



# Federalism, political imbalance, and the right to secession

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## Abstract

Scholars have generally taken a negative view of the inclusion of secession rights in federal constitutions. Adopting a *constitutional political economy* perspective, we challenge this consensus by highlighting the critical role that the right to secession can play in enforcing a federal bargain in the face of significant political imbalance among federal sub-units. We demonstrate that the inclusion of a secession right can allow for unanimous constitutional agreement to the formation of a federation in circumstances in which such agreement cannot be reached on a federation without a right to secession, even if union is potentially in the interests of all members.

**Keywords** Federalism · Secession · Bargaining

**JEL Classification** H10 · H77

## 1 Introduction

In a paper published in this journal, Chen & Ordeshook (1994, 45) observed that “of all the provisions that might be part of a federal state’s constitution, perhaps none is more controversial than those that implicitly or explicitly deal with secession.” Empirically, very few constitutions contain a secession clause and the dominant

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normative position within the scholarly literature is that this is a good thing—largely because it is thought that secession clauses introduce a destabilizing element that might increase inter-group conflict, encourage “threat bargaining,” and reduce incentives for compromise (Apolte, 1997; Chen & Ordeshook, 1994; Filippov, 2004),<sup>1</sup> Sunstein (1991, 634) articulates the argument this way:

To place such a right in a founding document would increase the risks of ethnic and factional struggle; reduce the prospects for compromise and deliberation in government; raise dramatically the stakes of day-to-day political decisions; introduce irrelevant and illegitimate considerations into those decisions; create dangers of blackmail, strategic behavior, and exploitation; and, most generally, endanger the prospects for long-term self-governance.

In this paper, we challenge this apparent consensus by bringing to bear a *constitutional political economy* perspective (Buchanan & Tullock, 1962; Buchanan, 1990) on the inclusion of secession clauses in federal constitutions. The lynchpin for our argument is the observation that when there is an imbalance in the political influence of federal sub-units, federations confront a credible commitment problem in implementing a “federal bargain” that reflects the interests of all units (Buchanan & Faith, 1987). This problem can pose a fundamental hurdle to the *formation* of a federation, even if union is in the interests of all potential members. We show that the provision of a low-cost “exit option” – such as a constitutional secession clause – can resolve this problem and allow for unanimous consent to the formation of a federation that would not be viable in its absence. Put differently, the right to *leave* a federation may be a necessary condition for the *existence* of the federation in the first place.<sup>2</sup>

To make this argument, we extend Chen and Ordeshook’s (1994) model of constitutional secession clauses. First, instead of assuming that federal policy is exogenously given, we explicitly incorporate a model of federal policy-making. This extension highlights that political decision-making within a federation is *endogenous* to the presence or absence of a low-cost exit option. Second, we model a constitutional stage during which potential federation members decide whether to form a federal union, and if so, whether to include a right to secession. We show that under conditions of political imbalance, only federations that include the right to secession can secure unanimous constitutional agreement by potential members.

The analysis has a number of implications. Most scholarship to date has focused on the potential impact of secession clauses on the emergence of secessionist movements and the stability of a federal system (e.g., see Sunstein 1991; Chen & Ordeshook 1994). Scholars have paid far less attention to the implications of the opportunity for low-cost exit for *on-going* political choices, namely, the fact that even if a federation never experiences a secessionist moment, the mere presence of the

<sup>1</sup> According to the national constitutions compiled by the <https://www.constituteproject.org> only the constitutions of Croatia, Ethiopia, Liechtenstein, and Saint Kitts and Nevis include explicit provisions allowing for secession.

<sup>2</sup> Apolte (1997) focuses on complications that arise from the fact that sub-units are not unitary actors. This is an important issue, but somewhat orthogonal to the central point of the current paper. Like the other contributions we build on (like Bordignon & Brusco (2001); Chen & Ordeshook (1994)), we thus put this issue to the side here.

*potential* for low-cost exit has significant consequences for federal policy-making (e.g., see Buchanan & Faith 1987, Bordignon & Brusco 2001). As a result, under certain conditions, the viability of a federation can (paradoxically) require the option to secede. When this is the case, inclusion of a secession right does not destabilize a federation. Instead, it is precisely the option to withdraw at low cost that can make a federation stable and successful because it provides a mechanism to resolve the commitment problem of maintaining a federal bargain over time. As we demonstrate, this is particularly important when there are systematic imbalances in the political influence of federal sub-units – a condition often found in federations that incorporate ethnic or religious minorities.

