

I want to explicate and defend the right of nations to some form of substantial political self-governance. This entails the right in certain circumstances of nations to secession. I shall further argue that we should be more permissive about this than many theoreticians are prepared to acknowledge (among them prominently Allen Buchanan).<sup>1</sup> The *presumptive* right – a right as a matter of political morality – to secession of a nation, where the majority of its citizens clearly express their preference for it, should generally be taken to be unproblematical. *Pace* Buchanan, *the burden of proof* should be to show that, in some particular circumstance or type of circumstance, this right (being defeasible as all rights are) should be overridden. There is, that is, a presumptive moral right of a nation to secede from a larger multination state or centralized state should the majority of the members of that nation wish to do so. The burden of proof is not to *establish* that the right to secede is a general standing right, but, on the contrary, against this right to secede, that, for a particular case or range of cases, that this right can be justifiably overridden. That is what in any case must be established, and that is where the burden of proof is. Or so I shall argue.

My argument is that this is the attitude to be taken in liberal democracies, particularly when both the remainder nations and the seceding nations are liberal democracies. In liberal democracies the right of a people to political self-governance, including the right to secession, is so deeply embedded that it cannot be easily overridden. Indeed the case for overriding it would have to be very strong. The step to secession, of course, should not be taken lightly, but a presumptive right to secession on the part of a people should always be acknowledged in a liberal democratic society. Such an acknowledgement is clearly tied to what it is to have a respect for democracy and (*pace* Buchanan) to the egalitarian belief in an equal respect for persons and for autonomy.

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1 A. Buchanan, *Secession* (Boulder, CO: Westview Press, 1991); A. Buchanan, 'What's so Special about Nations?' in J. Couture, K. Nielsen & M. Seymour, eds., *Rethinking Nationalism* (Calgary, AB: University of Calgary Press, 1996) at 283–310; A. Buchanan, 'Theories of Secession' (1997) 22 *Phil. and Publ. Aff.* 31–61.

I proceed by first setting out my conception of a nation, of nationality, and of liberal nationalism and why I believe that cultural-national membership is of deep significance to individuals in modern industrial societies and how this justifies their establishing some form of political self-governance for nations in such societies even when to do so involves the secession from a state, even a state that is not oppressive. Having set out my case I shall critically examine the powerful case made by Allen Buchanan that there should be no such strong presumption of the right to secession.

## II

I shall limit myself to what should be said concerning the liberal democracies of the rich capitalist countries and whatever successor socialist liberal democracies that we might in time come to have. I do this not because I think these are the only societies worth talking about. That would be absurd. I do it because our thinking about nationalism, its justifiability or lack thereof, and of secession should be significantly different when we are talking about such societies than when we are talking about the nations of the former Soviet Union, the former Yugoslavia, or of much of Africa and the Indian subcontinent where often the nationalisms in question are what Carol Prager has aptly called barbarous nationalisms.<sup>2</sup> Our thinking should be much more contextual than it usually is. There are nationalisms and nationalisms. We must be very cautious about grand-scale generalizations. We should like to have, of course, if such can be had, an account ('theory' may be too grand a word) that we could generalize to cover all the world. But we need more humble beginnings. There is enough for a particular occasion to be sorted out if we just stick to the rich liberal capitalist democracies. I shall resolutely so restrict myself.

## III

There are myriads of definitions or characterizations of 'nation' and, for 'nation,' its not being the name of a natural kind, there is no such thing as there being the correct definition of 'nation.' But some definitions are more perspicuous and more useful than others. David Miller and Allen Buchanan give closely related conceptualizations (characterizations) that

2 C.A.L. Prager, 'Barbarous Nationalism and the Liberal International Order: Reflections on the "is," the "Ought" and the "Can"' in J. Couture, K. Nielsen & M. Seymour, eds., *Rethinking Nationalism* (Calgary, AB: University of Calgary Press, 1996) at 441. For the less frequently noted case of the Indian subcontinent, see R. MacFarquhar, 'India: The Impact of Empire' (1997) XLIV, 16 *The New York Review of Books* 26-32 at 26.

well bring out what a nation is. Miller takes a nation to be 'a group of people who recognize one another as belonging to the same community, who acknowledge special obligations to one another, and who aspire to political autonomy – this by virtue of characteristics they believe they share, typically a common history, attachment to a geographical place, and a public culture that differentiates them from their neighbours.'<sup>3</sup> Buchanan relatedly, but less fully, characterizes nations as 'encompassing cultural groups that associate themselves with a homeland, and in which there is a substantial (though not necessarily unanimous) aspiration for self-government of some kind (though not necessarily for independent statehood).'<sup>4</sup>

Both authors stress the importance of a common culture. Miller speaks of a public culture and Buchanan of an encompassing culture and other authors with related characterizations of nation speak of an organizational culture, a societal culture or a comprehensive culture. They are all gesturing in the same direction. Often, though not invariably, that encompassing culture carries with it a distinctive language, and where it does, that language becomes very important to that nation. This is plainly true for the Catalanian, Quebec, and Flemish nations. But a distinctive encompassing or comprehensive culture is essential here, and, as well, for a group to constitute a nation, people in that group must generally have a sense of a common history and an historical attachment to a particular territory which they see as, though sometimes only in aspiration, their homeland in which they will practice some form of political self-governance. There must also be a mutual recognition between the members of a nation of their common membership and a recognition that they owe special obligations to each other that they do not owe to others. The members of any nation will aspire in *some way* to control a portion of the earth's surface. This makes the very idea of a nation, as distinct from some other cultural groups (an ethnic group, for example, made up of immigrants to a country) *inherently* political. They wish to be *mâitre chez nous*, to have political autonomy and some form of self-government. Again that distinguishes a nation from an ethnic group or even a national minority not in search of nationhood. In Quebec, for example, ethnic groups are the various allophone minorities while the national minority is the historically based anglophone minority.<sup>5</sup>

3 D. Miller, 'Secession and the Principle of Nationality' in J. Couture, K. Nielsen & M. Seymour, eds., *Rethinking Nationalism* (Calgary, AB: University of Calgary Press, 1996) at 266. See also his *On Nationality* (Oxford: Oxford University Press, 1996).

4 A. Buchanan, 'What's so Special?' *supra* note 1 at 289.

5 M. Seymour, 'Questioning the Ethnic/Civic Dichotomy' in J. Couture, K. Nielsen & M. Seymour, eds., *Rethinking Nationalism* (Calgary, AB: University of Calgary Press, 1996) at 30–61.

I spoke above of 'in some way' controlling a portion of the earth's surface or of having 'some form of self-government' because, given the extensive mix in many places of different peoples on the same territory – often different peoples long resident in the same territory – ,there are more nations than there are feasible nation-states and for some nations, the Samaritans, the Lapps, the Faeronisian – and *perhaps*, as well, for the Kurds, the Welsh, the Catalonians, and the Basques – their nations are too small or too scattered to be viable states. The First Nations in Canada, Quebec, and the United States are very good examples of nations that, while they can and should have some form of self-governance, they are arguably too small and too vulnerable to form states. They are plainly nations, but they are either too intermingled with other peoples on the same territory or are too small or too poor or too much without infrastructures to form viable states. But there are weaker forms of self-government short of statehood that could, and indeed should, be theirs.

So nations are inherently political *and* inherently cultural. The nationalism of a nation will give force to both of those aspirations. And these features will mark them off from other groups. Liberals, socialists, and communists, for example, will cut across cultures and across nations. And ethnic groups of immigrants living in a state will normally not aspire to a homeland or to a *political* community of their own. As immigrants they will seek to adapt to, and in some considerable measure adopt, the public (encompassing or integrating) culture of the country to which they have immigrated. For them the issue is not to form a political community, to say nothing of seceding from the state to which they have immigrated. For them a crucial *desideratum* is to integrate successfully into their new adopted homeland while still preserving something of their ethnic identity.<sup>6</sup> Only if they are for a long time oppressed will they sometimes move, if they are there in sufficient numbers, from being simply an ethnic group to becoming a nation seeking political autonomy. In such a circumstance they *become* a nation for they already have a common culture – a culture which is becoming ghettoized and marginalized in the society to which they have immigrated. More typically, as we go down a generation or two, their culture will gradually wither away to be remembered only occasionally with nostalgia.<sup>7</sup>

National minorities are distinct from both nations and ethnic groups. Like nations they are historically rooted in a state. They are groups, not

6 W. Kymlicka, *Multicultural Citizenship* (Oxford: Oxford University Press, 1995) and K. Nielsen, 'Cultural Nationalism, Neither Ethnic nor Civic' (1996–7) 28:1-2 *Philosophical Forum* 42–52.

7 K.A. Appiah, 'The Multiculturalist Misunderstanding' (1997) XLIV, no. 15 *The New York Review of Books*, 30–6.

seeking self-governance, whose historic homeland has been incorporated into a larger state through conquest, colonization, or voluntary federation or they are groups just living, and for a long time, on a territory bordering on or close to the territory of a neighbouring nation or state whose culture they share, for example, anglophones in Quebec in relation to English-speaking Canada or francophones in Ontario in relation to Quebec. Indeed, to be a national minority they must be a people living on the territory of another nation while sharing the comprehensive culture of a distinct nation adjacent to or at least close to the territory they inhabit. Moreover, they must be historical peoples, that is peoples who have been there for a long time. But unlike a nation they do not seek political autonomy; they do not seek a form of self-government. They do not see themselves as constituting a *political* community, but seek to insure that their rights are protected and their common culture preserved and respected in the political community of which they are a part. The Lapps in Norway and Sweden are a good example, as are the Swedish-speaking Finns in Finland, the German-speaking Alsatians in France, the German-speaking minorities in the south of Denmark, the Danish-speaking minorities in Flensburg and its surroundings, and the Tyroleans in Italy.

Sometimes the borderline between national minorities and aspiring nations is fragile as the struggles of Tyroleans in the first two decades after the end of the Second World War well illustrate. Still the distinction is an important one to make. In, for example, a sovereign Quebec the First Nations would remain nations and the immigrants ethnic groups, but the historically rooted anglophone community would plainly become, what they have always been if we just consider Quebec, a national minority with the distinctive rights of a national minority.<sup>8</sup> They would have rights that ethnic groups would not have, but also, as a national minority, they, without aspirations to nationhood, would not have rights to some form of self-government as, by contrast, the First Nations do. The same thing would obtain for the francophone minorities in the rest of Canada; they are national minorities in Canada in a way the Poles, Germans, and Italians are not. Similarly, the anglophone minority in a sovereign Quebec would become a national minority while the immigrant groups would not.

