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Peter Lindsay

Georgia State University, plindsay2@gsu.edu

Christopher Heath Wellman

Washington University in St Louis, kwellman@artsci.wustl.edu

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Lincoln on Secession

The recent spate of secessionist conflicts has inspired many of us to return to the classics of political theory for moral guidance on state-breaking. Because Hobbes, Locke, Rousseau, et al. are virtually silent on this topic, however, we look in this paper at the writing of Abraham Lincoln. Lincoln is not typically heralded for his political theory, but his arguments on secession deserve our careful attention not only because he was an exceptionally reflective principal in what was arguably history's most spectacular, protracted secessionist conflict, but also because (descendants of) his arguments continue to be influential.¹

In this essay we critically review Abraham Lincoln's arguments against the South's bid for independence. In doing so, we divide the article into three sections. First we review Lincoln's ten arguments against secession. Next we explain why none of these arguments is adequate. Finally, we offer an alternative argument that we believe better justifies Lincoln's Unionist stance.

Lincoln's Case Against State-Breaking

History records Lincoln as one of America's great political figures. He is commonly not, however, listed among the pantheon of leading philosophical lights—a contrast that presents certain problems in the search for Lincoln's "theory of secession." Perhaps, as Plato suggests, this contrast reflects the necessities of both endeavors. Political greatness, after all, is apparent in the ability to know what sorts of arguments appeal to

¹Allen Buchanan credits Lincoln as the originator of many of the arguments against secession that he surveys in his excellent book, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder: Westview, 1991), and Philip Abbott reflects upon how contemporary liberals and communitarians might utilize Lincoln's various arguments in his article, "The Lincoln Propositions and the Spirit of Secession," in Percy B. Lehning (ed.), *Theories of Secession* (London: Routledge, 1998), pp. 182-207.

what sorts of audiences.² Yet to have a theory, in the philosophical sense, suggests that one hold a set of ideas offering at least a good faith effort at internal consistency.

The ideas that Lincoln voiced and penned on secession make no strong case for altering history's assessment of him. What, for instance, are we to make of the claim that "[p]erpetuity is implied, if not expressed, in the fundamental law of all national governments" (IV, 252)? Were this true, it would foreclose any and all secessionist claims, irrespective of any substantive merit. Yet there is reason to doubt that Lincoln really wished to defend such an absolutist position. (Would he really want to suggest that the American Colonies were unjustified in seceding from the British, for instance?) His more common tactic was to raise arguments that could be made for secession and then demonstrate how in each instance they did not apply to the Southern case. The tactic was effective in casting the widest net possible, yet it was hardly the stuff of a "theory of secession." This fact will not concern us here. Our principal aim in this section is simply to highlight his many arguments; we are not concerned to place them in what would undoubtedly be a more forgiving political context.

Before examining these positions, two historical points need to be made. First, while Lincoln's writings span four decades, the great majority of his thoughts on secession come from a fairly short period of time. Most of the documents to which we refer were written between the end of 1860 and the middle of 1861. Two documents in particular play a prominent role: his First Inaugural Speech, delivered on March 4, 1861 (a month after the outbreak of the war), and his "Message to Congress in Special Session," delivered on July 4 of that year.

The second point is related: as Lincoln did not take an active stand against Southern slavery until well after the war had begun (and then only, in all probability, in response to the South's dogged military resis-

²In Lincoln's case the skill was particularly apparent in his handling of the slavery issue. For instance, in July of 1958 we see him urging a Chicago audience to "discard all this quibbling about this man and the other man, this race and that race and the other race being inferior ... and [let us] unite as one people throughout this land, until we shall once more stand up declaring that all men are created equal" (II, 501). A scant two months later he assures an applauding southern Illinois audience (in a debate with Stephen Douglas) that he is not "nor ever [has] been, in favor of bringing about in any way the social and political equality of the white and black races ... Inasmuch as they cannot so live, while they do remain together there must be the position of superior and inferior, and I as much as any other man am in favor of having the superior position assigned to the white race" (III, 145-46). (All citations from Lincoln are from *The Collected Works* (New Brunswick: Rutgers University Press, 1955); volume and page numbers are shown in parentheses.)

tance), the issue is conspicuously absent from the discussion of secession. Four months before taking office, Lincoln proclaimed:

I have labored in, and for, the Republican organization with entire confidence that whenever it shall be in power, each and all of the States will be left in as complete control of their own affairs respectively, and at as perfect liberty to choose, and employ, their own means of protecting property, and preserving peace and order within their respective limits, as they have ever been under my administration. (IV, 141)

At his inauguration in March 1861, he put the point more directly: "I have no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists. I believe I have no right to do so, and I have no inclination to do so" (IV, 250). The well-known irony is that, while slavery seemed to be in the forefront of the minds of Southern leaders, it was not the issue with which Lincoln was most directly concerned. Far from being a matter of principle, the omission reflected Lincoln's understanding that any hint at abolition would surely lose the South. As we shall argue below, the tactic was not without moral costs.

With these historical notes in mind, we may now turn our attention to Lincoln's arguments, which are ten in number: two against secession of any stripe, one against withdrawing from a republic, and seven meant specifically to undermine the South's claim to independence. The most sweeping objection to secession (argument #1) was made in the following terms: "If a minority ... will secede rather than submit, they make a precedent which, in turn, will divide and ruin them; for a minority of their own number will secede from them whenever a majority refuses to be controlled by such minority" (IV, 256). Relating this point to the Confederacy, Lincoln writes:

For instance, why may not South Carolina, a year or two hence, arbitrarily, secede from a new Southern Confederacy, just as she now claims to secede from the present Union? Her people, and, indeed, all secession people, are now being educated to the precise temper of doing this. Is there such perfect identity of interests among the States to compose a Southern Union, as to produce harmony only, and prevent renewed secession? Will South Carolina be found lacking in either the restlessness or the ingenuity to pick a quarrel with Kentucky? (IV, 256)

The argument is straightforward: allow one region to secede and you create an environment in which secession is increasingly seen as the answer to political problems. Presuming this outcome to be unacceptable, Lincoln here effectively rules out any and all secession.

