

SECESSION, MAJORITY RULE AND EQUAL RIGHTS: A FEW QUESTIONS

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How can one justify the secession of a territory from a liberal-democratic state of the kind currently prevalent in North America and Western Europe? The question does not primarily concern a mutually agreed secession, such as that of Norway from the United Kingdoms of Norway and Sweden in 1905. If the government and legislature of the 'parent state'¹ freely agree to a secession of a part of its territory, this provides at least a *prima facie*, albeit not necessarily the only, justification for the secession.

The question to be addressed in this paper is whether a unilateral secession could be justified in cases in which the parent state is a functioning liberal democratic state; such a state, by definition, grants equal political, civil and cultural rights to all of its citizens and thus endeavours to avoid or remove any form of discrimination, let alone oppression, among them. A unilateral secession from a liberal democratic state results in a change of its political and constitutional order, which breaches the existing constitutional procedure and to which a majority of the citizens of the parent state would object: because of its unconstitutional nature and because they believe, rightly, that this change will harm some of their interests. A minority of the citizens of the territory which is to secede may also oppose this secession because the new secessionist state, in their opinion, could be likely to deny them some of the rights they enjoy as citizens of the parent state. In this context, our initial question can be stated as follows:

Can a change to a constitutional order of a liberal democratic state which is not, at least *prima facie*, compatible with the principles of majority decision-

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¹ The phrase 'parent state' refers to the state from which a secession is being contemplated or carried out. It is used here as a term of art that does not carry any paternalistic (or widely parental) connotations incompatible with liberal and democratic values.

making and equal protection of rights, be justified within a liberal-democratic political theory?²

The question does not presuppose that a unilateral secession from a liberal-democratic state is, within a liberal theory, *prima facie* unjustifiable. It suggests only that, in view of the fact that unilateral secession breaches the principles of majority decision making and of equal protection of rights, it needs justification.³

In Part I of the paper, I examine several theories of secession which ascribe a general right of (unilateral) secession to certain groups - irrespective of whether or not their members are citizens of a liberal democratic state. In consequence, in spite of the significant differences among them, all the theories to be examined in Part I maintain that certain groups or individuals have a right to unilaterally secede 'their' territory from a functioning liberal democratic state. As we shall see, each of these theories offers a different account of the grounds on which the general right of secession is to be ascribed to groups and individuals, and of the conditions under which the right should be exercised. Yet all of the theories, whether implicitly or explicitly, maintain that the general right of secession, under the conditions they specify, overrides the principle of majoritarian decision-making as well as the interests and rights of the majority of citizens in the parent state (including those who inhabit the secessionist territory but oppose the secession). In examining these theories - which I shall call 'the general right of secession theories' - I aim to find out how they justify a positive answer to our question.

In Part II, I suggest an alternative account of justification of secession which does not postulate or advocate a general right of secession. Instead of a general right of secession, I outline, through a series of imaginary scenarios, several conditions which jointly may justify at least one type of unilateral secession from a liberal-democratic state. According to this account, a secession, whether mutually agreed or unilateral, should not infringe the citizens' rights which the liberal-democratic parent state is endeavouring to protect. The conditions for secession aim to ensure that the rights both of the secessionists and of the citizens of the parent state continue to be equally protected in spite of the secession. On such an account, under some circumstances, a unilateral secession would also be justified as a means of

² In addition to this, one could also ask, what measures, if any, is a liberal-democratic parent state justified in taking, in the case of a unilateral secession (as described above), to protect its liberal-democratic constitutional order and the rights and interests of its citizens, including those who inhabit the territory which is about to secede? Clearly, however, this question differs from the one addressed in this paper, suggesting why a mutually negotiated secession is preferable to a unilateral one: in the former case both sides have agreed that the threats both to the functioning of the parent state and to the liberties of the secessionists have in fact been averted. However, even if there is no negotiated agreement on the secession, if the secessionists have in fact done everything they could to avert such a threat, their unilateral secession could still be justifiable.

³ The question is not meant to prejudge whether unilateral secession is a disruptive and unconstitutional act of the same kind as a revolutionary overthrow of the central government, nor whether or not secession requires a justification of the kind one offers for acts of revolution.

protecting the secessionists' liberties or rights. Accordingly, I shall call it a 'protection' account of secession.

I

A. *General Right of Secession: Five Types of Justification*

Liberalism gives primacy to the liberty of an individual (conceived both as a liberty from interference and a liberty to act) as compatible with the equal liberty of others. The requirement of the compatibility of liberty of an individual with that of others links it, at least in a liberal theory of John Rawls, to another value - that of justice for all. The protection of liberty and justice requires the institutional arrangements, presently defined as constitutional and representative political systems which operate in the context of freely competing political associations and political parties. Such representative systems are both democratic in so far as they give equal access to political participation to every adult citizen, and majoritarian as they require all legislative decisions to be supported by a majority of citizens or their representatives.

Liberal-democratic political systems, both in theory and practice, protect the civil and political rights of minorities, including their cultural rights. Thus, within a liberal political system the use of a minority language can be legally protected within a particular sphere and public funds can be made available for education in the protected languages and cultures. Within a representative system, political power - the power of political decision-making and of legislation - may be devolved to regions or units in which particular groups of people form majorities. Liberal-democratic governments endeavour to serve the interests of and to be accountable to its citizens. Both the protection of minority languages and cultures and the devolution of decision-making increase the government's accountability and make it more responsive to the varied needs and interests of its citizens. Further, in enabling the citizens to decide on matters of particular interest to them within the region they inhabit, the devolution equalises the citizens' political rights, in so far as every citizen is thus enabled to participate in political decisions on matters of his/her concern.⁴

Secession is a withdrawal of a territory and its inhabitants from the existing political system and the jurisdiction of the existing governmental institutions. Secession is, therefore, a case not of *devolving* (as described above) but of *terminating* the competence of particular political and legal bodies over a certain territory and of establishing new bodies with the same kind of political and juridical competence. How is one to justify, within a liberal theory, the termination of the competence of political bodies which purported to protect the liberty and rights of the citizens living on that territory?

⁴ The protection of civil/cultural rights and the devolution of political decision-making may thus be justified within a liberal-democratic theory without, necessarily, invoking any group rights of cultural or political self-determination.