## IV

I am now in a position to specify what is distinctive about liberal nationalism, principally, but not exclusively, by contrasting it with ethnic national-

8 Seymour, *supra* note 5 at 30–61.

ism.<sup>9</sup> All nationalisms – liberal nationalisms, ethnic nationalisms, and authoritarian non-ethnic nationalisms (e.g., Argentina, Brazil, Chile, and Spain under their dictatorships) – are cultural *and* political nationalisms. Those things just go with being nationalisms of *any kind*. (A *purely* ‘civic nationalism’ is an oxymoron.) But pressing for the protection of their distinctive cultural institutions, including, where they have a distinct language, their language, does not turn a nationalism into an ethnic nationalism and, as well, seeking to form a state or some other form of political community to work to preserve and enhance their national and cultural identity does not make such nationalists into ethnic nationalists or make them chauvinistic. An ethnic nationalism will be rooted in an ethnic conception of the nation where membership in the nation and citizenship in a state will be rooted in *descent*. What determines membership or citizenship in an ethnic nation is who your ancestors were, not the language you speak, your cultural attunements, your conception of yourself, where you live or what your loyalties are. This nationalism is exclusionist, xenophobic, backward looking, and deeply anti-liberal. Where it, in some modified form, persists in some otherwise liberal states, for example, Germany, it is an anachronism firmly to be condemned as running against what liberalism and democracy are all about. Where nationalism is rightly despised and condemned it is either this nationalism or the sometimes jingoistic, non-ethnic nationalism of some authoritarian states (e.g., Chile under Pinochet and Spain under Franco). But liberal nationalism, while remaining cultural and political as all nationalisms are, is none of these things. It is a nationalism which is non-exclusionist. Citizenship is open to anyone, with a landed immigrant status within the territories of these liberal democracies, and immigration is at least reasonably open and is certainly not based on ethnic, racial, or religious grounds. It is, that is, quite independent of descent, race, and ethnic background. Anyone who wishes to have full citizenship and be a part of the nation may, at least in principle, do so if they learn its language, history, and customs, swear allegiance to it, and are willing to abide by its laws.<sup>10</sup> Perhaps in certain difficult circumstances they will have to meet certain educational or other work skill requirements as well. But that is a pragmatic matter determined by hard economic necessities or, in some instances, by questions of space. Still such restrictions in a liberal society, where it is functioning properly as a liberal society, can

9 Nielsen, ‘Cultural,’ *supra* note 6 at 42–52.

10 I need the qualification ‘at least in principle’ for there are all kinds of practical impediments that require restrictions on immigration: lack of space, lack of resources, and the like. Still that is the ideal to be approximated as fully and reasonably as possible.

never be racial, ethnic, or religious. Membership, with the recognition that goes with it, is defined in terms of participation in a common culture, in principle at least open to all, rather than on ethnic grounds. Both the Québécois and the Flemish stress open access to their nations and they protect the historic rights of their national minorities to have schools, hospitals, and other public services in their languages and the right to use this language in parliament.

Where a nationalist movement prevails in a *liberal* democratic society, the state will, as will any state, in certain respects privilege the encompassing culture of the nation. But, it will only do so in ways that will at the same time protect the rights of its minorities and indeed protect rights across the board. A central aim of a nationalist movement in a liberal democracy, as well as everywhere else, is to protect, and beyond that, if it can, to insure the flourishing of the culture of the nation that that nationalist movement represents. But, if it is a liberal nationalism, it will not seek to stamp out, or otherwise repress, other cultures and will actively work to preserve the culture and cultural institutions of the First Nations in its midst and of its national minorities. But it will also insist that there be a common cultural currency across the society; it will insist that that common currency (that public culture) be learned by all the children in the society, *perhaps* very isolated native peoples apart. The children will learn the official language of that culture, or if (as in the United States) there is no official language the dominant language, as well as some reasonable bits of its history and customs and come to have some knowledge of its political system and laws. There will, through its educational system, be this form of socialization. This is what a nation-state must do to preserve itself and to keep the society from becoming a Tower of Babel – to keep it, that is, from dissolving as a society. A liberalism that in the name of state neutrality would if, *per impossible*, it gained such a neutrality, have gained something that would undermine any form of such socialization. It would, if *per impossible* successful, make any kind of society at all impossible. But this socialization, into a culture, some form of which is inevitable, will not – indeed cannot if the state is a liberal democracy – be at the expense of minority rights and cannot turn either the people of its First Nations, its national minorities, or its immigrant citizens into second-class citizens. It cannot do those things and remain a liberal democracy. Its failure here, if that obtains, is a measure of its failure as a liberal democracy.

There is one further thing that needs to be said about a liberal nationalism before I turn to my argument for a general right of secession for such nations, unencumbered by the strong restrictions that Buchanan would place on it. It is not only necessary that a liberal nationalism not be

an ethnic nationalism; it must be a reiterated, generalizable nationalism and not a nationalism of the manifest destiny of a chosen people who can run roughshod over other peoples in terms of its allegedly privileged place in history as being the wisest and the best. It must not only be non-exclusionist; it must, as well, not be chauvinist. There can be no favoured *Volk*, no single people destined to have a preeminent place in the sun, while the rest are judged, in one degree or another, to be inferior and are placed, if such a chauvinist nationalism can have its way, in a subordinate position. (The nationalism of the white settlers in the former Rhodesia described so graphically by Doris Lessing is a paradigm case.) Rather than a nationalism for God's chosen people, a liberal nationalism will be a *reiterated* nationalism which claims that *all* nations have a right to some form of self-government and the right, and indeed the same right, when certain generalizable conditions prevail, to justifiably secede from the state in which the nation exists in a multination state or in a centralized state which denies its multinational character and in which one nation dominates the other nation or nations in the society. A just social order will be a social order where all peoples – all nations and all national minorities – will have institutions that protect their culture and which will enhance and protect their national and cultural identities.

V

However, this just assumes that the preservation and enhancement of a national-cultural identity, which is also a conception fitting in with a liberal democracy, is something of great importance to human beings. But why should a liberal democracy or people in a liberal democracy care about preserving such an identity? Indeed should they care about preserving their cultural identities? Why not just think in terms of individuals and in terms of what would maximize their secure flourishing, including a commitment to equal respect for all people and, as well, to what would strengthen their self respect? What, as Buchanan asks, is so special about nations and having a robust sense of national identity? Why not, as Andrew Levine and Harry Brighouse ask as well, just be cosmopolitans without any attention to such particularisms?<sup>11</sup>

First a red herring needs to be disposed of. Cosmopolitanism and a caring about a more local identity (something that makes one a member of a particular and, for one, a cherished community) need not at all

11 A. Levine, 'Just Nationalism: The Future of an Illusion' in J. Couture, K. Nielsen & M. Seymour, eds., *Rethinking Nationalism* (Calgary, AB: University of Calgary Press, 1996) 345–64; and H. Brighouse, 'Against Nationalism' in J. Couture, K. Nielsen & M. Seymour, eds., *Rethinking Nationalism* (Calgary, AB: University of Calgary Press, 1996) 365–406



stand in conflict. One, for example, can be proud of being an Icelander and be very much committed to one's homeland, its traditions, distinctive culture and be committed to working to see it flourish without being at all chauvinistic about it, thinking that 'the Icelanders are the best.' One can have such warm feelings about one's nation while also having cosmopolitan interests and commitments. There is, for many people, perhaps for most people, a place where one feels most at home, a place that one longs for after a long absence, and there is, in that particular culture, for many people, a reasonably definite answer to the question, 'Who am I?'.<sup>12</sup> But that is perfectly compatible with valuing others and without feeling that their traditions are inferior to one's own and with taking an active interest in what goes on in the world. (Moreover, *pace* Martha Nussbaum, it is psychologically impossible at least for most of us to be 'free floating cosmopolitans' with no roots in a particular culture.)<sup>13</sup> If we are to be focused at all we must have roots in a particular culture. To the extent that we get so extensively detached from those roots that we have no attachment to a people or a place, most of us at least will in one way or another suffer psychologically. But we should also not be ethnocentric, cooped up in our particular culture; we should both be cosmopolitans and have particular attachments. We should, that is, be cosmopolitans but *rooted* cosmopolitans.<sup>14</sup>

If we are not to be alienated and disconnected from our cultural environment we not only need to develop our powers, but to have an understanding of who we are. Self-definition is an indispensable condition for human flourishing.<sup>15</sup> But self-definition involves, though it, of course, involves much more than this, seeing ourselves as New Zealanders, Dutch, Irish, Ghanians, Canadians, or whatever. Or at least this sense of national identity has come into being with the establishment of industrial societies.<sup>16</sup> And, in all societies that we know anything about, group identity is important. It is plausible to regard national identity as a form of group identity appropriate to, and functional for, modern industrial societies.

12 G.A. Cohen, *History, Labour and Freedom* (Oxford: Clarendon Press, 1988), 132–54 and K. Nielsen, 'Socialism and Nationalism' *Imprints* (forthcoming).

13 M. Nussbaum, 'Patriotism and Cosmopolitanism' 3–17 and M. Nussbaum, 'Reply' 134–44 both in J. Cohen, ed., *For Love of Country* (Boston: Beacon Press, 1996).

14 K.A. Appiah, 'Cosmopolitan Patriots' 21–9 and B.R. Barber, 'Constitutional Faith' 30–7 both in J. Cohen, ed., *For Love of Country* (Boston: Beacon Press, 1996). See also M. Cohen, 'Rooted Cosmopolitanism' in M. Walzer, ed., *Toward a Global Civil Society* (Providence, RI: Berghahn Books, 1995) 223–3.

15 G.A. Cohen, *supra* note 12 at 132–54 and K. Nielsen, 'Socialism and Nationalism,' *supra* note 12.

16 E. Gellner, *Nations and Nationalism* (Ithaca, NY: Cornell University Press, 1983).

When a Dane, for example, meets a fellow Dane abroad there is normally a spontaneous recognition of a common membership in a nation which is not the same as when she meets, for example, a Chilean; though, if she is a liberal democrat, as she is very likely to be given her cultural attunements, equal respect will go to the Chilean and, if she is reflective, she will take an interest in the different life experiences, conceptions of things, and cultural attunements of people with nationalities different than her own. But normally there will be a sense of at homeness and an affinity with her fellow Danes that is rooted in their having a common culture: the songs they sing, the structure of jokes, the memories of places, a sense of a common history, literary references, political experiences, and the having of all kinds of common forms of intimate ways of living.<sup>17</sup>

Isaiah Berlin has made vivid for us Johann Götffried Herder's eighteenth-century resistance to Enlightenment *rationalism*.<sup>18</sup> People will suffer and will not flourish where they do not have a secure social identity. Among our very deep needs is the need to belong to a group; to be, that is, a member of some community. But this means, Herder argues, an attachment to local identities and not *just* to humanity in general. But these *gemeinschaften* are all distinct with their own characteristic shapes and patterns. The members of these communities are formed into a stream of tradition which deeply forms who they are and what they are like both emotionally and intellectually. Berlin puts Herder's conception as follows:

Human customs, activities, forms of life, art, ideas, were (and must be) of value to men, not in terms of timeless criteria, applicable to all men and societies, irrespective of time and place . . . but because they were their own expressions of their local, regional, national life, and spoke to them as they could speak to no other human group.<sup>19</sup>

Since this is the way almost all human beings are, national identity (the form that group identity or social identity takes under conditions of modernity), is vital for human beings in such conditions. Where it is at risk, even with benign intentions, including benign neglect, it is reasonable for people to struggle to preserve it. They are justified in claiming a

17 K. Nielsen, 'Undistorted Discourse, Ethnicity and the Problem of Self-definition' in W.A. van Horne, ed., *Ethnicity and Language*, vol. 6 (Milwaukee, WI: University of Wisconsin System, 1987) 16–36.

18 I. Berlin, *Vico and Herder* (London: Hogarth Press, 1976) 145–216; I. Berlin, *Against the Current* (New York: Viking Press, 1980) 333–55; and I. Berlin, *The Crooked Timber of Humanity* (New York: Alfred A. Knopf, 1991) 238–61.

