What should be the Relationship between the Normative and the Empirical? Assessing 20 Years of International Normative Theorizing on Secession

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Secession, or “the withdrawal of a group and its territory from the authority of a state of which it is part,”¹ has long been a difficult subject across academic disciplines. For more than twenty years, but particularly since the early 1990s, it has been a topic of rather spirited debate also among political philosophers and normatively-inclined scholars of international relations. This is a welcome development. Although during the Cold War incidents of separatism were frequent, academic study of secession, as a phenomenon in its own right, was neither widespread nor systematic.² While its perceived importance increased after 1989 as separatist undertakings claimed the lives of hundreds of thousands around the globe and led to major international crises, including external military interventions, secession has generated much uncertainty and confusion among both practitioners and students of politics. Still, at the core of the phenomenon lies the question of who has the right to govern whom and in what jurisdictional domain, a problem that political philosophers are naturally disposed to tackle.

Marked by underlying discontent with contemporary global attitudes towards unilateral secession³ – principally with the fact that it is generally treated as illegitimate yet seems to be accepted when it is politically expedient – the debate has revolved around the fundamental question of who is entitled to break away from an existing state. In its course two rival responses emerged, both claiming to stem from basic liberal principles. The first, permissive view, known as the Primary Right theory, is that there should be a general right to secession rooted in the will of a territorial majority; though differences exists among its proponents over whether the right ultimately derives from individual or collective autonomy. The second, restrictive view, known

² One book-length treatment of secession during this period – from an international legal perspective – was Lee C. Buchheit, Secession: The Legitimacy of Self-Determination (New Haven, CT: Yale University Press, 1978). Within political science, secession was studied primarily by comparativists.
³ As is the case with normative theorists of secession, this essay concentrates only on unilateral secession – that is secession undertaken without prior consent of the parent state.
as the Remedial Right Only theory, is that there should be no more than a last-resort right to secession that would arise only in cases of grave and persisting injustice.

Despite the ever-expanding literature on the topic there has been, so far, no attempt to evaluate this scholarly exchange comprehensively. This paper proposes to assess the debate’s international dimension; that is the aspects that go beyond the domestic sphere of states containing separatist groups. While sympathizing with some points made in the course of the debate, I nevertheless contend that, to the extent they address international relations, the Primary Right and Remedial Right Only positions need to be re-evaluated. This is because both positions rest on the ideal theory approach to political philosophy which is inappropriate for the topic. Ideal theorizing seeks to provide solutions to problems that exist in the political world by appealing to abstract principles rather than sustained reflection on the normative foundations of that world. In contrast, this paper sees the task of political philosophy as it was traditionally understood in both ancient and modern times: to make sense of lived political experience and to propose better alternatives where that experience is found defective. I argue that normative theorizing about secession requires, and ought to start with, coming to terms with the normative underpinnings of its actual practice. Because it does not do so, the ideal theory approach is bound to give us not only little practical but also limited moral guidance for confronting the often complex dilemmas disclosed by that practice.

The paper proceeds as follows. Drawing on a representative sample of writers, it begins by outlining the debate between the Primary Right and Remedial Right Only positions. The second part then presents the argument by analyzing what is both the central and most questionable aspect of both positions: their notion of the “right to secede.” To provide a

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6 David Miller is the only contemporary theorist of secession openly skeptical about thinking in terms of the “right to secede.” See Miller, On Nationality (Oxford: Clarendon Press, 1995), ch. 4 and “Secession and the Principle of Nationality,” in his Citizenship and National Identity (Cambridge: Polity Press, 2000). There is also a number of writers, such as Kai Nielsen and Wayne Norman, who think of the right to secede as essentially involving only seceding groups and parent states, and do not really write about the international sphere.
contrast between ideal theorizing and normative theorizing proceeding from practice, the third part presents a classical liberal theory of secession formulated by John Quincy Adams, one of the greatest thinkers and practitioners of US foreign policy. His ideas are illustrative of a theory that not only wrestled with the political order of the day, but also in a number of ways transcended it. They may also be employed to ask critical questions about the contemporary global attitudes toward secession.

**Primary Right theories**

The secession debate began in earnest with the publication of Allen Buchanan’s 1991 book. Prior to this volume, normative work on the subject was scarce. Harry Beran’s writings were among the first that elicited a scholarly response. In a 1984 article, Beran noted that while “separatism is one of the major sociopolitical problems in the contemporary world,” secession was “a forgotten problem of political philosophy.” His goal was to formulate a normative theory of secession that would not merely inform those interested in the phenomenon, but would also serve as a moral guide for foreign policymakers. Beran constructed what he termed “a liberal theory:” secession was to be permitted “if it is effectively desired by a territorially concentrated group within a state and is morally and practically possible.”

Beran grounds his theory in the primacy of liberty in liberal political philosophy. Since John Locke, liberals deemed human beings to be self-governing choosers capable of rational belief and action. Given that humans are able to determine their personal as well political existence, political association cannot be based on force. People can be governed only with their freely given consent. The unity of the state must be voluntary. It is this overriding emphasis on consent that makes the theory a primary right one: what matters is whether a group decides to withdraw from a state, not whether it has good reasons to leave it. Beran makes clear, as did Locke and others before him, that the consent requirement cannot extend to every single individual: all political communities have to operate by the majority principle. But he nevertheless insists that any territorially-concentrated group should be a *prima facie* candidate

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for secession if most of its members unmistakably express such a wish, for example in a referendum.¹¹

Still, Beran stresses repeatedly the important qualification that his expansive right of secession could be operationalized only “if it is morally and practically possible.” Obviously concerned about how his theory could be implemented in practice, Beran sketches conditions that may validate withholding secession. He puts forward six restrictions in the article’s conclusion: a group could be denied its wish if (1) it is not large enough to assume the essential responsibilities of an independent state; (2) it denies wishes to secede to groups within if secession of those sub-groups is morally and practically possible; (3) it intends to mistreat or oppress sub-groups that wish to break away but cannot; (4) the territory it occupies is not a border one, so that secession would cut off the existing state; (5) the territory it occupies is culturally, economically or militarily essential to the existing state; and (6) the territory it occupies has a disproportionally high share of the economic resources of the existing state. Beran tempered the conclusion by emphasizing that his list is only preliminary and the last three conditions need not be insurmountable barriers to secession.¹²

