Bargaining and Exit Threats*

There is a further group of objections to the claim that sub-state groups can have meta-jurisdictional rights; these are objections grouped around the importance of preserving majority rule and minimizing "strategic bargaining" by sub-state groups. The thought is this: in a legitimate state, most decisions (though not all), will be made by majority rule. The best version of this objection does not rely on the claim that minorities are unconditionally bound by majority decisions, but instead claims that recognising a right to secede for sub-state groups would allow them to exploit their compatriots and to undermine democratic procedures by cynically using the threat of exit.[40]

There are three responses to this objection. The first is to point out that this objection is not so much an objection to the claim that sub-state groups can have meta-jurisdictional rights, but to *institutionalising* these rights in advance, and therefore that these questions must be addressed separately.[41] The second response is to point out that

[39] For an account of how to ensure that secession results in a fair exit, see David Copp's proposal that the International Court of Justice adjudicate secessionist disputes; "Institutional Law and Morality in the Theory of Secession", *Journal of Ethics*, 2, 1998, pp. 219-45.
[40] Cass Sunstein, "Constitutionalism and Secession", *University of Chicago Law Review*, 58 (2), 1991, pp. 633-670; Buchanan, *Secession*, pp. 98-101. Note that Buchanan does not believe that this is a decisive objection to the permissibility of unilateral secession.
[41] Buchanan, "Theories of Secession".

a right to secede can plausibly be institutionalised in such as way as to minimise the credibility of these exit threats, by, for example, requiring super-majority support for secession, or by placing a time-limit on the triggering of secession referendums.[42]

But, most importantly, the problem with this objection is that it can only succeed as a *decisive* objection to the claim that sub-state groups can have meta-jurisdictional rights when a particular background account of self-determination is assumed. To explain this: no-one would think that this cluster of concerns around strategic bargaining could provide a strong objection to recognising a right to secede for wrongly annexed peoples. Think about how strange this objection would sound if presented as an objection to recognising the right of the Baltic republics—wrongfully annexed by the U.S.S.R in 1940—to secede. And it would not just be strange because the Baltics had no intention of staying in the U.S.S.R; even if the Baltics had not pressed their claim to secede in 1991 and public opinion on independence was more similar to the situation in Scotland, say—closely divided with no decisive majority in favour of either option—we would not hesitate to acknowledge the Baltic republics' right to secede. The reason for this is that we intuitively attach a great weight to their claim to self-determination. The point is that if we are similarly inclined to attach strong weight to the claims to self-determination of a particular class of sub-state groups, then group of objections I have canvassed in this section will not seem compelling.

Conclusion

Summing up, we do not have good reason to think that U-peoples as a whole have an interest in or claim to self-determination that sub-groups lack, or that the considerations

[42] Cf. Andrew Shorten, "Constitutional Secession, Exit Threats and Multinational Democracy", *Political Studies*, 62 (1), 2014 pp. 99-115; Daniel Weinstock, "Constitutionalising the Right to Secede", *Journal of Political Philosophy*, 9 (2), 2001, pp. 182-203.

I have canvassed in this sub-section—which are independent of territory—always defeat the claim of these other kinds of entity to self-determination. The overall conclusion of this sub-section, then, is that statists do not have good reasons to restrict meta-jurisdictional rights to just U-peoples. By recognising the claim to self-determination of U-peoples, and assigning them meta-jurisdictional rights, they are forced to concede the possibility that other types of entity, such as nations, can also have meta-jurisdictional rights, and so the right to redraw the boundaries of even legitimate, non-usurping states unilaterally.

Section 4: Making Room for Self-Determination

In her latest work on territory, *Territorial Sovereignty*, Stilz, as we noted in chapter 2, concedes more ground to proponents of self-determination. Stilz now holds that a state has the right to rule over a territory only if it "reflects the shared will of its population as to how (and by whom) they should be ruled".[43] In other words, Stilz makes room for the value of collective self-determination. First, let's give a brief overview of Stilz's account of the value of self-determination. To recap: for Stilz, the value of collective self-determination lies in the realisation of political autonomy. People have an interest in enjoying what, following Niko Kolodny, Stilz calls "correspondence" between their political judgements and the institutions they live under.[44]

Stilz accepts that some internal minority groups will not enjoy correspondence between the institutions of their present state and their political judgments. She picks out two kinds of groups that fail to achieve correspondence: (i) groups that have a history of oppression or serious injustice by their current state, and (ii) groups that have

[43] *Territorial Sovereignty,* p. 90.
[44] *Ibid*, p. 107.

"distinctive political priorities", such as, Stilz claims, the Quebecois and the Scots.[45] Stilz concedes that sub-state groups such as these have a "*pro tanto* claim to enjoy greater self-determination".[46] On her revised view, them a sub-state group can have a right to self-determination even in the absence of serious injustice against it.

On the face of it, Stilz's revised view is not a statist account of territory. She is willing to concede, in principle, that entities other than states or U-peoples can have jurisdictional and meta-jurisdictional rights. However, she is reluctant to concede that sub-state groups have the right to secede. According to Stilz:

> self-determination does not necessarily imply a right to secede unilaterally. Instead, I believe self-determination is a weighty moral claim that must be applied with due regard for circumstance: it does not necessarily generate a right to secede, and it may sometimes be permissibly overridden.[47]

To begin with, Stilz, claims, it is not always clear that statehood is the best means of satisfying a group's claim to self-determination: in circumstances where a substantial minority are in favour of remaining in their current state, greater autonomy short of independence is the best solution.[48] Secondly, Stilz says, we must consider whether secession would increase the risk of, for example, serious ethnic violence or would leave the rump state unviable. If it would do so, then the sub-state group's claim to self-determination is defeated. Although Stilz concedes that in cases where either (i) the sub-state group has a history of moralised grievances in addition to a failure of correspondence with their existing state's institutions, or (ii) "almost everyone" is in favour of secession, and there are no serious associated risks, a sub-state group may have a moral right to secede, she is reluctant to concede that sub-state groups have the moral

[45] *Ibid*, p. 135.
[46] *Ibid.*
[47] *Ibid*, p. 136.
[48] *Ibid.*

right to unilaterally break away.[49]She is even more reluctant to concede that sub-state groups should have a *legal* right to secede—at least, at the level of international law. Following Allen Buchanan, she claims that the incorporation of a legal right to secede in international law would be "destabilising in terms of peace and respect for human rights".[50]

On the face of it, therefore, Stilz's new view is not a statist view—she concedes that sub-state groups can have the moral right to self-determination. Stilz, however, arbitrarily privileges states and U-peoples. As Anna Jurkevics notes: "her model still heavily favours existing state institutions as negotiators on the world stage."[51] To see this, note how reluctant she is to concede that sub-state groups have a moral right to secede. A whole host of contextual factors must be assessed before we can conclude that a sub-state group may permissibly secede. It is not just that secession must be unlikely to bring about serious disorder or risks to international stability, but "nearly everyone" within a territory must support secession.[52] And even then, the sub-state group "may" have the right to secede.[53] The problem for Stilz is this: either she must hold (implausibly) that similar reasoning applies to the cases of reconstitution—such as Germany or the Baltic states—or she must say that having had statehood gives a group a significantly weightier claim to self-determination. Consider again Stilz's *Annexation* case, above. Would Stilz hold that the German people have no right to exercise their meta-jurisdictional rights unless they had the consent of "nearly everyone" in the territory they wished to claim?

