Territorial right and Secession; the problem of differential natural resource endowment

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This paper is a normative examination of rights over territory in the context of secession. Specifically, it focuses on cases of secession where control over territory has serious distributive justice implications, typically because some territories are much richer in natural resources than others. This is not a mere academic exercise. The division of territory and therefore natural resources is a serious issue in many cases of potential secession, including the Kurdish regions of northern Iraq, the Delta region of Nigeria and the oil-rich region of Bolivia. It is an important question how, normatively, we should think about these cases.

Theorists in the ethics of secession are aware that the right to control natural resources (hereafter called 'territorial right') may, in the context of unequally endowed sub-units, create a moral hazard. It provides an incentive for leaders of groups within richly endowed regions to mobilize for secession in order to reap the full benefits of these rich natural resources for themselves. This would be an unjust motivation; and not one which a normatively credible theory of secession would want to encourage. Wayne Norman regards with suspicion rich regions that have no just cause to secede – they cannot point to historical grievances or injustices – and regards them either as 'vanity secession'[i] or as politically opportunistic elites who seek power to capitalize on unjust greed, namely, the hope that all the wealth can be kept within a

smaller group.[ii] He takes it for granted that we would not want to countenance secessions motivated by injustice or mere vanity, and he proposes framing the constitutional mechanisms that permit secession in a way that would discourage these sorts of claims.

Pogge has a similar discussion about possible unjust motivations for secession, claiming that "many such conflicts are motivated by morally inappropriate considerations" and cites both competition for valuable or strategically important territory, and attempts by the more affluent to separate themselves from poorer regions "in order to circumvent widely recognized duties of distributive justice among compatriots".[iii]

We should not proceed too quickly here, however, by making a general rule that sub-units should not be permitted to secede, or are not justified in seceding, from units to which they are attached if they happen to be richer, or contain more natural resources. This is so for two reasons. One is that the aspiration for secession might not be motivated purely by the desire to escape obligations of distributive justice; indeed, many groups, differentially situated, have expressed, as groups, a desire for collective self-determination, even in contexts where the self-determination will not contribute to their wealth or well-being on other fronts. While one might suspect that Slovenia's secession from the former Yugoslavia was motivated by its relative wealth, that wouldn't explain why Kosovo, the poorest region in the former Yugoslavia was mobilized to seek collective self-determination even prior to the 1999 expulsion of Kosovar Albanians from their territory.[iv] This suggests that there might be some independent good about being able to govern yourself locally, in accord with your own language, culture and traditions, as this paper has suggested above. It seems wrong to deny self-determination to the richer regions, while allowing it to the

poorer regions, since they might be motivated by exactly the same considerations.

Second, there is a pragmatic reason to resist a blanket prohibition on the secession of rich units. If we think that viability is a factor in secession -- because related to the state's ability to perform its functions -- this is related to its relative richness. It would therefore be perverse to deny richer units the possibility of secession when they might indeed be the most viable units in a collapsing federation. The limit here of course is whether they leave a viable remainder unit.

This suggests that there should not be a blanket prohibition against richer sub-units seceding from poorer over-arching states. This would be unfair in the context of other potentially secessionist groups, and unfair in relation to the global order, which is composed of different states, each one of which exercises territorial right over its geographical domain (and so benefits from the natural resources that it controls).[v] This, however, is a fairly limited conclusion in the sense that it does not give us much guidance about when we should permit secession, and when we should not; and it brackets a much wider debate in the global justice literature about the fair distribution of territorial right in the first place.

In order to pursue the narrower question of the normative obligations that states have in the context of secession of unequally endowed units, it is necessary to examine the basis for territorial rights and the limits of such rights. The distributive justice question as it applies to natural resource arises because, in the contemporary global order, sovereign states have jurisdictional control over territory, and benefit from the possession and exploitation of these resources. In Part One, I outline a justificatory argument for territorial right as an essential part of the exercise of collective self-government. I call this the self-determination account of territorial right. This account involves a rejection of a Lockean theory of territory; and its

general justification in terms of being a constituent part of collective self-determination.[vi] However, while this justificatory argument sets limits on the kinds of considerations on which one draws, it does not directly determine the principles to regulate the secession of richly-endowed regions. Part Two focuses on two dominant theories in the ethics of secession to consider what they imply for this question. It examines Lea Brilmayer's territorial theory of secession, which is directly relevant to the issue of territorial right, but, because it operates with an historical account of entitlement to territory, does not have the conceptual resources to address this question. It then turns to Allen Buchanan's just-cause theory of secession, which, like Brilmayer's, does not directly address the issue of unequal natural resource endowment. Although both theories theorize the territorial element of secession, and provide principles that are helpful in addressing this issues, I argue that these theories are less useful than the account I offer in Part Three.

Part Three of this paper focuses on two lines of arguments that are consistent with the self-determination defense of territorial right, outlined in Part One. In Part Three, I suggest two reasons why a seceding unit might have obligations to the remainder unit. This section appeals to both reciprocity and legitimate expectation arguments to suggest cases where the over-holding state has some claim to the natural resources of the seceding state. I argue that these two reasons provide a better account of the obligations of seceding units to the remainder units than that of the most influential theory of justified secession (Allen Buchanan's remedial rights theory).

Part One: The Basis of Territorial Right.

In this section, I will define what I mean by territory and what is implied by territorial

right; distinguish it from property ownership; argue that it is not easily avoided; and then identify the typical view adopted in the ethics of secession debate on the question of rich sub-units seceding from relatively poorer over-holding states.

In the modern world, self-government takes on a territorial form: it tends to operate over a geographical domain, and to include all people within that domain as equal citizens. Territory refers, not to property, or even land, but to a geographical area or domain of legal and political rules. It is implicit in the notion of popular sovereignty that the whole territory of the state stands in a special relationship to the people as a whole, and that the people exercise sovereignty within that jurisdiction. On this conception of territorial jurisdiction, territory is conceived as in some sense belonging to all the people, and for the benefit of all the people. On the view advanced here, territory is a moral good because a necessary or essential component of the good of self-government.[vii] Of course, this requires that we presuppose that collective self-government is an important moral good, but there are reasons to do this: after all, it gives expression to people's communities; it reflects people's identity; it is a forum in which citizen autonomy can be expressed; in which citizens are empowered to shape the context in which they live and realize their political aspirations. When a group is deprived of its territory, it is also deprived of the main institutional conditions or means to exercise self-government.

