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Secession as a Remedial Right[1]

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ABSTRACT *Allen Buchanan holds that nations do not have a general primary unilateral right to secede. However, nations could legitimately secede if there were a special right to do so, if it were the result of negotiations and, more importantly, if some previous injustice had to be repaired. According to Buchanan, the three kinds of injustice that allow for unilateral secession are: violation of human rights, unjust annexation of territories, and systematic violations of previous agreements on self-government. I agree that nations only have a general remedial right to unilateral secession. But I argue that nations also have a general primary right to self-determination not held by other cultural groups. In virtue of this general primary right, nations also have a primary right to internal self-determination. I will then argue that the "past injustices" should include a failure to comply with internal self-determination. I also want to show that this alternative version of the Remedial Right Only theory meets the constraints, imposed by Buchanan himself, upon any satisfactory institutionalization of the principles governing secession. In the end, it will appear that my own version fares much better than Buchanan's in meeting these constraints.*

I.

According to Allen Buchanan, there are two main theories of secession: Primary Right theories and Remedial Right Only theories. Primary Right theories stipulate that some groups may unilaterally secede in the absence of past injustice. Remedial Right Only theories suggest on the contrary that unilateral secession can only be justified if important harms have been caused to the seceding group by the encompassing state. Buchanan subscribes to the remedial account of secession. So he believes that no group, not even nations, are entitled to secede if they have not been subject to moral harms. He also believes that nations are not unique among all cultural groups and are not even entitled to a general primary right to

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self-determination. So *a fortiori*, they do not have the right to unilaterally secede unless they are victims of prior injustices.

In what follows, I shall criticize Buchanan's version of the Remedial Right Only theory. I shall then develop an alternative account. I agree with Buchanan and against Primary Right theories that nations do not have a primary right to secede. But against Buchanan, I shall argue that nations are unique and are the subject of a general primary right to self-determination, that is, a general right to be free and equal. But there are various ways of institutionalizing this right. It can be through internal and through external self-determination. The right to internal self-determination is the right of a nation to "dispose of itself". More specifically, it is the right to develop itself economically, socially and culturally and to determine its own political status within the encompassing state. The right to external self-determination is the right to violate the territorial integrity of the encompassing state. It can take the form of secession or of an association with a different state. I believe that there are *prima facie* good reasons for resisting the idea of a general primary right to secede, and that such a right can only be conditional. The general primary right to self-determination only yields a primary right to internal self-determination. The existence of many ties that bind the stateless people to the encompassing state invites us to think that secession involves important changes that can only be justified if some important injustices have been inflicted on the seceding nation. Consequently, there should only be a remedial right to external self-determination.

The correct institutionalization of a general primary right to self-determination requires the constitutionalization of a primary right to internal self-determination and of a remedial right to secede. But since I accept a primary right to internal self-determination, this account allows me to enrich the list of just causes for secession. Buchanan's own list of remedial considerations is too conservative. He accepts only a limited list of remedial conditions. The violation of the primary right to internal self-determination is in my view an additional just cause for seceding. I also want to argue that this alternative version of the Remedial Right Only theory meets the constraints, imposed by Buchanan himself, upon the institutionalization of the principles governing secession. In the end, it will appear that my own version of the theory fares much better than Buchanan's in satisfying these constraints.

II. Buchanan's "Remedial Right Only" theory

Allen Buchanan holds that cultural groups may instrumentally acquire a moral value for individuals and can, for this reason, be the subject of collective rights.[2] They acquire such an instrumental value because they are treated as social goods by individual agents. For this reason, cultural groups

are entitled to cultural protection. Buchanan also holds that nations are just one among many other cultural groups (religious, linguistic, immigrant, ideological, etc.) and, as such, they do not deserve to have rights not granted to any other groups, and this includes the right to self-determination.[3] As a matter of fact, no group has a primary right to self-determination, that is, a general right similar to the right that persons have to be free and equal, and implying some form or other of self-government. Buchanan also rejects the idea that nations, or for that matter any other cultural group, could have a primary right to secede, that is, a general right to violate the territorial integrity of a state and one that they would have in the absence of past injustice. However, all cultural groups could legitimately secede if (i) there were a *special* right to do so, that is, some kind of privilege, similar to a special provision occurring in a particular contract. In this case, the contract would be a constitution. More importantly, and this is what I want to discuss in this paper, cultural groups could legitimately secede if (ii) we had to rectify some past injustice. It is this last case that allows us to talk about a remedial right to secede. In most of his writings, two fundamental remedial motivations were accepted by Buchanan: systematic violations of human rights (as with the Kurds in Northern Iraq) and unjust annexation of territories (as with the Baltic States in the ex-USSR). Secession would in these cases be acceptable only if there were no other solutions and if these motivations were not overruled by other more important moral concerns.

In his most recent works,[4] Buchanan has added a further condition. This new condition stipulates that a nation is entitled to unilateral secession when confronted with the state's persistent violation of previous agreements affording a minority group some limited form of self-government within the state.[5] If, for instance, there had been a special right to intrastate autonomy agreements written in the constitution, similar to a special clause in a contract, and if the encompassing state were to systematically violate this special agreement, this would give one further moral justification for secession. Violations of past agreements concerning self-government, as occurred in Chechnya or Kosovo, could *prima facie* count as good reasons for secession.[6] But even if Buchanan adds this additional remedial condition, there is still no primary right to secede, and there is still not even a general primary right to self-determination. There are just special rights or a general remedial right.

It is also important to emphasize that Buchanan's Remedial Right Only theory only concerns the grounds for a *unilateral* right to secede. Buchanan is willing to recognize that consensual secessions are morally permissible even in the absence of past injustice. That is, he has nothing to say against secession that results from negotiation, deliberation and agreement between the different parties.

In what follows, I shall focus only on a general right to secede as opposed to a special right, and I shall be concerned only with unilateral secession as opposed to a negotiated agreement reached between a seceding people and the encompassing state. Like Buchanan, I am favorable to a general remedial right to unilateral secession. But contrary to Buchanan, my account implies that nations or peoples are somehow unique and entitled to unique rights.[7] I am committed to the existence of a general primary right to internal self-determination for peoples, as distinguished from a primary right to secession as such, and committed to treat the violation of this right as a just cause for seceding.

III. Buchanan's theory under scrutiny

Buchanan compares his Remedial Right Only theory of secession with some Primary Right theories according to which nations, as such, have a collective right to self-determination and are entitled to secede on the basis of attributes that they have even in the absence of past injustice, as in the attributive Primary Right theories of Avishai Margalit and Joseph Raz.[8] He also criticizes associative theories that do not necessarily target nations and that do not necessarily invoke a right to self-determination. Nevertheless, these are theories purporting to show that a population in which individuals exercise their right to vote on secession could under certain circumstances be entitled to secede, even in the absence of past injustice. In this case, secession is justified on the basis of a democratic decision to do so, as in the Associative Primary Right theories of Harry Beran[9] and Christopher Wellman.[10] I want to concentrate on one specific argument formulated by Buchanan against Primary Right theories. The criticism affects both versions of the Primary Right theory and it is one that concerns the institutionalization of a primary right to secede. Specifically, it concerns the application of the principles governing secession in a constitutional order or in an international treaty.

Buchanan offers four criteria that determine whether the institutionalization of the principles of secession is acceptable. The institutionalization of a right to secede would be reasonable only if (i) it were consistent with morally progressive principles of actual international law, if (ii) it showed minimal realism concerning its acceptability by the international community in the near future, if (iii) it were not to produce perverse incentives and if (iv) it were morally accessible to very diverse societal cultures.[11] Buchanan then proceeds to show that Primary Right theories do not satisfy these constraints. He rightfully notes that international law formally acknowledges only a remedial right to secession. He also observes that the international community will be extremely reluctant to accept a primary right to secede. He also shows that perverse incentives would indeed be generated by the acceptance of a principle asserting a primary right to

secede. Finally, it can be argued that Primary Right theories also fail to be applicable to a wide range of societies, at least when compared with his own account. Buchanan thinks that appealing to the violation of human rights as a source of justification for seceding is something that can be universally acceptable, given the universality of the UN Charter of human rights.

