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# In Defense of Self-Determination\*

*Daniel Philpott*

## INTRODUCTION

Thinking back upon the fracas over self-determination at the 1919 Conference at Versailles, former Secretary of State Robert Lansing recorded that the concept was “loaded with dynamite. . . . It will raise hopes which can never be realized. It will, I fear, cost thousands of lives. In the end it is bound to be discredited, to be called the dream of an idealist.”<sup>1</sup> Today, new struggles under new flags in the former Yugoslavia and the former Soviet Union remind us of bloodshed in Biafra, Kurdistan, Bangladesh, and the Confederate States of America. Self-determination unfolds its pockmarked history, inducing skepticism.

To the democrat, though, this skepticism is far from easy. Despite its miscarriages, self-determination runs deep in democratic history, often traced back to the French Revolution, when Sieyès and others preached that Rousseauian self-government means not only democracy, but also an independent nation. And if the French Revolution is only partially vindicated, Americans find and celebrate the same link in their own revolution. The democratic intuition in international relations is that just as self-governing people ought to be unchained from kings, nobles, churches, and ancient custom, self-determining peoples should be emancipated from outside control—imperial power, colo-

\* I presented an earlier version of this article at the annual meeting of the American Political Science Association, Chicago, September 3–6, 1992, and a more advanced version at the annual meeting of the American Sociological Association, Miami, August 13–17, 1993. I wrote it as an associate at the Center for International Affairs at Harvard University. Those who read and commented upon the manuscript, to whom I owe thanks, include Tony Anghie, Peter Babej, Lea Brilmayer, Ted Robert Gurr, Amy Gutmann, Mark Henrie, Stanley Hoffmann, Robert Jackson, Scott Kim, Will Kymlicka, Lynda Lange, Stephen Macedo, David Mapel, Henry Nau, Joseph Nye, John Owen, Thomas Pogge, John Rawls, Timothy Shah, Michael Joseph Smith, Metta Spencer, Mike Tomz, Stewart Wood, Ngaire Woods, and an anonymous referee.

1. Robert Lansing, *The Peace Negotiations, a Personal Narrative* (1921), pp. 97–98; quoted in Alfred Cobban, *National Self-Determination* (Oxford: Oxford University Press, 1945), p. 19.

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nial authority, Communist domination. Self-determination is inextricable from democracy; our ideals commit us to it.

This intuition, I want to defend. I argue what may at first appear rash: that any group of individuals within a defined territory which desires to govern itself more independently enjoys a *prima facie* right to self-determination—a legal arrangement which gives it independent statehood or greater autonomy within a federal state. The form of self-determination I leave open: different situations require different solutions. Secession will most likely incite Balkan fury and should be a last resort; illiberal regimes and certain baneful results of fissure also limit the principle. In the end, the argument is more qualified and less iconoclastic, heeding history's wisdom and minding skepticism's sagacity.

About qualifications, I will say more; the most pressing task is justifying the principle. Self-determination—again, an actual legal arrangement that provides a group independence or more legal authority within a state—is rooted in moral autonomy, which not only grounds democracy and, derivatively, self-determination, but is also the map with which we navigate the minefield of qualifications which threaten to explode on us. These include illiberal groups, groups that are mingled with minorities, and groups simply less than unanimous about political divorce. Provisions for them are exceptions; they make the right of self-determination *prima facie* rather than absolute; and they ensure that self-determination is consistently liberal and democratic.

In recent years, as nations, peoples, and tribes in Bosnia, Quebec, Russia, Kurdistan, and Sri Lanka have jettisoned their envious servitude and inspired their citizens to vie through arms and protest for the pictured glories of statehood, the denouement of their historical destiny, liberal democratic philosophers have responded with new arguments, both sympathetic and skeptical. By now, three views are apparent. First is the ensconced orthodoxy, drawn from the United Nations (UN) Charter, subsequent UN covenants, and the body of international legal interpretation: paying tribute to self-determination's virtue, affirming that "all peoples" have the right to "self-determination," these authorities prefer hypocrisy, subordinating peoples' separatist claims to the venerable principle of territorial integrity.<sup>2</sup>

2. Exceptions are decolonization, which the UN made legitimate in a 1960 declaration, and the UN recognition of Bangladesh, which seceded from Pakistan in 1971. The European Community's recent recognition of secessionist Yugoslavian republics also pricks at the old orthodoxy, but is far from a clear precedent. For the UN view, see Articles 1(2) and 55 of the United Nations Charter. See also General Assembly Resolution 1514, which states, (1) "The subjection of peoples to alien subjugation, domination, and exploitation constitutes a denial of fundamental rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and

The sources of such (arguably benign) hypocrisy are multiethnic states, who fear fracture, and international lawyers acting out of moral prudence. Memories and scars from Versailles and the failed minority treaties of the 1920s and worries about a chain reaction of secessionist tragedies make skeptics chary of self-determination.

To some liberal theorists, though, self-determination's flaw is not that it is dangerous or reckless, too broad or too ambiguous, but that it is simply not anchored in liberalism or democracy in the first place: there simply is no *prima facie* right to self-determination. This is the view of legal theorist Lea Brilmayer and moral philosopher Allen Buchanan, who, in their arguments about secession, claim not that self-determination can never be justified, but that the burden is on separatists to demonstrate a territorial claim, which they can do only by showing that they have suffered a certain grievance or face a certain threat. Not every discontented group can pack its bags and leave with some of a state's territory simply because it desires to govern itself. What kind of grievances are relevant? Brilmayer focuses on the "legitimate historical" grievance—the group was previously invaded or illegally annexed (although she allows that other grievances might also count). Buchanan endorses this criterion and proposes others, too: "discriminatory redistribution"—an economic grievance like the American South's complaint about high tariffs—threats to cultural preservation, and threats of genocide.<sup>3</sup>

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cooperation," and (2) "All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and culture development." The United Nations International Covenant on Civil and Political Rights (1966), as well as the International Covenant on Economic, Social, and Cultural Rights, states, "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Finally, see General Assembly Resolution 2625: "By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social, and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter."

3. Lea Brilmayer, "Secession and Self-Determination: A Territorial Interpretation," *Yale Journal of International Law* 19 (1991): 177–202; Allen Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder: Westview, 1991); for a condensed version, see Allen Buchanan, "Toward a Theory of Secession," *Ethics* 101 (1991): 322–42. Even though both Brilmayer and Buchanan limit their discussion to secession, both of their arguments explicitly reject a general right to self-determination and may thus be posed as skeptics of my own argument. It is important to emphasize that Brilmayer does not argue that the historical grievance is the exclusive way to establish a territorial claim. She writes, "The typical secessionist claim couples an argument about ethnic distinctiveness with an historical claim to a particular piece of land. As a theoretical matter, other approaches may establish territorial claims. As Professor Allen Buchanan has argued, one can imagine territorial claims not founded

The third view, my own view, upholds democratic self-determination. Threats and grievances are indeed morally relevant and enhance a claim to self-determination, but neither they nor any special territorial arguments are needed to establish one. Nor is international law coherent in endorsing self-determination while prioritizing territorial integrity, for dismal global anarchy need not be self-determination's result. Liberal democracy points to a right of self-determination and requires its broader, more frequent promotion: with qualifications, under certain conditions, with circumspection. Below, I sketch such a right, portraying its basic features, flagging its potential problems. Although I unfortunately cannot adequately treat each of the offshoot dilemmas, when they arise I suggest how they ought to be approached.<sup>4</sup>

## THE MORAL CASE FOR SELF-DETERMINATION

### *A Democratic Right*

Self-determination's appeal is not obvious. Critics would compare it to anarchist bomb throwing—bringing war, economic chaos, and political turmoil—or highway robbery, in which secessionist bandits bolt with a larger state's territory. We must see, then, why liberal democracy requires it. Liberalism and democracy are both, of course, open to challenge. Self-determination, however, was invented by liberal democrats, and its intellectual history is a discussion among them. Defending and demarcating it on this familiar turf is an ample task; if it cannot be done here, it can doubtfully be done at all.

To behold plainly self-determination's justification, we must see its architecture unobstructed, free from the scaffolding of qualifications and addenda, clauses and codicils, needed to make it plausible in a fallen world. Imagine, then, the following Utopian group: enclosed in a demarcated territory, without minorities in its midst, unanimously desiring self-determination. For now, let's assume that with respect to its own individuals, it is liberal and democratic. And let's put aside pernicious consequences. What entitles this group to self-determination?

Self-determination has traditionally been a liberal democratic right; in its Hall of Fame are Mill and Mazzini, Wilson and Rousseau. These heroes of nations, however, differ in their justifications for

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upon an historical grievance. But the most intuitively appealing and direct territorial claims that one encounters typically have historical origins. The land properly belongs to the secessionist group, so the argument goes, and only came under the dominion of the existing state by way of some unjustifiable historical event" (p. 189).

