

# Self-Determination, Dissent, and the Problem of Population Transfers

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## Abstract

Many of the major self-determination movements of the 20<sup>th</sup> and early 21<sup>st</sup> Centuries did not go smoothly, but resulted in forced or semi-forced transfers of groups of people from one country to another. Forced population transfers are not, of course, supported by major theorists of self-determination and secession. However, the problems that make population transfers extremely common in actual cases of self-determination and secession, are not squarely faced in many theories of self-determination. And, I shall argue, certain leading theories of self-determination and secession would make population transfers almost inevitable in practice, even if not called for or sanctioned in theory. This is a major stumbling block for any attempt to move from an abstract account of self-determination towards a working theory. In this paper I take a first step towards addressing this problem. I shall show how any approach to dealing with secession, including “primary rights” accounts, “remedial rights only” accounts, and even “consensual” accounts, must be able to deal with the inevitable problem of population transfers, if it is to be a complete and plausible theory. I shall also show how population transfers, to the extent that we can always expect them to take place, can be made as just as possible, in light of any approach to the problem of secession. I will not here attempt to adjudicate between different approaches to secession and self-determination. To that extent, my argument may be seen as a friendly addition to all of the above approaches, showing how they may try to meet an objection which they have not yet faced.

## Introduction

Many of the major self-determination movements of the 20<sup>th</sup> Century did not go smoothly, but resulted in forced or semi-forced transfers of groups of people from one country to another. Famous examples include the compulsory “population exchange”

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between Greece and Turkey in 1923<sup>1</sup>, the population transfers that accompanied the independence of India and its split with Pakistan in 1947<sup>2</sup>, and the expulsion of most of the Palestinian population from the area that became Israel after 1948. Somewhat lesser known examples include the expulsion of ethnic Georgians from Abkhazia<sup>3</sup> and (more recently) South Ossetia<sup>4</sup>, with the help of Russia, and the exchange of populations between Armenia and Azerbaijan in relation to the on-going Nagorno-Karabakh dispute<sup>5</sup>, as well as the continuing slow-motion transfer of Serbs from Kosovo to Serbia<sup>6</sup>. This last example, in particular, helps highlight the connection, in many historical instances, between population transfers and so-called “ethnic cleansing”.

Forced population transfers are not, of course, supported by major theorists of self-determination and secession.<sup>7</sup> The problems that make population transfers extremely common in actual cases of self-determination and secession, however, are not squarely faced by many theories of self-determination. And, I shall argue, certain leading theories of self-determination and secession would make population transfers almost inevitable in practice, even if not called for or sanctioned in theory. This is a major stumbling block for any attempt to move from an abstract

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<sup>1</sup> See, for example, the papers in Renee Hirschon, (ed.), *Crossing the Aegean: An Appraisal of the 1923 Compulsory Population Exchange between Greece and Turkey (Studies in Forced Migration, Vol. 12)* (New York, Berghahn Books, 2003).

<sup>2</sup> See, for example, Yasmin Khan, *The Great Partition: The Making of India and Pakistan*, (New Haven, Yale University Press, 2007).

<sup>3</sup> See, Human Rights Watch, “Georgia/Abkhazia: Violations of the Laws of War and Russia’s Role in the Conflict”, <http://www.hrw.org/reports/1995/Georgia2.htm>, and, for more recent events, Elesya Vartanyan and Michael Schwartz, “Georgians forced out of Abkhazia, EU monitors report”, *New York Times*, Dec. 7, 2009

<sup>4</sup> See, Brian Whitmore, “One Year After ‘Independence’, Abkhazia and South Ossetia in Legal Gray Zone”, *Radio Free Europe/Radio Liberty*, Aug. 26, 2009, [http://www.rferl.org/content/Year\\_After\\_Independence\\_Abkhazia\\_South\\_Ossetia\\_In\\_Legal\\_Gray\\_Zone/1808101.html](http://www.rferl.org/content/Year_After_Independence_Abkhazia_South_Ossetia_In_Legal_Gray_Zone/1808101.html)

<sup>5</sup> See, “Nagorno-Karabakh”, <http://www.globalsecurity.org/military/world/war/nagorno-karabakh.htm>

<sup>6</sup> For a time-line of developments, including fairly recent ones, see, <http://www.bbc.co.uk/news/world-europe-18331273>

<sup>7</sup> Secession is, of course, only one form of self-determination. I will largely focus on cases of secession, in part because they provide clear cases for my purposes and in part because secession has been the focus of the most sustained discussion in the relevant literature. However, much of what I say will also apply to cases of de-colonization and to at least some internal autonomy agreements, though I will have little directly to say about the last item. My thanks to Tim Sellers for insisting, at the conference where these papers were first presented, on the need to make these distinctions.

account of self-determination towards a working theory.<sup>8</sup> If our goal is to provide a “coherent set of principles to distinguish legitimate from illegitimate secession”<sup>9</sup>, and to set “just terms for secession”,<sup>10</sup> we need to be able to provide an account that is able to deal with the inevitable problem of population transfers.<sup>11</sup>

In this paper I will take a first step towards addressing this problem. I shall show how any approach to dealing with secession, including “primary rights” accounts, “remedial rights only” accounts, and even “consensual” accounts,<sup>12</sup> must be able to deal with the inevitable problem of population transfers, if it is to be a complete and plausible theory. I shall also show how population transfers, to the extent that we can always expect them to take place, can be made as just as possible, in light of any approach to the problem of secession. I will not here attempt to adjudicate between different approaches to secession and self-determination. My goal in this paper is not to give an account of secession rights, but to highlight an essentially unexplored problem that arises internally within most of the leading approaches. To that extent, my argument may be seen as a friendly addition to all of the above approaches, showing how they may try to meet an objection which they have not yet faced. It may be that the need to deal with the problem of population transfers will make some theories of secession seem “too expensive” and so not plausible, but if so, this is a problem that proponents of such theories will need to squarely face.

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<sup>8</sup> I am enthusiastic in following Allen Buchanan’s lead in thinking that theorists of global justice and international law should work hard to see how their views could be instantiated, and the likely results of adopting a theory, and agree with him that doing so requires us to consider real cases whenever possible. For relevant attempts by Buchanan to do this, see, “The Quebec Secession Issue: Democracy, Minority Rights, and the Rule of Law” in Stephen Macedo and Allen Buchanan, (eds.), *Secession and Self-Determination: Nomos XLV*, (New York, New York University Press, 2003), 238-71; “Self-Determination, Secession, and the Rule of Law”, in Robert McKim and Jeff McMahan, (eds.), *The Morality of Nationalism*, (New York, Oxford University Press, 1997), 301-23; and, more generally, “Introduction”, in Allen Buchanan, *Human Rights, Legitimacy, and the Use of Force*, (New York, Oxford University Press, 2010) For some doubts about Buchanan’s actual implementation of this plan, see Lister, “Are Empiricism and Institutions Enough?”, *2 Transnational Legal Theory*, 127 (2011).