19 I. Berlin, *Crooked Timber*, *ibid.* at 13.

right to the sustaining of their national identity. Where it is threatened, a people have the right – though, again, as always, a defeasible right – to take steps to preserve it, even if this means secession, so long as they do not violate the rights of others in doing so and so long as they do not cause more suffering and misery all around by doing so – taking into consideration, and equally, people in both the seceding country and in the remainder country. This is both consequentialist and Rawlsian. It looks to the consequences both negative and positive, but the interests of *everyone* and *equally* must be considered as well.<sup>20</sup>

Nations, to summarize, are encompassing cultures associated with a particular territory where there is an aspiration on the part of at least a majority of the members of such encompassing cultures for a homeland and to some form of political self-governance in that homeland. Encompassing cultural groups are cultures which pervade the whole range of an individual's major life activities and which function as an indispensable source of self-identification and self-definition. Moreover, the very existence of such a culture requires social structures and a complex cluster of interdependent institutions. Without this being in place in the lives of human beings there can be no secure and stable sense of who they are and without that there will be little in the way of human flourishing. Instead people will experience anomie and alienation. These encompassing cultures – these nations – will have a fragile and insecure existence if they do not have a substantial degree of self-government. Moreover, in industrial societies such as our own – the rich constitutional capitalist democracies – such a nation will be most secure when it either has a sovereign state of its own or, as a component nation in a multination state, it is an equal partner in such a state with the other nations. To achieve that may require it to secede from a pseudo-multination state (a state where the component nations are not equal partners) or from some severely centralized state of which it is a part. In a liberal democracy there is a *presumption* that every nation has a right to one or other of these two state forms. This is a *presumption* which is always defeatable and not infrequently defeated. I have discussed some of the considerations that could justify its defeat in particular situations, and I will return to this when I consider Buchanan's critique of such a claimed general right. But in arguing for the right of a nation to such state forms I am not (*pace* Hegel) assuming that states are loveable institutions. They are not. I no more assume this than did Herder who was, unlike Hegel, thoroughly anti-statist. But that unloveableness notwithstanding, we can see from

20 K. Nielsen, *Naturalism without Foundations* (Amherst, NY: Prometheus Books, 1996) at 207–59.

what has been said above that for people to have such a nation-state or multination state is to have something which makes a very deep link with what is required (instrumentally required) to give sense to their lives. When, as sometimes must be the case, their nation, and for good reasons, can not have a state of its own, there is, as a result, unless it is a secure nation in a genuinely multination state showing equal respect for its component nations, more fragility and anomie in their lives. Their being able to sustain a stable sense of social identity in such a circumstance is more at risk. This is why in liberal democracies – where human rights are protected and there is a general egalitarian ambience – I attach this strong form of political recognition to nations with the hope that circumstances will make it possible, without denying the conditions of a liberal social order, for nations either to have nation-states of their own or to be a component nation in a genuine multination state. It must be a *genuine* multination state and not a pseudo one as are many so-called multination states. There must be an equal respect and equal authority between their different nations and they must all have an unequivocal and clear measure of self-governance and this right to self-government of each component nation must be a matter of mutual acknowledgement between the component nations of the multination state.

VI

Buchanan believes that *sometimes* nations have a right to secede. But his view of when this is so is much more restrictive than my own. He articulates and defends a particular version of what he calls a Remedial Right Only Theory of Secession.<sup>21</sup> For Buchanan, a group has the right to secede only if

1. The physical survival of its members is threatened by actions of the state (as with the policy of the Iraqi government toward Kurds in Iraq) or if it suffers violations of other basic human rights (as with the East Pakistanis who seceded to create Bangladesh in 1970); or
2. Its previously sovereign territory was unjustly taken by the state (as with the Baltic Republics).<sup>22</sup>

It must also be the case for the group to have the right to secede 'that there be credible guarantees that the new state will respect the human rights of all of its citizens and that it will cooperate in the project of

21 Buchanan, *Secession* supra note 1 at 27–80 and Buchanan, 'Theories of Secession' supra note 1 at 37.

22 Buchanan, 'Theories of Secession' supra note 1 at 37.

securing other just terms of secession.<sup>23</sup> This includes a fair division of federal properties in the old state, a fair apportioning of the national debt, a negotiated determination of new boundaries, agreed on arrangements for continuing, renegotiating, or terminating treaty obligations and provisions for defence and security.<sup>24</sup> In his classification of types of theories of secession, my account, as distinct from his Remedial Right Only Theory, is a variant of a Primary Right Theory. It is an account which, as he rightly says, claims that a group constituting a nation 'can have a (general) right to secede even if it suffers no injustices, and hence it may have a (general) right to secede from a perfectly just state.'<sup>25</sup> Here 'just' must be construed in a thoroughly uncontroversial and thus minimal sense, accepted by both theories, that is, in not violating uncontroversial individual moral rights and not engaging in 'uncontroversially discriminatory policies toward minorities.'<sup>26</sup> My account, as we have seen, also accepts the last set of conditions for the right to secede, for example, credible guarantees that human rights will be respected, boundaries negotiated, a fair division of the national debt made, and the like. I would further add, where after protracted negotiations the seceding state and the remainder state cannot agree about borders, the fair distribution of the national debt or of federal properties and the like, the dispute should be settled in binding arbitration by an international tribunal. It is here (though I do not say only here) where international law is very important. But my account differs from his Remedial Right Only Theory concerning his first two conditions. It need not be on my account that the physical survival of a nation is threatened. It may instead be the case that (1) only its cultural survival is threatened (say, the loss of its language) either as a matter of deliberate policy on the part of the government of the state in which it is embedded or in effect by actions by the larger state not intended to have these threatening effects but which have them all the same; and (2) that, even though it is clearly expressed (as, say, in a referendum), the democratic will of the majority of the people of the nation desiring to secede is not respected by the state where secession is an issue. If either of these things obtain, then the state opposing the secession acts wrongly even though it had not previously acted unjustly. In such a circumstance the seceding state has the right to secede, though always with the proviso that it does not violate the human rights or the civil rights of any of its citizens.

23 Ibid.

24 Ibid.

25 Ibid. at 40.

26 Ibid.

There is here, I argue (*pace* Buchanan), also a *general* right to secede that his account does not acknowledge. Unless we take it, as we well might (but note this would be controversial), that the potential remainder state, in refusing to accept secession under the above conditions, thereby acts unjustly, the seceding nation need not, if we do not accept this, in any of the less controversial and non-question-begging ways, have been treated unjustly by the remainder state. Put more simply but somewhat less accurately, the nation that would secede to form a state of its own need not have, prior to that time, been treated unjustly in the state in which it abides. It is enough on my account that its culture is threatened, though not necessarily by any deliberately repressive actions on the part of the state, such as repression of its language, for example, the historic treatment of the Welsh, Scots, and the Irish by the English. The remainder state need not have in any way acted badly to the seceding state for its culture to be threatened. Or even without that, it may be just that the majority of the people of the nation want to secede and vote to secede. Either is sufficient on my account (but not on Buchanan's) to justify secession – provided the human rights of all people in the territory in question are protected. The option for secession may just be an expression, in a properly democratic manner, of a nation's preferences. I would indeed bite, what Buchanan regards as the bullet, and 'go so far as to recognize a *right* to secede even under conditions in which the state is effectively, indeed flawlessly, performing all of what are usually taken to be the *legitimizing functions* of the state.'<sup>27</sup> That a nation *has* such a right does not, of course, mean or entail that in such circumstances it should *exercise* that right or even that in all instances it is reasonable to do so. I have the right to run for mayor in Montreal, and it is important that I have that right, but I shall never do so. A people will not in fact secede without reason. So it is unlikely that it will secede from a flawlessly just state. But it is important in a democratic ethos that it have the right to do so. So my view is very much more permissive than Buchanan's.

Buchanan thinks such a permissive view is both dangerous and absurd – being in a very bad sense utopian. I think *au contraire* that it is entailed by a firm and clear commitment to the right, in a democratic society, of a people to be self-governed. That is something which is very central to democracy. The difference between us can be narrowed a bit by noting that Buchanan is giving a general theory of secession for all societies – democratic and undemocratic, liberal and illiberal – while I am only talking about the conditions under which secession is justified when the contending groups are both firmly and resolutely a part of liberal democratic societies and are committed to its values.

27 Ibid.

Consider in this context Buchanan's Minimal Realist argument for preferring Remedial Right Only Theories to Primary Right Theories. The former, as he puts it, 'places significant constraints on the right to secede, while not ruling out secession *entirely*. No group has a (general) right to secede unless that group suffers what are uncontroversially regarded as injustices and has no reasonable prospect of relief short of secession.'<sup>28</sup> Why accept such a very restrictive view that, Buchanan's intentions to the contrary notwithstanding, would *seem* at least to wed us to the *status quo*? Buchanan's reasons are realistic *realpolitik* ones. The majority of secessions, he reminds us, 'have resulted in considerable violence, with attendant large-scale violations of human rights and massive destruction of resources. . . .'<sup>29</sup> Given this experience we should move in the direction of secession with caution and reluctance. There is another realistic reason as well. When a national minority in a state forges itself into a nation and secedes, this will often, indeed typically, result in a *new* national minority within the new state. 'All too often,' as he puts it, 'the formerly persecuted become the persecutors.'<sup>30</sup> Moreover, frequently 'not all members of the seceding group lie within the seceding area, and the result is that those who do not become an even smaller minority and hence even more vulnerable to the discrimination and persecution that fuelled the drive for secession in the first place.'<sup>31</sup>

However, it is just here that the restriction in scope concerning arguments for secession is crucial. I only argued about what should be said about secessionist movements in secure liberal democratic societies where all significant segments of the population, including the secessionists, are firmly committed to liberal democratic values. There, secession or not, the 'considerable violence,' 'large-scale violations of human rights,' 'destruction of resources' cannot obtain, nor could there be, so long as the liberal state is functioning as a liberal state should, persecution of or discrimination against minority groups new or old, large or small. These things are incompatible with *the very idea of liberal democracy*. And suffering from such injustices need not be the motive for secession in such societies. Without being persecuted they may wish to secure the protection of their culture or just to be *mâitre chez nous*. A society or cluster of societies, even in the severe strains of conflict over secession, cannot, if they are liberal democratic societies with both sides being committed to such values, engage in wide-ranging violence (indeed even in any violence) or in massive violations of human rights, destruction of

28 Ibid. at 44 (emphasis mine).

29 Ibid. at 45–6.

30 Ibid. at 45.

31 Ibid.

resources, persecution, or discrimination. This, if you will, is true by definition. Liberal democrats could not behave in this way and remain liberal democrats. So we lovers of democracy need not, and should not, have such a restrictive theory of secession for *such societies*, a theory which makes, if the recipe is followed, secession very difficult.

Buchanan could reply that I am engaging in a conventionalist's sulk by appealing to what is in effect an absurd ideal theory distant from the real world. It isn't what is entailed by the very idea of a liberal democracy that counts, but what happens in the real world of liberal democracies: the actually existing liberal democracies. But even there, the clash in Northern Ireland deeply involving England aside, liberal democracies have behaved in a manner that conforms rather closely, but not perfectly, to what the very idea of a liberal democracy requires. Consider Norway seceding from Sweden, Iceland from Denmark, the division (the wisdom of it aside) of Czechoslovakia, the division of Belgium, the devolution of Scotland and Wales. Tensions were, and, where the struggle is still ongoing, are high and rhetoric and propaganda flowed or flows, as the case may be, freely, but there was (is) little or no violence, persecution or human rights violations and certainly no massive destruction of resources. Moreover, as things calmed (calm) down, relationships of reasonable cooperation came (will come) into being. Sweden massed troops on the Norwegian border in 1905. But fortunately sanity prevailed and they did not invade. Now the two countries are good friends living in close cooperative arrangements. There neither was nor will there be with secession in genuine liberal democracies any undermining of the liberal social order or tearing apart of the liberal social fabric. There was in the above previous secessions arguably even a strengthening of it.

The relationships between Ireland and Britain and Spain and the Basques, however, do not fit this model. But with the latter it is not clear that we have stable liberal democracies with the traditions that go with them. And in the case of the struggle in Northern Ireland, it is not at all clear that all the major players are committed to *liberal* democracy. There is indeed a Protestant majority in Northern Ireland, but what is not at all clear is that the Ulster Unionists are committed to *liberal* democracy and the same could be said for some of their adversaries. But, even if we take these to be cases of liberal democracies, though still with old and severe ethnic enmities, slipping into violence and fanaticism in the course of struggles for independence, it remains the case that secessions have peacefully taken place in societies where all the contending forces were more firmly liberal democratic than the ones slipping into violence. There – and they are the more common case in liberal democracies – none of the ill effects predicted by Buchanan followed during or in the wake of secession.