This complex relationship between self-determination, geographical space and citizenship is hard to escape. In part this may be simply because humans are physical beings; they occupy space and have to exist somewhere; and proximate location is a basic condition for requiring shared institutional rules for self-government In general, non-territorial jurisdictional authority tends to be either over relatively insignificant areas or a mix of personal and territorial criteria: jurisdiction over education, for

example, can be organized non-territorially (g. Catholic school boards), but the usual formula is the state will build and operate these schools only *where numbers warrant*, which suggests an unavoidable geographical dimension. The same is true of language rights, which may attach to people as individuals, but there is typically an institutional response to language diversity and this generally suggests that these personal rights become effective only in cases where there are sufficient numbers of language speakers. Moreover, although some have argued that non-territorial autonomy arrangements hold out great promise,[viii] there is strong empirical evidence that this is unlikely to be satisfactory for most territorially concentrated national minorities, who seek to be collectively self-governing over significant areas of their collective life, and who seek to govern their national homeland. The inadequacy of most forms of non-territorial autonomy should be evident from the fact that it is not sought by most national minorities. It is, at least, not the first preference of those minorities that have the demographic concentration and capacity to exercise territorial self-government.

The modern state, then, has a very strong territorial dimension in the sense that its jurisdictional domain is defined geographically. As Burke Hendrix writes: "At times states appear to rule particular territories first, and citizens only incidentally – being born within a state's territory usually makes one legally a citizen, unless some clear and obvious commitment to another state prevents this."[ix] Moreover, states usually claim the right to conscript citizens to defend their territories, even when those territories were themselves acquired through force and fraud (most of the United States) or are virtually uninhabited (much of Greenland). This leads Hendrix to speculate about the exact relationship between the two: whether mere geographical fact somehow translates into authority, or whether it's the other way around, with control over persons somehow transformed into control over territory.

It is important to note that the relationship between state authority and control over geographical space does not translate into a conception of the state 'owning' the land. Although Hillel Steiner, for example, has argued for a natural right to property, and, following Locke, derived territorial control (government) from the individual consent of (natural) property holders, this conception is riddled with difficulties.[x] Part of the difficulty involves the very idea of a natural right, but part of the problem is that territorial right seems to attach to states that have very different property right regimes. For this reason, this paper adopts an alternate conception of territorial authority, viz., that territorial authority establishes rules regarding property ownership -- how individuals can come to own property, transfer it, make contracts regarding it, and so on. – rather than vice versa. On this view, territory is simply the geographical domain in which jurisdictional authority operates. Implicit in the idea of collective self-determination is the right to make decisions about the natural resources within their territorial jurisdiction. In this paper, I use the term 'territorial right' to include self-determining people having the right to control the natural resources within their territory.

There are at least two reasons why it is important that natural resources are part of 'territorial right'. The first appeals to an idea, first articulated by Locke in the context of justifying private property, which is referred to in the literature as 'the tragedy of the commons'. The basic idea here is that, when land is held in common for general use, and without authoritative rules governing its use in the common interest, there is little incentive for any particular person to invest their time and effort in developing the land to improve its productivity. Since the land is common, there is no way for an individual to ensure that she will benefit from her investment because the prospective investor cannot exclude free-riders from reaping the rewards without

contributing to the labour. Moreover, the problem isn't simply an incentive one: it may be rational to deplete the resources, to prevent other less scrupulous people from getting there first.[xi] For Locke and Nozick and others, the moral of the story is that, given the tragedy of the commons, exclusive ownership of, and control of the land (private property) is likely to make everyone, even the propertyless, better off overall than before. However, there is another, not incompatible solution to this problem: to establish a legitimate political order, with jurisdictional authority over natural resources (land, water, minerals in the ground, etc.) to ensure that its use (or rules which will govern its use) conform to the common good. This would mean that there would be rules on the number and size of fish harvested in the seas, for example, and coercive means to enforce these rules.

The other argument for territorial right is that it is an important dimension of collective self-determination, particularly the cultural dimension of different rules regarding land. Here, we can imagine a group of self-determining people who, for various (cultural, ideological, religious) reasons eschew private property, as the Maoris did for example. We might expect that such a group would make a rule that property is not individually held but collectively controlled, and therefore forbid its alienation. The rules that they make as self-determining people establish the terms of ownership, not to the other way round. And it is hard to see how a people could exercise important control over the collective conditions of their existence *unless* they had this capacity.

Once we allow that political self-determination necessarily involves control over natural resources, we run up against the problem that this can seem unfair from a distributive justice perspective. Even if we concede that the mere fact of differential natural resources does not automatically mean that resource-endowed countries are

wealthy, and resource-poor countries are actually poor – indeed, it may be the case that the opposite is true, as the literature on the 'resource curse' suggests[xii] – it would seem *prima facie* better to have control over a territory rich in resources than a territory poor in resources. This is because we might expect secondary benefits from control over natural resources; benefits such as the power to tax the resources, or employment or other related positive effects from proximity to important resources. If this is so, it is problematic from a justice perspective if group A controls a territory rich in many kinds of resources, while group B exercises their self-determination, such as it is, over a small, resource-less, land-locked desert.

There are two possible responses to this challenge. The first is that territorial right does not preclude the possibility of further justice consideration flowing from uneven riches (and here we distinguish between uneven resource endowment and uneven wealth) so that rich people may indeed (and I think do) have obligations to much poorer people. This issue is not simply an issue of uneven resources, but should be placed within the broader contest of obligations to less well off people. Second, there are specific obligations that arise from the secession of richer regions from other parts of the state. Because there have been pre-existing or shared institutional arrangements, governing the control over and benefit of resources in the state, there may be additional obligations in this case, beyond the general obligations that we have to all people as such, obligations which might be quite extensive, in a globally just world.

Part Two: Just-Cause Theories of Secession and Natural Resources

Most theories of the ethics of secession do not consider directly or at length the territorial dimension of secession, although it is considered indirectly in terms of

whether the violation of territorial right constitutes just cause. Typically, they focus on injustice, understood in standard liberal democratic terms,[xiii] or on democracy, where the exercise of collective self-determination is conceived of as an extension of democratic right, and in straightforward tension with the (international law) principle of territorial integrity.[xiv] This essay will consider the implications of just-cause theories of the ethics of secession, to explicate whether they offer any guidance on the issue of (uneven) richness of territorial resources. Buchanan's and Brilmayer's normative theories of secession are taken as representative examples of just-cause theories. It will also examine the extent to which Buchanan's and Brilmayer's theories offer different guidance, or different principles, than the (reciprocity and expectations) arguments considered in Part 3.