---

[49] *Ibid*, p. 137.
[50] *Ibid.*
[51] Anna Stilz and Anna Jurkevics, "Crises in Territorial Sovereignty: Critical Exchange on Anna Stilz's "Territorial Sovereignty: a Philosophical Exploration", *Political Theory*, 49 (5), 2021, pp. 856-863, at p. 860.
[52] Stilz does not tell us whether she means by "territory", the future territory of the would-be secessionist state, or the territory of the entire pre-secession state. The latter would of course unfairly stack the deck against secessionists.
[53] *Territorial Sovereignty*, p. 137.

What if there was a significant minority—say 20 per cent—who wished to integrate into, say, France? It is deeply implausible that the presence of this minority would in any way attenuate the force of the German people's claim to reconstitute their state. So why are groups like the German people—U-peoples—normatively privileged over other sub-state groups? Again, it cannot be that they have just a weightier interest. As we have seen, that is implausible—and it is in any case incompatible with Stilz's revised account of self-determination.

At this point, Stilz could reply that it would be much less troublesome to incorporate a right to re-constitute a state into international law than to incorporate a right to unilaterally secede *tout court*. There are two problems with this reply: first, Stilz is sceptical—even in *Territorial Sovereignty*, about whether sub-state groups have the *moral* right to secede—she cannot now equivocate and say that she is doing institutional reasoning. The second problem is that it simply isn't clear whether it would be less troublesome to incorporate a right to re-constitute a state into international law. Consider again the Baltic Republics, a paradigm instance of justified secession. These states were wrongfully annexed by the U.S.S.R. in 1940. They seceded in 1991. A significant amount of time passed between annexation and reconstitution. Yet the claims of the Baltics were as good in 1991 as they were in 1940. The problem here is that, especially if claims endure over a long period (a lifetime, say), secessionist movements will find it quite easy to point to precursor states, and claim to be re-constituting them. Insofar as there are serious risks to incorporating a right to secede into international law, there may well be similar risks to incorporating a right to re-constitute a former state.

What is the upshot of this discussion? Theories of territorial rights that stray away from simple functionalism have a hard time resisting the permissibility of unilateral

secession. Conceding a right to self-determination for non-state entities makes it very difficult to rule out secessionist claims without arbitrariness.

Section 5: Territorial Claims and Secession

So far I've argued that statist theories of territory don't have the resources to ground a necessary prohibition against unilateral secession from a legitimate, non-usurping state. One point I've tried to make in this chapter is that our views about which groups are entitled to self-determination are logically distinct from our views about claims to territory. For example, one can be committed a nationalist account of self-determination and yet deny that nations are the ultimate bearers of territorial rights. Similarly, I've argued, one can endorse a statist theory of territory and any of the more permissive accounts of self-determination.

It follows that a primary right theory of the right to secede is compatible with a statist theory of territory—minus the **Meta-jurisdictional Exclusiveness Claim**, which, as I've already pointed out, is more properly considered a component of the statist theory of *self-determination*. One can hold that *jurisdictional rights* are primitive to states, and yet hold that non-state entities have the right to transfer jurisdictional rights and to create new jurisdictional units. The *core* of the statist theory of territory is that jurisdictional rights are acquired by governing a territory in a satisfactory way—states that meet this threshold have jurisdictional rights, states that don't don't. This is perfectly compatible with permissive views about self-determination and secession. It is only by smuggling views about self-determination *into* a theory of territorial rights that statists

have given the impression that their theories of territory are incompatible with primary right theories of secession.

With that said, though, how should claims to territory be settled after secession? In other words, how do we determine what territory rightfully belongs to the new state, and what with the remainder state? As I've said, there is no straightforward relationship between theories of self-determination and theories of justified jurisdictional rights. To illustrate: on the nationalist theory of territory, a seceding nation has a claim to territory in which it has "embedded value". But someone committed to a nationalist theory of self-determination doesn't have to endorse this claim. If they don't, how do should we determine the boundaries of a secessionist national minority's claim to territory? The nationalist theorist of self-determination isn't committed to any particular answer to this question. The nationalist theorist could say that the borders of the new secessionist state should be determined by plebiscite, or on the basis of existing administrative boundaries, and so on. I believe this is a dialectically satisfying position for the nationalist theorist of secession to be in.

When states split, or dissolve, there is a whole host of questions about how to settle the resulting territorial claims. What issues of fairness arise as a result of competing claims to natural resources? How should we try to minimise the possibility of ethnic conflict and the number of people left on the "wrong" side of a border? Which considerations trump the preference of the people of a particular area to be part of one state or the other—for example, should we avoid creating enclaves, or give strong weight to strategic and defence considerations? Theories of territorial rights—construed as explanations of why states have jurisdictional rights—have very little to tell us here. This is not to say that theorists of territory have not tried to answer questions like this,

however. It is just to say that normative thinking about territory must not be limited to the questions around which statist theories of territory are framed—questions about *jurisdictional rights* and state legitimacy. I do not propose to answer fully the other questions listed above. They form an agenda for future work. The central question I have tried to answer is whether there is a *right* to secede—questions about fairness, natural resources, and institutionalisation and so on are tangential to this central question.

Nevertheless, there are two issues relating to fairness and territorial claims that I want to address here. The first is to do with territory and culturally significance and the second issue is the question of natural resources and territorial claims.

5.1: *Territory and Culture*

I've argued that statist theories of territory have little to tell us about how to settle territorial claims in the event of secession. But what about other theories of territorial rights? A natural place to start here is with nationalist theories, as described above. According to nationalists, nations acquire rights over territory by adding both material and *symbolic* or *cultural* value. David Miller describes this as follows:

> […] [L]and has its material value enhanced, by cultivation, for example, or by the creation of buildings, roads, waterways and so forth. At the same time, particular places, or areas within the territory, acquire symbolic significance for the group. In some cases this will happen as a result of specific events in the history of the group occurring on the territory, so a field becomes the place where a battle was fought or a building the place where a historic document was signed; in other cases it will be more a question of rituals and practices that endure over long periods of time and mark out built sites or natural features as 'sacred' to the group […].[54]

Now we don't have to endorse the nationalist theory of territorial rights *tout court* to see how processes like those described by Miller can generate claims regarding

[54] "Territorial Rights: Concept and Justification", p. 258.

particular bits of territory. And this may present problems in the case of secession. Suppose, for example, that a group exercises its moral right to secede, and takes with it territory to which the people of the remainder state have added value. In the case of *material* value, it seems plausible that, in the event of secession, compensation may be necessary in the case of loss of valuable infrastructure and improvements. But what about symbolic or cultural value? This seems less likely to be fungible, and so compensation may not be the appropriate response. Let's return to our Freedonia example from Chapter 3:

> *Antiquantia*: The Freedonians are a national minority of Centralia. They make up an overwhelming majority of one of Centralia's provinces. The Freedonians have overwhelmingly voted to secede from Centralia and set up their own state. The Centralians are willing to negotiate secession, but are insistent on one point. There is one thinly populated border sub-region of Freedonia, Antiquantia, that the Centralians claim has important symbolic value for them: this sub-region is the site of the burial of Centralia's earliest kings, and is the origin of many of the country's most treasured antiquities. The Freedonians point out that they make up a majority of the population of the sub-region, that it has been an administrative part of Freedonia for over a century, and that the sub-region voted with the rest of Freedonia to leave.