Of course, the existing states in the UN and in the international law establishment will stick together to seek to sustain the idea of the territorial integrity of states, i.e., of the existing states. They are pretty much, in this respect, like an old boys club. And, of course, we do not want a circus of anarchy, but, as a matter of historical fact, states come and go and it is not such a terrible thing if changes occur, particularly if the societies in question are liberal democratic ones with very distinct nations harnessed together rather artificially, and where the flourishing of these nations, or at least the smaller nations, within the umbrella state, could be enhanced by separation and no great harm would accrue to the remainder state by separation. A state should not, and indeed in most instances will not, break up without good reason. And when it does break up there will always be some dislocation and not all the after effects will be good. But some of them will be very good indeed. A nation or a people – which before had been treated as a national minority or worse still like an ethnic group – can now be in control of its own destiny as much (and as little) as any nation-state or nation within a genuine multination can be in the modern world.<sup>32</sup> States come and go, and sometimes they break up, perhaps without the conditions that Remedial Right Only Theories could sanction obtaining, with no great harm resulting, and arguably sometimes with considerable gain, for example, Iceland from Denmark and Norway from Sweden. If Quebec should secede from Canada, Scotland from Britain, and Wales from Britain, their thoroughly liberal democratic environments staying intact, it is anything but evident that that would not give more people more control over their lives and a fuller self-realization than the continuing of the *status quo*. Moreover, this could obtain without harming others in the remainder state or the minorities in the new state. Quite possibly more good would obtain all around. At the very minimum, this idea should not be rejected out of hand. Perhaps in some of these cases – the case of Wales, for example – it would not be practically feasible. Here we should go case by case. We need careful contextual moral reflection together with a scrupulous empirical examination of the facts of the case. But there is no case at all for the rejection of the putative right to secession on high moral or legal principle. At the very least, none of the dire results that Buchanan believes must just go with secession seem at all to be in the cards in such cases. It looks at least like it is better to go in the more permissive direction of what Buchanan calls Primary Right Theories than in the direction of Remedial Right Only Theories.

32 E.J. Hobsbawn, *Nations and Nationalism since 1780* (Cambridge: Cambridge University Press, 1990) and E.J. Hobsbawn, 'Ethnicity, Migration and the Validity of the Nation-State' in Michael Walzer, ed., *Toward a Global Society*, 235–40.

Buchanan could respond that what I have said unfairly makes his account sound more statist and authoritarian than it actually is. 'Remedial Right Only Theories,' on his account, 'hold that a general right to secession exists only where the group in question has suffered injustices' – things that plainly and uncontroversially have been taken to be injustices.<sup>33</sup> But, Buchanan insists, the qualification '*general*' is critical here. Remedial Right Only Theory allows that there can be *special* rights to secede if the state from which a distinct nation would secede *grants* it the right to secede or if the constitution of the state includes a right to secede or if 'the agreement by which the state was initially created out of previously independent political units included the implicit or explicit assumption that secession at a later point was permissible.'<sup>34</sup> But this seems to me only marginally less restrictive than a Remedial Right Only Theory would be without such riders. It does not give a people even nearly a strong enough right to self-determination – a right that a liberal democratic society, fully respecting individual autonomy and the right of a people to govern themselves, would want to see instituted. For it is still, on Buchanan's account, the constitution or the authoritative will of the government of the state from which a people as a subunit wish to secede or prior political arrangements of that state which determines whether the nation (the subunit) which wishes to secede can legitimately secede. It is *not sufficient*, on his account, for secession to be legitimate that a people (1) be genuinely a people (that is, a nation in the sense that Buchanan has defined and I have accepted); (2) in a fair democratic vote (as in a referendum with the issue clearly stated) a majority of its members vote for secession; (3) for the various civic guarantees such as protection of minority rights to be firmly in place; and (4) for there to be a negotiated settlement on borders, on the division of the national debt, and on joint assets and the like. These are *necessary* conditions for justified secession, and over them Buchanan and I are in agreement. But Buchanan wants *additional conditions* as well. On Buchanan's account, unless a state is flagrantly violating human rights, the political arrangements of the state from which a nation wishes to secede call the tune. That state, unless it is really a rogue state, ultimately determines what can legitimately be done. In that respect his account is statist and authoritarian and very conservative. That a nation can legitimately secede from it is a matter of *noblesse oblige* on the part of that state. But this runs too

33 Buchanan, 'Theories of Secession,' supra note 1 at 36.

34 Ibid. Here Buchanan would need to meet the powerfully articulated arguments of C.R. Sunstein that it would be a mistake for states to build into their constitutions a right to secede. C.R. Sunstein, 'Constitutionalism and Secession' (1991) 58 U. Chicago L. Rev. 633–70.

strongly against very deep considered judgments about democracy and the self-determination of peoples to be acceptable in a liberal democracy where everyone can be expected to play by the democratic rules of the game, for example, no repression, violation of human rights, persecution, no negotiating in bad faith, and the like.

Buchanan, I am confident, would continue to resist by claiming that my account is too utopian and does not meet the conditions of *minimal realism* that any even nearly adequate substantive normative political account must meet. 'Primary Right theories,' he has remarked, 'are not likely to be adopted by the makers of international law because they authorize the dismemberment [*sic*] of states even when those states are perfectly performing what are generally recognized as the legitimating functions of states.'<sup>35</sup> Because of this, Buchanan has it, Primary Right theories 'represent a direct and profound threat to the territorial integrity of states – even just states.'<sup>36</sup> Because states 'have a *morally legitimate* interest in maintaining their territorial integrity,' they should oppose Primary Right theory.'<sup>37</sup>

I grant that liberal democratic states, including (when they come on stream) socialist liberal democratic states, have a morally legitimate interest in maintaining their territorial integrity. But I would certainly not generalize that to all states. The territorial integrity of Indonesia or Burma is not something to which we should give high priority. Moreover, I think that Buchanan exaggerates when he says that Primary Right Theory represents a direct and profound threat to the territorial integrity of states. *Theories* seldom have such causal powers. But, even if they did, in the history of societies that are liberal democratic, secessionist movements are not frequent and come into being only where the encompassing culture of a people – the very thing that continues to make them a people – is at risk and they need self-government to protect their encompassing culture. States will, of course, try, and try hard, to keep their territory intact. And they have a morally legitimate interest in doing so. But morally speaking, a people wanting to govern themselves, particularly when their very nationhood is at risk, is standardly, but not invariably, a *morally more stringent claim* than the claim to the territorial integrity of what, at least in effect, is a multinational state, though typically, where secessionist struggles arise, a state in fact is not behaving as a multinational state should behave, for example, treating each of the component nations with equal respect. This has typically been the case with seces-

35 Ibid. at 45.

36 Ibid.

37 Ibid. at 46.

sions in liberal democratic societies. Transition has been, and can be expected to be, orderly, though not without bitterness and tension, in both the seceding state and the remainder state, still the generally recognized legitimating functions of the state have remained in place. A paradigmatic example is when Iceland seceded from Denmark. Protection of individuals' rights and the stability of their lives remained firmly in place in Iceland. And, after secession, no partition took place and the two nations (the Danish and the Icelandic), now both nation-states, maintained, without conflict, their respective territorial integrity. Or, more accurately, Iceland's territorial integrity and control was intact. The Icelandic nation had its homeland securely on the territory it claimed and territorial integrity returned to Denmark as well as soon as the Nazi occupiers were driven out – something that was quite independent of the issue of Iceland's secession, though many Danes understandably resented that Iceland seceded when Denmark was under occupation. But that does not substantially touch the reasonableness or justifiability of the secession. Moreover, *pace* Buchanan, the 'incentive structure in which it is reasonable for individuals and groups to invest themselves in participating in the fundamental processes of government in a conscientious and cooperative fashion over time' was enhanced in the case of Iceland and not undermined in the case of Denmark.<sup>38</sup> And the case of Iceland and Denmark is not atypical of secession cases which have gone through the works or are in the offing in *liberal democratic societies*.

Buchanan is right in asserting that in societies that are in the ball park of being just societies, we want the rule of law and the effective enforcement of a legal order to remain intact. But he has his sociology and history wrong. There was no such break down with secession in such societies, and it is not reasonable to expect it to happen if Scotland secedes from Britain or Quebec from Canada. After all Scotland/Britain and Quebec/Canada are not Serbia/Bosnia or Russia/Chechnya. Buchanan sees, wherever there is secession, the threat of anarchy, violence, and the stamping on people's rights. But here he is blinkered by a fixation on barbarous nationalisms, but there are nationalisms and nationalisms. Such violence and the like have not happened in *firmly* liberal democratic societies, and it is not plausible to think that it will happen as new cases come on stream, though sometimes some extremist and sensationalist segments of the mass media make it sound as if it might. But that is just irresponsible sensationalist rhetoric. Territorial integrity is a *desideratum*, but, in liberal democratic societies, it does not have nearly the critical weight that Buchanan and traditionally international law have

38 Ibid. at 46–7.

assigned to it. His account, his intentions notwithstanding, has a conservative *status quo* effect.

Buchanan has a further *realpolitik* argument against accounts of secession such as my own. It is my view that, *ceteris paribus*, if a nation becomes capable of having a functioning state of its own in a territory it has historically occupied and where no other nation has a comparable claim on the same territory, then it is a potential subject of the right to secede if a majority of its members so wishes. To this Buchanan responds that that 'would encourage even just states to act in ways that would prevent groups from becoming claimants to the right to secede, and this might lead to the perpetration of injustices.'<sup>39</sup> He adds 'Clearly, any state that seeks to avoid its own dissolution would have an incentive to implement policies designed to prevent groups from becoming prosperous enough and politically well organized enough to satisfy this condition.'<sup>40</sup> A state, he has it, is justified in so acting even if it acts only from the morally legitimate interest of preserving its own territorial integrity.<sup>41</sup>

If we are doing ideal normative political theory, this contention of his is plainly mistaken. Recall we are talking about secession in liberal democracies where the seceding nation and the remainder state are and will continue to be liberal democracies and in the struggle around secession both will be determined to play by liberal democracies' rules. The state from which the seceding nation is seeking to secede indeed has a morally legitimate interest in preserving its own territory but not at the expense of acting unjustly or in some other morally untoward way. A just state, as Buchanan takes it to be, particularly if it is a liberal democratic one, could not, while remaining just, so act as to perpetrate injustice by so treating a group so as to deliberately prevent them from becoming prosperous or politically organized. This is to treat them in an uncontroversially morally untoward way that runs flat against that for which a liberal democracy stands. In so treating them there would be a manipulating of people and not even in any paternalistic manner for their own good. There would be no treating its citizens as moral equals, as ends in themselves, and there would be the deliberate harming of some for *reasons of state*. In this, the reasons of state come to a preserving the state's own territorial integrity at the *expense* of some of its citizens and at the expense of liberal values, for example, autonomy and self-determination. Preserving their own territory is a morally legitimate state function, but not, in the case of a threatened peaceful and democratic secession,

39 Ibid. at 52.

40 Ibid.

41 Ibid. at 53.

where to do so comes at the expense of so harming its citizens and not treating them as having equal moral standing. It also pays scant attention to the democratically determined aspirations of a nation. Such behaviour is not morally acceptable in a liberal democracy. This is particularly starkly wrong when the seceding nation would become a liberal democratic state respecting human rights and the like and where no extensive harm, or in some instances no harm at all, would result to the remainder state as a result of the secession. But this in many instances would be the case. In such situations the remainder state could not be acting rightly in so acting.

It might in turn be replied that while this may be well and good for purely ideal normative theory, it is not for a normative theory in touch with the real world. For such a normative theory, it could be claimed, Buchanan's argument remains intact. In *really existing* liberal democracies, as elsewhere, states will fiercely resist secession and will indeed play dirty pool with actual secessionist movements. And indeed the secessionist movements will respond in kind. It is arguably, though surely *controversially*, the case, that in Canada, for example, the federal government by its policies toward Quebec, has deliberately impoverished Quebec. Montreal, for example, has gone from being a thriving metropolis to being the poorest large city in Canada.<sup>42</sup> But be that, possibly *parti pris* illustrative point aside, it is very likely that actual liberal states, feeling pressured by secessionist movements, would do, or try to do, just the things Buchanan mentions. They could not, as we have seen, do them and still remain states that were not unjust in any of the uncontroversial ways that Buchanan describes. But, as we cannot expect individuals to be angels, so we cannot expect such rectitude from the people running the governments of liberal democracies either. And we must, to articulate a practical institutional morality, take such facts into consideration.