## 2 The model

Departing from the (near) consensus that secessionist threats should be contained, Chen & Ordeshook (1994) examine the purpose and efficacy of constitutional prohibitions on secession. Their aim is to explain why a textual prohibition of secession—a mere “parchment barrier”—should be effective in preventing dissolution of a federation. To do so, they develop a simple but general model of federalism. The model is designed to capture the notion that uniting into a federation can provide a number of benefits to potential members. These benefits might derive from the introduction of inter-jurisdictional competition for citizens and capital, which constrains the power of governments (Brennan & Buchanan, 1980; Buchanan & Faith, 1987; Hayek, 1939; Vanberg & Kerber, 1994; Weingast, 1995) and allows citizens to sort into jurisdictions that best match their preferences (Tiebout, 1956; Ostrom, 1973). Centralizing (some) policy areas within a federation can also provide benefits through the creation of economies of scale, including in military defense and the provision of public goods more generally, as well as through the creation of a larger internal market (Riker, 1964; Bordignon & Brusco, 2001; Chen & Ordeshook, 1994). If preferences with respect to public goods vary across regions, federalism can allow potential members to secure the benefits of centralization where preferences are aligned but maintain local autonomy where preferences diverge. As Congleton et al. (2003) demonstrate, under such conditions, an efficient bargain among potential members may imply “menu federalism,” in which different regions retain different levels of autonomy across issue areas.<sup>3</sup>

The Chen and Ordeshook model assumes a number of states playing an infinitely repeated game. In each period, if State  $i$  acts as an independent state, it produces  $\pi_i > 0$  units of a good for consumption. But if the states form a federation, the joint product of the states increases to  $K(\sum \pi_i)$ , where  $K > 1$ . Thus, a federation offers benefits because it makes states more productive. The larger  $K$  becomes, the more

<sup>3</sup> As Congleton et al. (2003) conclude, their argument “suggests that dividing policy-making authority between regional and central authorities allows economies of scale in specific production areas to be realized, while reducing political risks and allowing local services to vary among regions. That is to say, federalism would be a common institutional arrangement whenever governments are formed via social contract although the degree of centralization would vary with the political and economic circumstances...”

significant the benefits from federation. Critically, this joint product is divided among the states according to an exogenously given, fixed partition (i.e., the states have no agency in choosing federal policy) that is independent of the presence or absence of a secession right.

Our first extension of the Chen and Ordeshook model is to explicitly model federal policy-making (i.e., the distribution of the federation product). To do so, we employ a version of the standard “setter model” (Romer & Rosenthal, 1978). Consider two states, 1 and 2, that can potentially form a federation.<sup>4</sup> In each period, one of the two states is in a dominant position within the federation; we refer to this as the “current majority.” The other state is in the “minority” position during this period. The current majority can propose a division of the federal product,  $K(\pi_1 + \pi_2)$ , between the two states. The minority must decide whether to accept or reject the proposed division. The substantive logic of this modeling choice is that it captures the idea that a particular subunit may be largely excluded from policy-making at the “top,” but retain significant ability to thwart or frustrate federal policy-making through state-level action.

The probability that State 1 is in the majority position in a period is given by  $p$  and the probability that State 2 is in the majority is given by  $(1 - p)$ . In words,  $p$  captures the relative political influence or power of the two states. Relative power might depend on factors such as population size or economic power (e.g., in federations in which some states are carved out to represent ethnic or religious minorities, or where there are significant differences in economic development across a federation). In addition,  $p$  captures institutional features of a federation that serve to equalize or skew political power in favor or against particular states (e.g., equal representation in the US Senate increases the influence of smaller states compared to larger ones). Without loss of generality, we assume  $p \in [\frac{1}{2}, 1]$ . We compare two types of federation:

- (1) **A federation with no secession rights:** In each period, the current majority proposes a division of the federal product which the other state can accept or reject, resulting in federal gridlock. If the minority rejects the proposal, each state produces and consumes its independent quantity,  $\pi_i$ , and pays a cost  $c > 0$  that represents the costs of federal deadlock.
- (2) **A federation with secession rights:** If the states have a right to secede from the federation, the minority state has three options. It can accept the proposed division, reject it (and collect the “deadlock” payoff of  $\pi_i - c$ ) but remain in the federation, or it can choose to secede from the federation. If it chooses to do so, each state pays a dissolution cost of  $s > 0$  during the secession period, but then produces  $\pi_i$  in each period as an independent state.

<sup>4</sup> Chen & Ordeshook (1994) model three states. They do so because they are interested in examining punishment strategies against secession, assuming that successful punishment requires coordination by two states against the seceding one. This is not an issue in our argument, so we need only consider two states.

Finally, we assume that prior to beginning play of the infinitely repeated game, the two states – independent at the outset – engage in a **constitutional choice** game. Specifically, the states can choose to i) remain independent, ii) form a federation without secession rights, or iii) a federation with secession rights. If they cannot agree on the type of federation to form, they remain independent. The key questions we are interested in are:

- How is the federal product divided under each type of federation?
- Under what conditions is each type of federation *viable* in the sense that both states would agree to its formation rather than remain independent?
- Are there circumstances under which both states would favor inclusion of a secession clause at the constitutional stage?
- How does the relative political influence of the two states ( $p$ ) affect the answers to these questions?

