Constitutional Secession Rights, Blackmail Threats and Multinational Democracy

Andrew Shorten

Department of Politics and Public Administration

University of Limerick, Ireland

June 2010

andrew.shorten@ul.ie

Comments welcome!

Note for participants at the 'Territory and Justice' conference: I plan to talk about the material in Section V (Four Objections to Blackmail Threats)

Constitutional Secession Rights, Blackmail Threats and Multinational Democracy

Are constitutional secession rights compatible with democratic constitutionalism in a multinational political association? Should exit rights form part of the repertoire of tools available to the constitutional architect? The advisability of incorporating a secession clause has long divided scholars of democratic constitutionalism, and this controversy has recently been invigorated by two related developments. The first of these is the spread of interest in multinational federalism, in both political philosophy and political practice. For instance, recent normative theories of federalism (e.g. De Schutter, forthcoming; Kymlicka, 2001; Norman, 2006; Weinstock, 2001) have explicitly orientated themselves around theories of liberal nationalism (e.g. Miller, 1995; Tamir, 1993; Tan, 2004). Whilst liberal nationalists argue that liberals may (and possibly must) accept the official promotion of national identity, multinational federalists argue that the federal state provides the best institutional setting for the reconciliation of parallel projects of national identity promotion. In political practice too, ongoing constitutional experiments in Canada, the United Kingdom, Belgium and elsewhere have established the multinational federation as a distinctive political formation, distinguished from both the traditional unitary nation-state (such as France and Irish Republic) and from the 'territorial' federation (such as Germany, Australia and the United States, see Kymlicka 2001, pp. 97-101). The rise of the multinational federation therefore creates a pressing need for careful thinking about its constitutional design.

The second development concerns the evolving constitutional arrangements of the European Union. Although the EU is more typically categorised as a *confederation* rather than a federation, the difficulties in establishing cross-European democratic institutions and procedures are informative for thinking about democracy in multinational political associations more generally. Prior to the ratification of the *Treaty of Lisbon*, none of the founding or amending treaties of the European Union (or its predecessors) referred to the possibility of a member withdrawing (and this possibility was both legally and politically contested, see, e.g., Berglund 2006). Building on Article 59 of the draft constitution, Article 50 of the *Treaty on European Union* now provides for an exit right, and stipulates a two-year time frame during which the terms of withdrawal are to be negotiated between the member state and the European Council, which must also obtain the consent of the European Parliament. If these negotiations are unsuccessful, then the withdrawing State ceases to be a member after the two-year period has elapsed, which suggests that Member States now have a unilateral right to secede. This important development is beginning to attract scholarly attention, particularly from economists (e.g. Eerola, Määttänen & Poutvaara, 2004; Gradstein, 2004; Lechner & Ohr, forthcoming).

This paper evaluates the case against incorporating secession rights in the constitution of a multinational political association, from the perspective of normative political philosophy. Specifically, it evaluates some general reasons for scepticism about secession rights, and addresses the question of whether or not these reasons have particular significance for multinational political associations. Existing democratic political formations that resemble multinational political associations include both multinational federations (such as Canada, Switzerland, the UK and Belgium) and the European Union. The rationale for evaluating the compatibility of constitutional secession rights with these kinds of association is twofold. First, securing justice and stability is a significant challenge for both new and established multinational democracies (including those emerging from ethno-nationalist conflict). Thinking carefully about constitutional arrangements for such societies is therefore a matter of political urgency. Second, the problem of constitutional design for multinational political associations brings into

view some important tensions between the demands of respect for identity, stability and justice. The difficulties of reconciling these demands are now part of the established intellectual furniture of political theory, and there are well-established debates concerning the relationship between theories of recognition and distributive justice, and between identity politics and political stability. Thinking about the challenges of constitutional design for multinational political associations is a way of bringing all three demands onto centre stage.

The paper is organised as follows. First, I set out the general contours of an ideal type that I label a 'multinational political association'. Second, I discuss the theory and practice of constitutional secession rights, and try to motivate support for them by setting out two presumptions in their favour. Third, I outline the general case against incorporating secession rights in the constitution of a multinational political association, which is that such rights allow parties to issue 'blackmail threats'. Fourth, I discuss whether secession rights encourage parties to issue blackmail threats. Fifth, I separate out four different reasons for condemning blackmail threats, and evaluate each in turn. One is an argument about democracy (the cynicism objection), one is about equality (the power-asymmetry objection), one is about justice (the exploitation objection), and the other is about stability (the agitation objection). Finally, I conclude by arguing that none of the objections to blackmail threats is sufficient to support the view they are - *as a class* - incompatible with democracy, equality, justice or political stability.

However, two related considerations may sufficient to override the presumption in favour of a secession right. First, if blackmail threats become an accepted part of political bargaining, then a multinational political association will find it difficult to sustain the bonds of democratic solidarity. Second, some (but not all) blackmail threats may be objectionable on the grounds that they degrade vulnerable groups, establish unjustifiable hierarchies, and encourage nationalist agitation. Notwithstanding these considerations, the case *for* secession rights in the constitution of a multinational political association is strong, especially in political communities where minorities have historically been neglected by the political centre.

I. Multinational Political Associations

A multinational political association is a political formation that allows for multiple and parallel projects of national-identity promotion. It contains constituent nations that are territorially distinct, and political power is distributed federally. It may also contain regions (such as a capital) that are not associated with any single component nation, or with more than one of the nations. Within their respective territories, each component nation has considerable scope for protecting and promoting its distinctive culture and language. At the federal level, recognition space is distributed amongst the component nations, so that no official identity dominates or is neglected in the shared institutions and symbols. The federal state may also grant official recognition to other identities that are not associated with the component nations (such as the Roma in Europe, for instance).