These are the objections raised by Buchanan against the institutionalization of a primary right to secede.[12] I tend to agree with Buchanan that his remedial theory of secession is in much better shape than Primary Right theories.[13] But I now wish to criticize Buchanan's theory by using his own criteria. His first criterion concerns the compatibility with progressive aspects of international law. He presents his own account as compatible but more generous than the one accepted in international law, describing international law as restricting the right to secede only to colonial or oppressed societies.[14] But Buchanan's account is in a sense more conservative than current international law. The first reason for this is that international law leaves the secession process partly in the political arena, even when no consensus is reached between the parties. Unilateral secession is not something that is entirely constrained by law, because international law constrains only the process of secession by juridical means in some cases. It does not license all other cases of secession, but neither does it automatically treat them as illegal. Many cases of secession are neither legal nor illegal as far as international law is concerned. As we saw, Buchanan acknowledges the possibility that the two successor states could reach an agreement on secession quite independently of international law, but he does not seem to allow for unilateral secession to take place if it is not on the basis of his short list of moral principles.

In international law, secession is—up to a certain point—assessed on a case-by-case basis. There are of course provisions defending the territorial integrity of sovereign states, but international law would also treat as sovereign a nation that asserts its sovereignty after a democratic decision, if it were also able to exert control over its own territory and if it were able to gain recognition from the international community. This requirement is known as the "effectivity principle". Applying the principle does not amount to licensing the exercise of a primary right to secede. It only implies that secession is to be partly left in the realm of political relations between peoples. I share with Buchanan the hope that an international body could assist the process of secession with the aid of a more comprehensive set of principles, and I am against the suggestion that the process of secession should be left entirely in the hands of sovereign states.[15] But I do not think that Buchanan's own list of principles is more progressive than actual international law, because the effectivity principle could allow a nation to secede on the basis of a just moral principle that we have not yet considered. Some nationalist movements could have very good moral justifications for seceding, and they could be inclined to make use of the effectivity principle

because it is the only way for them to exercise secession. It is true that the effectivity principle also opens the door for all sorts of seceding movements, including those that do not have very good moral credentials, but allowing for the process of secession to take place in the political arena is perhaps an unavoidable outcome, even if we are to make use of a more comprehensive set of seceding principles.

Another reason for saying that Buchanan's account is more conservative than current international law, apart from the effectivity principle, comes from the provisions included in the *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations* adopted by the United Nations in 1970.[16] International law not only allows a nation to secede if it is a "colony", or if it is "oppressed", that is, if it is under the domination of an external power. It also allows secession if various other conditions are met. In the *Declaration on Friendly Relations among States*, it is claimed that a nation may be justified in seceding if there is (i) a systematic violation of human rights, (ii) an unfair representation within the encompassing state, or (iii) a violation of the right to internal self-determination. By renouncing at least one explicit condition (condition iii), Buchanan appears to be even more conservative than international law.

I shall return to this list of justifications for unilateral secession shortly, but for the moment, let us note that in addition to being more progressive than Buchanan's, these provisions run against Buchanan's ideas. The *Declaration on Friendly Relations Among States* treats nations as unique among all cultural groups, acknowledges that they have a primary right to internal self-determination, and recognizes that they could be entitled to secede if this right were violated. In other words, international law admits precisely what Buchanan is denying. So Buchanan's theory does not seem to satisfy his own first criterion. Of course, Buchanan could want to insist that his own criteria must match only the "progressive" aspects of international law, and he may then rule out by fiat that the violation of the internal right to self-determination is a justification for unilateral secession, by declaring it is not a progressive aspect of the law. But the test of institutionalization, thus understood, would no longer be a test, for it would be determined by stipulations that repeat the theory instead of testing it against independent data.

I now want to turn to other difficulties affecting Buchanan's account in relation to the institutionalization of a right to secede. Buchanan's theory commits him to saying that the remedial right to secede could apply to any cultural group and not only to nations. Because of this, Buchanan does not appear to satisfy the second criterion either. Indeed, the theory does not seem to be even minimally realist, because one can doubt that the international community would ever want to grant a remedial right to secede to all cultural groups, and not only to nations. The United Nations

has assisted the secession process of nations involved in Eritrea, East Timor and Western Sahara, but it has never favored secession for other cultural groups. When a cultural group suffers from important injustices, the international community should obviously intervene. We should not remain passive if we witness important violations of human rights; but the solution may not be secession. Of course, one may question whether the new African countries that were created during the decolonization process were really "nations", but for the purpose of the present argument, the important point is that the international community treated them as such. So it is clear that the international community would never accept that religious, ideological, linguistic and immigrant groups could secede, unless of course they did at the same time constitute nations. The violation of territorial integrity by cultural groups would be an instance of partition, not of secession.[17] There may be some instances where there is no alternative to partition, but this has nothing to do with a right to self-determination.[18]

As far as the third criterion is concerned—the one related to perverse incentives—it may also be claimed that Buchanan's remedial right account could itself lead to great instability. I believe it would do so for two opposite reasons: firstly, because it is in one sense too liberal and secondly because it is in another sense too conservative. It is in a sense too liberal because it admits a very large number of seceding groups. Imagine what would happen if, as suggested, there were no distinction between nations and other cultural groups, and in particular no difference between minority nations, contiguous diasporas, immigrant groups, linguistic communities, religious groups, ideological groups, etc. All those groups could in principle secede from an encompassing state. Imagine what would happen if all cultural groups were able to use secession as a threat in their power struggle against the encompassing state. It is very likely that this would lead to great instability. Of course, Buchanan imposes a very strict list of justifications: violation of rights and liberties, unjust annexation of the territory, and violations of agreements on intrastate autonomy arrangements. But still, since there are clearly hundreds of places all over the world where rights and liberties are being violated, the implementation of Buchanan's ideas could itself be the cause of great instability.

At the same time, Buchanan's account is in another sense too conservative. Peoples who feel they are unjustly treated by their encompassing state would be inclined to see the two remedial conditions imposed by Buchanan as unjust. Some members of these communities would come to believe that their national struggle cannot successfully be fought within the framework of international law. It would convince some that the only remaining solution to their problems is violence.

Finally, Buchanan's theory does not seem to satisfy his fourth criterion either. His approach is individualistic. It places an exclusive focus on the violation of individual rights and liberties. Because of this individualistic

bias, it cannot clearly be described as morally accessible to the whole of humanity. Buchanan embraces ethical individualism, a doctrine that provides the foundation for a specific version of liberalism, one that has its roots in the Western Enlightenment tradition. It is a comprehensive doctrine according to which (i) personal identity is prior to moral identity, (ii) individuals are the ultimate sources of moral worth and (iii) autonomy is the most fundamental liberal value. It is not easy to see how this version of liberalism could be exported outside the Western world.

IV. An alternative theory

In what follows, I shall consider an alternative version of liberalism that does not rely on a comprehensive account. This new approach is political liberalism. Its three main features are opposed to the three features of ethical individualism just mentioned. (i) It is based on an institutional conception of persons and peoples. The institutional conception of persons is compatible with individuals who represent themselves as having an individualistic identity, that is, an identity that can be separated from their particular moral identity, but it is also compatible with those who see themselves as having a communitarian identity, that is, a constitutive particular moral identity. Political liberalism does not imply a commitment to the view according to which persons are "prior to their ends", for it adopts an institutional conception of persons that is compatible with many different comprehensive views. Now a similar account can be provided for peoples or nations. Political liberalism implies that we introduce an institutional conception in virtue of which peoples are understood as having institutional features, whether they are politically organized or not. Some nations are not only deprived of sovereign states. They are also deprived of any form of political organization like a province, a canton, a federated state, a *land* or a government after devolution. Nevertheless, many features may form the substance of their institutional identity : a language, a history, a flag, different rituals, celebrations, commemorations, institutional representatives, etc. (ii) Political liberalism also entails that individuals are not the only ultimate sources of moral worth, for peoples too, understood in the political sense, have an autonomous moral worth. I am favorable to an axiological pluralism in virtue of which the equal moral importance of persons and peoples is asserted.[19] (iii) Finally, political liberalism is committed to treat toleration and not autonomy as the most important liberal value.