4. Making a similar argument, among others, are Thomas W. Pogge, "Cosmopolitanism and Sovereignty," *Ethics* 103 (1992): 48–75; Michael Walzer, "The New Tribalism," 39 *Dissent* (Spring 1992): 164–71; and Harry Beran, *The Consent Theory of Political Obligation* (London: Croom Helm, 1987), pp. 37–42.

liberalism and democracy; I must, then, clarify my own. The source of both concepts, in my view, is autonomy. A full or original account of autonomy I do not provide here; I indicate only my notion of its meaning and its meaning for politics, borrowing from its greatest chroniclers. By autonomy, I mean individual moral autonomy, the sort that Immanuel Kant had in mind when he argued that a moral individual is a free individual, one who acts not upon his unreflective desires or base inclinations, or under the force or persuasion, psychical or physical, of another, but according to his own free will, pursuing ends that he has set for himself. Autonomy is not merely the opportunity for choice, made without standard or constraint, but involves acting according to one's own practical reason: carefully, reflectively. For Kant, autonomous practical reason legislates the moral law, and it is at the center of our moral nature—it is the source of our dignity and implies that we ought to be valued as intrinsic ends.<sup>5</sup>

And autonomy has implications for political institutions—three in particular. The first is old and familiar, one which Enlightenment theorists of autonomy recognized from the beginning: it is that law should protect freedom—freedom, meaning the “negative liberty” of Isaiah Berlin, the liberal rights of Kant and Locke. Rights to free expression, free worship, and a free press, and basic human rights to life and free movement protect the conditions in which we may reason and act autonomously, insofar as we respect others' right to do the same. Such rights are inviolable: they should not be sacrificed for any dream of “positive liberty,” Marxist or Jacobin.<sup>6</sup>

Autonomous people, though, are not merely negatively free but act deliberately and reflectively. Responding to Berlin, Charles Taylor avers that freedom is not merely negative liberty, living unhindered, but is also steering one's fate, exercising control over one's life.<sup>7</sup> This positive freedom is essential to moral autonomy, and it suggests a further link between autonomy and politics. In a recent paper, political philosopher Amy Gutmann stresses that “many of the most important,

5. Kant's conception of autonomy is in his *Groundwork of the Metaphysics of Morals*, 3d ed., trans. and notes by H. J. Paton (New York: Hutchison's University Library, 1961), and his *Critique of Practical Reason*, trans. and with an introd. by Lewis White Beck (New York: Liberal Arts, 1956). See also Arthur Kuflik, “The Inalienability of Autonomy,” *Philosophy and Public Affairs* 13 (1984): 271–98; and Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986).

6. For Kant, see n. 5; John Stuart Mill, *On Liberty and Other Essays*, ed. and with an introd. by John Gray (Oxford: Oxford University Press, 1991); Isaiah Berlin, “Two Concepts of Liberty,” in his *Four Essays on Liberty* (Oxford: Oxford University Press, 1982), pp. 118–72; John Locke, *The Second Treatise on Civil Government* (Buffalo, N.Y.: Prometheus, 1986).

7. Charles Taylor, “What's Wrong with Negative Liberty,” in *Philosophy and the Human Sciences*, 2 (Cambridge: Cambridge University Press, 1985), pp. 227–50.

along with the most trivial, of our life choices are influenced and constrained by social context, over which political authority has the greatest human control."<sup>8</sup> Prescribing law, inherently coercive, politics inevitably affects us—our possibilities, our opportunities, our obligations. In a multitude of matters, it acts upon us.

But autonomous people cannot be content to be acted upon. If they are to shape their fate, they must take part in shaping politics. "Part of freedom, especially as experienced by those who are deprived of it," continues Gutmann, "is the freedom to share in shaping one's political context."<sup>9</sup> Our possibilities, opportunities, and obligations ought to be ones that we, autonomous citizens governing with other autonomous citizens, have determined. What is evoked here is democracy, the tradition of Rousseau which holds that free citizens do not merely repose comfortably within liberalism's high protective walls but industriously continue to improve the interior furnishings of the polity.

Democracy we may think of as the activity of governing oneself, of exercising one's autonomy in the political realm. It consists of two elements: participation and representation. Participation is directly governing or seeking to influence government: in Rousseau's assembly on the hillside, joyful citizens bargain, advocate, persuade, participate, deliberate, and legislate upon their own good and the common good (when all is working right for Rousseau, the two are the same).<sup>10</sup> Even in the dispersed conversation of larger states, where the noisy coziness of Rousseau's city-state is absent and few actually legislate, citizens still participate through lobbying, speaking out, and writing to the editor. Representation, by contrast, is governing not firsthand but fiducially; its attendant virtue is accountability. "Although an autonomous citizen," writes Gutmann, "need not actively participate in politics, she must be prepared to hold those people who do actively participate accountable for decisions made in her name."<sup>11</sup> Through holding representatives accountable, one can also shape contexts—a form of asserting autonomy that is admittedly more passive than participation, but far more prevalent and still inestimably vital.

If being autonomous means participating and holding representatives accountable, then autonomy's second political implication is demo-

8. Amy Gutmann, "The Disharmony of Democracy," in *Democratic Community*, ed. John W. Chapman and Ian Shapiro (New York: New York University Press, 1993), pp. 126–60, 142. On the relationship between autonomy and democracy, I have also found helpful Robert Dahl, *Democracy and Its Critics* (New Haven, Conn.: Yale University Press, 1989), p. 91.

9. Gutmann, p. 143.

10. See Jean-Jacques Rousseau, *On the Social Contract*, ed. Roger D. Masters, trans. Judith R. Masters (New York: St. Martin's, 1978).

11. Gutmann, pp. 143–44.

cratic institutions, the laws and governmental structures which promote this democratic activity. Guarantees that citizens can vote, assemble, petition, speak out, and hold office allow them to participate and be represented in molding the social context that constrains and enables. That they so promote autonomy is the justification of democratic institutions;<sup>12</sup> and making institutions more democratic also makes them more just.

A third implication of autonomy is distributive justice. If we are autonomous, and if Kant is right in concluding that we thus ought to be treated as ends-in-ourselves, this ought to be reflected in society's distribution of wealth, opportunities, and other goods. John Rawls's difference principle, which maximally favors the least advantaged, relies upon just such an argument.<sup>13</sup> The distributive implication of autonomy is derivative and less obvious, and rather than dwell here on the relative merits of Rawls's scheme and others, I only note that autonomy indeed requires a just distribution, not merely liberal rights and democratic institutions.

Of these three political implications of autonomy, it is democratic institutions that imply self-determination. The other two ought not to be ignored, and below I argue that self-determination must not be pursued at their expense. But for now, I want to show that self-determination is a unique kind of democratic institution, a legal arrangement that promotes participation and representation, the political activities of an autonomous person. Other institutions—elections, a free press, the right to assemble, and many others—of course, also promote democracy; of self-determination's siblings, resembling it most are local government and minority representation schemes. But self-determination is unique—unique in the following respect: it promotes democracy for a group whose members first claim to share an identity for political purposes, and second seek a separate government, as opposed to a larger portion of representatives in their current state's government. Sharing an identity for political purposes means not that their political identity is their only identity, for Utopians may be diverse in religion, race, political beliefs, and so forth, but that it is with regard to this identity—Utopianism—that they want to govern themselves.<sup>14</sup>

12. I do not claim that autonomy is the only justification for democracy, but only that it is a persuasive one, and one that grounds both liberal rights and democracy.

13. For Rawls's use of Kant in this context, see *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), pp. 179–83, 251–57.

14. Utopianism, depending on its content, may actually combine with one of these identities. That is, the Utopians might be people who practice a Utopian religion or are of Utopian ethnicity. Below, I argue that the content of the identity does not matter for self-determination. And again, by referring to this ideal people, I am temporarily "bracketing out" problems presented by groups with internal minorities, and groups



Seeking a separate government implies that they occupy a common plot of land and are not simply scattered in the larger state (at this point, we still assume a minority-less Utopian group).<sup>15</sup>

What self-determination does for the Utopian group is redraw its political borders to circumscribe its residents as tightly as possible. The ideal group's ideal borders encompass all those who share its identity, and only those who share its identity. The group is no longer enclosed within borders that include many other people, or bifurcated into two or more political units by an intrusive boundary, but is one whose members live under a single common government. That self-determination redraws boundaries makes it similar to town, city, or county government, which gives people in local regions a degree of self-rule. But unlike counties in Pennsylvania, which are gridded according to rational administrative criteria, self-determining groups are demarcated in conformity with their identity.<sup>16</sup> And that self-determination is for groups with a particular identity makes it similar to proportional representation schemes, which also empower those with a common identity. But these arrangements do not redraw boundaries or create new institutions but only change the makeup of governing bodies; and those whom they empower might not live together but may be scattered among populations (usually as a minority).<sup>17</sup>

But if self-determination is distinct from its institutional siblings, how exactly does it make the Utopians more participatory and better represented, more democratic and more autonomous? Remember that autonomy entails steering one's fate, shaping one's political context. Now, in announcing that they desire self-determination, the Utopians are announcing something about this fate and context: namely, that it is a Utopian fate, a Utopian context. They are intent upon governing with other Utopians and enjoying institutions through which they may contribute to the Utopian future. At present, it is likely that

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who are illiberal or deny elements of democracy other than self-determination, such as free elections or the right to assemble.

15. By this I do not imply that the land of the self-determining group cannot be broken naturally—e.g., by water. See p. 369.

16. Of course, self-determination can also make smaller the groups that govern themselves, rendering government more local. And local government makes the group's members more autonomous—by having their government closer to them, they may participate and be represented more directly, more effectually. But as I am about to explain, contributing to local government is not what makes self-determination distinct. In fact, self-government sometimes achieves fusion, not fissure: witness the unification of both Italy and Germany in the nineteenth century, and Germany again recently.

17. Sharing an identity and desiring a separate government, it is important to note, are not moral requirements that a group must meet but are merely part of the description of any group seeking self-determination, distinguishing it from people who seek other kinds of democratic institutions.

the Utopians are estranged, their government too distant. They are governed not by themselves or leaders who share their legacy or their vision, whom they call one of their own, but are forgotten and trapped on an imperial frontier, one faction in the massive dominions of a remote centralized colossus. Neither this colossus nor the people living outside the region of Utopia has necessarily harmed the Utopians economically or physically; the imperial government may even be liberal and democratic. But, crucially, it does not understand the Utopian dialect, practice the Utopian religion, delight in splendid tales of a Utopian past peopled with Utopian heroes, or desire to extrapolate Utopianism into the future. And so, the Utopians want to govern themselves, not find their political will diluted or hindered by an encompassing oblivious mass.