In the context of a liberal theory - in particular, of a rights-based liberal theory - a natural response would be to argue that the liberal political system of the parent state fails to protect some of the rights which could only be protected in an independent political system. And since the liberal system endeavours to protect individual rights, it would also be natural to argue that the non-protectable rights are those of the groups which inhabit a delimited piece of territory, or are the rights which could only be exercised by such groups. While it indeed appears to be natural, the argument as presented here appears also to be *ex post facto* since the justification consists of finding the rights which would fit the case of a withdrawal of a group of people and 'their' territory from the parent state. In other words, since it is secession that is to be justified, these allegedly non-protectable rights could find the appropriate protection only through secession: they can be protected only in specially designed states, the kind of state which is achieved by secession from parent states.

The five theories to be examined here attempt to establish a right of that kind within a liberal theoretical framework. In doing so, the theories appeal to different principles or rights, each of which is regarded as fundamental, in the sense of being independent of any political association such as a state, and, consequently, not subject to restriction, without the consent of the holder, by the state or any collective body. These are the rights of an individual first, to private property, second, to free political association, and third, to a national culture or identity. Accordingly, the five theories differ in their answer to the rather common-sense question: What benefits could one expect to gain by leaving a just liberal-democratic state? Some secessionist theorists argue that the benefits of secession are to be primarily found in the realm of political liberties, while others emphasise the benefits secession brings in the realm of enjoyment and expression of a group or national culture. I shall first examine three theories of the former kind, followed by two theories of the latter kind. In examining these five theories, I shall be asking the following two questions: First, how does the particular account of the right of secession justify the breach of the majoritarian democratic principle mentioned above? Second, is the ascription of that right to the selected groups and individuals likely to result in a liberal-democratic order comparable to that of the parent state? In asking these two questions, I am attempting to establish whether these theories breach any liberal-democratic principles and thus whether the political order, resulting from the type of secession they advocate, is an improvement on that of the liberal-democratic parent state.

B. *From a 'Total Privatisation' of Land to a Problem-Free Secession:
Anarcho-Capitalism*

The first theory to be examined here, that of anarcho-capitalism, asserts that any individual has the right to establish any political arrangements for him/herself with others of like persuasion, and that, in the case he or she wants to do so by secession, the individual is only constrained by his or her ability to form, with others, a 'viable

political order,' and by the prohibition of 'engaging in unjust forms of market intervention'.⁵ The 'viable political order' is any order that protects the 'property and liberty' of all inhabitants within the seceding territory (but does not necessarily protect them from foreign states) while 'unjust forms of market intervention' comprise any form of state intervention in a free capitalist market. Thus their right of secession is derived from two more fundamental rights of individuals - that of free political association and of the free enjoyment of private property. The second of these rights implies an enjoyment unhindered by state intervention in the free market. The right to secede thus entitles individuals to withdraw from the jurisdiction of their state not only control of their private property (including land) but also of the public land (and property) of the territory where they live. Any problems arising from a withdrawal of public property are solved in an ideal anarcho-capitalist society since public property is abolished.⁶ In such an ideal 'privatised' society the borders of private land and property would replace the present state borders so that every landowner would be free to associate in a 'state-like' organisation with any other landowner. In such a society, secession would amount to the withdrawal only of privately owned land and all the current problems arising from secessions, such as anti-secessionist minorities, disputes over the ownership of economic resources and over rightful borders, would disappear.

In this ideal society, decisions about secession of private lands would be reached by each landowner individually and not by a majority. The majoritarian principle appears thus to be rejected as an illegitimate restriction on the right of free association of individuals.⁷ However, the advocates of anarcho-capitalist secessions are silent on the political rights of non-landowners or of the landless, as the latter seem to be excluded from decision-making on any 'state' matters. The rejection of the majoritarian principle appears then to lead to a political order with an unequal distribution of political rights. Not only is this no longer a liberal-democratic order as we know it today but it is an order which makes the poor and landless second-class citizens. For a liberal, this would not be an improvement on the present liberal-democratic order.

The anarcho-capitalists thus argue from the individual right of free political association to the right to remove a territory from the jurisdiction of a functioning liberal state. This is a large conceptual jump: why should my right to form political association with like-minded people give me the right to take a piece of land and its inhabitants from the jurisdiction of the present state? The anarcho-capitalist solution

⁵ Scott Boykin, 'The Ethics of Secession' in David Gordon (ed), *Secession, State and Society*, (1998) 65, 73-4.

⁶ Murray Rothbard, 'Nations by Consent: Decomposing the Nation-State' in David Gordon (ed), above n 5, 79, 85.

⁷ In the present liberal-democratic state system, anarcho-capitalists would obey only explicit legal prohibition of secession and would lobby for the legal codification of the right to secession. Therefore, they accept the majoritarian principle not because they consider it legitimate but because they want to avoid breaking the law: see Boykin, above n 5, 69. Theirs is thus a rather revolutionary doctrine advocating a non-violent overthrow of the present liberal-democratic order.

is, of course, a radical one. They would like to abolish any separate jurisdiction of states over land through its 'total privatisation', and then to combine the right of free political association with that of free enjoyment of private property so as to establish their right of secession - that is, the right to remove any privately owned land from any 'state-like' organisation. In such a utopia, the conceptual divide between the right of political association and the right of secession disappears. However, the latter right is restricted to landowners.

C. *From Recursive Majoritarianism to Unequal Rights of Secession:
Democratic Secessionism*

Faced with the problem of the conceptual jump, advocates of the democratic right of secession, instead of privatising the land, tie the right of secession 'politically' to the land and its inhabitants. According to Harry Beran, the right of secession, as a variant of the right of self-determination, is vested in a 'territorial community' which is defined as:

a social group that has a common habitat, consists of numerous families... capable of self-perpetuation through time as a distinct entity.⁸

The effective criterion for the existence of a territorial community 'in practice' is the group's wish to secede from 'their existing political community'. In other words, any group of people who share a common territory as its 'common habitat' may claim the right to secede in virtue of their common 'wish' to secede. The group wishing to secede then proceeds to delimit 'its' territory by the majority principle. 'Its' territory is the territory in which a majority wish to secede. This procedure could be repeated within the territory so delimited. If within the latter territory there is a similar group wishing to secede from it, it also has the democratic right to do so. Thus, recursive application of the majoritarian principle yields recursive secessions (or secessions within secessions) which in turn precludes the use of the same majoritarian principle to impose a state on unwilling territorially concentrated minorities. The exercise of this right purports to 'maximise the number of individuals who live in mutually desired political associations',⁹ and aims to establish rightful political borders, that is, borders determined by the democratic majority principle.