Multinational political associations may experience two destabilising dynamics: its constituent parts may pull away from one another, or they may push up against one another. The first dynamic has been widely explored in the literature on minority nationalism, in which federalism is typically presented as an alternative to secession (e.g. Kymlicka, 1998). It is in this vein, for example, that Wayne Norman identifies '[p]reventing secession – indeed, obviating even the *desire* by national minorities to want to secede' as a 'central design challenge' for federalism (Norman, 2006, p. 170). Recent federalist theories have answered this challenge by advanced the 'parallel identity promotion' view of federalism, according to which satisfaction of some nationalist

aspirations - such as regional autonomy and language rights - acts as a kind of 'pressure valve' to deflate full-blown secessionist politics. Advocates of this view of federalism have made bold claims on its behalf. For instance, Kymlicka congratulates democratic multinational federations for 'taming the force of nationalism', and for having 'domesticated and pacified nationalism' (Kymlicka, 2001, p. 92). In this, and in other accounts, the capacity to 'tame' or 'ameliorate' nationalism is identified as a distinctive property of federal political arrangements.

The second dynamic has to do maintaining peace amongst ethno-nationalist rivals. Multinational political associations may be 'divided', in the sense of containing members committed to advancing 'mutually contradictory assertions of identity' which can 'only be validated or, worse, constituted by suppression of another [identity]' (Dryzek, 2006, p. 46). One way for divided societies to contain ethno-nationalist rivalry is to promote a central 'civic' identity in the hope that it displaces the local, belligerent (often 'ethnic') identities. However, this option may be unavailable to multinational political associations, because they are committed to promoting national identities. Federalism again provides an alternative solution, according to which national autonomy under a federal umbrella may be the best means for securing long-term peace (e.g. Hannum, 2004; Weller and Wolff, 2005). However, as is well known to students of multiculturalism and the politics of recognition, multiple identity promotion often carries with it an accelerating logic of competitive demands, and this may be more likely to promote than pacify ethno-nationalist rivalries.

For both these reasons, multinational political associations are likely to be particularly vulnerable to political instability. Consequently, constitutional framers should pay careful attention to finding ways to prevent both secessionist politics and ethno-nationalist rivalries from overturning political order. The challenge is to do this *without* sacrificing the commitment to minority nation-building, or to justice and democracy. The scope for institutional experimentation here is substantial (an instructive discussion of the ways in which a concern with stability influenced classical federal theory can be found in Landau, 1973, esp. pp. 182-7). For example, power-sharing arrangements can ensure that all groups are represented in legislative and executive bodies, strategically designed veto rights may be able to offer protection to vulnerable minorities, and adaptations to the electoral system may be able to prevent dominant majorities from becoming tyrannical. The effectiveness of any particular solution is likely to be influenced by a number of variables, such as the degree to which a democratic culture has embedded itself, the presence or absence of a history of cross-group co-operation or conflict, or the influence of external third parties within domestic politics. Constitutionalising a right to secede may therefore have effects upon political stability that are difficult to predict, which raises difficult questions for political science. This paper, however, is concerned primarily with the normative evaluation of the case for secession rights.

II. Arguments *For* Constitutional Secession Rights

Constitutional secession rights are rare. On the one hand, a small number of constitutions actually contain explicit secession clauses, such as the 1983 Constitution of St Kitts and Nevis and the 1994 Constitution of the Federal Democratic Republic of Ethiopia. In some of these cases, such as the 1977 Soviet Constitution, it is not obvious that the authors of the constitution intended the secession rights to be used. On the other hand, it is possible to 'read' a secession right into some constitutions, such as the United Kingdom since 1998 (in respect of Northern Ireland) and Canada since 1998 (in respect of Quebec) (see, amongst others, Norman, 2001; Moore, 2001, p. 208 & 212; Tully, 2001). Meanwhile, some constitutions declare their states to be indivisible, and explicitly prohibit secession, such as the 1978 Constitution of Spain (Roach,

2007). Where a constitution neither prohibits, nor explicitly provides for a right to secede, and in the absence of clear provisions under international law, there is likely to be controversy both over the existence of a secession right, and over the mechanisms by which it might be operationalised. (By contrast, it is a defining feature of a *confederation* that constituent parts retain a right to exit, see, e.g. Watts, 1998, p. 121).

What reasons are there to favour incorporating secession rights in a constitution? Broadly speaking, two clusters of consequentialist reasons have been advanced. First are *precautionary* considerations. Historical experience suggests that secessionist politics tends to be a bloody and miserable business. The causes of secessionist violence are complex, and vary from case to case. Nevertheless, one common explanation of secessionist violence has to do with the impact of unpredictability on the incentive structure available to political actors - constitutional vacuums encourage a kind of strong-man politics in which actors strategically adopt robust personas to ward off potential threats. Incorporating secession rights into a constitution alters the incentives available to actors, potentially defusing the volatility of political divorce. The precautionary argument thus depends upon an untested (but plausible sounding) empirical hypothesis - that since 'secessionist politics will occur anyway, regardless of legal silences and prohibitions, ... its occurring in a legal vacuum will be more harmful than were it to occur within well thought out legal and procedural parameters' (Weinstock, 2001, p. 196, for another defence of this view, see Norman 2006, pp. 188-203). Unregulated secessionist politics may also be costly in other senses – for instance, it may compromise economic development (by discouraging investment) and derail 'ordinary politics' (by reducing the opportunities for voters to express a view about ordinary left-right issues). The implications of these precautionary considerations for institutional design are ambiguous, and there is a further issue about whether political divorce would be more effectively regulated by international law. Nevertheless, these considerations do suggest a general presumption in favour of the regulation of secession, including by constitutional means.