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

The reasons why the Utopians seek self-determination may include more than the intrinsic activity of governing. They may want to spread their language more widely among their people, educate their children into their customs, or keep alive their religion. Or perhaps they want to counter a threat to their identity: they believe their culture endangered, or maybe they face persecution, attack, or economic victimization. Or maybe they were long ago conquered or partitioned through diplomatic connivance and now want to recover their independence. Or, they may regard self-government itself—participation and representation in their own affairs—as integral to their identity, a rite of passage, a source of self-respect in the transition from national adolescence to adulthood.<sup>18</sup> Reasons other than self-government may

18. Herein, when I use the term "self-government," I mean democracy—the activities of participation and being represented in the shaping of one's political destiny. That a group might seek self-determination as a source of self-respect is suggested by Avishai Margalit and Joseph Raz, "National Self-Determination," *Journal of Philosophy* 87 (1990): 447–54. Yael Tamir, in her recent work, *Liberal Nationalism* (Princeton, N.J.:

in fact be morally relevant, enhancing a group's case for self-determination. But none is required: that the Utopians better participate and are better represented in their own affairs, whatever ends these affairs might entail, makes them more autonomous; and autonomy is at the heart of the justification of self-determination. We now have our basic principle: any group with a particular identity that desires a separate government is entitled to a *prima facie* right to self-determination.<sup>19</sup>

That no particular reason for self-determination is required may seem radical and troubling to the liberal democrat. Reasons for seeking self-determination can, after all, sometimes be ugly. We laud the Rousseauian urge to "run with joy to the assembly," extol the Lithuanians' desire to recover their independence, and appreciate the need to protect a culture, parry debilitating tariffs or taxes, and prevent genocide; but find ourselves ambivalent toward the Biafrans, who in the late 1960s wanted to secede from Nigeria and take with them the preponderance of Nigerian wealth, and hostile to the American confederacy, which aimed to perpetuate slavery.

In fact, motivations are virtually always alloyed, and self-government is usually at least an element. Groups rarely desire self-government alone; most aspire to self-determination partially for the intrinsic value of self-government, but also for some other good that self-government brings or prevents; they desire self-government in order to. . . . Consider the American Revolution: mixed in with the colonists' claims to being underrepresented, found at the very heart of the Declaration of Independence, is the prosaic desire for lower taxes. Many in the American South, too, valued self-government—their cherished states' rights—as an end, not solely a means to continue slavery or avoid the North's tariff. It was with self-government in mind that South Carolina's John C. Calhoun proposed the "concurrent majority" system, a legislative veto for states that would allow them to pursue better their common good.<sup>20</sup>

If self-government intrinsically valued is usually at least an element in the alloy of motivations, the question is, Should we be con-

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Princeton University Press, 1993), argues that self-determination can be justified as the political fulfillment of a nation's expression of its communal identity (pp. 73–74).

19. At this point, it might seem strange that a theory based on a universal Kantian notion of autonomy would justify the decision of individuals to direct their loyalties partially, toward the members of a particular group. But it is not so puzzling when one reflects on what moral autonomy requires. Positively, it stipulates only that we have a wide duty to promote others as intrinsic ends but says very little about how we might do this. It certainly does not contradict this duty if we focus our ends-promoting energy on a particular group of people. That is, as long as we do not in the process violate the autonomy of others or deprive them of the distribution of goods to which they are entitled as autonomous beings.

20. See John C. Calhoun, *A Disquisition on Government*, ed. and with an introd. by C. Gordon Post (New York: Macmillan, 1953).

cerned about the other metals? While no special motivation is necessary to establish the right of self-determination, some augur evil and may detract from it. They raise the prospect of injustice, either for the larger state's members, as discussed above, or even—as with the South's desire to perpetuate slavery—for some of the group's own members.<sup>21</sup> When such injustices are clearly on the horizon, preemptive countermeasures are in order: the self-determination claims of slaveholders, oppressors of minorities, or economic thieves, like any plan that compromises autonomy, should be curtailed, either through a federal autonomy scheme that prevents the injustice or through denying the claim altogether. Motivations are relevant, then, when they raise the prospect of actual injustice; and only this can qualify self-determination.

### *Balancing Autonomy Claims*

One such injustice potentially arises even with regard to the self-determination of the unanimous, liberal democratic, minority-less Utopians. It is that the autonomy of the erstwhile larger, unified, state's members will be curtailed. Autonomy belongs to all equally, and if self-determination boosts the autonomy of one set of individuals, it should not reduce that of another. Quite possibly, the lives of the remainder state's people are now more restricted. Perhaps they cannot emigrate to, travel, or hold a job in the separatists' region; or they no longer have a voice in determining the region's economic or environmental or educational or language policies, some of which may affect their own fate. Which limits they actually face will depend on the form of self-determination: secession obviously restricts their autonomy the most; innumerable forms of federalism prescribe countless varieties of laws, provisions, and prerogatives that cede groups different levels of exclusivity over different areas of life. Which forms of governance, then, best preserve autonomy—everyone's, equally?

A few master guidelines can guide us in our search, if not unlock every dilemma. First, because self-determination is rooted in democratic autonomy, the members of the larger state may not deny the separatists their pure, essential, unalloyed right to govern themselves or even claim the right to vote upon the separatists' exit. Brilmayer differs: it is not clear from democratic theory, she argues, why everyone in a state should not vote on the separation of a group within its borders.<sup>22</sup> But the nature of autonomy makes clear the reason: one

21. I discuss qualifications against illiberal self-determining groups below.

22. Brilmayer, p. 185. Again, Brilmayer is only discussing secession, not self-determination in general, and she only refers here to the issue of whether the larger state may decide upon the separatist group's fate, not the issue of which areas a group may govern itself in. Her argument, I think, nevertheless applies.

does not have the autonomy to restrict another's autonomy simply because she wants to govern the other. The larger state's citizens cannot justly tell the separatists, "My autonomy has been restricted because, as a member of our common state, I once had a say in how you were governed—in my view, how we were governed—which I no longer enjoy." A right to decide whether another self can enjoy self-determination would make a mockery of the concept. I am entitled to govern myself with others who govern themselves according to principles of justice; I may not decide who will and will not be included in my state, or how another group governs its own affairs. Allowing this would be like allowing the English to vote on the independence of the American colonies, the Iraqi Sunnis to decide the fate of Iraqi Kurds or Shiites, or the Soviet Union that of the Lithuanians.

Self-determination, however, has limits. When separatists depart, their former compatriots often lose more than just the illicit authority to govern others: they may suffer genuine injustices, economic and other. In the late 1960s, Biafra wanted to secede and take with it the preponderance of Nigerian wealth; if California were to secede, it might harm the prosperity of other Americans through restrictive economic policies and perhaps curtail their freedom to travel or emigrate. A second guideline, then, is that a group's right to self-determination is qualified by the injustices it inflicts on the larger state. These may be direct assaults on autonomy—freedom to travel, work, and so forth—but could also be injustices that are grounded in a theory of autonomy, such as a distributive justice theory.<sup>23</sup> Of course, which distributive theory is just, which economic claims or restrictions on immigration and employment are valid, what kind of language laws are allowable, now become crucial questions, essential to appraising the justice of any self-determination movement—and ones which I cannot answer here.

The general principle, though, is an international version of classic liberal individual freedom: with its enhanced independence—a separate state or federal autonomy—the group may govern exclusively in affairs that are truly its own, but, in matters which affect the larger state, it retains outside obligations. An enclave of Kurds surrounded by Sunnis, or Protestants surrounded by Catholics, or Canadian Aborigines surrounded by English and French Canadians may fully govern its cultural and religious, its indigenous and singular, matters. But if it appears to intend autarky, to sever the vital cords of economic interdependence by erecting renegade trade barriers or nationalizing

23. In Rawls's *A Theory of Justice*, the difference principle for distributing goods arises out of the notion of the free and equal person, of which autonomy is a key attribute. See pp. 252–56, 513–20, and his *Political Liberalism* (New York: Columbia University Press, 1993), pp. 72–81.

its industries, impoverishing the larger state, it may then be required to share economic decisions, agree to divide its revenues, or consent to some other just arrangement. Again, the legal solution that minimizes injustice in any situation is not always clear—not only must a theory of distributive justice be selected, but circumstances vary. Secession, the starkest, most consequential separation, on which injustice is most likely to be parasitic, will in most cases be ruled out. Yet Canadian arguments over Quebec divulge the issue's radical complexity and eminently situational nature. Sundry sets of circumstances will result in myriad constitutional contraptions; let one hundred federalisms bloom.

That federalist finagling is often required to allay assaults on autonomy means that self-determination is only conditionally justified. The Utopians, our internally ideal people, are entitled only to that combination of powers and prerogatives which respects their former cocitizens' autonomy. Of course, no group is utopian, and departures from Utopia's perfection raise the need for further qualifications. But first, a couple of conceptual challenges to the ideal case must be addressed.

*The Group's Objective Characteristics—a Criterion?*

One such challenge has always vexed theorists of self-determination: If there is a right to self-determination, who is entitled to it? How does one identify the "self" that "determines"? Buchanan deems this problem virtually insoluble: the UN Charter's "people," he argues, is rendered uselessly ambiguous by complex linguistic and historical issues.<sup>24</sup> If one seeks objective criteria, Buchanan's case seems sound: tests for identifying a people—linguistic, historical, religious, ethnic, racial, cultural—are virtually impossible to construct nonarbitrarily. Chances are that the history of any group is a rich (and perhaps tragic) tale of overlapping communities, some of whom have been conquered by other communities, many of whom acquired a new dialect or language during its period of industrialization, all of whom may or may not identify with the same group that their progenitors did. As a result, a group's selves are often what Michael Walzer calls "multiple selves":<sup>25</sup> Croatians in Bosnia-Herzegovina could be identified as Bosnia-Herzegovinian citizens, partisans of Croatia, Christians (which also characterizes their Serbian enemies), Catholics (which the Serbs are not), Serbo-Croatian speakers (like the Serbs), Serbo-Croatian speakers who use the Arabic alphabet (unlike the Serbs, who use Cyrillic), and so on.

