

## Why stay together? A pluralist approach to secession and federation

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**Why stay together?**

A pluralist approach to secession and federation

**Rainer Bauböck**



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## **A pluralist approach to secession and federation**

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## Editorial

Taking up responsibility as an editor is an honor as well as a burden. Taking up responsibility for a well introduced and successful product is even more so. I feel honored by the trust put in me by the colleagues of the department that the **Political Science Series** of the IHS will continue to flourish, and I feel the burden of living up to the standards and good quality the series has acquired since its inception.

I would like to take this opportunity to thank my predecessor and dear friend, Andreas Schedler, for his imagination and effort that gave birth to the **Political Science Series** in 1992. It acquired a kind of “best practice”-reputation since then and had a lasting impact on the publication policy of the Institute for Advanced Studies. During the last five years exactly 50 papers were published under Andreas Schedler’s direction and the **Political Science Series** became an integral part of the department’s activities.

I will do my best to continue what Andreas Schedler has begun so energetically and successfully and I hope that he will have the possibility to see the **Political Science Series** grow even from his new domicile and sphere of activity in far away Mexico.

Josef Melchior



## **Abstract**

As a political doctrine nationalism has four distinctive features which make it unattractive from a liberal perspective. It promotes revisions of external state borders by secession and unification in order to create homogeneous nation-states; it militates against national and ethnic diversity within the given borders of a state; it regards national obligations as overriding other interests and identities of the nation's members; and it attributes a moral priority to compatriots which overrides obligations towards foreigners or foreign countries. The paper briefly examines each of these 'four ugly faces' of nationalism. Although liberal political theory may claim to have most consistently opposed these nationalist propositions, I argue that traditional liberalism is ill-equipped to reply to questions which involve the legitimacy of boundaries of political communities. This claim is substantiated by a more thorough examination of the question how state borders ought to be drawn. Consequentialist, deontological and liberal nationalist approaches are each divided against themselves on the question about whether and how to defend or reject a right to secession. The paper derives an alternative response from linking the legitimacy of secession to a theory of federation. In this view, secession may not only be justified in cases of persistent discrimination and inequality of individual citizenship, but also when fair terms of federation are violated. In multinational states, the claims of territorially concentrated groups to self-government can be generally satisfied by guaranteeing them collective rights to regional autonomy and special representation at the federal level. If, and as long as, the terms of federation are fair, minorities incur an obligation to maintain the unity of the federation in which they participate both as individual citizens and as distinct political communities within the larger polity.

**Notes**

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## 1. Introduction

There are many different types and historical paths of nationalism. I take as my starting point the definition offered by Ernest Gellner, which I think is still the best one available, that “nationalism is a theory of political legitimacy which requires that ethnic boundaries should not cut across political ones” (Gellner 1983:1). This definition covers ethnic nationalism for which the nation as an ethnic group precedes the state as a political unit, but it also applies to republican nationalism for which the state comes first and faces the task to forge the cultural unity of a people. The definition refers to majority nationalism which defends the existing borders of a state and the cultural hegemony of a dominant group, as well as to the nationalism of dissatisfied minorities who want to change external state borders or to create internal subdivisions within which they enjoy political autonomy. A wholesale moral judgement about the various kinds of nationalism which abstracts from the context in which they arise is obviously inadequate. Nevertheless, we may ask whether there are some general – even though not necessarily universal – features of nationalism which are difficult to reconcile with principles of liberal democracy. Such a critical judgement would not warrant an automatic condemnation of every nationalist movement or ideology, especially not of those which emerge from resistance against oppression. However, it would lead to a certain ideological distance and would call into question the project of reconciliation at the level of principle which has recently re-emerged under the label ‘liberal nationalism.’<sup>1</sup>

Every comprehensive theory of political legitimacy has to answer fundamental questions about the identity of a political community and about its moral status. Each of these can be split into two parts, concerning external and internal relations respectively. What we get are four questions which can be used for testing the compatibility of nationalism and liberal democracy as principles of political legitimacy. First, where should the boundaries between different political communities be drawn, how to allocate territories and populations to states? Second, what is the common identity of the political community, how can it cope with internal diversity? Third, which are the members’ obligations towards their own community, how strong should their political loyalty be in cases of conflict with their other interests or with their moral judgement? Fourth, which moral obligations do the authorities and the ordinary members of a political community have towards foreigners or other states? In spite of all the varieties, any theory that can be called nationalist will defend certain answers to these questions. From a liberal perspective each of these answers presents an ugly face of nationalism, a politically dangerous or morally obnoxious principle. As we will see, nationalist answers allow for different

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<sup>1</sup> This is the title of Yael Tamir’s book (Tamir 1993). A second major work which revives this tradition is Miller (1995). Michael Lind’s definition of liberal nationalism echoes Ernest Gellner’s: “Liberal nationalists believe that language and culture – not biology – define nationality; that sovereign states, insofar as is possible, ought to coincide with linguistic-cultural nations; and that nation-states, in their constitutional organization, should be liberal (respecting codified rights of property, association, religion, and speech) and, where social conditions permit, democratic.” (Lind 1995:261). A number of other authors, among them Isaiah Berlin (1992), Richard Rorty (1994), Benjamin Barber (1996:36), Wolfgang Kersting (1995) or Avishai Margalit (1997) have recently promoted similar ideas.

degrees of nastiness, but no true nationalist can fully abandon the four characteristic ideas and embrace opposite principles.

In this paper I will mainly deal with the first question. I think that the kind of approach which I suggest could also be adopted for addressing the other three problems. This would be a task for potential sequels to this pilot. Like in TV series, I would first like to test initial responses from the audience before taking the risk to launch sequels. The argument I want to make is that liberals have very good reasons for resisting the temptations of nationalism – even when these are seductively presented in the cloaks of liberal nationalism – but that liberal traditions and most of their contemporary proponents fail to offer us coherent and convincing answers. The reason for this is that these traditions seem ill equipped to address questions concerning the boundaries of political communities. The basic *moral* premises of liberalism are universal in the sense that they apply equally to all individuals as *human beings*, while liberal *political* theory about justice and legitimacy in a social, economic and political order tends to take the state as its basic entity and addresses the individual as a *citizen*. Issues like secession, migration or ethnic and national minority rights cut across this dichotomy. They raise questions about how liberal democratic polities are constituted, how they define membership, which kind of loyalty they can expect in a world where states confront the claims of groups who have stronger ties to them than other human beings, but still are not their citizens, or not only their citizens, or do no longer want to be their citizens. Migrants and minorities are in this peculiar position where they depend on particular states for protection and rights but are often seen as not fully belonging to the polity because they maintain other and competing affiliations.

Nationalists have straightforward answers to most of these questions. They neatly separate the world into distinct communities. Among these communities the nation enjoys supremacy as an object of loyalty and as a limit for political and moral obligations. Civic republicanism has rejected the nationalist equation of cultural and political community but has defended the same structural features of exclusive membership and supreme loyalty with regard to citizenship. For both traditions, a national identity is generally *overwhelming* in the sense that it defines both the *largest* unit of collective identification and the unit of *overriding* obligations.

Liberals have more often relied on the principle of toleration which allows for a multiplicity of strong affiliations, practices and beliefs in civil society as long as these do not conflict with the task of the state to maintain public order, international peace and the basic liberties of all its citizens. However, liberal theorists have too easily assumed that the model of religious toleration could be generalized towards a more comprehensive neutrality of liberal government between competing claims of political and cultural communities.<sup>2</sup> Yet no modern state can be

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<sup>2</sup> John Rawls's project of political liberalism applies the principle of religious toleration to philosophy itself (Rawls 1993:10, 154). It responds to the fact of pluralism in a liberal society but refers only to the plurality of comprehensive religious and moral doctrines, not to the plurality of rival conceptions of the political community itself which dominates in ethnic and national conflicts.

neutral in matters of how it defines its own boundaries and what languages will be taught and spoken in its institutions of public education (Kymlicka 1990:231–2). These features of public life are primarily structured and reproduced by the institutions of the modern state rather than by autonomous associations in civil society. There is no Lockean solution to the problem of toleration between groups of individuals who live together in a single state but think of themselves as belonging to different nations. A proper response to nationalism will have to organize pluralism at the level of the polity rather than confining it to the private realms of domestic life and the public spheres of civil society.

The style of my inquiry will be normative and mostly conceptual. I will use specific cases only for illustration and want to refrain from explicit judgements about which side is right or wrong in a political conflict. My purpose is the critique of ideas which inform such judgements. I will also not address normative dilemmas underlying the most violent national conflicts in the contemporary world. Focusing instead on questions raised by rather benign cases such as Québec or Czechoslovakia may seem like a flight from the harder realities of terrorism, civil war or foreign military intervention. However, the target of my critique are deficiencies in liberal and democratic ideas about nations, political communities and cultural diversity. The wealthy and relatively stable liberal democracies of the western world serve as a reference point for this exercise in two different ways: first, by showing that ‘national questions’ keep haunting even these polities which can otherwise be seen as approaching liberal ideals; second, by demonstrating that the best democratic solutions to these challenges often do not conform to liberal or republican premises.

In the following section I will outline what I take to be dominant nationalist answers to all four questions listed above. The third and main part of the paper will then examine liberal, republican and pluralist responses to nationalist challenges to the stability of external state borders.

## **2. Four ugly faces of nationalism**

(1) As pointed out by Gellner, nationalists defend the idea that nations are political as well as cultural units and the borders of both should be congruent. This principle is violated by multinational states uniting under a single government different communities with a claim to independence, as well as by borders dividing communities of the same culture into separate states. Ethnic nationalism sees the cultural units as objectively given and asks that state borders should be redrawn to reflect the historical boundaries of the former. For republican nationalists nations are in the first instance political communities sharing a common will to independence. The proper borders can therefore not be defined by ethnographers, but only by the people themselves. Rival claims to populations or territories can then be tested either by violent means or by peaceful ones. National self-determination is exercised when ordinary

people take sides in a war between states fighting over their lands or when they vote in a referendum where they want to belong. However, there is an underlying agreement between the ethnic and republican conceptions of national self-determination. For both versions of nationalism nations are cultural as well as political units, they only differ with respect to the proper sequence how to achieve the desired congruence. In 1870/71 the German camp claimed that Alsatians were Germans because of their language and should therefore be politically reunited with their co-nationals in a single German *Reich*. Paris insisted that they were French by political choice. However, this was a package deal which implied that Alsatians should give up speaking German and assimilate to the French language and culture.

What is wrong with these ideas about national self-government? There are only three possible ways in which they may be applied. Firstly, and most commonly, they are invoked to defend only the claims of one's own nation and deny similar claims of others. Secondly, if they were consistently applied as universal principles, this would lead to instability, chaos and perpetual wars. Thirdly, this consequence can be only avoided if national self-determination is merely invoked as a subsidiary rule which is always overridden by other concerns such as the territorial integrity or economic viability of states. However, even such constrained self-determination may destabilize the international order and cause human suffering on grand scales.