<sup>9</sup> Buchanan, “Self-Determination, Secession, and the Rule of Law”, 303

<sup>10</sup> Buchanan, “Self-Determination, Secession, and the Rule of Law”, 308

<sup>11</sup> This problem is essentially ignored on the “just terms” suggested by Buchanan, for example. “Self-Determination, Secession, and the Rule of Law”, 308.

<sup>12</sup> The details of these different approaches to secession and self-determination will be given below.

## **What is a “population transfer”, and why should theorists of self-determination and secession address them?**

What is a “population transfer”, as used in this paper? If we look at historical cases, such as those noted above, we see that they often involve the forced movement of people in a clear and unequivocal way. But, sometimes these movements of people have been “negotiated”, and semi-voluntary. That is to say, the exchange of populations has been voluntary from the perspective of the states involved in the negotiation, but is not necessarily experienced as voluntary from the perspective of the people who are made, or encouraged, to move. In all of these cases, both the forced and the negotiated ones, there has been significant suffering<sup>13</sup> for those who were required to move. But, I shall argue, this is not a strictly necessary part of the problem. The issue I am most interested in here is not just that people are made to suffer from population transfers, though this is important and very often the case. Even if significant suffering can be avoided, I will argue, the problem must still be dealt with.

Put most abstractly and generally, a “population transfer”, as I will use the term, is when the process of self-determination, by a part of an existing state or territory, causes a significant group within that territory to leave, either from the “new” state to the old, “parent” state, or from the parent state to the new one, or to some 3<sup>rd</sup> state, so as to avoid being in the state from which the people have moved.<sup>14</sup> My general claim is that most normative theorist of self-determination, where this includes at least discussions of secession and de-colonization, and perhaps some internal autonomy agreements, have ignored this phenomena. But, population transfers are ubiquitous in nearly all actual and likely

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<sup>13</sup> By “suffering” I mean to include material deprivation, physical injury or harm, and subjective states of dissatisfaction. So, one may have suffered from being included in a population transfer even if one has not been subjected to physical or material harm, if one was made to move against one’s will, and this leads to subjective dissatisfaction. Of course, in many cases all three forms of harm will go together. My thanks to Jerry Vildostegui for encouraging me to be clear on this point.

<sup>14</sup> I do not intent this category to cover all possible types of movement between the parent and the new state, but only that which is directly or primarily motivated by the desire to not be in the new (or old) state as such. So, for example, movement from the new state to the old, or vice versa, motivated merely by better economic opportunities in the other state would, at least in many cases, not count as a population transfer on my account. Of course, in real life, motivations are rarely “pure”, and so it may be difficult to know if particular instances of movement between parent and new states falls under my account or not. My only comfort here is that this sort of problem seems to me to be very common in normative theory, and that there is nothing to do but to face it and do as well as we can in applying our theories to concrete cases. My thanks to Jerry Vildostegui for pushing me on this point.

cases, and give rise to significant moral considerations that cannot be legitimately ignored, even, I will argue, in “ideal theory” discussions of secession.<sup>15</sup>

Given that population transfers are an obvious and salient problem in actual cases of secession, but have been ignored, to a large degree, in theoretical discussions, I am in the somewhat paradoxical position of arguing that they are not only important in practice, but also in theory. However, I will show that any theory of self-determination, including a theory of secession, must provide an account of this phenomena and how it is to be dealt with if it is to be complete. (This is not to argue that only a complete theory may be worth-while. Even a partial theory is often an important step, and I do not claim to provide a complete theory, even of this phenomena. Rather, my point is simply that without an account of this phenomenon, a theory cannot be complete.) More importantly, without an account of how to deal with population transfers, we cannot know if a particular theory of self-determination is plausible or not, as this is a completely expectable phenomenon, one with significant moral implications, but one that has been widely ignored in the literature.

This raises the question of why, if this problem is as important as I have claimed, it has been so widely ignored or down-played. There are, I believe, at least two reasons for this. First, most historical cases, such as those noted above, involve grave injustices of a sort that theorists of self-determination or secession essentially all find unacceptable. So, the idea seems to be that, if the theorist or international lawyer focuses on “just”

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<sup>15</sup>Of course, this problem has not been completely ignored by normative theorist- it is often briefly noted by those working on the subject, and international lawyers have been somewhat better on this than have philosophers, but even those who have noted the problem have not, I shall argue, given it the sort of significant attention that it deserves. And it is often confused with the distinct problem of guaranteeing minority rights within the new state. As I shall show, while this is of course important, it cannot suffice to fully solve the problem address in this paper. The issue has been considered much more regularly by those working in “forced migration studies”, an importantly interdisciplinary field. But, this material has been largely ignored by philosophers and other normative theorists working on self-determination and secession, and the discussion within forced migration studies has also largely, though not completely, taken place without the input of philosophers. For a helpful over-view of this field, see Francois Crepeau, et. al., *Forced Migration and Global Processes: A View from Forced Migration Studies*, (Lanham, Maryland, Lexington Books, 2006). This mutual process of ignoring relevant literature is unfortunate, and I hope this paper contributes to breaking down some of these barriers. I should note a particularly good article from the forced migration studies field that is likely to be of use to many normative theorists working in the area, and that I shall refer to below, Michael Barutcisk, “Population exchanges in International Law and Policy”, in Hirschon, ed., *Crossing the Aegean*, 23-37.

cases of secession, on whatever account of secession she is working with, and rules out obviously unjust acts as generally impermissible, then she need not consider this problem. Those taking this line of thought assume that all population transfers must be forced transfers. This is a mistake. As I shall show, the theories of secession I will discuss here entail significant moral obligations to those who will, almost inevitably, leave their homes during the process of self-determination, even if this move is completely voluntary.

A second, related, idea is that this problem is essentially just a sub-aspect of the problem of refugees, and so it is best dealt with via a theory of refugees and what is owed to them, rather than directly as part of a theory of self-determination. I will show, however, that both of these reasons for not dealing with the problem of population transfers directly within a theory of self-determination are mistaken.