We proceed by contrasting outcomes under each of the two federations, and then consider the constitutional choice confronting the states. As in Chen & Ordeshook (1994), we consider history-independent Markov equilibria.<sup>5</sup>

## 2.1 Outcomes in a federation without secession rights

Suppose that the states have formed a federation that does not allow for secession, and consider a generic stage game in which State  $i$  is the majority state, and has offered a share  $x$  to State  $j$ . Since secession is not possible,  $j$  must choose between accepting and rejecting the offer. The payoff from rejecting (causing federal deadlock) is  $\pi_j - c$ , so  $j$  accepts any offer greater than or equal to  $\pi_j - c$ . This immediately implies that  $i$ 's optimal offer is  $x = \pi_j - c$ . Making this offer is preferable for both states (when in the majority) to offering less and inducing deadlock. Thus, the following constitutes a Markov perfect equilibrium:

**Equilibrium 1** The following strategy profile constitutes a Markov perfect equilibrium in the federation game without secession:

<sup>5</sup> The most important restriction introduced by this equilibrium refinement is that it rules out history-contingent strategies, such as strategies in which cooperation is sustained by reciprocity (e.g., via grim-trigger strategies). The fact that history-contingent strategies are not available typically reduces the set of equilibria radically. In our model, the Markov equilibrium we present is unique. This is the case because—as we prove below—the stage game played by the regions has a unique subgame-perfect equilibrium. Because strategies are history-independent, future play cannot be made contingent on behavior in the current period. This directly implies that in equilibrium, the regions must play the unique subgame-perfect equilibrium of the stage game in every period. We focus on Markov equilibria primarily to preserve comparability with Chen and Ordeshook (1994). Such equilibria are also substantively sensible in circumstances in which contingent strategies are difficult to implement or not credible. This may be the case, for example, if actors change over time. In our case, for instance, regions are unitary, permanent players in the model, but substantively, regional governments change in partisan and personnel composition over time, making contingent strategies less credible.

- State 1: If in the majority position, offer State 2 the share  $x = \pi_2 - c$ . If in the minority, accept any offer that gives State 1 at least  $\pi_1 - c$ .
- State 2: If in the majority position, offer State 1 the share  $x = \pi_1 - c$ . If in the minority, accept any offer that gives State 2 at least  $\pi_2 - c$ .

The intuition underpinning this equilibrium is immediate: Because a state cannot leave the federation, what constrains the majority state in a given period is the ability of the other state to refuse to “go along” and to cause federal gridlock. The majority can exploit its advantaged policy-making position as long as it does not push the other state to the point of preferring gridlock. The extent to which the majority can do so depends on how costly such deadlock is. The costlier deadlock is, the more the majority can exploit its position.

What are the expected payoffs to the states under a federation with no secession rights? Recall that State 1 occupies the majority position with probability  $p$ , and State 2 does so with probability  $(1 - p)$ . This implies that the expected equilibrium payoff to State 1 in a federation without a right to secede is given by:

$$F_1^{ns}(p) = \frac{p(K(\pi_1 + \pi_2) - (\pi_2 - c)) + (1 - p)(\pi_1 - c)}{1 - \delta}$$

The first part of the denominator captures the payoff to State 1 when it is in power. The second part captures the payoff it receives when State 2 is in power. Analogously, State 2’s expected payoff is given by:

$$F_2^{ns}(p) = \frac{p(\pi_2 - c) + (1 - p)(K(\pi_1 + \pi_2) - (\pi_1 - c))}{1 - \delta}$$

Note that if the two states successfully agree on a division, they divide  $K(\pi_1 + \pi_2)$ . In contrast, if they disagree and deadlock results, total production is the sum of individual states’ productions minus the cost of disagreement,  $(\pi_1 + \pi_2) - 2c$ . The difference between these two quantities captures the per period surplus generated by an agreement that avoids deadlock. This quantity is given by  $T = (K - 1)(\pi_1 + \pi_2) + 2c$ . We can simplify the expression of the two states expected payoffs in terms of this quantity. Specifically, each state’s payoff equals its “deadlock payoff” plus a share of the federation surplus that is proportional to the state’s political influence, as captured by the probability of being in the majority:

$$F_1^{ns}(p) = \frac{pT + (\pi_1 - c)}{1 - \delta}$$

and

$$F_2^{ns}(p) = \frac{(1 - p)T + (\pi_2 - c)}{1 - \delta}$$

Each state’s expected payoff increases in its political influence ( $p$  and  $1 - p$ ), the productivity of the federation ( $K$ ), and the productivity of the states ( $\pi_1, \pi_2$ ). Those comparative statics are intuitively sensible: The parameters that increase a state’s

payoff either increase the state’s leverage over the other state (political influence) or they increase the surplus of the federation ( $K$ ,  $\pi_1$ , and  $\pi_2$ ). In contrast, greater political influence by the other state lowers a state’s leverage and decreases its expected payoff.<sup>6</sup>

### 2.2 Outcomes in a federation with secession rights

How do outcomes change when the federation includes a right to secede, and states are able to withdraw from the federation? Intuitively, the key change introduced by the right to secede is an additional constraint on the current majority. It must not only anticipate what proposals are acceptable to the minority compared to federal deadlock within the federation, but also what proposals are not going to provoke secession.<sup>7</sup>

**Equilibrium 2** The following strategy profile constitutes a Markov perfect equilibrium in the federation game with a right to secession:

- State 1: If in the majority position, make the following offer to State 2:

$$x = \begin{cases} \pi_2 - c & \text{if } p < 1 - \frac{c-(1-\delta)s}{\delta T} \\ \frac{\pi_2-(1-\delta)s-\delta(1-p)(T+(\pi_2-c))}{1-\delta(1-p)} & \text{if } p \geq 1 - \frac{c-(1-\delta)s}{\delta T} \end{cases}$$

If in the minority, accept any offer that gives State 1 at least  $\pi_1 - c$ .