Not all theorists of nationalism have been so outspokenly partial in defending the superiority of their own nation as Johann Gottlieb Fichte in his addresses to the German nation of 1808. Other romantic nationalists like Johann Gottfried Herder or Giuseppe Mazzini believed in the equal moral worth and rights of all nations. They could still assume that the vast number of ethnic and linguistic groups in Europe naturally belonged to a small number of potentially independent nations. Later nationalist universalists like Woodrow Wilson witnessed a rapidly increasing number of would-be nations and became aware of the fact that a strictly universal principle of national self-determination would provide a further incentive for the proliferation of claims. The only possibility to maintain a general formula seemed to constrain it by a prior requirement that nations aspiring to self-determination ought to be able to form viable independent states. The claims of smaller and territorially dispersed groups to nationhood were thus ruled out in the name of preserving a stable international system of states with reasonably secure borders. Instead of breaking down territorial units into new units according to the national aspirations of their resident populations, this half-hearted application of the nationalist imperative created new majority nationalisms fighting for 'nationalizing' their state and transborder nationalisms linking minorities to an external homeland (Brubaker 1996:55–76). In a number of cases the disastrous outcome was a territorial unmixing of peoples so that they would fit into the new nation-states (ibid.:148–178). The situation of those who found themselves on the wrong side of a border was often bad, much worse was that of groups like the Armenians, Roma and Sinti or Jews who had no state to either protect them when they were persecuted or to admit them when they were expelled. The end of World War Two brought

a new wave of state-formation which departed from the principle of national self-determination in a quite different way. National self-determination was limited to single acts of decolonization and produced states whose borders did not respect ethnic or linguistic boundaries but simply followed those drawn by colonial administrations. Concerns about viable size of populations, economic resources and military strength became much less relevant, but so did concerns about the cultural homogeneity of new states, too. The very idea of the nation as a single cultural and political unit was grossly inadequate to the patterns of ethnic and cultural diversity in many of the former colonies. However, it became a powerful tool in the hands of postcolonial rulers who used it to legitimate internal oppression or aggression against neighbouring states. The latest wave of state-formation which resulted from the breakdown of the multinational Soviet and Yugoslav states illustrates once more the difficulty of containing the chain reactions triggered by claims for national self-determination and the arbitrariness of the criteria which defined the stopping points. A nationalist understanding of self-determination can hardly justify why only the 15 former Soviet Union republics, but not the other republics within the Russian Federation, such as Chechnya, could claim independence (Chwaszcza 1997).

(2) Nationalism can achieve its target of matching political and ethnic boundaries by adjusting either the former or the latter. If territorial borders cannot be changed to satisfy this drive for homogeneity, then group boundaries will come under attack. These internal frontlines are where nationalism shows its second ugly face. Once political rule over a territory considered as the national homeland has been successfully established, there are several possibilities how to eliminate cross-cutting ethnic boundaries. The most extreme ones physically remove the population declared to be foreign to the nation by mass-expulsion or genocide. The second option is internal segregation which effectively excludes minorities from the polity while depriving them of the resources needed to build their own autonomous community. This can be achieved by denying them full citizenship, by stigmatizing them as social pariah groups or by confining them to 'homelands' and reserves. The third option is coercive assimilation of minorities into the national culture. For assimilation to become a solution to the problem of ethnic heterogeneity two premises have to be accepted. First, the national culture cannot define itself in exclusively ethnic terms, because then nobody can ever become a full member who is not perceived as sharing the same descent. Second, the groups concerned must be seen as assimilable, i.e. as not inherently incapable or unworthy to join the nation. The denial of both premises characterizes racist varieties of nationalism which leave only the former two options. However, coercive assimilation creates itself a fundamentally asymmetric relation between a majority and a minority which frequently paves the way for a subsequent racialization of minorities. Assimilation is coercive when it devalues a minority's culture of origin and deprives it of resources for cultural reproduction. And the standards for what counts as successful assimilation are never set by the assimilating group, but always by the 'receiving' one. Groups can thus be defined as unassimilable *ex post*, after they have already adapted to the previously established criteria. As a price for political emancipation many West-European Jews had assimilated during the 19<sup>th</sup> century to the point of making themselves culturally

indistinguishable. Partly in response to this effort at self-transformation, antisemitism shifted from a religious towards a racist definition of difference.

Nationalist policies of cultural homogenization are not only targeted against ethnic minorities. The primary goal in forging a new nation is to overcome cultural diversity within the majority population by undermining its local dialects and traditional ways of life. In order to become truly 'national', majorities must cease to be 'ethnic',<sup>3</sup> which is quite paradoxical if this very transformation is undertaken in the name of preserving or reviving a presumably ancient and popular cultural tradition. What the national awakening really produces is standardized high cultures which require a modern state for their reproduction and dissemination among a wider population. This cultural modernization spreads within and across states by imitation as well as by resistance. It becomes a vehicle for the interests of dissatisfied elites which find their social advancement and political ambitions blocked by aristocratic privilege or colonial dependency. Today, transforming their oral cultures into national ones by documenting their language and teaching it in schools becomes imperative even for indigenous minorities whose traditional ways of life will thereby be destroyed forever.

(3) The third feature of nationalism is the particular conception of patriotism which it promotes. First, patriotism is different from a natural sentiment of familiarity that most individuals develop with regard to a place where they have been born and raised. Although images of landscape, climate or styles of popular architecture are often invoked in nationalist rhetoric, it is essential for patriotism to overcome merely local identities. Second, patriotism is also more than a spontaneous feeling of sympathy for one's fellow countrymen. Different from the love of friends or spouses, the love of nation is not a virtue which citizens are free to develop and cultivate. Not to be patriotic is a moral deficiency. Because citizens cannot be trusted to be naturally

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<sup>3</sup> How can we distinguish ethnic from national groups? Both involve thick notions of cultural identity. The former are always, and the latter mostly characterized by an imagined common descent. What distinguishes national groups is their striving for, or asserting of, collective political autonomy (Calhoun 1993). Ethnic groups can transform themselves into national ones and most national communities define their identity in terms of common ethnic origins (Smith 1986:149–173). This broad area where ethnicity and nationhood overlap does not make the two phenomena identical. National unity need not refer to common descent and ethnic groups need not understand themselves as separate political communities within the wider society. David Miller therefore rejects what he sees as the premise of Gellner's definition, i.e. that a nation must be understood as an ethnically homogeneous community (Miller 1995:21). Yet this misses the point that the definition is about nationalism rather than about nations or national identities. The nationalist legitimation of political power creates a dynamic of politicizing ethnic identities of dominant majorities and of resistant minorities. Nationalism transforms ethnicity from a relational identity within social networks into a 'categorical identity', i.e. a formal equivalence of persons defined by common membership (Calhoun 1993:230). In the age of nationalism ethnic and national identities inevitably compete with each other and the homogenizing impetus of the latter militates against demands for recognition of the latter. Theories of political legitimacy which affirm ethnic diversity within a nation and a plurality of national identities within the state should therefore not properly be called nationalist. Miller's own approach is nationalist to the extent that he reluctantly accepts such diversity as unavoidable but "is resistant to special group rights over and above what equal treatment requires, because of the fear that this will ossify group differences, and destroy the sense of common nationality on which democratic politics depends" (Miller 1995:154).

patriotic they have to be taught this virtue in school and later have to be constantly reminded in public rituals of their obligation to love their country.

These two aspects are more or less common to all kinds of patriotic rhetoric. Nationalism adds further elements. Patriotism is, third, an unconditional obligation. The critical patriotism of Edmund Burke who required that “to make us love our country, our country ought to be lovely” (Burke 1790/1987:111) is not the attitude of a true nationalist. “Our country, right or wrong” best describes the morality of nationalism. It seems that the men who pronounced this maxim intuitively felt how outrageous it is to ordinary moral understanding. Stephen Decatur, U.S. naval commander to whom the original quote is attributed, introduced it in 1816 with the following qualification: “Our country! In her intercourse with foreign nations, may she always be in the right.” U.S. senator Carl Schurz restated this more subtly in 1872: “When right, to be kept right; when wrong, to be put right.”<sup>4</sup> Both men conceded what radical nationalists are unwilling to admit: that their nation may commit wrongs towards other nations. However, their message was that this does not affect the moral bond which binds the individual to her nation. Fourth, this bond can neither be created nor be severed by the individual. The nation may admit new members who have served its cause or expel those who have betrayed it. Individuals may be chosen by the nation, but it is not for them to choose their nation. Likewise, the obligations of patriotism cannot be simply renounced, not even by leaving the national territory.

Fifth, and most importantly, loyalty to the national community ought to transcend all other interests and obligations. Citizens should be ready to abandon their family and friends, and to kill or die if this is required for the sake of their nation.<sup>5</sup> Some accounts of obligations use the image of concentric circles. In this view the smallest circles of family or friends form a dense web of special obligations while the widest circle of humanity involves universal obligations. The image itself does not tell us which of these obligations are stronger. It may be used to defend local as well as cosmopolitan accounts of morality.<sup>6</sup> But certainly the middle range cannot have any special importance. Yet this is exactly what nationalist morality defends. We are said to have special obligations to the nation which outweigh those towards smaller communities and towards humanity. In order to make this plausible nationalist rhetoric sometimes portrays the nation as if it were a family and sometimes as if it were the world. On the one hand, citizens

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<sup>4</sup> *The Columbia Dictionary of Quotations*, Columbia University Press, 1993.

<sup>5</sup> In a recent essay, Yael Tamir argues that even liberal democracies have to rely on nationalism in order to provide reasons why their citizens should be willing to die for the self-defence of their state (Tamir 1997). Interestingly, her account does not look at the other side of the coin which is the readiness to kill those fighting for an enemy. Also, there is no reason to assume that all liberal states have to rely for their self-defence on the general conscription of their citizens. Moreover, in an age of ever more powerful means of mass destruction the old Roman doctrine of *‘si vis pacem prepara bellum’* is no longer defensible. If you want peace you ought to prepare for peace. Apart from situations of acute threat a strong emphasis on teaching citizens to kill and die for the sake of their country is hardly a contribution towards peaceful and friendly international relations.

<sup>6</sup> Michael Walzer emphasizes that morality becomes thinner as we move towards larger units (Walzer 1994) while Martha Nussbaum claims that the widest circle is also the most important one for our moral obligations (Nussbaum 1996:9).

are often said to have incurred a debt which can never be fully repaid for having been born and raised in a national community (see Viroli 1995:9). On the other hand, the nation is presented as a complete world which offers everything an individual needs in order to lead a good life. Humanity is only a thin moral abstraction, the world is composed of nations and the boundaries of our own one are also the essential limits of our moral world.

(4) The fourth ugly face of nationalism is a direct consequence of this kind of morality. Nationalists generally dismiss positive obligations towards individuals or societies who are not recognized as members of their own nation. Those who want to present a moral defence of nationalism will reject chauvinist, racist and imperialist views which deny even negative obligations to refrain from invading other countries or contractual obligations resulting from international treaties. Yet they will insist that none of the following are moral obligations for governments and states: securing a right to basic subsistence for every human being (Shue 1980), assisting other states in developing their economy or democratic institutions or redistributing the benefits of natural resources between states (Pogge 1994), protecting refugees abroad and admitting them to one's own country (Gibney 1986), granting citizenship to long-term resident immigrants (Walzer 1983:56–63, Carens 1989). In the nationalist view, positive obligations such as these are limited to our fellow countrymen.<sup>7</sup>

It is difficult to deny that this view is a widely shared one in contemporary liberal democracies. Most people seem to think of positive obligations towards outsiders as praiseworthy acts of charity which should be performed by individuals or voluntary associations rather than states. This view results from two basic assumptions. First, state authorities have been entrusted by the nation to advance its common interests. They are not free to dispose of the nation's resources as individuals might do with their own wealth. If governments shared the nation's assets with outsiders this would not be an act of benevolence, but a breach of trust. Second, the flip side of national self-determination is that it dissolves special responsibilities towards other countries. It is as if centuries of colonial exploitation no longer counted for much once a colony has achieved independence. If the former colonial power retains special bilateral relations it is in order to further its own foreign policy and trade interests rather than as an acknowledgement of persisting obligations. Nationalism not only obfuscates responsibilities for present global inequalities resulting from past dominance, it also blurs the perception of how Western democracies are implicated in the persistence of poverty and authoritarian regimes in

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<sup>7</sup> Robert Goodin and Thomas Pogge agree that global obligations are primarily negative ones. But Goodin argues that the positive obligations of governments towards their citizens are not special ones: "National boundaries simply visit upon those particular state agents special responsibility for discharging those general obligations vis-a-vis those individuals who happen to be their own citizens" (Goodin 1988:682). Pogge claims that there is a general negative obligation not to cooperate in an unjust global institutional scheme: "The more advantaged participants in the prevailing institutional scheme are collectively responsible for the injustice of the scheme insofar as they actively perpetuate it and resist reform... By ignoring the misery of the world's poorest populations, we are disregarding not merely our positive duty of mutual aid but our negative duty not to make others the victims of unjust institutions." (Pogge 1988:238). Nationalists would of course deny the premises of both arguments.

other parts of the world through their foreign or trade policies and through the effects of global economic regimes and international institutions which perpetuate dependency.