24. Buchanan, *Secession*, p. 49.

25. Walzer, p. 171.

If, however, the expressed preference for self-government, not the identifying characteristics of the group, is decisive, then the problem of finding objective criteria is avoided, at least in theory. The standard is instead subjective: it simply does not matter which traits define a seceding group; we know one when it announces, campaigns, or takes up arms for its dream of self-determination. Adequate historical, linguistic, or racial tests may be impossible to cobble together. But why need we try? If Lithuanians, Croatians, East Pakistanis, or Tibetans express a desire for self-determination, we do not ask what characteristics make them Lithuanians, Croatians, East Pakistanis, or Tibetans. This is a matter for scholars of Slavic, Middle Eastern, and Asian cultures. We simply acknowledge, usually without difficulty, that a distinct group wants independence or greater autonomy from a larger state. Alfred Cobban writes: "Central European nationalists have sought in vain for some invariable, positive, eternal symbol of the difference of their nations one from another. Language, religion, traditions, territorial contiguity, natural frontiers, economic interests, race—extensive exceptions can be found to every proposed test, except the subjective one. The best we can say is that any territorial community, the members of which are conscious of themselves as members of a community, and wish to maintain the identity of their community, is a nation."<sup>26</sup> As the map drawers at Versailles in 1919 discovered, of course, discerning which groups desire self-determination is not always easy. The difficulties arise, though, not from the subjective criterion itself, but from "hard cases"—regions with overlapping minorities and people divided over their political fate—which beset any theory of self-determination.<sup>27</sup>

If a subjective standard is most fitting, this is not to deny that a self-determining group has shared traits, for we imagine not collections of anomic individuals, but patriotic guerrilla armies, spirited crowds toting guns and flags, a citizenry devoted to a shared history, common customs, the "folkways" about which Johann Herder wrote in the early nineteenth century. Can one conceive of a random collection of individuals—not Croatians or Protestants or New Jerseyans or members of the Flat Earth Society—but simply a random collection, yearning to govern itself? Why would it want such a thing? Certainly every group that has ever fought for independence or autonomy has shared some trait, usually ethnicity. It is typically a "nation"—that is, a group of people, united by a cultural characteristic—that conceives

26. Alfred Cobban, *National Self-Determination* (New York: Oxford University Press, 1970), p. 107.

27. I deal with these hard cases below.

of itself as a “nation” (the definition is subjective), and aspires to political autonomy.<sup>28</sup> My point is only that neither ethnicity nor any other objective trait should be the criterion of identification.

A final potentially relevant trait is size: are some units too small to be self-determining? Can a city secede? Can a neighborhood attain autonomous status? What about a family? An individual? Speaking theoretically, referring to our utopian people, disregarding international stability, and so on, I see no reason why a city or tiny region cannot be self-determining: Andorra, Monaco, Liechtenstein, Singapore, and Hong Kong are all doing just fine.

A neighborhood or family is more dubious. What is the difference? To be independent, there are certain functions which any state must perform: maintain its roads and utilities, educate its children, preserve minimal domestic order, and provide basic public goods. I do not include economic or military self-sufficiency, for, if these were requirements, a group's self-determination could easily be blackmailed by a neighboring state, not to mention that it would disqualify numerous states in the world for the sovereignty they presently enjoy. A state only has to meet basic public needs, which would be difficult to expect from a neighborhood or family. If the goal is something less than independence, then perhaps the requirements are fewer, although most autonomous regions perform at least some public functions—promoting the group's language or culture, for instance—that we do not typically envision neighborhoods or smaller units doing. And if the exiting individual is the unit, then we are talking about refugees, a different kind of issue in which self-government is not what is at stake.<sup>29</sup>

### *The Perspective of Consent Theory*

Self-determination, at this point, may seem too facile. Allowing a group to dissolve or reduce its obligation to the state on its own volition, absent grievance, threat, or legal territorial claim, may appear lax, something like allowing a child capriciously to run away from home: Do not the separatists have obligations to the larger group beyond respecting the autonomy of its members? Does not participating in a common society itself create certain obligations? This evokes the old

28. Several theorists of nationalism endorse something quite close to this definition. See Tamir, p. 66; Benedict Anderson, *Imagined Communities* (London: Verso, 1983), pp. 5–7; E. J. Hobsbawm, *Nations and Nationalism since 1870* (Cambridge: Cambridge University Press), pp. 9–11; Anthony D. Smith, *Theories of Nationalism* (London: Duckworth, 1983), p. 171; and Ernest Gellner, *Nations and Nationalism* (Oxford: Blackwell, 1983), pp. 1–7.

29. Brilmayer provides a helpful discussion of the distinction between secessionists and refugees (pp. 187–89).



democratic debate about the source of political obligation—is it consent or something else?—and raises the new issue of whether this obligation limits the right to self-determination.

Skeptics of self-determination are apt to be wary of consent: although a group may declare consent withdrawn, it may still be obligated. Brilmayer contends precisely this, arguing that a general right to self-determination falsely assumes that actual consent is necessary for political legitimacy: “philosophers have managed to justify state power quite nicely without actual consent.” And from the demise of consent theory follows the conclusion that no “right to opt out . . . exists in democratic theory.”<sup>30</sup>

Brilmayer’s leeringness of actual consent may be justified; in this context, I am agnostic toward it. My claim, though, is that no matter which liberal democratic basis of obligation one adopts—consent or something else—the right to self-determination remains intact. I do not deny political obligation in general: citizens may indeed be obligated to the fellow citizens and institutions of the state under which they happen to live at any point in time. But liberal democratic theory fails to show why the state under which people live, and to which they are obligated, must be this particular state, why the people with whom they live must include these particular people. Kant has told us that the state ought to be governed by the law of right, Rawls, by justice as fairness. But in which state ought people to live? Rousseau has told us that the general will of the people should rule. But which people? Who is included? These questions, liberal theory does not answer.

Of liberal democratic theories, friendliest to self-determination is the branch of consent theory that insists that actual, explicit consent is necessary for political obligation. As political philosopher Harry Beran persuasively argues, this theory requires a right of self-determination (secession, in his argument): If a group wants independence or local autonomy, what is it doing if it is not explicitly denying its consent to the present state?<sup>31</sup> But consent, as Locke famously argues, can also be tacit. “Every man that hath any possession or enjoyment of any part of the dominions of any government” either by owning property, traveling on the state’s highway, or even so much as “being . . . within the territories of that government,” in Locke’s eyes, “doth hereby give his tacit consent.”<sup>32</sup> In Locke’s world, it is not by voting or joining or contracting, but merely participating in a social scheme of cooperation, rambling along the highway, that people give their approval to a government that protects their life, liberty, and property.

30. *Ibid.*, p. 185.

31. Beran, pp. 37–42.

32. Locke, p. 67.

Tacit consent, too, is compatible with self-determination. Consent is crucial for Locke because he values autonomy: just government can only be created by “free, equal, and independent” individuals, not by coercion.<sup>33</sup> Now, whether or not one thinks that Lockean tacit consent is really consent at all, if autonomy lies behind consent, and if autonomy implies self-determination, then Locke’s theory ought to support not only our right to a just government, but also our right to choose under which government to live. Locke does not address self-determination in *The Second Treatise*, but he espouses the freedom and independence—the autonomy—on which it is based. Amending Locke, we can argue that the highway traveler is still obliged to the state in which he rambles, the citizen to the state in which he resides, but that fellow travelers and groups of residents are permitted to claim their own state or region, transferring their obligation to it.

The argument runs similarly for liberal democratic theories in which obligation is not based upon consent, but on something else—the intrinsically binding nature of liberal principles, perhaps. As long as liberal principles are what obligate us, and if liberal autonomy grounds self-determination, then it would take no less than a manifestly illiberal principle to deny it. Unless one invokes the nineteenth-century German romantic view that borders are “natural,” destined by God or nature to circumscribe their inhabitants organically and permanently, one can only conclude that either they are morally arbitrary—set by rivers, mountains, ancient diplomatic bargains, the vicissitudes of history—or they are justly, popularly, determined, validated by the inhabitants. And only the latter alternative is acceptable to liberal democrats.

It is true that many liberal theorists limit or even, like Kant, deny another form of defiance: rebellion. Would not the same theorists restrict self-determination? In fact, the two measures are quite different. Rebels seek to overthrow the existing state and its laws, and they are criminal when they destroy or defy just authority. Self-determination does nothing of the kind: the Utopians, true to their pristine nature, depart smoothly and cleanly, leaving intact the larger state, every bit as just or unjust as it was before, and then set up a new state no less just. And their autonomy is furthered. Of course, to many liberal theorists like Locke, rebellion is sometimes permitted, namely when the state has failed to provide minimal liberal justice. In this case, rebellion, like self-determination, is justified as a legitimate method for achieving liberalism.