The second cluster of consequentialist reasons is broadly *egalitarian* in character, and concerns the kinds of political relationships that are likely to develop under a constitution that provides for a right to secede. The key idea is that effective exit rights underscore the voluntary nature of political community, and protect minorities by discouraging exploitative political (or economic) arrangements. For instance, in Hirschmann's account of the relationship between exit and political voice we get the idea that the 'chances for voice to function effectively as a recuperation mechanism are appreciably strengthened if voice is backed up by the threat of exit' (Hirschmann, 1970, p. 82). Daniel Philpott applies this kind of reasoning to secession clauses, and suggests that the democratic leverage they secure for minorities should be thought of in terms of 'empowerment' (Philpott, 1998, p. 95). In a similar vein, Wellman defends secession rights 'because the threat of secession can be a healthy catalyst that stirs apathetic states from their monopolistic slumber and invigorates countries with competitive incentives' (Wellman, 2005, p. 155).

There are two different aspects to the egalitarian case for secession rights. First is an argument about democracy, which is that secession rights will empower minority voice and discourage the exploitation of minorities. Unlike the precautionary arguments, these are considerations concerning the ways in which secession rights shape *ongoing* democratic politics, independently of any party attempting to exercise those rights. Second is an argument about recognition, which is that secession rights perform an important symbolic function for minorities, and underline the consensual nature of federal political authority. Norman, for instance, suggests that secession

rights may help to foster a sense of partnership, trust, and loyalty amongst divergent peoples (Norman, 2006, pp. 207-214).

III. The Case *Against* Constitutional Secession Rights

So, secession rights might protect vulnerable minorities, and could be a prudent precaution in the eventuality of political divorce. Why do some constitutional scholars object to them? Cass Sunstein is probably the most prominent critic of secession rights (1991, 2001a, 2001b). In Buchanan's summary of Sunstein's objection, '[i]f a plebiscitary right to secede were [constitutionally] recognized...a territorially concentrated minority could use the threat of secession as a bargaining tool' (Buchanan, 1998, p. 21). The core of this objection is that secession rights undermine the central goals of democratic constitutionalism, because they facilitate blackmail threats. In turn, the objection to blackmail threats follows from an underlying view about the ends and purposes of constitutionalism.

According to Sunstein, constitutions should 'ensure the conditions for the peaceful, long-term operation of democracy in the face of often persistent social differences and plurality along religious, ethnic, cultural, and other lines' (Sunstein, 2001a, p. 96). Secession rights are said to be incompatible with (this vision of) democratic constitutionalism because they discourage minorities (especially national minorities) from engaging in the hard work of democratic politics, and instead encourage them to use the threat of secession as a democratic 'trump card'. The first part of Sunstein's critique is therefore that secession rights encourage the deployment of blackmail threats as a political strategy.

The second part of Sunstein's critique is that blackmail threats are bad for democratic self-government. This seems to be the central message of an oft-cited passage, in which he claims that constitutional secession rights will:

> 'increase the risks of ethnic and factional struggle; reduce the prospects of compromise and deliberation in government; raise dramatically the stakes of day-to-day political decisions; introduce irrelevant and illegitimate considerations into those decisions; create dangers of blackmail, strategic behavior, and exploitation; and, most generally, endanger the prospects for long-term self-governance' (Sunstein, 1991, p. 634)

Sunstein's scepticism about blackmail threats is closely connected to his view of democratic constitutions as 'precommitment strategies'. For instance, in the course of drawing an analogy between marriage and political association, he sets out some reasons in favour of making exit from either institution difficult:

> 'In a marriage, the understanding that the unit is not divisible because of current dissatisfaction, but only in extraordinary circumstances, can serve to promote compromise, to encourage people to live together, to lower the stakes during disagreements, and to prevent any particular person from achieving an excessively strong bargaining position' (Sunstein, 1991, p. 649; 2001a, p. 103)

Two things should be noted about Sunstein's treatment of the marriage and political association analogy. First, in both cases the presumption in favour of the 'precommitment view' depends upon favourable background conditions – including (most importantly) the absence of hierarchy or domination. Second, the 'precommitment view' does not rule out divorce – either marital or

political – rather it aims to prevent the threat of divorce from influencing deliberation and its outcomes. It is, in each case, blackmail threats (rather than divorce) that Sunstein objects to.

Sunstein's critique has two parts, and I try to keep them separate in the following analysis. First is the claim that secession rights *encourage* the deployment of blackmail threats. This is a claim principally about what secession rights do to the incentive structure facing political actors, and about how secession rights shape the bargaining position of political actors. I discuss it in Section IV. Second is the more fundamental claim that blackmail threats are *objectionable*, on normative grounds, which I discuss in Section V.

IV. Secession Rights and Democratic Incentives

The core of Sunstein's case against secession rights is that they undermine democratic politics by permitting strategic bargaining in the form of blackmail threats. Ultimately, the normative case against secession rights turns on whether or not there are plausible grounds for objecting to blackmail threats, and the following section analyses four objections to blackmail threats. As a preliminary to that, more needs to be said about the relationship between secession rights and blackmail threats. Three questions are particularly pressing. First, under what conditions do secession rights enable their holders to issue credible blackmail threats? Second, to what extent does holding a secession right support the bargaining position of a rights-holder? Third, do changes in the formulation of a secession clause alter the incentives for political actors?

Fortunately, there is already substantial theoretical and empirical work on these questions. Students of European integration, for instance, have identified cases in which being able to credibly threaten exit has strengthened the bargaining position of a member state. A prominent example of this was the newly elected Harold Wilson's renegotiation of the British terms of entry in 1974, which occurred just one year after the UK joined the European Community. In this case, Wilson's government was able to renegotiate, in its favour, the terms of the Common Agricultural Policy, as well as important budgetary measures. One analysis describes this as 'one of several cases in which the EC has been blackmailed by one of its members' (Schneider and Cederman, 1994, p. 633). However, the UK's capacity to issue a *credible* blackmail threat declined during subsequent years. For example, Schneider and Cederman (1994) cite the examples of the establishment of the Economic Monetary System (in 1978) and the negotiations preceding the Single European Act (in 1984) as cases in which the UK was unable to successfully blackmail its European partners (in both cases, France and Germany responded to the UK partial exit threat by threatening full exclusion – in other words, they called the UK's bluff). An explanation for this change is that as integration deepened, each member state became increasingly aware of the costs of exit, for each other member, and acted accordingly.