Which side, in this case, should prevail? It might seem, on the face of it, that the Freedonians have a much stronger claim: the people of the sub-region voted to join Freedonia. But surely the strength of this claim depends in part on how many people are going to find themselves on the "wrong" side of the border. If the region is, as stipulated, thinly populated, and only a few hundred or a few thousand people are going to find

themselves on the wrong side, then, *prima facie*, we should perhaps give greater weight to the Centralian claim. What about the fact that the sub-region has been an administrative part of Freedonia? As Margaret Moore points out, however, there are good reasons to think that this should have only very limited weight in determining territorial claims: administrative boundaries are often drawn, as she says, "haphazardly", or in a way such as to deliberately frustrate the ambitions of minority groups.[55]

But what is the content of the Centralian's claim to Antiquantia? According to nationalist theorists of territory, it is a claim to continue to exercise jurisdiction over the sub-region. But this might in fact be too strong a claim; as Kim Angell points out, the interest that the Centralians have in protecting the embedded value might be equally well satisfied by giving Centralians living in the area collective private property rights over parts of the sub-region.[56] But again, this solution seems to overlook the fact that *all* Centralians, regardless of their proximity to Antiquania, have an interest in, at the very least, continued access to the sites with embedded value.

A further issue that might arise is the creation of enclaves: if the Centralians of Antiquania are territorially scattered, or the sites of importance are located away from the border, then satisfying the Centralians' territorial claims may result in "patchy" or donut-like jurisdictions. There are good reasons to want to resist this—enclaves limit states' abilities to administer their territories in an effective way and create everyday

[55] "The Territorial Dimension of Self-Determination", p. 136. It might be objected here that the fact that a sub-region has been an administrative part of Freedonia gives the Freedonians a legitimate-expectations-based claim to continue ruling it. In reply, this claim (i) seems weak at best—it is hard to see what interest the legitimate expectation is latching on to, and (ii) must be balanced against the expectations of the Centralians to continue to control territory in which they have embedded value.

[56] "Do Insecure Property Rights Ground Rights of Jurisdiction? Miller on Territorial Justice." *Res Publica*, 19 (2), 2012, pp. 183-92.

problems for the people in them—they may have to cross borders to get to work, be subject to different tax codes, and so on.[57]

I think this discussion is just one of illustrating that we need to draw on a plurality of principles in order to settle this clash of claims. It is no use just appealing to the nationalist theory of territorial rights—it is implausible to think that the only issue that needs to be taken into consideration is the fact that the Centralians have embedded value in the territory. A fair solution to problems of this sort will take into account claims with respect to embedded value—in particular regarding symbolic or cultural value—but it will give due weight to respecting the political will of residents, and the need to create administratively viable borders.

5.2: *Natural Resources*

The final issue I want to discuss here is natural resources. First, what is a natural resource? For present purposes, we can adopt what Chris Armstrong calls the "conventional" definition:

> I assume for the purposes of this article the conventional definition of natural resources under international law, which depicts them as non-human-made goods taken from the 'natural wealth' of the world. As such they are distinct from man-made products but also from the geographical sites from which they can be taken. Key examples include non-fugacious resources such as unrefined minerals, metals and wild plants, and fugacious (free-flowing) resources such as air, water, wild animals, and various kinds of natural energy.[58]

[57] Cf. Harry Beran, "A Liberal Theory of Secession", *Political Studies*, 32, pp. 21-31, at pp. 30-1.
[58] Chris Armstrong, "Justice and Attachment to Resources", *Journal of Political Philosophy,* 22 (1), 2014, pp. 48-65, at p. 48.

Following Margaret Moore, we should also distinguish between claims involving unoccupied territory such as the ocean bed, and the deep underground, and claims involving occupied territory.[59] Let's begin by considering the first kind of case:

> *Sea-bed*: The Freedonians have overwhelmingly voted to secede from Centralia and set up their own state. The Centralians are willing to negotiate secession, but are insistent on one point. They want at least partial sovereignty over the developed natural gas resources in what would be the territorial waters of independent Freedonia. They argue that the Centralian people as a whole have a claim to those resources, having provided the investment needed to develop them. The Freedonians deny that the Centralians have any claim to these resources.

Let's canvass three responses to this case. The first response is that if the Freedonians have a claim to the territory, then they have a right to exclusive control over the resources contained there. But why would the Freedonians have such a claim? The nationalist theory of territory can't explain why they do: the Freedonians, haven't (exclusively) added any material value to the territory, and it most likely doesn't have any symbolic value for the Freedonians—it is a seabed, after all.[60] What about efficiency-related reasons to grant the Freedonian claim? The need to avoid enclaves is less pressing in the case of territorial waters. Let's now turn to the Centralian case. They might argue that although the resources are in the administrative region of Freedonia, the resources were developed with the aid of investment from Centralia. As such, the Centralians can argue that they have a claim to, if not jurisdictional control over the resources, to at least a fair

[59] *A Political Theory of Territory*, p. 162.
[60] One exception might be cases where the seabed contains coral reef or other natural features that are of symbolic importance.

share of the revenue generated (whether this is through royalties or income from direct sale of the gas). The fairest solution might be to give the Centralians a share of the revenue which slowly tapers off over time to reflect differing levels of subsequent investment.

A third response is to simply say that neither the Centralians nor the Freedonians have any claim to exclusive control over, or the full revenue stream derived from, the natural gas. Global luck egalitarians, for one, would deny their claims. Luck egalitarians, as is well known, claim that any distributive inequalities that result from so-called *brute* luck (as opposed to option-luck, where a risk is deliberately taken) are unjust.[61] Global luck egalitarians extend this requirement to the global level, and requires that inequalities that result from brute luck, such as being born in a resource-rich state versus a resource-poor one, be eliminated as a matter of justice.[62]

The problem with this view, as David Miller points out, is that it is very difficult to disaggregate the value of natural resources into a "natural" component—the value of the resource independent of improvement or overall social context—and the value that is contributed by improvement or social context—its proximity to human settlement, use and valuation by humans, etc.[63] In our Freedonian case, the resource has been

[61] See, e.g. Richard Arneson, "Equality and Equal Opportunity for Welfare", *Philosophical Studies*, 56, 1989, pp. 77-93, G. A. Cohen, *On the Currency of Egalitarian Justice: and other essays in Political Philosophy* (Princeton, NJ: Princeton University Press, 2011), Ronald Dworkin, *Sovereign Virtue* (Cambridge, MA: Harvard University Press, 2000).
[62] Moore, *A Political Theory of Territory*, p. 176. For an example of this view see Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979), p. 138; cited Moore, *A Political Theory of Territory*, p. 177. One question I sidestep here is *what* is to be equalised; in other words, what the "currency" of egalitarian justice is. For discussion see Ronald Dworkin, *op. cit*., pp. 11-119 and Cohen, *op. cit*.
[63] David Miller, *National Responsibility and Global Justice* (Oxford: Oxford University Press), Ch. 3. For discussion see Megan Blomfield, *Global Justice*, *Natural Resources, and Climate Change*, (Oxford: Oxford University Press, 2019), Ch. 4.

improved—it would seem, as Margaret Moore notes, that the fact that both parties stand to benefit from the resource is not a matter of luck.[64]

Now, as Moore shows, a further complication that global luck egalitarians overlook is the fact that territory can have more than merely, as she puts it, "instrumental" value. It can also, as we've already noted, be of cultural significance, or the importance of particular areas to individuals' life plans and ways of life.[65] Of course, this is less significant in the case of the natural resources lying beneath the sea, but it brings us to our next case:

> *Minerals*: Borduria is a border region of Centralia, lying close to Freedonia. It is very sparsely populated, but mineral rich. The Freedonians from our earlier cases, want to secede. They are deterred by the fact, however, that their state would not be economically viable without the mineral resources of Borduria. The Centralians reply that the Freedonians have no claim to Borduria: they do not make up the national majority in Borduria, there is no support for secessionism in the province, and it is not part of the administrative region of Freedonia. The Freedonians reply that Centralia has no need of Borduria: it would be viable and prosperous without it.