- State 2: If in the majority position, offer State 1 the share  $x = \pi_1 - c$ . If in the minority, accept any offer

$$x \geq \begin{cases} \pi_2 - c & \text{if } p < 1 - \frac{c-(1-\delta)s}{\delta T} \\ \frac{\pi_2-(1-\delta)s-\delta(1-p)(T+(\pi_2-c))}{1-\delta(1-p)} & \text{if } p \geq 1 - \frac{c-(1-\delta)s}{\delta T} \end{cases}$$

See the appendix for the formal derivation of this equilibrium. Here, we focus on the intuition. A useful starting point is to note that the possibility of secession makes political decisions—the division of the federal product—contingent on the

<sup>6</sup> The impact of the deadlock cost depends on a state’s political influence. State 1 is politically dominant (it is more likely than not to be in the majority). As a result, it benefits from a higher deadlock cost. For State 1, the upside of being able to extract the deadlock cost from State 2 when in the majority outweighs the negative impact of being paid less when in the minority. In contrast, State 2’s payoff declines in  $c$  for the same reason. It is more likely to be in the minority, and therefore more likely to be hurt by the ability of the majority to extract more when deadlock costs are high.

<sup>7</sup> For ease of exposition, we focus here on the case in which  $s < c$ . Results are substantively similar if this is not true, but become analytically less tractable. Substantively, the assumption that  $s < c$  is sensible for a number of reasons. The costs of federal deadlock ( $c$ ) are likely to be substantial if a recalcitrant sub-unit can undermine federal policymaking as a member of the union; disentanglement may often be less costly (remember, of course, that we are referring simply to the costs of deadlock and disentanglement – not the costs of foregone union, which may be substantial). Moreover, the costs of disentanglement ( $s$ ) are in part endogenous to the procedure prescribed by the secession right. In a sense, the precise purpose of a constitutional secession right is to reduce  $s$  by providing an orderly procedure for dissolution.

relative political power of the states. When State 1 (the dominant state) is not too dominant (when  $p$  falls below the threshold stated in the equilibrium), the possibility of secession has no impact on the equilibrium distribution. Each state continues to make (and to accept) the minimal offer to avoid federal deadlock, and the path of play is indistinguishable from the federation without secession. Why does the right to secession make no difference when the states are sufficiently balanced politically? The reason is that in this situation, *the right to secession does not constitute a credible threat*: Although State 1 is dominant (recall that  $p \geq \frac{1}{2}$ ), State 2 is sufficiently influential (i.e., likely to occupy the majority position within the federation in future periods) that the continued existence of the federation has significant value for State 2. As long as it is assured its “deadlock payoff” in the current period, it prefers to remain in the federation in order to secure the future benefits of union. The same is true of State 1.

The situation changes when State 1 becomes too dominant (in the sense that  $p$  rises above the threshold noted in the equilibrium strategies). Because State 1 is highly likely to be in the majority, the federation has significant value for it. As a result, State 1 is willing to accept the “deadlock payoff” rather than seceding on those (rare) occasions when it finds itself in the minority. But the same is no longer true for State 2. State 2 is now so likely to be shut out from influence in the federation (i.e., so likely to be in the minority position in future periods) that the “deadlock payoff” is no longer sufficient to induce it to remain in the union. Secession becomes a credible threat. Unless State 1 makes a sufficiently attractive offer to State 2, the minority will choose to leave the federation. Necessarily, this offer must be *larger* than State 2’s “deadlock payoff.” Put differently, when secession is possible, a state that is politically weak within the federation must be compensated to remain within the union. Because union provides benefits, the politically dominant state is willing to offer this compensation in order to maintain the federation. As one might intuit, how much more attractive this offer must be depends on  $p$ . The more dominant State 1 becomes, the bigger the offer it must make to State 2. Several features of this equilibrium are worth highlighting.

**Implication 1** The right to secession shapes policy decisions *even though it is never exercised*.

In equilibrium, secession does not occur because anticipation of the possibility of secession induces the dominant unit to make a more generous offer to the minority in order to induce it to remain in the union. Put differently, the right to secession serves as an enforcement mechanism for units that are politically disadvantaged within a federation, ensuring that dominant units cannot exploit their position to the same extent as would be possible when secession is not an option. This is a key point to which we return more explicitly below when we consider the states’ constitutional choice. As is intuitive, this mechanism requires that secession is not prohibitively costly. If  $s$  rises above a critical threshold (see appendix), secession by the disadvantaged state is not a credible threat, no matter how dominant State 1 becomes.