To this I have two responses. First, we still should for contexts such as this construct an ideal normative political theory – something to *model* ideally what the situation should be – in terms of what would obtain in a perfectly functioning liberal democracy. Thus, where we have a perspicuous constitution, we can clearly see, if we think carefully and take the matter to heart, what we should aim at in such an ideal world. (Indeed very much a counterfactual world.) With that clearly before us we can then see what accommodations we need to make to the actually existing political and social realities to get an account which here and now could guide policy while remaining the most morally adequate account avail-

42 M. Seymour *et al.*, 'Quebec Sovereignty: A Legitimate Goal' *IPSO (Intellectuals for the Sovereignty of Quebec.)* (Montreal: Fides, 1997) at 7–8.

able. Second, and quite differently, it is not clear that for the rich capitalist liberal democracies, the only reasonably firm democracies we have at present, that the Remedial Right Only Theory would be better, or even as good, at deterring such untoward strategic behaviour on the part of such states as would the Primary Right Theory. True, the Remedial Right Only Theory would offer an incentive for the state to behave more justly, but, where there is a nation in its midst, being treated as a national minority, or even worse as an ethnic group, and which wishes to run its own show, there would remain, Remedial Right Only Theory or not, a creditable threat of secession. This being so, the *realpolitik* incentive would remain on the part of the state to design policies to prevent those groups from becoming prosperous enough and politically well organized enough successfully to take a road to secession. But, where secession is at all a threat to the existing state, there would have to be a sizeable number of people resident in a distinct territory with a keen sense of nationality. This comes close to being a tautology. Moreover, where the state in question is a rich liberal capitalist democracy, some of them would be well educated and reasonably powerful. They, and others as well, would clearly see the state's actions as manipulative and repressive, and they would respond by more forcefully struggling against it. And seeing the plain injustice of such repressive measures, some people in the existing state, with another nationality, or with no sense of nationality, will come, as well, to be critical of the state's behaviour. In the real world where nations are treated merely as national minorities or just as ethnic groups, we will get struggle and strife and secessionist movements arising no matter what. We should at least know where the heart of the injustice lies. It lies – as ideal theory makes clear – in putting roadblocks on the way of a nation's right of self-determination, including secession, when, in seeking self-determination, that nation does not violate the rights of others and is committed not to treat unfairly those it is seceding from and not to discriminate against its own minorities.

Buchanan also in effect argues that a view such as mine, as any variant of a Primary Right Theory, does not take the reasonable path, which has been traditionally favoured in international law, of first trying to accommodate the aspirations for autonomy of a nation by urging, and seeking to put into place, arrangements *within* a state for it to become a decentralized federalized state: *a genuinely multinational, but still a decentralized, state*. This way of proceeding might very well be able to protect a nation's aspirations for autonomy – remember that autonomy admits of degrees and of kinds – including the having of some form of self-governance, short of nation-state sovereignty, while still keeping the principle, so central in international law and so cherished by states, of the territorial

integrity of the state.<sup>43</sup> Since demands for autonomy and some form of self-governance are accommodated in such an arrangement, Primary Right Theorists, Buchanan contends, 'cannot reply that the presumption in favour of decentralization as opposed to secession gives too much moral weight to the interest of *states* and there is no reason to prefer decentralization to secession.'<sup>44</sup> (It is also important to recognize here that self-determination comes in many forms.)<sup>45</sup>

However, *if* the turn to decentralization, rather than secession, prevents nations from flourishing, and stably sustaining themselves in viable regions, then decentralized federalism is a farce: there is little in the way of a genuine self-governance there. However, if the decentralization is very deep – perhaps the canonical system of Switzerland is an example – then the nations within such a decentralized federalized state would have a very considerable autonomy and a very considerable amount of self-determination. Then whether to go for decentralization or secession would be a real question; and sometimes a decentralized federalism, with its resultant multination state, could very well be the best option. But it would not have the obvious superiority that Buchanan thinks it has, for still, under the decentralized federation, a nation would not have as full a self-governance as it would have with outright secession. But full self-governance has its attractions, but it is also the case that extensive decentralized federation has its attractions. Perhaps between them there is not very much to choose from, and *perhaps* they are not so very different, when we see clearly what they would most likely come to be among liberal democracies in an interdependent world. In making, or trying to make, judgments here, we need, as we do in most complex moral situations, to realize that we will need to make trade-offs.

In such situations we need to go very carefully case by case, attending to the details. Still, all that notwithstanding, if my previous arguments against Buchanan have even been near to the mark, namely my arguments that secession in liberal democratic societies would not produce the anarchy, instability, repression, and the weakening of the rule of law that Buchanan believes is very likely to go with secession, then it still seems that the scales are likely usually to be tipped in favour of secession. A nation, forming a nation-state, can have full self-governance – full sovereignty – while still entering into cooperative arrangements with other nation-states. The Scandinavian Union is a good example. The key thing is that the ethos be stably liberal democratic. In such an ethos

43 Buchanan, *Secession*, supra note 1 at 53.

44 Buchanan, 'Theories of Secession,' supra note 1 at 53.

45 Buchanan, *Secession*, supra note 1 at 29.



secession carries with it no terrors. Peoples will come to have the fullest form of self-governance possible while still being able to enter into cooperative arrangements with each other – arrangements which will enhance the flourishing of the members of each nation.

## VII

In his ‘What’s So Special About Nations?’ Buchanan, from a different angle, and even more deeply than in his ‘Theories of Secession,’ attacks Primary Right theories of secession.<sup>46</sup> If his arguments are sound they completely undermine the account of secession I gave in sections I–VI. I think, however, perhaps not being able to see the mote in my own eye, that their soundness is very much in question. I shall try to show why.

I have argued that under conditions of modernity membership in a distinctive nation is critical for one’s self-identification and self-definition. Where such local identities are not in place people will experience alienation and will not flourish. There is, if you will, that much truth in communitarian claims. Without nationhood involving necessarily self-governance in some form, people will be psychologically crippled or at least seriously disadvantaged. Questioning the wisdom of what he calls the new-found enthusiasm for national self-determination, Buchanan rejects root and branch such claims and such conceptions.

Again there are several red herrings to be disposed of. First I, and other Primary Right theorists, agree that the doctrine (sometimes called ‘the nationalist principle’) every nation should have its own state is both impractical and dangerous. As I have made plain here, and as others have as well, including Buchanan, there are just too many nations for them all, given the territorial space that is available, to have nation-states of their own.<sup>47</sup> Sometimes nations must be part of a multination state or be in some other way federated or confederated in a larger state and be content with a more limited form of self-governance than they would have if they had a nation-state of their own. But my point was, and is, that this is, in many (but by no means all) circumstances, a *second best* that *sometimes* we must – including morally speaking ‘must’ – just accept. But it is, all the same, a second best that, at least morally speaking, we do not need to accept as what is ideally speaking right. Given the deep importance of nationality to people, where there is territorial space, and where no harm to others ensues, or everything considered a lesser harm ensues, it is at least reasonable to believe that it is better in such circumstances

46 Buchanan, ‘What’s so Special?’ *supra* note 1 at 283–310.

47 Buchanan, *Secession*, *supra* note 1 at 48–50.

for each nation to have its own state. That is arguably the ideally right thing. That will be an important ingredient in the maximizing of human flourishing all around and to the seeing that the opportunities for it are as fairly distributed as possible. To illustrate by translating into the concrete, places, such as Lebanon or much of the territory that was once Yugoslavia, where people with distinct national identities are so mixed on the same territory, then the only reasonable and decent thing to do is to go for a genuinely multination decentralized state. With enmities firmly in place, these are second-best solutions determined by humanly inescapable social realities. Given the critical importance of nationality for people, where *possible without violating the human rights of minorities* or denying the genuine nationality of anyone in favour of another nationality, each nationality should either have its own nation-state or be, in a genuine multination state, a component nation with *equal moral standing* with the other component nations in that state and with each nation having extensive powers of self-governance. There must, for this not to be an ideological trap for the component nations, be a real empowerment here. Often, given the hard facts of *realpolitik*, neither of these things – neither a nation-state nor a genuine multination state – can, as a matter of fact, be had and then, for the nonce, we must go for a second best by accepting some kind of umbrella state, a pseudo-multination state, perhaps calling itself a multination state, where all the component nations, the *de facto* dominant (usually larger) nation aside, have only rather limited powers of self-governance. This is not a very good second best, and in the long run it will be unstable. It is an arguable point that this is what the Canadian state is now. That possibly partisan point aside, what should be our first choices should be either, depending on the particular circumstances, a nation-state for the nation or the nation being a component nation is a genuine multination state where the component nations genuinely stand as equals. But whether, even *ceteris paribus*, it is better for each nation to have its own nation-state is *not* plainly true, but the claim made in the previous sentence seems at least to be firmly grounded. These are the things a nationalist movement should struggle for. A pseudo-multination state with one nation, sometimes severely, sometimes benignly, paternalistically, running the show is *a very distant* second best. But these considerations, whatever their force, do nothing to show that a nation does not have a *general* right to secession. Often this cannot be – other moral or factual considerations will in certain circumstances override, without abolishing, this right – and then, to repeat, we must go for a second best.

There is a second red herring to be put in the fish disposal unit. In trying to counter what he calls this new-found enthusiasm for national

self-determination, Buchanan rightly asserts that ‘the basis for ascribing the right to secede has nothing to do with nationality *as such*.’<sup>48</sup> Sometimes nations have a remedial right to secede but never, he has it, do ‘nations *as such* have a right’ to secede.<sup>49</sup> What he is very concerned to deny – he returns again and again to his ‘as such’ conception in his ‘What’s So Special About Nations’ – is the claim that a nation *as such* – that is, *just in virtue of being a nation* – has a right to some substantial form of self-government. As he puts it in summarizing his position, ‘I have not argued that nations do not have rights of self-determination; only that *as such* nations do not.’<sup>50</sup> But his conception here is also a red herring; nations as such, nationalities as such, have no inherent or intrinsic value. Nationalists need not, and should not, flounder about with such murky notions. And a Primary Right theorist need not and indeed should assume it or so argue. The thrust of my argument was to show the very crucial instrumental value – strategic instrumental value – of nations and nationality for human self-definition and self-identity and with that for human flourishing. I attach no independent value to nations and none to some *reification* ‘a nation as such’ – whatever that is – but rather I attach a central instrumental value to nations and nationality in the realization of human good. (This will be explicated in what follows.) Buchanan’s arguments against nations *as such* having a right to secede have no critical force. They are diversionary, directed with no critical force.

A third red herring also needs to be disposed of. I need not – and indeed I do not – regard ‘nations as cultural groups that *at one time enjoyed self-government*.’ That is *perhaps* true of most of them, but not of all, and it is certainly not tied up with the definition of what it is for a group to be a nation. So my claim that nations have a right to self-government is not tied to the claim that they once had self-government – as, say, the Baltic states – and subsequently were deprived of it and have a right to have it back. *Suppose* the Québécois never had self-government. Let us say they were first under the French Crown as a colony, then under the British Crown, and finally under the authority of Canada. But that would not diminish one whit their claim to nationhood and self-government. I neither make that assumption nor is one tied up with the very idea of what it is to be a nation that it at one time must have had to have its own independent state. My contention, rather, is that nations have a non-remedial right (albeit sometimes they have a remedial right as well, though it is a more secondary thing) to self-government and a presump-

48 Buchanan, ‘What’s so Special?’ supra note 1 at 307 (emphasis mine).

49 Ibid. at 285–6.

50 Ibid., at 290 (emphasis mine).

tive non-remedial right to independent statehood. Here, as should be apparent, Buchanan and I, without the diversion of red herrings, square off. I have so far tried to give considerations to favour my Primary Right account over his Remedial Right Only account. There are, however, some distinct and indeed very crucial matters still to be sorted out. The three red herrings disposed of I turn now to them.