Beran’s theory was followed by Primary Right theories of other writers. Avishai Margalit and Joseph Raz argue for the right to self-determination, which they define as a group’s “right to determine that a territory be self-governing, regardless of whether the case for self-government, based on its benefits, is established or not.”¹³ Their grounding of the right, which encompasses secession, differs from, and indeed stands in opposition to, Beran’s. According to Margalit and Raz, the right to self-determination stems from the inherent value of belonging to a group. “It is a group right, deriving from the value of a collective good, and as such opposed to in spirit to contractarian-individualistic approaches to politics.”¹⁴ Because of this, the right must be exercised for “the right reasons,” which Margalit and Raz take to be “to secure conditions necessary for the prosperity and self-respect of the group.”¹⁵ Beyond the weight given to groups as moral agents, however, their differences vis-à-vis Beran are insignificant.

¹⁵ Margalit and Raz, “National Self-Determination,” 459.
Margalit and Raz place two conditions on the exercise of the right. While espousing communitarian rather than contractarian liberalism, their first condition is also present in Beran’s account, albeit in a more specific context: a group demanding self-determination must be committed to respect for the basic rights of those within the group. The second condition, not mentioned by Beran, is that the damage to other countries be prevented or minimized. The advent of new states should not, as a matter of principle, adversely affect others, although what this means in practice will depend on the context of particular cases. Additionally, Margalit and Raz make explicit that a group’s right of self-determination imposes duties on others. They contend that “the first and most important duty arising out of the right is the duty not to impede the exercise of the right, i.e., not to impede groups in their attempts to decide whether appropriate territories should be independent, so long as they do so within the limit of the right.”

Margalit and Raz note that in practice this duty affects first and foremost the state that governs the concerned group, but they do add that there may be “a duty on other states to aid the relevant group in realizing its right, and thus to oppose the state governing the territory if it impedes its implementation.” Margalit and Raz qualify this statement by saying that “the extent of these duties must be subject to the general principles of international morality, which indicate what methods may or may not be used in pursuit of worthwhile goals and in preventing the violation of rights,” though they do not say what those principles are. They make it apparent, however, that this inquiry follows, rather than forms part of, articulation of the right of self-determination.

Christopher Wellman draws on various themes found in Beran. He develops what he calls a “hybrid” or “functional” model, which tries to take into consideration not only the state’s justification, but also its purposes. Wellman accepts that a state is justified only if the citizens have consented to it. But states are also created to perform specific functions and not all groups claiming statehood are capable of performing them. If a group falls into this category, its claims can be justifiably denied. The assumption of this argument is that unlimited secession, that is exercise of the general right to secede, could cause unacceptable harm to those within the group as well as to outsiders. Wellman does not provide an exhaustive list of the functions that the

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16 Margalit and Raz, “National Self-Determination,” 460.
17 Margalit and Raz, “National Self-Determination,” 461.
18 This argument extends to existing states too. If a state is unable or unwilling to perform its functions, outside annexation of its territory is justified. See Christopher Wellman, “A Defense of Secession and Self-Determination,” Philosophy & Public Affairs 24 (1995), 163.
state should perform, but it is evident that he has in mind a well-operating “liberal political state.” He describes the model most concisely when he writes, “any group may secede as long as it and its remainder state are large, wealthy, cohesive, and geographically contiguous enough to form a government that effectively performs the functions necessary to create a secure political environment” (italics original). Like Margalit and Raz, Wellman considers duties of parent states and third parties. “If both the seceding group and the remainder state would be able to perform the functions that a state must,” he argues, “then the secessionist party has a right to the territory and the remainder state has a duty not to interfere with the political divorce.” As for outsiders, Wellman, like Beran, wants the primary right to secede protected in international law. This law should guarantee that the groups entitled to secession do in fact accomplish it.

Just like the above authors, Daniel Philpott provides a measured defense of the right of self-determination which includes secession. He sees it as a basic right rooted in democratic theory. At the same time, self-determination is a contingent right, qualified by other liberal principles. Philpott requires that “a group must show that it is at least as liberal and democratic as the state from which it is separating, that its majority prefers self-determination, that it adequately protects minorities within its midst, and that it meets distributive justice standards.” Although he does not address generally the question of what duties arise from the right of self-determination, he too argues for its international legalization, and that would demand of states and intergovernmental organizations performance of a variety of tasks: “if self-determination were to attain the status of a genuine international right, then international law, and the bodies which enforce and interpret it, would grant recognition to peoples seeking federal autonomy or independence.”

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20 Wellman, “A Defense of Secession and Self-Determination,” 161-2. Wellman adds a qualifying note that “precisely what the size and nature of a group must be is a difficult empirical matter that could be decided only on a case-by-case basis.”
short- and medium-term prospects for institutionalization of this right. His conclusions on this score are gloomy. Confessing that the change is unlikely anytime soon, he notes, “outside the colonial context, self-determination is not a right and is understood by most international lawyers to be subordinate to territorial integrity.”

It is crucial to add that Philpott too sees assessment of the institutional possibilities of the right of self-determination as something that ensues, rather than accompanies, normative theory-building. As he puts it, “it is important to get the principles right before deciding what institutions would further them.”

**Remedial Right Only theories**

Remedial Right Only theorists are uncomfortable with the broad right to secede. They fear that institutionalization of this right could have harmful effects of considerable magnitude. They are concerned in this respect mainly about what they deem to be just states, liberal democracies. The danger is not only that the right may lead to the gratuitous and opportunistic dismemberment of particular democracies, but also that it threatens liberal democracy as such.