**Implication 2** Whether the right to secession has an impact on policy decisions depends on how valuable the federation is (that is, on  $K$ ). When the federation is highly productive (that is, when  $K$  is high), the right to secession only matters if political influence heavily favors State 1. If the federation is less productive (i.e., when  $K$  is low), the right to secession matters even if State 1 is less dominant.

Figure 1 illustrates this implication, plotting the equilibrium offer by State 1 as a function of the productivity of the federation ( $K$ ) and the political dominance of State 1 ( $p$ ). Consider the right side of the figure – the range in which  $K$  is high – first. Here, continued existence of the federation is highly productive, offering significant benefits. Despite the fact that State 2 is not in a dominant position, it can expect to benefit from remaining in the federation unless it is *very* weak, i.e., unless  $p$  approaches 1, indicating near total dominance by State 1. Thus, secession is not a credible threat under most circumstances, and the equilibrium offers are the same as in a federation without secession. Consider what happens as the federation becomes less productive (i.e.,  $K$  declines). Remaining in the federation becomes less attractive for State 2 since the federation generates less surplus. Hence, the threshold on  $p$  beyond which secession becomes a credible threat declines: State 2 is willing to leave the union even if State 1 is not completely dominant. To keep the federation together, State 1 must make the more generous offer under a broader set of conditions.

We can express the same implication in another way by focusing on political dominance. As Fig. 1 shows, for any given level of productivity of the federation, the right to secession only affects political decisions if State 1 becomes sufficiently dominant, i.e., if  $p$  crosses the threshold indicated by the boundary that separates the two regions in the figure. If the political balance between the two states is not sufficiently skewed, the threat of secession by State 2 is not credible, and as a result has no impact:

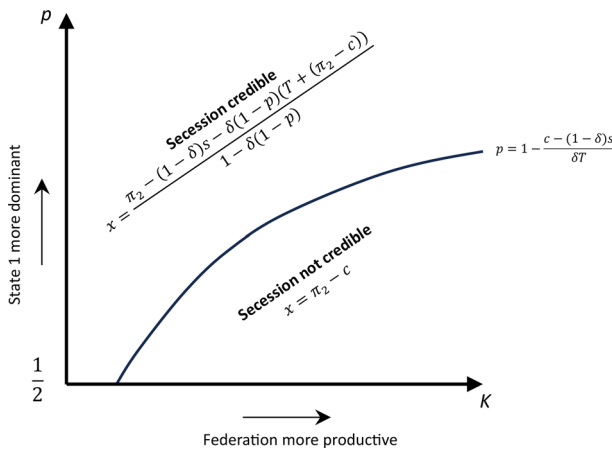


Fig. 1 Equilibrium offer by State 1 when there is a right to secession (drawn for  $s < c$ )

**Implication 3** For any given level of federation productivity ( $K$ ), the right to secession affects federation policy-making only if State 1 is sufficiently dominant politically.

### 2.3 The constitutional stage

We are now in position to consider the constitutional choice confronting the two states. What kind of federation would they choose behind a “veil of uncertainty” (Buchanan and Tullock, 1962), that is, before it is revealed which state occupies the majority position in the first period? Note that if State  $i$  does not consent to any federation, its expected payoff as an independent state is equal to

$$I_i = \frac{\pi_i}{1 - \delta}$$

Each state’s “calculus of consent” depends on how this payoff compares to the expected payoff of being in a federation with or without a right to secession, and how these two payoffs compare to each other. Consider first the payoff to a federation without the right to secession. As derived above, each state’s payoff equals its “deadlock payoff” plus a share of the federation surplus that is proportional to the state’s political influence, as captured by the probability of being in the majority:

$$F_1^{ns}(p) = \frac{pT + (\pi_1 - c)}{1 - \delta}$$

and

$$F_2^{ns}(p) = \frac{(1 - p)T + (\pi_2 - c)}{1 - \delta}$$

For State 1, the payoff of a federation without secession rights exceeds the payoff of remaining independent if the probability of being in the majority ( $p$ ) exceeds the following threshold:

$$p \geq \frac{c}{T}$$

It is easy to verify that this is always true for  $p \in [\frac{1}{2}, 1]$ . The intuition is that a dominant state – precisely because it is so likely to be in control of federal policy-making – does not need the protection offered by the possibility of secession. A federation, even without the possibility of exit, is always in its interest. In contrast, for State 2, the expected payoff of joining a federation without secession rights only outweighs the payoff of remaining independent if State 1 is not too dominant, that is, if  $p$  falls below the following threshold:

$$p \leq 1 - \frac{c}{T}$$

It is useful to pause for a moment to consider the intuition behind this result more closely. The result states that if  $p$  exceeds this threshold, that is, if State 1 is too

dominant in the sense that it is highly likely to occupy the majority position, State 2 would *not* consent to join a federation without secession rights, preferring instead to remain independent. *Critically, note that this is not the case because a federation could not – in principle – offer benefits to both states.* In fact, there are many divisions of the federal product even when  $p$  is above this threshold that would be advantageous for both states if implemented as a federal bargain. For example, both states would prefer a union in which they simply divide the surplus created by federation  $((K - 1)(\pi_1 + \pi_2))$  equally to remaining independent. The problem is that any such division, even if agreed to at the constitutional stage, is not credible: State 2 knows that once it has joined a federation without secession rights, State 1 need only offer  $\pi_2 - c$ . Assurances that State 1 will be more generous are simply not credible in the absence of a mechanism to enforce them. *In other words, it is the inability to credibly commit to a “federal bargain” in which State 1 offers more than  $\pi_2 - c$  once it is in power that prevents formation of this kind of federation, forcing the states to forego a mutually beneficial constitutional exchange.*