Jonathan Slapin's (2009) formal treatment of exit threats in political bargaining gives a more general account of these mechanisms. On his model, exit threats are most effective when the costs of exit are low for the threatening party but high for the remaining parties (or party). Slapin, like Schneider and Cederman, argues that this was the case for the UK in 1974. Other analysts have made the same claim about the Baltic states in the late 1990s (Filippov, Ordeshook & Shvetsova, 2004). By contrast, when exit is believed to be costly for the threatening party, and especially if it is unlikely to be as costly for the remaining party (or parties) then blackmail threats are unlikely to succeed. In other words, being able to issue an exit threat is a necessary but insufficient condition of political blackmail.

Returning to the first question, the literature in political science suggests that the credibility of a blackmail threat depends largely on each party's beliefs about the costs of exit (for each party). Whether the constitution recognises a right to secede is not, as far as I am aware, a variable that has been studied in the empirical literature on bargaining (this is unsurprising, given the scarcity of constitutional secession rights). Filling this lacuna is therefore a partly speculative exercise (for attempts to do so, see Sunstein 2001a, p. 112; Norman, 2006, pp. 205-7). One way to think about secession rights is that they reduce the costs of exit for the potentially seceding party (thereby enhancing the credibility of a blackmail threat). A secession right might reduce exit costs in at least two different ways. First, procedural clarity should remove uncertainty over the mechanisms of withdrawal, and should (if properly designed) prevent the remaining party (or parties) from threatening to impose arbitrarily punitive sanctions. Second, a secession clause is likely to provide opportunities for the threatening party to publicly demonstrate that secession is a viable possibility, through referenda and the like (for example, the bargaining position of the Danish government was strengthened after the popular rejection of the Maastricht agreement in 1992). By contrast, regulations that prohibit referenda over secession arguably weaken the position of subunits, by making it impossible for secession-seeking politicians to 'test the waters'. These considerations also shed light on the second question, about the extent to which secession rights support the bargaining position of the rights-holder. On the one hand, it is difficult to imagine a scenario in which a rights-holder is disadvantaged in bargaining by virtue of having a secession right. On the other hand, it is important not to exaggerate the significance of such rights, for two reasons. First, if exit is known to be costly then a secession right is likely to be largely formal. Second, even without a formal secession right, a party may still be able to issue a credible blackmail threat.

With regard to the third question, in what ways might the *formulation* of a secession clause shape the incentives available for political actors? One suggestion, made by defenders of secession rights, is that such rights should be qualified (or 'hedged') to discourage the more divisive aspects of secessionist politics, such as blackmail threats (e.g. Buchanan, 1991, p. 132; Weinstock, 2001, p. 197; Norman, 2001, pp. 87-8; Norman, 2006, p. 206-11; for a rival view, see Sunstein 2001b, p. 355). For example, Norman defends a 'rigorous secession clause' that is designed to defuse secessionist agitation by raising the hurdles that would-be secessionists must jump. According to Norman, 'with the prospects of a credible secessionist threat not in [on?] the cards, there would be less incentive to engage in the kind of nationalist mobilization that drives secessionist politics' (Norman 2006, p. 206). Hurdles might include requiring the support of a super- rather than a simple-majority in a plebiscite, or making secession triggering referenda into a scarce resource by imposing a waiting periods between polls (Weinstock, 2001, p. 197). In any case, the idea is that the precise formulation of a secession clause is likely to influence the kind of democratic politics engendered by the constitution. In the normative literature, the primary concern has been to engineer a clause that is likely to temper the ferocity of nationalist political mobilization, and to 'domesticate' secession (Norman, 2003).

V. Four Objections to Blackmail Threats

Cynicism and Political Dishonesty

The first normative objection to blackmail threats concerns their cynical deployment. On this view, what is objectionable is not blackmail threats *per se*, but a particular kind of blackmail threat, in which the threatening party fraudulently threatens exit in order to gain political leverage. Perhaps underlying this is the thought that this kind of political leverage is undeserved. In formal terms, blackmail threats are cynical when the threatening party intentionally

misrepresents their preference-ordering, in order to extract concessions (that would otherwise be unavailable to them) from their bargaining partner(s). For example, in contract negotiations, an employee issues a cynical blackmail threat if she threatens to leave a company unless she receives a pay increase, even though she would really prefer to stay, as illustrated in the first pair of tables:

Authentic preferences	Keep employer	Transfer employer	Keep Salary	Increase Salary
1	Yes			Yes
2	Yes		Yes	
3		Yes		Yes
4		Yes	Yes	

Stated preferences	Keep employer	Transfer employer	Keep Salary	Increase Salary
1	Yes			Yes
3		*Yes*		*Yes*
2	*Yes*		*Yes*	
4		Yes	Yes	

The credibility of a cynical blackmail threat, like all blackmail threats, is dependent upon assessments about the costs of exit for each party. So, for example, an employee's cynical blackmail threat will be more credible if she has a job offer from a rival firm, if her employer believes she is eager to relocate, if she has a rare skill-set, and so on. Another way of thinking about this is that the credibility of a cynical blackmail threat depends upon the willingness of the blackmailed party to accept the stated preference-ordering as authentic. This does not require that the blackmailed party *believe* that the blackmailer's stated preference-ordering is authentic. It may be rational, for example, to act as if one accepts the stated preference-ordering because one has calculated that calling the blackmailer's bluff is unacceptably risky.