On the face of it, the Freedonians have no claim to Borduria. But on further examination, there is something to their claim. They presumably share some responsibility for the development of Borduria's mineral resources. In addition, attaching Borduria to Freedonia would not create an enclave or cut deep into Centralian territory. No major

---

[64] *A Political Theory of Territory*, p. 179. Moore notes that this point is conceded by left-libertarians such as Hillel Steiner, who, for different reasons than the luck egalitarians, claim that individuals have a claim to equal share of the earth's natural resources; *ibid*. See Hillel Steiner, "Sharing Mother Nature's Gifts: a Reply to Quong and Miller", *Journal of Political Philosophy* 19 (1), 2011, pp. 110-123.
[65] *A Political Theory of Territory*, pp. 179-181. See also Chris Armstrong, *op. cit*.

centre of population would go to Freedonia, and only a handful of people would find themselves on the wrong side of the border. A further point: we can recognise a germ of insight in the global luck egalitarian position without endorsing the theory as a whole. And that insight, applied in this case, is that there is something unfair about the Freedonians being disadvantaged—to the extent that they are precluded from seeking independence—by what is a matter of brute luck. And remember that the Freedonians have at least some share of responsibility for the development of the resources. It is not a matter of their claim being only as good as anyone else's.

Without attempting to settle this issue here, I think what this line of argument suggests is that the ultimate configuration of borders to come out of a fair secession settlement will sometimes end up looking quite different from what either secessionists or the people of the remainder state expect. Secessionists often have a picture of what their proposed new state will look like—typically, it will encompass all of the territory of their administrative regions, and to which they have some historic attachment.[66] This is the case in Quebec and Scotland, for example. Likewise, the people of the remainder state assume that there is an established upper limit on their potential territorial losses. But both of these assumptions, I suggest, may be mistaken.

Conclusion

In this chapter, I have argued that there is no incompatibility between the most plausible versions of statist theories of territory and primary right theories of the right to secede. Statist theories of territory are committed to the claim that jurisdictional rights are primitive to states, and that states acquire these rights by governing in a minimally

[66] For an interesting historical case, see Paul Murray, *The Irish Boundary Commission and its Origins*, 1886-1925 (Dublin: University College Dublin Press, 2011).

satisfactory way. There is no incompatibility here with saying that non-state entities have the certain normative powers in respect of those jurisdictional rights—including the right to unilaterally create new jurisdictional units. Which groups one considers to have these rights will depend on which theory of *self-determination* you endorse—it has little to do with territory. Only by endorsing a statist theory of self-determination can statists rule out the permissibility of unilateral secession from a legitimate, non-usurping state. But this theory of self-determination is deeply implausible. In sum, the objection that unilateral secession from a legitimate, non-usurping state necessarily violates state's territorial rights fails. I have also canvassed some other putative objections to the permissibility of unilateral secession: notably, the objection from legitimate expectations and the objection from majority rule. I have concluded that these objections do not raise insuperable barriers to the permissibility of unilateral secession. Finally, I canvassed two problems relating to the settling of territorial boundaries in the event of secession: the problem of territory and symbolic value, and the problem of natural resources.

Conclusion

In this thesis I have argued for a nationalist theory of the right to secede. I have argued that co-nationality is an intrinsically valuable relationship, that this fact grounds a presumptive claim to collective autonomy on the part of nations, and that this claim is sometimes undefeated in the case of nations, but not for other kinds of group. I now want to first quickly give a recapitulation of the argument of the thesis, before turning to some broader implications of my theory and finally setting out a programme for future work.

6.1: *A Re-capitulation of the Argument*

I began in Chapter 1 by defending the priority of *non-institutional* theorising about secession. That is, I argued that we must establish the "deep morality" of secession and self-determination before thinking about how to institutionalise the right. Secondly, I distinguished between *remedial right only*, *alleviative* and *primary right* theories of secession. I argued that the customary distinction between remedial right only and primary right theories does not exhaust the conceptual space available. I then set down that my theory is a primary right theory. I will return to the implications of this in the next section of the conclusion. Finally, I described what it is for a theory to be a nationalist theory of secession.

Part of the work of a nationalist theorist is to explain why nations should be singled out when it comes to the primary right to secede. As such, as in Chapter 2 I dealt with a family of more permissive theories of secession and self-determination: voluntarist theories. I distinguished between individualist and collectivist voluntarist theories. I argued that these theories ultimately fail to give satisfactory or convincing accounts of the value and ground of self-determination.

In Chapter 3 I set out my own account of the value and ground of self-determination. I first distinguished between two ways of thinking about self-determination: self-determination as *self-government* and self-determination as *collective autonomy*. I argued that collective autonomy—understood as a claim against any interference by outsiders—is the best way to think about self-determination in the context of national self-determination. I then argued that co-nationality is an intrinsically valuable relationship. I spent most of the rest of the chapter drawing out the implications of this for nations' claims to self-determination. I argued that nations have a presumptive claim to collective autonomy, and I defended this claim by drawing an analogy between the rights of nations and the rights of families—in particular, parental rights.

In chapter 4, I took up the second leg of explaining why nations are special. I argued that even granting that other kinds of groups can have the same interest in or claim to self-determination as nations, nations are normatively special when it comes to the right to secede. I defended this claim by contrasting national and religious groups. I argued that nations tend to have certain features in virtue of which they can form the basis a collective political identity that is wide enough in content to facilitate the civic and cultural participation and non-alienation of minorities.

Finally, in Chapter 5, I argued that one common objection to the permissibility of unilateral secession—the objection from territorial rights—does not succeed in defeating the presumptive claim in favour of collective autonomy for nations. I re-constructed accounts of territorial rights that assign those rights to states, and I argued that the most plausible versions of these accounts do not have the resources to rule out the permissibility of unilateral secession, even from a legitimate, rights-respecting state.

6.2: *Implications*

Having summarised the arguments of the thesis, I now want to turn to some broader implications of the theory and the claims that make it up.

Nationalism in Theory and in Practice

One of the seeming tensions in the kind of nationalist theory that I have defended is between affirming the value of national attachments, and the strength of nations' claims to self-determination, and the importance of protecting the status and interests of minorities within the secessionist polity. I have tried to resolve this tension by setting a strong requirement for the permissibility of secession by a national group: that they must be able to offer minorities credible guarantees, not only that their basic rights will be respected, but that they will not be justifiably *alienated* from their new state.

Some might think that setting such a high bar is in tension with the overall thrust of the theory I defend. I do not think that this is the case. The account of national self-determination I have defended grounds the right to self-determination, ultimately, in the claims and interests of *individuals*. And the interests of individual members of minority groups in secessionist polities matter just as much as those of the national majority. One of the aims of this dissertation is to try to illustrate that there is no tension between the central commitments of liberal political morality—the commitment to individual rights and to moral equality—and nationalist aspirations. One can fully account for the nationalist ideal of self-determination without discarding these liberal commitments.

There is an interesting challenge to this claim, however. Someone might concede that I have shown that one can make the case for national self-determination without discarding liberal political morality. But my theory, they might claim, is only a simulacrum of nationalist thought and action. It has no relation to the *ideology* of nationalism. The tenets of this ideology are more thoroughgoing and more extreme than

the heavily qualified claims about the value of co-nationality I have limited myself to. But what are those tenets? Here I should defer to someone who studies nationalism sociologically and historically, rather than philosophically—Anthony Smith:

We may define the central propositions of the ideology, or "core doctrine" as follows.

