

Theories of Secession

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II. TWO TYPES OF NORMATIVE THEORIES OF SECESSION

All theories of the right to secede either understand the right as a remedial right only or also recognize a primary right to secede. By a right in this context is meant a general, not a special, right (one generated through promising, contract, or some special relationship). Remedial Right Only Theories assert that a group has a general right to secede if and only if it has suffered certain injustices, for which secession is the appropriate remedy of last resort.¹ Different Remedial Right Only Theories identify different injustices as warranting the remedy of secession.

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

Remedial Right Only Theories. According to this first type of theory, the (general) right to secede is in important respects similar to the right to revolution, as the latter is understood in what may be called the mainstream of normative theories of revolution. The latter are typified by John Locke's theory, according to which the people have the right to overthrow the government if and only if their fundamental rights are violated, and more peaceful means have been to no avail.²

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

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

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

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

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

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

Depending upon which injustices they recognize as grievances sufficient to justify secession, Remedial Right Theories may be more liberal or more restrictive. What all Remedial Right Only Theories have in common is the thesis that there is no (general) right to secede from a just state.

A Remedial Right Only Theory. For purposes of comparison with the other basic type of theory, Primary Right Theories, I will take as a representative of Remedial Right Only Theories the particular version of this latter type of theory that I have argued for at length elsewhere.³ According to this version, a group has a right to secede only if:

1. The physical survival of its members is threatened by actions of the state (as with the policy of the Iraqi government toward Kurds in Iraq) or it suffers violations of other basic human rights (as with the East Pakistanis who seceded to create Bangladesh in 1970), or
2. Its previously sovereign territory was unjustly taken by the state (as with the Baltic Republics).

I have also argued that other conditions ought to be satisfied if a group that suffers any of these injustices is to be recognized through international law or international political practice as having the right to secede.⁴ Chief among these is that there be credible guarantees that the new state will respect the human rights of all of its citizens and that it will cooperate in the project of securing other just terms of secession.⁵ (In addition to the protection of minority and human rights, the just terms of secession include a fair division of the national debt; a negotiated determination of new boundaries; arrangements for continuing, renegotiating, or terminating treaty obligations; and provisions for defense and security.) This bare sketch of the theory will suffice for the comparisons that follow.

Primary Right Theories. Primary Right Theories fall into two main classes: Ascriptive Group Theories and Associative Group Theories. Theories that include the Nationalist Principle (according to which every nation or people is entitled to its own state) fall under the first heading. Those that confer the right to secede on groups that can muster a majority in favor of independence in a plebiscite fall under the second.

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

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

Thus Margalit and Raz appear to embrace the Nationalist Principle when they ascribe the right to secede to what they call "encompassing cultures," defined as large-scale, anonymous (rather than small-scale, face-to-face) groups that have a common culture and character that encompasses many important aspects of life and which marks the character of the life of its members, where membership in the group is in part a matter of mutual recognition and is important for one's self-identification and is a matter of belonging, not of achievement.⁶

Associative Group Theories. In contrast, Associative Group versions of Primary Right Theories do not require that a group have any ascriptive characteristic in common such as ethnicity or an encompassing culture, even as a necessary condition for having a right to secede. The members of the group need not even believe that they share any characteristics other than the desire to have their own state. Instead, Associative Group Theorists focus on the voluntary political choice of the members of a group (or the majority of them), their decision to form their own independent political unit. Any group, no matter how heterogeneous, can qualify for the right to secede. Nor need the secessionists have any common connection, historical or imagined, to the territory they wish to make into their own state. All that matters is that the members of the group voluntarily choose to associate together in an independent political unit of their own. Associative Group Theories, then, assert that there is a right to secede that is, or is an instance of, the right of political association.

The simplest version of Associative Group Primary Right Theory is what I have referred to elsewhere as the pure plebiscite theory of the right to secede.⁷ According to this theory, any group that can constitute a majority (or, on some accounts, a "substantial" majority) in favor of secession within a portion of the state has the right to secede. It is difficult to find unambiguous instances of the pure plebiscite theory, but there are several accounts which begin with the plebiscite condition and then add weaker or stronger provisos.

One such variant is offered by Harry Beran.⁸ On his account, any group is justified in seceding if (1) it constitutes a substantial majority in its portion of the state, wishes to secede, and (2) will be able to marshal the resources necessary for a viable independent state.⁹ Beran grounds his theory of the right to secede in a consent theory of political obligation. According to Beran, actual (not "hypothetical" or "ideal contractarian") consent of the governed is a necessary condition for political obligation, and consent cannot be assured unless those who wish to secede are allowed to do so.