But within our present world of sovereign states, the recognition of this right would create two classes of citizens: those who happen to live (or 'have a common habitat') in territorial groups of their own choosing and thus have a right of secession (and to the choice of a state), and those who are dispersed among such territorial groups or do not have such 'a common habitat' and thus do not have the right to secede (or to choose their own state). The former, territorially concentrated individuals, would have the right to 'opt out' (by seceding) from the decisions of a

⁸ Harry Beran, 'A Democratic Theory of Political Self-Determination for a New World Order' in Percy Lehning (ed), *Theories of Secession* (1998) 36.

⁹ Ibid 39.

majority of the territory where they live while the latter, territorially dispersed individuals (or 'habitat-less' individuals), would have to obey the decisions of the territorially concentrated majorities. If the right of secession and of the choice of one's own state is not equally distributed, Beran's democratic theory of secession, like the anarcho-capitalist one, would create an order of unequal political rights in spite of its adherence to a majority decision-making principle. Like the anarcho-capitalist ideal order, this political order would enable the rich to secede their 'common habitat' (which has no significant debts or natural resources to be distributed with the parent-state) in order to avoid sharing their wealth with the poorer population of the parent state. The inequalities in natural resources among the seceded states are to be remedied, according to Beran, by powerful (but as yet non-existent) regional or world governments which would transfer resources from states rich in natural resources to states which are poor.¹⁰ By analogy, Beran could argue that such a supra-state government could, on a similar principle, re-distribute the *private* wealth of citizens from the rich to the poor states. But the exercise of the right of secession is not conditional upon acceptance of the jurisdiction of as yet nonexistent world or regional governments over matters of resources or wealth. Thus, according to Beran's theory, the rich in our present world could freely exercise their right of secession and refuse to share their private wealth or natural resources with any other state. Beran's right of secession of territorial communities would thus yield a political order with an unequal distribution of political rights among citizens within a single state, and an increased inequality in the distribution of wealth among sovereign states and among their respective citizens. Once again, this is hardly an improvement on the liberal-democratic constitutional order or on the present obviously unequal distribution of resources among states.

D. *From a Desire for Enhanced Participation to Unequal Rights of Secession:
Communitarian Secessionism*

The right of secession, according to Daniel Philpott, is based on the right to political participation. Autonomous individuals have the right to shape their own fate through participating in political decision-making and, therefore, the right to choose their own democratic institutions and the 'political context' in which they participate.¹¹ Accordingly they have the right to share this political context with individuals of the same identity - which may happen to be a national identity or any other type of political or 'participation-enhancing' identity. When they share such an identity in common, they are 'better able to participate, better represented, better able to deliberate and legislate in common, rather than [having] constantly [to] combat or be drowned in dissonance of foreign ways.'¹² Any group with a particular

¹⁰ Ibid 42-3.

¹¹ David Philpott, 'In Defense of Self-Determination' (1995) 105 *Ethics* 352, 358-9.

¹² Ibid 360. Similarly, Simon Caney argues that in a nation-state, 'because of their national commonality, the decisions reached by their political institutions express to a greater extent than otherwise the interests of each individual': see Simon Caney, 'National Self-Determination and National Secession: Individualist and Communitarian Approaches' in Percy Lehning (ed), *Theories of Secession* (1998) 149, 170.

'participation-enhancing' identity, concentrated on a particular territory, which has a desire to improve the political participation of the members of the group has a prima facie right to secede.¹³ Such a desire to improve individuals' political participation in political communities is a characteristic which distinguishes the communitarian or republican from the liberal approach to political theory.

But this attempt to establish a right of secession by linking a group desirous of a participatory political community to a specific territory leads to the same type of inequality as the democratic theory. Individuals who desire political community but are territorially dispersed would be denied a right of secession enjoyed by individuals who desire political community and are concentrated in a territory. At the same time, individuals who are *not* desirous of a participatory political community would be denied the right to secede from the political community even when they are territorially concentrated in it. Linking the desire for political community to territorial concentration has yielded a political order which grants the political right of secession only to those who have an appropriate desire and who are territorially concentrated, and denies it to those who lack either. The resulting political order is not liberal-democratic, nor is it an improvement on the liberal-democratic ideal. And unlike the previous two theories, this communitarian theory fails to address the legitimacy of majoritarian decision-making. It is unclear how the desire of a territorially concentrated minority for its improved political participation in a separate state overrides legitimately reached decisions of a majority of citizens, while any other desire of a similar minority fails to override such decisions.¹⁴

E. *From a National Culture to a Separate State: Cultural Secessionism*

Secessions are also thought to bring cultural benefits to secessionists. They are to enable those who were previously in a minority to protect and develop their own culture in a way which they, as a minority, were unable to do in the parent state. In many contemporary liberal states a single dominant culture - the culture of the majority of their inhabitants - provides a significant political context in which the political institutions and parties operate. Further, most citizens of contemporary liberal states feel, or are supposed to feel, a particular attachment to that culture and to those who share it. As a result, citizens are often politically mobilised to support various causes, including military operations, by appeals to their attachment to the shared culture and to the group which shares it. Minority groups in liberal-democratic states possess their own culture and associated national identity different from - and often defined in opposition to - the majority culture. By analogy, it is thought that such a culture and identity should provide a political

¹³ Its exercise is restricted by its potential consequences: secessions which 'augur[s] evil consequences' of various kinds, including unjust distribution of economic resources, should not be allowed: Ibid 371. As in the democratic secessionist theory, supra-state or international organisations would probably have to evaluate particular secessions and their consequences and enforce restrictions such as these.

¹⁴ Perhaps Philipott believes that a desire for such a good thing cannot be refused, even by a majority; if so, he does not tell us why it cannot.

context for a separate state structure for the minority groups as well. If in the liberal-democratic states - in some imagined world - there was a strict separation of culture(s) from politics so that the former did not provide a political context for the operation of political institutions, there would be no reason to suppose that liberal political institutions would operate in a single culture. In such a world, shared national or cultural identity would provide no reason to grant a right of secession to the group that shared that national or cultural identity. .

However, in our present world of sovereign states, many of which have a majority national culture, it has been argued that any group, which shares a distinct national identity, has, in virtue of its identity, a prima facie right to an independent state. In support, two types of arguments are advanced: one refers to the intrinsic value of distinct cultures and associated identities for those who share them and the other to the need for distinct cultures for the functioning of liberal-democratic institutions.