> 1. The world is divided into nations, each with its own individuality, history and destiny.
>
> 2. The nation is the source of all political and social power, and loyalty to the nation overrides all other political allegiances.
>
> 3. Human beings must identify with a nation if they want to be free and realize themselves.
>
> 4. Nations must be free and secure if peace and justice are to be prevail in the world.[1]

Let me go through each of these claims, and see how they stand in relation to the claims I have defended in this dissertation. With respect to 1, we should distinguish between the claim that the world *contains* nations and the claim that the world is *divided up* into nations. The second claim implies that *every* individual and group belongs to a nation. This is clearly false. Remote, uncontacted and tribal peoples typically have no national membership—their form of political and social organisation is too different to classify them as nations. All that my theory claims is that the world contains nations, and that this is of moral significance. As for "destiny", I do not know what this is supposed to mean. If it s supposed to mean that the ultimate fate of nations—whether and when they go in or out of existence, their final territorial configuration and form of social organisation, and so on, is not a matter of contingency, then I reject this claim. If things had gone slightly

[1] Anthony D. Smith, *National Identity* (London: Penguin Books, 1991), p. 74.

differently in the early Middle Ages, there might well be two or three nations in England today. Various contingencies will affect the future of nations too—some will go out of existence; some will come into existence. This makes no difference to their normative significance, or the value of the relationships that they involve. Parenthood, marriage, and so on, may be unrecognisable to future generations. That does not mean that those relationships aren't intrinsically valuable.

With respect to 2, I am not sure whether this is meant to be a normative or an empirical claim. But on both counts it is clearly false. Just as we are sometimes morally required to sacrifice the interests of our friends or our family, we are sometimes (perhaps more often) required to set national loyalties aside for the sake of justice and other values: and moreover, people often do fail to give priority to national attachments while retaining a sense of national belonging. The furthest I have gone to endorsing anything like the normative claim about national loyalty is that (i) individuals are *permitted* to give priority to their relationship with their co-nationals over their relationship with their compatriots—the people of the state to which they belong pre-secession, and (ii) nationality is more important than merely regional or local identity. But this does not imply that individuals are morally required to support their nation at the expense of all other values, and all other relationships.

Emphasising the value of the co-national relationship and the contribution that nationality makes to flourishing does not require me to endorse 3. Saying that parenthood is an intrinsically valuable relationship, and that it contributes to flourishing, does not commit one to the claim that non-parents are living "incomplete" or otherwise defective lives. This is another element of purported nationalist ideology that I do not and need not subscribe to.

The last claim looks by far the most plausible of the four. If the argument of this thesis is correct, claims of national self-determination are a matter of justice. A nation with a valid claim to secede that is not permitted to do so is seriously wronged. But, crucially, this does not mean that nations are wrong to freely associate with other nations, whether as part of multi-national states, or in looser associations such as the European Union. The claim that nations have a presumptive claim to collective autonomy does not entail that any nation *ought* to exercise its right to seek independence. Accepting the central claims of the theory I have defended is compatible with considerable scepticism about the merits of Scottish, Catalan, or Quebec independence.

It seems that in the main, there is little relationship between what are purportedly the central doctrines of nationalist ideology and the claims of the theory I have defended. But I do not think that this is particularly significant. The doctrinal accoutrements of practical political movements quite often have little to do with the philosophical tendencies that share their names. Quite possibly any attempt to distil the core propositions of liberal ideology—the ideology of actually existing liberal movements (political parties, and so on)—would result in something that bore little resemblance to liberal political philosophy.

Two of the central claims of this dissertation: that co-nationality is intrinsically valuable and that nations have a presumptive claim to collective autonomy are, when translated out of philosophical jargon, recognisably *nationalist* claims. As such, I don't think it is inaccurate to call the theory I defend a nationalist theory. It is perhaps a stripped down, minimalist (and crucially, liberal) nationalism I defend, but it is nationalism nonetheless.

Nationalism and Supranational Integration

On the face of it, one might think that a commitment to the theory defended here might motivate hostility towards supra-national organisations that adopt the competencies and prerogatives traditionally held by states; by this I mean organisations such as the European Union, the International Criminal Court, and so on. But I think this first impression is misleading. To begin with, it almost a cliché that European integration is looked on very favourably by sub-state nationalists. For it allows them to imagine that they can enjoy the benefits of belonging to a larger unit—economies of scale, and so on—and at the same time strike out as independent states.[2] And sub-state nationalists are right to regard it favourably. It offers them the chance to create *viable* states; states that will not be beholden economically to the remainder state.[3]

It is true, of course, that they will have to sacrifice some degree of sovereignty in order to attain the benefits of regional integration. But I am untroubled by this for two reasons. The first is that, as I've mentioned, without regional integration, smaller states are often economically beholden to their larger neighbour—typically, in the case of would-be secessionist states, this would be the remainder state. They have, in these circumstances, limited room for manoeuvre when it comes to economic and social policy. In addition, they are at risk of political domination by their larger neighbours. Regional integration for smaller states, then, potentially involves swapping the mere forms of sovereignty for a genuine chance of independent social and economic development.

[2] See Maddens, et. al., "The European Union in the Narratives of Secessionist Parties: Lessons from Catalonia, Flanders, and Scotland" in Ryan D. Griffiths and Diego Muro (eds) *Strategies of Secession and Counter-Secession* (London: ECPR Press, 2020), pp. 122-142.
[3] For an interesting overview of how membership of the EEC allowed Ireland to escape its traditional export dependency on the United Kingdom, see Kevin O'Rourke, *A Short History of Brexit* (London: Pelican, 2019), Ch. 7.

The second reason I am untroubled is that it is quite plausible that the best *institutional* theory of the right to secede will make surrendering some sovereignty a condition of exercising that right. I mentioned in Chapter 1 that supranational organisations are able to provide powerful incentives to would-be secessionists to respect basic rights, the claims of minorities and the rule of law. A well-worked out institutional theory of secession would give some account of the supranational institutional context required before it would be sensible to create a legal right to secede.

The Alleviative Theory

The theory I've defended in this thesis is a primary right theory of secession. Primary right theories hold that the right to secede is independent of the legitimacy and character of the remainder state—there can, in principle, be a right to secede even from a rights-respecting, well-functioning liberal democracy. As such, primary right theories are most directly relevant to thinking through the morality of secessionism in contexts like Canada, the United Kingdom and Spain—in other words, the assumed background against which the theory is supposed to apply is that of a high-income, industrialised liberal democracy. But of course, most states are not like that. So does the theory not apply to them? The deep morality of secession and self-determination does apply to poorer and less stable states. But there are two complications. The first is that working out the conditions under which a right to secede should be institutionalised would seem to be a more complicated matter—when there is a thinner institutional context, and where norms around respect for basic rights are weaker, secession is a riskier business. The second reason is that in the context of poorer and less stable societies, the interests of sub-state nations, *qua* nations, in exercising self-determination would seem less pressing than their interests in avoiding regional exploitation, uneven development and state oppression. It seems more

apt in these cases to argue for secessionist rights on the basis of the *costs* of remaining in states rather the value of co-nationality. That is, we should turn our attention to the *alleviative* theory of the right to secede, as outlined in Chapter 1. A central reason for this is dialectical: someone who is unmoved by nationality as a basis for self-determination can accept an account that grounds the right to secede on a claim to avoid certain costs.