Primary Right theory came under challenge not long after the publication of Beran’s seminal article. In a direct response to Beran, Anthony Birch argued that “groups are not entitled to opt out of a democratically governed state unless very special circumstances obtain.” He based this contention on procedural fairness of liberal democracy, which lets those within have input into government decision-making:

> If groups have assented to the system in the first place it is unreasonable that they should walk out, with all the disruption this would cause, just because some decisions or elections go against them. Having the right of voice, without fear of retaliation, they do not also need the right to exit.

A majority vote for a region’s secession would be a necessary, but not a sufficient, condition for the right to secede. There must also be just cause. Birch identifies four such causes: (1) if the region was included in the state by force and its people have continuously refused to give assent to the union; (2) if the central government failed to protect the basic rights and security of the citizens of the region; (3) if the democratic system has failed to safeguard the legitimate political and economic interests of the region, either because the representative process is stacked against the region or because the central authorities actively ignore the results of that process; and (4) if

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the central authorities disregard or reject an original bargain by which the region entered into the union which was to preserve its essential interests against the majority. Beyond these conditions, however, Birch is, interestingly, less restrictive than some of the Primary Right theorists. Once one or more just causes give rise to the right to secede, neither doubts about the viability of the new state, nor adverse effects on the economic and strategic interests of the parent state, nor concerns about possible future mistreatment of minorities within the new state can affect it.

The most sustained critique of Primary Right theories and the most extensive treatment of secession have come from Allen Buchanan. The gist of his criticism is that “if a plebiscitary right to secede were recognized (either as a matter of constitutional or international law or by wide moral consensus), a territorially concentrated minority could use the threat of secession as a strategic bargaining tool” and that such a right would erode “the conditions that make it rational for citizens to sustain a commitment to practice the virtues of deliberative democracy.”

As it is for Beran, Buchanan’s starting position is the liberal philosophy of John Locke. However, in contrast to Beran, he does not emphasize Locke’s insistence that the basis of a state’s legitimacy is the consent of its people, but rather his proposition that the people have the right to overthrow their government if and only if their fundamental rights are violated, and more peaceful means of restring them have borne no fruit. The right to secede from an unjust state is in fact a moral equivalent of the right of revolution against an unjust governing regime, even if it pertains only to a portion of a state’s citizenry.

What are the causes justifying secession? In his 1991 book and subsequent articles Buchanan argued that a group has a right to break away principally if: (1) it suffered from large-scale and continual violations of basic human rights (as, for example, East Pakistan did prior to its unilateral declaration of independence as Bangladesh); and (2) its previously sovereign territory was unjustly taken by another state (as the three Baltic republics, conquered by the Soviet Union in 1940, did in 1991). In his 2004 book, having reflected on the events of the

32 Buchanan, “Theories of Secession,” 35.
intervening period, he added a third one: serious and persistent violations of intrastate autonomy agreements by the state (as in the cases of Chechnya and Kosovo).\textsuperscript{33}

Buchanan addresses both what duties arise out of the right to secession and how the latter may be institutionalized. To say that a group has the right to secede means not only that it is permissible for the group to attempt to establish its own state, but also that “others, including the state in which the group is now located, are obligated not to interfere with the attempt.”\textsuperscript{34} Buchanan makes clear that this does not include the duty on the part of third states to recognize, when the attempt is successful, the new entity as a sovereign state. Recognition of entities created through rightful secessions is conditional on their willingness to satisfy at least minimal justice-based criteria, all of which are a concern to most Primary Right theorists too: human rights, minority rights, democracy and adherence to international law.\textsuperscript{35}

Buchanan takes institutional questions surrounding his theory extremely seriously. He contends that “moral theorizing about secession can provide significant guidance for international legal reform only if it coheres with and builds upon the most morally defensible elements of existing law.”\textsuperscript{36} Buchanan maintains that his theory is more realistic and progressive than that of Primary Rights theorists.\textsuperscript{37} However, while spending a great deal of time outlining how existing international law ought to change, he does not, in contrast to, say, Philpott, explore the actual prospects for the many changes he advocates.

**Primary Right and Remedial Right Only theories examined**

It is apparent from this survey that all Primary Right and Remedial Right Only theorists are deeply concerned about how their theories fit the “real world” and most also ponder the question of how the theories can be institutionalized, or at least render moral guidance to practitioners. But it is equally evident that their confrontation with the real world is essentially a second-order activity. The first order of business is to work out, proceeding from some abstract proposition about consent, nationhood or justice, circumstances under which secession is to be deemed

\textsuperscript{33} Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004), 353, 357. Norman adds one more just cause: a group is also entitled to secede when “the group’s culture is imperiled unless it gains access to all of the powers of a sovereign state.” See Norman, “The Ethics of Secession,” 41.

\textsuperscript{34} Buchanan, *Justice, Legitimacy, and Self-Determination*, 333-4.

\textsuperscript{35} Buchanan, *Justice, Legitimacy, and Self-Determination*, 335-6 and ch. 6.

\textsuperscript{36} Buchanan, “Theories of Secession,” 32.

\textsuperscript{37} Buchanan, “Theories of Secession,” 59-60.
morally right; only then are the ideal normative theories qualified and refined by considerations of actual world politics. The central aim of this paper is to show that this *a priori* method is problematic because it does not confront directly the context in which human beings in fact undertake and react to secession. Normative theorizing about secession must take considerations of actual world politics fully onboard from the outset.

Let us start with the central concept used by all the theorists under discussion – the right to secede. This term is for the most part employed casually, but are the meaning and implications of the institutionalized international right to secede self-evident? Two types of rights are commonly distinguished: negative and positive. R.J. Vincent defines negative rights as claims “to secured space in which subjects might pursue their own concerns without interference.” In contrast, positive rights are claims “that the space be filled with something.”