One of the many advantages of political liberalism is that it allows us to adopt a strictly institutional conception of persons and peoples. When they are understood in the institutional sense, persons are plain, ordinary citizens. Now peoples, understood in the institutional sense, are institutionally organized populations having a certain national consciousness. Under such an account, the nation is not understood as an ontological social entity,

for it is simply a population organized around a certain number of institutions and sharing a certain specific self representation. So political liberalism is neutral between metaphysical views that treat nations either as collective wholes or as nothing but aggregates of individuals.

Another important aspect of the account is that these institutions are not necessarily those of a sovereign state. They can be those of a province, a federated state, a canton or a *land*. Of course, not all federated states, provinces, cantons or *landers* contain populations that count as peoples, but those who entertain a national self-representation can be seen as nations in the institutional sense. The relevant institutions can also be those of an aboriginal self-government, or they can even be reserves. Moreover, as mentioned above, the institutions need not even be political institutions. The Acadian people, for instance, is a population with institutions that are not political. The institutional elements involved in their identity are language, radio stations, TV stations, schools, churches, libraries, bookstores, flags, rituals, ceremonies, celebrations, anniversaries, monuments, etc. A population organized around a set of institutions becomes a people or nation if it entertains a certain kind of national self-representation.

Another important aspect of political liberalism plays an important role in enabling us to circumvent the usual difficulties in trying to define what is a nation. By introducing an institutional conception, we not only avoid the ontological issue, we are also able to downplay the difficulty of having to provide *the* definition of the nation, since we may allow for many different definitions. Indeed, the minimal institutional account of the people is compatible with the existence of many different national self-representations. There are at least seven different sorts of nations corresponding to at least seven different sorts of national self-representations: the ethnic nation (for example, some aboriginal peoples), in which the population represents itself as sharing the same ancestral origin; the cultural nation (for example, the English people as distinct from the British) in which the population represents itself as multiethnic but also as sharing the same mother tongue, the same institutions, and the same history; the civic nation (for example, Italy or Japan) in which the population is representing itself as sharing the same country and as involving only one group of people sharing the same language, institutions and history; the sociopolitical nation (for example, Catalonia, Quebec, Flanders, Scotland), containing a population that represents itself as sharing a non-sovereign political community and as containing the largest sample in the world of a specific group of people sharing the same language, institutions and history; the diasporic nation (for example, the old Jewish diaspora, certain aboriginal peoples), in which a population sees itself as sharing the same language, institutions and history but as spread on many discontinuous territories and forming a minority in each of these territories; the multisocietal nation (for example, Great Britain, Spain, Canada and Belgium) in which the population represents

itself both as a country and as an aggregate of many different nations; and finally, the multiterritorial nation (for example, the Kurds and the Mohawks) where the population is seen as sharing the same language, institutions and history, but as existing on a specific continuous territory that does not correspond with formally recognized borders. All these groups are nations because they entertain self-representations that can be counted as involving a certain national consciousness.

The third point I want to make concerning the definition of the nation is that the above list need not be exhaustive. We must be ready to accept alternative definitions and consider new hybrid cases. As a matter of fact, the seven cases mentioned are just stereotypes and many real nations can be described as hesitating between many different stereotypes. That is, there may be disagreements within the population and no unanimity reached on these issues. What we describe as the *shared national consciousness* is just the view of the majority.

My fourth point is that if we put aside the case of multisocietal nations, there are common features exemplified by all other sorts of nations. They all possess a common public language (not necessarily distinct from other nations), common public institutions (in which primarily the common public language is spoken) and a common public history (the one that relates to common public institutions). National consciousness cannot be improvised because language, institutions and history are longstanding features, and it is these that can turn populations into national societal cultures. These features form the core of an institutional identity, and they are compatible with recognizing public minority languages, institutions and histories. If we also take into consideration multisocietal nations, we can say that a nation is either a simple societal culture entertaining a certain national consciousness or else it is an aggregate of societal cultures.

Also, with the exception of diasporic and multiterritorial nations, it is important to note that nations are confined within the territory of actual sovereign states and have their own territorial basis. This is obviously not true for diasporic nations, but the last case, the multiterritorial nation, does not exactly fit this description either. It is important to acknowledge that not all nations occupy a specific territory and one that is entirely contained within the boundaries of already existing states.

Finally, we must also distinguish between the above list, describing complete national societal cultures, and partial societal cultures such as contiguous diasporas (extensions of neighbouring nations or of national majorities, such as the Russian minorities in the Baltic states, the Palestinan minority in Israel, and the Albanian minority in Kosovo), and non-contiguous diasporas (immigrant populations). Philosophers and political scientists often confuse these very different sociological groups with minority nations, or use the single label "national minorities" to describe them all, but this is deeply flawed, since the three groups often have very

different features, interests and demands. I believe we must distinguish between minority nations and national minorities like contiguous and non-contiguous diasporas, because in the latter cases, the groups do not describe themselves as constituting, all by themselves, nations. However I shall not pursue any further this crucial issue within the confines of this paper. Partial societal cultures are in my view entitled to general institutional rights that are less than a right to self-determination, if this latter notion is to mean some kind of self-government, or political autonomy. Of course, one must not generalize this point, for there are always exceptions to consider. But for the purpose of this paper, it is only important to note that there are sociological reasons for distinguishing between minority nations, contiguous diasporas and non contiguous diasporas. Only the former sort of group entertains a national consciousness of its own. Contiguous diasporas represent themselves not as forming nations as such, for their self-representation involves a reference to a closely situated national majority on another territory. Similar remarks apply to non-contiguous diasporas. As immigrant groups, they identify with a foreign nation as well as their welcoming national community.

By adopting an institutional conception of the nation, by allowing for many different sorts of nations, by accepting that this list of possible definitions is to remain open, and by acknowledging also the existence of partial societal cultures, we pave the way for a better incorporation of the concept of nation within international juridical discourse. No one seriously doubts that there are aboriginal peoples, and that the Scottish population, the Catalonian population, the Acadian population and the Quebec population exist as peoples or nations. Political liberalism treats peoples as having an institutional identity and in this sense it plays an important role in the appropriation of the notion for international law.[20] The wide variety of cases just examined also gives support to the view that national societal cultures are the unique bearers of the collective right to self-determination. The suggestion may sound less controversial if we acknowledge the existence of a very wide variety of nations and if we grant some institutional rights to those extensions that I have called contiguous and non-contiguous diasporas.

The second virtue of political liberalism that I want to emphasize is that it serves to explain why particular nations should be treated as somehow unique and as entitled to specific rights. It is a well known fact that it is not enough to establish the importance of national societal cultures in general. Even if we accept the general point that national societal cultures play an important role for the development of individual liberties, this does not allow us to justify the importance of the diversity of particular nations. Indeed, establishing the importance of the nation in general is compatible with the assimilation of all national societal cultures within a single encompassing nation. Now, there are problems with the individualistic

attempts to justify the value of particular national groups. The individualistic justification for the importance of each nation must rely on moral psychology. This individualist justification supposes that each individual treats her own community as having a preferential status among all her different allegiances. Now the problem is that rational preferences vary systematically from one person to another and also vary through time for a single person. There are persons who place allegiance to their nation very low in their chart of group allegiances.[21] This point has been convincingly made by Buchanan, Harry Brighouse and Thomas Pogge, among many others.[22] We cannot justify the protection of particular nations by suggesting that each person treats her own people as a primary good. So it may be useful to investigate alternative versions of liberalism in order to justify treating particular nations as self-authenticating sources of morally valid claims.