First, in what follows I will show that the core injustice involved in many population transfers, even beyond the suffering that usually accompanies them, is not distinct from the injustice that legitimates secessionist movements and other attempts at self-determination. If I am correct in this claim, then a theory of secession that is based on a particular set of causes must deal with the problem of population transfers, as these same causes explain the core of the injustice of population transfers. This is made clearer when we note that the problem of population transfers is often caused, or at least precipitated, by the group seeking to secede, even when this group is justified in doing so on a particular theory.<sup>16</sup> If the injustice that accompanies population transfers is intimately tied in to the normative justification for secession and other forms of self-determination, as I shall argue, then a theorist cannot ignore the issue by focusing on (usually imagined) “just” cases of secession.

Second, I contend that this problem cannot just be assimilated to the problem of refugees. The problem of population transfers, though not completely distinct from the problem of refugees, is in some ways broader and in others narrower. (That is, while some people subject to a population transfer are refugees, and some refugees have been subject to an involuntary population transfer, each group contains significant sub-sections that do not fall in the other.<sup>17</sup>) Dealing with the problem of population

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<sup>16</sup> That this is so in many historical cases is well show by Michael Barutcisk. See Barutcisk, “Population exchanges in International Law and Policy”, 24-27. Barutcisk, in this paper, addresses primarily cases that involve significant wrong-doing by one or both sides to the dispute, but as this is both common and expected in cases of secession, his lessons are well worth attending to.

<sup>17</sup> For an account of who does or should fall under a definition of refugees, see my paper, “Who Are Refugees?” 32 *Law and Philosophy* 645 (2013).

transfers, for example, will involve duties on the part of states that do not fit into the refugee paradigm. In particular, the movement of people in question may be caused by acts that do not involve or amount to persecution, and yet, I shall argue, the “causing” state may still have obligations to those who leave, on any plausible theory of secession. If I am correct, then the most plausible grounds for ignoring the problem of population transfers are not valid, and anyone wishing to craft a theory of secession must be able to deal with this problem.

### **Approaches to Secession**

Theories of secession are typically divided into two main approaches, “Primary Rights” accounts and “Remedial Rights Only” accounts. In addition to these two approaches, I shall also discuss so-called “consensual” cases of secession.<sup>18</sup> While I will look at these approaches in turn, and will discuss the particular problems that arise on each, I will here claim that each approach must provide a mechanism for dealing with population transfers, as these movements of people are inevitable on all accounts, given their own terms. This is so since, on each of the accounts, doing what justice requires with regard to secession or self-determination rights will be just the sort of thing that gives rise to the movement of people we are here interested in. Furthermore, this movement of people could only be prevented with further injustice, by forcing people to remain in a state they do not wish to remain in.<sup>19</sup> If this is right, then any approach to secession is likely to create significant injustices. We might take this to show that secession is never or only very rarely allowed. But if these injustices that arise with population transfers can be dealt with in other ways, and the injustice removed or at least significantly ameliorated, then the theory might be saved. I shall now show how the problem arises on each account of secession, and how it might be dealt with, starting with the Primary Rights” account.

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<sup>18</sup> Allen Buchanan has done more than most to show how “consensual” secession differs from “contested” cases, where the latter group includes both Primary Rights and Remedial Rights approaches. See Buchanan, “Self-Determination, Secession, and the Rule of Law”, 304, and “The Quebec Secession Issue”, 240-1. As I will try to show, even in the case of “consensual” secession, the problem of population transfers inevitably arises. This issue is not addressed by Buchanan in these accounts.

<sup>19</sup> I do not, of course, mean this as a necessary truth. But, nearly all of our experience, and, I will argue, the logic of the theories themselves, show this to be extremely likely- likely enough that any theory that hopes to be workable must be able to deal with the problem. States which largely prohibited emigration, such as the former Soviet Union and East Germany, were rightly seen as deeply unjust for having done so.

## “Primary Rights” accounts of secession

The core idea of a “Primary Rights” account of secession is that secession can be justified without this needing to be based on any injustice on the part of the “parent” state or society.<sup>20</sup> The “primary right” in question may have a number of different basis. I will focus on two main versions, one, presented by Christopher Wellman, in his important book *A Theory of Secession*, bases this right on the idea of freedom of association. The other, developed by David Copp, grounds a primary right to secession in democratic principles.<sup>21</sup> Importantly, neither of these accounts depend on the controversial claim that a primary right to secession follows from the right of a “nation” to have its own state. Wellman’s account is at least compatible with some nationalist arguments (Copp explicitly rejects the idea that nationalism is relevant for self-determination<sup>22</sup>), but is broader than the typical nationalist argument, and could appeal to those who reject nationalist grounds.<sup>23</sup> I will focus primary on Wellman, as his view is more fully developed, but will consider Copp’s alternative account when useful.

Wellman puts his view into brief form by claiming that “Any group has a moral right to secede as long as its political divorce will leave it and the remainder state in a position to perform the requisite political functions.”<sup>24</sup> (Copp provides a similarly strong brief formulation, “Societies with a territory and a stable desire for self-government have the right to constitute themselves as states.”,<sup>25</sup> though he develops the necessary conditions for a society constituting itself as a state somewhat differently than does Wellman.) Importantly, though Wellman’s view is “statist”, in that it accepts that living in a state is a necessary condition, given the world we find ourselves in, for

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<sup>20</sup> Of course, injustice, real or perceived, by the parent state might motivate secessionist groups, but on the primary rights account this would merely be a matter of psychology, and not the primary moral justification for secession.

<sup>21</sup> See, David Copp, “Democracy and Communal Self-Determination”, in McKim and McMahan, (eds.), *The Morality of Nationalism*, 277-300. The democratic process is also important for Wellman, in that it is a majority vote in a territory that determines which rights of association are relevant. Christopher Heath Wellman, *A Theory of Secession*, (New York, Cambridge University Press, 2005), 62. But, Copp’s account seems to me to place democratic virtues at the center of the argument in a way that Wellman does not. This difference will be only minimally important for what follows, so I will not dwell on it at any length.

<sup>22</sup> Copp, “Democracy and Communal Self-Determination”, 283-90.

