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## **The Right to Secession: Remedial or Primary?**

Nicolás Brando & Sergi Morales-Gálvez

RIPPLE (Institute of Philosophy), KU Leuven, Belgium

[nicolas.brand@kuleuven.be](mailto:nicolas.brand@kuleuven.be)

[sergi.morales@kuleuven.be](mailto:sergi.morales@kuleuven.be)

### **Abstract**

The Scottish referendum, and the Kurdish and Catalan endeavours to organise unilateral independence referenda has made secession, once again, a prominent political issue. Understanding what entitles collectives to claim independence, and the conditions required for this claim to be justified are fundamental issues that must be answered for an assessment of legitimate secessionism. This article compares remedial and primary right approaches to a right to secession, looking at their meeting points and discrepancies. Although the literature emphasises their differences, this article explores their convergence points, arguing that certain core oppositions stem from an imprecise distinction between 'self-determination' and 'secession.'

**Keywords:** Secession, state sovereignty, self-determination, nationalism, independence.

The right to self-determination of groups within a state, and secession as its most extreme consequence, has been an issue of major concern for political philosophy during the last decades. A concern recently amplified due to the Scottish, Catalan and Kurdish attempts to secede, unilaterally or not, from larger polities. What justifies a group's right to secede from a state? What conditions must be in place in order for claims of secession to be legitimate? Two broad approaches exist in the literature: Remedial Right theories argue that a group's justified secession depends on the grievances and injustices that a state has imposed on the group; and Primary Right theories defend a group's right to self-determination and/or secession, regardless of the existence of injustices, provided that a majority of the group claims such a right. Despite that some authors have defined the nationalist approach as a separate category (Moore, 1998), we include the nationalist justifications within each of the two above mentioned groups, depending on if they defend a primary (Margalit & Raz, 1990; Miller, 1998; Moore, 1998) or a remedial argument (Patten, 2002; Seymour, 2007).

Our main claim is that Remedial and Primary approaches to secession have more features in common than is usually assumed. We argue that a widespread misunderstanding of the relationship between secession and self-determination, and an insufficient assessment of the conditions that justify the right to secession, are the reasons why their differences are emphasised.<sup>1</sup> Although wide variations exist within each approach, and the full scale of the debate would not fit in this article, we prefer to plainly explain each category using the most prominent version for each. Therefore, we focus here on a selected number of relevant authors in order to explore the potential convergence between the two approaches, despite their assumed opposition in the literature.

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<sup>1</sup> It should be made clear that our intention is to look at the *moral* justifications for secession, thus the issues that arise from translating these basic principles into political practice will not be analysed in detail.

## Remedial Right Theories

The remedial right approach to secession argues that there has to be a relevant motive for a right to secession to be justified. Secession is legitimate if it can be proven that a group or people have been a victim of injustice that only secession can remedy. There are two distinct proposals for a remedial right to secession: one limited to groups that have suffered *grave* injustices and human rights violations or unjust annexation by a state (Buchanan, 1991, 1995, 1997, 1998, 2004; Norman, 1998); and, another that includes in its remedial justifications the infringement of specific collective rights and the lack of constitutional recognition of minorities by the state (Patten, 2002; Seymour, 2007).

The fundamental stance of remedial right theorists is that there is no general or primary right for a group to secede from a *just* state (Buchanan, 1995, p. 54; 1997, p. 37). As long as the state does not infringe the fundamental rights of part of its population, the latter is not legitimated to claim secession. A remedial right to secession is as a *special* right that can be enforced only when a group has suffered certain injustices from the state, and when there is no alternative solution to remedy this group's grievances (Buchanan, 1995, p. 54; 2004, pp. 351-352; Norman, 1998, p. 41). According to Buchanan, the basic reason that justifies such a restriction is that institutions require *stability* in order to protect individual rights. If a right to secession were available under all circumstances, stability might be compromised and, therefore, the state would have less chances to guarantee the fundamental rights of its citizens.<sup>2</sup>

Looking at it from this perspective, Allen Buchanan gives four reasons that justify a secessionist claim: first, if the survival of the members of the group is imperilled by actions of the state, or if the latter has severely violated other basic human rights of a group; second, if a