Just-cause theories typically argue in favour of a general right to secede for groups that have suffered certain kinds of injustices at the hands of the state.[xv] Different just-cause theories focus on different kinds of injustices: some on prior occupation and seizure of territory; some, on serious violations of human rights, including genocide; others view discriminatory injustice as sufficient to legitimize secession. In Wayne Norman's elaboration and defense of just-cause theory, he cites five kinds of injuries to a group that are considered to give just cause: (1) that it has been the victim of systematic discrimination or exploitation, and that this situation will not end as long as the group remains in the state; (2) that the group and its territory were illegally incorporated into the state within recent-enough memory; (3) that the group has a valid claim to the territory it wants to withdraw from the state; (4) that the group's culture is imperiled unless it gains access to all of the powers of a sovereign sate; (5) that the group finds its constitutional rights grossly or systematically ignored by the central government or the supreme court."[xvi]

One advantage of this type of theory is that it suggests a strong internal connection between the right to resist tyranny – exploitation, genocide, oppression, wrongful seizure of territory – and the collective right to self-determination or secession. By suggesting a strong link between secession and human rights, this kind of argument grounds the ethics of secession within the generally accepted framework of human rights, and a generally accepted theory of state legitimacy.

Although Buchanan's original theory in *Secession* does count wrongful seizure of territory as among the injustices that can ground his theory of secession, Lea Brilmayer's just cause theory offers a more sustained treatment of territory. Her account is very interesting because she recognizes that secession is fundamentally a territorial act: the difference between secessionists and refugees is the territorial claim that comes with the exercise of collective self-government. She writes: "although secessionist rhetoric may focus on freedom from domination by an alien culture, it does not achieve this goal simply by abandoning land. An important element of the goal is the continued possession of a particular piece of land within which the political rights can be enjoyed."[xvii] She correctly notes that most theories of secession that focus on choice fail to conceptualize properly the territorial claim.

Brilmayer makes it a condition of a legitimate claim for secession that the secessionists (or leaders of the secessionist movement) can make a legitimate historical claim to a particular piece of land. She writes: "[T]he most intuitively appealing and direct territorial claims that one encounters typically have historical origins. The land properly belongs to the secessionist group, so the argument goes, and only came under the dominion of the existing state by way of some unjustifiable historic event."[xviii] Although she uses the example of the annexation of the Baltic states by the Soviet Union, she argues that this does not exhaust the type of arguments

of historic grievance. She focuses on two types: (1) land acquired through conquest by the state from which the ethnic (or national) group wishes to secede; and (2) land acquired by wrongdoing by some third party (e.g., when the European colonial powers fixed colonial borders to suit their own convenience).

Brilmayer's thesis, then, is that every secessionist movement is built upon a claim to territory, usually based on an historical grievance; and that, without a normatively sound claim to territory, self-determination arguments do not form a plausible basis for secession. Although the idea of self-determination focuses on people, not on places, and although some minority claims focus on grievance or injustice or a non-territorial kind, this is not sufficient to legitimate secession. She argues: a "minority cannot justifiably claim the remedy of secession unless sit can convincingly assert a clam to territory."[xix] A legitimate claim to land is a necessary, but not sufficient, condition for a legitimate claim to secession.

This theory has the merit of conceiving of territorial right as absolutely crucial to self-determination, and to the idea of the Westphalian system of states. In her view, a legitimate claim to territory is a vital condition for a legitimate claim to secession. The normative basis of the territory, however, is understood entirely in historical terms, and this historical title conception of territory is not only problematic for the obvious reason that there may be contested accounts of who (what group) ahs title, and multiple claims to the same piece of territory, but also not helpful for our purposes, because it ignores the distributive justice component of uneven richness of territory with which this paper began.

Brilmayer's historical title account, or indeed any historical title account, has a theory to establish legitimate title, but it abstracts from consideration the fact that territories themselves are unevenly endowed. The distributive justice question is only

relevant if we assume that there must be some non-historical justice considerations applicable to territory, which means that the domain of distributive justice is not fully met by principles of acquisition and transfer and rectification.[xx] Thus, it would seem that Brilmayer's account, while helpful in focusing on territorial right, ultimately has nothing to say about the problem outlined at the beginning of this paper, except perhaps to deny that it is a problem or an issue at all, as long as territory has been acquired justly.

Buchanan's remedial rights account of secession, like Brilmayer's, and unlike many of the democratic or 'choice' theories of secession, seems to operate with an acute awareness that territory is a crucial component to secession, and independently theorizes that requirement. Moreover, he offers a theory of justice that goes beyond a straightforwardly historical account of the legitimate acquisition and transfer of territory. For this reason, it is useful to explicate the precise moves in Buchanan's theory, and their implications.

In his book *Secession*, Buchanan argues that the desires and claims of secessionists have to be weighed against the claims of the state, which, if it is a just state, is the "trustee for the people, conceived as an intergenerational community".[xxi] The just state has an obligation to protect all (existing and future) citizens' legitimate interests in this political and territorial community. On Buchanan's view, secession is permissible only when the state forfeits its claim to being a legitimate trustee by failing to fulfill its justice-based obligations.

Territorial right enters into this theory in two ways: first, Buchanan draws on the fact that the state is territorial, not personal, to support his claim that the state is a trustee for all the people. This is important for his argument that the state must be a legitimate state.[xxii] Although Buchanan assumes that the state has an obligation (to

protect citizens' legitimate interests in the political and territorial community) he does not offer a particular account of a theory of territory, of how to draw borders, and over what domain the state rightly exercises its authority. Second, the requirement that the territory should not have been acquired unjustly within living memory –that is, by conquest or some act of aggression – suggests that he believes in territorial right (that the state exercises authority over its territory); but he offers no independent theory of the domain of justice. Indeed, it seems from the structure of his argument that the crucial element is whether the state is a site of justice, for that is necessary both to the state's claim to exercise legitimate authority and its claim over the whole territory (which is an important element in territorial right).

Although Buchanan does not articulate a full-fledged theory of justice,[xxiii] his account is derivative on a universalist theory of justice, because this is crucial to establish state legitimacy, and thereby determine whether secession is justified. Although he mainly focuses on secession as a remedy for injustice, the structure of his argument, and especially the foundational role of justice considerations, suggests that the process (of seceding) would also have to conform to justice considerations, including distributive justice theory. This suggests that he has the conceptual resources to address the issue raised above, viz., where a rich sub-unit seeks to secede from a larger poorer over-holding unit. His theory would not necessarily mean that such secession was unjustified –especially if the richer unit could credibly claim just cause – but that it would have to be conformable with considerations of distributive justice and may require that the richer unit continue or operate with a subvention towards the poorer unit, if this is a requirement of the particular theory of distributive justice.[xxiv] Since violations of distributive justice represent a potential just cause for secession, justice considerations would seem to be dominant after the secession, to

ensure that the resulting units themselves have legitimacy.