Liberals will generally admit that states have not only negative and contractual obligations towards foreign countries but also duties to compensate for past injustice and for ongoing disadvantages which they create for others. Yet they often also deny that there are any universal positive duties towards foreigners living in foreign states independently of any special responsibilities a state may have acquired for their fate. Where liberals and nationalists disagree most sharply is with regard to the claims of those foreigners who live permanently inside the territory of a state. In the nationalist view self-determination implies the right of each nation to control its own boundaries and these are not simply territorial ones. Immigrants who have become members of society by virtue of long residence or economic activity do not thereby acquire a claim to the rights and the legal status of citizenship. From a nationalist point of view the permanent exclusion from the political community of foreign immigrants and even of their children born in the country is perfectly legitimate. In a liberal democratic perspective this has to be seen as a violation of the principle that all those permanently subjected to the laws of a state ought to be equally protected by this law and equally represented in the making of laws.

### **3. The case against a right to secession**

The first question about political community concerns the population which it includes and the territory which it occupies. The nationalist interpretation of self-determination responds to this question. If applied consistently, the principle provides an incentive for secession movements which could reshape the boundaries of almost any present state. What can liberal or republican theories offer instead? We can distinguish three kinds of approaches. First, a consequentialist assessment of the effects of secession; second, theories which derive their judgements from basic principles for the legitimacy of political rule, and third, liberal nationalist attempts to reinterpret the principle of self-determination so that it no longer conflicts with basic liberal premises. What I will try to show is that the divergence of positions within each of these three approaches is greater than the differences between them. Consequentialists may argue for or against secession, depending on whether they adopt an act-consequentialist or a rule-consequentialist perspective. Some deontological liberals regard border changes essentially as a matter of democratic choice whereas others deny that secession can be justified unless a regime severely discriminates against a minority within its borders. Finally, liberal nationalists are also split into two camps, one of which advocates the formation of homogeneous nation-states while the other one interprets national self-determination as a right to resources for cultural maintenance rather than as an entitlement to form independent states. If each position in the debate on secession theories finds its strongest opponents within its own camp, this

should tell us something about the limitations of the three approaches.<sup>8</sup> My own argument leans towards the deontological position which denies a *prima facie* right to secession, but tries to develop an alternative justification that leaves much more scope for demands of dissatisfied groups who define themselves as national minorities within a wider political community. My discussion regroups the three schools of thought into two camps opposing a right of secession or advocating it.

The consequentialist argument against a right to secession has already been outlined above. First, proclaiming a universal right to self-determination is fraudulent and rises expectations that cannot be met because of the 'Russian doll phenomenon' (Tamir 1993:158). No matter how territories are divided into separate states, there will nearly always be smaller groups within each state which can potentially challenge the division in the name of their right to self-determination. Second, secessionist threats jeopardize the internal stability of governments and may provide causes for war between states. Third, successfully completed secessions more often than not exacerbate the problem of dissatisfied minorities which they were presumably meant to solve. Newly formed and still weak states have a vital interest in preventing further secessions and often resort to political suppression or coercive assimilation of established minorities or of those newly created by the separation. This may contain the 'domino effect' of secessions triggering further secessions. However, that stop mechanism in real cases can hardly be advocated at the level of principle. First, it is plainly inconsistent with the notion of a universal *right* of self-determination to maintain that it can only be enjoyed by those strong enough to grasp political power and hold on to it and, second, such a 'realist' perspective would conflict with the need to reduce authoritarian temptations for governments in new states.

A common argument against the principle of self-determination itself starts from deconstructing the concept of nation. This exercise involves limiting the historical range of nations and contesting the reification of collectivities which it implies. First, in the modern sense of the word which links nationhood to claims of political sovereignty, nations have not 'existed' for much more than 200 years and there is no reason to assume that they will last forever. It is not difficult to imagine changes in the social, economic and political structure of societies which could lead to a future world without nations. Compared to nations, states are much older and somehow more 'real' as identifiable ensembles of institutions within society and as the basic units of the global political system. Most utopias envisioning a world without states or with a single world-state are today thoroughly discredited. States may lose much of their present sovereignty, but the coexistence of a plurality of identifiable states appears to be an enduring

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<sup>8</sup> A full theory of secession must cover three different levels: justifications, constraints and procedures. The strongest disagreement among liberal theorists is on the first and primary question how secession can be justified. The broadly agree on the second question of "just terms of secession" (Buchanan 1997) such as guarantees for human and minority rights or the viability of post-secession states. Procedures how to decide on secession have so far received less attention. I will generally confine my own argument to the first level.

feature of any attractive vision for a future global political system. Second, nations are imagined communities (Anderson 1983); nationalism engenders nations rather than expressing their aspirations (Gellner 1983). The nation should not be treated as a given collectivity or entity, but as a practical category or even as a contingent event which emerges in specific institutional settings and is promoted by certain political actors (Brubaker 1996).

However, deconstructing the nation in these ways may still be largely irrelevant for normative political theory if we cannot promote alternative ways of imagining political communities in the present world. Some theorists think that the very notion of political community should be abandoned. For them, democracy does not involve or even represent citizens in legislation, but merely gives them the chance to peacefully change their rulers in competitive elections (Schumpeter 1950). It operates basically like a market in which voters maximize their preferences with regard to election results while politicians maximize their chances of winning seats (Downs 1957). These political theories dismiss not only nations, but the very idea of political community as a mere chimera. Normative theories, however, which affirm that democracy is the basic principle of legitimation for political rule, cannot do without a vision of community. What they oppose to nationalism is the idea that democracies are communities of citizenship rather than of nationhood.

Nationalism presupposes that the nation is either given prior to the state or shaped as a community by the state. The borders of nations are in both cases potentially incongruous with existing state borders. Once we abandon that solution in favour of a political community of citizens, the borders of states become basically indeterminate. No one has ever seriously proposed that all state borders should generally emerge from democratic decisions. For any democratic procedure of decision-making which involves aggregating the votes of citizens, the basic units of population and territory must be taken as already given. This is what is normally the case in actual conflicts. Borders are not invented from scratch, but the decision is whether a certain stretch of land will belong to one of two neighbouring states or will itself form a state. In such a case, citizens may decide in a referendum where they want their region to belong. However, the outcome still depends not only on majority preferences, but also on the prior decision over which territorial subunits and over how many of them these votes will be aggregated. Harry Beran has suggested a generalizeable rule. It would allow any secessionist group to determine itself the territory within which it wants the votes to be counted and to secede if it wins a simple majority, under the condition that any other group within the seceding territory may do likewise (Beran 1984:29–30).<sup>9</sup> Yet the idea that separation can be unilaterally decided by one party already contains a strong presumption in favour of secession. If we do not

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<sup>9</sup> The formation of the Swiss canton Jura seems to be the only historical example where a similar procedure was actually adopted (see Marko 1995:500–514). The specificities of the case are, first, that it was about the creation of a new entity rather than the emancipation of an existing one and, second, that a reiteration of local referenda after separation was feasible because it was an internal border change within the federal state. It could have been rather difficult to continue this procedure once sovereign states had already been established.

share this view and want to find a procedure for deciding border disputes which ought to be equally acceptable to unionists and separatists it will be difficult to say whether what is required is separate majorities in both parts of the country, an overall majority in the whole country, or a majority only in the part which wants to separate.<sup>10</sup> There seems to be thus no obvious way how to subject a change of borders to a democratic test that counts the votes of all citizens affected and yields a result which ought to be accepted as binding by all. The reason for this indeterminacy is, once again, that a democratic community cannot consistently apply the criteria of democratic decision-making which it uses internally to defining its own external boundaries.

This conclusion need not be deplored, but could as well be seen as the proper answer to the secessionist potential of nationalism. If all state borders are arbitrary from a purely democratic point of view, then there is *prima facie* no good reason to change the existing ones. What is needed in order to satisfy democratic legitimacy is that all individuals subjected to the laws of a state should be equal citizens of this state, i.e. enjoy all the basic rights attached to this status and be equally represented as members of the political community in its collectively binding decisions. The legitimacy of borders would then entirely depend on the internal democratic legitimacy of a regime.<sup>11</sup>

We may call this the liberal republican answer to nationalism. It does not imply that secession could never be justified, but it would certainly be strongly constrained. In order to understand how this argument works we should distinguish between three levels which may be called ideal, semi-ideal and non-ideal.<sup>12</sup> For ideal theory we imagine a Rawlsian original position in which existing state borders are not taken into account and all actors are motivated by concerns of justice. Semi-ideal theory would assume the same motivation but admit knowledge about existing borders and how they have come about. Non-ideal theory addresses the problem in a realistic context where some or even most actors are known to pursue their interests without concern for demands of justice. At the level of ideal theory the answer is simply that there is no democratic solution to the problem of drawing borders between states in a hypothetical original position. At the semi-ideal level people are well aware that borders have actually been shaped by wars of aggression, annexation, imperial conquest and colonization. As, *ex hypothesi*, they and their political representatives will refrain from any further injustice of this sort, they would also be aware that there is generally no way of correcting borders which could not generate new injustice. The victims of injustice in the recent past would have claims to compensation but these need not lead to changing state borders or reestablishing formerly independent states. If full justice can be done within the framework of borders as they have

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<sup>10</sup> Within the third option the hurdles may be raised by requiring a supermajority (Buchanan 1992:132–5). However, this does not yet take into account how secession may affect the interests of citizens living outside the province (among them members of ethnic minorities who are seen to belong to the secessionist nation).

<sup>11</sup> See Habermas (1996:167–171).

<sup>12</sup> See Barry (1992:279–80) who applies a similar distinction to the problem of free movement of persons between states.

emerged from unjust histories, and if any further change is likely to create new injustice, then there is no need or reason to redraw the political map. Much liberal critique of secession seems to be inspired by such considerations. The hope is that in “nearly just societies” (Rawls 1971) given borders will come to be accepted by citizens because, and insofar as, the state treats them with equal respect and concern (Dworkin 1976). Political integration through democratic citizenship should therefore prevent most border disputes from arising.

Only at a level of non-ideal theory where we assume that some or most governments continue to act unjustly can the case for secession be argued for specific circumstances. If a state effectively denied equal citizenship to a minority marked by its religion, language, ethnic origin or ‘race’ this group could legitimately break away from its oppressor state and form its own political community or join another state.<sup>13</sup> In a non-ideal world such a group could not be fully reassured that a regime which offers compensation and equal citizenship will not again be replaced by a repressive one. However, the changing of borders would still be considered a problematic remedy of last resort which should only be accepted if there is no real prospect of maintaining a united democratic polity and if secession would not worsen the situation of other groups in either the new or the parent state. The principle of territorial integrity would thus not only be asserted externally for interstate relations but also as a constraint on any attempt to change them from within a state unless this is the only plausible cure for pervasive injustice towards a group of citizens. Such reasons can be easily accepted in a context of colonialism or of recent annexation. However, in the liberal republican perspective which I have outlined here, it would be dangerous to argue the case for independence of Algeria or of the Baltic states on grounds of restitution. First, we would never know where to stop when going back in history to assess historical claims and, second, any idea of restitution would have to resort to some prior concept of the nation as a collectivity which had been injured. The alternative justification for secession is future-oriented: colonization and recent annexations create structures of dependency and general distrust among the formerly subjected populations which fatally undermine the project of integrating the polity through the unifying bond of citizenship.<sup>14</sup>

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<sup>13</sup> Allen Buchanan who broadly defends this approach calls it aptly a “grievance theory” or “remedial right” theory of secession (Buchanan 1997:317).

