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The status of Kosovo – reflections on the legitimacy of secession

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Abstract
On 17 February 2008, the province of Kosovo formally declared its independence from Serbia. The most important normative theories of secession—choice theories and just cause theories—appear to justify the creation of a second Albanian state on the Balkans. Kosovo's independence reflects the will of the vast majority of its inhabitants and can be seen as a remedy for grave human rights violations in the era of Slobodan Milošević. Two problems, however, need to be thoroughly discussed. Firstly, the secession of Kosovo may establish a precedent for other separatist conflicts and contribute to the destabilization of south-east Europe and other world regions. Secondly, the new political authorities in Pristina may not be capable to protect the Serb minority against discrimination and repression. It is argued that both problems give no conclusive reasons to reject Kosovo's claim for independence. However, some aspects of the secession, for instance the maintenance of the provincial borders, are considered to be illegitimate.

Keywords: *drawing of borders; independence; majority decision; minority protection; primary right theories; remedial right theories; self-determination; sovereignty; territorial integrity*

On 17 February 2008, the parliament in Pristina formally declared Kosovo's independence from Serbia. The status of the territory which since June 1999 has been de facto a protectorate of the United Nations remains, however, contested. A number of states, most notably Russia and China, strongly oppose the secession and are determined to block Kosovo's admittance to international organizations. The USA and most members of the European Union, on the other hand, immediately recognized Kosovo as a sovereign state. However, the efforts of the European governments to reach a consensus about the status question failed. Some of its members, as for instance Spain and Cyprus, face their own separatist problems and are reluctant to recognize Kosovo's independence.[1] The current crisis gives political theorists and philosophers, once again, reason to reflect on the legitimacy of secession.

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Up to now, the philosophical discussion of secession has mainly focused on the justification of abstract principles. With a few exceptions, a detailed analysis of particular cases, such as Kosovo, has not been carried out.[2] Most case studies have been conducted by scholars of international law or political scientists who hardly address moral questions. In this paper I will explore Kosovo's secession from the perspective of political philosophy. Thereby I intend to achieve two aims. On the one hand, I wish to contribute to a better understanding of the complex moral questions raised by Kosovo's claim for independence. On the other hand, I wish to highlight some theoretical problems the philosophical discussion thus far has not sufficiently considered.

In the first section, I will begin with a brief account of the events that preceded the declaration of independence. Thereafter, I will sketch the leading philosophical theories of secession and try to apply their basic ideas to the case of Kosovo. In the subsequent sections I will examine two justificatory problems that the creation of a sovereign state in Kosovo encounters. Firstly, I will address the threat of a further fragmentation and destabilization of the Balkans entailed by the separation of Kosovo. Secondly, I will discuss the legitimacy of a majority decision on secession and the need to protect the Serb population and other minorities in Kosovo. Finally, in the last section, I will summarize my main arguments for the approval of Kosovo's independence and point to some flaws in the process of its realization.

THE ROAD TO INDEPENDENCE

The conflict between Serbs and Albanians in Kosovo long precedes the foundation of the Yugoslav state in the aftermath of World War I. It can, at least, be traced back to the 14th century, when the territory came under the rule of the Ottoman Empire.[3] Neither the Kingdom of Yugoslavia (1918–1941) nor the Federative People's Republic of Yugoslavia (1945–1992) managed to resolve the frictions.[4] Even in the era of Socialism, national tensions were not overcome and separatist tendencies occasionally became apparent. Most notably, in March 1981, Albanian students rallied in the streets of Pristina to protest against their social situation and to call for independence. The unrest quickly spilt over into other cities and became a mass movement that had to be violently suppressed.

A key factor in the development of the recent crisis was Slobodan Milošević's rise to power within the Serbian Communist Party by the end of the eighties. In contrast to Tito, who had tried to balance the interests of the Yugoslav peoples, Milošević openly pursued a policy of Serbian nationalism.[5] In March 1989, the political autonomy the province of Kosovo had enjoyed under the Yugoslav constitution from 1974 was severely diminished. One year later, in June 1990, the provincial parliament was dissolved after its representatives had adopted a declaration of independence.[6] Moreover, the Milošević regime exerted substantial pressure on the population to attain its aim of a cultural 'Serbanization' of Kosovo. Inter alia, the Serbian language was introduced as compulsory at schools, and thousands of

teachers who opposed this regulation lost their jobs. Although the Albanians initially protested peacefully against the oppression, the state authorities engaged in systematic human rights violations. Human rights organizations documented numerous cases of Albanians who were sentenced without a proper trial or mistreated in police custody.[7]

The Albanians largely boycotted the Serbian-dominated institutions and tried to establish their own state structures. Under the leadership of Ibrahim Rugova, the elected president of the Albanian parallel state, they refrained from violence until the beginning of 1996. By then a growing number of Albanians had the impression that the strategy of peaceful resistance had failed to improve their situation. Most importantly, the fact that the Kosovo issue was not part of the Dayton Accords in 1995 caused bitter disappointment. As a consequence, the Kosovo Liberation Army (KLA), which rejected Rugova's pacifist course, was founded and took up arms. The attacks of the KLA and the Serbian responses which they provoked gradually led to an escalation of the conflict. In July 1998 the KLA abandoned its guerrilla tactics and for the first time attempted to seize control of a town in the Western part of the province. The Serbian army reacted with a massive offensive which compelled tens of thousands of Albanian civilians to flee to the nearby hills. To avert a humanitarian disaster, the North Atlantic Treaty Organization (NATO) called for the withdrawal of Serbian forces and threatened to launch air strikes if necessary. Thereby it prompted the Milošević regime to accept a ceasefire and to allow the deployment of 2,000 unarmed of the Organization for Security and Co-operation in Europe (OSCE) to Kosovo.