It is possible to establish the unique character of nations among all cultural groups, if nations are seen as the ultimate sources of cultural diversity, granted that cultural diversity is by consensus a value that we all share. The claim is that nations are often communities having different languages and specific institutions on different territories. This leads to differences in behavior, beliefs, customs, forms of life, views about the good life, religion, clothing, artifacts, art and traditions. The explanation for the existence of such a wide cultural variety lies to a very large extent in the existence of a wide variety of peoples speaking different languages with different institutions in different territories. This is external cultural diversity. Of course, cultural diversity can also occur inside a single nation, either because it offers a rich context of choice or because of the presence of different immigrant communities, different contiguous diasporas and different minority nations. This is internal cultural diversity. In either case, cultural diversity appears to be intimately related to the existence of nations. There are of course instances of diversity that are not instances of national diversity. There are, for instance, transterritorial "cultural" groups such as workers, women and homosexuals, which are not to be explained by the existence of nations, because they are not confined to specific languages, institutions and territorial boundaries. But it could be argued that they do not clearly exhibit "cultural diversity" either. They are perhaps more clearly instances of socioecomic, biological and sexual diversity, respectively. But even if we were to adopt an unrestricted concept of culture that allows us to speak of these three groups as cultural groups, there would still be room to argue that nations are the most important source of cultural diversity. Granting that some important cultural differences are perhaps not to be explained by nationality, it is still to a very large extent the most important source of cultural diversity. So there seems to be a clear connection between the existence of cultural diversity and national diversity. If we accept these claims, we have an argument for the unique importance of particular

nations, for it now appears that cultural diversity can only be secured if we are able to protect and promote national diversity. If cultural diversity is an important value and if nations are still nowadays the most important sources of cultural diversity, we would then have to recognize that nations are unique among all groups and that they should be treated as important autonomous sources of valid moral claims.[23] No peoples have intrinsic value. All peoples have value only in so far as they instrumentally serve the purpose of achieving cultural diversity. These philosophical theses could be accepted even by those who locate national identity very low in their chart of cultural allegiances. Cognitively agreeing on the importance of nations is one thing and preferring one's own national identity to any other group affiliation is quite another.

Now as required by political liberalism, the arguments for acknowledging the moral relevance of something must be based on public reason, and there are many such arguments that can be formulated in favor of the value of cultural diversity. But for the sake of what we are now discussing, the most important of those arguments is the one based on toleration. Even if toleration is not identical to recognition, when it is understood in terms of respect, tolerating difference must lead to the recognition of cultural diversity. The argument has forcefully been made by Anna Elisabetta Galeotti and Will Kymlicka, among many others.[24] Political institutions are never neutral from the point of view of cultural identity. They are always imposing common public languages, common public institutions in which these languages are mostly used, and common public histories concerning these common public institutions. This is obvious in the case of single nation states, but it is also true in the case of multination states, where there are always national majorities that impose their political agendas on minority nations. So in order to show toleration (or respect) for cultural minorities, the state cannot simply practice a certain neutral *modus vivendi* towards them. It must act to countenance the assimilative effects that are wittingly or unwittingly imposed upon minorities by the majority. Therefore, liberal toleration requires the implementation of a politics of recognition for those minorities. In a nutshell then, granted that nationalism is all over the place, we must recognize cultural diversity if we want to tolerate (respect) cultural differences.

As we have just seen, political liberalism is a doctrine from which we are able to derive the principle asserting the value of cultural diversity. But since we have established a connection between cultural diversity and national diversity, the thesis also indirectly plays an important role in the argument purporting to show the importance of particular nations. A liberalism based on toleration is therefore a good foundation for the principle asserting the value of cultural diversity, and it is indirectly also the basis for an argument leading to the principle ascribing value to particular nations. Of course, if political liberalism is to count as liberalism at all, it must also give as much

importance to the fundamental principles asserting the rights and liberties of persons. Peoples that do not protect fundamental individual rights and liberties should not be tolerated. There must therefore be an equilibrium between the principles asserting both kinds of rights: the rights of persons and the rights of peoples. For our present purposes, however, it is important to underline the fact that political liberalism allows us to derive the equal importance of particular peoples, understood as institutional groups.

There is a third and final feature of political liberalism that I want to emphasize and that is relevant for the issue that I want to discuss. Political liberalism not only enables us to formulate an institutional definition of peoples and a justification for their moral worth. It also helps to clarify the object of the right that peoples can claim on their behalf. If peoples are to be understood in the institutional sense, and if they can count as the main subject of collective rights, they should have the right to maintain their institutions, and to develop them accordingly. They should also be able, if necessary, to create new institutions, and they should have some control over these institutions. When nations are understood in the institutional sense, they are individuated by their institutional features. Securing their integrity as nations requires securing and developing these institutions, or even creating new institutions.[25] For instance, some nations that already have an institutional identity but do not enjoy political control over their own institutions could under certain circumstances ask for self-government (as with the Acadian people, some aboriginal peoples, or the Scottish and Welsh peoples, before devolution). Some nations who already have self-government could ask for the provision of more fiscal and political autonomy (as with the Scots after the devolution, or the Catalans in the Zapatero constitutional reform). They could also ask for formal recognition as a people, and ask for special status and asymmetric federalism (as with Quebec). Those that believe that their internal right to self-determination is being violated could ask for full sovereignty.

What is common to all those demands? The simple answer is that it is the right to be free. But what is this right to be free for a people understood in the institutional sense? It is the right to maintain, develop and create institutions. In short, it is the right to exercise a certain control over their institutions, and this may mean having political institutions, that is, having some form or other of political self-government. Nations are characterized as involving a certain number of institutions, and political self-government is sometimes what allows these institutions to be harmoniously held together in a coherent whole. This is especially important for larger national populations that reach millions of individuals. Now the right to some form or other of self-government is the right to self-determination. So I would want to argue that there is an initial claim to be made concerning the object of the right belonging to all peoples. There are good reasons to assume that this right is one of self-determination. The notion describes in general terms

the right to maintain, develop and sometimes even create institutional goods. The right to self-determination is also sometimes the right to maintain, develop or create *political* institutions. More generally, the conclusion to be drawn is the following: if institutions serve to individuate nations, as claimed by political liberalism, self-government secures the integrity of these institutions in a complex, coherent whole. Granted that nations have a moral worth, we should therefore also grant them the right to self-determination.

In this section, I have been concerned to sketch a general philosophical foundation for the view that there are nations, that particular nations have instrumental value and that they should have a primary right to self-determination. The existence of nations is secured by admitting that they must be understood only in the institutional sense, and must not be confused with strange ontological collective wholes. The autonomous value of particular nations is established by its instrumental role for cultural diversity, granting that there is an overlapping consensus in the international community on the value of cultural diversity. The promotion of cultural diversity is then derived from the obligation to practice toleration in a world in which national majorities exert assimilative pressures over national minorities. Finally, when nations are understood in the institutional sense, the promotion and protection of particular nations must lead to the protection and promotion of their institutional integrity and, more generally, to various forms of self government. But this is precisely what we mean when we talk about a general primary right to self-determination.

V. Internal and external self-determination

The right to self-determination is similar to the rights that we confer upon individuals. Just as individuals have the right to be free and equal, peoples have the right to self-determination. On the basis of this general right, individuals have the right to maintain their physical integrity (*habeas corpus*), they have the right to develop their individual capabilities (freedom of conscience, freedom of expression, freedom of association) and they can creatively exercise their political rights (freedom to vote, political duties as government officials). Similarly, the right of self-determination for a people, understood as a right to self-government, is a right to control its own institutions. Concretely, it means that the nation has the right to maintain, develop or create its own institutions.