While negative rights require of those against whom they are held mere non-interference, positive rights establish for their holders entitlements to the provision of goods deemed necessary for a meaningful life. The latter are thus far more demanding. Each type of right creates corresponding obligations for those against whom they are held, but negative obligations are less taxing and costly than positive ones. To give an example from domestic politics, it is far easier to guarantee the right to religious freedom, which requires that a state not intrude on religious beliefs and practices of its population, than the right to health care, which demands that the state supplies to its citizens physicians, nurses, hospitals, ambulances, etc. It is for this reason that the establishment of new positive rights tends to be challenging and requires broad social consensus. The citizens of both Sweden and the United States enjoy the right to religious freedom, but only the former have the right to health care – the American people and their public institutions have so far found no agreement on the issue. The most fundamental attribute of rights is that they drastically reduce decisionmaking discretion of those against whom they are held. By entailing obligations, rights eliminate discretion with respect to ends; those against whom rights are held retain it at most with respect to means. In the case of positive rights this means that if a person is entitled to the provision of something, then that something must not be rightfully denied to the person. If I have a right to health care *vis-à-vis* the Swedish government and ask for it in case I become ill, then the Swedish government has no other choice but to provide the care, though it perhaps may have a choice of doctors or medical facilities for me.

Whether they fully realize it or not, secession theorists who go beyond moral and/or institutional theorizing about secession within the parent state understand the right to secede as a positive international right. The negative international right to secession would simply require outsiders to abstain from interfering with separatist attempts, and such non-intervention may well end with the parent states defeating the separatists regardless of how fervently they might have expressed their aspiration to be independent or how strongly justice might have been on their side.\(^{39}\) Moreover, the requirement to desist from interfering with separatist attempts would not need institutionalization or become an innovative moral target – non-intervention in the domestic affairs, which include separatist attempts, is a long-standing cardinal rule of international law.

If positive rights are challenging to institute domestically, an obvious question is how they have fared in international society. Indeed, instances where states or groups within states would hold positive rights against other states or international organizations have historically been a great rarity.\(^{40}\) There are two major reasons for this. First, positive rights would impose on states both positive obligations towards others and dramatically reduce their discretion in decisionmaking. States, as constitutionally independent entities, however, see their primary obligations as being towards the interests of those within their borders, and to fulfill these obligations they are reluctant to abandon their decisionmaking freedom. This is no less true of liberal democracies, constitutionally mandated to render protection and foster welfare of their citizens, than of countries with other types of government. But second, and no less importantly, states have difficulties in formulating positive rights because they disagree on various substantive and procedural aspects of justice. Any proposal to institute a right to secede can be

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\(^{39}\) Even though in the quote on p. 12 Buchanan talks only about non-interference, his writings as a whole reveal that he has in mind the positive international right to secede. In case the parent state works to suppress a rightful claim, he clearly expects third parties to act on behalf of that claim. See Buchanan, “Secession, State Breakdown and Humanitarian Intervention,” in *Ethics and Foreign Intervention*, eds. Deen K. Chatterjee and Don E. Schied (Cambridge: Cambridge University Press), 189-91, 197, 209 and *Justice, Legitimacy, and Self-Determination*, 436-8, 445. The same is true for Copp. See Copp, “International Law and Morality in the Theory of Secession,” 226, 231-6. Likewise, Beran, who otherwise does not devote much attention to the explicitly international dimension of secession, writes that third parties “have a correlative obligation not to interfere with the exercise of the right, but do not have an obligation to assist in its exercise.” At another point in that chapter, however, he expresses a belief that “stronger international peace-keeping forces and a stronger international court than exist now would improve the ability of communities to exercise their right of self-determination.” But how is this improvement to occur if outsiders are not to interfere in the exercise of the right? See Harry Beran, “A Democratic Theory of Political Self-Determination for a New World Order,” in *Theories of Secession*, ed. Percy B. Lehring (London: Routledge, 1998), 34, 45.

\(^{40}\) There has been, however, rising number of agreements where states would bind themselves internationally to guarantee positive rights of their citizens. The most significant of them has to date been the International Covenant on Economic, Social and Cultural Rights (1966).
expected to be extremely contentious. Modern international society has witnessed countless secessionist attempts since the Dutch Act of Abjuration of 1581 renounced Spanish rule, but there has never been agreement on any general category of claimants entitled to unilateral pullout from existing sovereign states.

If groups were to have a genuine, enforceable positive right to secede and wanted to exercise it following a majority vote or a solemn proclamation of just causes, then outsiders would be under obligation to – one way or another – help bring about their independence. The implication of this obligation in practice would be that whenever the interests of their own people would clash with the wishes of groups entitled to break away, states would have to disregard the former and act on the latter. Given that demands for secession from sovereign states have almost always been contested, that would most of the time mean taking action against recalcitrant parent states. “Taking action” against them could not exclude the resort to coercive means – without them the right to secede may simply not be upheld.41

The chances that international society is going to institute a right to secession, whereby unilateral declarations of independence by groups, no matter how justified, would obligate foreign countries to take steps towards achievement thereof, are extremely remote. This is not only because it would be against interests of states to get automatically involved in contentious situations that have nothing to do with them and may well harm their citizens’ welfare. It is also because it would be against international interests to institute rights that would jeopardize peace and security, a key, if not the key, international value. The only example of independence by positive international right is post-1945 decolonization,42 but that right followed the global consensus that colonial status was no longer admissible. In such an atmosphere it was relatively unproblematic to press those very few powers that rejected the consensus, such as Portugal or South Africa, to abandon their colonies.

