Secession as a Remedial Right[i]

Michel Seymour

Department of philosophy

University of Montreal

michel.seymour@umontreal.ca

1.- Introduction

The Law of Peoples must, according to John Rawls, contain rules concerning self-determination and secession. 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.»[ii] But Rawls never did work out a theory of secession, for he was mainly concern to develop a simplified version of the law of peoples in which all peoples were described as having their own state. So he never discussed the fine details of a theory that would spell out the rules governing self-determination, secession and federation of peoples. However, an increasing number of liberal philosophers are now engaged into such a project. In this paper, I wish to discuss and critically examine Allen Buchanan's theory of secession. According to Buchanan, there are two main theories of secession: primary right theories and remedial right only theories. Primary right theories stipulate that nations may secede in the absence of past injustice. Remedial right only theories argue that secession can only be justified if important harms have been made to the seceding nation. In what follows, I shall criticize Buchanan's version of the remedial right only theory.[iii] Actually, my purpose is twofold. I hope to underline important difficulties affecting Buchanan's theory, but I also want to show that an alternative version of the remedial right only theory meets the constraints, imposed by Buchanan himself, upon any satisfactory account of

secession. In the course of showing this, it will appear that my own version fares much better than Buchanan's theory in meeting these constraints.

2.- 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.[iv] They acquire such an instrumental value because they are treated as social goods by individual agents. For that reason, cultural groups are entitled to cultural protection, that is, to what Will Kymlicka often calls «polyethnic rights», except that contrary to Kymlicka, they apply also to many other groups.[v] 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.[vi] As a matter of fact, no group has a primary right to self-determination, that is, a general right held by peoples similar to the right that a person has to be free and equal. 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, cultural groups could legitimately secede if (i) there were a *special* right to do so, that is, a kind of privilege, similar to a special provision occurring in a particular contract. 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 Irak) and unjust annexation of territories (as with the Baltic States in ex-

USSR). Secession would in these cases be acceptable if there were no other solutions and if these motivations were not overruled by other more important moral concerns.

In his most recent works,[vii] Buchanan has added a further new condition. This further condition stipulates that a nation is entitled to unilateral secession when confronted to the state's persisting violation of agreements to accord a minority group limited self-government within the state.[viii] In other words, if for instance there had been a special right to self-determination 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 some forms of self-government such as in Chechnya or Kosovo could prima facie count as good reasons for secession.[ix] But even if Buchanan adds this additional remedial condition, there is still no primary right secede, and there is still not even a general primary right to self-determination. There are just special rights (particular provisions in a constitution) 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 which 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 shall be arguing for a general remedial right to unilateral secession. But contrary to Buchanan, my account implies that nations or peoples are somehow special and entitled to unique rights.[x] I am committed to the existence of a general primary right to self-determination for peoples, as distinguished from a primary right to secession as such. I shall argue that a general primary right to self-determination entails a primary right to *internal* self-determination, understood as the ability for a people to develop itself within the encompassing state and to determine its own political status within that state. I agree with Buchanan that there is only a remedial right to external self-determination, or secession. Still, the account allows me to enrich the list of just causes that may be invoked in favor of a right to secede. Buchanan's own list of remedial considerations is much too conservative. The violation of the internal right to self-determination is such a just cause for seceding.

3.- What's so special about nations?

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, as in the attributive primary right theories of Avishai Margalit and Joseph Raz.[xi] He also criticizes associative theories that do not necessarily target nations and that do not necessarily invoke a right to self-determination. These are theories purporting to show that a population in which individuals exercize their individual right to vote on secession could under certain circumstances be entitled to secede. 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[xii] and Christopher Wellman[xiii].

Buchanan criticizes the attributive theory on the grounds that it treats nations as somehow special, since they are the only groups that enjoy the right to self-determination. Now I already said that my own remedial account involves the suggestion that nations do have a right to self-determination not enjoyed by any other groups. So I am committed to treat nations as somehow special, and I must therefore state very briefly how I would answer Buchanan's argument.

Buchanan's argument is that we have different ways to order our group allegiances. We order them differently because we have different rational preferences. Allowing nations to occupy a special place in the hierarchy of groups amounts to impose a particular ordering to everyone, and this violates the principle of equal respect.