But there are two sorts of self-determination: external and internal. As we saw, external self-determination is the violation of the territorial integrity of a state. It is the right of a nation to have its own sovereign state. Internal self-determination is the capacity for a people entirely contained within the territorial confines of an encompassing state to develop itself within that state.[26] It can have weak, canonical or robust interpretations. In the weak

sense, it implies (i) that the people is able to elect its political representatives, (ii) that an adequate fragment of these representatives comes from the people itself and (iii) that these last representatives occupy important positions in the government of the encompassing state. In the canonical interpretation, internal self-determination simply means some kind of self-government such as a state in a federation, or a government assigned by a devolution of powers in a unitary state. In the more robust sense, internal self-determination implies that the people is allowed to determine its own political status within the encompassing state, and this could require more specific forms of self-government such as the existence of a *de jure* multinational state (a multinational federation incorporating a formal recognition of the people, a special status to one or some of the provinces, and asymmetric federalism). But we do not need to choose between those three interpretations. Each of them may be seen as an appropriate interpretation of the very same idea in a different context. In a unitary state where there are two nations of equal size, the weak interpretation is quite enough to ensure that the nations are able to self-determine themselves. In a country with very diverse regions, it may be important to implement some kind of self-government for the stateless nation. In a unitary state where the nation is in a minority, or in a federal state where it is concentrated only in some of its many territories, the more robust interpretation may be required.

I said that self-determination is for a people a form of self-government. This is reflected in external and internal self-determinations. External self-government amounts to the creation of a new state. It is the most complete form of self-government. Internal self-government is illustrated by mechanisms such as having a certain political and fiscal autonomy, having a federated state, having a special juridical status, having access to a regime of asymmetric federalism or having the possibility of opting out of a program implemented by the encompassing state, and it also has to do with financial compensation. In general, internal self-government implies that the nation has some kind of political and fiscal autonomy. It can also be illustrated by measures such as the right to participate in the appointment of judges at the supreme court of the state, the right to have a certain control over immigration policies, and the right to play a role on the international arena.

How can we reconcile the primary right to self-determination enjoyed by the encompassing state with the one held by its minority nations? The first element of solution to that crucial problem is that no nations have a primary right to *external* self-determination, not even those that already form sovereign states. Indeed, if external self-determination is understood as the right to own a sovereign state, then it must be claimed that no nations, not even sovereign ones, enjoy a primary right to external self-determination. This means that we should not take the legitimacy of any nation for granted, not even those that form sovereign states. It all depends on their capacity to

recognize other nations. For sovereign states, this means that they must recognize their internal national minorities and accept the institutional consequences of this recognition. And as I have been arguing, minority nations do not have the primary right to external self-determination. They have a right to secede only if the encompassing state fails to grant them internal self-determination, or if other remedial conditions apply, such as those mentioned by Buchanan. The second element of the solution is that there is no such thing as an absolute form of sovereignty. Nations can only be sovereign to a limited degree. They must share some of their sovereignty with others and thus accept leaving part of their sovereignty to other political bodies. For instance, multinational federalism (Canada?), multinational quasi federalism (Spain?), unitary states with strong devolution of powers (Great Britain?), confederations of sovereign states (a sovereign Quebec with an economic and political partnership with Canada?) and quasi federations of sovereign states (the European Union?) are all instances of this idea. Finally, we must accept the principle of reciprocal recognition. If a minority nation is recognized within a sovereign state, it must recognize the legitimacy of the encompassing state. If a state is confronted with repeated demands on the part of one of its minority nations, it must take them very seriously and it must respond favorably. In my view mutual recognition plays an important role in achieving mutual accommodation.

I believe that if we accept these three fundamental ideas, the rights to self-determination of the encompassing state and of its minority nations can be made compatible. We can accommodate their competing rights to self-determination as long as we reject the existence of a primary right to external self-determination, reject the idea of absolute sovereignty and accept the principle of reciprocal recognition.

Before we examine the problem of institutionalization of our revised remedial account of secession, it is important to note that even if Buchanan rejects a general primary right to internal self-determination, he allows for particular rights such as "rights to be a distinct unit in a federation", "minority cultural rights", "the right to support for preserving minority languages", "the right to self-administration", "the right to self-government", or "collective rights to regulate the use of land and the development of natural resources".[27] According to Buchanan, these particular rights must replace a general primary right to self-determination. This means, crucially, that they are not particular institutional applications of a general primary right. They are either *special* rights to be granted on the basis of considerations related to the stability of the encompassing state, or remedial rights. There is no obligation on the part of the state to implement such rights, unless some remedial considerations enter the picture. Intrastate autonomy can become a "right" but only for remedial reasons.[28] Specifically, they must be implemented if some basic primary cultural rights are not implemented in the first place. Buchanan mentions "the right to

religion, to wear distinctive cultural dress, and to engage in cultural rituals and ceremonies, as well as the right against all forms of political, educational, and economic discrimination and exclusion".[29] These various cultural rights should be granted to various cultural groups, because individuals consider that these affiliations are very important in their own lives. If the state refuses to grant them these basic cultural rights, then the individuals that are affected by this have a moral argument for intrastate autonomy arrangements. The moral right to intrastate autonomy for a given group does not stem from a general right to internal self-determination for the group, but rather from a failure to implement rights to cultural protection for individuals.

Contrary to Buchanan, I am assuming that nations have a general primary right to self-determination and that they do so even in the absence of past injustice. They do have such a primary right because under the political version of liberalism, nations are considered as having an institutional identity and they are autonomous sources of valid moral claims. Having the right to self-determination amounts to having the right to preserve their identity as nations. Stateless nations have such a right, but the crucial issue is whether this right amounts to internal or to external self-determination. In what follows, I am going to assume that the right to internal self-determination can in principle give an adequate expression to the general primary right to self-determination. Like Buchanan, I want to argue that stateless peoples do not have a primary right to external self-determination, because all the substance contained in a primary right to self-determination can be captured by very different forms of internal self-determination. For instance, the right to self-government for a stateless people can take the form of a unit in a federation or of a devolution of powers in a unitary state. The economic development of a stateless people can be secured by some form or other of fiscal autonomy. Its social and cultural development may be secured by applying asymmetric federalism. The international presence of the people may also be secured by allowing it to play a role on the international scene. So it is not clear that the only way to achieve self-determination is by becoming a sovereign state.[30] If we adopt a consequentialist approach, the initial plausibility for granting a primary right to external self-determination could be questioned once we appreciate that there are literally thousands of peoples and that most sovereign states are *de facto* multination states. If issues of stability have a bearing on moral claims, then we should perhaps reject the primary right to external self-determination.

VI. The institutionalization of the revised remedial account

I have suggested that political liberalism gives some initial plausibility to the claims (i) that there are nations understood in the institutional sense, (ii) that

nations are unique and deserve to be treated as having instrumental value because they contribute to cultural diversity, and (iii) that they have a primary right to self-determination. A final fundamental point of disagreement with Buchanan could be mentioned. I do not wish to submit a closed list of remedial considerations. I believe that one must grant the possibility that there could be in the future other just causes that we are now not considering. So we have to leave the issue of unilateral secession partly in the political realm. Like international law, we have to accept the effectivity principle. I certainly wish like Buchanan to make unilateral secession a moral issue, but we must perhaps at the same time also be pragmatic and accept that unilateral secession cannot be completely governed by a fixed set of moral principles. There may be new moral arguments we are now not considering that could eventually become relevant. This is why I am still inclined to leave unilateral secession partly in the political realm.

Leaving the moral principles and returning to the issue of stability, what can we say in favor of my own theory concerning the institutionalization of a right to secede? Does my account meet the four conditions imposed by Buchanan? Like Buchanan, I also resist the idea that nations should have a primary right to external determination. But I now wish to show that this alternative Remedial Right Only theory appears to be much better than Buchanan's own theory.

Does my account comply with progressive aspects of international law? It is in a sense easy to answer this in the affirmative, because my own account roughly corresponds to the *status quo*. The Remedial Right Only theory that I have been advocating is inspired by the actual state of international law. I have explicitly considered the violation of internal self-determination as an acceptable remedial justification, and this is inspired by the *Declaration on Friendly Relations among States*. One can find in this document a definition of internal self-determination of peoples:

> By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter of the United Nations, all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.

This is the notion of internal self-determination that we have been using. The document refers to the notion as it is enshrined in the *Charter of United Nations*. It is also present in various other UN documents such as the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*.[31]

We also find in the same document a definition of external self-determination:

> The establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into any other political status freely determined by a people constitute modes of implementing the right of self-determination by that people.