Buchanan develops something he calls his *equal respect objection* to Primary Right theories. It is directed at the claim 'that nations *as nations* [*sic*] have the right to self-government (short of independent statehood).'<sup>51</sup> The Primary Right Theory makes a stronger claim as well. But it also makes this weaker claim. I did just that when I argued that there are too many nations for them all to have states of their own so that the only thing nations have an unqualified general right to is *some form* of self-government. It is this weaker claim, which could be true even if the stronger claim is false, that Buchanan's equal respect objection is directed against. His objection is that the singling out of 'nations *as such* [*sic*] for such rights of self-government,' while denying them 'to other groups, is morally arbitrary and this arbitrariness violates the principle that persons are to be accorded equal respect.'<sup>52</sup>

If the Primary Right Theory required the abandonment of equal respect for persons, then the Primary Right Theory should instead itself be abandoned. The equal respect principle is a fundamental principle of a liberal society, though it is honoured more in the breach than in the observance in our rich liberal capitalist democracies. But that notwithstanding, it is such a deep considered judgment of ours that, if Primary Right Theory required such an abandonment, I, and I expect its other defenders as well, would abandon the Primary Right Theory rather than override in our accounts this fundamental principle. The equal respect principle, that is, is a more deeply embedded considered judgment than moral judgments directly linked to the Primary Right Theory. But – or so I shall argue – we, that is, Primary Right Theorists (if that is what we should call ourselves), are not committed to such moral arbitrariness, and we do not violate the equal-respect-for-persons principle.

For starters, as I have already pointed out, we do not single out nations *as such* for rights of self-government, but we centre on nations because of their key – or, so as not to beg any questions, allegedly key – *instrumental* value in giving people a sense of themselves, something which is essential for their flourishing and their overcoming alienation. That claim *may* be false – something we will subsequently turn to – but, true or false, it is not

51 Ibid. at 291 (emphasis mine).

52 Ibid. at 293.

morally arbitrary. It claims that every human being under conditions of modernity needs for her secure self-realization a sense of nationality, and that everyone so situated should have a clear sense of nationality if she is to be able to live a good life. That is for us a central reason why we give such moral weight to considerations of nationality. Rather than a violation of the equal-respect-for-persons principle, it is a consideration that is solidly in accordance with it. Equal respect for persons is one of the underlying deep moral motivations for our commitment to nationality.

However, Buchanan could abandon his nation *as such* talk and still forcefully argue that, only instrumental value or no, too much weight is being given on the Primary Right account to nation and nationality. Even in conditions of modernity (perhaps most especially in conditions of modernity), it is not for all people, the argument goes, an indispensable part of their self-definition. In support of this, he brings forth a number of empirical considerations that certainly are deserving of careful consideration. Like Jeremy Waldron, he argues that there are many individuals, particularly in societies such as ours, for whom nationality is not nearly as important as defenders of nationality, including defenders of liberal nationalism, have alleged.<sup>53</sup> Why, Buchanan asks, should ‘nations – among all the various sources of allegiance and identification – deserve . . . [the] very strong form of political recognition’ that nationalists and Primary Right theoreticians accord to them?<sup>54</sup> In facing this very forceful question, it is important, however, to keep in mind that my argument for a general non-remedial right of nations to some form of self-governance was limited in scope. While remaining, at least for the purposes of the present essay, agnostic about societies other than liberal democratic ones, I only argued for my Primary Right account for liberal democratic societies under conditions of modernity. But, and here is the sting of Buchanan’s argument, and Waldron’s as well, it is precisely in such societies that claims like mine, David Miller’s, and Yael Tamir’s about the socio-psychological centrality of nationality become problematic.<sup>55</sup> In such societies, Buchanan remarks, where

there is substantial freedom of religion, of expression, and of association – pluralism will continue, with new groups and new conceptions of the good evolving

53 J. Waldron, ‘Minority Cultures and the Cosmopolitan Option’ (1992) 25 *University of Michigan Law Review* 751–93.

54 Buchanan, ‘What’s so Special?’ *supra* note 54 at 300.

55 D. Miller, *On Nationality* (Oxford: Clarendon Press) and D. Miller, ‘Secession and the Principle of Nationality’ in J. Couture, K. Nielsen & M. Seymour, eds., *Rethinking Nationalism* (Calgary, AB: University of Calgary Press, 1996) at 261–82. Y. Tamir, *Liberal Nationalism* (Princeton, NJ: Princeton University Press, 1993) and Y. Tamir, ‘The Right to National Self-Determination’ (1991) 58 *Social Research*, 565–90.

over time. Some groups will attract or hold members, flourish for a time, then lose their grip on individuals' allegiances and identities, just as individuals will revise and in some cases abandon their initial conceptions of the good.<sup>56</sup>

Moreover, 'there is no uniformity as to the *priorities* persons attach to their multiple identifications. Some think of themselves first as fathers or mothers or members of a family, and second as Swiss, or Americans, or Blacks, or Hispanics, or Christians.'<sup>57</sup> Others have different priorities here. There is not nearly a uniform cultural pattern. And, I would add, adding more fuel to Buchanan's fire, that some have these varied allegiances without having the foggiest idea of what priorities they have among them. Others *ambivalently* prioritize things in some contexts in one way and in other contexts prioritize them in another without a sense of how more globally for themselves coherently to order their priorities. And there are still others, probably less frequent in our societies than the varied people I described above, but still there in considerable numbers, whose 'primary self-identification is religious or political-ideological.'<sup>58</sup> They are frequently thought of as the ideologues among us, and they indeed have to some extent at least set their priorities. (However, doing so does not make one an ideologue.) Finally there are some individuals for whom no *single* identification is more important than any other or at least many diverse others. Being a father, a professor, a socialist or being French is no more or no less important than many of their other identifications and one of these identifications is no more important than others. How in such a world – a world that is our modern world – can we reasonably privilege nationality? Indeed can we rightly privilege nationality?

The point is, I agree, that generally, special purposes apart, we cannot reasonably privilege nationality or, for that matter, anything else. The crucial point to see about our modern societies, and perhaps other societies as well, is that in pluralistic societies nationality will be only one source of identification and allegiance among others, and for some people it will be of little or no importance relative to other sources of identification and allegiance, whether these are cultural or occupational or religious or political or familial.<sup>59</sup>

Given that cluster of sociological facts (and with Buchanan I take them to be facts), and given such a dynamically pluralistic society, to single out nations as the group that is entitled, among the various groups, to self-government is to give, Buchanan has it,

56 Buchanan, 'What so Special?' 293–4.

57 Ibid. at 294.

58 Ibid. at 295.

59 Ibid.

a public expression of the conviction that allegiances and identities have a single, true rank order of value, with nationality reposing at the summit. So to confer a special right of self-government on those groups that happen to be nations is to devalue all other allegiances and identifications.<sup>60</sup>

But this is incompatible, Buchanan asserts, with the fundamental liberal principle of equal respect for persons. Moreover, it is incompatible with the liberal assumption that governments are to act as the agent of all its individual citizens. To give such priority to nations, Buchanan avers, 'is an insult to the equal status of every citizen whose primary identity and allegiance is other than national and to all who have no single primary identity or allegiance.'<sup>61</sup> It is a form of *discrimination*, and as such it 'violates the principle of equal respect for persons.'<sup>62</sup> And, to move from individuals to groups, it is also the case that groups other than nations, that is, other cultural associations, including prominently religious and political-ideological ones, are sometimes similarly disadvantaged and in effect discriminated against. Here we have a powerful cluster of considerations that must be soundly met if I am to make out my case for secession and for a liberal nationalism.

## VIII

The cluster of considerations we have seen Buchanan raising in the last few pages constitutes, I believe, his strongest challenge to the type of liberal nationalist views on secession that I have articulated. It seems to me that a liberal nationalism must acknowledge that in modern societies, with their dynamic pluralisms, not all people give pride of place to the nation that *some* nationalists assume they do and that, as different as people are, it is not at all evident that without such strong nationalist identifications all people, or perhaps even most people, will suffer *anomie*.

Is there any kind of reasonable response that can be made to Buchanan compatible with acknowledging this pervasive pluralism? Buchanan suggests one himself only to, after perfunctorily examining it, to set it aside. But I think there is more to such a response than he acknowledges. So I shall examine it and extend it a bit. In speaking of a nation we spoke of an *encompassing culture*. What is special about a sense of national identification is that it functions to encompass our other identities 'by integrating them and making them cohere together.'<sup>63</sup> It is

60 Ibid. at 296.

61 Ibid.

62 Ibid.

63 Ibid. at 300, and Buchanan, *Secession*, supra note 1 at 53.

the integrating structure for the other identities. One's sense of family, say, is very strong. One's family life is the centre of one's life. But the kind of family it is; the language or languages it speaks; the practices that constitute its family life; the various roles and expectations that the members of the family have; the way the family makes social bonds; the way they see themselves in relation to others and the like is very much structured by their particular encompassing culture. They are significantly different if you are a German, an American, an Israeli, or a Mexican. And that difference is felt and appreciated by the members of these various encompassing cultures. One's encompassing culture is very much hooked up with a sense of who one is, and having a sense of who one is, is vitally important to everyone. Similar things can be said for those whose political-ideological or religious identifications are thought by them to be their most important identifications. Being a socialist and being in the struggle for worker's emancipation is for many socialist militants, and some other socialists as well, at the very heart of their lives. And being socialist is in the very nature of the case an internationalist matter, but it is not *just* an internationalist matter. The struggles are also, and typically most intensely, close to home if, say, one is French or Chilean, with one's French comrades or Chilean comrades. A sense of one's country remains extremely important. And exactly the same is true for Islamic militants. The worldwide Islamic movement is of vital significance for them, but so are matters close to home. How, for Turks or Afghans, for example, Islam fares in Turkey or in Afghanistan is at the centre of their attention. And being a Turk and being an Afghan structures how in concrete ways your Islamic practices and even conceptions go.

Encompassing culture does not, of course, *equal* language. The Québécois and the French have the same language, but they are different nations, that is, their encompassing culture is not the same. The same is true for Americans and English-speaking Canadians and for the English and the Scots. But all the same Wittgenstein is on the mark when he says that the forms of language are the forms of life. A language is standardly very closely linked with an encompassing culture and an encompassing culture with a language. This comes out very clearly when for a people their language is threatened or thought to be threatened with extinction, displacement, or devaluation. In such circumstances nationalist feelings and nationalist struggles come into being and broadly across the culture among people with various identifications and various more particular allegiances and from different strata of the society.<sup>64</sup> This seems to me to show how much of an integrating structure nationality (given its inti-

64 I did not say, however, *only* in such contexts.



mate, but not invariable, link with language) is in the lives of people. But it does not follow from this (*pace* Buchanan) that it must be, or even should be, at the *summit* of everyone's or even *anyone's* allegiances and identifications or that the nationalist need be claiming that it is. Being a good musician, being a gentle lover, being politically committed, being a kind and caring person, being a good Catholic, being a dedicated teacher, being an active member of one's local community, being a talented dry fly fisherman, and a myriad of other things may be more important to one, sometimes vastly more important to one, than one's nationality, but, for most of these things at least, one's nationality provides the cultural context of choice for these things and the integrating structure for them. How deeply important this cultural context of choice is to one is revealed when one has a sense that one's language, and with that one's encompassing culture, is being threatened. That is too close to the bone – too close to what one is and what one can do – to be accepted with equanimity. But that does not mean that of all one's allegiances and identifications, one's highest one, and the most important one – the one one prizes the most (assuming, what might not be the case, that one has just one) – is one's nationality. Not at all. Sometimes that may be so but certainly not always or even usually. What it does mean is that nationality as encompassing (integrating) culture, or a central part of it, presents the context for the secure realization of our other allegiances and identifications, and that it is one that we would be at a loss to be without.