So how are we to answer Buchanan? In a nutshell, nations form complex sets of political, juridical, educational and cultural institutions that offer a context of choice composed of numerous ideas, conceptions, cultural habits, ways of life, trends, values and works of art. Nations are complex arrangements of such institutions and they are still nowadays for this reason the most important depositary of cultural diversity, when compared with cities or transnational organizations. Now there is a consensus in the international community concerning the value of cultural diversity. So nations are important and special because national diversity is instrumental for cultural diversity. So nations should be treated as special because they are still nowadays ultimate sources of cultural diversity.

This argument does not presuppose a particular attachment to the nation. It supposes at best a cognitive endorsement of the claim that national societal cultures play a unique role in securing cultural diversity. So one could believe that nations are ultimate sources of cultural diversity without feeling a particular attachment to the nation, and without preferring our allegiance to a particular national societal culture among all other cultural groups. So we could grant Buchanan's point about the irreducible variety of our rational preferences concerning our group affiliations. Still, the argument is compatible with recognizing the crucial role played by nations in securing cultural diversity.

It is also important to note that I am not claiming that all nations must be protected and promoted as such. Those that violate individual liberties are not worthy of our support. I endorse a pluralistic axiology in virtue of which the individual rights of persons are seen as no more but no less fundamental and the collective rights of national societal cultures. But each nation that would protect and promote individual autonomy would be worthy of our protection and should be granted the right to self-determination. And all those nations that would systematically violate the rights and liberties of individuals would not be worthy of our protection. This is because I defend a pluralist axiology that asserts the equal importance of persons and peoples without giving any priority to one above the other. By doing so, we are able to claim the equal importance of national diversity and of individuals without suggesting that assimilation is always to be seen as a moral harm. For instance, the assimilation of a nation to another would not be a moral harm if that nation were unable to offer a unique or a rich context of choice. Individuals who live in these national societal cultures might be willing to leave for another national societal culture offering a larger and more liberal context of choice. The assimilation of such a societal culture would not necessarily be something to regret. In short,

cultural diversity is not something more important than individual autonomy. We must embrace a pluralist axiology and must be seeking to achieve an equilibrium between different normative principles.

The theory I am advocating supposes that we should value cultural diversity. Of course, there are many possibly different justifications for endorsing the principle concerning the value of cultural diversity. Some will want to argue that cultural diversity is an intrinsic good. Others will suggest that it is instrumental for the survival of the human species, and that the survival of the human species is itself an intrinsic good, as important but no more important than the protection and promotion of individual human beings. Others will want to argue that cultural diversity is ultimately itself beneficial to the individual. But we do not have to settle those issues. We just need an overlapping consensus.[xiv] I refer to an overlapping consensus, because people may be tempted to agree on the value of cultural diversity for various reasons. But we do not need to commit ourselves to any particular position. And we do not even need to commit ourselves to the existence of things which have intrinsic value and for which cultural diversity would be instrumental.

If all this is true, it enables us to show why nations are special and deserve to be described as having a primary right to self-determination.[xv] But it does not follow from this that nations do have a primary right to secession. I believe that Buchanan is right to argue against such a primary right. His most powerful arguments in this regard are consequentialist in spirit and they apply equally well against the attributive and associative versions of the primary right to secede.

4.- The institutionalization of a right to secede

I now want to discuss a second argument developed by Buchanan against all primary right theories. It is one that concerns the institutionalization of the rules regarding secession. We need to examine this argument also, because it affects both versions of the primary right theory, the associative as well as the attributive versions. The associative version of the primary right to secede is not affected by the argument concerning the violation of the principle of equal respect, because it does not necessarily appeal to the special status of nations among all cultural groups, and it relies mainly on the existence of a democratic process involving a particular population on a given territory. In a sense, the associationist version of the primary right to secede does not even need to use the notion of «self-determination», if that notion is understood as intimately related to the existence of a nation. Some associationist primary right theories could still want to defend the principle of «self-determination», but in doing so, they would have to say that self-determination need not be enjoyed only by a nation. The idea behind the associationist approach to the primary right to secede is precisely to avoid the difficulties generated by the attributive account. In a sense, associationists promote secession without nationalism. So they are not committed to treat nations as special. But Buchanan also formulates an argument that enables him to criticize both versions of the primary right to secede. This argument also affects the associationist.

Buchanan's argument shows that the institutionalization of an attributive or associationist primary right to secede is unreasonable and leads to extremely problematic results. He compares the primary right account and his own remedial

right account by using four criteria that determine whether the institutionalization of the principles of secession would be acceptable. In a previous version of this argument, Buchanan thought that the institutionalization of a right to secede would be reasonable only (i) if it were consistent with actual international law, (ii) if it showed minimal realism concerning its acceptability by the international community in the near future, (iii) if it were not to produce perverse incentives (iv) and if it were morally accessible to very diverse societal cultures.[xvi] I will mention below important changes that took place more recently in Buchanan's theory regarding these criteria.