But if operationalization of the right to secede by individual states is too vexing to contemplate, cannot this be done by some international organization? Several secession theorists indeed suggest that the right could be authoritatively interpreted and decided upon by an impartial international tribunal instituted or empowered for that purpose. Buchanan proposes

that the UN General Assembly Committee of Twenty-Four be mandated to perform these tasks.\textsuperscript{43} Wellman, inspired by David Copp’s proposal,\textsuperscript{44} prefers the International Court of Justice.\textsuperscript{45} Philpott can envisage a range of options, including “regional organizations like NATO.”\textsuperscript{46} The chances that a tribunal with these functions would come into being, however, are also quite slim. Under current international law, any institution with such functions would require the consent of those would be bound by its decisions. But how many states, liberal democratic or otherwise, can be expected to authorize an international organization to rule on claims that can possibly lead to losses of their own territory? One of the main constitutional responsibilities of central governments is to protect their countries’ territorial integrity, so it is hard to imagine that there would be any candidate voluntarily submitting to a judicial or quasi-judicial scheme under which its territory can be taken away by a decision of an international body.

Even if states, which by their very nature are partial on the matter of safeguarding their territorial integrity,\textsuperscript{47} could somehow be persuaded to establish an impartial tribunal for adjudicating the rightfulness of secessionist claims and, thus, potentially compromise that integrity, who would enforce the tribunal’s judgments and by what means? Would all states or only the powerful ones be charged with enforcement? Could military force be used against a parent state that rejects the tribunal’s decisions and refuse to vacate the territory that was certified to have a right to secede,\textsuperscript{48} or, alternatively, against a group bent on secession despite the judgment that it has no right to it? What if the dissenting parent state happens to be powerful? What if the state charged with enforcement has a vital interest – for example one involving the security of its citizens – in maintaining friendly relations with the dissenting parent state? How would the tribunal treat territorially-concentrated groups that were to subsequently secede from the territories that were found to have a right to secede? And what about non-members? How would tribunal members treat separatist cases within non-member states given that the protection

\textsuperscript{43}Buchanan, \textit{Justice, Legitimacy, and Self-Determination}, 359.
\textsuperscript{44}Copp, “International Law and Morality in the Theory of Secession,” 231-6.
\textsuperscript{45}Christopher Wellman, \textit{A Theory of Secession}, 158.
\textsuperscript{46}Philpott, “Self-Determination in Practice,” 85.
\textsuperscript{47}Copp, who alone addresses possible objections to the impartial tribunal proposal, contends that its principal advantage is that it would be render clear and definitive resolutions of drawn-out disputes. See Copp, “International Law and Morality in the Theory of Secession,” 236-8. But apart from the problem that states may not believe that impartiality can be expected in international decisions on who may and may not secede, he ignores this basic duty that constitutions of sovereign states normally assign to central governments.
\textsuperscript{48}On this question, Copp states, without any elaboration, that military enforcement would not normally be wise. See Copp, “International Law and Morality in the Theory of Secession,” 233-4. Yet justification of this position is of critical importance – it would likely pinpoint real limits to international legalization of the right to secede.
of territorial integrity against external encroachment is one of the basic state rights under the UN Charter? Secession theorists do not deem these considerations of interests, power and law as crucial for normative theory construction even though, by their very essence, they give rise to weighty normative questions.\(^{49}\)

Furthermore, which set of principles of justice would serve as the basis for the commission’s deliberations and judgments? Can states sitting on the tribunal be expected to agree, either in general or with respect to specific cases, on procedural and substantive criteria that would distinguish justifiable from “vanity”\(^{50}\) secessions? If secession theorists, all Western liberals, cannot agree on these criteria – and, as seen, no two theorists have the exact same criteria and qualifications even when they share the general outlook – how, given the historical record, can states? Buchanan refers to “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,”\(^{51}\) but it would be quite challenging to identify generally agreed-upon causes permitting unilateral secession in international practice. Apartheid South Africa and the “safe zone” in the Kurd-inhabited parts of Iraq\(^ {52}\) are good examples of widespread international consensus on unacceptable state conduct, but one cannot infer from these episodes that such conduct would constitute just cause for unilateral secessions.

The best evidence for this doubt is the sole instance of generally recognized unilateral secession since 1945, that of East Pakistan in 1971.\(^ {53}\) While there was widespread repulsion at

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\(^{49}\) On this point, see also Margaret Canovan, *Nationhood and Political Theory* (Cheltenham: Edward Elgar, 1996), 122-4.

\(^{50}\) Norman, “The Ethics of Secession as the Regulation of Secessionist Politics,” 53.

\(^{51}\) Buchanan, “Theories of Secession,” 51.

\(^{52}\) Buchanan, “Theories of Secession,” 50.

\(^{53}\) Buchanan (“Democracy and Secession,” 15), Philpott (“Self-Determination in Practice,” 98) and Moore (“The Ethics of Secession and Postinvasion Iraq,” *Ethics and International Affairs* 20 (2006), 77) claim that there have been multiple successful unilateral secessions in the post-Cold War period. All of the new states, however, emerged with the consent of the central governments and in Yugoslavia, where this was not the case, the federal republics were offered recognition by the European Community members and other countries only after four out of the six Yugoslav republics had declared their independence, pulled out from the federal government, and the outside world had concluded that the old federation dissolved. The end of Czechoslovakia and the Soviet Union cannot even be called secessions – those federations dissolved constitutionally, even if the beginning of their end involved attempts at secession. The distinction is crucial because, while it allows state dissolution, international society has regarded secessions without the consent of the sovereign government as illegitimate. When the new states of Croatia, Bosnia and Herzegovina, the Federal Republic of Yugoslavia, Moldova, Georgia and Azerbaijan faced secessionist movements during the 1990s, the separatist entities were not recognized because of their unilateral character. For more details, see James Crawford, “State Practice and International Law in Relation to Secession,” *The British Year Book of International Law 1998* (Oxford: Clarendon Press, 1999).
the atrocities committed by the Pakistani army in East Pakistan, there was no agreement on whether the cause of those who wanted to give birth to a sovereign Bangladesh was just. India’s military intervention in the conflict, although partly justified by humanitarian concerns, was actually widely condemned when debated at the United Nations, not least by numerous liberal democracies. What is more, neither individual states (including those supporting India) nor any of the UN bodies suggested that there was a right to secede from even extremely repressive governments.\(^5^4\) It seems that Bangladesh ultimately owes its independence to the eventual international acquiescence to India’s victory in East Pakistan.