So there is no question (again *pace* Buchanan) that for people whose scheme of values is such that they do not place nationality at the top – something that would be very rare in any case – are taken by consistent liberal nationalists to be less valuable members of the community or are in any way discriminated against. And it is not true that liberal nationalists just rather unwittingly assume that, or to be consistent, must assume it. In a liberal society people are not valued in that hierarchical way, and a liberal nationalism far from requiring it repudiates it. But it does see, in most circumstances, the necessity of preserving the cultural life of the nation of which one is a member and, by generalization, liberal nationalists acknowledge that this holds for the people of other nations as well, for this (the having of such an encompassing culture) provides the cultural context of choice where people, any and all people, can carry out their various life plans. In that way it is very like, and perhaps is, a Rawlsian primary good. Without an encompassing culture – without something which makes us a 'we' so that we can know who we are – we could do none of these things, could carry out none of our life plans; we could have no conceptions of the good at all. Being a good musician in

many cultural contexts (and particularly in conditions of modernity) is indeed a very international thing, but an individual who is devoted to the task of coming to be a good musician comes to that in a particular culture, the very form it takes for her is not entirely free of that culture, and, more centrally, a person is not only a good musician but a certain kind of person, and that carries with it the stamp of a particular encompassing culture. That stamp should not be seen, and standardly is not seen, as an infliction but as an empowerment and something that gives us a sense of at-homeness in a very big, sometimes alienating, and amazingly diverse world. Each individual needs to have a sense of who she is, and that sense carries with it, though that is not all that self-identification carries with it, a sense of being Dutch, Catalanian, Fijian, Faeronisian, and the like. Moreover, nationality is politically important here for it provides the context of choice for people in realizing, and indeed in even being able to form, life plans. Thus nationality – people being members of a nation – is vital in politics without for a moment (*pace* Buchanan) implying or involving nation worship or claiming that nations have intrinsic or inherent value. Moreover, there is no assumption at all for liberal nationalists that nationality is superior to other allegiances and identities. So liberal nationalism with its stress on the importance of nationality certainly does not come to ‘an insult to the equal status of every citizen whose primary identity and allegiance is other than national. ...’<sup>65</sup> A government, where it is decent, as indeed it hardly ever is, acts as the agent of the people: that is for *all* individuals under its jurisdiction. But to do so effectively it must, while continuing to respect individual rights, act to preserve the common encompassing culture of a people without which they, both as individuals and as groups, can do nothing, including, repairing the ship at sea. But in continuously repairing the ship at sea there will be a gradual changing of that encompassing culture. Modern societies will standardly be dynamic pluralisms, but that is perfectly compatible with liberal nationalist projects.

It is not that this sense of nationality necessarily, or even typically (once more *pace* Buchanan), provides the primary source of self-identification for everyone. For some their religion will do that, integrating and rendering coherent their identifications and the like. But, as we have seen, religion, in the forms it takes, in its very possibility of arising and being sustainable, requires even more encompassing cultural structures, structures that go with nationality. For example, we worship in a particular way, in a particular language, and with a whole battery of other practices. Think how different in concrete ways the practice of Roman

65 Buchanan, ‘What’s so Special?’ at 296.

Catholic worship is in very different cultures. And for modern societies it is only where people are secure as a nation, that is, where they have some reasonable measure of self-governance, that the flourishing of their religion and their religious identification can be secure. Think, for example, of Islam, the religion of the Turkish minority, in Bulgaria. Without their proper recognition as a national minority, and with that a protection of their language, Islam would be very insecure in Bulgaria. It is not a sufficient condition for such security, but it is a necessary condition for it. Nationalism, *pace* Buchanan, need not inhibit religion; it sometimes could, for good or for ill, facilitate it.

There is no claim among liberal nationalists that nations are morally primary. The privilege that nations have in the political order is *strategically instrumental*. It is not that in a liberal society the nation sets the moral order of the life of a people; that it tells them what conceptions of the good are legitimate or what life plans are acceptable. And, while I do argue, as Will Kymlicka does as well, that one's culture provides a meaningful context for choice and that without such a context autonomy is impossible, I do not deny that some people can over time, and usually with considerable effort, change their culture (even their encompassing culture), change, that is, their nationality, and that with new cultural materials they will have a new, or partly new, meaningful cultural context of choice.<sup>66</sup> And it is a good thing, as Harry Brighouse has put it, that cultures become in that way permeable.<sup>67</sup> Liberal nationalism neither tells a tale of cultural imprisonment nor does it entail it. The extensive changing of one's culture is very rare and for most people it is (drastic circumstances aside) impossible, but the possibilities of such change are there for some few privileged people and, as well, though in a very different way, for immigrants and the like where the conditions of their immigration (or its rough equivalent) are very dislocating (the cultural change being great), uncushioned, and only partial. Still, immigrants become Canadians, Americans, Australians, and the like. And it is also true that over time various people, sometimes acting more or less singly and sometimes in concert, do change cultures, even gradually, comprehensive cultures. This usually happens for them with pain, though sometimes also with a sense of liberation. (Two powerful though somewhat different pictures of this wrenching change are given in Upton

66 W. Kymlicka, *Multicultural Citizenship* and J. Couture & K. Nielsen, 'Liberal Nationalism Both Cosmopolitan and Rooted' in J. Couture, K. Nielsen & M. Seymour, eds., *Rethinking Nationalism* (Calgary, AB: University of Calgary Press, 1996) at 595–650.

67 H. Brighouse, 'Against Nationalism' in J. Couture, K. Nielsen & M. Seymour, eds., *Rethinking Nationalism* (Calgary, AB: University of Calgary Press, 1996) at 365–406.

Sinclair's *The Jungle* and Henry Roth's *Call It Sleep*.) But such change, hopefully as painless as possible, is not something to which the *liberal* nationalist stands opposed. Instead she welcomes it, particularly when it is the sort of which Waldron speaks.

Waldron and Buchanan are right that since these things are so, for some people there is no need for them to maintain their culture of origin. Indeed, by not doing so, or not completely doing so, we might even gain a certain kind of hybrid vigour where people change – more realistically, partially change – their culture. But that does not mean we can be *rootless individuals shorn of all culture*.<sup>68</sup> That is not even intelligible. What a few individuals might become is *poly-national*. They could have an amalgam, stable or unstable, of several national identities. But that would not be to be without nationality providing a context of choice. Poly-nationality is *nationality*; it is not, what is impossible anyway, to be a rootless individualistic atom shorn of culture. And that cosmopolitan poly-nationality might very well be a very good thing. (Waldron is on to something here.) But many people, as we have seen, can, and indeed are, cosmopolitans while not being poly-national and while having a more standard sense of national identity as (for example) Scots, Ghanians, Poles, or Finns. I suspect that as a matter of fact the poly-nationality that Waldron speaks of is very rare, and so thinking of oneself may well be fraught with self-deception. But I need not, and do not, deny either that it can occur and that, if it occurs, it could be a good thing – perhaps even a very good thing – or that it could yield hybrid vigour. What I deny is that it is common and that it can be an option for anything more than a small elite. And I deny, as well, that it is a necessary condition for being a thoroughgoing cosmopolitan or for the fullest flourishing that human beings can gain. (We might not have much of an idea about when that would occur. But I leave that aside.) Thus it seems to me of minor political and sociological significance.

What is so special about nations, among the various groups, that entitles them to political self-government and to a presumption, everything else being equal, to statehood (in a nation-state or in a multinational state), is that they, in contrast to the other groups, are encompassing (integrating) cultures, located historically on a territory which the people making up the nation regard as their homeland or, if they are in diaspora, aspire to make their homeland and furthermore, and distinctly, that they are of sufficient size and with sufficient infrastructure to be able to carry out the functions of a state. (There is no algorithm here for what constitutes 'sufficient size' or 'sufficient infrastructure.') Such groups are

68 G.A. Cohen, *supra* note 12 at 132–54; M. Cohen, *supra* note 14 at 132–54; and K. Nielsen, 'Socialism and Nationalism,' *supra* note 12.

(a) capable of self-government and (b) everything else being equal can be self-governing because they alone provide a thoroughly secure meaningful cultural context of choice which, in turn, is necessary for autonomy and human flourishing. No other group meets both conditions (a) and (b). The First Nations in Canada and the United States provide *problematic* cases. *Perhaps* they do not meet all these conditions, for example, they *might* lack the size or infrastructure, and thus they might have a right to self-government but not to full self-government, and thus, not to complete sovereignty. Or perhaps it is better (being less paternalistic) to say that they have the right or at least in certain circumstances they have that right, but that it might be unwise for them to *exercise* that right. But it would have to be shown, to deny them full self-government, that the infrastructure could not in time be provided or stimulated by the state in which they now exist or that they were too small or necessarily too weak to be self-governing or that they had no reasonable territorial claim. Non-natives should be very careful about what they are claiming here. We have for too long assumed, and often with self-deception, the white man's paternalistic burden.

## IX

There is a final issue to which I shall now turn. It is the claim forcefully made by Buchanan in 'Theories of Secession' that Primary Right theories of secession operate in 'an institutional vacuum' and in doing so provide us with no guidance to the urgently practical question of what *institutional* responses are ethically appropriate to the secessionist challenges that actually face us. Theories, such as my own, the argument goes, are utopian in a bad sense for they can provide little in the way of moral guidance for the institutional reform of our international institutions, including the most formal of these, the international legal system.<sup>69</sup> Again we members of the chattering classes (of which philosophers are charter members) are constructing useless ideal theories that provide no guidance concerning actual questions concerning what is to be done.

In taking a more institutional approach to secession, Buchanan contends that we should distinguish between two questions and come to see that they require quite different answers. They are

1. Under what conditions does a group have a moral right to secede, independently of any questions of *institutional* morality, and in particular apart from any consideration of international legal institutions and their relationship to moral principles?

69 Buchanan, 'Theories of Secession,' *supra* note 1 at 33.

2. Under what conditions should a group be recognized as having a right to secede as a matter of international institutional morality, including a morally defensible system of international law?<sup>70</sup>

His dichotomy, I think, like so many dichotomies, is more confusing than helpful. How, for example, is it possible – conceptually possible, if you will – to float free altogether from institutional morality? Morality, as one of our forms of life, is inescapably institutional such that ‘a morality free of all institutional constraints’ is an oxymoron. But to go on in this vein might be thought to be diversionary nit picking. So, having registered a protest, I will let Buchanan’s dichotomy stand. In doing so I will take him to be saying that persons centring on the first question give scant consideration to how international law works or to the situations and contexts of possibilities of actual states, while those concentrating on the second question put such matters front and centre. Buchanan’s claim is that theories of the sort I have articulated, whatever their intuitive attractions, will not continue to remain attractive when serious attempts are made to institutionalize them.<sup>71</sup> ‘Moral theorizing about secession,’ he argues, ‘can provide significant guidance for international legal reform only if it coheres with and builds upon the most morally defensible elements of existing law. ...’<sup>72</sup> Primary Right theories, including my own, do not do that. Thus, even if all my previous criticisms of Buchanan’s account were sound, still, as he sees it, my own positive account, since it does not meet this institutional constraint, must be woefully inadequate. A normative theory of secession, the argument goes, which does not take such institutional considerations into account from the very beginning, is just spitting into the wind. It is the idle speculations of some free-floating intellectuals.