I will argue in section four, below, that this tends to mirror the results of the two arguments that this paper focuses on – the reciprocity and legitimate expectations arguments – but there are reasons for thinking that the more historical and contextual focus of the reciprocity and legitimate expectations arguments are superior in two respects.

Part Three Secession and Uneven Endowment: Reciprocity and Legitimate Expectations

In this part of the paper, I suggest two reasons why we might think that seceding units sometimes do have an obligation to provide additional resources to the remainder state following secession. These arguments are based on an understanding of territorial right as flowing from the exercise of collective self-determination, although here I further argue that this only applies when collective self-determination involves both institutionalized reciprocity and gives rise to legitimate expectations. In this section, I assume that the reader accepts the argument of Part One of this paper, namely, that territorial right is justified as implicit in collective self-determination, and that collective self-determination can be a legitimate aspiration and moral good.

3.1 Argument from Reciprocity The first argument appeals to the idea of reciprocity. By 'reciprocity', I mean a basic appeal to a principle of fairness or turn-taking in the context of relations of cooperation. This (moral) principle is quite different from many other kinds of normative principles, and different, too, from the way in which Cohen and Murphy (and luck-egalitarians) understand the principle of justice. [xxv] It does not assess, in an institution-independent way, the justice or goodness of our different practices or institutions: it arises only in the context of significant forms of cooperation. It is a duty that we would not have in the absence of

cooperation.

There are clearly some duties that we just have, whether or not institutions or practices of cooperation are in place: we should not torture people; we should not deprive them of their liberty; we should not violate their rights. But in the context of cooperation, further (moral) considerations arise: for example, we should not exploit others or be exploited by them either.[xxvi] We also have moral duties which arise from on-going reciprocal cooperation over time, which I will call here 'duties of reciprocity' [xxvii]

Reciprocity is an important feature of both fairly informal cooperative practices and institutional practices characterized by turn-taking over time. We might say that a relation is fair between two people if they take turns, helping each other out when need arises. If my neighbour Sandra babysits my child when I am unavoidably detained at work, and I do the same for her when she is unavoidably detained, then we might say that our relation is imbued with the principle of reciprocity. We might, however, think that taking turns isn't sufficient to characterize the relationship as reciprocal if the turns themselves are unequal – if she has three children in need of care, say, and I have only one. Or we might think that the relationship is not reciprocal if I end up needing her assistance, and calling upon it far more often than she needs me. At a certain point, we might – depending on our account of exploitation – think that my relation with her is fundamentally exploitative, even though she keeps agreeing to it. The point, however, is that we can imagine a way to characterize this kind of cooperation as imbued with reciprocity, and not simply mutually advantageous, because it requires us to help each other out over time (and not in each transaction). In the context of on-going cooperation, I would be violating my duties of reciprocity if my neighbour Sandra rang and asked me to take her child

as she was unavoidably detained, and I answered simply that I was too busy at the moment, as I was just going to dash out to get a much needed double expresso. That would be a perfectly reasonable response, if there had been no prior cooperative practices: it might not be altruistic, but it violates no duties. But given the history of our relation, that response would violate my duties of reciprocity.

The fundamental point here is that the principle of reciprocity suggests that the nature of past relations may create obligations in the future and this principle is particularly apposite in the context of on-going, shared cooperative practices and institutions. In reasonably deep institutional arrangements, such as where there is a redistributive dimension, it's clear that there are duties of reciprocity. Unlike in the market transaction case discussed in the end-note above, redistributive arrangements involve on-going cooperation where there are, typically, differential benefits (there are winners and losers). Living under such arrangements implies an understanding of reciprocity – that I will support you when you need it, and you will support me, if I end up the loser. This is precisely what makes these arrangements advantageous, compared to a baseline in which there is no such arrangement.

. This suggests that there may be reasons for treating aspiring secessionist units differently than independent states, because they have operated in the context of shared institutional arrangements, where there may be duties of reciprocity. Whether or not the principle of reciprocity inhered in the previous institutional order is important when contemplating changes to the international order.

Let us imagine two different secessionist scenarios in which the principle of reciprocity can be appealed to. In scenario 1, region A of a country is rich in a specific natural resource, and is thereby wealthier than region B of the same country. However, it uses some of the money generated by the natural resource to support B's

plans for economic development, as well as to transfer some money to the poor of B. Now, suppose that B, which was formerly resource-poor, becomes resource-rich due to technological changes, which make the uranium found under the ground suddenly valuable, whereas the dirty coal of region A is no longer the energy of choice. Changes in extraction and preferred energy sources have altered the market situation and thus altered how we value these resources. It would seem that the past support of B by A makes it incumbent on B to support A when the table is turned. It would seem deeply problematic for B to then attempt to secede from A and so gain full control of the resource wealth, without any form of compensation. The argument here doesn't preclude the collective self-determination (secession) of B, but it does suggest that the self-determination of B has to take account of the obligations incurred, both in terms of debt repayment of a formal kind and more informal kinds of indebtedness.

The second way in which reciprocity may inform our obligations of support in relation to natural resources and generated wealth depends on the decision-making structure of the pre-secessionist state and the way in which decisions are allocated. Let us suppose, unlike in the first case, that P is resource-rich, but that decisions about natural resources are not an exclusive concern of P, but that jurisdictional authority over natural resources is in the hands of the federal government. According to the division of powers in the state, the region has either no say over natural resources in its geographical area, either because this is not a federal system at all, or it is a federal system with jurisdictional authority over natural resources held by the federal government. Now, let us suppose, in that scenario, decisions about non renewable resources, which are concentrated in region P, are made by the over-holding state, comprised of regions P, Q, R for the common good of all parts of the country. In this

context, a decision is made to exploit this resource at full capacity, and use the revenue, not only to meet distributive justice obligations in the state as a whole, but to invest in the infrastructure of the state. This may of course differentially impact the different regions of the state; in this case,the investments have the effect of primarily advantaging R.

In that scenario, it would seem to be a violation of reciprocity for R to then attempt to secede (without, we are imagining, any kind of obligation to the remainder state, or to the region whose resources were used, to the massive benefit of R). In this example, it would seem that the principle of reciprocity has been violated. The principle of reciprocity does not necessarily mean that is self-determination is rendered impossible, but that that self-determination has to be pursued in way that is consistent with its duties to the remainder state, duties which are derived precisely from the previously shared institutional context, rather than a universalist basic rights conception.