If the more recent Iraqi Kurd or Kosovo Albanian cases are anything to go by – in both UN Security Council Resolutions 688 (1991) and 1244 (1999), respectively, upheld the territorial integrity of their parent states – it is not clear that states are today any closer to agreeing that gross human rights abuses or genocide may give rise to a right to secede.\(^5^5\) And one must remember that even when states would agree in general that either of these conditions warrants secession from the perpetrator state, they would not necessarily have to agree that the condition has been reached in a particular instance. NATO’s Kosovo intervention demonstrated the challenge of applying general criteria to specific cases: what British Prime Minister Blair characterized as a justifiable intervention to stop genocidal behavior, Russia and China, two permanent members of the UN Security Council, portrayed as an illegal aggression against a sovereign state and strenuously objected to the use of the term genocide.

Finally, there is an even deeper question. If one believes in the liberal concept of self-determination – that is, in autonomous and reason-possessing individuals who are “competent to direct their own lives”\(^5^6\) – can an external tribunal authoritatively determine to what sovereignty should secessionist groups belong? Should not a group’s will, to the extent it does not directly harm third parties, be paramount even if it clashes with whatever conditions the tribunal would


\(^{55}\) While Kosovo has been, controversially, recognized as an independent state by 80 countries since 2008, no recognizing government suggested that Kosovo had a right to secede. In fact, most went to great lengths to emphasize that Kosovo was a ‘unique’ case and its recognition a one-time exception to the principle of territorial integrity. See Heiko Krueger, “Implications of Kosovo, Abkhazia and South Ossetia for International Law: The Conduct of the Community of States in Current Secession Conflicts,” Caucasus Review of International Affairs 3 (2009): 121-142.

agree upon? Provided that it is clearly demonstrated, is it not the group’s conclusion that it suffers intolerable injustice or deprivation that should be decisive? Is not outside determination of political and legal status philosophically incompatible with self-determination?

There is, of course, nothing wrong with secession theorists being dissatisfied with the contemporary global institutional attitudes towards secession and advocating that some version of the right to secede be enacted internationally. However, this cannot be done without probing fully into what – given the moral and legal realities of the existing international system – adoption of such a positive right entails, and then offering a normative rationale for why it should be adopted. In particular, secession theorists cannot fail to respond, and to justify their responses, to at least the following fundamental questions: What are a state’s proper responsibilities towards its own citizens and towards outsiders, and what if the two sets of responsibilities clash? What if states’ conceptions of the responsibilities towards outsiders are at odds with one another or with existing international law? When, and by whose decision, should coercive intervention be undertaken in world politics? What is a state’s proper constitutional role with respect to its territory? These queries need to be part and parcel of normative theories of secession, and not something to be tackled ex post when a theory is to be reconciled with the real world. The next section will offer an example of a normative theory of secession that does just that.

**John Quincy Adams’s theory of secession**

Although it is a familiar fact that in the course of his long and distinguished public career John Quincy Adams articulated influential US foreign policy tenets, it is not widely known that he had a compact set of views on secession akin to a normative “theory.” Adams, however, developed such views when he faced, in the capacity of secretary of state, the attempts of the Spanish and Portuguese American territories to liberate themselves from their European sovereigns.

The unilateral secessions in Latin America in the 1810s and early 1820s generated a great deal of interest and support in the United States as there was a *prima facie* affinity between them and the US struggle for independence against Britain. The Latin Americans, just like the Americans some forty years previously, were not only engaged in a separatist conflict against their parent country, but their actions were also defended in similar terms. Still, there was considerable uncertainty as to what the US policy towards the developments in Central and
South America should be. Adams came to play the pivotal role in shaping the US position towards Latin America and in the process he put forward general principles of policy toward foreign secessionist bids.

In Adams’s view, the question of the “right to secession” had two distinct dimensions - one from within the country where secession was to take, or taking, place and the other from outside that country. Holding classical liberal views of US founders, Adams believed that each people had a natural, pre-political right to determine their government. Because “lawful government was a compact and not a grant,” Adams shared Locke’s view that this right entitled the governed to overthrow and replace the government violating the compact. The right of revolution undoubtedly included the right to secession: the US Declaration of Independence opened with a general maxim that “the laws of nature and nature’s God entitle” a people to “throw off” their oppressive government by dissolving “the political bonds which have connected them with another [people]” and by assuming “among the powers of the earth the separate and equal station.”

Adams believed that a political community had a legitimate ground to invoke the right to secession when its basic, inalienable rights were repeatedly and seriously infringed. But in international terms, that is, in terms of the relationship between a political community and international society, this right was negative in character. Once invoked by a political community, it obligated third parties no more than to respect the attempt to leave what that group deemed to be the unjust parent state. The right did not obligate third parties to help bring the attempt, if opposed by the parent state claiming the group broke away unjustly, to a successful conclusion. Indeed, only the political community in question could do so. Outsiders could have opinions about the justice of foreign secessionist undertakings, but they had no right to actively intervene on their behalf. With respect to the revolting Spanish Americans, Adams said: “I am satisfied that the cause of the South Americans, so far as it consists in the assertion of

independence against Spain, is just. But the justice of a cause, however it may enlist individual feelings in its favor, is not sufficient to justify third parties in siding with it.”

Why were outsiders not to side with what they deemed to be just causes? In his official and private writings Adams referred to three distinct reasons: legal, moral and prudential. Adams made clear that acknowledging the right of Spanish Americans to revolution and independence did not put an end to the obligations of the United States towards Spain under international law. That law required third parties not to take part in internal disputes of foreign countries, including secessions. The United States was to respect Spain’s sovereignty and territorial integrity in Central and South America as long as Spain “could entertain a reasonable hope of maintaining the war and of recovering her authority.” For example, Adams argued against recognizing Spanish American territories prematurely. He contended that to do so would have meant “trespassing on [the US government’s] duties to Spain by assuming as decided that which was precisely the question of the war.”