So, cynical blackmail threats are possible in employment negotiations, but what about politics? Consider the following example:

> *Power Station:* The federal government is trying to modernise the power supply, and wants to do this by constructing a new generation of nuclear power stations. These are 'hyper-safe' power stations, which are likely to provide valuable employment opportunities in the areas in which they are located. Consequently each citizen would prefer for the power stations to be built locally. The political representatives of a minority nation issue a blackmail threat, demanding that all of the power stations are built inside their territory. The government accede to the demand, even though they are sceptical about its sincerity.

Suppose that the power station blackmail threat is, as the government suspects, cynical. If so, it can be represented as follows:

Authentic preferences	Remain	Secede	No local power stations	Local power stations
1	Yes			Yes
2	Yes		Yes	
3		Yes		Yes
4		Yes	Yes	

Stated preferences	Remain	Secede	No local power stations	Local power stations
1	Yes			Yes
3		*Yes*		*Yes*
4		*Yes*	*Yes*	
2	*Yes*		*Yes*	

Under what conditions would it be rational for a government to accept the stated preference-ordering as authentic (i.e. to accede to the power station blackmail threat)? Two things are likely to enhance the credibility of cynical blackmail threats. First, a minority nation may be more likely to convince its bargaining partner that the cost of exit is low if it can plausibly threaten to 'go it alone', for instance because of its fortuitous deposits of natural resources, or its economic strength. (This gives rise to a 'fairness' objection to secession rights that I discuss below.) Second, the government will have greater reasons to accept the stated preference-ordering as authentic if the background culture of the minority nation is already hospitable to secessionist mobilisation. If, in other words, it believes that population are ready and willing to secede (as was the case for the UK in 1974, see Slapin, 2009, p. 201). This second consideration indicates why collective groups, such as minority nations, may find it difficult to issue blackmail threats that are both cynical and credible. The most plausible way for the political representatives of a national minority to convince their bargaining partners about the willingness of their constituents to secede is to have already built up genuine reservoirs of nationalist resentment. But this is to make the stated preference-ordering the authentic one - in other words, credibility for collective blackmail threats carries the cost of authenticity. Facilitating political cynicism, therefore, is not a reason for objecting to secession rights.

Exploitation

A second normative objection to blackmail threats is that threatening exit in order to gain bargaining leverage is exploitative, and exploitation is wrong. Consider the following case:

> *Oil:* The historical homeland of a minority nation (O) is found to be blessed with abundant stocks of oil. Representatives of O offer to share the oil profits with their compatriots, on the condition that they are compensated with increased levels of education funding. The representatives threaten secession if their conditions are not met. The members of O do not 'merely' want their children to have an improved education, they are seeking a competitive advantage for their (and only their) offspring.

This is clearly a case of exploitation – the political representatives of O exploit their fellow citizens' interest in oil profits to gain an unrelated benefit (increased educational opportunity). However, is exploitation of this kind wrongful? Exploitation is sometimes acceptable, as when an entrepreneur 'exploits' an untapped market. In political bargaining too, exploitative blackmail threats may strike us as being morally defensible. Consider, for instance, the Republic of Tatarstan, which has been able to exploit the interest of the Russian Federation in the oil in its territory, in order to extract limited various economic concessions from the centre (Ross, 2000). Suppose, then, that not all exploitative blackmail offers are objectionable, what distinguishes acceptable from unacceptable exploitation? Two views can be discerned from the literature on exploitation.

According to the first view, exploitation is unjust (and therefore unacceptable) when it violates rights. This is a libertarian view about wrongful exploitation, and it has been applied to the secession case by Wellman (2005, pp. 132-8). The libertarian view holds that exploitation is unjust either when the exploiter removes an option from an opportunity set that the exploited party has a right to, or when the exploiter attaches a cost to an option where the exploited party has a right to that option at no (or a lesser) cost. So, in Wellman's example, offering to save a drowning woman if and only if she will have sex with you is unjustly exploitative, whereas making the same offer to someone who is safely ashore is exploitative, but not unjustly so. He calls these the 'drowning woman' and the 'fancy boat' examples. Both involve one party exploiting the other's interest in boats, but only the drowning woman case violates rights.

How might a blackmail threat be unacceptably exploitative, on the libertarian view? The rights-violating view is frugal about wrongful exploitation, and it is difficult to see how it might condemn the behaviour of O, since the rump state has no right to a permanent union, or to a share in the oil (absent prior contractual arrangements). Wellman compares cases like these to consumer relations:

> 'I am repeatedly shocked by the escalating price of running shoes. When I shop at a sports store, I must choose whether to pay roughly a hundred dollars or settle for a "second-rate" pair of shoes. But, while I lament the fact that they are so expensive, I am in no position to complain. Whether I pay an exorbitant amount or go without my preferred shoes, I should not feel righteously aggrieved, because I have no right to acquire the shoes without paying the additional cost' (Wellman, 2005, pp. 139-40)

By contrast, O's blackmail threat would be unacceptably exploitative if secession would violate the rights of the remaining citizens. For example, if 'political divorce would strip the rump state of a crucial good that could not be replaced after the division' (Wellman, 2005, p. 141) then it would be unacceptable to threaten secession. The examples Wellman cites in this regard are political stability being jeopardized because of diminished population or incongruous territory.

The rights-violating view of exploitation therefore condemns blackmail threats in which the basic rights of the blackmailed party are threatened. Suppose, however, that the loss of O (and the oil) would not leave the parent state vulnerable in Wellman's sense. May the rights-violating view nevertheless condemn their blackmail threat? One possibility is to focus on what O seeks to *gain* from their exploitative blackmail threat – increased educational opportunity for their offspring. Perhaps we might justifiably condemn O's exploitation of their compatriots on the grounds that O is demanding something that cannot be given up without violating rights. The most plausible construal of this objection is to say that future generations hold a right to intragenerational educational equality of opportunity, and that this right may not be waived by the current generation. But even supposing that such a right exists, it is not O that threatens to violate the right, but their compatriots who are willing to waive it. Thus it is difficult to see how the rights-violating view of exploitation can condemn O's blackmail threat.