<sup>23</sup> Wellman, *A Theory of Secession*, 97-127

<sup>24</sup> Wellman, *A Theory of Secession*, 1

<sup>25</sup> Copp, “Democracy and Communal Self-Determination”, 278

living a good life,<sup>26</sup> his account is also individualistic, in that the basis of the right mentioned above, is that, “people should be left free to be the authors of their own lives.”<sup>27</sup>

On Wellman’s account, it is wrong to prevent a group that wants to, and would be able to, form a viable state from doing so, if it is able to do so without wronging others.<sup>28</sup> Here, however, we reach a problem that Wellman, and many others in the “Primary Rights” camp, do not squarely face. Agreement to form a new state will essentially never be unanimous. Some of the population in the secessionist area will want the status quo.<sup>29</sup> Why is this a particular problem here? After all, any political decision will have losers — those whose desires are not satisfied by the choice, and whose interests may be set back by the decision taken. If this were just another political decision, like any other, then those who lose out would not need any special compensation, and could not claim to be wronged.<sup>30</sup> But, I shall claim, proponents of a “primary rights” view cannot see this as just another political decision. If they did, then a *state-wide* choice in favor of keeping the state together, as opposed to a regional one to break away from the parent, would not be unjust. But with this, the supposed right to self-determination would disappear.<sup>31</sup>

Here we note that any attempt to fix the “optimal group” for a vote on secession will be artificial. There are no “natural” groupings that tell us where the boundaries of a vote should be placed. This is a larger problem than Wellman and other Primary Rights proponents realize, I shall show, and sets up the case for demonstrating how, on the Primary Rights account’s own terms, an injustice is done to the “losers” in a vote for secession. In any case we can consider, we could re-draw the boundaries so that the actual losers would win. But if the boundaries are arbitrary — that

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<sup>26</sup> Wellman, *A Theory of Secession*, 16-17

<sup>27</sup> Wellman, *A Theory of Secession*, 2

<sup>28</sup> Wellman, *A Theory of Secession*, 57

<sup>29</sup> Indeed, as Donald Horowitz has argued, the presence of local minority members within the secessionist region is often one of the contributing factors in motivating the secessionist desires. See Horowitz, “A Right to Secede?”, in Macedo and Buchanan, (eds.,) *Secession and Self-Determination: Nomos XLV*, 53-4. This point is also noted by Barutciski, “Population Exchanges in International Law and Policy”, 26. Horowitz here focuses on ethnic minorities, but while these have been important and salient historical cases, there is no reason to limit the consideration to such groups.

<sup>30</sup> Importantly, I am not advancing the claim, made by some libertarians, that any set-back to interest cause by changes in government policies is a wrong requiring compensation. For a view like this, see Richard Epstein, *Takings: Private Property and the Power of Eminent Domain*, (Cambridge, Harvard University Press, 1985).

<sup>31</sup> The idea of a state-wide choice to divide an existing state arises in so-called “consensual” cases of secession, but as I shall show shortly, the problem of population transfers arises again in these cases, too.

is, non-natural and not self-determining — then there is no pre-theoretical case for drawing them one way or another.

Recall now that the validity of the choice, by the secessionist group to break away, on a Primary Rights account, depends on the idea that it is an important good to be able to live in a viable state of the sort that one wants. As Wellman puts the point, “A group’s members are disrespected when the group’s right to self-determination is violated.”<sup>32</sup> If this good is denied someone without very weighty reasons, then, on the Primary Rights account, the rights of the person in question are violated. And, importantly, on Wellman’s account, it not a group as such whose rights are violated when it is prevented from forming a state of the sort it wants, but rather the individuals who make up the group.

This raises the question of which group is the proper one for the analysis. Wellman takes his lead from Charles Beitz, and holds that, “The people should decide who the people are.”<sup>33</sup> David Copp takes a similar path when he holds that, “Societies with a territory and a stable desire for self-government have the right to constitute a state”,<sup>34</sup> and that a group that is not currently a state has the liberty to hold a plebiscite within the relevant territory to decide this question.<sup>35</sup> But neither of these approaches can work on their own; as it will essentially always be possible to find groups of “people”, or “societies with a territory and a desire for self-government” that get us the unionist, rather than the secessionist, outcome, negating the secessionist claim. So, we must push further if the Primary Rights account is to be coherent.

Copp’s account, I will claim, offers us no help here. Copp holds that “all and only societies that are relevantly ‘territorial’ and ‘political’ have the right to self-determination”,<sup>36</sup> and that “societies are groups of an appropriate kind to form states.”<sup>37</sup> But this, especially on a Primary Rights account, where we are assuming that the secessionist group is not facing injustice, does not give us any reason to treat the would-be secessionist group as the relevant “society” rather than the larger, pro-unionist group. This is perhaps especially true on an account such as Copp’s, which rejects nationalism and cultural ground as legitimate ways for determining the boundaries of societies.<sup>38</sup>

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<sup>32</sup> Wellman, *A Theory of Secession*, 57

<sup>33</sup> Wellman, *A Theory of Secession*, 60, citing Charles Beitz, *Political Theory and International Relations*, (Princeton, Princeton University Press, 1999), 106

<sup>34</sup> Copp, “Democracy and Communal Self-Determination”, 280

<sup>35</sup> Copp, “Democracy and Communal Self-Determination”, 279-801

<sup>36</sup> Copp, “Democracy and Communal Self-Determination”, 290

<sup>37</sup> Copp, “Democracy and Communal Self-Determination”, 292

<sup>38</sup> Copp notes that in the case of “societies” without a territory of “their own”, providing a state to the society would necessarily involve “moving populations around in order to create space for the society”, and recognizes that this is, at

Wellman, on the other hand, does offer us a reason for picking smaller, pro-secession groups as the relevant unit, as opposed to the larger, pro-union group. But, as we shall see, this very reasoning takes us to the heart of the problem of dissent and population transfers. Wellman says that, “Our goal must be to construct politically viable states that include as many separatists and as few unionists as possible.”<sup>39</sup> Why should this be? I think it must be because, on Wellman’s account, we wrong those who do not want to join the new state when we include them. The logic of the Primary Rights account pushes us, it seems, relentlessly towards this conclusion.

Importantly, the wrong that is done to the dissenters who are included in the new state, as there inevitably will be, is not just or primarily that their preferences are not met, or even that their interests are set back.<sup>40</sup> This is, I would content, a completely typical and non-problematic feature of any political process, at least when not motivated by unacceptable grounds. Rather, here it is the very right, one take to be particularly weighty by the Primary Rights theorists, that give legitimacy to secessionist cases that is violated by incorporating dissenters into the new state against their wishes. Recall Wellman’s claim that, “a group’s *members* [that is, the individuals, not the group itself] are disrespected [and so wronged, on this account] when the group’s self-determination is violated.”<sup>41</sup> But this is just what happens to the dissenters who are trapped in the new state. As Buchanan aptly points out, the right

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least, problematic. Copp, “Democracy and Communal Self-Determination”, 295. He seems not to notice that no “society” has exclusive control of a territory, and so this “moving populations around” is in fact the typical and expected outcome of self-determination of the sort he supports. See again Barutciski, “Population Exchanges in International Law and Policy”, 28, for useful discussion on this point.