Aside from its entrenchment in law, non-intervention was also warranted on distinct moral grounds. Adams believed that while the inalienable rights cited in the US Declaration of Independence were universal, securing them was the responsibility of particular political communities. In the world of multiple states set apart by discrete political existence, each people formed a distinct “moral person” and each member of a people was “personally responsible for his society.” This meant not only that the primary responsibility of a country’s statespersons was to their polity, but also that authoritative judgments of a secessionist bid belonged to those directly affected by it rather than outsiders. “By what right we could take sides?” Adams asked with respect to the contests in Latin America. “Who in this case of civil war constituted us the judges which of the parties has the righteous cause?” (italics original). Just as outsiders could not judge authoritatively the merits of foreign peoples' claims, so they could not intervene coercively to bring them about. The attainment of independence could not but depend on the

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60 Adams to Anderson, 194.
efforts of a people who desired it. In fact, a people’s determination to be an independent country was most convincingly expressed through the ability to establish it on the ground.63

Finally, Adams was convinced that there were also compelling prudential reasons for non-intervention. In his view, foreign secessionist contests, including those couched in the language of freedom, could disguise less than noble human motives. Coercive intervention in them could lead to perilous entanglements abroad that might have harmful consequences for society at home; yet the principal concern of the US government had to be the well-being of the American polity. Reacting to Congressional voices calling for US intervention on behalf of Spanish American secessionists, Adams declared:

Wherever the standard of freedom and independence has been or shall be unfurled, there will [America’s] heart, her benedictions and her prayers be. But she goes not abroad, in search of monsters to destroy. She is the well-wisher to the freedom and independence of all. She is the champion and vindicator only of her own…She well knows that by once enlisting under other banners than her own, were they even the banners of foreign independence, she would involve herself beyond the power of extrication, in all the wars of interest and intrigue, of individual avarice, envy, and ambition, which assume the colors and usurp the standard of freedom. The fundamental maxims of her policy would insensibly change from liberty to force…. She might become the dictatress of the world. She would be no longer the ruler of her own spirit64 (italics original).

The difference between the approaches of contemporary theorists and John Quincy Adams to normative theorizing about secession is becoming apparent. While the former presume that moral ideals, once formulated, are there to overcome political reality, Adams thought that political reality disclosed a normative order that one had to come to grips with first. On the one hand, his moral sensibilities were at one with the Declaration of Independence’s belief that secessions should be initiated only in cases of serious injustice and thus close to

63 This was hardly an unrepresentative or isolated view. Classical liberal thinkers such Immanuel Kant and John Stuart Mill argued that genuine self-determination could be achieved only by one’s arduous efforts. In Preliminary Article no. 5 of *Perpetual Peace*, for instance, Kant prohibits foreign intervention into an ongoing separatist conflict. “As long as this internal conflict is not yet decided the interference of external powers would be a violation of the rights of an independent people who is merely struggling with its internal ills.” See “Perpetual Peace: A Philosophical Sketch,” in *Immanuel Kant: Political Writings*, 2nd edition, ed. Hans Reiss (Cambridge: Cambridge University Press, 1991), 96. Mill argued that “the only test possessing any real value, of a people’s having become fit for popular institutions, is that they, or a sufficient portion of them to prevail in the contest, are willing to brave labour and danger for their liberation…If they have not sufficient love of liberty to be able to wrest it from merely domestic oppressors, the liberty which is bestowed on them by other hands than their own will have nothing real, nothing permanent. No people ever was or remained free, but because it was determined to be so…” See “A Few Words on Non-Intervention,” in *John Stuart Mill: Essays on Politics and Culture*, ed. Gertrude Himmelfarb (Garden City, NY: Doubleday and Company, 1962), 410-1.

Remedial Right Only theorists. On the other hand, Adams argued the responsibility for the decision to secede rests with the secessionists who had directly experienced government of their parent country. In the final analysis, he therefore accepted that the authoritative judgment regarding the grounds for secession belonged to the will of the seceding group, a position not unlike that of Primary Right theorists. The greatest divergence in approach between contemporary secession theorists and Adams is with respect to the international arena: whereas the former imply or assert that foreign interventionism should be incorporated into the right to secede, Adams considered the question from different angles and rejected it.

Still, even though the right to secede was itself negative, Adams did not understand secessions to impose on outsiders exclusively negative obligations of non-interference. The requirement that third parties refrain from intervening in the self-determination process obviously demanded that they respect the self-determination outcome. Adams maintained that “in every question relating to the independence of a nation, two principles are involved; one of right, and the other of fact; the former exclusively depending upon the determination of the nation itself, and the latter resulting from the successful execution of that determination” (italics original). Once a political community established itself as a de facto independent state, it had, Adams insisted, a right to demand foreign recognition as a sovereign state. A collectivity that had attained statehood in demonstrable fact was entitled to acknowledgment of that statehood in law due to the decisive normative meaning of the achievement: the formation of a stable, effective entity in which the population habitually obeyed the new rulers was taken as an authoritative expression of the will of the people to constitute an independent state. In the absence of international agreement as to what constitutes a valid method of verifying popular will, any foreign assessment thereof was necessarily presumptive: as neither its founding nor continued existence could come to pass without at least tacit approval by its inhabitants, the de facto state was taken to embody, in the words of Adams’s predecessor in office Thomas Jefferson, “the will of the nation substantially declared.”

The right to recognition could not be, as such, refused. A third party could postpone recognition, but neither arbitrarily nor indefinitely: there had to be compelling reasons for a

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65 John Quincy Adams, Secretary of State, to Joaquín de Andagua, Spanish Minister to the United States, April 6, 1822, in Manning, Diplomatic Correspondence, Vol. 1, 156.
delay, such as those pertaining to regional or international security. It was also reasonable of states responding to a request for recognition to ask the entity that otherwise qualified for recognition to commit to fulfilling extra conditions which were of general interest to international society. As part of the recognition process, existing states could call for guarantees that they themselves, or their important principles and institutions, would not be endangered by new states.