Lincoln's second objection to all secession (argument #2) was a *reductio* that compared secession to exclusion:

If all the States, save one, should assert the power to drive that one out of the Union, it is

presumed the whole class of seceder politicians would at once deny the power, and denounce the act as the greatest outrage upon the State rights. But suppose that precisely the same act, instead of being called "driving the one out," should be called "the seceding of the others from the one," it would be exactly what the seceders claim to do; unless, indeed, they make the point, that the one, because it is a minority, may rightfully do, what the others, because they are a majority, may not rightfully do. (IV, 436)

Here Lincoln noted that there is no morally significant difference between minority and majority secessions. Would things be any different if the South constituted 49 or 51 percent of the Union, for instance? Presumably not. Thus, there is no real difference between minority secession and majority secession, which is sometimes called "exclusion." However, exclusion is clearly impermissible: surely everyone would agree that it would be wrong for all of the States to exclude, say, South Carolina from the United States, for instance. But if exclusion is wrong and there is no morally relevant difference between minority and majority secessions, then minority secession is also wrong because it is simply exclusion by another name.

A third argument was only slightly less sweeping. Rather than barring all secession, Lincoln argued that, at a minimum, it is incompatible or at least unnecessary within what he called a "republican form of government." The claim here is that the institutions of change in such a government—elections,³ constitutional amendments,⁴ and even provisions for revolution⁵ (as well as "intelligence, patriotism, Christianity, and a firm reliance on Him" (IV, 261))—are adequate to address all conceivable grievances. Indeed, such ability to accommodate is what, for Lincoln, gave republicanism its moral stature.

Beyond these three general arguments, Lincoln cast a much narrower net, catching only the difficulties inherent in the Confederacy's secessionist claims. In his July 4, 1861 message to Congress (three months after the attack on Fort Sumter), he stated that

[o]ur adversaries have adopted some Declarations of Independence: in which, unlike the

³"I do not deny the possibility that the people may err in an election; but if they do, the true cure is in the next election; and not in the treachery of the party elected" (IV, 259). The point is perhaps more elegantly put in his July 4 (1861) "Message to Congress in Special Session," in which he suggests that the United States system teaches "men that what they cannot take by an election, neither can they take it by a war" (IV, 439).

⁴"Whenever [the people] shall grow weary of the existing government, they can exercise their *constitutional* right of amending it, or their *revolutionary* right to dismember it" (IV, 260).

⁵See preceding note. By "revolutionary right" Lincoln undoubtedly meant that right referred to in the Declaration of Independence. Note the contradiction with the argument mentioned earlier, that "no government proper, ever had a provision in its organic law for its own termination ..." (IV, 252).

good old one, penned by Jefferson, they omit the words "all men are created equal." Why? They have adopted a temporary national constitution, in the preamble of which, unlike the good old one, signed by Washington, they omit "We, the People," and substitute "We the deputies of the sovereign and independent States." Why? Why this deliberate pressing out of view, the rights of men, and the authority of the people? (IV, 438)

With this concern over the South's political philosophy in mind, Lincoln addressed the issue of secession:

The Constitution provides, and all the States have accepted the provision, that "The United States shall guarantee to every State in this Union a republican form of government." But, if a State may lawfully go out of the Union, having done so, it may also discard the republican form of government; so that to prevent its going out, is an indispensable *means*, to the *end*, of maintaining the guaranty mentioned. (IV, 440)

Here Lincoln made no blanket objection to secession,⁶ only a plea to protect that ("republican government") which secession threatens. That threat was, in his mind, not just evident in the words of Southern political philosophy; it could also be seen in the way in which contemporary political decisions were being made:

It may well be questioned whether there is, to-day, a majority of the legally qualified voters of any State, except perhaps South Carolina, in favor of disunion. There is much reason to believe that the Union men are the majority in many, if not in every other one, of the so-called *seceded States*. (IV, 437)

He goes on to cite the elections in Virginia and Tennessee that, given the strong elements of coercion involved, could "scarcely be considered as demonstrating popular sentiment" (IV, 437).⁷

Two distinct arguments can be seen in these remarks. One (argument #4) is that the secession was, far from a popular uprising, a movement co-opted by elites and therefore illegitimate from a republican (to continue in Lincoln's vernacular) standpoint. Lincoln is here emphasizing that the legitimacy of secession requires, among other things, that a majority of those in the seceding region freely support the separatist movement.

The second argument (argument #5) concerned the ultimate outcome of the separation. As the Confederacy's documents cast doubts on its desire to create a consent-based government, Lincoln viewed the Con-

⁶Taken out of context, this passage could be read as a blanket objection in the sense that no government could ever guarantee that the seceding region would maintain a republican form of government. Given that the remarks come in the context of Lincoln's very specific arguments about Southern threats to republican government, a "conditional" interpretation of the passage seems to make more sense.

⁷"At such an election, all that large class who are, at once *for* the Union and *against* coercion, would be coerced to vote against the Union" (IV, 437).

federate separatist movement with suspicion because he worried that they were poised to create an unjust (because non-republican) form of government that would thereby violate the rights of its free (i.e., non-slave) constituents.

Lincoln's third objection to the South's separation (argument #6) was that it was contractually obligated to remain in the Union. Lincoln himself did not believe the United States should be thought of as merely a contract. For the sake of argument, however, he was willing to think of it as just that. In his mind, this raised the following question: "[I]f the United States be not a government proper, but an association of States in the nature of a contract merely, can it, as a contract, be peacefully unmade, by less than all the parties who made it?" His answer was unequivocal: "One party to a contract may violate it—break it, so to speak; but does it not require all to rescind it?" (IV, 253). Just as Jones may not permissibly fail to deliver widgets to Smith if Jones had agreed to do so and Smith has not released him from the contract, the South, so Lincoln argued, may not permissibly withdraw from the contractual Union unless the North agreed to release it. In short, even if the United States were a "mere" contract, unilateral secession would not be permissible.⁸

A fourth objection (argument #7) to the South's secession was related. If, for Lincoln, the Union was not a contract, what was it, and, more importantly, what was the nature of agreement by which the Union was formed? The answers to these questions were contested. In Lincoln's mind the Southern position rested on an "ingenious sophism," namely, that "any state of the Union may, *consistently* with the national Constitution, and therefore *lawfully*, and *peacefully*, withdraw from the Union, without the consent of the Union, or of any other state" (IV, 433). For Lincoln, the heart of the sophism lay with the assumption that "there is some omnipotent, and sacred supremacy, pertaining to a *State*" (IV, 433). He denied this out of hand: "Our States have neither more, nor less power, than that reserved to them, in the Union, by the Constitution—no one of them ever having been a *State out* of the Union" (IV, 433). The conclusion, which he drew rhetorically, was clear: "Having never been States, either in substance, or in name, outside of the Union, whence this magical omnipotence of 'State rights', asserting a claim of power to lawfully destroy the Union itself?" (IV, 434). The central idea (argument #6) seems to be that since neither the Confederacy nor its