Advancing an intrinsic value argument, Yael Tamir argues that membership in a nation, defined primarily by its culture, is a constitutive factor of personal identity. Therefore, the:

ability of individuals to lead a satisfying life and to attain the respect of others is contingent upon...their ability to view themselves as active members of a worthy community.¹⁵

For this purpose, Tamir argues individuals need to be able to 'conceive certain social and political institutions as representing particular cultures and as carriers of national identity.' Since they need to do so with 'as little external interference as possible',¹⁶ they need to be granted the right to establish, in suitable circumstances (partly determined by sheer luck), an independent state. Tamir's argument is, in short, that since the individuals' desire for a politically satisfying life cannot be fulfilled in a state in which they are a (cultural) minority, they have the right to an independent state in which they could lead such a life. Unlike the communitarians, Tamir does not hold that such a desire, by itself, entitles the group to a separate state. She argues that in liberal-democratic states, any majority culture - simply in virtue of its being the culture of the majority - politically excludes citizens who belong to minority cultures.¹⁷ In her argument, the phrase 'the majority culture' is taken to mean 'the culture which excludes any minority culture and those who share it'. Tamir notes further that:

¹⁵ Yael Tamir, *Liberal Nationalism* (1993) 73.

¹⁶ Ibid 74.

¹⁷ 'Members of these minorities [ethnic groups and national minorities in liberal states] feel excluded because they realise that it achieves an appearance of disinterest in cultural issues by exclusion, namely, by rejecting all those who do not belong to the dominant culture.': Ibid 141. And '...[If] belonging to a minority group unavoidably carries with it social, political and frequently economic disadvantages...': Ibid 149.

[M]embers of national minorities who live in liberal democracies...feel marginalised and dispossessed because they are governed by a political culture and political institutions imprinted by a culture *not their own*'¹⁸ (emphasis added).

From this she concludes that members of (cultural) minorities in liberal-democratic states are, necessarily, excluded and oppressed and thus rightly feel dispossessed and marginalised. The best way to remove the oppression is to grant them the right to a state in which the former minority would be in a majority and, as a consequence, would no longer feel marginalised and dispossessed.

Her argument appears to depend on the assumption that the phrase 'the majority culture' means 'the culture which excludes any minority culture and those who share it'. If one rejects this assumption, one can acknowledge that majority cultures do not, necessarily, exclude minority cultures and the groups which share it; some majority cultures, in particular those of immigrant states such as Canada and Australia, at least attempt to include some minority cultures. If at least some minority groups are not excluded in this way, then, contrary to Tamir, it does not follow that, in general, minority groups have a right to separate state - a right which would override any majority decisions. In other words, sharing in a minority culture while residing in a state with a majority culture does not, by itself, give to the minority group and its members any right to a separate state.

But even if not excluded or oppressed by the majority, members of the minority may still feel marginalised and dispossessed 'because they are governed by a political culture and political institutions imprinted by a culture *not their own*'. It is the sharing (or having to share) a political culture and institutions which are alien to the group and not the exclusion or oppression that causes these feelings. If so, it is not the liberal democratic parent state and its dominant culture that prevents a cultural minority from leading a politically satisfying life, but their feelings of marginalisation which may be a result of their having to participate in alien or foreign political institutions and cultures. Whatever remedy one may think would be best here, it is clear that secession of the minority population is neither the only remedy nor necessarily the best one.¹⁹

Nonetheless, the ideal political order envisaged by cultural secessionists, in which no cultural group would feel marginalised because it has to participate in an alien political culture, appears an improvement on the present liberal-democratic order in which some groups in liberal democratic states do feel so marginalised. However, given the wide dispersal of individuals within liberal-democratic states who share in minority cultures, it is unclear how this ideal order could be achieved or even approximated through the secession of minority groups.

¹⁸ Ibid 72.

¹⁹ One possible remedy would be to make the majority political culture more inclusive by assimilating some aspects of the minority culture, including the use of the minority language.

F. *From a Threatened Culture to a Secession: The Secessionism of Threatened Cultures*

In Tamir's view, only the political and social institutions which represent national identity or culture can offer a politically satisfying life to those who share that identity and culture; in her view, liberal culture or liberal-democratic values alone offer no such satisfaction. In contrast, David Miller suggests that national cultures provide a necessary background for free political choice and thus for liberal democratic political culture:

A common culture of this [national] sort not only gives its bearers a sense of where they belong and provides an historical identity, but also provides them with a background against which more individual choices about how to live can be made.²⁰

Further, it is an empirical fact - as both Miller and Margaret Moore²¹ note - that, because people are often very strongly attached to their national culture, national minority cultures are not easily replaceable by majority cultures. In order to provide a suitable background for the exercise of liberal choices, it is necessary to preserve as many national cultures as possible. Independent and sovereign states are, Miller believes the best instruments for the preservation of a group's identity or cultures. Therefore, if a minority culture is threatened within a state that has a majority culture, the minority group needs to be granted a right to form a state of its own which would protect its culture.

In this form, the right of secession appears to be derived from the more general and relatively uncontroversial right of self-defence: those groups whose cultures are vital to their liberal political life have the right to defend their cultures against the threat of extinction and, as a means to that end, they have the right to establish and maintain independent states capable of protecting their cultures. A liberal can grant that national groups, whether constituting a majority or minority in a particular state, have a right of self-defence of this kind,²² but still require that it be exercised only when no other means of defence is available. A well-functioning liberal-democratic state endeavours to protect minority cultures and to enable all of its citizens, including those in minorities cultures, to participate in its political life. Therefore, in order for a minority group in a state to exercise its right to self-defensive secession, the group or its leaders need to establish that the state is incapable of protecting the groups' cultural identity or interests. In other words, the minority group or its representatives need to establish first, that the group's culture

²⁰ David Miller, *On Nationality* (1995) 85-6.

²¹ Margaret Moore, 'Nationalist Arguments, Ambivalent Conclusions' (1999) 82 *The Monist* 469, 482-3.