Finally, we come to the passage in which three conditions for unilateral secession are formulated. The document stipulates:

> Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

The document stipulates that if a state complies with the principle of equal rights for its citizens, if it complies with the self-determination of its peoples and if the government is representative of the whole population, then a stateless people within that state will have no right to violate the territorial integrity of the state. But the converse also seems to be true. The failure to implement these three principles could provide a justification for seceding. Of course, this is only a Declaration and not a Convention. Nevertheless, it is an important document and one that I respect faithfully in my proposed revision of the Remedial Right Only theory. There are other documents asserting the right of internal self-determination of peoples, but the *Declaration on Friendly Relations Among States* is to my knowledge the only document suggesting that the violation of internal self-determination is a just cause for unilateral secession.

But what about the remaining criteria considered by Buchanan? Could the international community eventually subscribe to my version of the Remedial Right Only theory? As I said, the international community does not allow all cultural groups to secede. Self-determination is a right enjoyed only by nations. Since I am also committed to restricting the right of secession to nations, I can perhaps pretend that my own principle is minimally realist, in the sense discussed above. But would the international community be willing to subscribe in the near future to the view that the failure to respect internal self-determination is a justification for secession? Some may entertain doubts concerning such a prediction. I offer three responses to this criticism. First, few decades ago, no one would have

thought that the international community would support violation of the sovereignty of a particular state for the sake of humanitarian intervention. But we finally got to the point where this is now seen as something acceptable, as in Somalia for instance. My second response is that any difficulty the international community has in accepting my own list of justifications for secession may, if anything, reveal something wrong in the criteria and not in the theory. It is perhaps wrong to ask for a list of remedial conditions that would be accepted *in the near future* by the international community. Is one hundred years from now too far away in the future? I claim that the *Declaration on Friendly Relations among States* could become a Convention within the next one hundred years or so, and I claim that this fairly modest prediction makes me a minimal realist. But why not say the same thing concerning Buchanan's own account? Is it not possible that the international community would want to grant secession to all sorts of cultural groups in one hundred years from now? I believe not, and this relates to my third response. The international community is in a way already engaged in a process such as the one that I am describing. The international community has already endorsed the *Declaration on Friendly Relations Among States*. Moreover, in addition to the UN Declarations and Conventions, I previously mentioned that the UN is assisting the self-determination process in East Timor, Eritrea and Western Sahara. It is willing to recognize sovereign states if they formed sociopolitical units in prior federations such as Yugoslavia and Czechoslovakia and the USSR. But we do not have any indication in UN documents or in practice that the international community is beginning to be open minded concerning the right to secede for all sorts of cultural groups.

What about the third criterion? Does my account create perverse incentives for minority nations? On the contrary, I believe that my account is a source of possible stability in the long run. If all multination states were forced to implement measures that would provide internal self-determination for their constitutive peoples, this would stabilize them as multination states. If there were an international body responsible for the implementation of measures purporting to secure the internal self-determination of stateless peoples within sovereign states, this would constrain nation-building policies performed by those states, but it would also simultaneously serve to demobilize minority nationalisms in their pursuit of sovereignty. So I am not creating favorable conditions for igniting nationalist movements. On the contrary, I am proposing a solution that may serve to ease nationalist tensions. The idea is that one cannot expect a nation to renounce legal sovereignty in favor of a multination state and to renounce also political recognition within that state. Political recognition is required because of the existence of a moral right to self-determination enjoyed by stateless peoples, but it is also required for securing the stability of multination states. By implementing such measures, we are forcing the state

to restrain its own nationalist tendencies, but we are also securing it as a viable state, for we are responding positively to the just demands of stateless peoples.

But let's suppose that I am wrong and that a slippery slope argument is justified in the case of nationalist aspirations for stateless peoples. Let us suppose that they will never be satisfied with any intrastate arrangement. I believe in this case that it would still be worthwhile to engage on the path of reform, for we would have found a way to peacefully constrain the seceding process. So even if we put aside arguments based on justice, and concentrate only on issues of stability, there are no reasons for refusing to grant a primary right to internal self-determination.[32]

But if we restrict the right to internal self-determination to nations that have an institutional identity, are we not inviting the encompassing states to remove all the institutional features of nations? Are we not creating a perverse incentive here? It is easy to answer in the negative. If a state rushes to adopt measures that are meant to deny an internal minority its institutional life, then this is a justification for secession. As a matter of fact, I am precisely giving an argument against this kind of perverse incentive. The primary right to self-determination of a people is violated if the state attempts to remove the institutional identity of one of its founding peoples. The attempt to extinguish the basic institutions of a national minority, like language for instance, turns out to be a moral harm according to the present account. Since peoples have an institutional identity, dismantling their institutions amounts to a violation of their integrity as peoples. Of course, one cannot do anything for those peoples that were completely decimated. But no account can do anything for them anyway. The virtue of the present account is that ethnic *and* cultural cleansing both appear to be moral harms. By granting national minorities a primary right to self-determination, we are directly confronting their internal problems within states. In so doing, we are perhaps paying respect to the memory of those peoples that have historically been the subject of violence, repression and annihilation. Their suffering was in a sense not completely useless.

The argument according to which the present account creates perverse incentives can thus be shown to be itself a perverse argument, for it could absurdly serve as well against introducing fundamental individual rights in a country where these rights are not respected. Let us suppose that, as citizens of a country, it is claimed that all individuals should enjoy fundamental rights and liberties. Does this create an incentive on the part of the state to remove the status of citizens to some of its subjects? Of course, the answer to this is that by denying them the status of full citizens, they are precisely denying them these fundamental rights. The introduction of a full regime of rights and liberties for the citizens of a country is precisely the means that we have to block this perverse incentive, because, for the state, it would amount to treating some of its subjects as second class citizens. Similarly, trying to

extinguish some or all of the institutional features of a people is not an option for the state, since peoples have the right under the present account to demand the preservation of their institutional integrity. They may do so because, under the present account, their institutional make up is constitutive of their identity as a people.

A similar criticism, raised against Kymlicka's account, can also easily be discarded. Since Kymlicka justifies the value of nations by relying solely on their ability to provide a rich context of choice, this seems to imply that only full blooded societal cultures can enjoy the right to self-determination. Peoples whose institutions would have been greatly affected by the encompassing state could not enjoy such a right. But I am not restricting the value of peoples to their ability to provide a rich context of choice. I have been arguing that they are instrumentally valuable because of their instrumental role in securing cultural diversity, and a nation may exhibit *external* cultural diversity even if it cannot *internally* provide a rich context of choice for its own members.

Finally, I believe my account satisfies the fourth criterion also. My own account is inspired by political liberalism and not by a comprehensive individualistic version of liberalism. Being thus disenfranchised from ethical individualism, it can more easily be applied at the international level. Political liberalism not only applies to societies with an individualistic ethics. It also applies to communitarian democracies, that is, to societies in which there is a consensus on the role of particular values for the identity of the community. So I am inclined to believe that political liberalism is morally accessible to a wider range of diverse societal cultures.

This point needs emphasizing so let me dwell on it a little more. There are difficulties that stem from adopting political liberalism for the formulation of a law of peoples, especially if one wishes to endorse the particular version adopted by Rawls. I do not wish, like Rawls, to apply toleration understood as respect toward decent hierarchical societies. We may seek to accommodate them but not to include them under the veil of ignorance in ideal theory. Toleration as respect or as "political concern" is quite okay, but not toleration as conductive to esteem. Political liberalism prescribes toleration even toward some non-liberal societies, or at least it can do so as long as toleration is understood in the sense of a *modus vivendi*, but it can only esteem those societies that behave as democracies with a full system of individual rights and liberties.