In the following months the truce was repeatedly broken by both sides and the situation appeared increasingly intolerable. After the alleged massacre in the village of Račak the Contact Group, which consisted of the USA, Russia, Britain, France, Germany, and Italy, initiated peace talks between the opposing parties on 6 February 1999 at Rambouillet.[8] The primary goal of the negotiations was to persuade the Serbian government to allow armed NATO forces to take over control in Kosovo. President Milošević, however, found the conditions unacceptable and refused to put his signature on the peace accord. In response to the failure of the Rambouillet talks, NATO units started on 24 March 1999 a large-scale military operation. At the same time, the Serbian government engaged in the mass expulsion of the Albanian population and compelled more than 700,000 people to seek refuge in adjacent countries.[9] Yet, after 78 days of massive air strikes, Milošević agreed to the complete withdrawal of the Serbian military and paramilitary forces. On 12 June 1999, NATO ground troops entered Kosovo and gained full control over the province within a few weeks. Until the public order was restored, an estimated 150,000 Serbs escaped from acts of vengeance across the provincial border.[10]

The United Nations had assumed responsibility for the further developments in Kosovo only two days before the NATO invasion begun. On 10 June 1999, the Security Council adopted resolution 1244 which determined the establishment of the United Nations Interim Administration in Kosovo (UNMIK) and the Kosovo Forces (KFOR). However, the future status of Kosovo, the main point of difference

between the Serbian and the Albanian sides, was not clearly stipulated. On the one hand, resolution 1244 referred in various passages to the sovereignty and territorial integrity of the Yugoslav state.[11] Furthermore, it explicitly stated that the transitional administration should enable the people of Kosovo to enjoy substantial autonomy *within* Yugoslavia. On the other hand, the resolution repeatedly emphasized the need to reach a political settlement of the conflict. Thereby it indicated that the final decision on Kosovo's status would be made at the end of a negotiation process.[12]

With reference to resolution 1244, Martti Ahtisaari, the United Nations' special envoy for Kosovo, initiated in November 2005 a series of two-party talks. Not unexpectedly, the Serbian and Albanian representatives failed to reach a consensus about the question of independence. In his final report for the Secretary-General from 26 March 2007, Martti Ahtisaari stated:

> (...) After more than one year of direct talks, bilateral negotiations and expert consultations, it has become clear to me that the parties are not able to reach an agreement on Kosovo's future status. Throughout the process and on numerous occasions, both parties have reaffirmed their categorical, diametrically opposed positions: Belgrade demands Kosovo's autonomy within Serbia, while Pristina will accept nothing short of independence. (S/2007/168)

To break this impasse, Martti Ahtisaari submitted his own proposal for settling the Kosovo status to the Security Council. Basically, he suggested conceding the province—in line with the Bosnian solution—a form of supervised sovereignty. According to his plan, Kosovo should obtain full independence from Serbia but remain, for the time being, under international control. In particular, with regard to minority rights the new state should conform to a high number of detailed requirements.

The Russian government strictly rejected the Ahtisaari-Plan and threatened to put in a veto in the Security Council decision. A new round of negotiations between the Serbian government and the representatives of Kosovo Albanian provisional government that was opened on Russian demand ended on 10 December 2007 without results. Even before, US-President Bush had declared his willingness to bypass the United Nations and to recognize Kosovo's independence unilaterally. Frustrated by the lack of progress, more and more member states of the European Union followed the course of the US-Government. On 14 December 2007, the European Union decided to establish the European Union Rule of Law Mission (EULEX) in Kosovo, with the aim to support the implementation of the Ahtisaari-Plan. However, the intended circumvention of the United Nations proved to conflict with the requirements of international law. Resolution 1244 gives the European Union no explicit mandate to supervise Kosovo's sovereignty, and Russia prevents the Security Council from reaching a new decision.[13] In negotiations with Belgrade the new Special Representative of the United Nations, Lamberto Zannier, finally reached a compromise. The Serb government accepted the deployment of EULEX throughout Kosovo on condition that the mission will be strictly neutral on the status question.[14] The government in Pristina instantly raised a protest against the

compromise. Kosovo's political leaders take the view that the declaration of independence on 17 February 2008 and the adoption of the constitution on 15 June 2008 established a sovereign state.[15] They promised, however, to continue the cooperation with the United Nations and the European Union on the basis of the Ahtisaari-Plan.

PHILOSOPHICAL THEORIES OF SECESSION

In the current discussion on the legitimacy of separatist aspirations, three theoretical positions have to be distinguished.[16] The primary right or choice theories, on the one hand, offer a voluntaristic justification for secession. Their adherents hold that any territorially concentrated group of individuals may freely decide on its membership in a given state.[17] In Kosovo the ratio of positive and negative attitudes toward secession reflects to a large extent the national proportion of its inhabitants. The vast majority of the Serbs, who make up about 5% of the population, oppose separation; whereas the Albanians, who comprise about 90% of the residents, almost unanimously wish to have a state of their own. The latter have already expressed their willingness to gain independence in a plebiscite that they organized in September 1991. According to Albanian sources, about 87% of the eligible residents participated in the referendum, and more than 99% of the voters supported the creation of a sovereign state.[18]

On February 2008, no referendum was organized; the parliament in Pristina decided to declare Kosovo's independence. Yet there is no doubt that a newly held plebiscite on the question of secession would have confirmed the result of the former vote. Given the desire of the vast majority of Kosovo's population to gain political independence, the creation of a sovereign state appears to be legitimate. However, most proponents of primary right theories have stipulated some conditions that the separatists must meet. Harry Beran, for instance, has argued that secession must be prohibited if it exposes minorities to exploitation or oppression. As I will explain later in more detail, this requirement causes serious problems for the justification of Kosovo's independence.[19]

Theories of national self-determination, the second alternative, may be labeled voluntarist as well. Contrary to primary right theories, they only regard national communities as being morally entitled to establish an independent state.[20] The restriction of the right to secede to nations has, however, no bearing on the assessment of Kosovo's political divorce. The Albanians clearly meet the objective as well as the subjective criteria that are used to characterize national communities. By central cultural aspects they differ from the Serbian population, e.g. they speak a language of their own and have a distinct religious affiliation. Furthermore, they recognize each other as members of a particular nation and have a strong sense of belonging together.[21] Since the Albanian population qualifies as a national community, there is no reason for advocates of nationalist theories to withhold the right to secede from them.

The remedial right or just cause theories, on the other hand, treat the right to secession analogously to the right to resistance. Their advocates view the demand for an independent state only as legitimate if the group in question suffers from serious injustice. They usually acknowledge inter alia the forceful annexation of the territory and the violation of fundamental human rights as justification for secession. The focus of remedial right theories is, in contrast to primary right theories, not on the will of the people but on their ill-treatment by the existing state. As I outlined above, the Kosovo Albanians undeniably experienced severe oppression and violence in the era of Slobodan Milošević. The Serbian military and paramilitary forces committed the most serious human rights abuses—including murder, rape, and expulsion. Therefore, the events that preceded and accompanied NATO's military intervention in June 1999 appear to give the Albanian population a just cause to secede.[22]

Remedial right theorists, however, face two problems when they consider the claim for an independent Kosovo. Firstly, the distinction between the group of offenders and the group of victims that the remedial right approach presupposes is not clearly cut. To be sure, the Albanian population suffered from severe human rights violations under the regime of Slobodan Milošević. As long as they jointly followed the lead of Ibrahim Rugova and responded peacefully to the aggression, they could unequivocally be categorized as victims. The picture changed, however, when the KLA entered the stage in February 1996 and put up armed resistance. The KLA not only attacked military and paramilitary forces, but also committed atrocities against Serbian civilians and Albanians who were accused of collaboration. Moreover, according to many observers, its leaders deliberately tried to escalate the conflict with the aim to provoke an international intervention. Thus, the activities of the KLA may have conflicted with the principle of proportionality, i.e. they may have exceeded the countermeasures permitted by the right to self-defense. To my knowledge, remedial right theorists have not commented on cases in which the just cause of a group is tainted with unjust actions of some of its members. Therefore, the question whether they regard the secession of Kosovo as rightful despite the war crimes of the KLA cannot be answered with certainty.