One final, casuistic remark on obligation and loyalty: the individual’s right to choose his own state does not imply geographical libertari-

33. *Ibid.*, p. 54.

anism, the idea that anyone may declare allegiance to the state of his choice, no matter where it is located, and no matter where he is located. Because democratic society is what Rawls calls a “fair system of cooperation”—involving socially coordinated activity on fair, mutually recognized terms—it must necessarily exist among people who live together. This is true not only if one believes that humans are by nature political animals, as Aristotle and Aquinas taught, but also simply because street cleaning, managing the environment and infrastructure, defense, education, and so on—the social tasks which require government—are done together: in neighborhoods, cities, larger regions. Though an individual right, self-determination is exercised in groups. Thus, an American citizen living in Cambridge, Massachusetts, may not declare allegiance to Sweden, while a region like Alaska or the disjointed sections of Malaysia or Indonesia may share statehood with a region that is not geographically adjacent.<sup>34</sup>

### *The Territorial Claim*

Self-determination does not merely create a new state or self-governing region; it also separates or places under a new type of sovereignty the old state’s land. This detachment is sharpest for secession, but it raises a general question about self-determination: must a group establish a claim to land in addition to its claim to a new government? Both Buchanan and Brilmayer, in fact, argue that the territorial claim is crucial and present methods for establishing it. Brilmayer explores the “historical grievance” as “the most intuitively appealing and direct” method; for Buchanan, a group making a territorial claim must either (1) show the ill-begotten nature of the larger state’s dominion and demonstrate its own historical claim or (2) evince a threat of genocide, discriminatory redistribution of wealth, or the erosion of its distinctive culture.<sup>35</sup>

34. Self-determination is an individual right because it is the individual who chooses to live under a certain government, and whose autonomy may be enhanced by doing so. For the reasons stated here, though, the right must be exercised in a group. It is also important here to keep in mind some of the points that I argue above. First, I do not intend to make any argument about refugees and immigration—these issues are about whether a given society with a given government is obligated to receive new individuals into its midst, not about who governs a particular territory. Second, the argument that a region may share statehood with a noncontiguous region is qualified by the size requirement, the same one that applies to any self-determining group. Finally, I do not envision, or hope for, a world of geographically divided states. They may exist in theory, and often in practice, as Alaska, Malaysia, and Indonesia show. Yet, as I argue in the final section, the justice of any secession depends on its consequences; in fact, it is because of the harmful consequences of secession—one of which is international instability—that I favor other forms of self-determination. Under this principle, I look askance at any declaration of allegiance to a noncontiguous state that brings with it harmful moral consequences such as war.

35. Buchanan, *Secession*, pp. 104–14; Brilmayer, p. 189.

Is a territorial claim indeed required? The intuition behind this hurdle is that without it, the self-determining group is somehow “taking” land that “belongs” to the larger state. But in what sense is this true? Certainly the state does not “own” the land, at least in the ordinary sense that a person owns property. Instead, as Buchanan argues, the state is better thought of as a trustee: “the relationship between the state and its territory is *not* the same as that between a person and the land which is her private property. . . . Modern states, whether socialistic or capitalistic, are not conceived of in this way.” Rather, the state acts as an “agent” for the land, giving it “jurisdictional powers” to administer and protect it on behalf of the “principal,” the collective citizenry.<sup>36</sup> The state governs, not owns; it’s a matter of government, not land.

The state’s “agency” doubtless involves regulating property and resources, setting aside and maintaining public property, and defending the land; in these ways, a government serves the people on the land it governs. But in liberal democratic theory, it may only so serve them, it may only govern them at all for that matter, if it is just. And beyond its just prerogatives, a government has no special relationship to the land. If a self-determining group, then, justly claims a new government, this government (state or regional) becomes the new agent of its land. And just as the larger state may not prevent the separatists from governing themselves, neither may it prevent them from placing new borders, state or regional, around themselves. Land is only an issue because, as mentioned above, the world is such that people living under the same government necessarily live together. And again, only by asserting some sort of illiberal organic connection or mystical tie could a group claim land that is justly governed by someone else. It’s a matter of government, not land.

For Buchanan, the mere fact that a government does not “own” the land in a state does not translate into a right of self-determination; a group must still make a territorial claim by demonstrating particular grievances and threats—discriminatory redistribution, cultural endangerment, and so on. But why are these necessary? For Buchanan, they establish the right of self-determination (for him, secession) in the first place; this is the essence of his general argument. But once the right to secede has been established, why does an additional territorial claim have to be made? In what sense is land an issue beyond the sense in which government is an issue?<sup>37</sup>

36. Buchanan, *Secession*, p. 108.

37. This argument should answer the potential objection that even if democratic theory does point to a right of self-determination, it does not show that the group is necessarily entitled to the land on which it lives, rather than merely a piece of land, somewhere. In response, I would ask the advocate of this argument to show why a

## QUALIFICATIONS TO THE PRIMA FACIE RIGHT OF SELF-DETERMINATION

As I have been arguing, self-determination is conditional, and if there is a prima facie right to self-determination for Utopians, manifestly few groups are utopian: most are illiberal, include minorities who do not regard themselves as members of the group, or are not unanimous about secession. And even when they approximate the ideal, their attempts at self-determination often have perverse results—war, refugees, economic chaos—which detract from their moral appeal. Qualifications, then, must be considered. I argue for limitations on illiberal, undemocratic, mixed, and divided groups, and advocate restrictions on separations that augur evil consequences, but dispute the necessity of Buchanan's and Brilmayer's threats and grievances: these enhance, but are not necessary to, the prima facie right. With these qualifications, just self-determination is considerably rarer than the ideal case would suggest.

### *Illiberal Undemocratic Groups*

The secession of the Confederacy reveals that even if self-determination furthers democracy, it does not always promote liberalism. For the Confederacy, this is a gross understatement; for Quebec or the former Yugoslavia, where Aborigines and Anglophones, Serbs, Croats, and Muslims fear outnumbered vulnerability, it is the heart of the controversy. And even if a self-determining group is freed from outside control, it may not be internally democratic, either. Advocates of autonomy must object to the curtailment of basic liberal freedoms, as they must to the denial of the right to participate and be represented, which would undermine the essential democratic justification of self-determination.

But if internal liberal democratic autonomy is a requirement for self-determination, we must answer, What characterizes liberal democracy? Which specific standards must a group meet? This is difficult, of course, as there are many kinds of liberals and democrats. At the

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group may not exercise self-determination on the piece of land on which it lives. It seems that only a special claim of some other authority to the land could defeat its own claim. But as I have argued, beyond the claim to govern justly a piece of land, groups and governments have no right to call it theirs in any meaningful way. On another issue: perhaps the biggest losers from the transferral of land would be those in the larger state who own property in the new state. Unlike the government, which is only an agent, these owners really do own; and they may fear the loss of their possessions under the new government. This, however, is a side issue at most. One of the conditions for self-determination might be that the new state respects the property claims of the old state, or at least provides compensation for those who lose property. Perhaps the prospect of losing property is a reason to choose regional autonomy over independence. In any case, the prima facie right of self-determination remains intact.

very least, though, we must demand that any regime, whatever its circumstances and beliefs, seeks to protect “basic human rights,” including fundamental political and civil liberties—the right to life, freedom from torture and coercion of belief, the right to speak and worship and vote and participate freely—and the right to basic subsistence. If any human rights are universal, it is these; they are the basic conditions of a free and decent human life. Few liberal democrats would not endorse them.<sup>38</sup>

So ought we to deny self-determination to any group that might disenfranchise or deny minority rights to some of its members? It is not quite so easy. Consider the former African colonies. In the early 1960s, when most of them gained independence, it was far from clear which of them would become liberal democratic republics. Most established constitutions with democratic procedures and basic rights. Because of a host of complex factors, including an absence of liberal democratic traditions, many of these did not last. The alternatives to independence, however, were not clear; that liberal democracy would have come sooner had independence been delayed is not evident, either.

Mill’s argument that a people must develop liberty unaided, recognizing that independence is often only the beginning of a long road to guaranteed human rights, is helpful here. Of course, Mill, now anachronistically, also justified colonialism as tutelage in self-government for “barbarian” peoples, who were not yet mature enough to develop their own liberty.<sup>39</sup> But from his insight that the development

38. For a persuasive defense of “basic human rights,” see Henry Shue, *Basic Rights* (Princeton, N.J.: Princeton University Press, 1980). Even if liberals believe that certain human rights are universal, there remains the truly difficult question of whether liberal states can assert claims of universality against cultures that do not share such beliefs. The answer largely depends on one’s philosophical premises and views of political justification: Do rights result from agreement and consent, hypothetical or actual, or do they arise from a particular philosophical foundation? I adhere to a “perfectionist” notion of liberalism, believing that the universality of at least the basic human rights can be placed on the foundation of reason, and that from this same foundation, we can argue that members of cultures whose philosophies may not endorse these rights are nevertheless obligated. I agree with William Galston that liberalism must, in the final analysis, base itself on truth claims, rather than social agreement (see Galston, *Liberal Purposes* [Cambridge: Cambridge University Press, 1991]). I do not, of course, have the space here to defend such claims. But I would point out that even many nonperfectionist liberals endorse an international legal system that requires all cultures to respect basic human rights. Rawls, who views himself as a “constructivist,” arguing that liberalism is “political, not metaphysical,” endorses the concept of universal basic human rights in his “The Law of Peoples,” in *On Human Rights: The Oxford Amnesty Lectures 1993*, ed. Stephen Shute and Susan Hurley (New York: Basic, 1993), pp. 41–82. For the constructivist conception, see Rawls, *Political Liberalism*, pp. 89–99.

39. See John Stuart Mill, “A Few Words on Non-Intervention” in his *Dissertations and Discussions* (New York: Henry Holt, 1873), vol. 3, pp. 238–63.

of liberal democracy must be unabridged, we may generalize that only if minimal, nascent liberal democracy is absent are even liberal democratic metropolises justified in postponing self-determination. As long as the new regime is initially headed on the narrow path—however arduous it may prove—toward human rights, it must be allowed to stride (or plod) onward.