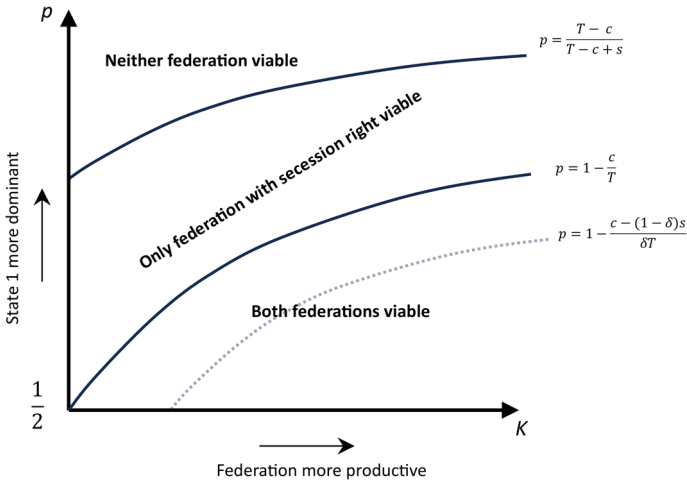
**Implication 4** At the constitutional stage, a weaker state will not agree to the formation of a federation without secession rights if political imbalance is too great.

What about a federation with secession rights? As established above, when State 1 is politically dominant, the possibility of secession forces it to make a more generous offer to State 2 in order to preserve the union. This implies that State 2 can expect a larger payoff under a federation with a secession right. Consequently, State 2 may be willing to join a federation that allows for secession when it would not do so in the absence of a secession right. Specifically—as we illustrate in Fig. 2—as long as State 1 does not become exceedingly dominant ( $p < \frac{T-c}{T-c+s}$ ), State 2 will agree to join a federation that allows it to secede at cost  $s$ . Critically, this cutoff lies above the cutoff that separates the region in which State 2 is willing to join a federation without secession rights ( $p < 1 - \frac{c}{T}$ ). In other words, In the area between these two cutoffs—when political balance is pronounced but not extreme—the states cannot agree to form a federation *without* secession rights, but could agree on a union that *includes* a secession right.<sup>8</sup>

**Implication 5** Inclusion of a right to secession can make federation viable at the constitutional stage even in the face of pronounced political imbalance between the member states.

The key point illustrated by our model is simple. Political imbalance between potential member states can pose a significant hurdle to the formation of a federation. If states anticipate that they will be politically disadvantaged within the federation, and there is no credible mechanism for ensuring a federal bargain that is sufficiently attractive, they will not consent to the formation of a federation *even when*

<sup>8</sup> Of course, the right to secession – as long as there are positive costs to exercising it – is not a “cure all.” If political imbalance becomes extreme (towards the top of Fig. 2), even inclusion of a secession right is not sufficient to induce State 2 to join a union.



**Fig. 2** Political imbalance and viability of different federation types (drawn for  $s < c$ )

*union offers a potential Pareto improvement.* The right to secede—provided doing so is not too costly—can resolve this problem by providing a mechanism to enforce mutually beneficial federal bargains. The mere presence of the right to secession counteracts the threat posed by political imbalance in a way that makes federation a viable choice at the constitutional stage.

### 3 Secession as a substitute

In the face of significant (anticipated) political imbalance, inclusion of a right to secession can make mutual agreement to a federation possible at the constitutional stage. But the degree of political balance within a federation is, at least in part, a function of the constitutional structure more broadly. It is easy to imagine institutional features—from representation rules (e.g., equal representation of states in the US Senate), domains of policy autonomy for sub-units (e.g., reserving education policy to lower level governments), and fiscal rules (e.g., a fiscal equalization and transfer scheme)—that might serve to equalize political influence and outcomes across units, and thus obviate the need for a secession right. In fact, one of the main critics of constitutional secession rights, Cass Sunstein, explicitly points to this feature when he argues that “there are better and less disruptive means of ensuring that the good motivations that sometimes underlie secession movements can be addressed. These involve, above all, federalism, checks and balances, entrenchment of civil rights and liberties, and judicial review” (Sunstein 1991, 667). In our model, such features lower  $p$  towards  $\frac{1}{2}$  and place a federation in the lower part of Fig. 2. Here, the right to secession is not necessary in order to make a federation viable, especially for federations that promise significant benefits (i.e., in which  $K$  is reasonably high). In other words, the model suggests that other institutional features can

substitute for the right to secession and vice versa. In light of this substitution effect, it is useful to consider the advantages and disadvantages of each approach.