Christopher Wellman has more recently advanced another variant of plebiscite theory.¹⁰ According to his theory, there is a primary right of political association, or, as he also calls it, of political self-determination. Like Beran's right, it is primary in the sense that it is not a remedial right, derived from the violation of other, independently characterizable rights. Wellman's right of political association is the right of any group that resides in a territory to form its own state if (1) that group constitutes a majority in that territory; if (2) the state it forms will be able to carry out effectively what was referred to earlier as the legitimating functions of a state (preeminently the provision of justice and security); and if (3) its severing the territory from the existing state will not impair the latter's ability to carry out effectively those same legitimating functions.

Like Beran's theory, Wellman's is an Associative Group, rather than an Ascriptive Group variant of Primary Right Theory, because any group that satisfies these three criteria, not just those with ascriptive properties (such as nations, peoples, ethnic groups, cultural groups, or encompassing groups) is said to have the right to secede. Both Beran and Wellman acknowledge that there can also be a right to secede grounded in the

need to remedy injustices, but both are chiefly concerned to argue for a Primary Right, and thus to argue against all Remedial Right Only Theories.

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

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

Notice that in the statement that Primary Right Theories recognize a right to secede from perfectly just states the term "just" must be understood in what might be called the uncontroversial or standard or theory-neutral sense. In other words, a perfectly just state here is one that does not violate relatively uncontroversial individual moral rights, including above all human rights, and which does not engage in uncontroversially discriminatory policies toward minorities. This conception of justice is a neutral or relatively uncontroversial one in this sense: We may assume that it is acknowledged both by Remedial Right Only Theories and Primary Right Only Theorists--that both types of theorists recognize these sorts of actions as injustices, though they may disagree in other ways as to the scope of justice. In contrast, to understand the term "just" here in such a fashion that a state is assumed to be unjust simply because it contains a minority people or nation (which lacks its own state) or simply because it includes a majority that seeks to secede but has not been permitted to do so, would be to employ a conception of the justice that begs the question in this context, because it includes elements that are denied by one of the parties to the debate, namely Remedial Right Only Theorists. To repeat: the point is that Primary Right Theories are committed to the view that there is a right to secede even from a state that is perfectly just in the standard and uncontroversial, and hence theory-neutral sense.¹¹

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IV. COMPARING THE TWO TYPES OF THEORIES

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

Furthermore, there is good reason to believe that secession may in fact exacerbate the ethnic conflicts which often give rise to secessionist movements, for two reasons. First, in the real world, though not perhaps in the world of some normative theorists, many, perhaps most, secessions are by ethnic minorities. But when an ethnic minority secedes, the result is often that another ethnic group becomes a minority within the new state. All too often, the formerly persecuted become the persecutors. Second, in most cases, not all members of the seceding group lie within the seceding area, and the result is that those who do not become an even smaller minority and hence even more vulnerable to the discrimination and persecution that fueled the drive for secession in the first place.¹² Requiring serious grievances as a condition for legitimate

secession creates a significant hurdle that reflects the gravity of state-breaking in our world and the fact that secession often does perpetuate and sometimes exacerbate the ethnic conflicts that give rise to it.

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

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

At this point it might be objected that the fact that states would be unlikely to incorporate Primary Right Theories into international law is of little significance, because their interest in resisting such a change is itself not morally legitimate. Of course, states will not be eager to endanger their own existence. Similarly, the fact that a ruling class of slaveholders would be unlikely to enact a law abolishing slavery would not be a very telling objection to a moral theory that says people have the right not to be enslaved.¹³

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

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

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

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

Individuals' rights, the stability of individuals' expectations, and ultimately their physical security, depend upon the effective enforcement of a legal order. Effective enforcement requires effective jurisdiction, and this in turn requires a clearly bounded territory that is recognized to be the domain of an identified political authority. Even if political authority strictly speaking is exercised only over persons, not land, the effective exercise of political authority over persons depends, ultimately upon the establishment and maintenance of

jurisdiction in the territorial sense. This fact rests upon an obvious but deep truth about human beings: They have bodies that occupy space, and the materials for living upon which they depend do so as well. Furthermore, if an effective legal order is to be possible, both the boundaries that define the jurisdiction and the identified political authority whose jurisdiction it is must persist over time.

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

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

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

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

In Albert Hirschman's celebrated terminology, where exit is too easy, there is little incentive for voice--for sincere and constructive criticism and, more generally, for committed and conscientious political participation.¹⁴ Citizens can exit the domain of the existing political authority in different ways. To take an example pertinent to our investigation of secession, if a minority could escape the authority of laws whose enactment it did not support by unilaterally redrawing political boundaries, it would have little incentive to submit to the majority's will, or to reason with the majority to change its mind,¹⁵

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

Moreover, in order to subvert democratic processes it is not even necessary that a group actually exit when the majority decision goes against it. All that may be needed is to issue a credible threat of exit, which can serve as a de facto minority veto.¹⁶ However, in a system of states in which the principle of territorial integrity is given significant weight, the costs of exit are thereby increased, and the ability to use the threat of exit as a strategic bargaining tool is correspondingly decreased.