A harder case arises when a secessionist regime is outright despotic or intent upon denying human rights, either through law or brute coercion. Did the Bengalis in East Pakistan not have the right to secede in 1971 since they purported to establish an Islamic republic? Many Islamic states, after all, do not extend full religious liberty to non-Muslims. In the case of Bangladesh, the solution is relatively easy: the larger state, Pakistan, was no different in its character. Secession did nothing to detract from liberalism, while political independence was gained.<sup>40</sup>

Even more subtle and difficult is the case of an illiberal or undemocratic group which wants to secede from or gain greater autonomy within a liberal democracy. Can such a group be permitted self-determination? Under what terms? The hardest cases are groups which claim that in order to preserve their endangered culture, they require special provisions which may conflict with the traditional panoply of liberal rights. Canadian Aboriginals, for instance, seek property laws that prevent developers from building casinos on their reservations and limited restrictions on voting rights, education, and access to political office. Can a liberal theory based upon autonomy allow such provisions?

Political philosopher Will Kymlicka argues that in fact, for certain reasons, under certain circumstances, protecting a group's culture through limited restrictions on choice is consistent with autonomy. He argues that culture is a "context of choice," without which we would be faced with an endless array of options, unable to distinguish between them. Culture is essential to an autonomous individual's meaningful life, making it a "primary good" which a liberal state has an interest in promoting.<sup>41</sup> Kymlicka proceeds to distinguish the structure of a culture—those features which persist over generations and without which the culture as a "context for choice" would not exist—from the specific character of a culture—"norms, values, and their attendant institutions"—existing at any one time, which can be changed without altering the structure. Special provisions are permissible for preserving

40. Other factors, including Pakistani massacres of the Bengalis, also favored the secession of Bangladesh.

41. Kymlicka borrows the concept of a "primary good" from Rawls. His application of Rawls to the question of culture is in his *Liberalism, Community, and Culture* (Oxford: Clarendon, 1991), pp. 166–69.

structure but not character. And Kymlicka adds a crucial qualification: a group may protect its culture from outsiders, but it must not restrict the ability of its own members to choose among the cultural options available to them. Thus, during the 1960s, while the French-Canadian culture underwent radical transformation in institutions such as the Roman Catholic church and parochial schools, its structure remained intact. That is, French Canadians could still point to a meaningful historic French-Canadian culture constituted by language and particular customs. Restrictions on French Canadians for the purpose of preserving these institutions would not have been just, whereas some types of cultural rights to preserve the French language vis-à-vis the English may still be permitted.<sup>42</sup>

A hard case for Kymlicka is the American Pueblo Indians, who argue that restricting the religious liberty of Protestants in their own community is necessary, not merely because Protestantism is contrary to the dominant Pueblo culture, but because it threatens to disintegrate Pueblo culture as a context of choice. Kymlicka responds that the Pueblos are wrong—Protestant worship does not in fact erode their cultural structure—but that if Pueblo culture were in danger, a difficult balance between religious liberty and preserving a context of choice would have to be struck. In any case, the resulting solution should not be “imposed” on the Pueblos by the American Supreme Court but should be applied through Pueblo courts.<sup>43</sup>

On the matter of enforcement, at least as it applies to self-determination, a more interventionist approach seems to me appropriate: if a group whose members enjoy full liberal rights within a liberal democracy desires self-determination, its members’ continued enjoyment of these rights ought to be guarded through outside enforcement, especially if this enjoyment seems in doubt. As political theorist Chandran Kukathas argues in an attack on Kymlicka, Kymlicka’s profound reluctance to “impose” liberalism from the outside is inconsistent with his concern for civil rights.<sup>44</sup>

But the more essential question is, Which provisions for protecting culture might we allow a self-determining group to implement? Here, I find persuasive Kymlicka’s general argument that culture as a context of choice for autonomous individuals is worth preserving, and with him, I allow some limited restrictions on rights: zoning laws, electoral laws, and educational requirements that help preserve culture. Such practices are found in many liberal democracies: the Israeli army favors

42. *Ibid.*, pp. 166, 198, 167.

43. *Ibid.*, pp. 196–98; see also Kymlicka, “The Rights of Minority Cultures,” *Political Theory* 20 (1992): 140–46.

44. Chandran Kukathas, “Cultural Rights Again: A Rejoinder to Kymlicka,” *Political Theory* 20 (1992): 678–80.



Jews over minorities, and Canada allows Quebec broad discretion to protect its culture, although its extent is hotly disputed. More fundamental restrictions on autonomy—slavery or any kind of physical restriction, prohibition of worship or basic expression, denial of exposure to the outside world through education or travel—are, however, entirely outside liberalism’s purview. A full treatment of liberalism and culture requires far more lines to be drawn and distinctions to be made than is possible here. Generally, though, some kinds of devices for protecting some kinds of culture cannot be allowed by liberalism, or liberal self-determination. Most extremely, a group which denies some of its members any semblance of freedom cannot be allowed self-determination. This was the problem with the Confederacy, and why it was morally impermissible for it to secede from the relatively liberal North. Not only did the Confederacy have no intention of outlawing slavery, but it seceded largely for the purpose of perpetuating slavery, and precisely this secession would have made it possible. Secession could not have been allowed, however, if liberalism means anything at all.<sup>45</sup>

#### *Are Threats or Grievances Necessary?*

Along with prohibitions for bad liberal democratic character, perhaps we should also require a group to demonstrate that it has suffered certain wrongs or faces certain threats. So argue both Buchanan and Brilmayer, for whom it is not a group’s character or preferences that matter most, but its previous or prospective fate: only by showing grievances or threats can it demonstrate the required territorial claim. In my view, grievances and threats are indeed morally important: invasion, economic negligence, and so on represent real injustices, and they require amendment. But they are not necessary for self-

45. To some, it may appear that I have not adequately addressed the special case of an illiberal group that is generally united in its illiberal practice and desires self-determination. What if, for instance, an enclave that practices a religion that prohibits religious freedom for its members decides to secede and rule itself according to its own illiberal customs? (We may even assume that it provides individuals the right to exit in order to make its case more attractive.) Why should it not enjoy the right to self-determination? Similar to the question of universal human rights, which I discuss in n. 38, one’s answer to this question largely depends on the version of liberalism that one adopts. If agreement, rather than a philosophical foundation, is the primary basis for domestic principles of justice, then it would seem that one ought to favor more strongly the right of a group to secede in order to live out an illiberal practice. With my own perfectionist version of liberalism, resting on moral autonomy, I am reluctant to favor the creation of a new regime that promotes practices that are any more illiberal than the culture-promoting restrictions I discuss above. A group cannot use its autonomy to choose under which government to live in order to establish a regime that denies the individual autonomy that is protected by basic human rights. Again, however, I would need to defend my perfectionist approach if I were fully to defend this view.

determination; only the enhancement of democracy is. Absent the importance of self-government, in fact, one cannot make full moral sense of them. It must always be asked, Who suffers the threat or grievance? And the answer to this must always be a group that desires self-government.

*Historical grievances.*—A group that was once invaded, annexed, or robbed of its land through diplomatic subterfuge and continues, through literature, stories handed down, and the brave acts of dissidents, to tend the memory of its glorious, innocent, free, untrammelled past, staving off the homogenizing intentions of its oppressors, has suffered a historical grievance. Lithuania, summarily seized by Stalin, is paradigmatic. To Brilmayer, a “historical grievance” is the “most intuitively appealing and direct” way to establish a territorial claim.<sup>46</sup>

Applying the historical grievance criterion can be difficult—who took what when is not always lucid—and Brilmayer recognizes this: colonial cases are clearest; others are not so easy.<sup>47</sup> Casuistry, though, is rarely simple; and no theory of self-determination is easily applied. But there is a deeper problem. In Brilmayer’s argument, the historical grievance is a way of demonstrating a legal claim to territory. But as I have argued, this is the wrong kind of claim to require: land is only relevant to the extent that a people under a common government live on it; and self-government, not a legal argument about the history of one’s land, is the central issue.

Historical grievances, though, are not irrelevant. We still hold that Lithuania suffered injustice when Stalin annexed its land and that this crime enhanced its secessionist claim in 1990. And the Lithuanians may very well have a legal case. If they do, it augments their self-determination claim. But the moral heart of their argument is surely not that their land is something to which they are simply legally entitled, but that it is the space in which they have lived out their common life, fashioned their historical identity, and, most important for our purposes, want to govern themselves. Underlying the legal claim, providing its moral foundation, is self-government: this is what Stalin took away when he deviously bargained for the Lithuanians’ land in 1939.

*Discriminatory redistribution.*—Buchanan defines discriminatory redistribution as “implementing taxation schemes or regulatory policies

46. Brilmayer, p. 189.

47. She helpfully lists four standards to help sort out the complexity: (1) the immediacy of the historical grievance, (2) the degree to which the group has kept its claim alive, (3) the extent to which a secessionist territory is occupied by indigenous people, as opposed to outside settlers sponsored by conquerors, such as Russians in the Baltic States, and (4) the nature of the historical grievance: colonialism and conquest are clear grievances; in other cases, who took land when is obscure. She notes further complexities in applying each of these standards and provides attendant qualifications. Brilmayer, pp. 195, 199–201.

or economic programs that *systematically work to the disadvantage of some groups, while benefitting others, in morally arbitrary ways.*<sup>48</sup> He cites the American South, which claimed to be the victim of a discriminatory tariff. More recent examples are Slovakia, which gave dissatisfaction with the rapid pace of Czech economic reforms as a reason for separation, and Croatia, one of whose *casus belli* was that Serbia wounded it economically.