The alleviative theory generates a programme for future work. The core thing linking the cases to which it might apply is that they involve costs to would-be secessionists that do not rise to the level of violation of basic rights. Some of them do not involve *injustice*, as such, at all. I want now to canvass a central class of cases that has been neglected in the philosophical secession debate. These are cases involving intra-regional exploitation and underdevelopment. The most egregious of these cases can be classed as cases of *internal colonialism*—Michael Hechter describes these cases as follows:

> Commerce and trade among members of the periphery tend to be monopolised by members of the core. Credit is similarly monopolised. When the commercial prospects emerge, bankers, managers and entrepreneurs tend to be recruited from the core. The peripheral economy is forced into complementary development to the core, and thus becomes dependent on external markets. Generally, this economy rests on a single primary export, either agricultural or mineral. The movement of peripheral labour is determined largely by forces exogenous to the periphery. Typically there is great migration and mobility of

> peripheral workers in response to price fluctuations of exported primary products.[4]

What characterises the relations between the centre and the periphery in internal colonialism is, inter alia, *exploitation.* As Matt Zwolinski notes, states can be agents of exploitation, both by taking unfair advantage of their subjects for the benefit of their own agents, or for the benefit of others.[5] Examples of the latter are the state protecting various kinds of rent-seekers from competition or enforcing unjustly distributed property rights over mineral or other natural resources. Colonies are often characterised by state-backed rent-seekers, usually non-residents of the colony itself.[6] This is just as true of internal colonies. States often also ensure—by various fiscal and legislative means—that their metropolitan commercial centres have near-monopoly control over the resources and capital of their colonies, thus depriving the people of the colony of opportunities for exchange with other commercial centres.[7] Not only is the state an agent of exploitation, it also facilitates exploitation by creating conditions of economic vulnerability—economic dependence on monopsony firms, overreliance on a small number of commodities and agricultural and industrial backwardness.[8] I think it is clear that the cumulative effect of the underdevelopment and distortion of the internal colony's economy is to leave its people dependent on unfair exchanges.

---

[4] Michael Hechter, *Internal Colonialism*: *the Celtic Fringe in British National Development, 1536-1966* (London: Routledge and Keegan Paul, 1975), p. 33.
[5] "Structural Exploitation", *Social Philosophy & Policy*, vol. 29 (1), 2012, pp. 154-179, at p. 176.
[6] Pablo Gonzalez Casanova, "Internal Colonialism and National Development", *Studies in Comparative International Development*, vol. 1 (4), 1965, pp. 27-37, at p. 31.
[7] *Ibid*, p. 30.
[8] *Ibid*, pp. 36-7.

What is the upshot of this discussion for the permissibility of secession? Clearly, insofar as a region resembles an internal colony as described above, and as long as there are no serious prospects for reform, its people have serious grievances. It is not just that their standard of living is lower than it could be—they have intrinsically *moralised* grievances against their state: their state both exploits them and creates conditions that leave them vulnerable to exploitation. Of course, the fact of these grievances doesn't entail that the people of the internal colony have a claim to secede—it must be the case that secession is a plausible *remedy* for these grievances and would not otherwise be seriously costly for the internal colony. An internal colony with a sophisticated political culture, a well-developed civil society and viability as an independent state, then, would have a good claim to secede.

Neither the remedial right only theory nor the primary right theory have the appropriate tools to handle this case. The remedial right only theory will not permit secession except in the case of violations of basic rights by the state. This is not the situation of the internal colony; the internal colony is badly-off, but it is not Kosovo or Darfur. The primary right theory, if it says the people of the internal colony have the right to secede, would seem to say so for the reasons that are slightly out of place. It is not the fact that the people of the internal colony have a distinct nationality that should, in the first instance, command our attention—it is their social and economic condition, and the way in which this condition is the fault of their state. It is only *after* conditions improve that we might start to care about nationality.

My aim here is not to deny the importance of the claims of nationality, or the truth of the primary right theory. It would be very odd of me to do either at this stage. What I want to suggest is that the secession debate might, in future, be usefully re-oriented away

from the central cases of Scotland, Quebec and Catalonia, and towards a broader set of problems. The clash between primary right theorists and their critics has its place but it has dominated philosophical discussion of secession for too long, and has crowded out other questions.

Bibliography

Christopher Achen and Larry Bartels, *Democracy for Realists* (Princeton, NJ: Princeton University Press, 2016).

Andew Altman and Christopher Wellman, *A Liberal Theory of International Justice*, (Oxford: Oxford University Press, 2011).

Benedict Anderson, *Imagined Communities*: *reflections on the origins and spread of nationalism* (London: Verso, 1983)

Kim Angell "Do Insecure Property Rights Ground Rights of Jurisdiction? Miller on Territorial Justice." *Res Publica*, 19 (2), 2012, pp. 183-92.

Chris Armstrong, "Justice and Attachment to Resources", *Journal of Political Philosophy,* 22 (1), 2014, pp. 48-65

Richard Arneson, "Equality and Equal Opportunity for Welfare", *Philosophical Studies*, 56, 1989, pp. 77-93

Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979).

Harry Beran, "A Liberal Theory of Secession", *Political Studies,* 32, 1984, pp. 21-31, p. 30.

———"A Democratic Theory of Political Self-Determination for a New World Order", in Percy Lehning (ed), *Theories of Secession*, (London: Routledge, 1998), pp. 33-59.

Megan Bloomfield, *Global Justice*, *Natural Resources, and Climate Change*, (Oxford: Oxford University Press, 2019),

Harry Brighouse and Adam Swift, "Parents' Rights and the Value of the Family", *Ethics*, 117 (1), 2006, pp. 80-108.

———*Family Values*, (Princeton, NJ: Princeton University Press, 2014).

Lea Brilmayer, Secession and Self-Determination: A Territorial Interpretation. *Yale Journal of International Law*, 16, 1991, pp. 177-202;

Allen Buchanan and Elizabeth Levinson, "Secession", *The Stanford Encyclopedia of Philosophy* (Winter 2021 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/win2021/entries/secession/>.

Allen Buchanan, *Secession: the morality of political divorce from Fort Sumter to Lithuania*, (Boulder, CO: Westview Press, 1991).

——— "What's so Special about Nations?" *Canadian Journal of Philosophy*, 26, 1997a, pp. 283-308.

———Theories of Secession, *Philosophy and Public Affairs*, 26 (1), 1997b, pp. 31-61.

——— "Democracy and Secession", in Margaret Moore (ed) *National Self-Determination and Secession* (Oxford: Oxford University Press, 1998)

——— "The making and unmaking of boundaries: what liberalism has to say", in Allen Buchanan and Margaret Moore (eds), *States, Nations and Borders* (Cambridge: Cambridge University Press, 2003), pp. 231-61.

———*Justice, Legitimacy and Self-Determination*, (Oxford: Oxford University Press, 2004).

———*Institutionalizing the Just War,* (Oxford: Oxford University Press, 2018).

Simon Caney, "Self-Government and Secession: the Case of Nations," *Journal of Political Philosophy*, 5 (4), 1997, pp. 351-372.

Ian Carter, "Territory, Self-Determination and Individual Autonomy", *Philosophy and Public Issues,* 6 (2), 2016, pp. 35-54.

Amandine Catala, "Secession and distributive justice", *Philosophical Studies*, 174 (2), 2017, pp. 529-55.

Eric Cavallero, Value Individualism and the Popular-Choice Theory of Secession, *Social Theory and Practice*, 43 (1), 2017, pp. 125-153.

G. A. Cohen, *On the Currency of Egalitarian Justice: and other essays in Political Philosophy* (Princeton, NJ: Princeton University Press, 2011).

David Copp "Democracy and Communal Self-Determination", in In R. McKim, & J. McMahan, *The Morality of Nationalism* (Oxford: Oxford University Press, 1997), pp. 277-300.

——— "Institutional Law and Morality in the Theory of Secession", *Journal of Ethics*, 2, 1998, pp. 219-45.

James Crawford, *The Creation of States in International Law* (2nd edition) (Oxford: Oxford University Press, 2007), p. 388).

——— *Brownlie's Principles of Public International Law* (9th edition) (Oxford: Oxford University Press, 2018), p. 618.

John Curtice and Rachel Ormston, "Devolution: On the Road to Divergence? Trends in Public Opinion in Scotland and England" in Park et. al. (eds) *British Social Attitudes: the 28th report* (London: Sage, 2011).