<sup>39</sup> Wellman, *A Theory of Secession*, 59

<sup>40</sup> Interestingly, Buchanan suggests that it might be part of a requirement of just secession that people who suffer loss in value of private property because of secession be compensated for this. While this might sometimes be reasonable, I do not think it is plausible as a general requirement. Loss in value of private property because of changes in government policy and regulation is a perfectly normal and, I think, unproblematic occurrence, and only a few extreme libertarians, such as Epstein, think compensation is owed for this. Loss in value of private property due to secession, then, seems to me to be a mere political loss, unlike the losses I shall discuss above. See Buchanan, “Self-Determination, Secession, and the Rule of Law”, 308

<sup>41</sup> Wellman, *A Theory of Secession*, 57. Emphasis is mine. Copp makes a similar statement, “It is an unjust lack of regard for a person to fail to give him or her authority over decisions that affect only his or her own life; it is similarly an unjust lack of regard to fail to give this person equal authority with other members of his or her society over political decisions regarding that society.” Copp, “Democracy and Communal Self-Determination”, 292. Of course, a decision by a group to secede from a state never affects just that group- it necessarily also affect the inevitable dissenters as well.

of a local majority to secede is the right to deprive the local minority of its citizenship, or to determine its citizenship unilaterally.<sup>42</sup> But this unilateral determination of the citizenship of a minority by a majority is just the wrong that the Primary Rights account was meant to remedy.

We should note that the new state, arguably, does not violate the right to self-determination of those who populate what remains of the parent state. But those dissenters trapped in the new state — and there always will be such — have, on the Primary Rights account's own terms, their right to self-determination violated. To see this, recall Wellman's claim that, "a group of citizens who are able and willing to perform their requisite political functions have a right to group self-determination."<sup>43</sup> This, however, applied to the undivided parent state as well. Furthermore, Wellman says, it is the "political capacities of the group" which "explain why it is entitled to political self-determination."<sup>44</sup> But, before a case of secession, the future dissenters were part of a group with this capacity — the undivided state — and afterwards they are not. It is just the secession movement that destroys the capacity in the dissenters. On Wellman's own account, this is to wrong them.

It is important to note that this sort of wronging need not involve political persecution or other similar rights violations, such as rendering the dissenters stateless.<sup>45</sup> This is one reason why the problem of dissent and population transfers cannot be assimilated to the problem of refugees. But, the wronging that does take place is still the same sort of wronging that makes, on the Primary Rights account, suppression of secessionist movements itself a wrong. Furthermore, we can see now that the typical solution offered to the "losers" in a secessionist movement, such as having made sure that they had "meaningful input" in the decision to secede or not, as suggested by Diane Orentlicher, cannot suffice.<sup>46</sup> This would be a sufficient answer only if the harm suffered by the dissenters were a typical political loss. But as we have seen, the Primary Rights view must deny this. Similarly, while protecting the rights of the minority dissenters in the new state is certainly required, it again cannot be sufficient on the Primary Rights account, as this

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<sup>42</sup> Buchanan, "Self-Determination, Secession, and the Rule of Law", 315

<sup>43</sup> Wellman, *A Theory of Secession*, 57

<sup>44</sup> Wellman, *A Theory of Secession*, 58

<sup>45</sup> In actual cases of secession this is an all-to-common and predictable result, a feature that seems to generally be ignored by theorists of secession. Surely the plausible results of following a theory deserve as much consideration as do the hoped-for ones.

<sup>46</sup> Diane F. Orentlicher, "International Responses to Separatist Claims", in Macedo and Buchanan, (eds.), *Secession and Self-Determination: Nomos XLV*, 30

will not remedy the wrong suffered, and, on the Primary Rights account, protecting minority rights would not have sufficed to make succession unacceptable in the first place, either. So, by the very logic of the Primary Rights account, the secessionist group will have both harmed and wrong the inevitable dissenters. It will have deprived them of an important good, and a good they had a right to.<sup>47</sup>

What follows from this? There is a temptation, one I am liable to, to say that this above argument shows that a primary rights account of secession is inconsistent and so must be rejected. This, I think, is probably too strong. If we can show that the secessionist group can nullify the wrong to the dissenters in some way, can provide compensation to them, then this problem can be met.<sup>48</sup> It is here that the problem of population transfers re-emerges.

Now, in most real-world situations like this, the dissenting group is either directly forced out or subjected to conditions that make their lives difficult, if not strictly intolerable. We see this even in supposedly benign examples of secession, such as that of the Baltic States from the Soviet Union.<sup>49</sup> That this is both very common and completely predictable is largely ignored by those

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<sup>47</sup> We can also expect further harms to follow, of course. Most secessionist movements are followed by a period of “nation building”, and as Anna Stilz has nicely noted, nation building will almost always be seen as oppressive, and sometimes extremely coercive, by those who are outside the dominant group. See Stilz, *Liberal Loyalty: Freedom, Obligation, and the State*, (Princeton, Princeton University Press, 2009), 143. This should not be ignored, as it often is, by theorists of secession, but is not our main focus here.

<sup>48</sup> Some other discussions of secession have talked about compensation as an element of just terms of secession, but none, to my knowledge, have been addressed to the issues raised here. As noted, Buchanan has suggested that compensation to individuals for loss of property value may be required, though I have suggested reasons to doubt this. More typical are calls for compensation to the “parent” state, to repay investments in infrastructure and the like. (See, for example, Copp, “Democracy and Communal Self-Determination”, 280.) But none of these accounts address the wrong that is done to dissenting individuals, on the Primary Rights account’s own terms, when they are trapped in the new state. Some historical negotiated population transfers have included calls for compensation, though the exact justification for and nature of the claims was often unclear, and any compensation actually paid could not plausibly be called sufficient. See Barutciski, “Population Exchanges in International Law and Policy”, 30-33.

<sup>49</sup> See, for example, David Greene, “Russian Minority Struggles in Post-Soviet Estonia”, NPR, Aug. 23, 2010. <http://www.npr.org/templates/story/story.php?storyId=129333023> Similar situations exist for ethnic Russians in the other Baltic States. The utterly cavalier attitude of the Estonian president is particularly worth noting.

pressing the Primary Rights account.<sup>50</sup> This is essentially completely ignored by both Wellman and Copp. The completely foreseeable result is, most often, either the involuntary, or at best semi-voluntary, transfer of populations (the slow-motion ethnic cleansing of Serbs by Kosovars in Kosovo provides a typical example<sup>51</sup>) or else in a continuing unstable state (Moldova, with the unresolved status of Trans-Dniester, might provide an example.<sup>52</sup>) As I will show, however, the problem is not limited to cases of forced or semi-forced transfers, as predictable and typical as those are.