It is evident that Adams’s theory of secession took seriously both normative considerations arising out of contemporary domestic and international politics as well as liberal principles. It is no less apparent that the theory propounded a balanced formula: it sought to find equilibrium between legitimate rights and interests of secessionist groups, parent states and third parties/international society. Naturally, Adams could not provide answers to serious challenges that arose during subsequent secessionist conflicts, some of which are still with us. One of them was how to draw boundaries of breakaway entities where regardless of how one drew, diverse but intermingled populations holding different political allegiances nevertheless remained. Another was that his theory presumed that in the course of contests over sovereignty inhabitants stayed where they were, and so it could offer no guidance in case massive involuntary population transfers did in fact occur. International practice found a response to the former problem – repeatedly conditioning recognition of new states by their pledge to respect minority rights – and found no uniform response to the latter one. Adams’s theory, the key tenets of which were adopted autonomously by British foreign policymakers of the same period, nonetheless served as a basis for the practice of recognition of de facto statehood until decolonization.67

Can Adams’s ideas offer any enlightenment to those who think about secession in the present postcolonial world? I believe they can, though limited space in this paper allows for only a brief sketch of the most important insights. Adams’s world was one in which there was typically no agreement between a secessionist group and its parent state on whether or by what procedure the former may become sovereign, and this is fundamentally our world too. By believing that when this disagreement escalated into an open conflict third parties were not to take sides, Adams refused to favor governments of existing states over secessionist groups. Today, in contrast, existing states, as both Primary Right and Remedial Right Only theorists note

in frustration, are in effect privileged in that their territorial integrity is protected against unilateral secession. Since decolonization, which both tripled UN membership and gave rise to a considerable number of weak and fractured states, secessions without the consent of the parent states have been considered illegitimate regardless of merit or success on the ground. Aside from espousing the general state view that external legitimization of unilateral secessions threatens domestic and international stability, liberal democratic countries have apparently come to believe that given the right constellation of democracy and human and minority rights, diverse groups can learn to coexist within any given jurisdiction, and so international borders ought not to change.\(^{68}\) Territorial integrity has established a priority over non-colonial self-determination also because of arguments espousing liberal values.

Adams would reject the idea that third parties could, either in law or in fact, guarantee a country’s territorial integrity against challenges from within, against that country’s citizens. He argued that states had to keep themselves unified by earning the loyalty of all who lived within their boundaries. If they failed to do so, outsiders were not to aid in restoration of their authority. Adams was not adverse to the idea of third parties helping settle secessionist conflicts if the parties to them agreed, but he insisted that foreigners should remain neutral as to the substance of the conflict. He would have very likely disapproved of the post-November 1961 UN intervention to crush the Katangan secession, British weapon supplies to Nigeria to help it defeat Biafra or UN Security Council resolutions affirming the territorial integrity of Iraq, Croatia, Bosnia and Herzegovina, Somalia, the Federal Republic of Yugoslavia or Georgia against challenges from their own people. He would have seen all of these as interfering with the requirement that government ought to be based on the consent of the governed. On the same ground, he would probably have advocated recognition (not necessarily unconditional) of entities such as Somaliland that have beyond any reasonable doubt relinquished loyalty to their parent states and managed to establish themselves as state-like communities demonstrably backed by their population.

One can, of course, disagree with Adam’s theory of secession or its parts. What cannot be disputed, however, is that Adams understood normative thinking about secession as requiring

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consideration of its actual occurrence, that he considered the phenomenon in the entire context of domestic and world affairs, and that he provided normative justification for each element of his theory.

**Conclusion**

Allen Buchanan contends that “the task of the political philosopher…is to make a persuasive case for trying to transcend the current limits of political feasibility in pursuit of moral progress.”\(^{69}\) Such an understanding of the role of the normative theorist is certainly legitimate. It is also legitimate to argue that “an account of the right to secede, if it is to provide guidance for reforming international law, must be embedded in a more comprehensive moral theory of international legal institutions.”\(^{70}\) But Buchanan and other secession theorists are mistaken to believe that they identified “the appropriate moral principles involved”\(^{71}\) and that the only question left to be worked out is an institutionalization of these principles. The obstacles that the theorists face are not of a technical but of a basic normative sort. This is because in arriving at their respective positions, they have not struggled with, and responded to, a variety of normative issues surrounding secession which have been presenting themselves in world affairs. And this is precisely what a viable normative theory of secession must do.

Kai Nielsen writes that “without the ideal theory we would not know in what direction we should try to go in the correcting of our actually existing institutions.”\(^{72}\) But before prescribing remedies, we must inquire why the existing institutions are the way they are. They were, after all, created by human beings to serve some intelligible purposes. The approach favored here forces us neither to assume their limitations nor to give up on our ideals. It rather asks us to examine with an open mind what lies behind those limitations (i.e. by taking normative justifications of past and present state policies and international law seriously), to sort out morally acceptable principles from unacceptable ones, and, after doing so, to propose a better alternative. To believe that moral ideals with respect to the international governance of secession need to be set apart from empirical reality because “the rights and norms outlined in…international law, which [has] been created by states, run strongly in favor of maintaining

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\(^{69}\) Buchanan, “Theories of Secession,” 42.

\(^{70}\) Buchanan, *Justice, Legitimacy, and Self-Determination*, 348.

\(^{71}\) Philpott, “Self-Determination in Practice,” 98.

\(^{72}\) Nielsen, “Liberal Nationalism and Secession,” 131.
the territorial integrity of states”⁷³ is misleading. As also attested by the theoretical example of John Quincy Adams and the recognition practice to which his ideas helped give rise, grappling with actual politics is a precondition for any reasonable hope of political change.

⁷³ Moore, *The Ethics of Nationalism*, 240.