<sup>14</sup> Before the war of independence Algeria did not have the status of a colony but was considered a part of France. In the perspective of some French republicans, the justified grievance of Algerians was not so much that their country had been annexed, but rather that they did not enjoy full French citizenship (Audard 1996:167).

## 4. The case for a right to secession

One need not be a nationalist in order to reject these objections against secession. The case against entrenching existing borders may also be argued on perfectly liberal grounds. Consequentialist objections can be weakened by pointing to real world cases where secession appears as a the least costly solution for a protracted conflict. If people who are categorized as belonging to different nations generally hate each other, or if their political leaders exploit historical grievances to make them hate each other, separation appears defensible as the minor evil. Maybe the peaceful break-up of Czechoslovakia prevented an escalation of the conflict? Maybe the early international recognition of Slovenia, Croatia and Bosnia as independent nation-states during the war had not fuelled the conflict but had helped to forestall a full military mobilization by the Serbian government? Maybe the attempt to impose a federal solution for Bosnia after the war will ultimately fail because further separation is the only way to prevent the conflict from re-escalating? I am not interested in assessing whether any of these arguments is empirically sound. They all involve counterfactual and contestable assumptions about alternative courses of history and thus illustrate the general problem of indeterminacy which haunts purely consequentialist moralities. What is important to understand is that the least cost argument for secession can only be defended as a strictly contextual one. Once it were generalized it would amount to saying that nationalism is an unavoidable evil which is somehow inherent in the human condition. While Kant thought that the problem of building a state should be solvable even for a people of rational devils (Kant 1796/1984:31), the pessimistic view of nationalism sees societies as populated by irrational devils for whom there is no other solution than to separate them into different states. This approach ignores the contingency and political agency involved in escalating national conflicts and the many examples of relatively peaceful and stable societies (among them pre-war Bosnia) where people of different nationalities lived side by side or even tended to mix through intermarriage. Moreover, an approach which forecasts the unavoidable break-up of multinational states and merely seeks to limit the social costs of this transformation may have to be rejected on its own consequentialist grounds. First, if adopted as a general guideline for practical political action it will become a self-fulfilling prophecy. If all external and internal actors behave as if the break-up of a state was inevitable that will surely bring about this very result. Second, it will also undermine efforts at containing the proliferation of secessions by imitation of successful examples elsewhere. Any reasonable consequentialist outlook must try to avoid these effects. It seems therefore imperative that secessionist solutions to national conflicts should be assessed like peace treaties after a war. They must reflect concerns of fairness in order to create a stable new order, but they also have to be tailored to a specific conflict in order to end it and they should not create incentives for other governments to launch aggressive wars in the hope of achieving a similar settlement.

A more serious challenge to the anti-secession argument comes from theories for which secession is a matter of choice rather than merely a response to injustice. These draw the

exactly opposite inference from the premise that existing state borders are arbitrary from the moral point of view. If they are, then what wrong is involved in letting groups secede if they so wish, as long as they do not thereby harm those who want to remain with the existing state? One such theory claims that “because the nation’s territory is legitimately composed of the real estate of its members, the decision of any of them to resign that membership and, as it were, to take their real estate with them, is a decision which must be respected” (Steiner 1995:17). Other theories suggest that democratic legitimacy is based on individual consent which can only be tested by allowing for both individual exit by emigration and collective exit by secession, provided that it does not undermine the geographical contiguity and viability of the remaining state and provided that the separating group does not deny a similar right to further secessions from their newly formed state (Beran 1984, 1988).<sup>15</sup> The plausibility of such choice-based defences of secession depends on reducing the liberal state to its minimal functions of maintaining internal and external security and property rights. Secession does little harm if the citizens’ stakes in their political communities are anyhow quite low, or can be easily parcelled out between them and transported across borders. The political passions that secessionist claims raise in the real world show that these assumptions may be quite unrealistic. An alternative Rawlsian view of the political community as an ongoing cooperative scheme for the production of a large range of public goods will constrain the private use of real estate by defining the state territory as a common asset.<sup>16</sup> Just as no subpopulation of citizens living in any particular stretch of land within a state enjoys full collective ownership rights over the land they inhabit, so most other collective goods cannot easily be divided in case of secession. Whereas individual exit does not interrupt the ongoing cooperation of those who want to stay, collective exit by secession will generally have just this effect.

There is another version of the choice argument for secession which contrasts with libertarian utopias but is more difficult to reject. In real cases such as that of Québec one may adopt two different perspectives. One could deny that the secessionists have a good case by pointing out that Canada is a fairly liberal democracy, that there are many collective assets which cannot be neatly divided between the province and the rest of Canada, and that an independent Québec would immediately trigger claims to further secession and protection under the federal constitution by the aboriginal ‘first nations’ in the province. However, we might also ask the converse question whether the rest of Canada has a good case in prohibiting or resisting a

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<sup>15</sup> see Chwaszcza (1997) for a lucid discussion and critique of these arguments.

<sup>16</sup> “An important role of a people’s government, however arbitrary a society’s boundaries may appear from a historical point of view, is to be the representative and effective agent of a people as they take responsibility for their territory and the size of their population...” (Rawls 1993:56). Buchanan offers the following quite similar definition: “Territorial sovereignty is an agency/trusteeship function carried out by the state on behalf of the people as a multigenerational community. It consists of control over borders and the administration of justice, and is not strictly speaking ownership of the land within those borders” (Buchanan 1991:113). The secession of private owners of real estate is therefore not constrained by an overriding property right of the state in the territory, but by a trusteeship the state exercises on behalf of all citizens seen as a single polity. A group may then be justified in seceding when the state systematically acts towards it in a way which violates the trusteeship that legitimates its authority.

secession of Québec. As Will Kymlicka points out we cannot simply assume “that the burden of proof lies on those who want to secede rather than on those who want to prevent a group from seceding” (Kymlicka 1992:532).<sup>17</sup> In Canada it seems that even the antisecessionist forces have implicitly accepted Kymlicka’s shift of the burden of proof. From a perspective which condemns any secession that is not triggered by serious injustice,<sup>18</sup> it is quite amazing that none of the major political actors at the level of the other provinces or the federal government seems to seriously question that a simple majority in another referendum in the province alone would create a situation in which Canada should no longer resist secession.

Given the objections against a general choice-based presumption in favour of secession I would plead for a dualistic and contextualized perspective. Insisting on justification does not put the burden of proof on one side only. Suppose a secessionist party has no sufficient justice-based reasons for dissolving the existing political community but actual secession would also not cause serious new injustice.<sup>19</sup> In this situation our judgement will still be that secessionists are wrong. But that does not imply that unionists would be right in using force to prevent the break-up of the state. If neither the attempt to secede nor forceful resistance against it is warranted by claims to justice, then the case against secession will have to be fought at the level of political argument and this entails that a political decision derived from fair democratic procedures should be accepted by both sides, no matter what the outcome. This is as much as can be said at the level of principle. The question which can only be answered in a specific context is what should count as a fair procedure. As I have argued above, from a non-nationalist perspective there is no general answer to the questions where to draw the boundaries of the units over which votes will be aggregated and whether a simple majority in the province whose secession is proposed should count as sufficient. However, in a real world case like Québec, where secession comes as a final challenge after a prolonged struggle for increasing autonomy or for a new division of powers within a federation, these questions have normally already been settled beforehand. We cannot conclude from this that the same procedures should be adopted in other instances nor can we derive from such a specific case a general moral argument for majoritarian choice as a sufficient justification for secession.

But why should we look for justification of secession rather than merely for its permissibility? Beran draws the analogy with divorce where liberal laws have shifted from a presumption for maintaining a marriage unless there is a justification for dissolving it to granting partners

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<sup>17</sup> see also Beran (1988:323).

<sup>18</sup> I do not wish to make any judgement on whether the Francophone Québécois have sufficient reasons to secede on grounds of justice. From the perspective developed in the following section, this depends on whether terms of federation have been seriously violated. Yet it seems possible to interpret the Québec case as one where the argument from choice is as strong as it can be simply because reasonable observers disagree on the standards and record of injustice.

<sup>19</sup> Few serious observers doubt that an independent Québec would be a liberal democracy based on roughly the same constitutional principles as the Canadian federation – including respect for cultural difference and minority rights (see Carens 1995).

freedom to end the marriage contract without assessing their reasons for doing so (Beran 1984:25). Yet this seems an inappropriate comparison. In contrast with the nationalist view, the populations involved are not like individuals and their unity under a common government is not like a marriage. Political communities share a common authority but are in many ways divided by divergent interests. Splitting them into two parts of which either one can decide to separate will inevitably hurt many individual and group interests which cut across the boundary drawn by secessionists. Of course individuals have also different interests in a marriage relation and often feel ambivalent about ending it. But leaving the choice to individuals is the liberal way of respecting their integrity as persons. In this view a marriage does not fuse the partners into a new and indivisible collective person and that is why it would be wrong to protect the marriage by the force of law against a wish of one partner to end it. In the image of divorce the secessionist group is likened to an individual while the total polity is compared to a contractual union between individuals. However, in the case of secession there is no *a priori* reason to make this kind of ontological difference. What we are faced with in a dispute between unionists and separatists is two competing claims for drawing the boundaries of political community. The analogy of divorce is only convincing if we adopt the nationalist view which attributes collective personhood to nationalities while denying it to heterogeneous political communities.

A final argument against requiring that secessions be justified rather than merely desired and possible is that judgements reached on moral grounds cannot be made legally binding in the absence of a higher authority accepted by both the existing state and the secessionist group. There seems to be little practical value in a moral position which would, for example, reach the conclusion that the separation of Czechoslovakia was wrong. However, this conclusion is premature because very few cases are like Czechoslovakia. First, where either secessionists or unionists use force in order to achieve an illegitimate goal, there is a need for an international judicial authority which would at least condemn the guilty party even if enforcement of the decision by intervention from outside may be a thorny issue. Second, in cases where unionists and secessionists refrain from force but cannot reach agreement, an international political authority should offer its good services as a mediator or arbiter. Judges and arbiters have to be provided with standards by which to assess the rival claims. Third, when a majority shows a reluctant willingness to accept secession once it gains majority support, as in the Canadian case, or when its representatives even agree to separation, as in the Czechoslovak case, a moral assessment of claims will still be practically important for the public deliberation which must precede any such decision and which should involve the whole citizenry. The decision whether an existing political union is to be maintained or dissolved is about the basic units of political representation and cannot legitimately be taken by representatives bargaining behind closed doors, where moral arguments have a weaker force than in public settings. I have conceded above that secession which is not sufficiently justified by present grievances should not be forcefully prevented unless it will cause serious injustice.

Yet this does not mean that it should not be argued against nor that such argument is merely an academic exercise without political impact.<sup>20</sup>

None of the theories of secession examined so far rely on nationalist premises and each of them may be defended within a broadly liberal or republican tradition. However, if liberal positions on this issue are really as contradictory or inconclusive as I have portrayed them, then it seems quite possible to search for some point of convergence between nationalism and liberalism. The *locus classicus* for this attempt is John Stuart Mill's brief chapter on nationality in his *Considerations on Representative Government*. Mill regards nationality as a common sympathy derived from sharing a common name and history which feeds a desire for self-government. Without such sympathy government will be experienced as coercive. This is why "[f]ree institutions are next to impossible in a country made up of different nationalities" (Mill 1861/1972:392). Mill's policy recommendations are straightforward: For their own benefit smaller nationalities should be assimilated while states composed of several nationalities of roughly equal size should split up. He concedes that common subjection under a despotic government may produce a harmony of feelings between different nationalities. However, "if the era of aspiration to free government arrives before this fusion has been effected" and "if the unreconciled nationalities are geographically separate ... there is not only an obvious propriety, but, if either freedom or concord is cared for, a necessity, for breaking the connection altogether" (ibid. 398).