⁸Lincoln's understanding of the binding force of contracts is in keeping with Anglo-American liberal thinking. The paragon example is Locke, who argued that while a political community could only be formed by a contract, its delegation of power to a governing body could, if the community were to retain the ability to dissolve that body, only be in the form of a "trust." See Locke, *Second Treatise of Government*, chap. 13.

constituent States enjoyed sovereign status prior to their inclusion in the United States, neither could be in a position to subsequently (re)claim it.⁹

The remaining three arguments employ a strategy already suggested with his concern for the Confederacy's republican credentials, namely, an emphasis not on the status of the seceding region, but rather on the consequences of state-breaking. First (argument #8), Lincoln wondered what economic harm might come to the "plain people," claiming that "[t]hey understand, without argument, that destroying the government, which was made by Washington, means no good to them" (IV, 439). The concern was, of course, with some merit. With the loss of the North's industrial base, and the reticence of European countries to offer support to its cause, the South would face very real economic challenges.

A second consequence (argument #9) was related: even if the South's economy made the transition unscathed, would it use its wealth in a manner to which it was obligated? As Lincoln explained:

... nothing should ever be implied as law, which leads to unjust, or absurd consequences. The nation purchased, with money, the countries out of which several of these States were formed. Is it just that they shall go off without leave, and without refunding? The nation paid very large sums ... to relieve Florida of the aboriginal tribes. Is it just that she shall now be off without consent, or without making any return? The nation is now in debt for money applied to the benefit of these so-called seceding States, in common with the rest. Is it just, either that creditors shall go unpaid, or the remaining State pay the whole? A part of the present national debt was contracted to pay the old debts of Texas. Is it just that she shall leave, and pay no part of this herself? ... Again, if one State may secede, so may another; and when all shall have seceded, none is left to pay the debts. Is this quite just to creditors? Did we notify them of this sage view of ours, when we borrowed the money? (IV, 435-36)

Thus, Lincoln objected that the South's secession would allow them to skip out on their share of the national debt.

Finally (argument #10), there were consequences not just to the South or North, but to all of humanity. Lincoln expressed this concern most clearly in the Gettysburg Address, when he spoke of the war as "testing whether that nation, or any nation so conceived and so dedi-

⁹This was not the first time Lincoln emphasized the temporal issues surrounding statehood and sovereignty. In attempting to establish the legal status of the Union's perpetual nature, he argued in the First Inaugural Address that the "Union is much older than the Constitution" (IV, 253). In fact, he went on, "[I]t was formed ... by the Articles of Association in 1774 ... [and] matured and continued by the Declaration of Independence in 1776 ... [and] further matured and expressly declared and pledged, to be perpetual, by the Articles of Confederation in 1778." Dating the Union back prior to the Constitution bolstered his claim that the States could in no way be seen as having enjoyed sovereign status prior to their inclusion in the United States.

cated, can long endure.” The Union goal, he argued, is thus to insure that “government of the people, by the people, for the people, shall not perish from the earth” (VII, 23). As Allen Buchanan records: “Lincoln was convinced that the fate of democracy in the world depended on the success of the American experiment, that if the Union dissolved, political freedom and all its fruits might ‘perish from the earth’.”¹⁰

Assessing Lincoln’s Arguments

In this section we explain why none of Lincoln’s ten arguments is adequate. Reviewing them in the order we introduced them above, let us begin with what might be dubbed his “Russian Doll” argument (argument #1), which purports to establish the impermissibility of all secession. According to this argument, no right to secede can exist because, were any secession allowed, there would be no justification for denying subsequent separatist movements who in turn seek independence from the newly sovereign states. As it stands, this argument may not appear very compelling. In general, it does no good to suggest that one can never permit X on the grounds that permitting X once will lead to many reiterations of X, unless one also explains why the proliferation of X is problematic. Imagine, for instance, protesting that we can never allow anyone to put their pants on one leg at a time because this might lead to *everyone* putting their pants on one leg at a time. Since there is obviously nothing wrong with everyone putting their pants on one leg at a time, clearly we have no reason to fear the precedent set by the first person doing so. On the other hand, my throwing batteries in the trash—an action with no measurable environmental cost—might of itself be morally unproblematic, yet if it could be shown that my example would lead to widespread battery dumping, then a case could be made against my lone action. Note, however, that that case rests on the assertion that the *reiteration* of the action, not the action itself, is problematic.

In fairness to Lincoln, however, it seems reasonable to construe his first argument as a slippery-slope argument that includes the (plausible) implicit premise that the proliferation of state-breaking could be extremely harmful. In other words, once one starts the secessionist ball rolling, there would be no stopping it short of anarchy. Thus, we cannot allow any secessionist rights because doing so would lead to subsequent reiterations that are clearly harmful.

The first thing to note about Lincoln’s blanket denial of the right to secede is that it saddles him with the awkward conclusion that the

¹⁰Buchanan, *Secession*, p. 97.

American Revolution, itself an act of secession, was unjustified. Of course, Lincoln is not logically barred from claiming that the American colonists had no right to secede, but we suspect that he would not want to endorse such a conclusion and thus might refrain from condemning secession *per se*.