²² Among the fundamental interests of liberal peoples, Rawls lists both their striving '...to protect their political independence and their free culture with its civil liberties....' and their self-respect or *amour propre*. Having listed these fundamental interests, he grants all peoples a right to self-defence, but asserts '...no people has the right to self-determination, or a right to secession, at the expense of subjugating another people': See John Rawls, *The Law of Peoples* (1999) 34, 38.

is required for its members to make the kind of choices other citizens make in a liberal-democratic state, second, that its culture is under threat of being diminished to the extent that it cannot serve this purpose, and third, that the threat cannot be averted in any other way but through the secession of the group. In short, the decision of the minority representatives that their functioning liberal-democratic parent state cannot protect their culture is not, by itself, sufficient evidence of the state's incapacity. If so, in order to establish the above three points, the parent state and the representatives of a national minority would need to agree as to what constitutes the state's incapacity to protect the minority's culture. If any such agreement is necessary to exercise the right of secession, the right is no longer a general right of *unilateral* secession of national minorities but a right whose exercise requires some form of *mutual agreement* between the seceding group and the parent state. In Part II I shall examine a scenario in which secession is achieved through a mutual agreement of this kind, and then argue that in order to justify unilateral secessions without such agreements, one need not resort to any general right of secession. In short, I shall argue that in order for a minority group to achieve a politically satisfying life through secession from its liberal-democratic parent-state, it is not necessary to grant a general right of secession to any minority group which is dissatisfied with its political life in its parent-state. If so, in order to justify secessions from liberal-democratic states it is not necessary to rely on any theory which grants such a general right to minority groups, and, therefore, it is not necessary to rely on any one of the five theories examined above.

II

A. *How to Preserve Equal Rights of Secessionists and Non-Secessionists: A Few Conditions*

In its *Reference re Secession of Quebec*, the Supreme Court of Canada held that in order for a secession from a constitutional liberal democratic state to be legal, it is necessary that it be carried out within the constitutional framework of the parent state. The Supreme Court thus required a negotiated agreement between the representatives of the secessionists and of the parent-state which is then given legal effect by a change in the Constitution of the parent state.²³ The change of the Constitution, carried out by an already established majoritarian democratic process, legalises the withdrawal of the seceding territory from the constitutional jurisdiction of the parent state. This procedure would therefore result in a mutually agreed secession.

The Supreme Court of Canada also envisaged the possibility of a unilateral secession following a failure of the negotiations between the state and the minority desiring to secede. For a unilateral secession from a liberal-democratic state to be justifiable within a liberal political theory, must not worsen the political and welfare circumstances of the citizens in the seceding state. In practice, this means that the

²³ *Reference re Secession of Quebec* [1998] 84 SCR 15.

secessionist state needs to guarantee at least the same range of political and civil rights and liberties as well as welfare rights²⁴ as the parent-state grants to all of its citizens equally. If the secessionists claim that in their new state a reduced range of rights or a less than equal distribution of rights is a trade off for benefits of other kinds, then they are abandoning their attempts to justify their secession within a liberal and democratic theory. Within liberal theory no trade offs of this kind can be justified.²⁵ For example, within such a theory, unequal political rights - such as the denial of citizenship rights to those who do not speak the majority language in the secessionist state - cannot serve as a trade-off for getting a state 'of one's own' (that is, the state in which the majority culture is that of the secessionists). Within a liberal theory, then, the maintenance of the same range of political, civil and welfare rights is the first necessary condition for any justifiable secession, whether negotiated or unilateral, from a liberal-democratic state. An agreement of the parent state to a secession of a part of its territory, in the case of a negotiated secession, indicates that, in the view of the representatives of the parent state, this condition has been satisfied.

The second condition necessary for a justifiable secession, that of a referendum, requires an application of the majoritarian principle: it is through a referendum that the majority of the citizens of the territory selected by the secessionist leaders for secession²⁶ can express their individual desire for secession. The aim of such a referendum is to enable a group of citizens to propose a change to the constitution of the parent state, legalising the withdrawal of the parent state's jurisdiction from that territory and the establishment of a separate state. If so, the right to organise and to vote in a referendum of this kind derives from the general democratic right of citizens to petition, individually or as a group, their government and/or representative bodies for changes in legislation or policy. But the right to petition is not only a liberty-right: in petitioning their government or representative body, citizens claim a right to a considered response by the government which would show that it is responsive to the citizens' concerns and interests. If a majority of the inhabitants of a territory²⁷ in a referendum express their desire for secession, a considered response of a liberal democratic parent-state to such a referendum would be to negotiate with the secessionists' representatives as to how their demands can

²⁴ The phrase 'Welfare rights' refers to the legal welfare provisions, enabling citizens to lead a dignified life despite various kinds of disadvantages arising from their lack of employment, illness or family circumstances.

²⁵ See, for example, John Rawls' account of the 'absolute weight' of basic liberties in *Political Liberalism* (1996) 291-9.

²⁶ I assume that the petitioners (that is, the pro-secessionists) would select the territory on which the secession referendum is to be held. This does not in any way imply that the boundaries of the future independent state, if the secession takes place, would coincide with the boundaries of that territory; as I suggest below, various parts of that territory may further secede prior to or following the initially proposed secession.

²⁷ And not only a majority of those voting. One should assume that at least some of those who did not vote had in fact boycotted the referendum, thereby rejecting the referendum and the very proposal of a secession.

be satisfied - in this case, on what terms a secession should be carried out or, alternatively, under which conditions it could be avoided.

A referendum of this kind is, of course, not just an ordinary petition of citizens who desire constitutional change. The pro-secessionist voters express their desire not only for a change of the Constitution of the parent state but also for the change of the identity of political and legal authority over a territory in which they live together with others who may not desire such a change. Therefore, all citizens residing on a territory (but no others) should be invited to vote in the referendum regardless of their national belonging or of their views on the secession.²⁸ But since every citizen, and any group of citizens, has the same right of petition (apart from the initial group of secessionists) other groups of citizens residing on the territory may want to petition to secede other, smaller pieces of territory on which they live from the initially selected piece of territory and/or to remain within the parent-state. The same right to petition entitles those potentially secessionist groups to hold further referenda for secession (or separation) from the initially seceding territory.

A failure by the secessionists to grant such a right to others - or its restriction only to some (for example, 'national') groups and its denial to other (for example, 'ethnic' or 'minority') groups - would indicate that their primary goal is to gain political control over the territory they selected for secession and that this goal overrides, in their view, at least some liberal-democratic principles. Secessionist movements often claim the right to control a particular territory on historical, economic or cultural grounds which, in their opinion, precede (and sometimes even override) any expressed preferences of its inhabitants. For example, secessionist leaders often claim a territory which, in the past, was allegedly controlled by a state or a ruler whom they regard as 'their own' (that is, as belonging to their national group) even when 'their' national group is no longer in majority on that territory.²⁹ Within a liberal-democratic theory, however, those putative rights based on historical, economic or cultural considerations cannot override the political and civil rights granted by a liberal democratic state. For example, within a liberal theory, the (putative) historical right of a group to the entire territory it claims cannot override the right of another (smaller or larger) group inhabiting the same territory to reject,

²⁸ However, no citizen can be obliged to vote in such a referendum. Individuals as well as various groups and political association may - as they often do - boycott a referendum, thus rejecting both the proposal for the change and the procedure that could lead to it.