Buchanan then proceeds to show that primary right theories do not meet these constraints. He rightfully notes that international law accepts 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 also be argued that primary right theories also fail to be applicable to a wide range of societies.

I tend to agree with Buchanan that his remedial theory of secession fares much better on these consequentialist grounds when compared with primary right theories.[xvii] But I now wish to criticize Buchanan's theory by using his own criteria regarding the institutionalization of a right to secede.

Buchanan's first criterion concerns the compatibility with international law. He presents his own account as compatible and more generous than the one accepted in the international law. The reason is that he describes international law as restricting the right to secede only to colonial societies.[xviii] But in fact, Buchanan's account is

in a sense more conservative than current international law. The first reason is that international law accepts the effectivity principle. It partly leaves the secession process in the political arena. It is not something that is entirely constrained by law. It only constrains by juridical means the process of secession in the case of colonies and oppressed nations. International law does not license any 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. Secession is to be assessed on a case by case basis. International law defends the territorial integrity of sovereign states, but it also would treat as sovereign a nation that would assert its sovereignty after a democratic decision, if it were also able to exert control over its own territory and if it were able to get the recognition from the international community. This is the «effectivity principle». In this way, international law leaves secession partly in the realm of the 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 entirely left in the hands of sovereign states,[xix] but I do not think that Buchanan's own list of principles is more progressive than international law.

In addition to the effectivity principle, another reason for saying this concerns the *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States* adopted in the United Nations in 1970. 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 the same binding power, they must be considered as relevant in any theory of secession. We should 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. 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 could be justified to secede if there were (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.[xx] By renouncing two of those explicit conditions, Buchanan appears to be even more conservative than actual international law. I shall return shortly to this list of justifications for unilateral secession shortly, but for the moment, I want to consider other difficulties concerning Buchanan's account in relation to the institutionalization of a right to secede.

Buchanan does not appear to be clearly a minimal realist because one can doubt that the international community would ever want to grant a right to secede to any cultural group, and not only to nations. The international community has refused to grant secession to the Serbs in Bosnia, or to the Albanian Kosovars within Serbia. One reason is that these groups are not nations as such. They are rather what I would like to call «contiguous diasporas».[xxi] They illustrate the case of «national minorities» that are not «minority nations», in the sense that they are extensions of neighboring national majorities (respectively, the Serbs of Serbia and the Albanians in Albania).[xxii] At the same time, the international community has accepted the secession of Bosnia, Croatia and Slovenia, and it did so precisely because, among other things, these could legitimately claim to be nations. The international community is aware of the fact that there are numerous contiguous diasporas all over the world, and especially in the Balkans, and this is why it is extremely reluctant to allow for secession to take place when the group does not form a nation

all by itself. The United Nations has assisted the seceding process involved in Erythrea, East Timor and Western Sahara, but it never favored secession for other cultural groups. Of course, one could question whether the new African countries that were created during decolonization were really «nations» as such, but 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 would at the same time constitute nations. The violation of territorial integrity by cultural groups would be an instance of partition, not of secession.[xxiii]

An apparent counterexample to my claim seems to be offered by Pakistan. The international community accepted the partition of India and tolerated the creation of Pakistan. It could be claimed that the population of Pakistan was seen as forming a religious group. But I believe that it had also some sense of national identity, and if this were true, it would show that it is not a clear counterexample. The fact of the matter is that the international community is not about to accept Buchanan's suggestion that ideological, linguistic, immigrant, religious and all other cultural groups can under some circumstances secede.

As far as the third criterion is concerned, the one related to perverse incentives, it could 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 : because it is in one sense too liberal and 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 would be 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 threath in their power struggle against the encompassing state. Of course, Buchanan imposes a very strict list of justifications : violation of rights and liberties and unjust annexation of the territory. But still, since there are clearly hundreds of places all over the world where rights and liberties are violated, the implementation of Buchanan's ideas could themselves be the cause of great instability.

At the same time, it would create perverse incentives because it 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 themselves unjust. Some members of these communities would come to believe that their national struggle cannot be successfully fought within the framework of international law. It would convince some that the only remaining solution to their problems is violence.

Finally, since Buchanan's approach is individualistic, it places an exclusive focus on the violation of individual rights and liberties. It is insensitive to the collective right of self-determination. It is insensitive to the collective aspirations of a people. And so it is also insensitive to an argument for secession based on the failure to respond favorably to these aspirations. Because of this individualistic bias, it cannot clearly be described as morally accessible to the whole of humanity.