Even if Lincoln were prepared to condemn George Washington et al., there are other problems with his Russian Doll argument. To appreciate these difficulties, notice that his argument requires two implicit premises: (1) unlimited state-breaking would result in unpalatable circumstances, and (2) one cannot permit some political divisions without licensing all of them. Because we share Lincoln's fear of political instability, we can accept his first premise. We deny his second premise, however, because there is nothing to preclude one from distinguishing between harmless versus harmful secessions and disallowing only the latter. If one wants to avoid political instability, then one should prohibit only those political divorces liable to cause such instability. The key is that if it is political instability rather than secession that is worrisome, then one should prohibit only the former. Of course, avoiding this instability might require disallowing *some* state-breaking, but it does not follow from this that secession can *never* be permissible. In short, just as one would not outlaw all driving merely because driving while drunk is dangerous, we ought not outlaw all state-breaking merely because there are circumstances in which secession would prove dangerous. Thus, in the absence of an explanation as to why one could not allow harmless secessions without also allowing subsequent harmful ones, we deny that the slope from permitting any secession to anarchic chaos is as slippery as Lincoln's Russian Doll argument presumes.¹¹

¹¹Here a defender of Lincoln might protest that we have over-simplified the matter. In particular, one might worry that it is not so easy to merely prohibit only those secessions liable to cause political instability; difficult questions must be answered regarding who should make this determination and by what criteria. Both because there are bound to be controversial cases, and because the separatists and the unionists are each interested parties whose impartiality cannot be relied upon, contemporary theorists like Wayne Norman suggest that international bodies be established to adjudicate these disputes according to clear and promulgated rules. See Wayne Norman, "The Ethics of Secession as the Regulation of Secessionist Politics," in Margaret Moore (ed.), *National Self-Determination and Secession* (Oxford: Oxford University Press, 1998).

We are receptive to this suggestion, but the fact remains that political leaders like Lincoln will be forced to make their decisions in an institutional vacuum until such effective international courts are established. Moreover, because it was clear that the division between the North and the South would not have resulted in anarchic chaos, Lincoln could not invoke such concerns to justify resisting this particular secession. Thus, while we agree that we should work toward a future in which leaders like Lincoln will not effectively preside over secessionist conflicts, this does nothing to diminish our concerns

Lincoln's second general argument (argument #2) was a simple one involving only two premises: (1) there is no morally relevant difference between minority and majority secessions, and (2) majority secessions (otherwise known as "exclusions") are obviously wrong. We resist this argument because we disagree that all exclusions are necessarily impermissible. We admit that it would be wrong for an overwhelming majority to exclude a tiny, fragile minority who could not form a viable country on their own, but what makes this particular case of majority secession worrisome is not that the majority leaves the minority but that a majority leaves a group in a perilous circumstance in which it cannot secure political stability. In short, it is the excluded group's political inviability rather than its minority status that is worrisome. If this is correct, then there is nothing wrong with majority secession per se; rather, there is something problematic only about excluding vulnerable groups.¹²

From this, we can draw two conclusions: First, even if Lincoln were right (as we think he was) that there is no morally relevant difference between minority and majority secessions, Lincoln's argument fails for its reliance upon the false premise that all majority secession is impermissible. Second, if Lincoln were to retreat to the more plausible premise that no party may secede from a politically inviable group, this would render his argument impotent against the South's bid to secede, because the North clearly would have been able to perform the requisite political functions on its own. Thus, while we applaud Lincoln's insight that minority and majority secessions are not as different as one might initially suspect, we deny that any blanket rejection of secession follows from this.

Lincoln's next argument (argument #3) is more restricted; it applies

about Lincoln's first argument.

¹²One might contest our claim that exclusion is permissible unless it leaves the excluded group in a politically unviable position. After all, surely people have a right not to be deprived of citizenship by a vote of others, no matter whether the result leaves them in peril or not. We disagree. This is not the place for an extended defense of political self-determination, but consider the following (very quick) response to this objection: As long as political states remain territorially rather than consensually defined (as they must, if they are satisfactorily to perform the functions that justify their existence), then not everyone will have complete discretion to choose their compatriots. The more modest goal, then, must be to give citizens the maximal say in drawing political borders consistent with maintaining viable, territorially defined states. The way to do this is to allow all and only those secessions/exclusions that leave the separatists and the divorced party politically viable. Finally, to those who protest that this would allow a majority to place a minority in a dispreferred political situation, we counter that rejecting our recommendation allows a minority to force a majority to remain in a dispreferred political arrangement. Thus, the concern that we exercise maximal control over our citizenship actually *motivates*, rather than *undermines*, our recommendation.

only to democracies (or, in Lincoln's terms, to republican forms of government). In his view, secession is both incompatible with, and unnecessary under, a democracy. It is incompatible with democracy because voting makes sense only if one presumes that all voters will be bound by the results, and secession is unnecessary because democracy offers citizens alternative (non-separatist) means of voicing concerns and expressing preferences.

At an ideal level, this argument is perhaps sound: democracy's primary virtue is precisely what renders secession unnecessary.¹³ Yet if precluding secession on democratic grounds makes for a sound theoretical argument, it runs into trouble as a practical doctrine. The most obvious difficulty is that it demands too much of actual democratic political institutions. A healthy constitutional democracy should be able to accommodate a vast number of grievances, yet to say that any grievances that it cannot accommodate are ipso facto illegitimate seems to go too far. A more plausible position is one that Lincoln himself, in a sarcastic caricature of his opponents, hinted at:

Prior to my instalation here it had been inculcated that any State had a lawful right to secede from the national Union; and that it would be expedient to exercise the right, whenever the devotees of the doctrine should fail to elect a President to their own liking. I was elected contrary to their liking; and accordingly, so far as it was legally possible, they had taken seven states out of the Union. (VI, 263)

Clearly Lincoln was right to suggest that democracy requires accepting defeat at the polls—one might even say that democracy is defined by the losers' continued embrace of the system.¹⁴ Getting a president "contrary to [one's] liking" is an acceptable, if perhaps regrettable, democratic outcome, and thus to demand secession on such a whim ("we don't like the president") *does* imply a lack of respect and understanding for legitimate democratic institutions.

In pointing this out, however, Lincoln was implicitly acknowledging the more reasonable position that democracy does not preclude seces-

¹³Even the apparent contradiction of recognizing the right of revolution while rejecting the seemingly less drastic right of secession can be squared: as a threat designed to insure the leaders' accountability to the people, revolution, it might be argued, preserves a nation's republican ideal; secession, on the other hand, ensures only its abandonment.