Again I shall bite Buchanan’s bullet and do precisely what Buchanan thinks I should not be doing. I have argued in this essay for a general moral right to secede under certain conditions and I have spelled out what those conditions are. I have not considered how my normative argument could be incorporated into international legal regimes. And I am not proposing what I am proposing as an international legal right or indeed any kind of legal right. Rather I am saying that if the general moral right I am claiming for liberal democratic societies is indeed such a moral right, then, whether it is actually incorporated into international legal regimes or not, it should be. As things stand, even with a morally progressive understanding of the legal order, if it cannot be taken to be

70 Ibid. at 31–3.

71 Ibid. at 32

72 Ibid.

an international legal right, then so be it. Then the international legal system should be altered so that it comes to be in accordance with that moral right. We should not tailor moral or normative political theory and our moral principles to square with the legal system.

It is just such a 'high handed,' if not 'high minded,' or, I expect Buchanan would think, 'light minded,' attitude that Buchanan believes to be thoroughly mistaken, and, if taken seriously, dangerously mistaken. It simply ignores the decisive role of actually existing states as makers of international law and thus does not have even the minimal realism that any adequate normative theory of secession must have.<sup>73</sup> States, as we have seen Buchanan arguing, will stick to a principle of territorial integrity, in the teeth of secessionist challenges; the international legal order, except over the most extreme cases where clear and extensive violations of human rights are involved, and sometimes not even then, will continue to support the *status quo*, that is, the firm territorial integrity of the existing system of nation-states. I have argued against the acceptance of this bit of *realpolitik*, as something which is morally acceptable, as something which is just to be taken as an institutional fact of life not to be subject to critical moral assessment. It yields, to put it minimally, a too restrictive account of the right to secession and, if accepted, firmly commits us to the *status quo*. Where we limit ourselves, as I have, to secession crises that emerge in liberal democratic societies, it makes secession in those societies too difficult in a way that works against or conflicts with the very deepest constitutive normative commitments of liberal democracies. In societies that are *actually such democracies* (if indeed, except perhaps in what is our ideologically distorted thought, there are any) Primary Right theories, if acted upon, will not create the perverse incentives of which Buchanan speaks; and liberal democratic societies, to the extent they are actually genuinely liberal democratic, will not be so intransigently committed to actually existing borders. There will be, of course, a presumption in favour of these borders, not lightly to be set aside, but where secessionist issues come to the fore in such societies there will be no principle of territorial integrity *über alles* (excepting only the most extreme cases where states, failing to be liberal democratic states, against a people, commit extensive and repeated human-rights violations). I have resisted such territorial integrity *über alles*, arguing that it is a morally arbitrary statist conception.

Buchanan realizes such a response can be made, and he faces it in the last two pages of his 'Theories of Secession.'<sup>74</sup> He imagines, and I be-

73 Ibid. at 59–60.

74 Ibid. at 60–1.

lieve rightly so, a Primary Right theorist responding to him by saying that they and Buchanan are simply engaged in two different enterprises. Buchanan, the argument goes, is offering a *non-ideal* institutional theory of the right to secede while the Primary Right theorist is 'offering an *ideal*, but nonetheless, institutional theory.'<sup>75</sup> Buchanan puts the following words into the Primary Right theorist's mouth. Primary Right theorists 'are thinking institutionally . . . but they are thinking about what international law concerning secession would look like under ideal conditions, where there is perfect compliance with all relevant principles of justice.'<sup>76</sup> In such an ideal world none of the untoward consequences Buchanan mentions concerning secession could arise, and so there are no grounds in ideal theory for restricting the right to secede in the way Buchanan does. Ideal theory, being an ideal theory, depicts *counterfactual* conditions, but it does show us what *ideally* would be the best thing, and that shows us what we should do our best to approximate in whatever ways are practicable under real-life conditions.

Buchanan responds by saying that if Primary Right theories 'are only defensible under the assumption of perfect compliance with all relevant principles of justice, then they are even less useful for our world than my [that is Buchanan's] criticisms heretofore suggest – especially in the absence of a complete set of principles of justice for domestic and international relations.'<sup>77</sup>

This response only seems to have force because Buchanan makes his ideal theory more ideal, and ideal in a rather peculiar way, than the ideal theory that the Primary Right theorists need to deploy. Buchanan builds into his characterization of ideal theory the condition of 'perfect compliance with all relevant principles of justice' and then rightly points out that that kind of ideal theory is as useless as Christian Science for providing any guidance in the real world at least in the context of theorizing about nationalism. But it is utterly gratuitous to foist that condition of perfect compliance onto the Primary Right theorists' conception of an ideal theory or onto any useful conception of an ideal theory. The proper characterization of ideal theory, without that dangler, is that we are articulating an ideal theory, for liberal democratic societies, which involves thinking institutionally about what international law concerning secession would look like under ideal conditions, that is, under conditions in which states in such societies actually behaved in accordance with the moral principles embedded in the very idea of liberal democratic

75 Ibid. at 60.

76 Ibid.

77 Ibid. at 60–1.



society, for example, respected human rights, were committed to a principle of equal respect for all persons with its prohibitions on exploitation, manipulation, and the like and where we had, as well, a society committed to achieving and sustaining autonomy and indeed, as much as possible, equal autonomy. This is the counterfactual ideal conception of a liberal democratic society that ideal theory assumes. It says nothing about perfect compliance of individuals or about the invariant behaviour of individuals in that ideal conception of a liberal democratic society.

Setting aside for the purposes of ideal theory construction questions of political sociology, I attempt to give a perspicuous characterization of what an ideal liberal democratic society would be without asking the question whether there is much likelihood that we could have an instantiation of such a society as distinct from something of an approximation of it. I try to give a characterization of what such a society would look like. But nothing need, or should, be said about perfect compliance of individuals or about having 'a complete set of principles of justice for domestic and international relations.' The former is Christian Science, and with the latter it is not evident that we even understand what we are asking for in asking for such a 'complete set' of principles of justice. The ideal theory that the Primary Right theorist needs, just as the ideal theory that Buchanan claims for his own, is open ended and in various ways indeterminate as any reasonable normative account, ideal or non-ideal, must be. As in the body of my essay my ideal account unfolded, I worked with articulating what it would be for our societies to be liberal democratic societies. I did not assume that any of our societies meet, or as a matter of fact could meet, fully these conditions. And I did not speculate on how close they were likely to come to meeting them. Rather, taking the under-articulated ideal of what it would be for something to meet the ideal embedded in the very idea of a liberal democracy, I tried to more fully articulate it and to ask, if people were reasoning and living according to that idea, what they would say about secession. With these ideas and ideals and on the assumption that this is the kind of society (deliberately idealized) we are talking about, we can come to say, where such liberal democratic principles are generally being adhered to, when secession would be justified and when it wouldn't be. In doing this we do not need to bring in anything about perfect compliance of individuals or about having a complete set of principles of justice both domestic and global.

The world we know is, of course, quite distant from the very idea of a liberal democratic society – our idealized picture. But by clearly seeing what should be done in a world (a counterfactual world) of well-functioning liberal democratic societies, we can, keeping this model firmly in

mind, then, taking the hurly-burly real world into account, attend to determining what qualifications would need to be made for a non-ideal theory to articulate the best possible approximation in real-life conditions to what is set out in the ideal theory. We would with the non-ideal theory have a theory saying something about what is to be done in real-life situations in the harsh, hard world that we know. There with such a non-ideal theory we would, as well as attending to the ideal theory, have also to consider what John Dewey called the means-ends continuum. That is, we would not only have to consider the ideal, but the probabilities and conditions for attaining or at least approximating what the ideal calls for and the costs of such an attainment. But without the ideal theory we would not know in what direction we should try to go in the correcting of our actually existing institutions. An analogy might help. We know that there cannot be such a thing as a frictionless plane, but understanding the idea of it, the conception itself, we gain some idea of in what direction we would have to go to get as little friction as possible. There is no good reason not to believe that Primary Right theories articulate an ideal theory which provides something to be approximated in real-life situations and in doing that provides something of a useful guide for real-life situations. Where we have come as close as possible to the ideals specified in a sound ideal theory, we have the best real-world account we can gain. Our reach, as the old saw goes, must exceed our grasp – or what is heaven for?<sup>78</sup>

78 It is important to see that my defence of a right to secede under the conditions I have described is a claim to a *moral* right. I argue it, that is, as a matter of political morality. I take no position on whether it should be made a matter of a *constitutional* right of a state. It may very well be that Cass R. Sunstein is right in arguing 'that a right to secede does not belong in a founding document' of a state (any state) (C.R. Sunstein, 'Constitutionalism and Secession' (1991) 58 U. of Chicago L. Rev. 669.) Sunstein has argued very carefully for this, and it may very well be that he is right. But, as he makes emphatically clear, the soundness of his arguments about no *constitutional* right to secede neither do anything at all to show that, as he puts it, a subunit of a state might not, as a matter of political morality, be justified in seceding nor was that the aim of his arguments. He could consistently either agree with Buchanan's more restrictive account of when secession is justified or with my more permissive account or with neither. The point is that his arguments about no constitutional right to secede are compatible with either position. In turn, I take no position about making the right to secede a constitutional right. That is to say, I am not saying it should be declared by a constitution to be either legal or illegal. Indeed neither should ever be a background presupposition of constitutional thinking. It seems to me instead that the right to secede is a political-moral matter and that the courts of a *state*, including its supreme court, have no business saying either that secession is legal or illegal. What such a court could justifiably assert instead is that domestic courts (the courts of any state) cannot

rightly say that it is either. It is rather that they should say, if they say anything at all about this matter, that it is a matter of political morality not within the jurisdiction of the courts of any state or at least their state. This can be consistently said while still saying that international law can and does speak to this. It does, that is, make judgments about the legality of secession. I have *not* been concerned here with what international law says or doesn't say on this matter, though I have not, of course, denied its competence to so speak. I have instead been concerned with what should be said as a matter of political morality. And I have further argued that when (if ever) this is clearly established international law should tag along. Morality, where it is firmly established, in such circumstances overrides law, not the other way around.

However, here a perceptive remark of an anonymous referee is very much to the point. She points out that in *Loizidou v. Turkey* the 1996 judgment of the European Court of Human Rights reveals an emerging consensus in international law that the right of secession should be interpreted as remedial. This squares with Buchanan's view of the matter. But the referee then goes on to point out that this development is a recent and contested development in international law. Until very recently the right to secession was much more restricted than even that, being restricted to the right of decolonization. Matters concerning the right to secession, the referee goes on to say, are now in a state of transition in international law and we are (*pace* Buchanan) *in no position to say what it usually favours*. Since, that is, the international law of secession is still in transition from no to some right of secession, one cannot confidently say that it usually favours a least drastic means approach. That would be in effect to take a conservative *status quo* position (in effect, a *political* position) and it could not be justifiably claimed to be something determined by 'the very logic of international law.' Politics, not law, is what largely calls the tune here. Moreover, it is important to keep in mind here that public international law conceives of both general and regional international law. There are, for example, international legal rules that on certain issues apply only between Latin American states. The referee concludes, 'Hence Buchanan's view of what states would or would not realistically do may be true for general international legal rules, but not necessarily for rules that might apply to Western liberal democracies. Indeed international legal theorists themselves are now starting to think in terms of international law between liberal states.' Given the truth or even just the plausibility of the above considerations, I should concede even less than I have to Buchanan about what a progressive conception of the development of international law commits us to.

But, in any event, I was concerned, first and primarily, to defend a view of the right to secession as a moral right and second, and derivatively, to argue that, if views like mine are clearly established to be sound, that international law, whatever its position now, should adjust itself to such moral views. What is interesting and from my point of view encouraging about the above observations of the referee is that, if they are on the mark, international law may already be starting to move in that more permissive direction. At least that is in the same realm as far as international law is concerned. One last, and quite different, point concerning secession: if à la Bentham one objects (mistakenly I believe) to the very idea of *moral* rights, then talk instead of the *justifiability* of secession. Nothing of any significant substance would be changed, and my arguments would still go through. For an application of the above considerations to Quebec/Canada relations see D. Neuman, 'Par consentement, le Canada anglais devra reconnaître du Québec' *Le Devoir* (14 Octobre 1997) A9.