If the Primary Rights account is to be plausible as anything more than a mere class-room example, it needs to be able to deal with this sort of completely predictable problem. And, it will not suffice for proponents of the Primary Rights account to say that they do not sanction the sort of bad acts noted above. This is so for two reasons. First, because the sort of response noted is completely predictable on a Primary Rights account, and a theory, if it is to be plausible, must be able to account for its predictable results.<sup>53</sup> Second, and more deeply, even if these predictable bad acts are avoided, the dissenters, who are trapped in the new state, will be, as noted, wronged on the internal logic of the Primary Rights account. The most plausible solution, it seems, is to compensate the dissenters, by providing them means to engage in a truly voluntary population transfer, if they so wish.

It may seem odd or even paradoxical that a “population transfer” may be, in one case, part of the problem, and in another, a

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<sup>50</sup> This fact is noted by Donald Horowitz, but he takes it to be a strong reason against recognizing a right to secession, a conclusion I do not here want to draw. See Horowitz, “A Right to Secede?”, 55-6.

<sup>51</sup> See International Crisis Group: Setting Kosovo Free: Remaining challenges, <http://www.crisisgroup.org/en/regions/europe/balkans/kosovo/218-setting-kosovo-free-remaining-challenges.aspx> , 10 Sept. 2012. Of course, the Kosovo situation involved other significant injustices as well, though the crisis started with the declaration of a unilateral right to secede by the Kosovars.

<sup>52</sup> See, [http://news.bbc.co.uk/2/hi/europe/country\\_profiles/3641826.stm](http://news.bbc.co.uk/2/hi/europe/country_profiles/3641826.stm)

<sup>53</sup> In recent years a view has developed, inspired by the work of Gerald Cohen and his followers, that political philosophy need not be action-guiding, but needs only to provide an ideal. This ideal need not have any practical connection with real life. For this idea, see Cohen, *Rescuing Justice and Equality*, (Cambridge, Harvard University Press, 2008), 229-73. This strikes me as quite wrong in general, but as particularly implausible if we are hoping to set rules for regulating behavior. For helpful discussion on the general philosophical point, see Gerald Gaus, *The Order of Public Reason*, (New York, Cambridge University Press, 2010), 176. That theories of secession, among others, should have to account for their predictable results, and not just the desired ones, is an assumption of this paper. While I do not defend this assumption here, it seems to me to be a reasonable one for anyone who wants political philosophy to be taken seriously, for if the predictable results are not considered, why should anyone care about the theory at all?

potential solution to the problem. But, the difference here is due to the voluntary nature of the transfer in the latter case. It will usually be, at best, problematic to force someone from a territory in which she lawfully resides without her consent.<sup>54</sup> But, providing the same person with the option of assistance in moving from one country (say, from the new country to the parent state) may be not morally problematic, but rather, morally required, at least on the internal logic of the Primary Rights account. Of course, this must not be seen as an alternative to having full rights in the new state, but as an additional option made available to the dissenters, to compensate them for the wrong done to them on the Primary Rights account's own lights. In this way the new state may "buy out", so to speak, those who did not wish to be incorporated into the new state, and who had their rights to association and self-determination violated against their will.

What would such compensation come to? It would not necessarily be required that those who dissented from the secessionist movement get payments or compensation that would make them just as happy as they were before the political split, or that would make them indifferent to the outcome. For one thing, this might turn on idiosyncratic valuations that could not be part of the sort of right that the Primary Rights account was meant to protect. More importantly, at least some of the set-back to interest faced by the dissenters will be of the sort that losers in any political dispute will face, and losers in a political dispute are not generally entitled to compensation merely because their interests did not prevail. What is required, by the internal logic of the Primary Rights account, is that the new state take steps to help any dissenters who wish to do so to relocate to the remaining part of the parent state in a way that puts them in as close to a situation as they were in before, from the perspective of the rights claimed by the Primary Rights account, as is possible and feasible. It is beyond the scope of this paper, and my expertise, to suggest every step that might be required, but as an example, we might think that the new state would have the obligation to ensure that the departing dissenter could sell her residence or business at the prevailing pre-split market rate, perhaps by being a buyer of last resort. Other steps may be required as well, but these are likely to

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<sup>54</sup> Such actions will nearly always, perhaps always, be problematic, but sometimes might be the least bad option. As Barutciski notes, "Insisting on certain principles in times when urgent action is needed can be unprincipled if the result is inaction." Baructciski, "Population Exchanges in International Law and Policy", 26. Though it is unpleasant to consider, it is possible that significantly less life might have been lost, for example, in the break-up of the former Yugoslavia if negotiated, though perhaps not completely voluntary, population transfers had been accepted early on.

be context-dependent and beyond the power of philosophical discussion to discern.

This requirement will put some burden on what remains of the parent state as well, mostly notably an obligation to accept the dissenters back into it as full members. This seems normatively unproblematic, as the dissenters should still be seen as citizens of the old state. But, it is the new state that has the primary burden to put the dissenters into something like the situation they were in before.<sup>55</sup> This may be very expensive, and this expense might make secession, on the Primary Rights account, less attractive, but it is a cost that the new state must be willing to pay, if, by the logic of the Primary Rights view, it wants to be justified in breaking a formerly viable state to create a new one.<sup>56</sup>

### **“Remedial Rights Only” accounts of secession**

I will now turn to “Remedial Rights Only” accounts of secession, and show how they, too, must be able to deal with the problem of population transfers if they are to be complete and plausible. Here I shall take Allen Buchanan as my primary representative of the Remedial Rights view. As Buchanan presents the case, a Remedial Rights approach sees secession as, “a remedy of last resort against sever and persistent injustice”, where the injustices “must be of such consequence as to void international support for a state’s claim to the territory in question.”<sup>57</sup> These injustices, Buchanan contends, include at least genocide and massive violations of basic

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<sup>55</sup> Let me reiterate that this does not mean that the dissenters must be indifferent between their situation pre and post-split, only that they are compensated for the rights violation that the Primary Rights account suggests they have undergone. As noted, this compensation will often, perhaps typically, take the form of facilitating a voluntary population transfer.

<sup>56</sup> This requirement would also go a significant way towards making other parts of Wellman’s view more coherent. Recall that Wellman claimed that we should try, in any vote on secession, to craft a territory so as to include as many secessionists, and as few unionists, as possible, and also held that a bare majority in a given territory is enough to justify secession. While not strictly incompatible, these two clauses together will tend to lead to significant numbers of dissenters being included, as this will often be the way to include as many secessionists, numerically, as possible, compatible with a bare majority of secessionists. The second clause will also lead, predictably, to including desirable territories in the plebiscitary region, even if these territories have a majority of dissenters, so long as this will not lead to a majority of dissenters over-all. But, the need to pay compensation to dissenters would discourage would-be secessionists from casting their nets as wide as possible, even when this meant including a large number of dissenters, and also from engaging in “land-grabs” by including desirable territories, even though they would not have a local majority of dissenters.