The second view about exploitation is the respect view, advanced by Allen Wood (amongst others). On this account, exploitation is objectionable when exploiters fail to treat those whom they exploit with proper respect. Specifically:

> 'Proper respect for others is violated when we treat their vulnerabilities as opportunities to advance our own interests or projects. It is degrading to have your weaknesses taken

> advantage of, and dishonourable to use the weaknesses of others for your ends' (Wood, 1995, p. 150-1)

This respect view generates a far more extensive account of wrongful exploitation than does the libertarian view. So, for example, what makes the 'drowning woman' case objectionable is not that the offer attaches a cost to an option that should be freely available to her as a matter of right (i.e. to be saved). Rather, it is that the boat owner treats the vulnerability of the drowning woman as an opportunity, and in doing so fails to treat her with proper respect. Applying this account to blackmail threats, O's threat is exploitative because it exploits the rump state's interest in both oil profits and political union. It is wrongfully exploitative, on the respect view, if the political representatives of O take advantage of the vulnerability or weakness of their compatriots.

The respect view connects the moral case against exploitation to the background circumstances against which it occurs, and in particular to the relationship that obtains between exploiting and exploited party. So, for instance, O's exploitation may be more or less objectionable depending upon the economic fortunes of their compatriots. The respect view of wrongful exploitation has two general advantages for the moral evaluation of blackmail threats. First, because it has a relational aspect, it draws into view some of the underlying normative connections between the theory of federal citizenship and the case against blackmail threats. Specifically, issuing exploitative blackmail threats that fail to treat one's fellow citizens with proper respect seems to be precisely the kind of thing that a federal theory of citizenship should attend closely to. Second, unlike the rights-violating view, the respect view provides grounds to condemn exploitative blackmail because of what the blackmailing party seeks to *gain* from the exchange. For instance, in the oil case, it is difficult to envisage circumstances in which the majority willingly disadvantage their offspring without experiencing that bargain as degrading. By contrast, in the power station case, if the minority is impoverished, we can imagine the majority acceding to the blackmail threat without compromising their self-respect.

Might the respect view also condemn exploitative blackmail threats that are less brazen than O's? Recall the Tatarstan case. In 1995, whilst other members of the Russian Federation paid 10 per cent of the income tax they collected into the federal budget, Tatarstan paid only 1 percent. Similarly, Tatarstan kept all the excise taxes from alcohol and petrol, whilst other regions gave between half and all to the centre (these figures come from Ross 2000, p. 409). This case draws attention to an important ambiguity that arises in the evaluation of exploitative blackmail threats. On the one hand, thinking about blackmail threats as a bargaining strategy encourages a focus on the relationship between the peripheral region and the political centre (indeed, Tatarstan's generous tax obligations are the product of a bilateral treaty between the Republic of Tatarstan and the Russian Federation). It is difficult to see how Tatarstan's exploitative blackmail threat expressed disrespect to the Russian political centre (rather, it established a more equal relationship between the two). On the other hand, thinking about blackmail threats in terms of the duties of democratic citizenship encourages a focus on the relationship between the peripheral region and its federal partners. Shifting perspective in this way may provide the basis for condemning the Tatarstan exploitative blackmail threat, on the grounds that it violated reciprocal duties of fairness that Tatarstan had toward their federal partners.

Much more needs to be said about how the respect view of wrongful exploitation can underpin the normative evaluation of blackmail threats, and about how such a view connects to the wider theory of federal citizenship. However, the respect view is less promising as a basis for *constitutional* theorising, for two reasons. First, the fact of reasonable pluralism suggests that

different parties may have different views about whether an exploitative blackmail threat fails to treat the blackmailed party with due respect. Connected to this is a concern that the aggressive policing of the respect view may turn out to disadvantage groups with reasonable but minority views about respect. Second, clarity is a special desideratum of a constitution, since all citizens must be able to understand and internalise constitutional essentials. However, a constitution that sought to prohibit disrespectfully exploitative blackmail threats would surely introduce more ambiguity than is desirable.

Asymmetrical Threatening

What the preceding discussion suggests is that if the constitution of a multinational political association incorporates secession rights, thus making it possible for groups to issue blackmail threats against one another, then the constitution must outlaw a particular class of rights-violating exploitative blackmail threats (the kind condemned by Wellman's narrow account). In practice, this will probably mean attaching a 'catastrophe rider' to any secession clause, preventing any group from threatening to secede if doing so would threaten the basic rights of the remaining citizens. Consequently, a secession clause - with a catastrophe rider attached - will allow some (but not all) groups to issue blackmail threats. This gives rise to a third cluster of objections to secession rights, which is that if the ability to issue blackmail threats is distributed unfairly, then this will created unjustified inequalities in democratic leverage. In particular, secession rights of the kind envisaged are likely to create at least three different, and unjustified, hierarchies.

First, as a consequence of the catastrophe rider, groups that are *indispensable* will be disadvantaged. The catastrophe rider says that secession is not permitted if it will threaten a crucial and irreplaceable good (for instance, if political stability would be jeopardized because of diminished population or incongruous territory, see Wellman, 2005, p. 141). If such groups may not secede, then they will be unable to issue credible blackmail threats, and as a consequence will be disadvantaged. Second, not all citizens belong to groups that are sufficiently united, and regionally concentrated, to be in a position to issue *credible* blackmail threats. In particular, national minorities are likely to be advantaged over regional minorities. For instance, in the UK, whilst Scottish people may be in a position to benefit from a blackmail threat, residents of Derbyshire are probably not (although, as *Lega Nord* have demonstrated, regional as well as national groups are able to engage in secessionist politics). Third, populations inhabiting *burdensome* territory, or groups that are economically disadvantaged, will be less able to issue credible blackmail threats. As noted earlier, the credibility of blackmail threat can be calculated by comparing the two respective 'exit costs' of secession – for the seceding party and the remaining party(s). If the loss of a party would have neutral or beneficial consequences for the remaining partners, then that party will be unable to issue a credible blackmail threat.