¹⁴While Lincoln might not agree with Rousseau that "when ... the opinion contrary to mine prevails, this proves merely that I was in error" (*The Social Contract*, reprinted in *The Basic Political Writings* (Indianapolis: Hackett Publishing, 1987), p. 206), he would, however, insist on proving correct Tocqueville's assessment that "every American feels a sort of personal interest in obeying the laws, for a man who is not today one of the majority party may be so tomorrow" (*Democracy in America* (New York: Harper Perennial, 1988), p. 240).

sion, it simply raises the bar (substantially) for its acceptance.¹⁵ To point out that it is unreasonable to secede on whim is to suggest that it *may be* reasonable if the grounds reflect neither bad faith nor frivolity. Put otherwise, it is *the whim* that is the problem, not the demand for secession. Hence we would argue that there are limits to the ability of republican institutions to accommodate secessionist concerns (i.e., to keep the country together). When those limits are reached, it does not of necessity signal that the demands are illegitimate, for, in the real world of democracy, it could just as reasonably suggest that the institutional mechanisms of accommodation have broken down. In fact, secession might help democratic theory solve the otherwise intractable problem of persistent minorities. (In cases other than permanent minorities, determining whether secession or revolution is the more appropriate response would require further information.)

If our reasoning to this point has been on target, then Lincoln was wrong to suggest either that secession must always be impermissible or that political divorce from democracies can never be legitimate. The arguments on which Lincoln placed the greatest emphasis, however, were those directed specifically against the South's claim to independence, and it is toward these seven arguments that we now turn.

Lincoln's first objection to the South's separatist movement (argument #4) was that it lacked popular support. On his view, the Confederacy's Declaration of Independence was the initiative of an elite few who lacked democratic authorization and whose views were unrepresentative of the wishes of most Southerners. We would take this argument very seriously if we were convinced of the accuracy of this descriptive claim, but we lack Lincoln's conviction that the majority of Southerners preferred to remain in the Union. Lincoln correctly notes that not every State had a free plebiscite on the matter, but, given the nature of political representation at the time, we are unimpressed with this fact. It might strike some as awkward that we contextualize the need for plebiscites, but consider the American Revolution and the division of the former Czechoslovakia into the Czech Republic and Slovakia: in neither instance was a free plebiscite held on the issue of political divorce. In the case of the American Revolution, it strikes us as objectionably anachronistic to condemn the colonists for not having taken a plebiscite. Let us be clear here: we agree that political elites ought not to have started the war if they knew that the majority of their fellow colonists preferred to maintain their affiliation with Britain, but it does not follow from this

¹⁵Buchanan discusses this idea that "a right to secede undermines constitutional democracy" in some detail. See *Secession*, pp. 98-99.

that these same elites should not have declared independence without first polling those they sought to represent. In the case of Czechoslovakia, on the other hand, it seems right to question why no plebiscite was held. Because the democratic institutions and technological machinery necessary to perform the plebiscite were readily available in the latter case, it does not seem too much to demand. Thus, we are not suggesting that the people's preferences are morally insignificant; rather, we are making the less contentious descriptive claim that the mere absence of a free plebiscite in the Confederate case does not necessarily imply a lack of popular will. Given the standards of political representation at the time, it strikes us that the general behavior of Southerners is the best indication of their preferences, and we take their willingness to engage in such a horrendously long and costly war as at least *prima facie* evidence that there was ample popular interest in independence.

Lincoln's second concern about the South's separatist movement (argument #5) was that its subsequent sovereign state would not be republican. We agree with what must be seen as the general principle here: a group has no right to secede to form a substantially less just state than the one in which it currently resides. Our only question is whether such an argument applies to the Southern case. Lincoln inferred the injustice of the Confederacy from two observations: (1) the secession was not popularly supported in the South, and (2) the Confederate's Declaration of Independence included neither the phrase "all men are created equal" nor "We, the People" (instead it substituted "We the deputies of the sovereign and independent States"). While a seceded South may indeed have presented a shaky moral vision (by contemporary standards especially), we nonetheless find neither of Lincoln's inferences of injustice sound.

Having just addressed (1) above, we need only explain our doubts about (2). Lincoln alleged that the substitution of "We the deputies of the sovereign and independent States" for "We, the People" signaled a departure from Republican principles. In our view, however, a more plausible interpretation of this substitution is that it is an attempt to claim the status thought necessary to demand independence. That is, the South sought to emphasize their standing as sovereign and independent states to buttress their moral claim to political self-determination, not to signal their reluctance to govern democratically. Whether or not our reading of the Confederate's Declaration of Independence is more accurate is, in the end, a question best left to more qualified historians. What is paramount here is simply that speculations about the South's political future drawn from questionable textual interpretation hardly constitute the sort of empirical support necessary for rejecting secession on justice

grounds.

On the other hand, if Lincoln had objected to the South's intention to create a state that condoned slavery, then (as we will emphasize below) he would have been on solid footing in resisting their creation of an objectionably unjust state. Of course, Lincoln explicitly refused to criticize the Confederacy on these grounds.¹⁶ Thus, although Lincoln was right to insist that the South should not be permitted to form a substantially less just government, we take the contestable textual evidence he offered to support his claim to be insufficient and, as a consequence, we reject his version of this argument.

Lincoln's third argument against the South's right to secede (argument #6) was that if the Union were merely a contract (which he did not believe), then the South would be contractually obligated to remain in it. The argument rests on two claims, one historical and one philosophical. The historical claim is that if it were a contract, there is substantial legal precedent to show that it would have entailed a perpetual Union. The philosophical claim is that, given the nature of contracts, the Southern secession would thereby be ruled out.

We may, in arguing against Lincoln, grant him the historical claim: let us presume that the Union *was* formed by a contract purporting to bind all parties in perpetuity. Does it follow from that fact that the parties *would be* thus bound? Does the philosophical claim hold? For two reasons we argue that it does not. First, even if we grant *arguendo* that the representatives were capable of binding all of their constituents at the time, it is problematic to suppose that future generations can be bound by an agreement made by their forebears.¹⁷ As Rousseau observed: "Even if each person can alienate himself, he cannot alienate his children."¹⁸ We take this point to be commonsensical: if Allaine's grandmother promised someone in her church that Allaine would become a monk, for instance, no one would think that she has a moral duty

¹⁶This may be an instance in which Lincoln's political position and motives inhibited him from making a more philosophically sound argument. We cannot make the case here, but it does not seem unreasonable to speculate that Lincoln believed that the South's perpetuation of slavery should count against its claim to sovereignty. If so, perhaps Lincoln eschewed this (clearly more compelling) objection only because it was politically inexpedient.

¹⁷One might resist our contention that future generations cannot be bound by their forebears on the grounds that this would seem to undermine the very idea of a constitution. In response, consider two points: First, we mean to suggest only that future generations cannot be *morally*, as opposed to *legally*, bound. Second, even legal constitutions typically provide means for future generations to amend them, so that future citizens need not be bound by their ancestors' vision.