²⁹ A claim of such a putative historical right to a territory within of a parent state should be distinguished from a claim that a particular territory was unjustly annexed to the present parent state, for example, by context. The latter rests on a claim about injustice of acquisition of the territory and its nullification of the parent state's jurisdiction over that territory while the former rests only on a claim about prior possession of a territory. Secessionists claiming the territory often, however, confuse claims about prior possession and injustice, by assuming that any prior 'possession' of a territory which has been lost to another state implies that the territory was, in fact, unjustly acquired. In *Secession: the morality of political divorce from Fort Sumter to Lithuania and Quebec* (1991), Allen Buchanan argued that some secessions (in particular of the Baltic states from the USSR) could be justified by reference to the (relatively recent) unjust acquisition of the seceding territory by conquest. However, he clearly distinguishes claims based on injustice of acquisition from those based on prior possession.

in a referendum, the secession of the territory claimed by the first group. Therefore, in the case of an intended secession from a liberal-democratic state, considerations of the above kind cannot, within a liberal democratic theory, override the prior necessary condition of guaranteeing the same range of rights as those of the liberal democratic parent state.

In consequence, according to the above account, for a mutually agreed as well as for a unilateral secession from a liberal democratic state to be justified, it is necessary but not sufficient:

1. that a majority of the citizens residing on the territory marked for secession demand it through a referendum; and
2. that the same range of political, civil and welfare rights be guaranteed to all citizens of the seceding territory as it was in the parent state.

In the imaginary scenarios of secession discussed below I suggest a few further conditions which together with the above two may prove to be sufficient for a justifiable secession.

1 From Mutually Agreed to Unilateral Secession

Since a liberal-democratic parent state is obliged to protect the political rights of all of its citizens equally, the imposition of an undemocratic or illiberal government on a group of its citizens against their will, through secession, is an infringement of their political rights similar to the imposition of a foreign-supported government by military conquest. For this reason a liberal-democratic state is obliged to protect its citizens against unjustified secession which would breach their rights. But, as long as the above two necessary conditions are satisfied, and its ability to protect the existing rights of its remaining citizens remains substantially unaffected, a liberal democratic state has no reason to oppose, in principle, a transfer of jurisdiction of a part of its territory to another liberal democratic state which would be able to promote its citizens' well-being in the same way as the parent-state does. Conceived in this way - as a constitutional transfer of jurisdiction and political-decision making to another liberal democratic state - secession need not be a sign of the weakness (or of the weakening) of the parent-state nor of its failure to provide equal protection of the rights of all its citizens.

2 Mutually Agreed Secession

Take, for example, a scenario in which a political movement for secession is motivated by cultural nationalism: the secessionist intellectual and political elites argue that the parent state's alien political system and culture poses a continuous threat to their group's culture/national identity; and that, even regardless of the alleged threat, the alien culture/political system cannot offer to their group (or at least to their elites) a politically satisfying way of life. On the basis of this

argument, the secessionist elites mobilise their national group against the parent state and its government claiming that the latter is intrinsically untrustworthy because it is alien. Such a mobilisation can be highly disruptive to any liberal-democratic state because it blocks any attempt by the government to regain the trust of the nationally mobilised part of the electorate while at the same time it entrenches resentment among that part of the electorate which is regarded as alien and therefore untrustworthy.³⁰

The political elites and their majority electorate in the parent state may show both an understanding for the feeling of alienation and marginalisation experienced by members of the minority and view the divisive politics of its leaders as too high a price to pay for retaining the nationally dissatisfied group and the territory it inhabits within the state. They may decide that a secession of the nationally dissatisfied group would lead to a politically more satisfying life for both the majority and the minority: the former would enjoy a 'normal,' nationally non-divisive political life and the latter would no longer feel marginalised, alienated and dispossessed as it did in the parent state.³¹ In such a case these two groups could negotiate an agreement which would allow for a constitutionally acceptable transfer of jurisdiction to a new state and a (more or less satisfactory) division of common assets. This is possibly the desirable scenario that the Supreme Court of Canada envisaged in the case of any future secession of the province of Quebec from Canada; and this is roughly the scenario which was followed in the secession of Norway from the United Kingdoms in 1905. In any case, a negotiated agreement of this kind, together with the previous two necessary conditions, would jointly suffice to justify a secession from a liberal-democratic state.

3 *From a Denial of Political Liberties to a Justifiable Unilateral Secession*

Suppose that the two necessary conditions stated above are satisfied but the government of the parent state refuses to negotiate over secession (while it is ready to negotiate over any other measures) for either economic or 'historical/cultural'

³⁰ In presenting any government of the parent state as untrustworthy solely on the ground of its nationality/culture, the (potential) secessionist leaders focus, as on an issue of paramount importance, on restricting government's power over 'their' national group. Their focus on the untrustworthiness of the parent-state government detracts from the consideration of government's policies and their effects in a wider (non-national) context. Responding to their pressure, the government may also attempt to privilege their national group in an attempt to prove (usually unsuccessfully) its trustworthiness. This is likely to cause justifiable resentment among other non-privileged groups and to polarise the electorate along national lines. As a result of the national mobilisation of this kind, the symbolic issues of status and recognition of national groups may also come to dominate the politics of the parent state. These are only some of the dysfunctional or at least undesirable consequences of a national mobilisation against the parent state's government.

³¹ In calculating the possible benefits of secession, political leaders of the parent-state would usually take into account the loss of resources and of transport access as well as of the defence capability of the parent state. But the latter has already been reduced by the secessionists' national mobilisation against the parent state: the nationally mobilised group would hardly be ready to fight for the state from which it is alienated.

reasons (or both). An example of the first would be the disruption of the parent state's economy and a resulting drop in its citizens' standard of living caused by the withdrawal of natural resources (for example, oil fields) on the seceding territory. An example of the second would be the loss of some historical monuments or sites on the secessionist territory which are essential to the existing narrative of the majority's national identity. Such a withdrawal might be conceived as a shameful defeat undermining the self-esteem of the majority in the parent state. In contrast to the representatives of the parent state, the secessionists are ready to negotiate ways of reducing or alleviating the negative impact of the desired secession on the parent state, including granting to the latter extra-territorial rights and access to its historical 'national identity' sites.