The key phrase in Buchanan's definition is "morally arbitrary." It implies an injustice against a group that is not simply a matter of democratic procedure or distributive justice for individuals. After all, if these were the only issues, the question of self-determination would not arise; rather, a more just distributive policy would be required. Instead, the claim is that a group—a group with moral status—is being discriminated against. Buchanan, however, never tells us exactly what makes a certain collection of individuals a group with moral status in the first place. The question remains: Who is being victimized? Most states in the world include groups of people who are poorer than the rest. In only a few states do such groups see themselves as a group subject to economic discrimination. The identity of these groups typically does not depend on their economic victimization. Poverty may solidify their identity and solidarity; it does not create the group itself. Absent an argument establishing a group's moral status, it is merely a collection of similarly victimized individuals entitled to a just distribution of goods, whatever this may be. It is not until the group identifies itself as a group and seeks to promote its ends that it gains moral status. Then, however, we are no longer dealing with economics alone: economics may be a reason or motivation for self-determination, but self-government is now also at stake. And self-government is all that is required for self-determination. The group's economic grievance, if it is valid, may be an accessory justification for self-determination and may enhance its claim to a form of self-determination that remedies the injustice (at least economic independence), but it is not necessary.

But this is not the only economic issue: in some secessions, groups such as Biafra and Katanga, African provinces with a disproportionate share of their state's wealth, impoverish the larger state.<sup>49</sup> Should such self-determination claims be restricted? As Buchanan himself notes, and as I have argued, the distributive obligations between regions of states (as between individuals) are unclear and highly controversial.<sup>50</sup> Even if self-determining peoples are responsible for the economic consequences of their action, compensation—what Michael Walzer

48. Buchanan, *Secession*, p. 40; italics in original.

49. In some cases, such as Slovakia, the seceding people represent the poorer region.

50. Buchanan, *Secession*, pp. 114–24.

calls “the international equivalent of alimony and child support”—may be an appropriate solution.<sup>51</sup> Although it is not clear how such a payment could be enforced (perhaps the international community could make recognition conditional on payment), compensation is at least a provisional way of meeting economic obligations between groups, to the degree that they even exist.

*Cultural preservation and self-defense.*—With Buchanan, I consider cultural preservation and self-defense valid reasons for self-determination. Cultural membership is valuable, Buchanan claims, for Kymlicka’s reason: it is a “contribution to the lives of the individuals whose culture it is.”<sup>52</sup> If a culture is endangered, its members have the right to seek protection within the bounds of liberalism; and this enhances its claim to self-determination. Similarly, a group threatened with genocide by the larger state or a third party against whom the state cannot defend has a strengthened right of self-determination, just as a state, in just-war theory, has a right to self-defense. This makes sense from the democratic perspective—a group obviously cannot be self-governing if its very existence is at stake—as well as from the standpoint of human rights (independence may be the only way to prevent these gross violations). Applications? “One of the strongest arguments,” writes Buchanan, “for recognizing a Kurdish state or an Armenian state may be that only this status, with the territorial sovereignty it includes, will ensure the survival of these peoples in the face of genocidal threats.”<sup>53</sup> I concur.

### *Dissenters and Minorities*

The hardest, distressfully common, cases are ones in which dissenters and minorities live among the self-determining group. A dissenter is one who belongs to the group but does not agree on separation; a minority does not belong to the group at all. A Slovak who opposes secession from Czechoslovakia, believing that he will have a better, more economically abundant life in a united Czechoslovakia, is a dissenter; an English-speaking Quebecer or a Serb living in Croatia is a minority.

But before deciding how to treat these cases, we must address a prior, underlying issue: How do we decide who is a dissenter, minority,

51. Walzer, p. 168.

52. Buchanan, *Secession*, pp. 53, 61 (overall argument on pp. 52–64). He adds five qualifications to the cultural preservation argument: (1) the culture must actually be endangered; (2) alternatives less drastic than secession must be exhausted; (3) the culture must “meet minimal standards of justice”; (4) the seceding people’s new regime must uphold political and civil rights and the right to exit; (5) the people must not claim a territory to which a state or a third party also has valid claim.

53. *Ibid.*, p. 67.

or group member in the first place? The general criterion is subjective: we simply observe which collection of people demands self-determination. But what if some of the people living physically among this group claim not to be a part of it? Or what if some do not agree upon self-determination? One could imagine a handful of zealous California revolutionaries declaring independence for California, and finding little popular sympathy, especially among a group in the southeastern part of the state that calls itself Arizonan and swears to join Arizona. Who is the self-determining group—the revolutionaries, everyone who lives in California's borders, or everyone who calls himself or herself Californian?

The simplest and most apposite answer begins with a couple of definitions. A candidate group is the collection of people whose identity—ethnic, religious, cultural, national—the proclaimers of self-determination claim to share, and on whose behalf they purport to act (in this case, all those who call themselves Californians). A candidate territory is that region which the proclaimers of self-determination desire to place under a new (or more local) government (in this case, the state of California). Simply put, we evaluate that claim which self-determination's explicit advocates put forth. Usually, it is not hard to identify the candidates: we can pick out the groups as Bosnian Muslims, Tamils, Croatians, Serbs, Francophone Quebecers, and so on, and recognize the territory as Bosnia, Serbia, Northern Ireland, Quebec, and so on. Rather, the perplexing question is which claims are justified, given that we are no longer dealing with our homogeneous, unanimous, utopian group.

In the case of the dissenters, who occupy a homogeneous, minority-less candidate territory but are divided over whether to separate, the operative principle must be majoritarianism. Guaranteeing everyone's right to live in the state of his choice is impossible; a next-best alternative must be adopted. The ideal method of assessment is the plebiscite, feasible in a democracy. Unfortunately, governments, even democratic ones, often simply assume that their population is united or do not bother to check for fear that the citizens might not want what they want. In Slovakia, Vladimir Meciar was elected in summer 1992 with less than 40 percent of the vote on a platform including, but not limited to, national independence. Assuming a mandate for secession, Meciar then sued for political divorce. A specific vote on secession was not taken, and one can only guess the Slovaks' true preference.<sup>54</sup>

54. For a good argument linking majoritarianism to the principle of autonomy, see Dahl, pp. 137–39. On a separate issue, one might argue that because of the magnitude of the decision to become independent and the need for widespread support for the new government, the vote required should be higher than 50 percent. Such an argument is intuitively attractive, although it is difficult to know exactly where to place the cutoff.

In the (harder) case of minorities, the candidate territory is heterogeneous—swirls of contrasting minority color run through a solid majority background. Northern Ireland, mixed between Catholics and Protestants, Croatia, mixed between Croats and Serbs, and Quebec, mixed between French-speakers, English-speakers, and Aboriginal peoples, are only a few such territories. The dilemma is, first, that not everyone can enjoy the autonomy to live under the government of his choice short of ethnic cleansing (which, to say the least, does not respect autonomy either) and, second, that blithely granting self-determination to the candidate group may endanger the rights of the minority.

Here, a two-part principle is needed. (1) In the heterogeneous candidate territory, the decision rests with the majority of the total territory's inhabitants, with the qualification that under the new government, minority rights—including Kymlickan cultural rights—are guaranteed. The autonomy maximized through majority rule must not be gained at the expense of minority rights. Croatia, for instance, is a heterogeneous territory, but whether it would guarantee (or would have guaranteed) minority rights is exceedingly disputable. (2) The second part deals with the yet more complex "self-determination within self-determination" or, in our technical terms, a homogeneous subterritory within a heterogeneous candidate territory. Here, the minority is not interspersed among the majority, as African-Americans are, but uniformly occupies its own enclave, as Serbs in eastern areas of Croatia and Aboriginals in northern Quebec do. Applied consistently, logically extended, self-determination requires that we treat this enclave as a candidate group that may choose its own fate through its own majority decision.

The latter clause guards against a certain perversity: that the proclaimers of self-determination might opportunistically define the candidate territory so widely that it encompasses not only the land where their group lives, but an extra piece of land as well (but not so large a piece that they lose their majority). For instance, say that our Californian seceders wanted to take with them the southern half of Oregon, where only nonseparatist Oregonians live, and thought that within these expanded borders they could win a majority vote. In the present rubric, this would not work: because southern Oregon is itself homogeneous, southern Oregonians—the new candidate group—could proclaim their own intention to remain under the government of Oregon and would be so permitted.<sup>55</sup>

55. On the question of defining candidate groups and territories, several gnarly casuistic challenges arise. I can think of four in particular: (1) Union—two territorial groups want to fuse (see n. 16). This one is actually not so difficult. Both groups agree on uniting; self-determination implies that they ought to be allowed. (2) Expulsion—the

*Self-Determination's Consequences*

If the democratic argument for self-determination is correct, then the UN's post-World War II reluctance to recognize self-determination movements needs rethinking; justice requires it. Yet we know from today's struggles in Bosnia and elsewhere that war, refugees, and disrupted lives often result from self-determination. A full moral account, then, requires a counterpart to just-war theory's category of *jus in bello*, or the justice of means of fighting. A key tenet is proportionality: if the morally evil consequences of an otherwise just war (in this case, self-determination movement) outweigh the good achieved, then the action should be avoided. It is difficult to be systematic: some secessions, like Slovenia's, are almost graceful, while others, like Eritrea's and Bosnia's, turn into bloodbaths. And, though morally crucial, consequences resist quantification: How does one weigh them against the moral worth of a just self-determination movement? Ethics here is baffling and situational.