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<sup>2</sup> Besides this 'threat of anarchy', Buchanan defends seven other reasons why secession should not be primary: protecting legitimate expectations; self-defence; protecting majority rule; minimisation of strategic bargaining; soft paternalism; preventing wrongful taking; and distributive justice (Buchanan, 1991, pp. 87-126). For the specific dangers of opportunistic behaviour with unrestricted secession (especially with regards to distributive justice) see Sunstein (1991) and more recently Dietrich (2014).

group's sovereign territory has been illegally occupied by a foreign power (Buchanan, 1997, p 37); three, if there is a discriminatory, persistent and severely unjust redistribution of the state's resources (Buchanan, 2013, p. 17); and, finally, both Buchanan and Wayne Norman consider the persistent infringement of constitutional rights as a legitimising force for secession (Norman, 1998, p. 41; Buchanan, 2004, pp. 357-359). This last point has been considered as conditional to the existence of X right in the state's constitution. But Buchanan, in his preface to the Spanish edition of *Secession* (1991) specifies that there might be an injustice in place (and a possible justification for a secession) even if there is no constitutional commitment. He says that 'the continuous refusal to negotiate an adequate form of intra-state self-government' (2013, p. 17; our translation) can constitute an injustice.<sup>3</sup>

Buchanan emphasises that a special and remedial right to secession does not necessarily entail that the same conditions apply for a group's right to *self-determination*.<sup>4</sup> Considering secession a remedy does not restrict a minority's right to self-determine their own affairs inside a larger state. He rather indicates that a group's right to self-determination can be achieved through 'less radical' measures *within* the larger polity (Buchanan, 1995, p. 53). This approach, thus, restricts the right to secession only to cases that fall within the four abovementioned conditions, while arguing that claims of groups can be properly accommodated inside a larger polity.

We want to stress this point because some of Buchanan's critics have ignored his distinction between rights to self-determination and rights to secession, assuming that he is restricting both in the same manner.<sup>5</sup> For instance, Christopher H. Wellman argues that a Remedial Right theory (including Buchanan's), 'leaves no room for a right to secede grounded in political self-determination' (1995, p. 148). In a similar vein, Daniel Philpott claims that his own proposal

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<sup>3</sup> This is a claim more thoroughly addressed by Nationalist Remedial theorists. See section below.

<sup>4</sup> Despite that some branches of liberalism are quite suspicious of group rights, Buchanan defends a conciliation of between them and individual rights (1991, pp. 74-81).

<sup>5</sup> For a brief distinction and definitions, see Guibernau (2015).

opposes Remedial theories, arguing that Buchanan and Norman ‘explicitly reject a general right to self-determination and may thus be posed as skeptics of my own argument’ (1995, p. 354 fn.3). He claims this, despite his awareness of Buchanan’s concern *only* with secession, not self-determination (1995, p. 354, p. 370, p. 371; 1998, p. 80). As will be shown in the next section, the seeming opposition between Buchanan’s remedial right theory and Philpott’s primary right theory relies on both confusing and mixing the concepts of self-determination and secession. Without this misinterpretation, their differences become meagre.

### *Nationalist Remedial Right*

Despite that the remedial right theories clearly leave their justifications for secession as a remedy for injustice, they lack precision in defining which groups are entitled to bear this right. Simply relying on the subject of the right without narrowing the scope of possible bearers creates difficult complications (Patten, 2002, p. 560). For example, very small minority groups could demand a right to secession; and the same could be demanded by an oppressed gay or female community. There would also be problems with immigrant minorities, or with minorities dispersed around a state. For this reason, focusing only on matters of justice could create patterns of secessionism from groups with unfeasible probability to establish well-structured independent states.

Another problem with the basic remedial right is that it does not take into account the collective claims of communities or peoples. Some theorists, thus, have proposed a remedial approach that includes special rights and claims of collectives (Patten, 2002; 2014, pp. 232-268; Seymour, 2007). On top of the general remedial justifications for secession, the National Remedial approach includes the infringement of a group’s right to internal self-determination or its improper recognition by the state within its justifications for secession, while limiting the legitimacy of such a right only to nations or peoples (Seymour, 2007, pp. 295-298). In a

nutshell, minority nations (or stateless nations), according to the Nationalist Remedial theorists, should be accommodated within multinational states via the state's recognition (symbolically and legally) of their right to self-government inside the broader polity (see also Costa 2003).