Agitation

The final objection to blackmail threats is that they incentivise secessionist agitation on the part of nationalist entrepreneurs, and that secessionist agitation is bad for democratic politics and/or political stability. The agitation worry is a common one in the literature. For example, Allen Buchanan's cautious defence of secession rights is explicitly addressed to those who worry that such rights are 'too explosive to legitimize' and may lead to 'unacceptable political fragmentation, if not outright anarchy' (Buchanan 1991, p. 129). Why do blackmail threats incentivise secessionist agitation? Blackmail threats are more likely to be successful when the blackmailed party believes that the cost of exit (for the blackmailing party) is low. This is more likely to be

the case if there is popular support for secession (by contrast, exit from the EU became more costly for the UK between 1974 and 1978, because membership became more popular amongst the British public, see Schneider and Cederman, 1994, p. 639). If political elites have an interest in being able to issue credible blackmail threats, then they also have an interest in keeping the nationalist fires stoked. Moreover, as Wayne Norman notes, 'unlike some other forms of 'posturing' to back up threats in political bargaining, this kind of nationalist sentiment is not easily turned off' (Norman, 2006, p. 205).

What kinds of political activities might secessionists engage in? Norman notes that secessionist politics may take a variety of forms, 'ranging from the legally innocuous activity of advocating secession to the legally and morally dubious activities of unilateral declarations of independence (UDI) and armed insurrection' (Norman, 2006, p. 190). In between these extremes are a range of activities, such as 'the creation of political parties with secessionist platforms, the contesting of elections by such parties, their organizing of referendums on independence when they form regional governments, and so on' (Norman, 2006, p. 190). There are at least two reasons to support the view that even the more moderate forms of secessionist agitation can be harmful. First, secessionist agitation is bad for democracy because it can derail 'ordinary' politics, as the risk of secession will 'loom in every decision' (Weinstock, 2001, p. 195). For instance, if an unsettled national question is allowed to dominate the political agenda, all other issues may become subsumed under its ambit. This may compromise democracy when, for instance, party cleavages consolidate around the secession issue and voters lack the opportunity to express a view about ordinary left-right issues. Likewise, if secessionist divisions become a settled feature of the political landscape, political innovation may be stifled as opposing factions refrain from entering coalitions with one another. Second, secessionist agitation tends to promote oppositional forms of political discourse, and this can be corrosive on social solidarity. Of course, there are a number of different views about what kinds of social unity political community may require, and for what purposes. What presumably is less controversial is that abrasive secessionist politics can undermine the kind of social trust that makes cooperation possible, and that at least some degree of cooperation is required for political stability and social justice.

VI. Conclusion

Are blackmail threats compatible with the goals and ends of federal and democratic constitutionalism? And are they sufficiently objectionable to overturn the egalitarian and precautionary presumptions in favour of constitutional secession rights? The normative case against blackmail threats has two prongs. First, implicit in an ideal of *federal citizenship* are reasons for condemning actors who issue exploitative blackmail threats, even when such threats do not place the rights of others in jeopardy. Blackmail threats are objectionably exploitative when they involve using the threat of exit to get more than your fair share (of, for instance, resources, or opportunities). Exploitative blackmail threats of this kind, in effect, signal that you no longer consider yourself to be bound by the reciprocal duties of citizenship. The normative analysis of the relationships between citizenship, distributive justice, and blackmail, deserves more attention than I give them in this paper.

Second, implicit in an ideal of *federal constitutionalism* are reasons for preferring political arrangements that make blackmail threats costly (but not impossible). Filling out some of the different aspects to this objection has been the focus of the current paper, which advanced five claims. First, secession rights do not make cynicism a rational strategy, although political elites may attempt to issue cynical blackmail threats. Second, secession rights need not sanction rights-

violating forms of exploitation, and attaching a 'catastrophe rider' to a constitutional secession clause would be sufficient to prevent parties from issuing unjust blackmail threats. Third, secession rights allow parties to issue exploitative blackmail threats, and some of these may be morally objectionable, especially in societies already characterised by inequalities of power and wealth. Fourth, because the ability to issue blackmail threats is distributed unequally, secession rights may undermine democratic equality. Fifth, secession rights incentivise secessionist agitation on the part of nationalist entrepreneurs, which may undermine political stability and derail ordinary politics.

Drawing these together, the strongest objections to blackmail threats all have to do with their poisoning the bonds that sustain democratic solidarity – by degrading vulnerable groups, establishing unjustifiable hierarchies, and encouraging nationalist agitation. Blackmail threats may, therefore, be most objectionable because of the damage they do to the quality of relationships that obtain amongst citizens, making it less likely that they will internalise or exhibit the necessary virtues. However, none of these reasons tell decisively against recognising secession rights, and in some constitutions they may be advisable. In particular, being able to threaten exit might be a vital protection for smaller regions in multinational political associations, who otherwise may be neglected.