Of course, in many cases, secession occurs in part because prior unjust or unfair practices have alienated the secessionist group, and the reciprocity principle never characterized the previous arrangement. Consider the case of the Kurds in Iraq, who live in the northern region (in one of the two oil-rich areas) and who, under the regime of Saddam Hussein, were oppressed, exploited and murdered. The oil resources were not used to the benefit of the Kurdish people of northern Iraq, on whose territory the oil was found, nor even fairly across the state as a whole, but disproportionately benefited the Sunni community in the centre of Iraq, who formed the bedrock of the Saddam Hussein regime. Moreover, the regime was not characterized by the moral principle of reciprocity among groups in the state as a whole. Estimates by respectable (neutral) sources of the number of people killed in the spring of 1991 in

Saddam's counter-attack against Kurdish and Shi'a rebels are in the region of 300,000 people. Some estimates run even higher.[xxviii] In the 1988 Anfal campaign alone, in which the Saddam regime gassed the Kurds in more than 40 villages, approximately 182,000 people were killed, and more were blinded and maimed. The regime practiced systematic repression, torture and rape, imprisoned political opponents and leaders of ethnic minorities. These practices have been well documented by impartial international observers, such as Human Rights Watch, and by independent journalists and NGOs.[xxix]

Since reciprocity did not characterize the previous (institutional) arrangement, there are no corresponding duties of reciprocity on the part of Kurds to share the resources in a continuing, on-going basis with Sunnis, in the context of secession. Of course, if Kurds and Arabs are to build a new federal Iraq, based on the equality of people, obviously, some fair dispensation with respect to natural resources will have to be worked out; but, if the state collapses, and the Kurds separate, then, any duties that the Kurds have will be ones consistent with the more minimalist baseline for global justice and the common humanity of everyone in the world.

Expectation based Claims. There is a second, related argument, which also suggests that cooperative arrangements can give rise to duties. This argument proceeds somewhat differently from the appeal to reciprocity because it is mediated through the idea of shared expectations.

This view focuses on the fact that people operate from a current baseline of control over territories, resources, and institutional support, and these give rise to expectations, which give rise to claims of justice. This account is identified with Bentham and is broadly utilitarian in form. According to Bentham, *expectations* are

an important foundation for justice -- although Bentham also had the explicit rider that possessory expectations must be supported by law.[xxx] Jeremy Waldron, in his article "Superseding Historic Injustice", cites Bentham's view approvingly and then goes on to argue that possession, however acquired, but especially possession acquired long ago, gives rise to expectations, and these expectations give rise to claims of justice. He writes:

> For better or worse, people build up structures of expectation around the resources that are actually under their control. If a person controls a resource over a long enough period, then she and others may organize their lives and their economic activity around the premise that that resource is "hers", without much regard to the distant provenance of her entitlement. Upsetting these expectations in the name of restitutive justice is bound to be costly and disruptive.[xxxi]

On this view, an important ground for rights and entitlements is expectations, and people can legitimately claim possessory rights to objects under their control on the grounds of these expectations.[xxxii] The expectations-give-rise-to-justice argument is most persuasive when it appeals to expectations that people have, which form a background for the decisions and choices that they make when they navigate through life. As Waldron emphasizes, people make choices against some background knowledge of resources, and changes in these resources can harm them because it alters the conditions under which they made the choices. Something like this is appealed to in a standard account of the moral wrong associated with promise-breaking, where it is the breaking of expectation-inducing promises which represents a free-standing moral wrong.[xxxiii]

The expectations-give-rise-to-justice argument seems to presuppose an account of *legitimate* expectation, and so some versions may collapse into a reciprocity argument. By this I mean that it is not clear that the mere fact that one has

an expectation gives rise to duties of justice. It does so only when the expectation is a legitimate one, either because it is grounded in some further external moral principle, such as a principle of fairness, or reciprocity, or consent. Otherwise, it could give rise to clearly unfair and illegitimate transfers, based solely on the (subjective) fact that there are some people who tend to focus on their own needs (not that of others) and tend, as a matter of character, to expect that a lot will flow in their direction. In Waldron's example, the expectation was based on the fact that the resource in question was in the control of the expectant person, and so was the basis on which she was organizing her life around it.

How does this translate into the case of secession? In that case, we have a state that is marked by shared institutional arrangements, usually including a common currency, a common redistributive practice and so on. If sub-region A of the state has been used to receiving X amount of resources from the region B, but then region B separates, there may be duties on the part of B to continue the transfer, at least for some time, so that A can adjust to the new state of affairs.

Interestingly, this intuition does not work in reverse. Consider the case of region L, which has been receiving transfers from the centre, based on shared membership in a common political project, and, despite being the net beneficiary of the political project, decides, for linguistic, or cultural or other reasons, to leave the political project. It is difficult to think why the rich sub-unit would be under a duty to continue to transfer the resources regardless. Joe Heath cites the example of Canada, where each Albertan subsidizes, through the equalization programme (designed to ensure equal services across the country) Quebec to the tune of $3,000 per annum per Albertan.[xxxiv] He argues that it is preposterous to expect that Alberta is morally bound to continue this subvention or this level of subvention once Quebec has left the

political project. The intuition behind this is that secession was their choice: the transfers were clearly based on membership in a common political project (reciprocity) and that, while there may be expectations of support in certain contexts – eg., when a member of that political community– it would be unreasonable to expect these transfers to continue when the recipient unit voluntarily leaves. It would be unreasonable, too, in the context of the self-determination argument which is the background assumed condition. The transfers are conceived of as based on common membership in a common political project: they not based on corrective justice, nor on a universalist theory of global justice.

A Comparison of Just-Cause and Self-determination approaches to secession

Both just cause theory and the more contextual self-determination account offered above have the advantage of being continuous with credible and generally accepted moral principles - such as justice, human rights, reciprocity, and legitimate expectations. Moreover, both are backward-looking in focus: they require an assessment of the policies and practices of the state, and the veracity of claims made by the would-be secessionist group concerning violations of human rights, torture and unjust killing, in the case of just-cause theory, and the oppressive, non-reciprocal government practices and policies in the case of the reciprocity argument. This makes them relatively unproblematic to apply.[xxxv]

Both theories would seem to give the green light to similar sets of cases. In part this is because the legitimate expectations argument is itself derivative on a further moral conception, including justice considerations (to sort out which expectations are legitimate and which are not). However, even the reciprocity argument, because it appeals to a fundamental principle of fairness or turn-taking in

the context of cooperation, would also seem to mirror the results of most theories of justice. This is because justice-based accounts are also concerned with the equal application of principles or policies to everyone, and grounded in fundamental principles of fairness. Groups that are systematically oppressed or treated unfairly could ground their claims in either the language of justice or the language of reciprocity. It might seem, therefore, that appealing to reciprocity does not constitute a conceptual advance over the more traditional language of justice.