In addition, the ability of representative institutions to approximate the ideal of deliberative democracy, in which citizens strive together in the ongoing articulation of a conception of the public interest, also depends, in part, upon stable control over a definite territory, and thereby the effective exercise of political authority

over those within it. This stability is essential if it is to be reasonable for citizens to invest themselves in cultivating and practicing the demanding virtues of deliberative democracy. All citizens have a morally legitimate interest in the integrity of political participation. To the extent that the principle of territorial integrity helps to support the integrity of political participation, the legitimacy of this second interest adds moral weight to the principle.

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

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

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

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

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

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

The most obvious case in which the organs of international law have treated an existing state as illegitimate was that of Apartheid South Africa (which satisfied condition [2]). The United Nations as well as various member states signaled this lack of legitimacy not only by various economic sanctions, but by refusing even

to use the phrase "The Republic of South Africa" in public documents and pronouncements. More recently, the Iraqi government's genocidal actions toward Kurds within its borders (condition [1]) was accepted as a justification for infringing Iraq's territorial sovereignty in order to establish a "safe zone" in the North for the Kurds. To the extent that the injustices cited by a Remedial Right Only Theory are of the sort that international law regards as depriving a state of legitimacy, the right to secede is consistent with the principle of the territorial integrity of existing (legitimate) states.

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

In contrast, any theory of secession that recognizes a primary right to secede for any group within a state, in the absence of injustices that serve to delegitimize the state, directly contradicts the principle of the territorial integrity of existing states, on its progressive interpretation.¹⁷ Accordingly, Remedial Right Only Theories have a singular advantage: Unlike Primary Right Theories, they are consistent with, rather than in direct opposition to, one of the most deeply entrenched principles of international law on its morally progressive interpretation. This point strengthens our contention that according to our second criterion Remedial Right Only Theories are superior to Primary Right Theories.

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

V. PRIMARY RIGHT THEORIES

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

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

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

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

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

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

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

Even if Wellman's view were never formally incorporated into international law, but merely endorsed and supported by major powers such as the United States, the predictable result would be to make centralized states even less responsive to demands for autonomy within them than they are now. Allowing groups within the state to develop their own local institutions of government and to achieve a degree of control over regional economic resources would run the risk of transforming them into successful claimants for the right to secede. Beran's version of Primary Right Theory suffers the same flaw, because it too gives states incentives to avoid decentralization in order to prevent secessionist majorities from forming in viable regions.

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

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

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

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

First, it is clear that no principle which identifies all "encompassing groups" as bearers of the right of self-determination, where this is understood to include the right to secede from any existing state, would have much of a chance of being accepted in international law, even when states' actions were determined primarily by the pursuit of morally legitimate interests. The reason is straightforward: most, if not all, existing states include two or more encompassing groups; hence acceptance of Margalit and Raz's principle would authorize their own dismemberment. Second, the right to independent statehood, as Margalit and Raz understand it, is possessed by every encompassing group even in the absence of any injustices. Consequently, it too runs directly contrary to the principle of the territorial integrity of existing states on its most progressive interpretation (according to which just states are entitled to the protection the principle provides).

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

Moral Accessibility. The last of the four criteria for assessment, moral accessibility, is perhaps the most difficult to apply. None of the accounts of the right to secede under consideration (with the possible exception of the Nationalist Principle in its cruder formulations) clearly fails the test of moral accessibility. Therefore, it may be that the comparative assessment of the rival theories must focus mainly on the other criteria, as I have done. Nevertheless, it can be argued that Remedial Right Only Theories have a significant advantage, so far as moral accessibility is concerned. They restrict the right to secede to cases in which the most serious and widely recognized sorts of moral wrongs have been perpetrated against a group, namely violations of human rights and the unjust conquest of a sovereign state. That these are injustices is widely recognized. Hence if anything can justify secession, surely these injustices can. Whether other conditions also justify secession is more controversial, across the wide spectrum of moral and political views.

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

NOTES

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

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

3 Allen Buchanan, *Secession* (Boulder: Westview Press, 1991), pp. 27-80.

4 Allen Buchanan, "Self-Determination, Secession, and the Rule of International Law," in *The Morality of Nationalism*, Robert McKim and Jeffrey McMahan, eds. (Oxford: Oxford University Press, 1997).

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

6 Avishai Margalit and Joseph Raz, "National Self-Determination," *Journal of Philosophy* 87 (September 1990): 445-47.

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

8 Harry Beran, *The Consent Theory of Political Obligation* (New York: Croom Helm, 1987), p.42.

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

10 Christopher Wellman, "A Defense of Secession and Self-Determination," *24 Philosophy and Public Affairs* 2 (Spring 1995): 161.

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

12 Donald Horowitz, "Self-Determination: Politics, Philosophy, and Law," *NOMOS XXXIX*, pp.421-463.

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

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

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

16 Allen Buchanan, *Secession*, pp. 98-100.

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