So what is the difference between political liberalism and liberal individualism as far as moral accessibility is concerned? The difference is that political liberalism prescribes respect toward democratic communitarian societies, that is, those societies in which there occurs a consensus concerning a particular view of the good life or a particular view of the common good, but also one that is democratic in the full sense of allowing not only for an electoral process but also a full range of civic and political

liberties. Rawls' particular version of political liberalism is defective in many ways and cannot be saved, especially when we apply it in the international realm. The reason is that Rawls is led to endorse a watered down version of the law of peoples that in many ways ceases to be liberal. But just as there are different versions of comprehensive liberalism (strong or moderate), there are also different versions of political liberalism. According to the version I would like to defend, political liberalism implies esteem only toward communitarian democracies, that is, peoples that see themselves as having a constitutive moral identity but adopt a democratic regime with full freedoms and liberties. These societies are perhaps not liberal in the comprehensive individualistic sense, but they are liberal in the political sense.[33]

Let me end this paper by considering recent changes that have occurred in Buchanan's theory concerning the institutionalization of a right to secede. In his most recent book, Buchanan has removed one criterion and has offered two new criteria.[34] Compatibility with progressive principles of international law no longer seems to be a requirement. One should not be surprised by the change, given the above criticisms concerning the incompatibility of his account with actual existing international law. It reveals that Buchanan himself now realizes that his own account does not meet the constraint that he introduced in the first place. The two new criteria introduced by Buchanan relate to territorial claims and to the transitional process. I agree with him that a theory of secession must incorporate considerations that deal with these two important issues, but I do not think that they have any direct impact on the choice between the two versions of the Remedial Right Only theory that we are now discussing.

Concerning the claim to territory, there are of course moral issues to be raised. When a seceding nation claims a territory in which there live other minority nations, the status of those minority nations cannot be discarded as unimportant from a moral point of view. Indeed, I would be inclined to apply the same set of moral considerations to these nations. They too should enjoy a primary right to internal self-determination, and they too could be entitled to secede if this right were violated. All sovereign states, including those that secede, have a right to their territorial integrity, but all stateless peoples have a right to violate this territorial integrity if their right to internal self-determination is ignored by the seceding group.

From the point of view of stability, there has to be a principle governing the issue of territory in case of secession. Without going into detail, let me just say that I would subscribe to the *uti possidetis* principle in virtue of which the seceding group keeps after secession the territory that it possessed before secession. This principle was supported by the International Court of Justice during decolonization in Africa, and also applied in the USSR with the creation of fifteen new states, in Yugoslavia with the secession of

Slovenia, Croatia and Bosnia, and in Czechoslovakia with the creation of Slovakia and the Czech Republic. When the federated states became nation-states in these countries, they roughly kept the old borders they had had as federated states. So there is a lot of force to the *uti possidetis* principle as far as stability is concerned. Any account that cannot incorporate such a principle is in big trouble. However, the principle becomes extremely problematic from a moral point of view if a stateless nation has a claim on a territory where there are also minority nations not belonging to the nation, especially if these minorities are clearly against secession. In this case, if a majority of the whole population decides to secede, it becomes crucially important to devise complex arrangements for accommodating those minorities. It is not enough to secure their collective rights as minorities. There must be political arrangements that take into consideration the will of the minorities. One can imagine, for instance, the creation, maintenance or development of economic and political links between the two successor states. In this way, the minorities are also able to win their case in some sense, because they are still able to maintain important links with the previous state.

The transitional process is also in my view crucially important. One may be inspired on this score by many provisions contained in the reference case produced by the Supreme Court of Canada in 1998 on the secession of Quebec.[35] The Supreme Court suggested that in the absence of explicit provisions in the constitution of the country, the seceding process must be constrained by four underlying structural principles: the democratic principle, the principle of federalism, the principle of the primacy of the constitution and of the rule of law, and the principle of protection of minorities. Any province could in principle initiate a secession process. However, there has to be a referendum on secession. The question must be clear, concise and short. The democratic principle must be interpreted by the rule of absolute majority, but the absolute majority must also be clear. An unclear absolute majority would be, for instance, one that resulted from an unclear question, or from many irregularities occurring while counting the votes, or from a very low participation rate. There must also be negotiations after the referendum on various important issues: dividing the assets and the debt, economic union, the minority question, etc. Of course, these procedural norms are not the only ones that must be followed and they cannot replace the moral issues that any remedial theorist will want to raise, but they are very important and Buchanan is right to raise them.

VII. Conclusion

Let me conclude by saying what I believe I have shown. I gave reasons to believe that nations as such have a general primary right to self-determination held by no other cultural groups. I came to this conclusion

by exploiting the virtues of political liberalism. This particular version of liberalism allows us to develop an institutional conception of peoples that can be incorporated into international law. It also offers a justification for the value of particular nations based on the value of cultural diversity, and it allows us to derive an argument for the primary right of self-determination for peoples. When they are individuated in terms of their institutions, peoples may be seen as having a primary right to demand some kind of self-government. In virtue of this general primary right, nations also have a primary right to internal self-determination. The theory also supposes that nations can only have the right to secede if they suffer important injustices. For this reason, the account is a Remedial Right Only theory of secession. However, my main concern has been to show that a variant of this theory is better than Buchanan's account. The injustices do not merely relate to the violation of human rights, to the annexation of territories, or to the violation of previous intrastate autonomy arrangements, for they also stem from a failure to comply with principles such as fair representation and internal self-determination. I have shown that my account satisfies the four initial conditions for institutionalization imposed by Buchanan, and I have criticized Buchanan's own account for not complying very well with his own criteria.

Notes

1. This paper was read at Edinburgh, Queen's, Columbia and Albany universities, and at the London School of Economics. I wish to thank in particular John Breuilly, Will Kymlicka, Jon Mandle, Adèle Mercier, Ross Poole, Stephen Tierney and Jeremy Waldron for their comments on a previous draft of this paper. I also wish to thank the Social Sciences and Humanities Research Council of Canada (SSHRCC) for supporting this research.
2. A. Buchanan (1994) "Liberalism and Group Rights" in: J. Coleman (Ed.) *In Harm's Way. Essays in Honour of Joel Feinberg* (Cambridge: Cambridge University Press) pp. 1–15; see also A. Buchanan (1989) "Assessing the communitarian critique of liberalism" *Ethics* 99, pp. 852–882. For a recent discussion, see A. Buchanan (2004) *Justice, Legitimacy, and Self-Determination* (Oxford: Oxford University Press) pp. 410–415.
3. A. Buchanan (1996) "What's So Special About Nations?" in: J. Couture *et al* (Eds.) *Rethinking Nationalism*, Supplementary Volume, *Canadian Journal of Philosophy* (Calgary: University of Calgary Press) pp. 283–309.
4. Buchanan (2004); A. Buchanan (2003) "Secession" in: *Stanford Encyclopedia of Philosophy* (http://plato.stanford.edu/entries/secession/index.html).
5. Buchanan (2004) pp. 357–359; Buchanan (2003) "Secession", section 2.
6. Buchanan (2004) p. 357.
7. As I shall argue below, non-contiguous diasporas (that is, immigrant minorities) and contiguous diasporas, understood as extensions of national majorities on other territories, may also derivatively acquire similar sorts of rights, but it is precisely because they can be seen as extensions of national majorities on other territories. If these minorities do not see themselves as constituting nations, they may in a certain sense enjoy certain rights, but in this case, they do not necessarily imply a right to self-government.