The secessionists' representatives regard the issue of secession as an issue of liberty of its members to pursue a politically satisfying life. In the present scenario, the parent state holds that the economic or historical interests of a majority should restrict the (perceived) liberty of a minority of its citizens to pursue a politically satisfying life. Within a liberal theory, however, this could be regarded as a case of oppression of the minority. Its liberty would be restricted for the sake of pursuit of the majority's rather narrowly defined non-political interests. In such a case, to override the decisions of the majority, the minority could invoke the right of self-defence: a unilateral secession for them would be a defence of their liberty to lead a politically satisfying life. This suggests an additional condition would be necessary to justify a unilateral secession at least in some cases:³²

3. In a case in which the parent state's refusal to negotiate over a secession of its minority constitutes an unjustified denial of the minority's political liberties, the minority is entitled to defend its political liberties by unilateral secession.

Like its mutually agreed counterpart in the previous scenario, such a unilateral secession is likely to create new territorially dispersed minorities in the seceded state. Thus those who belonged to the majority population in the parent state, would, as a dispersed minority in the seceded one, suffer a loss of political influence and power and could also regard the new state as alien. However, the parent state is not obliged to protect the political power and cultural status of any one group of its citizens and, as the secession satisfied the second necessary condition, the seceded state would grant the same range of rights as the parent-state.

4 *From a Threat to the Parent State's Capacity to Protect its Citizens to an Unjustifiable Secession*

In the above case of justifiable unilateral secession, the secessionists face a mutually exclusive choice between satisfying the narrowly defined economic or

³² This and the following additional conditions are not necessary conditions for unilateral secession.

historical ('national identity') interests of the majority and their own secession. In this context, faced with the alternative of being oppressed by the majority, they are, on the above account, right in choosing secession. But this would not justify their disregard of the economic and/or 'national-identity' interests of the parent state's citizens outside the context of this mutually exclusive choice.

An example would be when the secession removed from the parent state the only economically viable access to foreign markets (for example, the only shoreline) on which its economy is heavily dependent. The secession would thus cause a loss of employment and widespread impoverishment of the large segments of the population in the parent state. In turn, this would undermine its capacity to protect the same range and level of welfare rights or even, in the case of the resulting social unrest, the same range of political rights as before. Just like the parent state in the preceding scenario, this time it is the secessionists who refuse to alleviate the harmful effects of their secession.

In this case, the secessionists hold that their economic interest or their national pride overrides the parent state's obligation to protect the rights of its citizens. A liberal theory, I think, cannot justify this ranking of interests and obligations as it could not justify it in the previous case, in which the same kind of interests of the parent states were supposed to override the secessionists' concerns for their political liberties. This suggests the following additional condition for justifiable unilateral secession:

4. In a case in which secession is likely to threaten the capacity of the parent state to protect the rights of its citizens, the secessionists are obliged to take whatever measures are in their power to avert that threat.

Where a secessionist movement fails to satisfy Condition 4, unilateral secession is not justifiable. However, provided the first two conditions stated above are satisfied, this additional condition could transform it into a justifiable secession. While welfare rights are here included among the rights to be protected, they obviously do not include the citizens' economic interests - such as financial investment or employment opportunities or jobs - which are not entrenched as positive rights in the parent state's legislation. Thus the parent state would not be justified in attempting to prevent a secession on the ground that it threatens some of its citizens with a loss of their investment or their jobs. On the other hand, by specifying so broadly the measures the secessionists are required to take to preserve the ability of the parent state to protect the rights of its citizens, the above condition requires that the secessionists have also to be ready to sustain economic losses - such as those of investment or jobs - when and if they need to postpone their planned secession. Hence Condition 4 does not put heavier burdens on the secessionists than on the parent state.³³

³³ This condition also suggests why a mutually negotiated secession is preferable to a unilateral one: in the former case both sides have agreed that the threats both to the functioning of the parent state and to the liberties of the secessionists have in fact been averted. But even if there is no negotiated agreement on the secession, if the secessionists have in fact done everything

5 *From a Breach of the Political Rights of Citizens to an Unjustifiable Secession*

The welfare rights of its remaining citizens are not, clearly, the only rights which the parent state is obliged to protect. Suppose that a group opposed to the initial secession organises peaceful public protests in the territory of the secessionists prior to the secession, and demand that the secession be called off. Suppose further that the secessionist authorities suppress these demonstrations by force and imprison the group's leaders accusing them of treason. Alternatively, suppose that political leaders of the secessionist movement encourage their militant followers to attack and intimidate the anti-secessionists both during and after such public protests. In using or encouraging the use of force to suppress these protests against their planned secession, the political leaders of the secessionist movement show that they are not ready to satisfy the second condition for justifiable secession, that is, the guarantee of the same range of rights to all citizens on the territory they want to secede. In such a clear-cut case of unjustified use of force to restrict the citizens' political rights, the parent state would be called on to protect them by force if necessary. Whether in such a case a parent state uses force would probably depend on many factors, including utilitarian considerations of the costs of such a military intervention (it is quite possible that the ensuing warfare would cause much more damage to lives and property than the initial breach of the political rights did).³⁴

6 *Can Secession be Achieved in the Absence of a Right to Secede?*

Apart from clear-cut cases of the abuse of political rights such as the one above, there are other types of systematic abuse of citizens' rights by the secessionists or their leadership which do not appear to justify the use of force by the parent state. Take, for example, a case of secession in which the secessionists confiscate natural assets on its territory, claiming without justification that these assets were plundered by the parent state prior to secession. Another example would be if the secessionists' legally enacted an electoral gerrymander with the aim of reducing or even wiping out the former majority group's political representation in their new state and thus denying the former majority group a voice in political life. While any abuses of this kind are clearly breaching the second necessary condition for a justifiable secession, it is far from clear that the parent state is obliged to protect its former citizens (or those who retained its citizenship) as it would protect citizens living on its territory. In any case, the secessionist state, once internationally recognised as sovereign, would, in virtue of its acquired territorial sovereignty, deny any right to the parent state to protect its former citizens on its territory. This

they could to avert such a threat, and fulfilled the first two conditions, their unilateral secession could still be justifiable.