A few generalizations, though, are germane. First, it doubtless makes a difference what kind of self-determination is championed. Secession brings certain ills upon the larger state's house that more benign forms do not. As we have seen, it more strongly restricts the larger state's citizens, denying them opportunities for work, movement, and change of residence that they previously enjoyed. The mere threat of secession could also be used for economic blackmail—"grant

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vast majority of citizens in an existing state want to expel the citizens living within a certain territorial enclave, and the enclaved citizens do not want to leave. Imagine that the citizens of the United States want to expel Florida, contrary to the wishes of Floridians. This one is more difficult, for two groups' rights to self-determination are mutually exclusive: the larger group wants to define its territory so as to exclude the smaller (it is in a sense "seceding" from the smaller one); the smaller group resists exclusion. Assuming that no injustices, harms, or grievances have been committed, considering the groups' political aspirations alone, there is no way to solve this problem consistent with self-determination based on autonomy. The best imperfect answer I can think of is to maintain the status quo, allowing people to remain in the system of social cooperation in which they have been living. (I thank one of the anonymous editors for raising this problem.) (3) Exclusion—the citizens of one state do not want to allow an outside group of citizens to join. If Puerto Rico decides to aspire to statehood in the United States, and the United States flatly refuses, this would be an example. Again, on the basis of principles of autonomy, the problem is insoluble; favoring the status quo would give a veto to the receiver state. This is not to ignore, however, economic or other considerations of justice that might favor Puerto Rico's inclusion. These, however, need to be developed systematically. (4) Exclusive secession—a territorial group secedes from or becomes autonomous within a larger state but excludes a separate group, which it does not include in its identity, from joining it in a new state or federative region. Imagine Californians seceding, but excluding those living north of San Francisco, whom they claim are not true Californians, from the new Californian state. Once again, we reach a dead end. The status quo seems to favor allowing the northern Californians to join.

me these concessions or else!”—and actual secession, as is exceedingly apparent, can bring war, disrupt economic relations with the larger state, and impoverish the residents of either region. Slovakia’s secession from Czechoslovakia will likely retard Slovakia’s economic development. And by creating more states, especially adjacent hostile states, secession brings Balkanized conflict. It’s already happening in the Balkans, where the violent exits of Bosnia-Herzegovina, Croatia, and Slovenia encourage the fissiparous urges of Kosovo and Macedonia, and it could happen elsewhere. Ernest Gellner, theorist of nationalism, points out that since the number of “potential nations” on earth is “*much* larger than that of possible viable states,” trying to make them all states would be a humanitarian disaster.<sup>56</sup>

A presumption against secession should be adopted; other forms of self-determination should be sought. In all cases, however, it must also be remembered that grievances and threats can enhance a case for self-determination, and that not allowing self-determination has evil consequences, too. The Bosnian Muslims fear persecution in a Yugoslavia dominated by Serbs; the Iraqi Kurds were ravished by Saddam Hussein.

Factoring in these harms, we may posit a general formula: a candidate group is granted a general right to self-determination within a candidate territory when the group’s likely potential for justice—that is, its degree of liberalism, majoritarianism, and treatment of minorities—is at least as high as the state from which it is gaining self-determination;<sup>57</sup> its claim is enhanced, and more justifiably takes the form of secession, when it suffers threats and grievances; but if its separation limits the autonomy of the larger state’s members, then it must be limited or modified to minimize or compensate for this harm; and, finally, the prospects for war and chaos must be weighted proportionately against the justice of self-determination and any injustice that the group has suffered. Secession, by this formula, truly becomes a last resort; it should be endorsed only when a people would remain exposed to great cruelty if left with a weaker form of self-determination.

56. Gellner, p. 2; italics in original. Also quoted in Buchanan, *Secession*, p. 49. For a helpful study of minority movements that shows that secessionist conflicts are longer and bloodier than conflicts over federal autonomy, see Ted Robert Gurr, *Minorities at Risk: A Global View of Ethnopolitical Conflicts* (Washington: USIOP, 1993).

57. The phrase “at least as high as” indicates that I allow for the self-determination of even the nonideal candidate group, which in fact, includes virtually every candidate group. The alternative would be to pose a standard of justice that would be impossibly high or whose level would be arbitrarily set. Using the present approach, self-determination is a justice enhancing measure, not one that achieves a particular level of justice. I am indebted to Amy Gutmann for raising this issue.



Yet there is a final, perhaps unexpected way in which a right to self-determination might be destructive, not in its actual exercise but in its very existence: according to some critics, it would subvert majoritarian democracy.<sup>58</sup> Through constantly threatening departure if it is not conceded its economic, educational, linguistic, or other demands, a group could prevent disunity-fearing voters and legislators from voicing their true preferences and weaken collective decisions; it would never be clear whether the dissenters would abide by the results. Especially in multiethnic constitutional houses of cards like Russia or India, easy exit could make democracy totter.<sup>59</sup>

But would this disaster truly arise from self-determination? The possibility of blackmail threats must be admitted; but a ceaseless barrage of them, chipping away at democracy, is unlikely, at least not as a result of the right I have proposed. Because it is strongly qualified by justice, the right would be denied to many potential blackmailers: groups who are illiberal or unjust to minorities will not enjoy it, and those who use their threat to elicit economic concessions—a grand get-rich-quick scheme—will encounter the demands of distributive justice, requiring that they consent to permeable economic borders or some kind of compensation. Gray areas of justice do exist, though, and might be exploited: ambiguity about exactly what distributive justice requires might tempt an arbitrageur of separatism, and vagueness about what is needed to protect minorities might entice a nationalist. In the eyes of many English-speaking Canadians, Quebec has long used the threat of separation to extract an unjustly disproportionate portion of federal resources and political prerogatives.<sup>60</sup>

Again, the possibility is real, but much will depend on how “loosely constructed,” to borrow a term from constitutional law, the right of self-determination is. Profligacy and indiscriminateness may indeed encourage new disputes and fire existing ones, whereas a strict construction, hesitant to allow ambiguous claims, could dampen them. At the margins, where the case for self-determination is murky, democratic stability ought to be favored over further separatist bargaining power. Self-determination is justified because it promotes democracy, but democracy can only and finally succeed when it is stable: citizens

58. Dahl, e.g., argues that “political autonomy as an absolute right . . . would make a state, or any coercive organization, impossible (or at any rate illegitimate), since any group facing coercion on any matter could demand and through secession gain autonomy” (pp. 196–97). My own theory does not make the right of political autonomy absolute, nor does it only deal with secession. (I do not claim, though, that my following explanation would satisfy Dahl.)

59. See Amitai Etzioni, “The Evils of Self-Determination,” *Foreign Policy*, no. 89 (Winter 1992–93), pp. 21–35.

60. I am indebted to one of the anonymous reviewers for assistance with this point.

are confident that their decisions are made freely, uncoerced by the constant threats of a particular group not to participate at all, and secure in the expectation that their democratic decisions will be accepted whatever their content. When self-determination is clearly just, by contrast, the issue of bargaining takes on a new aspect: now, we actually want our group to have more leverage with which to press its claims. Thus empowered, it might attain a just solution, which will be either independence or a set of new terms of federation on which democracy may continue—stably, successfully, with the assent of its citizens.<sup>61</sup>

A stable democratic solution, incidentally, need not always be majoritarian. Political scientist Arend Lijphart shows that, in fact, several of the world's democracies (e.g., Belgium and Switzerland) have achieved stability by creating special provisions for groups: guaranteed cabinet positions, electoral privileges, and so on.<sup>62</sup> These provisions, allowing groups to govern themselves more directly and guard their interests as well as take part in ruling the entire state, are forms of self-determination that have proved stable.

In the argument about blackmail, as in much of my argument for legitimizing self-determination, I have assumed that legitimation means empowerment; that altering international law and global assumptions so that self-determination would be prioritized over territorial integrity would in fact embolden groups who would claim the right and weaken those who would deny it. Self-determination's critics, in fact, might claim that to legitimize the principle, even a "strictly constructed" one, to allow it to spread into political discourse, to give hope to aspirants all over the globe, would breed innumerable offspring with claims clear and ambiguous, within both tyrannies and democracies, carrying all of separatism's attendant troubles. Global anarchy, Gellner's humanitarian disaster, would not be far away.

But would legitimacy alone really have such an effect? First of all, even a legitimated principle of the kind I propose would, as I have argued, allow few secessions and reject many claims to federal autonomy. More important, though, even if the principle became law, it is not likely that self-determination's moral status would burgeon so dramatically that it would spark rampant separatist zeal. Self-determination has hardly been living in benighted times, waiting for enlightenment. For defiant peoples, it has been legitimate ever since the French Revolution, and the fact that it has not been forcefully championed by the UN hardly diminishes its appeal.

61. Once a reasonably just solution is attained, any further claims by the same group would then become unjust or ambiguous.

62. See Arend Lijphart, *Democracies* (New Haven, Conn.: Yale University Press, 1984). On Lijphart, see Dahl, pp. 156–60.

Incentives for separatism, if not strengthened by the principle's legitimacy alone, are more plausibly influenced by the precedent of enforcement set by an international community—great powers, the United Nations, the European Community—that takes seriously an expanded right of self-determination. Until now, I have discussed when the right might be “granted” or how it ought to be “constructed” but have said little about who is doing the granting and constructing. Here we reach a difficulty, for in the world of states there is no widely respected and authoritative Supreme Court to develop a tradition of precedent, no sovereign executive to enforce it. The closest we have is the international community, which, depending on the extent of its moral authority and its ability to thwart self-determination's opponents through tanks, ships, and planes used for combat and embargo, and depending on how strictly it “constructs” the principle, on how seriously it heeds the proper moral qualifications, how careful it is to limit war and other tempests, and how much it values stable democracy, can indeed affect the incentives for self-determination. Of course, many separatist struggles and, for that matter, the suppression of them, will occur no matter what norm exists, no matter how opposed the international community. Legitimacy alone will not deter the maniacal nationalist, and the world's largest powers cannot come close to preventing all, or perhaps even most, of self-determination's excesses. These powers, though, still significantly influence self-determination's moral fate.

Strengthened in international law and prudently supported by the world's most powerful states, legalized self-determination could quite conceivably contribute to order and stability, not anarchy. Only when current rivalries and ancient hatreds are accommodated within a just legal framework—not an immediate possibility, but a guiding ideal—are they likely to become tame. Houses divided against themselves cannot stand, but they are less divided when their members feel respected.

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<sup>44</sup> **Cultural Rights Again: A Rejoinder to Kymlicka**

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<sup>59</sup> **The Evils of Self-Determination**

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