Secondly, the time lag between the unjust treatment of the Albanian population and the creation of a sovereign state in Kosovo deserves consideration. As a result of NATO intervention, no further human rights abuses of Serbian forces have occurred since June 1999. Thus, the complaints of the separatists date back to the period before the civil administration of the United Nations was established. If the remedial right to secession is meant to be a right to self-defense, the distance of time cannot be ignored. An action can only count as an instance of self-defense if it is performed in direct response to an aggression. If the life of person A is threatened by person B, he is allowed to take appropriate measures to protect himself against the assault. However, he cannot plausibly assert to act in self-defense if he uses violence against person B eight or 10 years later.[23] Likewise, nowadays Kosovo's secession cannot be seen as an immediate reaction to human rights violations by the Serbian state.

Allen Buchanan, the main proponent of the remedial right theory, has not directly addressed the aforementioned problem. However, in his writings he has repeatedly

emphasized that the right to secession should be treated as a remedy of last resort.[24] According to Buchanan, the creation of a new state should only be permitted if the injustice cannot be alleviated in less drastic ways. To think of secession as a remedy of last resort has important consequences for the justification of Kosovo's independence. One has to consider carefully whether there are acceptable alternatives before consenting to the division of the existing state. With regard to Kosovo, one has to re-examine the current situation and to evaluate the prospects for political autonomy and minority protection in the democratic Serbia of today. If one reaches the conclusion that the Albanian population is no longer endangered, one has to disapprove of the secession. In this case the NATO intervention and the implementation of an interim administration, somewhat ironically, would have destroyed Kosovo's right to independence.

The discussion, so far, has shown that Kosovo's claim for sovereignty receives some support from the leading philosophical theories of secession. Primary right theories and theories of national self-determination attach great importance to the fact that the vast majority of the population wishes to separate from Serbia. Since the Kosovo Albanians clearly constitute a national community, proponents of the latter position have no reason to reject their claim for political independence. Insofar as the Kosovo Albanians suffered from severe human rights violations in the era of Slobodan Milošević, they have in addition a just cause for secession. However, the preceding discussion has also revealed some ambiguities regarding the moral assessment of Kosovo's secession. It is, for instance, not clear how the remedial right theories deal with the atrocities committed by the KLA and with the time lag between injustice and secession. Even more importantly, some normatively relevant aspects of Kosovo's independence have not yet been addressed. Two serious problems—the supposed effects on other separatist conflicts and possible dangers to the Serb minority—need to be examined. In the next sections I will explore, first, the risk of further secessions that the creation of a new Albanian state presumably entails and will then turn to the legitimacy of majority decision.

THE THREAT OF FRAGMENTATION AND DESTABILIZATION

In 1991 a series of secessions, starting with the Baltic Republics, led within a few months to the breakdown of the Soviet Union. In the same year, caused by Slovenia's and Croatia's declaration of independence, the disintegration of Yugoslavia began. Hitherto, 15 new states have been established in the Soviet Union and six sovereign entities have come into existence in Yugoslavia. To understand the distinctiveness of the Kosovar claim for independence, one has to take a closer look at the process of fragmentation. The dissolution of the Soviet Union and Yugoslavia followed the same pattern in so far as both states split apart along the lines of the existing federal subunits. Although in some cases, such as the Crimean peninsula, the internal borders were initially fiercely disputed, in the end they remained unchanged. Until February 2008 the international community had exclusively recognized former

republics of the Soviet Union and Yugoslavia as sovereign states. The case of Kosovo is of particular importance because its legal status differed from that of Slovenia, Croatia, and the other newly independent states. Although the Yugoslav constitution from 1974 granted limited political autonomy to Kosovo as well as to Vojvodina, both provinces were treated as parts of the Republic of Serbia.

There is widespread fear that Kosovo's independence might encourage further secessions, thus causing a high amount of instability. Most of the Yugoslav successor states comprise national minorities which might claim a revision of the existing borders. The Albanians in Macedonia, for instance, might be tempted to follow the lead of their Kosovar brothers. Likewise, the Serbs in Bosnia-Herzegovina might try to gain full political independence or unification with Serbia. Moreover, the international recognition of Kosovo's sovereignty would possibly strengthen separatist movements in other parts of the world. Most obviously, the unity of some successor states of the Soviet Union, for instance, Georgia or Moldavia, could be endangered. The supporters of secession in South Ossetia, Abkhazia, and Transnistria might—in view of Kosovo's success—not be willing to compromise. In fact, the Russian government made an explicit reference to Kosovo to justify its armed intervention in Georgia in August 2008. All parties that are involved in the conflict over Kosovo's status are well aware of the possibility to establish a precedent. The representatives of the United Nations frequently point to the singularity of the case and emphasize that its handling does not set the benchmark for other separatist conflicts.[25] Whereas, the Serbian and the Russian government take every opportunity to warn of the effects that Kosovo's independence might have on the Balkans and other world regions.

The federal organizations of the Soviet Union and Yugoslavia undoubtedly provided for an element of stability in the process of fragmentation. Thus, the borders of the subunits may appear as one—perhaps the only—possible halt point on the slippery slope of separatism. Respect for the territorial integrity of former republics may be deemed necessary to avoid an ongoing destabilization of the state system. Therefore, one may wish to restrict the right to secede to the subunits of federal states. As a consequence, an act of secession which violates the internal borders of the predecessor state would be illegitimate. The inhabitants of Kosovo could not claim a right to independence because the Yugoslav constitution did not concede the required status to their territory. Before I consider the merits—or rather deficiencies—of the aforementioned argument, I will briefly explicate its political importance. The aim to protect the territorial integrity of republics strongly influenced the response of the European Community to Yugoslavia's disintegration.[26]

The intention to retain the existing subunits was already apparent in the guidelines on the recognition of new states which the European Community issued on 16 December 1991. Among other conditions which applicants for statehood had to fulfill, they were required to show 'respect for the inviolability of all frontiers.'[27] Even more explicit with regard to the status of the former Yugoslav republics was Opinion No. 3 of the Badinter Commission from 11 January 1992.[28] Answering to the

question whether some disputed internal borders in Yugoslavia could be regarded as frontiers in terms of international law the Commission stated:

> 'The boundaries between Croatia and Serbia, between Bosnia-Herzegovina and Serbia, and possibly between other adjacent independent States may not be altered except by agreement freely arrived at. (...) The former boundaries become frontiers protected by international law. This conclusion follows from the principle of respect for the territorial status quo and, in particular, from the principle of uti possidetis.'[29]

The above quoted Opinion explicitly stressed the intention to advance the stability of new states. As a consequence, the Badinter Commission effectively confined the right to self-determination to the six Yugoslav republics. Thus, the European Community recognized Bosnia-Herzegovina as a sovereign and independent state, but refused to accept the secession of its Serbian-dominated parts.[30]

Having explained the motives for the protection of internal state borders, I will now consider whether it can stand up to critical scrutiny. The attempt of the European Community to confine the right to secession to republics of federal states faces three serious problems. Firstly, the principle of political self-determination cannot be applied in a meaningful manner to arbitrary chosen collectives. It is frequently overlooked that the principle consists of two elements which are linked to different normative concepts. The idea of a collective *self*, on the one hand, places demands on the community which is supposed to constitute the state. The residents of the territory in question must have ethnic or national affiliations or, at least, the strong desire to form a political association. The free *determination* of one's affairs, on the other hand, requires institutions which enable the individuals to participate in political decisions. This has to be understood as a call for democratic government and a denial of all kinds of subjugation and oppression.[31]

To be sure, the federal organizations of many states take historical and cultural aspects, or even the will of the people, into consideration. However, the subunits of federal states do by no means necessarily coincide with the predominant group identities. The first Yugoslav state which came into existence after World War I provides an appropriate example. The borders of the 33 districts (oblasti) were designed in a rather technical way, i.e. they deliberately disregarded national sentiments.[32] As more current examples the so-called hyphen republics in Germany come to mind, which consist of two quite distinct parts. The inhabitants of North Rhine-Westphalia, Baden-Wurttemberg, or Mecklenburg-Western Pomerania clearly have no common identity and strong sense of belonging together. Accordingly, federal subunits do not always comprise collective entities that are suited for political self-determination at the state level.

Secondly, a rule that guarantees the territorial integrity of federal subunits appears to be biased against separatist movements. The federal organization—the number of republics, the drawing of borders, etc.—is exclusively determined by the existing state. Thus, a decision highly relevant to the possibility of secession and to the conditions under which it may occur is left to one of the opposing parties. In

consequence, minority groups who are not conceded a republic of their own—such as the Kosovo Albanians—will feel seriously disadvantaged. Likewise, minority members who do not approve of the given federal borders—such as parts of the Basques—will complain about their unfair treatment.[33] Therefore, the proposed solution will in all likelihood not be capable of putting an end to separatist disputes. Due to its partiality, the supporters of independence will feel morally entitled to continue their struggle for political self-determination. Thus, the aim to bring the process of fragmentation to a halt, which was the main reason for the protection of internal borders, will presumably be missed.[34]

With regard to Kosovo, the restriction of the right to secession to former republics would certainly not further stability. Even in the era of Socialism the Albanian population repeatedly complained about the unfairness of Yugoslavia's federal organization.[35] They claimed equal treatment in relation to Serbs, Croats, Slovenes, and other national groups who enjoyed the formal status of republics. Thus, the Albanians cannot be expected to subscribe to the view that Yugoslavia's internal borders deserve protection. They would undoubtedly refuse to live under the rule of Belgrade and continue to strive for the creation of a sovereign state. This is not to say that Kosovo's secession will solve the conflict and bring about stability in the foreseeable future. Since the vast majority of the Serbs—inside and outside Kosovo—oppose independence, the situation will remain highly volatile. The point is rather that the sole argument for the protection of federal subunits is inconclusive; the maintenance of internal borders does not necessarily lead to more stability.

Thirdly, the restriction of the right to secede to republics of federal states is likely to provide perverse incentives. The granting of limited political autonomy to subunits can make a valuable contribution to the satisfaction of minority demands. Therefore, the maintenance or development of federal structures can help to prevent conflicts and to stabilize multinational states. To be sure, the delegation of restricted self-determination rights to minorities offers no universal remedy for separatist aspirations. Even, as Will Kymlicka observed, it may have the effect of encouraging independence movements:

> (...) The more that federalism succeeds in meeting the desire for self-government, the more it recognises and affirms the sense of national identity amongst the minority group, and strengthens their political confidence. Where national minorities become politically mobilised in this way, secession becomes more likely, even with the best-designed federal institutions.[36]

However, in some states federal arrangements evidently provide a workable basis for the cooperation of the constituent nations. For instance, the granting of restricted self-determination rights to the 23 Cantons appears to be an important factor for the success of the Swiss model.[37]

In view of the positive effects on the solution of minority conflicts that federalism may have, this should be a viable option. However, a right to secede that is reserved to federal subunits may induce many states to make no use of this instrument. To protect their unity they may either forgo a federal organization or draw the borders of

their subunits in a way that makes partitions unlikely. As a consequence, they cannot concede limited self-determination rights to national or ethnic groups who wish to protect their cultures. Thus, fear of secession may prevent many states from finding adequate solutions for their minority problems. Subsequently, the aim to stabilize societies which are affected by multinational or multiethnic conflicts will not be achieved.

A right to secession that is restricted to federal subunits has, as the aforementioned objections reveal, serious flaws. It is based on an implausible concept of self-determination; it can probably not stop the process of fragmentation; and it has counter-productive effects on minority politics. For all these reasons a principle which allows only the republics of federal states to gain independence should not be accepted. Consequently, the legal status granted to the province of Kosovo by the Yugoslav constitution should not impede its secession. However, the argument leads also to the conclusion that not all demands of the Albanian separatists are morally justified. If the territorial integrity of the Serbian republic is not protected, the borders of the province of Kosovo cannot be sacrosanct either. Although the Serbian minority is on the whole too much scattered over Kosovo to make counter-secessions possible, one exception demands attention. The region north-west of Mitrovica, including parts of the city itself, is a Serbian stronghold that could easily be united with Serbia. Therefore, the borders of a sovereign Kosovar state should not be seen as predetermined by the territorial order of former Yugoslavia. Withholding the right to secede from the Serbian minority would mean to apply different standards to the opposing parties.[38]

THE JUSTIFICATION OF MAJORITY DECISIONS

It is a common feature of separatist conflicts that not all inhabitants of the contested territory share the wish to create a sovereign state. Although some referenda on secession, such as in Norway in 1905 or in Eritrea in 1993, revealed an overwhelming support for independence, the decisions were not unanimous. Even there a small minority disapproved of the creation of a sovereign state and opted for maintaining the status quo.[39] Subsequently, the justification of majority decisions has to play a crucial role with any argument for or against secession. The conflict in Kosovo is no exception from the rule; the population of the province is deeply divided on the question of independence. The Albanians, about 90% of the inhabitants, are in favor of secession, whereas the Serbs, circa 5% of the inhabitants, prefer to remain within the domain of Belgrade. The Serb population of Kosovo, as other loyalist minorities in separatist conflicts, can raise two objections to the creation of a sovereign state. Firstly, they may complain that the secession of the province compels them to leave the existing political community against their will. Secondly, they may point to serious risks to which they will be exposed if Kosovo gains independence and Albanian nationalists will take office.