¹⁸Jean Jacques Rousseau, *The Social Contract*, p. 144.

to do so.¹⁹

Moreover, even if the Southerners could inherit political obligations from a contract entered into generations earlier, we must not assume without argument that the obligation would be to remain in the Union; it seems more plausible to suppose that they had only the more modest responsibility to secede in a fair fashion. In support of this, notice what obligations we ascribe to married individuals. Even though the contract between spouses is much less problematic (insofar as it is explicit, consensual, and personal rather than intergenerational), we still do not insist that couples must stay together as promised; instead, we claim only that they are obligated to divorce under certain terms. (We insist that their collective assets be divided fairly, for instance, and we sometimes make special arrangements for the provision of children and/or continued transfers.) Along these same lines, and because the marriage contract seems a more apt basis of comparison than a commercial contract, it strikes us that whatever residual obligation the South had to the larger Union would require them only to secede under fair terms (by agreeing to pay a fair portion of the national debt, for instance), rather than to remain in the political union indefinitely.

Lincoln's fourth concern (argument #7) was that the Confederacy (and/or the seceding States) lacked the proper pre-Union status. He insisted that because the Southern States were not sovereign political units prior to the formation of the United States, they had no right to withdraw from the Union. In our view, this is among the weakest of Lincoln's arguments. We recognize that there was considerable controversy at the time regarding the pre-Union status of the Southern States, but we think that this entire issue can be safely side-stepped, since it is implausible to suppose that only previously autonomous regions can qualify for the right to secede.²⁰ For instance, do we really want to deny the Kurds a

¹⁹Of course, one might object that there is a morally relevant difference between the person to whom my grandmother made a promise and our political partners, because the latter have reasonable expectations of continued cooperation based upon the nearly one hundred years of cooperation. This difference may indeed be morally relevant, but if so, it indicates that whatever political duties the South had to the Union were based on this ongoing cooperation rather than merely some contract purportedly entered into in either 1776 or 1789. As space does not permit it, we leave aside the issue of tacit consent and its power—an issue raised in response to anti-social contract thinkers dating at least as far back as Filmer. We mention only the fact that *neither* supporters nor critics of social contract thinking would presume that contracts bind all future generations.

²⁰More troubling still is what the argument implies as a theory of legitimacy. To say that prior sovereignty is the *sine qua non* of secessionist claims is to say that social bonds not rooted in political history are, in spite of any other virtues they may manifest, somehow inadequate for the establishment of the right to self-government. Yet it is difficult to see how a region's prior political history has any moral standing with respect to the issue

right to secede from Iraq *on these grounds*? In light of the fact that political boundaries are so often the result of fraud, force, and historical contingencies, it seems wrong to place so much moral weight on a party's political pedigree. Given that so many Southerners at the time were arguing that their right to secede stemmed from the nature of the agreement into which these States had entered, it is understandable that Lincoln would have been attracted to this position; the problem is that he offers no decent argument to support his counterintuitive premise that only previously autonomous units could claim the right to sovereignty. Finally, notice that the original Thirteen Colonies clearly lacked this status vis-à-vis Britain, so even if Lincoln could manufacture the requisite arguments on this issue, it would leave him with the awkward implication that the United States had no right to its own independence.

Lincoln's fifth argument against the political division (argument #8) was that individuals in the South would suffer economically. In our view, this argument too can be rejected even if its principal descriptive claim is true. That is to say, even if Lincoln were right that the South's economy would do less well on its own, it seems that the Southerners should have enjoyed the moral dominion to decide whether the benefits of independence were worth the economic costs.²¹ By analogy, the authors of this article would likely earn considerably more as investment brokers than as professors, but no one would claim that we are therefore obligated to leave our posts at the university in order to maximize our economic prospects. It is up to us to decide how important financial success is, and—regardless of whether others think we are wise to forgo the economic opportunities that we do—it is our right to make these choices. (By the same token, it is not surprising that few objected to the political division of the former Czechoslovakia even though it was widely taken for granted that newly sovereign Slovak Republic would subsequently suffer economically.) Thus, whether or not Lincoln's economic predictions were on target, we are unmoved by this argument.²²

of sovereignty (except perhaps as a second order factor in determining, say, a region's protective capabilities or its cultural cohesion). If political history were relevant to the degree that consent, common heritage/language, or ability to protect its citizens arguably are, it would preclude not just the secession of certain regions within a state, but also the formation of states with no prior history of statehood.

²¹ Again, we are leaving slavery out of the economic calculus.

²² There is a more sophisticated version of this argument that would be more compelling, but we reject it for its reliance on an implausible descriptive premise. Specifically, one might suggest that, while no one has a right that her country be maximally politically efficient, each of us has a right to a decent minimum. If one combines this claim with the observation that—unlike an individual choosing her own profession—state-breaking raises moral issues insofar as it inevitably includes unwilling constituents who would

Lincoln's sixth argument in favor of forcibly preserving the Union (argument #9) was his fear that the South would default on its debts to the North after the secession. In particular, Lincoln expressed concern about the South not paying its fair share of the national debt, much of which was assumed when the United States purchased portions of the Southern territory. We agree that it would be permissible to hold the South responsible for its portion of the country's expenses, but we deny that this undermines their right to secede. In our view, the Confederacy's secession is consistent with their paying their portion of the national bills, just as marital divorce is compatible with each of the individuals exiting with a fair share of the couple's assets and debts. Thus, if Lincoln were genuinely concerned about only the national debt, the appropriate thing for him to do would have been to demand that the South could secede only on the condition that it leave with its portion of the overall debt. Of course, Lincoln might object to this proposal on the grounds that there would be little the North could do to ensure that the South honor this debt after the separation. (After all, there is an important disanalogy between marital and political divorces in that the former occur under the supervision of legal systems that can enforce the terms of separation, but there is no comparably powerful institution of international law to ensure that political states honor their exit agreements.) If Lincoln's worries were legitimate, then he would have been justified in insisting that the secession be incremental or provisional until the debt was paid off (or, at the very most, he might have suggested that the secession be delayed until the South had either paid its debt or, more reasonably, given sufficient collateral or assurances that it would do so). But none of this is sufficient to establish that the South's secession was illegitimate *simpliciter*; rather, these considerations imply only that Lincoln might have permissibly placed conditions on the Confederacy's separation.