Mill's argument has recently been restated by David Miller who promotes a principle of nationality which would focus "on the political conditions for securing national identities. The principle tells us to further the cause of national self-determination wherever possible" (Miller 1995:112). "The drawing of political boundaries should therefore not be seen as a matter of sheer contingency" (ibid:188). Miller points out that this approach limits the cases of legitimate secession: "[E]xisting boundaries are put into question only where a *nationality* is currently denied self-determination" (ibid:112, original emphasis).<sup>21</sup> Secession is therefore legitimate in

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<sup>20</sup> Allen Buchanan defends the need for working out principles for secession in international law and empowering international authorities to apply them in mediating or adjudicating actual conflicts (Buchanan 1997:304). However, he unnecessarily limits his theory to such cases where secession is not consensual, conceding thus too much ground to choice-based approaches. A full theory should be able to judge also non-violent and apparently consensual cases of separation like those of Czechoslovakia. First, as I have just argued, majorities may be simply wrong and we need general principles that guide our judgement of a specific case in order to find out whether separation is to be welcomed or should be argued against. Second, even when majorities on both sides favour the break-up of a state, minorities may be negatively affected (as were the Romanians in Czechia and Slovakia) and their interests should at least be relevant for working out just terms of separation.

<sup>21</sup> Miller wants to deny that *ethnic* diversity creates a problem for state boundaries. However, "the unity of a state can be questioned on grounds other than national heterogeneity" (Beran 1984:23). Suppose the American civil war had not been fought over the issue of slavery but over some other morally neutral right of the federal states. Would the North then have been justified in launching the war in order to maintain the Union merely because the South had no claim to be a distinct nation? This is not a purely hypothetical case because in Abraham Lincoln's justification for the war, the maintenance of the Union was clearly prior to fighting for the abolition of slavery. In order to answer questions like this we need a broader theory of federation which treats multinationality as a special case.

multinational states, if the seceding territory would not again form a multinational state. Miller adds some additional criteria such as the impact of secession on minorities or the viability of post-secession states and he advocates only partial self-determination if nationalities are very small, of ambivalent identity or territorially intermingled (ibid:113–8). The striking difference with both choice-based and justice-based theories is, however, that the nationality principle would, under the specified conditions, not merely *allow* for secession but actually *recommend* or *require* a break-up of multinational states in order to improve the cultural preconditions for social solidarity and political freedom.

This seems to me indefensible. Consequentialist, justice-based and choice-based arguments for secession are attractive because they appeal to *intrinsic* values of liberal democracy such as ending oppression, avoiding violent conflict, and providing opportunities for democratic choices. Only illiberal nationalists could claim that the goal of increasing the national homogeneity of states is also a good in itself which requires no further justification.<sup>22</sup> Mill and Miller argue for such homogeneity as an *instrumental* value, as a condition which is likely to improve the quality of liberal democracy. However, this argument runs into serious difficulties. First, the instrumental goal should not be allowed to override the more fundamental and intrinsic values. Miller's formula, however, contains no such safeguard. Suppose the German speaking Alsatians who wanted to stay with France in 1870 had hoped that Paris would grant them the status of a national minority. Would their opting for a multinational France have undermined their case and strengthened the German claims?<sup>23</sup> Second, Miller concedes that in many cases – given his list of criteria probably even in most cases – multinational federal states may be the only possible solution to the problem of how to form stable democracies in a region inhabited by different nationalities. On the one hand, if such states can be viable and decent democracies then national homogeneity surely is not a *necessary* condition for liberal democracy. On the other hand, given the record of authoritarian regimes in fairly homogeneous nation-states it is quite obviously also not a *sufficient* condition. National homogeneity can therefore be nothing more than a generally favourable background or a first-best solution to the problem. Third, this makes it quite unclear in which sense the principle should serve as a practical guideline. Background conditions cannot always be brought about by political action and attempts to do so are often self-defeating in terms of the goals which they pretend to serve. Even if we conceded that an *existing* sense of common national belonging may strengthen democratic stability and solidaristic attitudes at the level of polities, efforts to *increase* homogeneity by way of assimilation or secession are likely to have the opposite effects. Examining the historical records of how relative homogeneity has been achieved in a

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<sup>22</sup> Jonathan Glover suggests a Kantian imperative for liberal nationalism: "Always treat nations merely as means and never as ends in themselves" (Glover 1997:29).

<sup>23</sup> An actual historical case which comes close to this hypothetical alternative is the referendum held in Southern Carinthia on 10 October 1920 about whether this Austrian region would join the new Kingdom of Serbia, Croatia and Slovenia. The majority of the Slovene population voted for Austria in the expectation that the newly formed republic would guarantee their rights as a linguistic minority, a hope which was later disappointed.

small number of Western states we surely do not find many policies which could be recommended for contemporary liberal democracies.

## 5. Why federation should be preferred to secession

Not all liberal nationalists agree with Mill and Miller. Yael Tamir who also attempts to reconcile liberalism and nationalism does not entirely abandon the ideal of national homogeneity but regards it as unattainable. “[A]lthough it cannot be ensured that each nation will have its own state, all nations are entitled to a public sphere in which they constitute the majority” (Tamir 1993:150). Similarly, Avishai Margalit and Joseph Raz defend the value of “encompassing groups”, membership in which has an important public dimension, but argue that “its political expression does not require a political organization whose boundaries coincide with those of the group. One may be politically active in a multinational, multicultural polity” (Margalit and Raz, 1995:89).<sup>24</sup>

One way to realize this principle is to form multinational federal states.<sup>25</sup> A full theory of federation must distinguish, first, federal states from alliances or federations between states and, second, incongruent federal states from congruent ones (Tarlton 1965). The classic definition of internal federalism has been given by William Riker: “Federalism is a political organization in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions” (Riker 1975:101).<sup>26</sup> Arend Lijphart defines congruent federations as “composed of territorial units with a social and cultural character that is similar in each of the units and in the federation as a whole” (Lijphart 1984:179). Multinational federations are obviously incongruous. Their territorial division defines subunits that are generally more homogeneous with regard to nationality than the federation as a whole.<sup>27</sup> Federations of this sort are polities which consist of several constitutive groups. In contrast to congruous

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<sup>24</sup> On this question liberal nationalists split into two camps, one of which defends the territorial and political linkage between state and nation while the other one is mainly concerned with political conditions for the flourishing of cultural groups. I think that the latter approach cannot be properly called nationalist.

<sup>25</sup> John Stuart Mill briefly considers federation as a solution *after* separation rather than as an alternative to it: “There may be cases in which the provinces, after separation, might usefully remain united by a federal tie...” However, he quickly dismisses this possibility by assuming that “each of them has other neighbours with whom it would prefer to connect itself...” (Mill 1972:398).

<sup>26</sup> Mill distinguishes two kinds of federal unions: those whose decisions are binding only for governments, and those which “have the power of enacting laws and issuing orders which are binding directly on individual citizens” (Mill 1972:400). The former could be either federations of states or federal states with no system of liberal citizenship. In my discussion of federation I take it for granted that federal liberal democracies fall into the second category, i.e. combine provincial autonomy and representation with direct individual citizenship at the federal level. It is interesting to note that even the European Union, which is not a federal state but still a federation of states, moves towards the second model with many decisions having direct effect for individuals and with a rudimentary system of Union citizenship supplementing citizenship of the member states.

<sup>27</sup> Within such federations there may be, however, certain units which reproduce the multinational composition of the whole federation. One example is the status of Brussels as a bilingual region within the Belgian federation.

federations which may be formed for common defensive or offensive purposes (in response to external or internal threats or to opportunities of political expansion),<sup>28</sup> incongruous federation is always understood as a representation of societal diversity through the territorial organization of the polity.<sup>29</sup> Their territorial division of power is characterized by two basic features: partial self-government for each group within territories where it forms a majority of the population and special representation for each of them in political institutions of the common state (such as a second parliamentary chamber, or reserved seats in a single chamber, in a federal government or supreme court). Special representation may be reinforced by a minority group veto and self-government by nullification rights in order to circumvent the problem that even within a federal system small minorities may become permanent ones<sup>30</sup>. There is a wide variety of federal systems and which mix of institutions and rules is appropriate depends obviously on the context of particular cases.

As pointed out by Wayne Norman (1994:80) there are two immediate difficulties with the federal solution for nationality conflicts. First, devolving political power to minorities who form provincial majorities also turns state-wide majorities into minorities in those provinces. These groups will claim the same rights as their co-nationals living elsewhere in the state. Second, small or dispersed nationalities who are not able to form regional majorities may feel that their position worsens if they are subjected to provincial laws rather than to federal ones. The case of Québec can serve once again to illustrate both problems. The answer should not be to abandon federal solutions, but to refine them by adding provisions of non-territorial cultural autonomy,<sup>31</sup> federal protection and special exemptions or powers for groups which cannot form a federal unit. This is what we might call a pluralist approach to the problem of federation and secession. I will try to show that it has its own difficulties but is still superior to the liberal, republican and nationalist answers discussed so far. In the following discussion I will not pursue further the issue of ethnic diversity and minority rights.<sup>32</sup> While a federal structure of polities may also have beneficial side-effects for ethnic minorities, their claims are different from those articulated in a federation. Moreover, serious challenges to existing state borders cannot be raised by small and dispersed ethnic minorities. They emerge from groups or political entities which either already form a federal unit or autonomous province or could do so if the state in which they live adopted this solution. This is why “an adequate theory of secession requires an adequate theory of federation” (Kymlicka 1992:532).

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<sup>28</sup> see Riker (1975:113–128).

<sup>29</sup> This special legitimation for multinational federations is almost completely ignored in the classic accounts of Wheare (1947) and Riker (1975).

<sup>30</sup> Veto rights allow minorities to block legislation at the federal level which would adversely affect them; nullification rights allow them to nullify federal legislation so that it does not apply in their own province (see Buchanan 1991:38, 1997:307).

<sup>31</sup> Tamir's principle of self-determination covers both territorial and cultural autonomy. Dispersed minorities should be given powers to create a public space in which their culture is the dominant one (Tamir 1993:57–77).

<sup>32</sup> For a brief discussion of a catalogue of minority rights see Bauböck (1996:228–39).

Norman suggests a contractarian approach to federation which “recommends federal principles and institutions if they would have been selected by enlightened federal partners interested in developing a stable mutually beneficial federation for the long haul” (Norman 1994:83). The basic situation is therefore one of “independent nations negotiating to form a just and stable federation” (ibid.:85). Such an approach seems to apply better to federations between states (as in the European Union) than to most federal states, whose provinces had never enjoyed independence. Still, some constitutional acts like the Union of 1707 between Scotland and England or the Canadian Confederation of 1867 have been interpreted as involving a contract between independent partners. In other cases where formerly self-governing groups were forcibly included in a state but have never abandoned the aspiration to self-government we can imagine fair terms of an initial agreement which can be used as a benchmark for assessing the present arrangements. The familiar liberal device of hypothetical contract can thus justify claims for autonomy raised by many indigenous minorities.