Frank Dietrich, "Secession of the Rich: A Qualified Defence", *Politics, Philosophy and Economics*, 13 (1), 2014, pp. 62-81.

Ronald Dworkin, *Sovereign Virtue* (Cambridge, MA: Harvard University Press, 2000).

David Enoch, "Hypothetical Consent and the Value of Autonomy", *Ethics*, 128 (1), October 2017, pp. 6-36. "

——— False Consciousness for Liberals, Part I: Consent, Autonomy, and Adaptive Preferences", *Philosophical Review*, 129 (2), 2020, pp. 159-210.

Cécile Fabre and Seth Lazar (eds) *The Morality of Defensive War* (Oxford: Oxford University Press, 2014)

Cécile Fabre, "Cosmopolitanism and Wars of Self-Defence", in Cécile Fabre and Seth Lazar (eds) *The Morality of Defensive War* (Oxford: Oxford University Press, 2014), pp. 90-114.

———*Cosmopolitan Peace* (Oxford: Oxford University Press, 2016).

Francine Friedman. *The Bosnian Muslims: Denial of a Nation*. (Boulder, CO: Westview, 1996).

Chaim Gans *The Limits of Nationalism* (Cambridge: Cambridge University Press, 2003).

Azar Gat, *Nations: the long history and deep roots of political ethnicity and nationalism* (Cambridge: Cambridge University Press, 2013).

David Gauthier, "Breaking Up: An Essay on Secession", *Canadian Journal of Philosophy*, 24, 1994, pp. 357-372.

Ernest Gellner, *Nations and Nationalism* (Oxford: Blackwell Press, 1983)

Anca Gheaus, "Childrens' Vulnerability and Legitimate Authority over Children," *Journal of Applied Philosophy*, 35 (1), 2018, pp. 60-75.

Pablo Gonzalez Casanova, "Internal Colonialism and National Development", *Studies in Comparative International Development*, 1 (4), 1965, pp. 27-37.

Paul Goren, "Party Identification and Core Political Values", *American Journal of Political Science*, 49 (4), October 2005, pp. 881-896.

Ryan D. Griffiths, *The* Age *of Secession* (Cambridge University Press, 2017).

Michael Hechter, *Internal Colonialism*: *the Celtic Fringe in British National Development, 1536-1966* (London: Routledge and Keegan Paul, 1975).

Eric Hobsbawm, *Nations and Nationalism since 1780* (Cambridge: Cambridge University Press, 1990)

Paul Howe, "Rationality and Sovereignty Support in Quebec," *Canadian Journal of Political Science*, 31 (1), 1998, pp. 31-59.

Thomas Hurka, "The Justification of National Partiality", in Robert McKim and Jeff McMahan (eds), *The Morality of Nationalism* (Oxford: Oxford University Press, 1997).

Michael Ignatieff, *Blood and Belonging* (London: Vintage Books, 1993).

Donald Kinder and Nathan Kalmoe, *Neither Liberal nor Conservative: Ideological Innocence in the American Public* (Chicago, IL: University of Chicago Press, 2017).

Christine Korsgaard, "Two Distinctions in Goodness," *The Philosophical Review,* 92 (2), 1983, pp. 169-195. Joseph Raz, "Liberating Duties", *Law and Philosophy*, 8 (1), 1989, pp. 3-21

Matthew Kramer, *Liberalism With Excellence,* (Oxford: Oxford University Press, 2017).

Will Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995).

H. L. A. Hart, "Are there any natural rights?" in J. Waldron (ed) *Theories of Rights* (Oxford: Oxford University Press, 1984).

Adrian Hastings, *The Construction of Nationhood: ethnicity, religion and nationalism* (Cambridge: Cambridge University Press, 1997).

Elie Kedourie, *Nationalism* (London: Hutchinson, 1960).

Will Kymlicka, "The Sources of Nationalism: Commentary on Taylor", in R. McKim and Jeff McMahan (eds) *The Morality of Nationalism* (Oxford: Oxford University Press, 1997), pp. 56-65.

Cécile Laborde and Sune Laegaard, "Liberal Nationalism and Symbolic Religious Establishment" in In G. Gustavsson, & D. Miller, *Liberal Nationalism and its Critics: Normative and Empirical Questions* (Oxford: Oxford University Press, 2019), pp. 172-187.

Cécile Laborde, *Liberalism's Religion* (Cambridge, MA: Harvard University Press, 2017).

Sune Laegaard, “What's the Problem with Symbolic Religious Establishment?” In C. Laborde, & A. Bardon, *Religion in Liberal Political Philosophy* (Oxford: Oxford University Press, 2017), pp. 118-133.

Seth Lazar, “The Justification of Associative Duties”, *Journal of Moral Philosophy*, 13 (1), 2016, pp. 28-55.

Hsin-wen Lee, “The Identity Argument for National Self-Determination”, *Public Affairs Quarterly,* 26 (2), 2012, pp. 123-139.

——— “Institutional Morality and the principle of national self-determination”, *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition*, 172 (1), 2014a, pp. 207-226.

——— “An examination of the Feasibility of Cultural Nationalism as Ideal Theory”, *Ethical Perspectives*, 22 (1), 2014b, pp. 199-224.

——— “The Instrumental Value Arguments for National Self-Determination.” *Dialogue: Canadian Philosophical Review*, 58(1), 2019, pp. 65-89.

David Lefkowitz, “International Law, Institutional Moral Reasoning, and Secession*, Law and Philosophy”*, 37 (4), pp. 385-413.

Patti Tamara Lenard & David Miller, “Trust and National Identity” in E. M. Uslaner (ed), *The Oxford Handbook of Social and Political Trust* (Oxford: Oxford University Press, 2018), pp. 57-76.

Patti Tamara Lenard, “Inclusive Identities: the Foundation of Trust in Multi-Cultural Communities”. In G. Gustavsson, & D. Miller, *Liberal Nationalism and its Critics* (Oxford: Oxford University Press, 2019), pp. 155-171.

Eric Loomis, “Criteria”, in K. D. Jolley (ed) *Wittgenstein: Key Concepts* (Slough: Acumen Publishing, 2013), pp. 160-68.

Bart Maddens, et. al, “The European Union in the Narratives of Secessionist Parties: Lessons from Catalonia, Flanders, and Scotland”, in R. D. Griffiths and D. Muro (eds) *Strategies of Secession and Counter-Secession*, (London: ECPR Press, 2020), pp. 122-142.

Avashai Margalit and Joseph Raz, National Self-Determination, *Journal of Philosophy*, 87 (9), 1990, pp. 439-61.

Andrew Mason, “Special Obligations to Compatriots,” *Ethics*, 107 (3), 1997, pp 427-447.

Jeff McMahan, “The Limits of National Partiality” in Robert McKim and Jeff McMahan (eds), *The Morality of Nationalism* (Oxford: Oxford University Press, 1997).

Tamar Meisels, *Territorial Rights* (2nd edition) (Dordrecht: Springer, 2009).

David Miller, *On Nationality* (Oxford: Oxford University Press, 1995).

——— “Secession and the Principle of Nationality”, in Margaret Moore (ed) *National Self-Determination and Secession* (Oxford: Oxford University Press, 1998), pp. 63-4.

———*Citizenship and National Identity* (Cambridge: Polity, 2000).

——— “Reasonable Partiality Towards Compatriots”, *Ethical Theory & Moral Practice*, 8 (1/2), 2005, pp. 63-81.

———*National Responsibility and Global Justice* (Oxford: Oxford University Press, 2007.

——— “Territorial Rights: Concept and Justification”, *Political Studies*, 60 (2), 2011a, pp. 252-268.

——— “Property and Territory: Locke, Kant and Steiner”, *Journal of Political Philosophy*, 19 (1), 2011b, pp. 90-109.