<sup>57</sup> Allen Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, (New York, Oxford University Press, 2007), 337-8

individual human rights, unjust annexation of territory, and possibly, though more controversially, the persistent violation of internal autonomy agreements.<sup>58</sup>

In a case of secession supported by a remedial rights account, a part of a state breaks away, not primarily to exercise a right to association or self-determination, but to prevent serious wrong-doing against the population. This seems easy to justify, but again, in real life, these cases too almost always give rise to

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<sup>58</sup> Buchanan, *Justice, Legitimacy, and Self-Determination*, 351-2. In earlier work Buchanan had suggested that “discriminatory redistribution” within a state — the transfer of wealth from one region (or perhaps social or ethnic group) to another within the state might be aground for remedial secession, though even then he held that there were practical worries with this. See Buchanan, “Self-Determination, Secession, and the Rule of Law, 310-13. My purpose here is not to evaluate supposed grounds for justifying a remedial right to secession, though I will note, briefly, that it does not seem likely to me that any but the most extreme examples of “discriminatory redistribution” would plausibly “void international support for a state’s claim to the territory in question.” Mississippi, after all, is a persistent net-importer of wealth and benefits from the rest of the states in the U.S., a problem largely guaranteed by the U.S. constitution’s system for representation, but this would not, I would think, justify the rest of the U.S. “seceding” from Mississippi. Violations of internal autonomy agreements, at least without other significant violations of civil or human rights, also seem at least a problematic ground. This is so because the justification for such agreements may deteriorate over time, leading to cases where the maintaining of such agreements leads to more injustice than their removal. Similarly, such agreements are often no more than one way of coming to a political settlement within a state, and as such might not be required by justice in themselves. To suggest that such agreements must be maintained, even in the face of changed circumstances, seems to me unjustified, and for “outsiders” to attempt to adjudicate these disputes, at least so long as there are not major human rights violations, would itself be a major violation of the right to self-determination. Outside adjudication, absent consent to a court to do so, would also be an illegitimate use of force. On this point, see my paper, “The Legitimizing Role of Consent in International Law”, 11 *Chicago Journal of International Law*, 663 (2011). Finally, even the “unjust annexation” ground seems to me more problematic than Buchanan suggests. Buchanan’s primary example is the annexation of the Baltic States by the Soviet Union. While not completely implausible, I will contend that this is also not as clear an instance as is suggested. The Soviet Union “annexed” the Baltic states in 1939, but they had been independent only for 22 years, and that only due to a peace treaty forced on the Soviet Union by an occupying (German) army intent on reducing Russian territory. This independence resulted in the expulsion of a large number of Russians who had been living in the Baltics before World War I. These Russians were living in the future Baltic states because it was at the time part of the Russian Empire. Estonia had been part of the Russian Empire since the 16<sup>th</sup> Century, and Latvia and Lithuania since the 17<sup>th</sup>. The inclusion of the Baltics in the Russian empire was the result of many wars over centuries, in some of which the Baltic States, particularly Lithuania, and their allies, were the aggressors. How to adjudicate these matters is not clear to me. But, it is clear to me that the “unjust annexation” clause will often be significantly less straightforward in application and adjudication than Buchanan’s account suggestions. I shall, however, largely leave these issues aside for the rest of the paper.

population transfers that are themselves straight-forwardly unjust. (If we take Kosovo's secession from Serbia as an instance justified by a Remedial Rights account, then the subsequent ethnic cleansing of Serbs by Kosovars would be a clear example.) Or, these population transfers may be due to unjust programs enacted against the residual population of the new state. (If, following Buchanan, and despite my misgivings, we treat the secession of, say, Estonia from the Soviet Union as a case justified by the Remedial Rights approach, then the subsequent unjust, but perfectly expectable, treatment of the remaining ethnic Russian population would be a clear example.)

However, even if we do not have cases of "backlash" injustice such as these, we are still left with the problem faced in the "Primary Rights" case, of a significant population of "dissenters", many of whom may be morally blameless in the events justifying the secession on Remedial Rights grounds, trapped in the new state. Now, per hypothesis, on a Remedial Rights account, there is no claim here of a primary right to live in association with others based on mutual consent, as there is on the Primary Rights account. So, the new state, on the Remedial Rights account, has not harmed or wronged those trapped in the new state, at least not in the particular way postulated by the Primary Rights account, assuming that the new state meets all of its moral and political obligations. This would be rare, if it every actually happens in the sort of cases that give rise to secession justified by a Remedial Rights account, but we shall assume this is met for now. Then, on the Remedial Rights account, the new state owes no special compensation to those "trapped" in the new state. But, those so trapped may still want to leave, have good reason to want to do so, and be disadvantaged by the need to do so. The cause of this need to leave, however, is the bad acts of the parent state. So, here, it is the parent state that has the obligation to make the move easy, both by granting admission, and also by paying compensation for those relocating. (We may note that, in real-world cases, many parent states in this situation do not want the "trapped" population to be relocated, often for nakedly political reasons. The example of Russian populations in Ukraine — all too prominent recently — and Moldova are examples of this phenomenon, even though the secessions of Ukraine and Moldova from the Soviet Union were not plausibly Remedial Rights cases. This, however, is itself both a mistake and an injustice on the part of the parent, so we will condemn it and move on.)

What of cases where the new state in turn engages in bad acts? This is the more common scenario in real life, it seems, so it is worth considering to a greater degree than have most theorists of self-determination. Of course, the first obligation in such cases is

for the new state to stop doing the bad acts. But suppose the bad acts have already been done, and the remaining group of dissenters can no longer feel safe in the new state. Who owes what then? We here face difficult questions of casuistry that I cannot hope to fully answer, both because of space considerations in this paper and also because there may not be any useful general answers. But, in such instances, I will contend that both states owe some degree of compensation. The original, parent state does, both for the reason noted above, and also because its original bad acts were the proximate cause of the new bad acts. But the new state also owes compensation, since it had no right to drive out or persecute the remaining population of dissenters, and so must compensate them for making life in the new state unacceptable. This may be done by helping them, if they so wish, to move to the parent state. That is, the compensation may be paid by facilitating a voluntary population transfer.