We may gain a clearer understanding of the first objection if we look at the right of association to which primary right theories of secession attach great importance. The right of association forms an integral part of modern democratic constitutions and belongs to the core values of Western societies. Theories of constitutional law usually draw a distinction between the positive and negative sides of the right of association. Positively, it entitles individuals to form associations and to engage in communal activities; negatively, it secures freedom from involuntary membership in associations. The positive aspect of the right takes account of the fact that participation in different forms of communities frequently ranks high in individual life plans. The achievement of many important goals and the performance of many valued activities presupposes the possibility to enter into association with like-minded others. The negative aspect of the right gives consideration to the fact that preferences with regard to community membership are liable to change over time. The exit-option enables individuals to sever existing bonds and to engage in new relationships or to remain aloof. Furthermore, it aims at restricting the power of associations which may put substantial pressure on their members to conform to their rules.

To be sure, democratic constitutions do not—at least not explicitly—grant the right of association with regard to the state itself. The right is exclusively applied to communities which reside on the territory of the state, such as religious groups, labor unions or sports clubs. However, the aforementioned considerations seem to be of relevance for the state as for any other form of association. The individuals usually desire to form a political community with persons with whom they share basic interests, values, and cultural characteristics. Moreover, as separatist conflicts make apparent, they sometimes fail to identify with the existing state and wish to establish a new one.[40] Of course, one of the most important purposes of the modern state is the protection of individual rights. Thus, it may be argued that the right of association cannot refer to the state because the state is in charge of guaranteeing it. The secession of a subunit, however, has not necessarily negative effects on the protective functions of the state. The truncated state as well as the newly created one can be able and willing to safeguard individual liberties, including the right of association. If this condition is fulfilled, the ideal of free association and dissociation can consistently be applied to the state level.[41]

The Serb population of Kosovo may claim that the secession of the province violates their right of association both in its positive and negative sense. They are not allowed to remain under the jurisdiction of Belgrade, i.e. they have to leave the Serbian state against their will. Moreover, they are involuntarily included into the newly established state in which the Albanians are clearly predominant over other national groups. Thus, the treatment of the Serb population may appear illegitimate because it fails to show respect for an important liberty. However, the members of the Albanian majority in Kosovo who favor secession can base their claims on the right of association as well. They may assert that the right of association allows the separation from an existing political unit and the founding of a new one. Accordingly, the Albanians have the right to resign their membership in the Serbian state and to create an independent political community. Hence, the right of association seemingly

supports the cause of the defenders of the status quo and of the advocates of secession alike.

It is worth mentioning that the right of association only gives rise to conflicting claims if it is applied to the state; other types of community do not face a similar problem. If, for example, some discontented members of a religious group decide to leave, nobody's right of association is necessarily violated. The heretics may found a community of their own somewhere else, without forcing other believers to resign their membership in the established church. The state constitutes an exceptional case because it has, contrary to other types of community, a territorial dimension. Secession necessarily entails the partition of a piece of land whose inhabitants typically disagree on the question of independence. Consequently, if the separatists make use of their right of association, they have to compel other residents to join the new state. Likewise, if the loyalists exercise their right of association, they have to do so at the expense of fellow-citizens who desire to split apart.

By now it has become clear that with regard to the state not everybody's right of association can be respected. Since some individuals inevitably have to forego the political community of their choice, we cannot hope to completely avoid rights violations. However, we can try to find a decision procedure that allows as many individuals as possible to make use of their right of association.[42] In this regard a majority rule that demands the assent of at least 50% of the electorate is preferable to any conceivable alternative. Its application in a referendum guarantees that the highest possible number of individuals will be able to exert their right of association. Decision procedures which set a standard of, for example, 40 or 60% unfairly work to the advantage of either separatists or loyalists. In sum, the first objection does not succeed; the complaints which the Serb minority grounds on the right of association are outweighed by parallel complaints by the Albanian majority.

If, as proposed in the last section, sub-units of the separating region are allowed to opt for a counter-secession, even more cases of involuntary state-membership can be averted. The unification of the area north-west of Mitrovica with Serbia would increase the number of individuals who belong to the political community they identify with.[43] However, it is in general impossible to disentangle national communities completely by an act of secession or a series of subsequent secessions. Therefore, neither in Kosovo nor elsewhere partition can serve as an instrument for the creation of homogenous political units. The establishment of new states inevitably leads to so-called trapped minorities who frequently have to live in a hostile environment.

The second objection calls attention to the fact that secession may expose groups who wish to maintain the status quo at a level of serious danger. The justification of a majority decision on separation, therefore, has to address the problem that the newly created state may not be willing to respect minority rights. The argument that I have put forward so far explains why it is legitimate to withhold the right of association from some individuals. This, however, does not imply that a majority who desires to gain independence is entitled to violate other rights of the minority. It is a common

feature of modern democratic states that they do not accredit the majority with an unrestricted decision-making power. Their constitutions give fundamental individual concerns, such as the protection of life, bodily integrity and basic liberties, priority over collective interests. In other words, democratic societies regard decision-rules which enable the majority to encroach on fundamental individual rights as illegitimate. A vote on the future status of a territorial subunit has to meet the same requirements as the legislative procedures within the state. There are only two circumstances under which a majority decision on secession may be justified—either the separatists are considered trustworthy, i.e. to be prepared to abstain from rights violations, or a third party is willing and able to protect the minority.