Yet a theory of federalism which helps to assess claims for secession has to go beyond contractarian assumptions. Federation can come about in two different ways: by union or by devolution. A normative theory of federation must therefore show under which conditions it is preferable to independent government of the separate parts as well as to centralized government. In addition to the question: (1) ‘Why federate rather than stay independent?’ we must answer the further questions: (2) ‘Why maintain a federation rather than centralize the state or break it apart?’ and (3) ‘Why transform a centralized state into a federal one?’

The answer to the first question will be motivated by the attractions of federation such as material benefits of economic integration or by threats like the superior power of some potential aggressor state.<sup>33</sup> These are prudential reasons rather than moral ones and they cannot explain why the terms of federation should remain binding over generations once these conditions have changed. Kant has suggested that striving for “eternal peace” is a moral imperative to form an ever enlarging federation (Kant 1796/1984). However, this applies, once more, only to federations between states and not to federal states.<sup>34</sup> I cannot imagine under which circumstances forming a federal state out of independent ones would be a moral demand.<sup>35</sup> Yet this is exactly what would be needed if a contractarian theory of federation

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<sup>33</sup> For John Stuart Mill federation is an answer to the threat of war between states, rather than to internal diversity within states: “Portions of mankind who are not fitted, or not disposed, to live under the same internal government, may often with advantage be federally united as to their relations with foreigners: both to prevent wars among themselves, and for the sake of more effectual protection against the aggression of powerful States” (Mill 1972.:398).

<sup>34</sup> Kant rules out the possibility of a world state although he remains ambiguous as to its desirability.

<sup>35</sup> One such answer is suggested by Lord Acton: “A great democracy must either sacrifice self-government to unity or preserve it by federalism. The coexistence of several nations under the same State is a test, as well as the best security of its freedom... The combination of different nations in one State is as necessary a condition of civilized life as the combination of men in society” (Acton 1907:277). If taken literally this proposition would not only justify maintaining multinational states but also a require to form new ones out of relatively homogeneous nation-states. This merely turns Mill’s and Miller’s theory on its head. While a defence of pluralistic federation must

wanted to show why groups which have never signed an actual contract and which have the potential to form separate states should not do so. I suggest therefore that we ought to look for moral reasons for devolution within existing states or for maintenance of federation, which are independent of reasons for forming a new state by federation.

The reasons given by justice-based theories which deny a *prima facie* right to secession are obviously also relevant for maintaining a federal state. In a well-ordered democracy citizens regard the polity as an ongoing cooperation over generations which generates public goods and benefits. Some of these goods are collective in the sense that their division into separate packages for independent states will reduce the total value and, more importantly, any operation of dividing them in this way will create some injustice towards groups of citizens which could be avoided if a common polity is maintained. The costs of separation are generally much higher than the costs of staying separate and this is one reason why a theory of federation cannot be reduced to the initial reasons for uniting. It may be objected that federation facilitates separation because it already creates an internal division of the polity and allocates important public goods and political powers to its subunits. This will lower the costs for an ultimate step of dividing the state itself. A federal structure of the state may also wet the appetite of secessionists who could be deterred by the much stronger resistance a centralized state can put up against a them. But our normative judgement depends on the prior question whether claims to collective autonomy are justified. If they are, then denying federal solutions in the name of preventing secession is unjust. The stability of borders certainly does not legitimate suppressing minorities who could challenge them.

The very features that may threaten unity in federal states also provide moral reasons for maintaining this unity which are not available in a centralized state. Federal systems give to their subunits partial autonomy to run their own affairs and collective representation at the federal level in addition to the equal representation of each individual citizen (see Marko 1995:487). A subunit which considers itself a distinct minority within the state enjoys powers to fight against discrimination, to shape the public culture of the region where it forms a majority and to influence policies of federal authorities which may affect its interests. Secession transforms its autonomy into sovereignty but deprives it of its voice in the running of the larger state. While autonomy gives the minority a moral reason to maintain the federation by partially satisfying demands which are invoked to justify secession, collective representation involves the subunits in the government of the larger polity so that they also acquire a collective responsibility for the common good of that state.

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deny that liberal democracy is incompatible with a multinational structure of the polity, it certainly need not assert that the latter is a necessary condition for the former.

Whether or not these moral reasons for maintaining federation are sufficient to refute the claims of secessionists will of course depend on how federal arrangements live up to their promise to strike a fair balance between the collective interests of the various parts of which the state is composed. The flip side of a theory of federation that serves to deny the legitimacy of secessionist claims is that a breach of federal agreements by the representatives of the majority population gives minorities a good reason to threaten with secession. The federalist approach rejects therefore the liberal republican assumption that secession can never be justified as long as individual rights of citizens are maintained.<sup>36</sup> It adds a distinctive justification to a grievance theory of secession which is generally absent in liberal accounts.<sup>37</sup> This added reason that threatening secession may be a legitimate means to defend collective rights within federal arrangements makes the theory also more realistic than its competitors. It highlights one of the most common reasons for secessionist challenges and helps to explain why liberal democratic constitutions are not immune to this challenge.

Suppose a parliamentary majority in a multinational state unilaterally suspends a federal arrangement of special representation or constitutional veto for a minority without touching any of the individual rights of citizenship, such as the use of the minority language and without introducing discrimination, e.g. in access to public office. If majorities enjoyed such a licence to modify the terms of federation in their favour then minorities would have no reason to accept them as fair and binding. What should count as a breach is difficult to specify in general terms. A well-ordered federation is not a final settlement of claims that could have been enshrined in a foundational contract, but an institutional framework for building mutual trust in an ongoing negotiation of claims.<sup>38</sup> In a modern economy and mobile society the social boundaries between subunits of a federation and their particular cultural characteristics are continuously in flux. This provides temptations for groups which gain in demographic or economic strength to change the terms of federation to their advantage and nourishes corresponding fears by the losers. However, a federal agreement will become less binding over time if modifications in the allocation of powers and benefits are the outcome of bargaining procedures which merely reflect the respective strengths of the various parts. Maintaining a proper balance will generally require to compensate the weaker parts for a loss in demographic or economic leverage by giving them more political weight.

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<sup>36</sup> Jürgen Habermas has recently defended this position: “Solange nämlich alle Bürger gleiche Rechte genießen und niemand diskriminiert wird, besteht kein normativ überzeugender Grund zur Separierung vom bestehenden Gemeinwesen.” [As long as all citizens enjoy equal rights and nobody is discriminated, there is no convincing normative reason for separating from the existing polity] (Habermas 1996:171, my translation).

<sup>37</sup> For example, Allen Buchanan’s shortlist of justifying grounds for secession consists of “(1) persistent and serious violations of individual human rights and (2) past unredressed unjust seizure of territory” to which he adds discriminatory redistribution as a third reason (Buchanan 1997:310). In his more extensive previous discussion he includes the “limited goals of political association” (Buchanan 1991:35). However, he restricts this justification to the extremely rare case of federal states formed from previously independent units by explicit contract. A theory of federation that accounts for the power of secessionist claims has to be much broader.

<sup>38</sup> see Tully (1995:140–82).

Some of these reasons for maintaining a given federation already go a long way towards answering the third question: Why should states be organized as federal ones and which states should be so organized? Yet this question reveals a further complication. There are two very different reasons for doing so. One is that the federal units are understood to form themselves polities within the larger polity with a history of self-government or a claim to collective identities and interests which could be continuously overridden by state-wide majorities unless they were protected by federal arrangements. The other reason is to empower the *individual* citizens by multiplying the levels of government where they can exert their influence and to prevent the abuse of political authority by establishing a system of checks and balances between vertical layers of government. This second reason applies to congruous federations just as to incongruous ones. Any large-scale democracy needs local, provincial and national levels of administration. Such decentralization does not yet imply a federal division of powers. What distinguishes federal from non-federal regimes is that the former give provincial levels of government some final decision-making power and make them directly accountable to their local constituencies.<sup>39</sup> The first idea turns devolution into a vehicle for integrating collectivities which could otherwise challenge the existing borders. The second reason may, however, be just as well used to split up minorities and suppress potential or manifest demands for autonomy. Instead of representing diversity within the polity, decentralization can then become an instrument for transforming heterogeneous societies into apparently homogeneous polities. Examples for this policy may be found both in non-federal and in federal states. When in 1789 the National Assembly divided France into 83 departments of roughly equal size this was meant to destroy the historical identities of regions many of which could be identified by cultural and linguistic difference. After the annexation of the former Mexican territories the borders of the south western states of the US were quite deliberately designed to prevent a Spanish-speaking majority in any one of them. In a republican perspective such ethnic gerrymandering of internal boundaries is perfectly legitimate because the federal scheme is meant to empower the individual citizen rather than groups. Ignoring historical boundaries makes it also easier to reconcile the equal collective representation of federal provinces with equal representation of citizens by creating subunits of equal size. However, such congruous federalism by design is a rare exception. In federal unions the provinces or states generally do represent historic units and their self-government is justified by imagining them as constitutive building blocks of the larger unit. The United States which have been regarded as the classic example of congruous federation show the highest degree of inequality of representation due to unequal size of states (Lijphart 1984:174). Wyoming with a population of less than 500.000 and California with 30.000.000 each elect two Senators. The only reason why this is not regarded as violating standards of equality of political rights is that

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<sup>39</sup> Whether this should be generally seen as an improvement of democratic representation is a controversial claim. Riker (1975), for example, rejects both the normative arguments for devolution and the hypothesis that federalism makes any difference to political outcomes. In his view, it merely complicates procedures of political decision-making. While this may be sometimes true for congruous federations, it is certainly wrong for incongruous ones. In multinational societies, federalism makes a difference to the protection of minority interests.

the states are considered to be historically distinct units with a right to govern some of their own affairs and to be represented as such units in a second chamber.

On the one hand, imposing congruous federalism on a society of regionally concentrated national groups may sometimes be an effective way of maintaining unity by suppressing demands for autonomy. But it may just as well encourage resistance movements to resort to violence when all democratic channels of articulating their demands have been effectively blocked. On the other hand, the mixing of regional and national representation in an incongruous federation requires a delicate balance which is sometimes difficult to achieve. Although groups which define themselves as national minorities can fit well into a federal scheme which gives them collective representation and autonomy they may still regard their special claims as quite different from those of the other provinces. One of the major complaints of the Québécois is that their status has deteriorated from one of the two founding nations to one among ten provinces. This is why they demand recognition as a 'distinct society' on top of their rights as the majority in one province. Still, the two reasons for federation need not be mutually incompatible unless they are made so by a republican conception of homogeneous citizenship.<sup>40</sup> The answer to the third question is thus that in over-centralized states (such as France before the 1980s), as well as in federal arrangements which are skewed against them, historic minorities have a good cause to demand a change of the present system. Whether they may legitimately use the threat of secession in order to bring such transformation about is a matter that depends on contextual judgements about the gravity of their complaints.

The argument for recognizing territorially concentrated historical minorities as political communities within the larger polity can be stated like this: There is no reason why claims to self-government should be *a priori* limited to sovereign states. If we find that within such states there are groups of the population which conceive of themselves as distinct political communities who wish to collectively decide matters of specific concern for their members and who form regional majorities, then there is no *prima facie* reason to deny them rights to partial autonomy. In fact, the equal representation of citizens at the level of the larger polity will in these cases *require* that their affiliations to these smaller political communities be taken into account so that they are not disadvantaged compared to majority members for whom the larger state is coextensive with the only political community within which they want to be represented. Many theorists of democracy have suggested that legitimacy of majority rule depends on opportunities for minorities to become themselves majorities in competitive elections. However, this is an extremely remote possibility for a minority which defines itself as a distinct historic community within a larger society. If their members rank the interests of their

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<sup>40</sup> The Scottish and Welsh referenda of September 1997 illustrate how both reasons for devolution can be combined in harmonious ways. Labour, Liberals and Nationalists who all supported the vote for regional assemblies had different reasons for doing so. The Scottish National Party sees this as a first step towards independence, Welsh nationalists merely strive for more regional autonomy within the UK and Labour and Liberals want to decentralize levels of government and to experiment with proportional representation.

own group high compared to those political issues which concern all citizens, they will see a system of political authority which denies them autonomy or special representation as illegitimate.