Against this objection, there is, I think, a convincing response. Before I discuss this, however, I should note that both just-cause theory and the reciprocity argument, outlined above, are indeterminate in important ways. Just-cause theory is indeterminate mainly because there are disagreements about what justice requires, especially in the realm of fairly fine-grained theories of distributive justice. Although Buchanan argues that unfair distributive arrangements should be counted as giving just cause (to secede) to a group, and so seems to address the distributive justice concerns raised at the beginning of the paper, he fails to address the problem that there is no agreement on which particular theory of distributive justice we should accept (e.g, Dworkinian equality of resources vs. Rawlsian original position theories and the resulting difference principle vs. Nozickian proceduralism). In order to address this more difficult problem, he seems not to 'count' as violations of justice those that are based on particular, contested, fine-grained theories of distributive justice. He mainly refers to egregious violations of human rights which are generally accepted as deeply problematic both in the philosophical literature and the international legal order.[xxxvi] However, to the extent that it fails to address this more difficult question, it also fails to provide an answer to the question posed at the beginning of the paper, where we might think that the secession of a resource-rich

area is problematic from a distributive justice perspective. This is not as serious as one might think, since, while Buchanan does not clearly specify and argue for a particular theory of justice, his theory still has some ability to deal with this question. This is because w*hatever* theory of distributive justice one adopts from the point of view of assessing the legitimacy of the state order itself can also be applied to the process of secession and the international order following secession.

There is also a significant degree of indeterminacy in the reciprocity argument, too. Reciprocity is an external moral principle that arises in the context of cooperative arrangements, but the principle is not a pure economic principle, applicable only in the economic domain, as my example above suggested. A region might be an economic beneficiary of redistributive practices, and so seem to have obligations (of reciprocity) into the future. On the other hand, that same group or region may be culturally oppressed, and so may deny that the arrangement was fully characterized by reciprocity. Indeed, they might be able to make a case that the obligations of reciprocity run in the opposite direction. Unless we have a clearly worked out theory of the precise obligations of reciprocity and the priority of its different elements, we will have a similar degree of indeterminacy.

However, there is another aspect of Buchanan's theory which needs to be carefully considered, and which makes his theory less useful (than the reciprocity account offered above) in addressing the question of uneven natural resources. Recall that Buchanan's argument is structured such that states lose their right to territorial integrity (and so can be legitimately sundered by secession) if they fail to fulfill their justice-based obligations. A crucial question raised by the structure of this argument is: at what point do we regard *the state* as an unjust one? And, at what point do we regard *the regime* (as distinct from the state) as an unjust one? In his more recent

(2004) book, Buchanan elaborates on the implicit distinction operating here between *state* acts of injustice and particular *government's* acts of injustice.[xxxvii] .[xxxviii] He defines a "state" as an enduring structure of basic institutions for wielding political power, where this structure includes roles to be filled by members of the government.[xxxix] The "government" can be thought of as the human agency by which the institutional resources of the state are employed. If the state is illegitimate, its government is illegitimate. But if the government is illegitimate, it does not follow that the state is illegitimate.

If unjust acts are committed by a particular government, then the logic of the analysis is that they can be rectified by a change in government. We are then in the realm of revolution, as John Locke argued in 1681. Locke considered the possibility that "either the executive or the legislative, when they have got the power in their hands, design to go about to enslave or destroy them [the people]. The people have no other remedy in this.. but to appeal to heaven."[xl] Locke was clear that this constitutes a right to revolution, although he was careful to argue that it should be exercised judiciously. "Nor let anyone think this lays a perpetual foundation for disorder: for this operates not, till the inconvenience is so great that the majority feel it, and are weary of it, and find a necessity to have it amended."[xli]

Buchanan argues that remedying the flaws of an illegitimate state involves more than a change of character in the government: it requires profound constitutional changes that transform the state itself. An example of such a profound constitutional change is secession. And of course secession is justified if the state is illegitimate, because by definition the state does not deserve the rights (to territorial integrity) that it has had conferred on it by the international community. The problem is that the conditions that have to be met to qualify as an 'unjust state' are quite stringent, and

this makes the theory of secession very restrictive. Indeed, Buchanan cites only two examples of unjust states: Apartheid South Africa and the ante-bellum South of the United States.[xlii]

On Buchanan's account of the distinction between 'state' and 'government', there are potentially two distinct categories of unjust (or just) entities. The category 'unjust government' is over-populated, encompassing all governments who have engaged in unjust conduct. The category 'unjust state' is seriously under-populated. Buchanan cites only two examples, and one of these (South Africa) is contestable (at least in the sense that the change in the nature of the state from an apartheid state to a state of equal citizens seems to have been affected by a change of government). Secession is legitimate only if the entity in question falls into the category of 'unjust state', which is highly unlikely, since repression, torture and killing at the behest of the government may not be sufficient, in Buchanan's view, to render a state as "unjust". Indeed, it seems that this line of argument doesn't really constitute a theory of legitimate secession, since there are practically no instances of secession that would be justified. It is really a theory of political legitimacy.

The problem with the just cause argument is that it is fundamentally rooted in a theory of political legitimacy, which raises the problem of distinguishing between the two possible remedies to an illegitimate order. The standard distinction (between regime and states) is not wholly plausible – as the over-populated nature of 'unjust regime' and under-populated nature of 'unjust state' attests – and it does not track the mobilization of secession.

In contrast, the reciprocity and legitimate expectations arguments track the intuitively plausible cases of justified secession – the seeming results of just cause theory, based on a fairly cursory look at how the theory works – but because it is

grounded in an examination of the moral quality of the relations between the groups in question is able to avoid the difficulties to which just-cause arguments are subject. The just-cause theory of secession, to the extent that it is a theory of state legitimacy, confronts a very basic problem of distinguishing state and regime legitimacy. This is avoided by the more contextual reciprocity and legitimate expectations arguments canvassed above, because they are not derived from a theory of political legitimacy, but have a more contextual focus on the moral quality of the relations – and especially whether the relations embody reciprocity –of the constituent units, in order to determine on-going obligations..

Part Four. Conclusion.

This paper explored the intersection between the basis for territorial rights, self-determination and natural resources. I argued in Part One that territorial right is implicit in the contemporary organization of states. Jurisdictional control over territories is assumed as part of the exercise of collective self-government, and it is difficult, if not impossible, to exercise significant forms of political autonomy without control over territory (resource control, rules surrounding property ownership, transfer, etc.). This means that territorial right, in itself, is not problematic, but is a second-order moral good (if we view collective self-government as a moral good) In Part Two, I considered the implications of both Brilmayer's and Buchanan's theories for this question. In Part Three of the paper, I focused on the distinct normative issues raised by secession. In particular, I argued that there are additional reasons (additional to whatever general duty we might have in the way of aiding poorer peoples) why a seceding unit might have obligations to the remainder unit – reciprocity and shared expectations -- but these do not apply in every case of

secession. Moreover, these do not render the secession impermissible; they just dictate that there are additional duties to be discharged, even in the event of a successful secession. Finally, this paper argued that this approach to secession is conceptually superior to the just-cause approach because it is focused on the moral quality of the relations between constituent units rather than on an external principle of political legitimacy.