With regard to Kosovo's secession, the Serb inhabitants have reason to doubt that the independent state will adequately respect their minority rights. As outlined in the first section, KLA forces committed human rights violations against the Serb population before and in the aftermath of NATO intervention. Under the interim administration of the United Nations, several incidents revealed that there still exists a high potential for aggression.[44] To be sure, the new constitution defines Kosovo as a multiethnic state and guarantees important minority rights. But the capability (and perhaps even the willingness) of the government to safeguard the rights of the Serb population may be doubted. However, the European Union has pronounced to enforce the Ahtisaari-Plan which advocates a supervised sovereignty for Kosovo. Most importantly, the Ahtisaari-Plan envisages, for a transitory period, appointing an international civilian representative with strong corrective powers. The representative is supposed to control above all the implementation of the minority policy which the status settlement stipulates. If the Ahtisaari-Plan is put into action, the Serbs and other minority groups will be effectively protected against repressive measures. In this case the creation of an independent state in Kosovo which the vast majority of its inhabitants desired can be regarded as legitimate.

In this section I have argued that majorities should only be allowed to secede if the prospective state can be expected to protect minority rights. If the European Union successfully ensures the implementation of the Ahtisaari-Plan, Kosovo will meet this requirement. However, many other separatist movements on the Balkans and elsewhere cannot satisfactorily guarantee the safety of minority groups. Their appeal to the will of the majority to break with the existing state does not suffice to vindicate a right to political independence. Therefore, the condition of minority protection constrains the possibility of further fragmentations that I have explored in the last section. It significantly reduces the number of territorial units whose residents can legitimately demand a state of their own.

CONCLUDING REMARKS

The arguments that I have put forward in this article lead to the conclusion that Kosovo's separation from Serbia may in principle be justified. The claim for

independence can be based on the predominant will of the inhabitants and on the unjust treatment of the Albanian population under Slobodan Milošević. Thus, the separatists may appeal to normative principles that play a prominent role in the philosophical discussion on secession. Both objections to the establishment of the new state that I have explored in the preceding sections proved to be unwarranted. Neither the federal organization of Yugoslavia nor the dissent of the Serb minority provides decisive reasons for maintaining the status quo. However, with regard to the Serb population Kosovo's secession has to meet an important condition. The creation of a sovereign state can only be justified if the security and basic rights of the Serbs are effectively guaranteed. Since for the time being the new Albanian state cannot be entrusted with minority protection, the commitment of a third party is required. The legitimacy of Kosovo's secession essentially depends on the willingness and capability of the European Union to safeguard the basic interests of the Serb population.

Notwithstanding my general endorsement of Kosovo's secession, I regard three aspects of its realization as problematic. Firstly, the fact that the United Nations have failed to organize a referendum on the status question deserves critique. To be sure, Kosovo's declaration of independence on February 2008 was adopted by a democratically authorized parliament. There is no doubt that a referendum would have shown an overwhelming support for the creation of a sovereign state.[45] However, the case of Kosovo should not be looked at in isolation; its handling may have effects on other separatist conflicts. Since parliaments not always correctly represent the views of the electorate, it seems preferable to leave decisions on fundamental questions, such as secession, to the citizens.[46] Therefore, the United Nations should aim at making it a general rule to hold a referendum when a territorial subunit demands independence. The procedure in Kosovo might have contributed to the development of an appropriate international standard; here the United Nations have missed an important opportunity to strengthen the role of plebiscites.

Secondly, although the territorial integrity of the Serb republic was not respected, a change of Kosovo's provincial borders was not seriously considered. As I outlined above, the region North-West of Mitrovica and parts of the city itself could easily be integrated into Serbia. A large majority of its predominantly Serb inhabitants would obviously prefer to live under the rule of Belgrade. At least from the perspective of primary right theories of secession the unequal treatment of both cases appears unjustified. If the boundaries of the Serb republic deserve no unqualified protection, the same must hold for the province of Kosovo. Apart from the question of legitimacy, maintaining the territorial status quo in Kosovo causes serious practical problems. The Serb population of the Mitrovica area strictly opposes Kosovo's independence and remains loyal to Belgrade. On May 2008, the region as well as the Serb enclaves within Kosovo participated in Serbia's general and local elections. Although Pristina denounced the elections as illegal, new local governments in Mitrovica and elsewhere were established. Kosovo's government and the interna-

tional administrators now face a dilemma. If, on the one hand, they try to enforce the authority of the independent state, they risk an escalation of the conflict. If, on the other hand, they do not intervene, they must come to terms with the development of a parallel state within Kosovo.

Thirdly, as I outlined in the first section, Kosovo's government firmly rejected the status neutral approach of the United Nations. The initial support of the political authorities in Pristina for the EULEX mission suffered a major setback when the compromise with Serbia was reached. To be sure, Kosovo's government unequivocally declared its willingness to comply with the provisions of the Ahtisaari-Plan. The newly created state, moreover, will depend for the foreseeable future on the financial aid of the European Union. Therefore, all political parties in Kosovo have strong economic incentives to cooperate with the donor countries. One wonders, however, how the European Union would respond if Kosovo's government demanded to lift all restrictions on its sovereignty. Whether the member states of the European Union would be prepared to enforce the supervision of Kosovo's political institutions appears questionable.[47] In view of the importance of minority protection and the need to gain the trust of the Serb population, this uncertainty gives reason for concern.

NOTES

1. Until October 2009, 22 out of 27 member states of the European Union (and 62 out of 192 United Nations members) have formally recognized Kosovo as an independent state.
2. See Raymond Deterez, 'The Right to Self-Determination and Secession in Yugoslavia: A Hornets' Nest of Inconsistencies', in *Contextualizing Secession. Normative Studies in Comparative Perspective*, eds. Bruno Coppieters and Richard Sakwa (Oxford: University Press, 2003), 112–32.
3. Židas Daskalovski, 'Claims to Kosovo: Nationalism and Self-Determination', in *Understanding the War in Kosovo*, eds. Florian Bieber and Židas Daskalovski (London: Frank Cass, 2003), 13–30.
4. The Federative People's Republic of Yugoslavia changed its name to Socialist Federative Republic of Yugoslavia in 1963.
5. Daniele Conversi, 'The dissolution of Yugoslavia. Secession by the Centre?' in *The Territorial Management of Ethnic Conflict*, 2nd ed., ed. John Coakley (London: Frank Cass, 2003), 264–92.
6. The Albanian leaders intended at this stage of the conflict to remain part of the existing state, i.e. they tried to gain independence from the Serbian Republic, not from the Yugoslav Federation. See Peter Radan, *The Break-up of Yugoslavia and International Law* (London, New York: Routledge, 2002), 196–201.
7. Julie Mertus and Vlatka Mihelić, *Open Wounds: Human Rights Abuses in Kosovo* (New York: Human Rights Watch/Helsinki, 1993); Noel Malcolm, *Kosovo: A Short History* (London: Macmillan, 1998), 342–47; Alex J. Bellamy, Human Wrongs in Kosovo: 1974–1999, in *The Kosovo Tragedy. The Human Rights Dimension*, ed. Ken Booth (London: Frank Cass, 2001), 105–26.
8. Academic literature gives different versions of what happened in Račak. Most writers hold the view that the 45 deaths were actually villagers who had been executed by Serbian killer troops. See, e.g. Sabrina Ramet, *Balkan Babel. The Disintegration of Yugoslavia from the Death*

of Tito to the Fall of Milošević, 4th ed. (Boulder, CO: Westview Press, 2002), 325–29. Some authors, however, suspect the KLA of having displayed the bodies of their own fighters who were killed in combat in Račak, for the purpose of provoking a NATO intervention. See, e.g. Aleksandar Pavković, *The Fragmentation of Yugoslavia. Nationalism and War in the Balkan*, 2nd ed. (Houndmills: MacMillan, 2000), 191–4.