Finally, we come to the argument that apparently played the biggest role in motivating Lincoln to resist the secession (argument #10), his desire to fulfill what has been called the "Great American Experiment." Few of us would be indifferent to having our countries partitioned, so it is more than understandable that Lincoln would be so uncomfortable with the United States splitting in two on his watch. In Lincoln's view, however, there was even more at stake in the case of preserving the

prefer to remain in the existing Union, one could plausibly suggest that secession is impermissible whenever it would cause such economic deprivation that unwilling individuals would have to endure extreme economic hardship. We do not worry about this more sophisticated variation on Lincoln's argument, though, because we deny that the South's independence would have such a profound detrimental effect upon its economy.

United States, for he believed that America's republican form of government was a model for the future. Hence his obligation to do whatever was necessary to keep the country intact was not just to future citizens, but to all of humankind.

Insofar as we are fans of constitutional democracy who (with some reservations) are happy that the United States has served as an influential model of how governments should order themselves, we are not without sympathy for this argument. The problem is that it is not clear to us why the remaining Northern States could not have equally supplied the world with such a paradigm after the political division. (Indeed, some think that, unencumbered by the South, the remaining States would have enjoyed even more economic, political, and moral success.) Thus, unless there is some reason to believe that the rump state would have foundered, it appears that an alternative "Great American Experiment" could have continued without the South, and, as a consequence, the value of preserving a model government did not justify forcibly resisting the secession.

Moreover, even if we concede for the sake of argument that neither of the two post-secession countries would have provided a suitable model of government, there remain additional problems with this argument. The chief difficulty is that it is impermissible to treat the Antebellum Southerners merely as a means to creating a greater good for future generations. To see this, consider the pyramids: regardless of how happy we may be that these tremendously impressive structures were constructed, their magnificence cannot justify the institution of slavery used to build them. Or, put in more contemporary terms, no matter how confident we may be that humanity into the indefinite future would appreciate our completing, say, a huge space station for scientific exploration, these expected returns would not justify our using slave labor even if the latter were necessary to finish this project. For the same reasons, Lincoln could not permissibly limit the Southerners' political self-determination if his only justification for doing so was that it was necessary to secure dividends for future generations.

At this point one might protest that it is inappropriate to compare preserving democracy to building pyramids because the latter is so much less significant. Whereas the pyramids supply little more than aesthetic value, the importance of political arrangements is in an entirely different league both because they have such a profound affect upon those living under them and because they can be replicated in a manner that allows an unlimited number to benefit. For two reasons, we resist this response. First, world-historical significance is not established by a claim alone, but rather stands in need of a rational argument. The twentieth century

had far too many examples of leaders who thought the contrary, and who did so to devastating effect. Indeed, it is difficult to think of a terrorist or totalitarian leader who could not defend treating humans merely as a means if permitted to do so in the name of the some putative benefit to humanity.

Second, there is something ironic about denying the South's political self-determination in the name of a republican form of government, because the principal virtue of, and justification for, democracy is its maximal promotion of political self-determination. Indeed, it is striking that not only have defenders of secession like David Copp and Daniel Philpott argued that the best defense of state-breaking grounded in self-determination is to be found in democratic theory,²³ but arch defenders of democracy like Robert Dahl have independently concluded that secession is "perfectly consistent with democratic practice."²⁴ Thus, insofar as the very principles that demand that important social decisions be reached democratically also justify secession grounded in self-determination, it is more than a little awkward to deny the latter in the name of the former. We conclude, therefore, that the "Great American Experiment" no more justified Lincoln's denial of the South's exercise of political self-determination than it would justify Canada's forcibly annexing the United States in its effort to conduct a "Great NORTH American Experiment."

In the end, then, our response to Lincoln's arguments is reminiscent of Dax Cowart's attitude toward those who denied his right to die. Cowart was the victim of an explosion that killed his father and left him blind and horribly burned all over his body. The treatments he endured for his burns were so torturous that he decided that the remainder of his life was clearly not worth these twice-a-day procedures (which involved peeling the bandages off his skinless body, scraping away any potentially infectious material, and lowering him into a tub of liquid that was tantamount to acid). When he told the hospital staff of his desire to die, they ignored his wishes and removed the phone from his room so that he could not call a lawyer. Now, years after his recovery, Cowart is happy to be alive. Still, he insists that (1) he had a right to die, (2) the medical

²³See David Copp, "Democracy and Communal Self-Determination," in Robert McKim and Jeff McMahan (eds.), *The Morality of Nationalism* (Oxford: Oxford University Press, 1997), pp. 277-300; and Daniel Philpott, "In Defense of Self-Determination," *Ethics* 105 (1995): 352-85, and "Self-Determination in Practice," in *National Self-Determination and Secession*, pp. 79-102. Allen Buchanan criticizes both authors in his article, "Democracy and Secession," in *National Self-Determination and Secession*, pp. 14-33.

²⁴Robert Dahl, *Democracy and Its Critics* (New Haven: Yale University Press, 1989), p. 196.

practitioners acted impermissibly in disrespecting his self-determination, (3) if faced with the choice again, he would again choose to die rather than face the horrific treatment, and finally, (4) though they acted wrongly, Cowart understands that the hospital staff meant well and acted with noble intentions. Similarly, despite the fact that we are happy that the Union was preserved, we believe that (1) none of Lincoln's arguments justified his denying the South's political self-determination, (2) if faced with a Southern secessionist movement today, the North would have no right to deny their independence, and finally, (3) though his arguments were poor, Lincoln acted with noble intentions.

An Alternative Argument Against Southern Secession

Although we reject each of Lincoln's ten arguments, we believe neither that the South had a right to secede nor that Lincoln acted impermissibly in forcibly resisting its secession. In this section we first explain why the South had no right to secede and then comment on a common defect characteristic of the arguments Lincoln posits as well as those he omits.