Ethical individualism provides the foundation for a specific version of liberalism, one that has its roots in Western Enlightment 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.

In his most recent book, Buchanan has removed one criterion and has offered two new criteria.[xxiv] Compatibility with 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 claim and to the transitional process. I agree with him that these offer important challenges to any theory of secession. Any 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.

5.- An alternative approach

The above criticisms are directed against Buchanan's own version of the remedial right to secede. I now wish to show that an alternative remedial right only theory appears to be much better than Buchanan's own theory. Under this alternative approach, nations are the main subjects of the right to self-determination. As

national societal cultures, they are the only ones that could be entitled to secession. Moreover, nations do have a general primary right to self-determination. Since they do enjoy this general right as a primary right, there is at least one application of the right that must be respected even in the absence of past injustice. This is not secession, however, or if one prefers, external self-determination; it is rather internal self-determination. By «internal self-determination», I mean the right of a nation to develop itself economically, socially, culturally and politically within the encompassing multination state. It is also a right to «determine its own political status» within that state. According to this account, a nation is entitled to choose its own favored constitutional, institutional and administrative arrangements within the encompassing state even in the absence of past injustices. So *pace* Buchanan, nations do have a primary general right to self-determination as such and, because of this, there is at least one application of this right that can take place without the need to invoke any remedial considerations.

But there is a further third major difference with Buchanan that must be emphasized under this alternative approach to secession. In addition to our claims that nations are indeed special and that they have a primary right to self-determination, we also have to acknowledge that the failure to respect the internal self-determination of a nation constitutes a moral harm that can justifiably be remedied by secession. Remember that Buchanan initially allowed for only two main remedial conditions : the violation of fundamental rights and liberties and the unjust annexation of the territory. I find these conditions too restrictive. In addition to them, two other conditions should at least be allowed. In addition to Buchanan's suggestion that a systematic violation of previous agreements concerning self-government, the failure to grant internal self-determination constitutes an important harm that needs to be addressed in any theory of secession. According to my

account, a nation is not justified to secede without remedial justifications. So my account of secession is remedial. But contrary to Buchanan, I treat the violation of the internal right to self-determination as a moral justification for secession. I am able to invoke this further important consideration because, contrary to Buchanan, I agree that nations do have a primary right to self-determination, and thus have a primary right to internal self-determination.

As I said at the beginning of this essay, Buchanan recognizes in the most recent version of his theory that nations would have a unilateral right to secede if the state systematically violated previous agreements concerning self-government. Does this amount to the same justification as the one that I am now allowing? Not really. There is no general primary right to internal self-determination involved in Buchanan's new justification. There is just a list of special rights that might have been afforded in the past. Violating these previous agreements provides a further just cause, but there were no general obligation on the part of the state to make any legal agreements whatsoever in the first place, those that would be based on a general right to internal self-determination. Perhaps a state should try to do as much as it can in order to accommodate nationalists. In order to avoid secession, it would perhaps be wise for the state to consider options such as decentralization, devolution and other forms of self-governments. But these are prudential considerations. They are not based on the existence of a primary right to internal self-determination.

But does Buchanan have nothing to say concerning the right to internal self-determination? Of course, he does. He rejects a general primary right to self-determination, but 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».[xxv] These particular rights must replace a general primary right to self-determination. But crucially, they are not particular institutional applications of a general right. They are either remedial rights or *special* rights to be granted on the basis of considerations related to the stability of the encompassing state. There is no obligation on the part of the state to implement such rights, unless some remedial considerations enter the picture.

More precisely, rights to intrastate autonomy can become «rights» but only for remedial reasons.[xxvi] Buchanan argues that everything should be done in the first place to protect the individual rights of the members of a community, including those «individual rights that empower and protect communities». What are these rights? 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.»[xxvii] These «collective rights» are general cultural rights that apply to all cultural groups and not only to nations and they are justified on an individualistic basis. They amount to those polyethnic rights discussed by Kymlicka that I alluded at the beginning of this essay, except that they apply across the board to all cultural groups. Buchanan's idea is that individuals have moral rights to cultural protection, and it is only when these rights are violated that intrastate autonomy rights should be implemented. The moral right to intrastate autonomy for a given group does not stem from a general right to self-determination for the group, but rather from a failure to implement rights to cultural protection.