### **Consensual Secession**

The last form of justification for secession that I will address is “Consensual” (sometimes also called or characterized as “Constitutional”) secession. As noted, Allen Buchanan has done as much or more than anyone else to distinguish Consensual/Constitutional secession from “contested” cases, where the latter group would include secession sanctioned by both Primary Rights and Remedial Rights Only accounts, so long as they were undertaken unilaterally. Consensual cases of secession, Buchanan notes, may be either negotiated or take place by means of a constitutional clause.<sup>59</sup> Such cases of secession are unproblematic, Buchanan contends, so long as “both parties” consent, and there are not violations of “individual or minority rights” during or after the process.<sup>60</sup> On its face, this seems completely plausible. In real life, again, issues are often much less clear, since it is unclear, both in morality and as a matter of international law, who the relevant “parties” are, and how they must or may make this decision. In many well-known cases of supposedly “consensual” secession or dis-union, such as the split between the Czech Republic and Slovakia, and the dissolution of the Soviet Union, the decision to split the country was made by political elites, arguably for their own benefit, and without the input, and quite possible without the support, of the local population. Whether such cases can properly be called “consensual” is at least unclear, though I shall largely leave this particular issue aside.

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<sup>59</sup> Buchanan, *Justice, Legitimacy, and Self-Determination*, 338

<sup>60</sup> Buchanan, *Justice, Legitimacy, and Self-Determination*, 304

The deeper issue with respect to even cases of consensual secession undertaken in legitimate democratic form is that it, too, allows for people who do not agree with the majority to have their citizenship changed without their consent. Just as we would not think it acceptable for a majority in a state to decide, even by democratic vote, to take away the citizenship of a minority, and this even if a new citizenship would be given to the minority by another state, we ought not be satisfied with a procedure that allows majorities to change the citizenship of dissenters against their wishes. (Imagine that Spain wanted to re-acquire Florida, and that the rest of the U.S., perhaps tired of paying to re-build after hurricanes and looking to cut Medicare costs, decided to give Florida to Spain. I contend that even if everyone in Spain, and everyone in the U.S. outside of Florida, consented to this via a democratic vote, it would still be unjust to current Floridians to transform them into Spaniards if they, each one, did not consent to this. But this is a close parallel to what happens to dissenters, even in the case of consensual secession. In both cases the citizenship of the dissenters is unilaterally changed by a majority in a way that seems problematic, at best.) Something has gone wrong, or has been ignored, in discussions of consensual secession, it seems.

As with the general Primary Rights account, we could take this to show that the idea of consensual secession is incoherent, absent the agreement of every single person affected, and so must be dropped. But again, that seems too quick and extreme. The possibility of providing compensation that allows for voluntary population transfers between the two resulting states can arguably solve the most troubling issues that result from consensual secession. As with unilateral Primary Rights cases of secession, the purpose of providing this compensation is not to make the dissenters indifferent between the pre and post-secession state. Certain of their losses will, again, be “merely political” – the sort of losses we expect losers in any democratic system to put up with. Rather the point and goal of this compensation is to help the dissenters avoid the particular wrong of having their citizenship changed against their will, by helping them move, if they so desire, to one of the other states. The first thing that will be required here is that each citizen, regardless of where she lives after the split, must have the right to retain citizenship in either country. Now, if either country does not wish to extend dual citizenship to those living in it (a situation that seems to me likely), then any person who ends up living in the “wrong” country will be owed compensation sufficient to make movement to the “correct” country relatively easy. This is not based on a right to association, as in the Primary Rights account, but rather on the principle that a

state may not unilaterally change the citizenship of its members without their actual, individual, consent.<sup>61</sup>

Here, unlike unilateral Primary Rights cases, both sides are likely to have to provide compensation to a significant number of dissenters. (Note how this differs from unilateral cases. If Quebec unilaterally decided to withdraw from Canada, some francophone Canadians living outside of Quebec would likely want to leave the remaining part of Canada for Quebec, but I would see no reason for the remaining part of Canada to have any obligation to pay compensation in such a case, as Canada would have not changed anyone's citizenship without her or his consent.) We see here, then, that even consensual or constitutional approaches to secession must be able to deal with the problem of dissent and population transfers if they are to be complete and plausible.

### Conclusion

The desire for secession is never unanimous in any territory. In any case, there will be a dissenting population. This problem is obvious, and yet has been largely ignored in the philosophical or normative literature on secession and self-determination, except for calling for the protection of minority rights. Since the protection of minority rights is an obligation every state has anyway, it is clear that no real effort has been put into dealing with the problem of dissenters. Given the real-world results of this situation — quite often major human rights violations, but essentially always significant wronging of many people — this omission is unacceptable. In this paper I have tried to take a first step towards addressing this problem, by looking at the problem of population transfers, to see how, and if, it may be transformed from a serious wrong to a means of overcoming wrong-doing, while still accepting that some cases of secession are acceptable and very likely. While, I think, unilateral Primary Rights approaches to secession have the most obvious and far-reaching problems to overcome here, I have tried to show that

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<sup>61</sup> That a state may not render citizens *stateless* is set out in the UN Convention on the Reduction of Statelessness. See [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=V-4&chapter=5&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&lang=en). While many important countries, including the United States, are not participants to the treaty, the principles set out therein seem to me to be impeccable. The case in question would not render former citizens stateless, but that even the involuntary denaturalization of current citizens against their will when they have access to other citizenships is incompatible with due process and the equal protection of the law has been long recognized by the U.S. Supreme Court, among others. See, e.g., *Afroyim v. Rusk*, 387 U.S. 253 (1967). For discussion of this point, see my paper, *Citizenship, in the Immigration Context*, 70 MARYLAND LAW REVIEW 175, 226-29 (2010). My thanks to Larry May for pointing out the need to say more on this point.

similar issues arise in any approach to secession, including Remedial Rights Only and Consensual approaches. Importantly, in all three cases, the problem arises from the internal logic of the theory of secession itself, and not because of any “outside” considerations. I do not claim to have given a comprehensive theory, and perhaps there are other ways of addressing these serious wrongs accompanying all instances of secession. But, I hope that from this point it will be clear that any serious theory of secession and self-determination, if it hopes to be close to comprehensive, and if we are to judge its plausibility, will have to address the status of dissenters and the problem of population transfers.<sup>62</sup>

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<sup>62</sup> My thanks to Fernando Teson and Michael Blake for helpful discussion at the conference where this paper was first presented, to Martin J. De Nys, for insightful comments at a faculty workshop on this paper at the Higher School of Economics in Moscow, Russia, and to Gerald Vildostegui and Larry May for very helpful and insightful written comments on an earlier draft.