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[i] He uses the wonderful term 'vanity secessions' in Wayne Norman, "The Ethics of Secession as the Regulation of Secessionist Politics" in Margaret Moore, ed., *National Self-Determination and Secession* (Oxford: Oxford University Press, 1998), 55.

[ii] Norman, "Ethics of Secession as the Regulation of Secessionist Politics", 40.

[iii] Pogge, *World Poverty and Human Rights.* (London: Polity Press, 2003), 191. This forms part of an argument for the dispersal of sovereignty.

[iv] Nationally mobilized Kosovar elites sought to push forward a secessionist agenda prior to the 1999 Serbian onslaught, and grave violation of human rights in Kosovo. I mention this because the greivous injustices do not explain the national

mobilization (though it may have contributed to it); indeed, the repression on the part of the (Serbian) state can itself be partly explained in terms of a response to what they viewed as treacherous, disloyal acts by the minority – attempts at secession.

[v]). Of course, this is a fairly limited conclusion in the sense that it does not tell us whether territorial right is itself legitimate. It may well be that unilateral control over natural resources is problematic and that our international state system is deeply flawed from a global justice standpoint.

[vi] The unequal richness of territories over which jurisdiction is applied is not uniquely problematic for would-be seceding groups, in the sense that the scenario envisioned (where territorial right leads to unfair division of resources) is typical of the contemporary global order. In this context, I abstract from the more general question, which occupies those in the global justice literature, of what constitutes a fair share of resources, and whether this operates as a constraint on self-determination, both for units that are already self-governing and for aspirant self-governing (secessionist) units.

[vii] The relationship described here between self-determination and territory does not apply only in secession. In a unitary state, the relationship is simple: over this geographical domain – or territory – the state exercises its authority; its rules apply to all people within the territory; and, in a democratic state, all citizens relate to one another from a position of political equality, where they make collectively binding decisions over their collective life together. However, the exercise of political authority across territories is not usually an all or nothing matter. In federal

states, sub-units have jurisdictional authority over some areas of life and other areas fall within the authority of the central government. Boundaries between states are not the only relevant boundary, for sub-units also often exercise authority over important areas of life. The issue of control over natural resources also raises its head in federal states, where the typical model is that the federal (or central) unit has control over natural resources; but there are also cases – such as Canada – where the sub-units have significant control over natural resources.

[viii] Ephraim Nimni,"Introduction" in Ephraim Nimni, ed., *National Cultural Autonomy and its Contemporary Critics* (London: Routledge, 2005).

[ix] Burke A. Hendrix, *Ownership, Authority and Self-Determination* (Penn State University Press, 2008), 3.

[x] See Hillel Steiner, "May Lockean Doughnuts have Holes? The Geometry of Territorial Jurisdiction", *Political Studies*, vol. 56, no. 4 (2008), 949-956; Cara Nine, "Territory is not derived from Property: A Response to Steiner", *Political Studies*, vol. 56, no 4 (2008), 957-963; Tamar Meisels, *Territorial Right* (Dordrecht: Springer, 2005)..

[xi] This is true of over-fishing in the oceans, which can be thought of as a kind of 'commons'. Fishing trawlers from various countries are taking so many fish from the ocean, or taking them so young (before they reproduce) that several species are endangered and fish stocks are going down world wide. This is irrational in the sense that people involved in the fishery are undermining their own livelihood. But from

the point of view of each fishing captain or each country it is perfectly rational. If Canadian boats do not take the fish, the Spanish or Icelandic boats will.

[xii] Pogge cites an empirical relationship worked out by two Yale economists between the possession of rich natural resources and poverty (and mediated through the tendency to military dictatorship). Pogge, *World Poverty and Human Rights*, 163. According to this thesis, the affluent countries are thereby implicated in a cycle where the possession of resources generates various negative effects on the poor (but resource-rich) country, especially military coups and dictatorships and corruption. This cycle is caused by the fact that there is a very strong motive to seize political power, namely, to gain control over the resource; and that possession of the resource then generates income to help them maintain power (it enables them to buy off loyal soldiers and fund the police and military). Rich countries are implicated in this 'harm' because they assume that all governments have 'territorial right' -- the right to make decisions about the use and transfer of resources in their territory – and that this territorial right helps to fuel the cycle.
Insert discussion of 'resource curse'.

[xiii] See Wayne NOrrman, "Ethics of Secession as the Regulation of Secessionist Politics".The most famous just-cause theorist of secession is, of course, Allen Buchanan, but he does not, as I will show below, ignore territory. It is an important component of his overarching argument.

[xiv] See, for example, Harry Beran, "A Liberal Theory of Secession", *Political Studies*, vol. 32 (1984), 21-31.; Christopher H. Wellman.*A Theory of Secession: The Case for Political Self-Determination* (Cambridge: Cambridge University Press, 2005); Lea Brilmayer, "Secession and Self-Determination: A Territorial Interpretation", *Yale Journal of International Law*, vol. 16 (1991), 177-202 is an exception and she begins her article by noting the failure of the standard accounts to conceive of the territorial dimension of self-determination.

[xv] Allen Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder, Co.: WEstview Press, 1991).

[xvi] Wayne Norman, "Ethics of Secession as the Regulation of Secessionist Politics" in Margaret Moore, ed., *National Self-determination and Secession* (Oxford: Oxford University Press, 1998), 34-61 at….

[xvii] Brilmayer, "Secession and Self-determination: A Territorial Interpretation", p. 188.

[xviii] Brilmayer, "Secession and Self-determination: a territorial interpretation", p. 189.

[xix] Brilmayer, "Secession and Self-determination: a territorial interpretation", p. 193. Brilmayer argues that her account helps to explain the Indian claim that the norm of self-determination required the Portuguese to leave Goa, but made this claim without consulting the Goans. This is puzzling in terms of the standard account of self-determination, but intelligible in territorial terms. The claim was, essentially, that Portugal had acquired the land improperly and had no legitimate claim to it. While this account does have some explanatory value, it is not helpful in evaluating contested views of historical grievance.

[xx] The parallels with standard distributive justice arguments are obvious: it is the difference between Rawls' focus on patterned principles and Nozick's focus on historical principles.

[xxi] Buchanan, *Secession*, 109.