The right to secede offers three principal advantages compared to mechanisms that impose decision-making rules that equalize influence (such as equal representation, or supermajority rules) or seek to address (minority) concerns through the inclusion of rights guarantees (such as cultural or religious autonomy). The first concerns efficacy: Constitutional guarantees of specific rights (such as guarantees for religious or cultural autonomy) may not effectively constrain political abuses, especially if such enforcement must rely on judicial review (e.g., see Rosenberg 2008, Vanberg 2005, Clark 2010). A right to secession directly allows a sub-unit (and its citizens) to remove itself from a jurisdiction, obviating the need to enforce policy changes within the federation. Second, as a mechanism for protecting minority concerns, the secession right is open-ended; it does not require *ex ante* specification of the interests or rights to be protected. In contrast, particular rights guarantees in a constitution can, by definition, only apply to interests that are known (and sufficiently influential) at the constitution-writing stage. Third, decision-making procedures that equalize influence by sub-units will, virtually by definition, be “counter-majoritarian,” that is, impose hurdles that increase the political power of minorities. At least in democratic settings, such features may be viewed as illegitimate attempts to impose “minority rule.” Attacks in the US on the legitimacy of the electoral college, equal representation in the Senate, or the vast literature on the “countermajoritarian difficulty” posed by judicial review are examples (e.g. Bickel 1962, Friedman 2009). In contrast, the right to secession is less vulnerable to such claims. Secession does not allow a minority to “impose” decisions on the remaining members of the federation; it simply allows the minority to opt out. In other words, the right to secession can offer a method for protecting the interests of political minorities that may appear more consistent with democratic commitments because it can constrain democratic decision-making without the need for “countermajoritarian” decision procedures (see also Vanberg 2011; 2018).

The disadvantages of a secession right largely concern questions of efficacy. One is that secession is costly, and thus will not be undertaken, in the words of the *Declaration of Independence*, for “light and transient causes.” Our model reflects this fact: The secession right only affects how majorities exercise their power when secession is a credible threat. When it is not, the mere inclusion of a secession right has no impact. As a result, (the threat of) secession can only prevent substantial abuses of power. A second disadvantage is that secession is a *collective* right; its exercise requires a political decision by a sub-unit. In contrast, constitutionally protected rights guarantees offer the potential for individuals (typically acting through the legal system) to limit abuses of political power without the need for broader political support. Vanberg (2000, 370) highlights precisely this difference between individual and collective choice in a related context, namely the theory of “functional overlapping competing jurisdictions” (FOCJ). Discussing competition among jurisdictions in the provision of public goods, he notes that “there is a significant difference between an arrangement in which citizens have the option individually and separately to choose among competing suppliers of public services and one in which they can exercise such choice only collectively as communes.”

## 4 Why are secession rights so rare?

Our analysis raises an obvious question: If the right to secede can be essential for the viability of certain federations, why do so few “real world” federal constitutions include secession clauses? To explore this, it is helpful to contrast federations with international treaties and international organizations. Like federations, these agreements involve members (in this case, sovereign states) that subject certain issues to joint decision-making or control. However, unlike federations, international treaties and organizations often explicitly allow for “secession.” As Helfer (2012) observes, “[t]reaty provisions that authorize unilateral denunciation and withdrawal are pervasive...A 2010 study based on a random sample of 142 international agreements published in the United Nations Treaty Series (UNTS) found that 60 per cent of treaties surveyed contain an exit clause.”

Considering the structural differences between federations and treaties suggests potential explanations for why secession clauses are rare in federal constitutions. One issue concerns credibility: As our analysis shows, merely including a secession right (as a “parchment barrier”) is insufficient; to enforce a federal bargain, the threat of secession must be credible. A potential member weighing whether to join a federal union with a secession right might question whether this right could actually be exercised, for at least two reasons:

- Other member states may not permit exit in practice, especially at low cost, instead blocking or penalizing attempts to withdraw.
- The social, political, and economic ties within a federation may become so deep that exercising the exit option will be prohibitively costly.

In terms of our model, potential members may anticipate that the cost of dissolution,  $s$ , may be so large that they would never choose to secede after joining. This will induce a form of “survivor bias:” Federations that require a credible right to exit to form in the first place might never come into existence. As a result, the federations that do emerge—and which we observe—are those for which a secession clause is not necessary. The situation is different for international treaties and organizations. Because these involve sovereign states, forcing a member to remain against its will is typically far costlier for the other members. Additionally, the entanglements created by such agreements are less extensive than those in federations, making withdrawal less costly. These factors ensure that a right to exit in international agreements is usually credible, enabling the creation of arrangements that depend on the inclusion of such a right.

A second issue concerns the empirical circumstances in which federations as opposed to international treaties and organizations typically emerge. Our argument is rooted in the constitutional political economy tradition, which emphasizes institutional features likely to emerge out of a constitutional process that requires potential members to agree on a structure for joint governance. This closely resembles the process for negotiating international agreements: States typically cannot be compelled; they must *agree* to join. In this sense, the formation

of international organizations and treaties offers a useful perspective on what is likely to emerge out of a contractarian process. As Congleton (2020, 2) argues, the “decision-making procedures adopted and powers delegated to newly created international agencies thus provide evidence of the type of decision-making processes and extent of authority likely to be held by governments created via social contract.” Consistent with our argument, such agreements consistently lead to the inclusion of a “right to secession.” In contrast, federations often do not emerge out of such voluntary, contractarian processes. Instead, they frequently result when a dominant or conquering power perceives that it is more efficient to grant some level of regional autonomy—particularly to ethnic or religious minorities—rather than to impose direct rule (Broman, 2022, 2023). Not surprisingly, such arrangements are not likely to include a right to withdraw.