It could be argued that the failure to *initially* implement intrastate autonomy rights does constitute a harm that can be repaired only by secession. But for Buchanan, it is not so, and it is because he rejects the notion of a primary general right to self-determination. The stateless nation cannot ask for particular rights to self-determination on the basis of a just principle such as the general primary right to self-determination. Rights to self-government seem to be understood either as instances of special rights, or as corrective measures for failing to implement general cultural rights. According to the new account offered by Buchanan, there is a right to secede if these particular agreements are not implemented after being adopted, but there is no right to secede based on the failure to adopt them if individual cultural rights are preserved.

6.- The institutionalization of the revised remedial account

But what can we say in favor of my own criterion concerning the institutionalization of a right to secede? Does my account meet the four conditions imposed by Buchanan ? First, does my account comply with actual 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 conditions enumerated in the *Declaration on Principles of International Law concerning Friendly Relations*. 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.»

We can also find 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.»

Of course, this is a declaration and not a Convention as such. Nevertheless, it is an important document and one that I respect perfectly in my proposed revision of the Remedial Right only theory. The document states that if a state complies the principle of equal rights for its citizens, if it complies 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 is also true. The failure to implement these three principles could provide such a justification.

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 secession to all the cultural groups. Self-determination is a right enjoyed only by nations. And since I am committed to restricting the right of secession to nations, I can safely pretend that my own principle is minimally realist, in the sense discussed above. But would the international community be willing to subscribe to the view that the failure to respect internal self-determination is a justification for secession?

I offer two responses. 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 and Kosovo. My second response is that the difficulty of the international community to accept my own list of justifications for secession may, if anything, reveal something wrong in the criterion 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 between states could become a Convention within the next one hundred years or so, and I claim that this fairly mild prediction makes me a minimal realist.

Furthermore, 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 nations, I believe that this would stabilize them as multination states. 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. 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 simultaneously serve to demobilize minority nationalisms in their pursuit of full sovereignty. I am not creating favorable conditions for igniting nationalist movements. On the contrary, I am proposing a solution that may very well serve to ease down nationalist tensions.

Finally, my own account is inspired by political liberalism and not by a comprehensive individualistic version of liberalism. Such an account is among other things compatible with persons and peoples who represent themselves as having a communitarian identity (a constitutive particular moral identity), and not only in accordance with individualism (where persons and peoples are seen as having an identity that can be separated from their 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 a political conception of the person which is compatible with many different comprehensive views. 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. As I said before, I am favorable to an axiological pluralism in virtue of which the equal moral importance of individuals and peoples is asserted. This leads to the admission of two distinct original positions, one for individuals and one for peoples.[xxviii] Finally, political liberalism is committed to treat toleration and not autonomy as the most important liberal value. Being thus disenfranchised from ethical individualism, it can more easily be exported. So I am inclined to conclude that it must also be morally accessible to a wider range of diverse societal cultures.

7.- Conclusion

Let me conclude by saying what I believe I have shown. I accept that nations as such have a general primary right to self-determination held by no other cultural groups. In virtue of this general primary right, nations also have a primary right to internal self-determination. I have also argued that nations can only have the right to secede if they suffer important injustices. So I also wish to defend a remedial only right to secede. But the injustices do not merely relate to the violation of human rights or to the annexation of territories, for they also stem from a failure to comply with principles such as internal self-determination. I have shown that my account favorably meets the four conditions for institutionalization imposed by Buchanan, and I have criticized Buchanan's own account for not complying very well with his own criteria.

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[i] I wish to thank Will Kymlicka, Jon Mandle, Adèle Mercier and Jeremy Waldron for their comments on a previous draft of this paper.

[ii] Rawls (1999), *The Law of Peoples*, Cambridge Mass., Harvard University press, p.38.

[iii] The relevant works are: Buchanan (1991), *Secession. The Morality of Political Divorce. From Fort Sumter to Lithuania and Quebec*. Boulder, Westview; Buchanan (1996), « What's So Special about Nations? » in J. Couture, K. Nielsen & M. Seymour (eds.), *Rethinking Nationalism*, Supplementary Volume, *Canadian Journal of Philosophy*, University of Calgary Press, 283-309; Buchanan (1997a), «Theories of Secession», *Philosophy and Public Affairs*, 26/1, 30-61; Buchanan (1997b), «Secession, Self-Determination, and the Rule of International Law», in J. MacMahan and R. McKim (eds.), *The Morality of Nationalism*, Oxford, Oxford University Press; Buchanan (1998), « The International Institutional Dimension of Secession », in P. B. Lehning (ed.), *Theories of Secession*, London, Routledge, 227-256; Buchanan (2000), « Democracy and Secession », in Margaret Moore (ed), *Secession and National Self-Determination*, Oxford University Press; Buchanan (2003a) «Secession», *Stanford Encyclopedia of Philosophy*, (http://plato.stanford.edu/entries/secession/index.html); Buchanan (2003b), « The Quebec Secession issue: Democracy, Minority Rights, and the Rule of Law», in S. Macedo and Allen Buchanan, eds., *Secession and Self-Determination*, NOMOS XLV, New York University Press, 238-271; *Justice, Legitimacy, and Self-Determination*, published at Oxford University Press, 2004.