[xxii] A just state is, by definition, a legitimate state, and an unjust state, an illegitimate one. However, it does not always work in reverse: a state could be legitimate (in the sense proffered by Rawls in *Political Liberalism*, and in *Law of Peoples*,) but not be just, because legitimacy is a lower standard than that of justice.

[xxiii] He refrains from endorsing a particular fine-grained theory of distributive justice in *Secession*, although he notes that such considerations can give rise to claims of unjust treatment (grievance,in Brilmayer's terms). In *Justice, Legitimacy and Self-determination*, he relies on a theory of human rights.

[xxiv] The problem here of course is whether the state is seen as the site of justice or the global order is viewed as the site of justice. It seems from the structure of his argument that Buchanan must reject the view, articulated by Nagel and Blake that only the state is the appropriate site of justice, because only the state represents a basic structure in the appropriate sense. See Michael Blake,"Distributive Justice, State Coercion and Autonomy", *Philosophy & Public Affairs*, vol.30, no. 3 (summer, 2001), 257-296; Thomas Nagel, "The Problem of Global Justice", *Philosophy & Public Affairs*, vol. 32, 2 (2005), 113-147..

[xxv] Gerald Cohen, *Rescuing Justice and Equality* (Cambridge, Mass.: Harvard University Press, forthcoming 2008); and luck-egalitarians like Kok-Chor Tan, *Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism* (Cambridge: Cambridge University Press, 2004).

[xxvi] There is of course an important question of how to arrive at a (non-moralized) conception of

exploitation, and how to arrive a t a conception that is distinct from just standard considerations of fairness. Although I am assuming here that we can have an independent account of exploitation, nothing rides on it: the duty not to exploit could just be a duty to arrive at fair rules and fair practices. Indeed, this consideration of 'not being taken for a sucker by others' is often thought to be a fundamental value in Rawls, which he thinks arises only in the context of cooperation through institutional arrangements.

[xxvii] . Of course, there are different kinds of cooperation: it can be very minimal or quite deep. In some cases, for example, in coordination problems, the central duty would seem to be to keep one's promises, or to keep one's side of a coordination agreement. Suppose two countries agree on a standard metric for train tracks, so that the trains can run unproblematically from one jurisdiction to another. This is a win-win situation in the sense that cooperation to set an agreed standard is in both country's interests, and the main duty would be to maintain one's agreement on the standard, especially if the other country invests in that kind of track with the expectation that your country is also keeping that size and kind of track. In this kind of cooperative practice, it doesn't seem that there are duties of reciprocity, though it is typically optimal for all parties to agree on a common standard. Here it would seem that there is, first, a fairly general moral duty to work towards arrangements where coordination problems are overcome; and, second, to keep agreements that are made.

In many market transactions, the cooperation is entirely win-win, in the sense that people will not cooperate (will not agree to a market transaction) unless it is in their interests; why, after all, would X and Y agree to a trade unless it's in their interests? N o one is obligated to reach a market agreement under which they will do worse than the status quo; indeed, by definition, they won't reach an agreement unless it's in their mutual interests. Of course, they might agree to cooperate in a reciprocal way, as when I agree to help you rebuild your roof in exchange for your labour next year when my roof will need repaired. This is not a self-reinforcing kind of contract, however (except for the expectation of penalty from a reputation as a non-complier), so this sort of agreement might require the enforcement of contracts and the rule of law. It requires precisely the sort of institutional arrangements that enforce reciprocity and are characterized by reciprocity.

[xxviii] Tony Blair, statement on 20 November, 2003, cited in O'Leary, Salih and McGarry, "Preface", xii in Brendan O'Leary, John McGarry and Khaled Salih, eds., *The Future of Kurdistan in Iraq* (University of Pennsylvania Press, 2005),

[xxix] Human Rights Watch, *Genocide in Iraq; The Anfal campaign against the Kurds*. New York: Middle East Watch Report, Human Rights Watch, July; BBC News 2001, "Iraqi Kurds' Story of Expulsion", 3 November; United States' Agency for International Development (USAID), 2004. "Iraq's Legacy of Terror: Mass Graves". www.usaid.gov/iraq/pdf.iraq_mass_graves/pdf.

[xxx] The cite is to Jeremy Bentham, *Supply Without Burthen*, and is note 38 of Waldron, "Settlement, Return and the Supersession Thesis". Paper given to a conference on Israeli Settlements and Related Cases, June 102, 2003, Tel Aviv University, Israel.

[xxxi] Waldron, "Superseding Historic Injustice", Ethics, 103 (October 1992), 4-28 at p. 16.

[xxxii] Of course, in this passage Waldron also appeals to the problem of correcting the injustice in the context of such expectations.

[xxxiii] Heidi M. Hurd, "Promises, Schomises", Paper delivered to Queen's University Philosophy colloquium, October, 2007.

[xxxiv] Joe Heath, "Rawls On Global Distributive Justice: A Defence", *Canadian Journal of Philosophy, Supplementary Volume* , ed. Daniel WEinstock (Lethbridge: University of Calgary Press, 1997).

[xxxv] Of course, the facts may be unclear or contested, and there may be no reliable, independent witness to ascertain which narrative of events is true. This is not a philosophical objection, however, since the same is true of criminal trials in which wrong doing is alleged.

[xxxvi] This doesn't need to be regarded as a *purely* pragmatic move. It might be thought that the gravity of the situation, or the remedy sought, might necessitate a greater degree of determinacy both about the justice violation and the consequences

attached to rectifying it. ..

[xxxvii] Allen Buchanan, *Justice, Legitimacy and Self-Determination, Moral Foundations for International Law* (Oxofrd: Oxford University Press, 2004), 281-288. Here Buchanan is principally concerned with he issue of legitimacy as it applies to state recognition policy (recognitional legitimacy) but this question of who should be the object of recognition (with all the rights and obligations that that entails) is another way of posing the question of the legitimacy of secession.

[xxxviii] Allen Buchanan, *Justice, Legitimacy and Self-Determination, Moral Foundations for International Law* (Oxford: Oxford University Press, 2004), 281-288. Here Buchanan is principally concerned with the issue of legitimacy as it applies to state recognition policy (recognitional legitimacy), but this question of who should be the object of recognition (with all the rights and obligations that that entails) is another way of posing the question of the legitimacy of secession.

[xxxix] Buchanan, *Justice, Legitimacy and Self-Determination,* 281-3.

[xl] John Locke, "Second Treatise of Government", ch. XIV, para. 168; in *Political Writings of John Locke*, ed., David Wootten (New York: Penguin, 1993), 348.

[xli] Ibid.

[xlii] Buchanan, *Justice, Legitimacy and Self-Determination*, 282-*3*.