8. A. Margalit & J. Raz (1990) ''National self-determination'', *Journal of Philosophy* 87, pp. 439–461.
9. H. Beran (1984) ''A liberal theory of secession'', *Political Studies* 32, pp. 21–31.
10. C.H. Wellman (1995) ''A defence of secession and political self-determination'', *Philosophy and Public Affairs* 24, pp. 142–171.
11. A. Buchanan (1998) ''The International Institutional Dimension of Secession'' in: P. B. Lehning (Ed.) *Theories of Secession* (London: Routledge) pp. 227–256; see pp. 237–239. I will mention below important changes that took place more recently in Buchanan's theory regarding these criteria.
12. Those who are inclined to read Buchanan's criticisms as providing a consequentialist argument will be tempted to question the very plausibility of the moral claims made by Primary Right theorists. Those who reject this reading will be inclined to think that Primary Right theories must be appreciated as dealing both with issues of justice and issues of stability. And Buchanan's argument will then be seen as showing that Primary Right theories have a problem in dealing with the issue of stability. I shall remain neutral regarding these different interpretations.
13. Buchanan (1998), pp. 239–244.
14. See for instance ''Secession'' Section 3, where Buchanan writes : ''The deficiencies of existing international law regarding secession motivate the project of developing principled proposals for reform. At present international law recognizes only a very narrow set of circumstances under which the unilateral right to secede exists as an international legal right, namely, when a group is subject to colonial domination''.
15. For an argument favorable to the constitutionalization of the right to secede at the level of the sovereign state, see D. Weinstock (2001) ''On some advantages of constitutionalizing a right to secession'', *Journal of Political Philosophy* 9, pp. 182–203. In my view, confining the right to secede to the level of the state would not be sufficient, for it would allow for abuses. There needs to be an international body responsible for implementing international conventions, including those that are related to secession.
16. UN General Assembly Resolution 2625 (XXV). Annex, *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations*, General Assembly Official Records: Twenty-fifth Session, Suppl. No 8 (A/8028) October 24, 1970, pp. 131–134. From now on, I shall refer to this document as the *Declaration on Friendly Relations Among States*. Of course, this is just a Declaration and not a Convention, but international law should not be understood as involving only a list of Conventions. Even if Declarations do not have similarly binding power, they must be considered as relevant in any theory of secession. We should in any case be inspired by the Declarations in order to formulate progressive views. And if we do, we will observe that international law contains measures that are more progressive than the ones that are put forward by Buchanan.
17. I partly agree with Radha Kumar when she writes that we must distinguish ''ethnic partition from negotiated secession or a dissolved federation on two grounds: demography and borders. When an existing administrative unit leaves a state, it is secession; where new borders have to be carved out of existing units, it is partition. And where a mono-ethnic or single-religion state is created from a multi-ethnic or multi-religious state, it is ethnic partition''. R. Kumar (2004) ''Settling Partition Hostilities: Lessons Learned, the Options Ahead'' in: Seymour M. (Ed) (2004) *The Fate of the Nation-State* (Montreal: McGill-Queen's University Press) pp. 247–270; see p. 248. Where I may differ with Kumar, it is with her restrictions concerning secession to existing administrative units. There are in my view nations without political institutions that could be entitled to secession.
18. The international community has even refused until now to grant secession to the Serbs within Bosnia, or to the Albanian Kosovars within Serbia. One reason for this may be

that these groups do not describe themselves as nations. They are rather what we could call "contiguous diasporas". This however does not imply that Kosovo should remain a province of Serbia. It implies that if the international community decides to allow for secession to take place, it will be based on prudential considerations and the preservation of stability within the region.

19. This leads to the admission of two distinct original positions, one for individuals and one for peoples. See J. Rawls (1999) *The Law of Peoples* (Cambridge: Harvard University Press) pp. 33–34, for an account that treats peoples as self-authentificating sources of claims.
20. Rawls' version of the Law of Peoples only considers peoples that have their own sovereign states. This is, according to Rawls himself, a simplification. The Law of Peoples must also contain rules concerning self-determination and secession, and federation. Thus, Rawls writes that "the right to independence, and equally the right to self-determination, hold only within certain limits, yet to be specified by the Law of Peoples for the general case". Rawls (1999) p. 38. So he clearly acknowledges the existence of stateless peoples even if peoples must be understood in an institutional sense.
21. Pragmatic considerations such as those that relate to the expectations of the population concerned or consequentialist arguments invoking the practical problems generated by assimilation policies are certainly important, but they do not relate to the moral issue raised here. We are looking for independent reasons to treat nations as sources of legitimate moral claims.
22. See Buchanan (1996); H. Brighouse (1996) "Against Nationalism" in: Couture *et al*, (1996); T. Pogge (1997) "Group Rights and Ethnicity" in: Kymlicka and Shapiro (Eds), *Ethnicity and Group Rights*, Nomos (New York: New York University Press).
23. It is true that, very often, nation building policies encounter tensions with internal diversity. But it is precisely the point of the above argument. Nations are to be valued in so far as they are instrumental in favoring cultural diversity. Particular nations do not have intrinsic value. They only have value if they play a crucial role in securing cultural diversity.
24. A. E. Galeotti (2002) *Toleration as Recognition* (Cambridge: Cambridge University Press); W. Kymlicka (1995) *Multicultural Citizenship* (Oxford: Oxford University Press).
25. The idea could be that nations understood in the institutional sense survive only if they are able to maintain, develop and create their own institutions. The reason is that institutions crystallize in the long run the will to survive of the members belonging to the group. Their will to survive as nations is in a way publicly established by the very existence of a complex set of institutions. Nations would need to preserve their institutions in order to survive as nations.
26. In this paper I do not want to consider the vexing problem of self-determination for diasporic and multiterritorial nations. Since they are not contained within the confines of existing sovereign states, they raise entirely different political issues.
27. A. Buchanan (1997) "Secession, Self-determination, and the Rule of International Law" in: J. MacMahan and R. McKim (Eds.) *The Morality of Nationalism* (Oxford: Oxford University Press) p. 306.
28. Buchanan (2004) pp. 416–421.
29. Buchanan (2004) p. 406.
30. Contiguous diasporas should at least benefit from institutional rights (schools, colleges, universities, hospitals, social services, etc.), and immigrant groups should benefit from polyethnic rights (as in a multiculturalism policy, for instance), but they do not have the primary right to self-government. The differential treatment between nations, contiguous diasporas and immigrant groups may be explained if we consider them holistically. Contiguous diasporas benefit mainly from a certain institutional protection

and have only primary rights to institutions, but they also benefit indirectly from the full protection of the right to self-government held by the neighboring national majority (or by the nation-state) of which they are an extension. Immigrant groups benefit primarily from polyethnic primary rights, but they also benefit indirectly from the right to self-government held by the nation from which they are a diaspora, and from the institutional rights held by their contiguous diasporas. Nations, contiguous diasporas and non-contiguous diasporas have different needs and thus different interests, and it is for this reason that they also have different sorts of rights. As long as they fail to entertain a national consciousness, fragments of nations will not aspire to self-government. They will justifiably ask only for institutional protection (contiguous diasporas) or for a policy of multiculturalism (immigrant groups).

31. See also Part 1 Article 3 of the *Draft Declaration on the Rights of Indigenous Peoples* which reads: ''Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.''
32. In order to evaluate whether the demands of stateless peoples are just, an international body could play an important role. The demands would have to have been made for quite a long time by serious political leaders who were supported by the population, and the population would have to entertain a national self-consciousness for quite some time. The demands would also have to be economically feasible and it would be realistic to expect their possible implementation without creating instability or unjust consequences for other peoples. So no group can improvise itself to be a nation. And no group could rapidly invoke the violation of the right to internal self-determination just because the state initially refused new demands coming from a new subunit suddenly describing itself as a nation. An international independent body would happily serve the purpose of assessing along the above procedural lines the demands of populations describing themselves as stateless nations.
33. A communitarian democratic society presupposes a weak notion of rational autonomy that does not involve the capacity to revise one's moral identity while remaining the same, but it is one that may be deliberative enough to meet the standards of a democratic regime. People may be involved in a reflective process, they might perform strong evaluations on their first order moral judgments and engage into thought experiments concerning what they are. The community as a whole may similarly be engaged in deliberations having these three features (reflection, strong evaluation and thought experimentation) but the whole thing is seen as a process of self-discovery or as a search for authenticity and not as implying a capacity for revision. Nevertheless, the community could change its moral identity. For such a communitarian society, this would mean that it would become another community, but the democratic process is seen as precisely that: allowing for a community to discover its authentic self and to become another community if necessary, as opposed to our version of political liberalism where the community as a whole and its citizens in particular are seen as remaining the same in their political identity in spite of the changes occurring in their moral identity. The version of political liberalism that I favor does not entail that we should esteem non liberal societies. We esteem only communitarian societies that are democracies.
34. Buchanan (2004) pp. 348–350.
35. Supreme Court of Canada, *Reference re Secession of Quebec* [1998] 2 S.C.R.