## 5 Conclusion

Constitution-makers and scholars have generally taken a dim view of the right to secession and few constitutions include this “exit option.” A primary reason for this skepticism is the fear that explicitly allowing for secession may increase inter-group conflict, encourage threat bargaining, and destabilize a federation. We have highlighted an aspect of secession clauses that has (in our view) not been sufficiently stressed in this context. In the face of significant political imbalance among federation members, the right to secession can serve as a powerful deterrent that keeps politically dominant members from exploiting their position to impose unfavorable outcomes on weaker subunits. In other words, the presence of an exit option can encourage more conciliatory and “fair” behavior. From a *constitutional political economy* perspective, this aspect is critical because it has direct implications for the formation of a federation. If a potential federation is characterized by significant political imbalance, weaker members, anticipating that it will be challenging to enforce whatever federal bargain is offered at the constitutional stage once they join, are not likely to agree to formation of a federation without a mechanism that can resolve this problem of credible commitment. One way to do so is to include a right to secede as part of the constitutional structure. Critically, the purpose of doing so is *not* the expectation or hope that the secession right will be exercised. Rather, the point is that the presence of a low-cost exit option serves as an enforcement mechanism that induces more powerful members to honor the terms of the federal bargain rather than to exploit their dominant position.

Several prominent examples of constitution-making appear consistent with this argument. Consider the 1947 Burmese Constitution, written to pave the way for Burma’s independence from Great Britain. Historically, Burma had been dominated by the Burman, comprising roughly  $\frac{2}{3}$  of the territory’s population, with the remaining population divided among a number of small ethnic groups, most of whom belonged to the so-called “Hill Peoples.”<sup>9</sup> These small ethnic groups—represented

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<sup>9</sup> The largest of these, the Karen, constituted roughly 9% of the population.

by the Supreme Council of the United Hill People—insisted that they were open to the creation of a federal Burma, but only on the basis of “a) equal rights and status; b) full internal autonomy...c) a right to secession from the Federation at any time after attainment of Freedom.”<sup>10</sup> The Burmese Constitution adopted in 1948 made good on this condition, including a right to unilateral secession in Chapter 10. The Ethiopian constitution-making process of 1993 exhibited a similar dynamic. Despite being home to over 80 distinct ethnic groups, Ethiopia had historically been dominated culturally, politically, and economically by the Amhara people. State resources and services were concentrated in areas populated by Amharas, policies recognized Amharic culture as Ethiopian culture, and other cultural traditions were marginalized (Micheau, 1996). Following the end of the civil war in 1991, a Transitional Charter was adopted, and work towards a new federal constitution for Ethiopia began. Already as part of the Transitional Charter, representatives of various minority groups—presumably worried about the potential for renewed Amhara dominance—insisted on the inclusion of a secession right and this demand carried over to the constitutional assembly (Habu 2005, 325f.). Article 39 of the Constitution that ultimately came into force in 1994 explicitly recognizes that “every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including the right to secession.” In short, both the Burmese and the Ethiopian experiences suggest precisely the logic of our model: In the face of significant political imbalance, weaker subunits would only consent to the formation of a federation if granted the right to secede as part of the constitutional bargain.

In closing, we emphasize three points. First, our argument is not that the right to secession is the *only* means by which a mutually advantageous federal bargain can be achieved. Other institutional features that serve to equalize political power (i.e., drive  $p$  towards  $\frac{1}{2}$  in our model) can serve a similar purpose. A fruitful avenue for future work is to more carefully consider the advantages and disadvantages of these alternative mechanisms, and the conditions under which each is particularly likely to be effective. Second, the right to secession is a collective right exercised on behalf of a community of individuals. This fact raises significant normative and positive questions that we put aside here in order to focus on the role of the potential for exit in enforcing a federal bargain. But clearly a fuller treatment of secession should address these issues. Finally, our focus has been on secession rights within a federal union. But the central conceptual point applies more broadly to virtually all forms of partnership in which an imbalance of power can pose a challenge. Whether in business partnerships (e.g., law firms), private partnerships (e.g., marriage), or—as noted above—international treaties and organizations, the “right to secede” at relatively low cost (even if never exercised in equilibrium) can serve as an important constraint on the behavior of dominant parties. As a result, the ability to form such partnerships may itself be endogenous to the inclusion of a low-cost exit option as part of the constitutional structure.

**Supplementary Information** The online version contains supplementary material available at <https://doi.org/10.1007/s10602-025-09462-7>.

<sup>10</sup> Frontier Areas Committee of Enquiry Report, Burma Library, April 24, 1947., p.6.



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