"Neo-Kantian Theories of Self-Determination: A Critique," *Review of International Studies,* 42 (5), 2016a, pp. 858-875, at pp. 867-9.

———Boundaries, Democracies and Territory, *American Journal of Jurisprudence*, 61 (1), 2016b, pp. 33-49.

——— "Lockeans versus Nationalists on Territorial Rights", *Politics, Philosophy and Economics*, 18 (4), pp. 323-335

———What's Wrong with Religious Establishment. *Criminal Law and Philosophy*, 15, (1), 2019, pp. 75-89.

———*Is Self-Determination a Dangerous Illusion?* (Cambridge: Polity Press, 2020).

Margaret Moore, *The Ethics of Nationalism* (Oxford: Oxford University Press, 2001).

——— *A Political Theory of Territory* (Oxford: Oxford University Press, 2015).

——— "The Moral Value of Collective Self-Determination and the Ethics of Secession", *Journal of Social Philosophy*, 50 (4), 2019, pp. 620-41, at p. 633.

Paul Murray, *The Irish Boundary Commission and its Origins*, 1886-1925 (Dublin: University College Dublin Press, 2011).

Kai Nielsen, "Liberal Nationalism and Secession", in Margaret Moore (ed) *National Self-Determination and Secession*, (Oxford: Oxford University Press, 1998), pp. 103-130.

——— "Cultural Nationalism: neither ethnic nor civic" in Ronald Beiner (ed) *Theorizing Nationalism* (Albany, NY: State University of New York Press, 1999), pp. 58-70;

Cara Nine, "Territory is Not Derived from Property: A Response to Steiner", *Political Studies*, 56 (4), 2008, pp. 957-63.

———*Global Justice and Territory,* (Oxford: Oxford University Press, 2012).

Wayne Norman "The Ethics of Secession as the Regulation of Secessionist Politics", in Margaret Moore (ed) *National Self-Determination and Secession* (Oxford: Oxford University Press, 1998).

———*Negotiating Nationalism* (Oxford: Oxford University Press, 2006)

David Novak, "Land and People", in D. Miller and Sohail Hashmi (eds) *Boundaries and Justice: Diverse Ethical Perspectives* (Princeton, NJ: Princeton University Press, 2001), pp. 213-236.

Robert Nozick, *Anarchy, State and Utopia* (New York, NY: Basic Books, 1974).

Martha Nussbaum, *Liberty of Conscience* (New York: Basic Books, 2008).

Kevin O'Rourke, *A Short History of Brexit* (London: Pelican, 2019), Ch. 7.

Allen Patten, *Equal Recognition* (Princeton: Princeton University Press, 2014).

Charles Pattie and Ron, "Stick to the Union? Nationalism, inequality and political disaffection and the geography of Scotland's independence referendum", *Regional and Federal* Studies, 27 (1), 2017, pp. 83-96.

Philip Pettit, *On the People's Terms* (Cambridge: Cambridge University Press, 2012).

Daniel Philpott, "In Defense of Self-Determination", *Ethics*, 105 (2), 1995, pp. 352-385.

———"Self-Determination in Practice", in Margaret Moore (ed) *National Self-Determination and Secession* (Oxford: Oxford University Press, 1998), pp. 79-102.

John Rawls, *Political Liberalism* (New York, NY: Columbia University Press, 1993).

———*The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999).

Susan Reynolds, *Kingdoms and Communities in Western Europe* 900-1300 (Oxford: Oxford University Press, 1984).

David Rodin, "The Myth of National Defence", in Cécile Fabre and Seth Lazar (eds) *The Morality of Defensive War* (Oxford: Oxford University Press, 2013), pp. 69-89, at pp. 80-81.

Jonathan Seglow, *Defending Associative Duties* (London: Routledge, 2017).

Andrew Shorten, "Constitutional Secession, Exit Threats and Multinational Democracy", *Political Studies*, 62 (1), 2014, pp. 99-115.

A. John Simmons, *Boundaries of Authority,* (Oxford: Oxford University Press, 2016).

Anthony Smith *National Identity* (Harmsworth: Penguin Books, 1991).

———*Chosen Peoples* (Oxford: Oxford University Press, 2003).

———*The Antiquity of Nations* (Cambridge: Polity Press, 2004);

Steven Shulman, "Challenging the Civic/Ethnic and West/East Dichotomies in the Study of Nationalism." *Comparative Political Studies*, 35 (5), 2002, 554-585.

Maria Sobolewska and Rob Ford, *Brexitland* (Cambridge: Cambridge University Press, 2020).

Jeff Spinner-Halev: "Hinduism, Christianity, and Liberal Religious Toleration", *Political Theory*, 33 (1), February 2005, pp. 28-57.

Hillel Steiner, 1996, "Territorial Justice", in S. Caney, D. George and P. Jones (eds) *National Rights, International Obligations,* (Boulder, CO: Westview Press, 1996).

——— "Sharing Mother Nature's Gifts: a Reply to Quong and Miller", *Journal of Political Philosophy* 19 (1), 2011, pp. 110-123.

Anna Stilz and Anna Jurkevics, "Crises in Territorial Sovereignty: Critical Exchange on Anna Stilz's Territorial Sovereignty: a Philosophical Exploration, *Political Theory*, 49 (5), 2021 pp. 856-863.

Anna Stilz Why do states have territorial rights? *International Theory*, 1 (2), 2009, pp. 185–213.

——— "Nations, States and Territory," *Ethics*, 121 (3) 2011, pp. 572-601.

——— "Territorial Rights and National Defence" in C. Fabre and S. Lazar (eds) *The Morality of Defensive War* (Oxford: Oxford University Press, 2014)

——— "Decolonization and Self-Determination", *Social Philosophy and Policy*, 32 (1), 2015, pp. 1-24.

——— "The Value of Self-Determination", *Oxford Studies in Political Philosophy*, 2, 2016, pp. 98-125.

———*Territorial Sovereignty* (Oxford: Oxford University Press, 2019).

Cass Sunstein,, "Constitutionalism and Secession", *University of Chicago Law Review*, 58 (2), 1991, pp. 633-670.

Yael Tamir, *Liberal Nationalism*, (Princeton, NJ: Princeton University Press, 1993)

Laura Valentini, "Ideal vs. Non-Ideal Theory: A Conceptual Map", *Philosophy Compass*, 7 (9), 2012, pp. 654-664.

Steven Wall, *Liberalism, Perfectionism and Restraint* (Cambridge: Cambridge University Press, 1998).

——— "Collective Rights and Individual Autonomy," *Ethics,* 117 (2), 2007, pp. 234-264

Steven Weimer, "Autonomy-Based Accounts of the Right to Secede", *Social Theory and Practice* 39, 4, 2013, pp. 639-40.

Daniel Weinstock, "Constitutionalising the Right to Secede", *Journal of Political Philosophy*, 9 (2), 2001, pp. 182-203.

Christopher Wellman, *A Theory of Secession* (Cambridge: Cambridge University Press, 2005).

——— "A Defence of Political Self-Determination and Secession", in *Liberal Rights and Responsibilities,* (Cambridge: Cambridge University Press, 2013).

——— "The Paradox of Group-Autonomy", in E. F. Paul, F. D. Miller and J. Paul (eds) *Autonomy* (Cambridge: Cambridge University Press, 2010), pp. 265-285.

Richard Wyn Jones, "On Process, Events and Unintended Consequences: National Identity and the Politics of Welsh Devolution", *Scottish Affairs,* 37, 2001, pp. 34-57.

Matt Zwolinski, "Structural Exploitation", *Social Philosophy & Policy*, 29 (1), 2012, pp. 154-179.