9. John K. Cox, *The History of Serbia* (London: Greenwood, 2002), 169.
10. Aleksandar Pavković and Peter Radan, *Creating New States. Theory and Practice of Secession* (Aldershot: Ashgate, 2007), 153. For a comprehensive survey of the academic debate on the war in Kosovo, see Sabrina Ramet, *Thinking about Yugoslavia. Scholarly Debates about the Yugoslav Breakup and the Wars in Bosnia and Kosovo* (Cambridge: University Press, 2005), 200–19.
11. At this particular time the Federal Republic of Yugoslavia consisted of Serbia (including the provinces of Vojvodina and Kosovo) and Montenegro; on February 2003 it was renamed to State Union of Serbia and Montenegro.
12. Andreas Zimmermann and Carsten Stahn, 'Yugoslav Territory, United Nations Trusteeship or Sovereign State? Reflections on the Current and Future Legal Status of Kosovo', *Nordic Journal of International Law* 70 (2001): 423–60.
13. Jean D'Aspremont, 'Regulating Statehood: The Kosovo Status Settlement', *Leiden Journal of International Law* 20 (2007): 649–68.
14. On 24 November 2008, the Secretary General of the United Nations, Ban Ki-Moon, stated in his report: 'EULEX will fully respect Security Council Resolution 1244 (1999) and operate under the overall authority and within the status-neutral framework of the United Nations' (S/2008/692). See also S/2008/354, Annex I.
15. On 8 October 2008, the General Assembly of the United Nations adopted a resolution submitted by Serbia requesting the International Court of Justice to issue an advisory opinion on the following question: 'Is the unilateral declaration of independence by the Provisional Institutions of Self-Government in Kosovo in accordance with international law?' (A/Res/63/3).
16. Allen Buchanan, 'Theories of Secession', *Philosophy & Public Affairs* 26 (1997): 31–61; Allen Buchanan, *Justice, Legitimacy, and Self-Determination. Moral Foundations for International Law* (Oxford: University Press, 2004), 350–3.
17. For primary right theories, see Harry Beran, 'A Liberal Theory of Secession', *Political Studies* 32 (1984): 21–31; Harry Beran, 'The Place of Secession in Liberal Democratic Theory', in *Nations, Cultures, and Markets*, eds. Paul Gilbert and Paul Gregory (Aldershot: Ashgate, 1994), 47–65; David Gauthier, 'Breaking Up: An Essay on Secession', *Canadian Journal of Philosophy* 24 (1994): 357–72; Daniel Philpott, 'In Defense of Self-Determination', *Ethics* 105 (1995): 352–85; Christopher H. Wellman, *A Theory of Secession. The Case for Political Self-Determination* (Cambridge: University Press, 2005).
18. Aleksandar Pavković, *The Fragmentation of Yugoslavia*, 186–7.
19. Since the newly established state in Kosovo does not 'permit sub-groups within itself to secede', it clearly fails to satisfy another of Beran's conditions. See Harry Beran, *A Liberal Theory of Secession*, 29–30.
20. For nationalist theories, see Chaim Gans, *The Limits of Nationalism* (Cambridge: University Press, 2003); Avishai Margalit and Joseph Raz, 'National Self-Determination', *The Journal of Philosophy* 87 (1990): 439–61; David Miller, *On Nationality* (Oxford: University Press, 1995); David Miller, *Citizenship and National Identity* (Cambridge: University Press, 2000); Margaret Moore, *The Ethics of Nationalism* (Oxford: University Press, 2001).
21. A more detailed attempt to explicate the characteristics of a national community can be found in David Miller's book 'On Nationality.' According to Miller, a nation can be defined as '(...) a community (1) constituted by shared belief and mutual commitment, (2) extended in history, (3) active in character, (4) connected to a particular territory, and (5) marked off from other communities by its distinct public culture (...)' (27).

22. One may argue that the violations of human rights from which the Kosovo Albanians suffered must be seen as a reaction to their separatist aspirations. In this view, the Kosovo Albanians cannot claim a remedial right to secede because it was their attempt to secede that led to violent countermeasures. However, the Serbian state infringed on basic political and cultural rights even before the first declaration of independence in June 1990. Furthermore, it is open to debate whether the more severe human rights violations that were committed later constitute a just cause for—initially unjustified—secession. I am grateful to an anonymous referee of this journal for bringing this point to my attention.
23. Irrespective of the time lag, person A has a claim on person B to compensate him for the harm he has suffered. Correspondingly, the remedial right to secession could be conceived of as a right to compensation that an unjustly treated group could assert against the state. Thus the aforementioned problem could be avoided, but still one would have to give reasons why secession is thought to be the appropriate form of compensation.
24. See for example, the following statement: 'Remedial Right Only Theories conceive of the right to secede as analogous to the right to revolution as understood in the mainstream of liberal political theory: as a remedy of last resort to persistent and grave injustices.' Allen Buchanan, *Justice, Legitimacy, and Self-Determination*, 351.
25. Martti Ahtisaari, for instance, wrote in his report for the Secretary General: 'Kosovo is a unique case that demands a unique solution. It does not create a precedent for other unresolved conflicts. In unanimously adopting resolution 1244 (1999), the Security Council responded to Milošević's actions in Kosovo by denying Serbia a role in its governance, placing Kosovo under temporary United Nations administration and envisaging a political process designed to determine Kosovo's future. The combination of these factors makes Kosovo's circumstances extraordinary' (S/2007/168).
26. In the process of decolonization, the United Nations protected the territorial order that the colonial powers had established in their domains. Although the United Nations made a few exceptions, the colonial peoples were in general not allowed to change existing borders. See Antonio Cassese, *Self-Determination of Peoples. A Legal Reappraisal* (Cambridge: University Press, 1995), 76–9. Most importantly, the secessions of Katanga from Congo in 1960 and of Biafra from Nigeria in 1967 were not accepted. See Lee C. Buchheit, *Secession. The Legitimacy of Self-Determination* (New Haven, CT, London: Yale University Press, 1978), 141–53, 162–76.
27. The European Community's guidelines on the recognition of new states are published in 31 ILM 1485-1487 (1992).
28. The Badinter Commission—named after its French chairman—was designed to counsel the European Community on legal questions concerning Yugoslavia's dissolution. From the late 1991 to the middle of 1993 the Commission handed down 15 opinions on different aspects of independence and state recognition.
29. For Opinion No. 3 of the Badinter Commission, see 31 ILM 1499-1500 (1992); an excellent discussion of the Commission's ruling on internal borders can be found in Peter Radan, *The Break-up of Yugoslavia*, 222–33; for a brief account, see Helene Quane, 'A Right to Self-Determination for the Kosovo Albanians?' *Leiden Journal of International Law* 13 (2000): 219–27.
30. Mikulas Fabry, 'International Norms of Territorial Integrity and the Balkan Wars of the 1990s,' *Global Society* 16 (2002): 145–74.
31. According to remedial right theorists, individuals who live under democratic institutions and enjoy substantial freedoms have no reason to complain and cannot justify secession. Since they think of political self-determination exclusively in terms of democratic governance, they are negligent of the self-related aspects of the principle.
32. See Peter Radan, *The Break-up of Yugoslavia*, 138–9.
33. Jan Mansvelt Beck, *Territory and Terror. Conflicting Nationalisms in the Basque Country* (London, New York: Routledge, 2005), 77–96.