Bibliography

Beran, H. (1998) 'A Democratic Theory of Political Self-Determination for a New World Order', in Lehning (ed.) *Theories of Secession* (London, Routledge)

Berglund, Sara (2006) 'Prison or Voluntary Cooperation? The Possibility of Withdrawal from the European Union' *Scandinavian Political Studies* 29/2, pp. 147-67

Buchanan, Allen (1991) *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder, Westview Press)

Buchanan, Allen (1998) 'Democracy and Secession', in Moore (ed.) *National Self-Determination and Secession* (Oxford, Oxford University Press)

Buchanan, Allen (2004) *Justice, Legitimacy and Self-Determination* (Oxford, Oxford University Press)

De Schutter, Helder (forthcoming) 'Federalism as Fairness' *The Journal of Political Philosophy*

Dryzek, John (2006) *Deliberative Global Politics: Discourse and Democracy in a Divided World* (Cambridge, Polity Press)

Eerola, Essi, Niku Määttänen & Panu Poutvaara (2004) 'Citizens Should Vote on Secession' *The B.E. Journal of Economic Analysis & Policy*, 4/1.

Filippov, Mikhail, Peter C. Ordeshook & Olga Shvetsova (2004) *Designing Federalism* (Cambridge, Cambridge University Press)

Gradstein, Mark (2004) 'Political Bargaining in a Federation: Buchanan meets Coase' *European Economic Review*, 48, pp. 983-999

Hannum, Hurst (2004) 'Territorial Autonomy: Permanent Solution or Step Toward Secession?' in Ninamer et al. (eds.) *Facing Ethnic Conflict: Toward a New Realism* (Lanham, Rowman Littlefield)

Hirschmann, Albert (1970) *Exit, Voice and Loyalty* (Cambridge MA, Harvard University Press)

Horowitz, David (2003) 'A Right to Secede?', in Macedo and Buchanan (eds.) *Secession and Self-Determination* (London, New York University Press)

Kymlicka, Will (1998) 'Is Federalism an Alternative to Secession?' in Percy Lehning (ed.) *Theories of Secession* (Routledge, London), pp. 111-50.

Kymlicka, Will (2001) *Politics in the Vernacular* (Oxford, Oxford University Press)

Landau, M. (1973) 'Federalism, redundancy and system reliability' *Publius Journal of Federalism,* 3/2, pp. 173-95

Lechner, Susanne and Ohr, Renate (forthcoming) 'The right of withdrawal in the treaty of Lisbon: a game theoretic reflection on different decision processes in the EU' *European Journal of Law and Economics*
Miller, David (1995) *On Nationality* (Oxford, Oxford University Press)
Moore, Margaret (2001) *The Ethics of Nationalism* (Oxford, Oxford University Press)
Norman, Wayne (1998) 'The ethics of secession as the regulation of secessionist politics', in Moore (ed.) *National Self-Determination and Secession* (Oxford, Oxford University Press)
Norman, Wayne (2001) 'Justice and Stability in multinational societies' in Gagnon, A. and Tully, J. (eds.) *Multinational Democracies* (Cambridge, Cambridge University Press), pp. 90-109.
Norman, Wayne (2003) 'Domesticating Secession', in Macedo and Buchanan (eds.) *Secession and Self-Determination* (London, New York University Press)
Norman, Wayne (2006) *Negotiating Nationalism: Nation-Building, Federalism and Secession in the Multinational State* (Oxford, Oxford University Press)
Norris, Pippa (2004) *Electoral Engineering: Voting Rules and Political Behavior* (Cambridge, Cambridge University Press)
Philpott, Daniel (1998) 'Self-Determination in Practice', in M. Moore (ed.) *National Self-Determination and Secession* (Oxford, Oxford University Press)
Riker, W. H. (1975) 'Federalism' in Greenstein and Polsby (eds.) *Handbook of Political Science* (Reading Mass, Addison Wesley)
Roach, Steven C. (2007) 'A Constitutional Right to Secede? Basque Nationalism and the Spanish State' *International Studies Perspectives* 8/4, pp. 446-460
Ross, Cameron (2000) 'Federalism and democratization in Russia' *Communist and Post-Communist Studies*, 33/4, pp. 403-420.
Schneider, G., & Cederman, L. (1994) 'The change of tide in political cooperation: a limited information model of European Integration' *International Organization,* 48, pp. 633–662.
Slapin, Jonathan (2009) 'Exit, voice, and cooperation: Bargaining power in international organizations and federal systems' *Journal of Theoretical Politics,* 21, pp. 187–211.
Sunstein, Cass (1991) 'Constitutionalism and Secession' *University of Chicago Law Review*, 58, pp. 633-70
Sunstein, Cass (2001a) *Designing Democracy: What Constitutions Do* (Oxford, Oxford University Press)
Sunstein, Cass (2001b) 'Should Constitutions Protect the Right to Secede?' *The Journal of Political Philosophy*, 9:3, pp. 350-5
Tamir, Yael (1993) *Liberal Nationalism* (Princeton, Princeton University Press)
Tan, Kok-Chor (2004) *Justice Without Borders* (Cambridge, Cambridge University Press)
Tully, James (2001) 'Introduction' in Gagnon, A. and Tully, J. (eds.) *Multinational Democracies* (Cambridge, Cambridge University Press) pp1-34
Watts, Ronald L. (1998) 'Federalism, Federal Political Systems, and Federations' *Annual Review of Political Science*, 1, pp. 117–37
Weinstock, Daniel (2001) 'Constitutionalizing the Right to Secede', *The Journal of Political Philosophy*, 9:2, pp. 182-203
Weller, Marc & Stefan Wolff (eds.) (2005) *Autonomy, Self-governance and Conflict Resolution: Innovative Approaches to Institutional Design in Divided Societies* (London, Routledge)
Wellman, Christopher Heath (1995) 'A Defence of Secession and Political Self-Determination', *Philosophy and Public Affairs*, 24, pp. 142-71.
Wellman, Christopher Heath (2005) *A Theory of Secession: The Case for Political Self-Determination* (Cambridge, Cambridge University Press)
Wood, Allen (1995) 'Exploitation' *Social Philosophy and Policy* 12, pp. 136-58.