In brief, we think the South's bid to secede was disqualified by its interest in preserving the institution of slavery. Because we appreciate the value of self-determination, we do not insist that a group must have been treated unjustly to qualify for a right to secede. In our view, for instance, the merits of the American Colonies' case for divorce from Britain did not depend upon the strength of their claims to have been victimized by an unfair system of taxation without representation: they need only have cited their desire to form their own country. Insofar as we share Lincoln's concern about the dangers of political instability, however, we restrict the right to secede to only those parties able and willing to form a state at least as just as the one from which they seek to secede.²⁵ Of course, national debts and other issues might explain why various conditions may legitimately be placed on any given political divorce, but, as we explained above, this does not establish the impermis-

²⁵We also insist that the rump state not be left unable to perform the requisite political functions. Because of our focus on Lincoln, we will not here defend these strikingly permissive views on unilateral state-breaking. Readers interested in a such a defense are encouraged to see Christopher H. Wellman, "A Defense of Secession and Political Self-Determination," *Philosophy & Public Affairs* 24 (1995): 142-71. We should also specify that we understand a right to secede to include a moral liberty to separate and a moral claim that the rump state (as well as third parties) not forcibly resist the divorce. For the purposes of this paper, we do not assume that the remainder state (or any other party in the international community) has a duty to officially recognize or otherwise assist the seceding state.

sibility of secession any more than the analogous restrictions on marital divisions preclude couples from divorcing.

Applying this reasoning to the South, we think that their capacity to perform the requisite political functions qualified them for a right to independence as long as they were willing to do so in a just manner. As we have seen, Lincoln doubted that they had that capacity (argument #5), thereby demonstrating his acceptance of what we consider the relevant general principle. His mistake, in our assessment, was in not applying that principle against the institution that discredited the South's claim to legitimacy more than any other. Insofar as Southern leaders sought to continue slavery, any professed intention to form a state at least as just as the Union, and thus any right of secession, may be soundly rejected.

Before moving on, it is important to spell out the conditional nature of this argument. Specifically, we submit that Lincoln was justified in forcibly resisting the separatist movement *if* this was the only way to end slavery. Taking seriously the hypothetical nature of this conclusion reveals that this justification did not give Lincoln license to fight the secession no matter what; it authorized him only to place a condition on the political divorce. In particular, since Lincoln's only legitimate grievance with the secession was that the subsequent sovereign state would be unjust, Lincoln should have extended the Southern States the following offer: "If you agree to permanently abolish slavery, then I will not contest your leaving. If you plan to maintain slavery, on the other hand, then you leave me no choice but to forcibly resist the secession so that I can eradicate that unjust institution." In the end, then, our position is that Lincoln might have had a right to deny the South's bid for independence, but, because he would be justified in doing so only if it were necessary to end slavery, he was required first to offer the South the option of seceding without slavery. In short, since it was the *slavery* rather than the *secession* to which Lincoln could righteously object, this justification permitted him only in placing a condition on the terms of the political divorce. However, because the Southern States were adamant about maintaining slavery, this condition, unlike those discussed above, is pivotal.

The preceding analysis highlights that there are two distinct issues: the eradication of slavery and the preservation of the Union. It is striking that Lincoln explicitly recognized that these two concerns were separable and thus posed distinct questions. When discussing the issue of slavery, Lincoln explained:

My paramount object in this struggle is to save the Union, and is *not* either to save or to destroy slavery. If I could save the Union without freeing *any* slave I would do it, and if I could save it by freeing *all* the slaves I would do it; and if I could save the Union by

freeing some and leaving others alone I would also do that. What I do about slavery, and the colored race, I do because I believe it helps to save the Union. (V, 388)

But, while Lincoln is to be applauded for distinguishing between the separate issues of slavery and secession, we reject his position on each of the two distinct matters. Whereas Lincoln asserted that (1) the South had no right to secede, (2) continuing the practice of slavery was, if expedient, an acceptable option, and (3) the correct stance to take regarding slavery was determined by the more important issue of preserving the Union; we would submit that (1A) the South had a right to secede if they would abolish slavery, (2A) under no circumstances was slavery an acceptable option, and (3A) the only justification for denying the South's political self-determination was as a necessary means to eliminating the (more important) institution of slavery. In fact, we believe that slavery is such a grave injustice that it not only placed Lincoln *at liberty* to do what was necessary to extinguish it, it obligated him to do so. As a result, not only do we contend that Lincoln would have been justified in denying the South's independence if this were the only way to eradicate slavery, we assert that, if the North had wanted to secede from the South, the North would have been obligated to remain in the Union if this were the only way to put an end to slavery. Thus (as should be clear from our claim that the importance of eliminating slavery would also trump the North's political self-determination), our stance does not stem from a failure to respect the autonomy of the South; it is rather because we insist that the South's unjust institutions disqualified their claim to self-determination.

Before concluding, it is worth noting that our criticism of Lincoln's position on the South's independence and our criticism of his stance on slavery both stem from a dissatisfaction with the value he places on self-determination. In the case of the political divorce, Lincoln's arguments insufficiently appreciate the South's right to political self-determination, and regarding slavery, he failed to respect the slaves' rights to personal self-determination. Thus, while he might have had a general regard for the importance of autonomy, he did not recognize key parties (i.e., Black slaves and non-sovereign groups) who have moral rights to self-determination. In the end, then, his ten arguments against the South's bid for independence all fail for their incompatibility with the South's moral dominion over its own affairs, and he failed to make the one argument against the political divorce that we believe would have been compelling because he did not appreciate the importance of a slave's right to self-determination.

Conclusion

In closing, we want to emphasize that our criticism is directed exclusively toward Lincoln's *arguments*, not Lincoln as a person or statesperson. Without retreating from our objection that Lincoln's arguments consistently give insufficient weight to the value of self-determination, we appreciate that his cultural era and political position placed enormous constraints on what he might reasonably be expected to believe, much less publicly endorse. Thus, our relatively low estimation of his stated arguments against the South's bid to secede in no way dampens our profound admiration of Lincoln as a statesperson. In short, nothing in this essay is meant to deny that the United States was exceedingly fortunate to have such an extraordinarily wise, virtuous, and politically savvy leader at the helm during its greatest crisis. To repeat a point made at the outset, Lincoln's handling of the secession issue may be the greatest possible evidence that philosophy and political rule are best left un-mixed.²⁶

Peter Lindsay

Department of Political Science and
Department of Philosophy
Georgia State University
polpl@langate.gsu.edu

Christopher Heath Wellman

Department of Philosophy
Georgia State University
phlchw@langate.gsu.edu

²⁶We are indebted to two anonymous reviewers for this journal for their helpful comments on an earlier version of this article.

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