Let me draw some preliminary conclusions: If a given state consists of several territorially concentrated collectivities which conceive of themselves as distinct political communities and if the unity of the state has not been created and maintained by oppression, colonization, or recent annexation, then a federal solution will be generally preferable to either a centralized structure of government or to the break-up of such a state. As long as federal arrangements strike a fair balance between the various claims the option of minorities to secede is not only constrained by feasibility conditions but also by the commitments their representatives have accepted through cooperating in the federal institutions. A well-ordered federation may under these conditions provide a point of convergence from which the options of centralized government and separation both appear as illegitimate. Such a federation need therefore not grant minorities a general *right* to secede<sup>41</sup> although it may have to *tolerate* secession if it is persistently supported by a sufficient majority in a province and if it does not seriously disadvantage other groups in the province or the remainder state.

Liberal nationalists who do not share Miller's preference for homogeneous nation-states may agree but still criticize that this approach fails to specify *which* communities seek collective autonomy and representation and *why* they seek it. For them the obvious answer is that these are national communities who need such rights in order to defend and protect the specific culture that distinguishes them from the majority population. Their claims can then be supported by theories about the general value of secure membership in a national culture like the one elaborated by Will Kymlicka (1989, 1995).<sup>42</sup> While I have some doubts that national cultures can be treated as totalities which provide individuals with a complete set of values and options for their lives, I would support the conclusion that members of minorities are not only entitled to free practice of their religions, languages or ways of life and to protection against social discrimination but can also claim that their cultures be not excluded from public institutions supported by the state. Territorial autonomy allows national minorities, for example, to turn their language into the dominant one in the public schools of their province while collective representation allows them to protect the more dispersed members of their groups outside their autonomous territory (e.g. by requiring that their language be taught as the second one there). Yet this makes them liable to grant the same rights to members of the national majority or to smaller minorities living in their province. Federal arrangements can therefore be recommended for accommodating the legitimate desire of various territorially concentrated groups for preserving their cultural identities.

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<sup>41</sup> Although Allen Buchanan generally discusses secession in terms of justice rather than choice, he supports in the end a constitutional right to secede with only procedural constraints (Buchanan 1991:127–149).

<sup>42</sup> see also Buchanan (1991:53), Raz (1994:69), Parekh (1995).

What remains unsatisfactory about this interpretation of federalism is that it seems to get the priorities wrong. Rather than being merely an instrument for preserving cultural difference, self-government is more often the real goal of national aspirations while cultural traditions and practices serve as markers to identify the members and as a resource for mobilizing them. In Canada it has been observed that the secessionist challenge came only after the Quiet Revolution of the 1960s which made the Francophone Québécois much more similar to the Anglophone mainstream in terms of their ways of life (Whitaker 1995:196). Preserving the French language in the context of Anglophone North America has become the essential legitimation for the political claims of the Québécois. But they certainly do not need this language in the same way that their agrarian ancestors might have needed their land. Most are probably bilingual and could be competent citizens and economic agents in an Anglophone environment. In the context of modern liberal democracies similar phenomena can be observed with almost any relatively successful national movement. Rather than self-government being a means to preserve cultural difference, this difference is preserved as a means to justify the claim to self-government. The advantage of the federal approach outlined here over nationalist or republican versions of liberalism is that it accepts the desire for self-government asserted by historic communities across generations as a basic claim which cannot be denied from a democratic perspective that confirms the same principle as a foundation for legitimate political rule. Such communities can generally be identified by cultural and especially linguistic difference. Yet their right to self-government does not depend on the nature or the amount of the difference that separates them from a majority population. And this right is also not merely instrumental for maintaining their traditional ways of life, but will more often be used to transform them into a modern national culture which provides their members with social status, political recognition and economic opportunities.

This is a descriptive rather than a normative observation about the desire for self-government. In a liberal democracy there must be normative strings attached to granting this demand. There are important differences in this regard between the autonomy of voluntary associations or religious congregations to regulate their internal affairs and the autonomy of institutions which exercise political authority within a territory. The latter will have to meet the general norms of democratic accountability and respect for individual liberties and rights. Most importantly for our discussion, national minorities who form provincial majorities gain the right to shape the public culture in their province but lose the right to exclude other minorities from it. They have to treat their own internal minorities as equal citizens of the province and also to provide opportunities for a public representation of their culture.<sup>43</sup> Far from endangering a liberal

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<sup>43</sup> Indigenous minorities should be seen as an exception to this general requirement. I would tentatively suggest that two reasons must be combined in order to justify granting them stronger powers to exclude non-members from their territory or from their public culture. Both reasons refer to the entirely different significance of territory for these groups. The first one is a history of forced incorporation, resettlement and confinement in reserves, the second one is that territory figures as an essential cultural and religious signifier rather than merely as a space for the exercise of political power. Forcing indigenous minorities to open their territories and public cultures to the inflow of non-members would thus continue a history of colonization and would deprive them of their capability to

constitution by granting excessive powers to minorities, federal devolution may thus actually help to strengthen commitments to liberal principles among dissatisfied national minorities. The widespread rejection of multinational federalism among liberal republicans rests on the prejudice that only central state institutions are liberal and secular while national minorities will always be illiberal and abuse any power given to them in order to restrict freedom in their provinces.<sup>44</sup> There is little evidence for this in Canada, Belgium, Switzerland or Spain. On the contrary, if my argument is correct, there is a reasonable expectation that, within the framework of liberal democracies, pluralistic federalism provides both reasons for enhancing the commitment of all constitutive groups towards liberal values and for maintaining the unity of multinational states.<sup>45</sup>

Here is a list of other points which pluralistic federalism could score against the currently prevailing ideas: First, this approach can avoid the reification of political community implicit in both nationalism and republicanism. By allowing for multiple levels of self-government it undermines illusions about a collective self which forms the substance of the polity and is imagined as an individual, i.e. an indivisible entity endowed with a single will. At the same time, it can assert that the very idea of democracy implies a substantive conception of political community with a shared structure of authority, equal membership and equal representation in collectively binding decisions. While the contract theory of federation which merely considers its emergence from previously self-governing polities reinforces the problematic analogy of union as marriage and secession as divorce, adding the independent reasons why union ought to be maintained and how federation can come about by devolution help to correct for this bias.

Second, it reverses the priorities shared by all kinds of nationalism. Rather than preferring homogeneous nation-states as the best realization of the principle of self-determination and accepting multinational federations grudgingly as second-best solutions, we should see border changes or the restitution of independent statehood as necessary only in the cases of decolonization or after annexation but generally promote federal solutions within existing borders as the best possibility for building viable and just democracies. The break-up of

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reproduce their culture. None of these reasons apply to other territorially concentrated national minorities marked by differences of language or religion.

<sup>44</sup> See Kymlicka (1997:81–2).

<sup>45</sup> Will Kymlicka is more skeptical about the incentives and moral reasons for unity in multinational federations: “Demands for self-government ... reflect a desire to weaken the bonds with the larger political community, and indeed question its very authority and permanence” (Kymlicka 1995:181). This interpretation is only convincing if we think of federation exclusively in terms of the first question, i.e. the conditions under which separate political communities would unite without renouncing their original right to self-government. The matter looks quite different once we focus on the reasons for maintaining federation which emerge from sharing membership in a liberal democracy that respects federal commitments. The Québec referenda on independence and election results in autonomous provinces of Western European democracies do not indicate an overwhelming and permanent desire for independence among national minorities. While the desire for regional self-government is constant and strong in most of these areas, the vacillating support for secessionist parties seems to be more often a reaction to perceived breaches of promises by the central government.

multinational democracies is therefore to be deplored as a regrettable, and in most cases avoidable, political failure.

Third, the argument corrects the liberal republican idea that equal citizenship is generally sufficient to justify existing borders while it resists the liberal nationalist suggestion that citizenship has to be supplemented with, or supported by, the more substantial membership provided by cultural communities. A pluralistic theory of liberal democracy argues for *differentiating* citizenship so that *substantial* equality of membership can be maintained in a complex and multilevel polity. This allows for a recognition not only of the vertical and nested structure of multiple membership in federal states<sup>46</sup> but also of horizontal and overlapping memberships which emerge from migration between independent states (Bauböck 1994b).

Fourth, this approach relies on a specific interpretation of a right to self-government which can be distinguished from self-determination. The latter concept refers to the idea that the collective 'self' of the national community, which is either defined objectively by a shared ancestry and culture or subjectively by a shared will of belonging to a political community, determines the borders within which the nation is to rule itself. By contrast, the idea of self-government which is at the core of democratic legitimacy need not imply a right to determine the borders of the territory or the boundaries of the collective over which government authority will be exercised. Here the prefix 'self' simply says that the population subjected to a political authority considers this government as their own and are justified in doing so because of democratic procedures of representation and decision-making.<sup>47</sup> Self-government would thus be the broader and more generally applicable term which neither requires full sovereignty nor a right to determine or change external borders. Only this conception of self-government is compatible with multiple membership in vertically nested political communities. One can at the same time be a citizen of a federal state, of a province and of a local municipality which are all considered to be self-governing. Of course, the smaller local or regional units are in important ways governed by federal laws. However, in a federal democracy all citizens are full and equal members of at least one collective unit at each level and in this sense they still govern themselves.

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<sup>46</sup> Kymlicky points out that "self-government rights necessarily give rise to a sort of dual citizenship" (Kymlicka 1995:182). As with dual citizenship emerging from migration, there are certainly "potential conflicts about which community citizens identify with most deeply" (ibid.). However, in both cases the escalation of such conflicts is fuelled by a unitary conception of sovereignty and citizenship much more than by reasonable demands for the recognition of multiple affiliations.

<sup>47</sup> This contrasts with Yael Tamir's distinction between national self-determination, which she defines as the "the way in which individuals define their personal and national identity" (Tamir 1993:70) and self-rule which is "the right of individuals to participate in governing their lives." (ibid.:69). An individual right to determine oneself to which national, ethnic or religious community one belongs is indeed an essential liberal achievement. However, such individual control over membership does not imply any specific right of the communities or their members. The right to a public sphere for one's culture, which is Tamir's central concern, is, in my view, a genuinely *collective* right which cannot be derived from individual self-determination in her sense of the term.

Fifth, federalism offers therefore a solution for how a right to self-government can be made compatible with a similar right for all groups who have the requisite capacity to exercise it. On the one hand, it opposes the republican doctrine that only sovereign states can be regarded as self-governing polities as well as the conservative realist approach which denies a general right to self-government in the name of securing the territorial integrity of existing states. On the other hand, federalism does not attribute to all political communities a right to determine themselves their borders and avoids thus the non-generalizeable and self-defeating principle of national self-determination.