³⁴ In order to trigger military intervention by the parent state on their behalf, anti-secessionist groups may provoke the secessionist authorities to use force against them. In cases of such a provocation, the parent state would not be justified in intervening because the secessionist authorities, had it not been for a deliberate provocation, would not have used force and would have not breached the political rights of some of its citizens.

suggests that once the seceded state has gained international recognition as a sovereign state, the acts of its government against its citizens or residents, however undemocratic or illegal, would probably have no bearing on the justifiability of its secession. In order to achieve a justifiable secession from a liberal-democratic state the secessionist movement could easily pay mere lip-service to the liberal-democratic principles and then, having gained power and independence through secession, would be free to display at least some illiberal or undemocratic political instruments or goals. In the present system of sovereign states, a justifiable secession provides no guarantees to the citizens of the secessionist state that its regime will be (or will continue to be) a liberal-democratic one. In practice, ensuring that a secession is justifiable is a way of ensuring that the liberal-democratic parent state has discharged its obligations to its citizens, both on the remaining territory and on the newly seceded state, before it lost jurisdiction over the latter.

If so, what difference would the above 'protection' account make to the actual practice of secessions? Like the theories granting a general right of secession, this account allows minorities to secede unilaterally, provided they satisfy a series of conditions. This suggests that the 'protection' account, like the former theories, also grants to the same groups (perhaps only tacitly) a general right of secession.

To see that this is not so, let us now review the rights to which the 'protection' account refers. The political campaign that a secessionist movement launches in favour of secession, culminating in a secession referendum, is justified by reference to its rights to free political association and expression. The secession referendum and the ensuing negotiation with the parent state's representatives is based upon the right to petition the government, derived from the right of free expression, and requires an accountable government to respond in a considered way to the concerns expressed in the petition. The act of secession is finally justified either by the legislation of the parent state, resulting from the negotiated agreement with the secessionist representatives or, if that is lacking, by the right of the secessionist group to protect its liberty to pursue a politically satisfying way of life. Unlike the 'general right of secession' theories, this account does not presuppose that any particular group, in virtue of some of its 'natural' characteristics such as its territorial habitat or its national identity, has a right to pursue a politically satisfying way of life in *a separate state*. It only assumes that in a liberal democratic state individuals enjoy the liberty of pursuing their political aims provided they do not thereby cause unacceptable harm to others. This does not imply that they, individually or collectively, have a right to establish a separate state, but only that in a liberal democratic state they are free to pursue this goal unhindered by state authorities, provided that their pursuit of the goal does not cause unacceptable harm to others.

In the second scenario discussed above, the parent state used its existing jurisdiction over the secessionists to deny them liberty. The only way for the secessionists to effectively protect it (and to cause the least harm) is to withdraw from the

jurisdiction of the parent state, that is, to unilaterally proclaim secession. In other words, under the circumstances outlined in this scenario, unilateral secession appears to be both effective as a means of protection of liberties and causes no unacceptable harm to the rights and interests of non-secessionists (in the scenario the secessionists are ready to alleviate the harm their secession causes). In other circumstances their unilateral secession *would* cause unacceptable harm; an example of this would be a breach of the equal rights principle in the scenario in which some rights of the citizens of the parent state could no longer be protected.

According to the 'general right of secession' theories, the secessionist group has the right of unilateral secession at the very start of their movement's campaign for secession; the movement is thus free to threaten the parent state with unilateral secession and to employ this right as an instrument for the mobilisation of its supporters. The continued public insistence on the inalienable but nonetheless state-denied right to a separate state as well as threats of unilateral secession may (and often do) provoke conflict and violence.³⁵ Even if it does not lead to conflict and violence, the secessionists' assertion of a right of unilateral secession subordinates the parent state's obligation to protect the existing rights of all its citizens to their own alleged right to an independent state. In this way, the secessionists would be encouraged to believe that their rights override those of their fellow citizens in the parent state.

Unlike the 'general right of secession' theories, the 'protection' account encourages secessionists to minimise harm to others and to accommodate their needs and interests through a negotiated agreement. But this account also restricts unilateral secessions to democratic, majority-seeking secessionist movements and envisages the possibility of a prolonged negotiations and highly uncertain outcomes. This may put the secessionists and their supporters at a disadvantage. To give an example: the procedure of negotiation with the parent state that this account envisages would require secessionists to recognise the legitimacy of the state they reject as alien. Moreover, these negotiations need not necessarily lead to a justifiable secession. According to the 'protection' account, unilateral secession appears to be justifiable only if the parent state slips from its adherence of liberal-democratic principles and the secessionists do not. In contrast, the 'general right of secession' theories give them a general right to secede to start with; they retain their right regardless of the illiberal or undemocratic actions (or omissions) of their leaders or their movements. More importantly, these theories ensure that the secessionists' cause is just, provided the secessionist group has the necessary characteristics (for example, has a threatened minority culture). In short, the attribution of a general right of secession to groups of individuals or to national groups appears greatly to increase the certainty of the outcome - independence through secession - because the outcome depends not on whether particular actions of the parties are justifiable but primarily

³⁵ For a discussion of this possible scenario see Margaret Canovan, 'Sleeping Dogs, Prowling Cats and Soaring Doves: Three Paradoxes in Political Theory of Nationhood' (2001) 49(2) *Political Studies* 203, 207-8.

on whether the secessionists possess the right characteristics for the ascription of the right of secession.

However, as I have tried to show, assigning the right of secession to groups on the basis of group characteristics hardly promotes liberal and democratic values, in particular respect for the equality of political rights. Moreover, such a seemingly generous distribution of the right of secession to various groups in most cases undermines the secessionists' attempts at independence in two ways. In order to redress various inequalities arising from the its general application, the 'general right of secession' theories either severely restrict the circumstances in which secession is allowed (such as when they do not 'augur... evil consequences'³⁶) or require the secessionists to hand over some of their newly won political power or sovereignty to inter-governmental, or international bodies, or both. This in turn severely restricts the certainty of outcome which the 'general right of secession' theories appear to promise.

The 'protection' account does not restrict secession to groups possessing 'natural characteristics' such as a common culture or habitat. Nor does it require a supervision of the secession itself by any supra-state bodies. Any secessionist group which has the support of a majority of the citizens residing in a territory is entitled to negotiate with the parent state over the secession of that territory. Its secession is restricted only by the harm it is likely to cause to the rights of the citizens of the parent state, including those living on the secessionist territory. The right (if it is a right) to negotiate with the parent state is not related to any 'natural characteristics' of the group but to the decision of the majority in the territory to secede. The 'protection' account, while aiming to secure the protection of the rights of all concerned, is not only less politically arbitrary but less restrictive of the liberty of secessionists than those theories which link the general right of secession to a 'natural characteristic' of a group to which such a right is granted. In this sense at least, it fulfils the principal desiderata for a liberal-democratic theory of secession better than theories claiming a general right of secession.

³⁶

Philipott, above n 14.