[iv] Buchanan (1994), « Liberalism and Group Rights » in J. Coleman (dir), *In Harm's Way. Essays in Honour of Joel Feinberg*, Cambridge, Cambridge University Press, 1-15; see also Buchanan (1989), «Assessing the Communitarian Critique of Liberalism », *Ethics*, 99, 1989, 852-882. For a recent discussion, see *Justice, Legitimacy, and Self-Determination,* 410-415.

[v] Kymlicka (1995), *Multicultural Citizenship*, Oxford, Clarendon, 1995, 30-31.

[vi] Buchanan, « What's So Special about Nations? ».

[vii] *Justice, Legitimacy, and Self-Determination,* 357-359; Buchanan (2003a) «Secession», *Stanford Encyclopedia of Philosophy*, (http://plato.stanford.edu/entries/secession/index.html. See section 2.

[viii] *Justice, Legitimacy, and Self-Determination,*357-359.

[ix] *Justice, Legitimacy, and Self-Determination*, 357.

[x] Immigrant minorities and contiguous diasporas 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.

[xi] Avishai Margalit & Joseph Raz (1990), «National Self-Determination », *Journal of Philosophy*, 87, no. 9, 439-461.

[xii] Harry Beran, «A Liberal theory of Secession», *Political Studies*, 32, 21-31.

[xiii] C.H. Wellman, «A Defence of Secession and Political Self-Determination», *Philosophy and Public Affairs*, 24/2, 1995, 142-171.

[xiv] I believe we also need to provide an argument based on public reason.

[xv] It will be noticed that I have not provided an argument for the existence of a right to self-determination ascribed to nations. Even if we grant that nations are special, why should they have that kind of right? My answer to that question, in a nutshell, is that the notion of self-determination describes in general terms the right to create, maintain and develop institutional goods. The idea is that nations survive only if they are able to create, maintain and develop their own institutions. These, as it were, cristallizes in the long run the will to survive of the members belonging to the group. The survival of the nation is no longer exclusively in the hands of each member of the group, for each one is reminded through the existence of common institutions, that her own will is shared by a majority of members within the group. I thank Will Kymlicka for attracting my attention to the obligation to provide an argument for justifiying the right to self-determination.

[xvi] « The International Institutional Dimension of Secession », 237-239.

[xvii] « The International Institutional Dimension of Secession », 239-244.

[xviii] See for instance Buchanan (2003a) 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».

[xix] For an argument favorable to the constitutionalization of the right to secede at the level of the sovereign state, see Daniel Weinstock « On Some Advantages of Constitutionalizing a Right to Secession », in *Journal of Political Philosophy*, vol. 9, no.2, 2001, 182-203. In my view, confining the right to secede at 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.

[xx] 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).

[xxi] I owe this phrase to Radha Kumar.

[xxii] Notice that I am not claiming here that there exists an Albanian nation comprising the population of Albania and the population of Kosovo. For such a nation to exist, there should be a majority within Albania itself that would consider the Kosovars as Albanians. And even under such circumstances, it is not clear that we should allow them to form their own state. Being a nation is a necessary condition, but not a sufficient condition to justify creating a state.

[xxiii] I 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.» See «Settling Partition hostilities: lessons learned, the options ahead», in Seymour (ed) *The Fate of the Nation-State*, Montreal, McGill-Queen’s, 2004, 247-270; see 248.

[xxiv] *Justice, Legitimacy, and Self-Determination,* 348-350.

[xxv] «Secession, Self-Determination, and the Rule of International Law», 306.

[xxvi] *Justice, Legitimacy, and Self-Determination,* 416-421.

[xxvii] *Justice, Legitimacy, and Self-Determination,* 406.

[xxviii] See Rawls *The Law of Peoples*, 33-34, for an account that allows us to treat peoples as self-authentificating sources of claims.