Sixth, with most liberal theories of justice this approach shares a preference for the internal transformation of states to bring them closer to democratic and liberal ideals. Like foreign humanitarian intervention changing state borders should be regarded as a last remedy when other means have failed. Making governments accountable and responsive to their citizens requires a combination of collective voice through democratic representation with the liberty of individual exit through emigration, but not an easy dissolution of political communities by collective exit which would undermine their territorial stability and intergenerational continuity.<sup>48</sup> This stability and continuity is not only in the interest of present rulers but even more so in the general interest of citizens whose opportunities and fundamental choices for their lives depend on the protection and rights provided within a democratic system of political authority. Such a presumption in favour of existing state borders does not contradict a moral internationalism which asserts that states have duties beyond borders. It neither legitimates claims to the full value of natural resources in the state territory (Pogge 1994), nor does it in any way justify the huge global inequalities of social resources and opportunities for individuals who happen to have been born in different countries (Dummett 1992). The argument is neither incompatible with demands for large scale redistribution between states and a general duty to contribute towards building international institutions which could organize such transfers, nor with special duties that result from economic and political dependencies between specific states. What is excluded is only the most radical brand of cosmopolitanism which sees the solution to all these problems in a single world state. A pluralist approach to the problem of external borders and internal diversity within states will naturally advocate a similar pluralism at the level of the international political system. This allows for shifting traditional elements of sovereignty from the level of states to supra-state federations and international institutions without pursuing the goal of ultimately dismantling the state as the basic unit of the global political order (Pogge

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<sup>48</sup> Buchanan adds a further important reasons why easy secession is incompatible with democratic stability. "A territorially concentrated dissident minority can sometimes use the threat of secession as a bargaining tool to thwart majority rule. Where the majority regards secession by a minority as unacceptable, the threat of secession can function as a minority veto on majority decisions" (Buchanan 1997:302, see also Buchanan 1991:98–100). While I think that a federal scheme may include provisions for minority vetoes, these ought to be explicit and limited ones. Both the groups which enjoy it and the laws which may be vetoed should be clearly defined in order to maintain a stable framework for democracy at the federal level.

1992).<sup>49</sup> Pluralistic federalism would thus take the existing states as its starting point for moving towards recognition of lower level polities and towards building higher level ones. The resulting structure would retain the state as the level with the most comprehensive bundling of tasks for collectively binding decisions but would expand in vertical and horizontal dimensions by adding other layers of political community in which citizens can be simultaneously involved as multiple members. Just as a pluralistic federal state offers the best hope for integrating an internally diverse polity, so international federation would provide an institutional framework for reducing the danger of war and for correcting gross injustices in the international system.<sup>50</sup>

## 6. Conclusions

In this paper I have merely outlined an agenda for addressing the nationalist challenge. The main task was to provide an answer to one particular feature of nationalism: the threat it poses for the stability of external borders. I have examined three current theories which derive a right to secession from collective choice, from serious violations of human and citizenship rights, or from the supposedly beneficial consequences of national homogeneity within a state. The response I have suggested refutes the first and the third approach while expanding the second one so that violations of federal agreements and of distinctively collective rights are added to the list of grievances which may justify secession. Finally, I have defined the contexts within which federation is an answer to questions about the legitimacy of democratic government. These are conflicts involving one or more territorially concentrated groups within a given state which have asserted claims of self-government over several generations.

I conclude with some defensive points and one cautionary note. Pluralistic federalism is hardly a novelty and it is no magical formula for beating nationalism, but rather the most common response to it in multinational democracies. The theory is 'realistic' in the sense that it

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<sup>49</sup> Building or joining a global institution which could help to realize specific goals of international justice (such as a judicial authority, an authoritative body monitoring human rights, a scheme for burden sharing with regard to refugee admission and assistance) is arguably a moral duty. By contrast, as I have already pointed out above, forming a supranational federation from a group of independent states such as the European Union, or joining an existing federation of this sort, is generally a matter of prudence rather than of morality. However, *maintaining* such a federation and reforming it from the inside can become a duty once a state has become deeply involved in, and has benefited from, an ongoing and comprehensive cooperation.

<sup>50</sup> For the sake of simplicity I have treated nationality conflicts as internal ones. However, many involve of course external homelands or protector states. Secessionist movements may be driven by demands for national union with a neighbouring state. Taking these cases into account will require combining intra-state federalism with elements of inter- or supra-state federation. For example, in a case like the Irish one, any possible solution will have a strong external dimension. If the framework of the United Kingdom were to be preserved, this would require an external involvement of the Irish Republic, if a united Ireland is to be achieved, this could involve British guarantees for the Protestant minority; a third alternative would be a novel scheme of joint territorial sovereignty shared by the UK and Eire (see Glover 1997:26). These three solutions respond to the demands of the conflicting parties in quite different ways and I do not want to assess their merits in terms of justice or feasibility. The relevance of my argument for such cases is that each external solution would still require a federalist foundation of partial autonomy and special representation for the province under dispute.

accounts for many of the institutions and accommodating arrangements that have evolved in democratic states from centuries of conflict between national groups and movements. Some readers may find this a rather disappointing proposal. What is the use of normative theorizing if it only highlights present realities, or even worse, if it merely justifies a status quo? I would like to defend this style of inquiry against the more fancy analytical approaches which seem to see their major achievement in deriving surprising and counter-intuitive conclusions from initially plausible but over-generalized premises. I also want to defend it against the charge that it is essentially apologetic. The theory is a critical one with regard to theoretical debates as well as political institutions. While it is true that the federalist response to nationalism is in some way accommodating by offering fair terms for self-government, it has to reject the nationalist core pretensions about the nature of political community. At the same time it denies some widespread assumptions of liberal theories about democratic citizenship as a unitary and homogeneous bundle of strictly individual rights and obligations. And while it argues for federal arrangements as a proper framework for negotiating claims to self-government the theory also provides standards by which existing arrangements can be criticized whenever they implicitly violate the conditions for mutual trust which provide the moral glue for the federation.

There is also the opposite charge of practical futility of a normative theory which appeals to moral principles that are blatantly absent in real politics. Is multinational federalism not simply an arrangement that emerges from a certain balance of powers and interests? Does the way how theory informs our understanding of liberal democratic federations in multinational states make any difference for the prospects of stabilizing them? I think it does. One should not underestimate the effects of public imagination on the stability of democratic institutions. Questions about the nature and boundaries of political community cannot be settled by bargaining between representatives of interest groups. They are about what Antonio Gramsci called hegemony. As Benedict Anderson has argued, a 'nation' is a specific style of imagining a political community (Anderson 1983). There are deep structural features of modernity which make this style a pervasive one. And there are many constellations in politics which provide strong incentives for politicians to cultivate that style in their rhetoric. However, in a liberal democracy public discourses are never completely determined by structural forces nor can they be completely manipulated by self-interested political elites. Legitimation can only be achieved by exposing candidates to competition and arguments to contestation. What critical normative theory may achieve in practical terms is to coin a few concepts and to launch a few ideas which catch public attention and will, however distorted, find their way into political discourse.

The cautionary note is that federalism is one specific manifestation of a pluralistic approach to the boundary problems of political community. It is neither the only solution nor a sufficient one. More specifically, it cannot fully answer the second question asked at the beginning of this paper: What is the common identity of a liberal democracy and how can it cope with internal diversity? All modern liberal societies experience a broad diversity of religious

affiliations, languages, ethnic origins, sexual orientations or ways of life. Most of these do not crystallize into regional majorities with a claim and an aspiration to self-government. In principle any such diversity could be recognized within a federal scheme of collective autonomy and representation. This would lead to a 'corporate federalism' (Lijphart 1984:183–5) instead of a purely territorial one. The extreme version of corporate federalism would be a democratized Ottoman millet system. One of the attractions of corporate federalism is that it seems to make secession much more unlikely. Non-territorial units of representation cannot break away in order to form sovereign territorial nation-states. And by largely satisfying the demand for self-government of groups corporate federalism would remove the incentives for territorial resettlement in order to create more homogeneous national regions.<sup>51</sup> However, there is a profound difference between the two types of federalism. In a liberal society, carving up the public sphere into separate domains for each group is not at all like dividing the territory between federal entities. Territorial federalism allows for social integration across ethnic and national boundaries and does not undermine the essential individual rights and liberties. It designates, first, a regional space of cohabitation of citizens as the unit of political representation, whereas corporate federations would imply that people living in the same area belong to different constitutive units of the polity. Although we may imagine a future where public spheres no longer have any spatial correlate, this is not a particularly attractive vision. A society in which neighbourhoods are thoroughly segregated along ethnic or class lines will hardly achieve democratic integration via the internet. And if, for example, schools, universities and museums are generally run by religious or language groups, rather than being common institutions for all citizens living in a territory, there will be little left which these citizens share when they enter the voting booth. Second, liberal democratic federalism is premised upon the right of free movement within the whole territory of the state. Although multinational federations are created in order to represent nationalities, no federal unit may prevent an increasing diversification of origins among their population<sup>52</sup> and each unit has to equally represent all their citizens independently of their origins. By contrast, the units of corporate federations would only represent their group members. This increases their powers to restrict internally their members' liberty (Kymlicka 1995:35–44) and to disregard external costs of their ways of life for non-members living in the same area. Third, any incongruent federal systems can only work if the boundaries between its constitutive units are relatively stable over time. Territorial federalism is easier to maintain in modern societies where group membership is essentially fluid due to geographic mobility and intermarriage because it disconnects the unit of

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<sup>51</sup> One could, for example discuss whether from the perspective of Francophone Canadians a bilingual corporate federation would not have been preferable to the present binational territorial federation in which French speakers outside Quebec find it more difficult to preserve their language. While this former solution was strongly advocated by liberal politicians like Pierre Trudeau, it was probably never a realistic option because of the strong constraints it would have imposed on the political aspirations of self-government among French Canadians.

<sup>52</sup> The exception of indigenous territories has already been discussed in footnote 43 above. The province of Québec presents again an interesting case because it enjoys, on the one hand, limited powers to regulate immigration from outside Canada into its territory (Carens 1994), but no power to regulate the internal mobility of immigrants admitted by the federal state.

representation from individual group affiliation. By contrast, corporate federalism encourages groups to police their boundaries not merely in order to maintain their culture or way of life, but also their political clout. Those who belong to several communities or to none, who want to leave one community and to join another one, would be in a difficult position if their rights strongly depended on stable affiliations to groups.<sup>53</sup> Corporate federalism could thus lead to substantial restrictions of freedom and would destroy a common public sphere which is essential for the integration of a political community.<sup>54</sup>

These objections against any full-blown corporate federalism leave the question of cultural and ethnic diversity still unanswered. As with the problem of secession, liberals have been strongly disunited amongst themselves and none of the solutions they have proposed seems entirely satisfactory. Civic republicans want to build a strong common culture of citizenship which will keep diversity at bay; libertarians plead for a cultural *laissez-faire* which reduces state intervention to maintaining public order; political liberals search for an overlapping consensus that would legitimate political institutions independently of the different beliefs and practices of various groups.<sup>55</sup> In a pluralist perspective, by contrast, such diversity will necessarily be reflected within the polity itself and will justify a range of group rights. There must also be some space of autonomy for groups who want to withdraw from the wider society as long as they do not restrict the liberties of their members so that these can no longer choose to be full citizens. However, these are cases for special exemptions.<sup>56</sup> The wider polity must find ways how to integrate its various groups into a shared public sphere and special rights should promote rather than undermine this integration. This solution does neither build a ‘wall of separation’ between a diverse civil society and a homogeneous polity, nor does it build such walls within the political realm between the various groups. The alternative is a pluralization of the polity which builds upon the fundamental assets of common individual citizenship and strengthens them by recognizing the impact of group membership on the citizens’ social and economic opportunities, political powers and cultural resources. What emerges from combining the federal response to national aspirations and the pluralistic integration of cultural, ethnic and religious minorities is just the kind of structure of the polity which nationalism strives to overcome: borders of political communities and of cultural ones cutting across each other in many different lines. As in a spider’s web, these lines should be seen as a texture which provides stability to the polity rather than dividing it into different compartments.

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<sup>53</sup> see Lukes (1993:25).

<sup>54</sup> This is why I would not recommend Tamir’s principle of self-determination as a right to a *separate* public space where the culture of one’s own group is *dominant*.

<sup>55</sup> see Parekh (1995) for an excellent summary of the various liberal responses to diversity.

<sup>56</sup> See Jeff Spinner’s account of the Old Order Amish as “partial citizens” (Spinner 1994:87–108).

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