34. Robert McCorquodale made a similar remark with regard to the postcolonial order: '(. . .) The inequities of the colonial boundaries cannot be ignored as these boundaries were the result of dispositions by colonial powers, often in complete disregard for natural geographical or ethnic boundaries. These inequities often give rise to conflicts rather than resolve disputes (. . .).' Robert McCorquodale, 'Self-Determination: A Human Rights Approach,' *International and Comparative Law Quarterly* 43 (1994): 857–85, at 881.
35. See Noel Malcolm, *Kosovo: A Short History*, 324–9.
36. Will Kymlicka, 'Is Federalism a Viable Alternative to Secession?' in *Theories of Secession*, ed. Peter B. Lehning (London, New York: Routledge, 1998), 139. See Will Kymlicka, *Politics in the Vernacular. Nationalism, Multiculturalism, and Citizenship* (Oxford: University Press, 2001), 112–6.
37. Will Kymlicka arrived at a similar conclusion: '(. . .) It would be a mistake to think that implementing federalism will remove the issue of secession from the political agenda. I should emphasise (. . .) that I am not suggesting that we therefore reject federal solutions. Federalism is often the only option available for accommodating conflicting national identities within a multinational state.' Will Kymlicka, *Is Federalism a Viable Alternative to Secession?* 142.
38. Märta C. Johanson wrote on this issue: 'It would not (. . .) seem to promote long-term peace to unconditionally support the retention of the present Kosovo boundaries as the borders of an independent State of Kosovo at this point in time. Such a retention would not represent the maintenance of any *status quo*, as the effects of that boundary—containing vulnerable groups without protection within an entity which those groups perceive to be immediately threatening—would only fossilize the present tensions.' Märta C. Johanson, 'Kosovo: Boundaries and the Liberal Dilemma', *Nordic Journal of International Law* 73 (2004): 535–49, at 549.
39. In the Norwegian plebiscite 99.9% of the participants opted for independence; see Pavcović and Peter Radan, *Creating New States*, 73. In the Eritrean referendum 99.8% of the voters supported the creation of a sovereign state; see Ruth Iyob, 'The Ethiopian-Eritrean conflict: diasporic vs. hegemonic states in the Horn of Africa, 1991–2000', *The Journal of Modern African Studies* 38 (2000): 658–82.
40. Harry Beran remarked on the right of association: 'One area to which the ideal of the voluntariness of human relationships has not been applied by liberalism, in theory and practice, is that of the unity of the state itself. Yet it seems that a commitment to the freedom of self-governing choosers to live in societies that approach as closely as possible to voluntary schemes, requires that the unity of the state itself be voluntary and, therefore, that secession by part of a state be permitted where it is possible.' Harry Beran, *A Liberal Theory of Secession*, 25. Similar views are expressed in David Gauthier, *Breaking Up: An Essay on Secession*, 359–62; Daniel Philpott, *In Defense of Self-Determination*, 355–63. For critical statements, see Anthony H. Birch, 'Another Liberal Theory of Secession', *Political Studies* 32 (1984): 596–602; Allen Buchanan, 'Democracy and Secession', in *National Self-Determination and Secession*, ed. Margaret Moore (Oxford: University Press, 1998), 14–33.
41. See Christopher H. Wellman, *A Theory of Secession*, 35–8.
42. David Gauthier advanced—perhaps more elegantly—the idea of a weak right of association: 'I find it helpful to think of each person as having a weak right to enter into and continue political association with those with whom she wishes to associate and who wish to associate with her, and to avoid or to exit from association with those with whom she wishes not to associate. By a "weak right" I intend one whose exercise must be coordinated with that of other persons in such a way that, other things equal, as many persons as possible will find themselves in mutually desirable association.' David Gauthier, *Breaking Up: An Essay on Secession*, 360.
43. For the proposal to make a recursive use of majority decisions, see Harry Beran, *A Liberal Theory of Secession*, 29–30; for a discussion of this principle in the context of former

Yugoslavia, see Aleksandar Pavković, 'Recursive Secessions in Former Yugoslavia: too Hard a Case for Theories of Secession,' *Political Studies* 48 (2000): 485–502.

44. The most serious incidents, which occurred on 17 March 2004 in Mitrovica as well as other cities and villages, led to 19 deaths and several hundreds injured. See Märta C. Johanson, *Kosovo: Boundaries and the Liberal Dilemma*, 535–7.
45. Arguably, the Serbs who were expelled from Kosovo in the aftermath of NATO intervention should have been allowed to participate in a referendum. Their votes, however, would not have tipped the balance in favor of maintaining the status quo.
46. For instance, the decision of Slovakia's parliament to dissolve the union with the Czech Republic would possibly not have obtained a majority in a referendum. See Aleksandar Pavković and Peter Radan, *Creating New States*, 76–8.
47. On 24 November 2008, the Secretary General wrote in his report on the United Nations Interim Administration Mission in Kosovo: 'The Kosovo authorities frequently question the authority of UNMIK in a Kosovo now being governed under the new Constitution. While my Special Representative is still formally vested with executive authority under resolution 1244 (1999), he is unable to enforce this authority. In reality, such authority can be exercised only if and when it is accepted as the basis for decisions by my Special Representative' (S/2008/692).