This is what Allen Patten calls the 'failure-of-recognition' clause (2002, pp. 562-565; 2014, pp. 237-242), which justifies a right to secede when 'the state has failed to establish arrangements that extend recognition to a national minority' (2014, p. 235). Michel Seymour argues that, despite the fact that a nation can only demand a right to secession when it has suffered human rights' violations or unjust annexations, it does possess a primary right to internal self-determination that cannot be ignored or infringed by the state, in which case it would legitimise a secessionist claim (Seymour, 2007, p. 395). Just as individuals, nations or peoples have a primary right to manage their own internal affairs, and to be free and equal to other nations within the same state: they 'have the right to maintain their physical integrity (habeas corpus),... to develop their individual capabilities (freedom of conscience, freedom of expression, freedom of association) and...can creatively exercise their political rights (freedom to vote, political duties as government officials)' (Seymour, 2007, p. 409). This implies that, as long as a people is not recognized by the state as such and does not have the right to control its own institutions, it gains the remedial right to secession.

Following this approach, when a state coerces a nation's institutions it violates this group's right to self-determine its own affairs and to express its culture freely (Seymour, 2007, p. 416). In this sense, a national group does not have a primary right to secede from a flawless state; secession for nationalist remedial theorists is justified through the state's violation of Buchanan's requirements for basic justice; by failing to recognize the national minority in the constitution; or by encroaching its right to internal self-determination (Patten, 2002, pp. 560-563, p. 566; 2014, p. 235).

Remedial right theories emphasize the value of justice for justifying (or not) a group's right

to secede from a state. It seems clear that underlying these proposals is a fundamental trust in the state's capacity to accommodate various national groups without having to break-up a territory or to resort to radical measures such as secession, insofar as grave injustices have not befallen on groups within the territory. Secession is justified as a last resort as long as the differences among various national groups inside one territory cannot be overcome.

### **Primary Right Theories**

On the other side, primary right theorists affirm that no injustice is required for a group to be able to self-determine its own affairs or to decide unilaterally if it wants to secede from a larger polity. The plebiscitary approach to these theories defends that secession is a universal right, thus any group can claim self-determination (Beran, 1984; Philpott, 1995, 1998);<sup>6</sup> while, on the other hand, the nationalist approach argues that nations have special characteristics that make them exclusive bearers of this primary right (Margalit & Raz, 1990; Miller, 1998; Moore 1998). When looking at the proposals that are usually included under this heading, it is important to be aware that some theorists defend only the primary right to *self-determination*, while others include a primary right to *secession* in their argument. It is fundamental to make this distinction clear because our stance is that this confusion has led to consider them as much more widely opposed than they actually are.

#### *Plebiscitary Primary Right*

There are two basic approaches to a plebiscitary primary right: on the one hand, there is an expansive primary right grounded on basic individual liberties and rights, including the right to self-determination *and* the right to secession (Beran, 1984, 1988, 1998); on the other side is the

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<sup>6</sup> Within the primary right theories there is a libertarian branch (see Tideman, 2004; Block, 2007) that we are not going to discuss. Our focus will be on primary right theories embedded in liberalism, both in its plebiscitary and its nationalist conceptions.

widely misinterpreted proposal made by Daniel Philpott (1995, 1998) that defends only a primary right to self-determination, leaving secession as a solution for exceptional cases. The latter has usually been seen as a defence of a primary right to unilateral secession, but if looked at in detail, it can be noted that Philpott does not actually defend an approach to secession as radical as his critics interpret it to be.

One fundamental argument structures the primary right theories: the link between democracy and self-determination created by individual moral autonomy (Moore, 1998, p. 10). Based on John Stuart Mill's 'Harm Principle,' a defence of individual moral autonomy implies that an individual must be free from restraints to act and choose, as long as doing so does not harm another individual's same freedoms (Philpott, 1995, p. 356). In this sense, a person's rights can only be conceived as fully respected if she is allowed to determine without restraints her political fate. The individual moral autonomy that classic liberal democratic thought has defended since its foundations would imply a person's right to choose her own political associations and, hence, self-determine her will to stay under a political system or to follow another (Beran, 1984, p. 26; Webb, 2006, pp. 372-373).

Looking at it from this perspective, a group's right to self-determination and/or secession would be founded upon the aggregate individual autonomy of each of its members. This leads to the second argument for primary right theories: because democracy implies an individual's right to self-determination, then a plebiscite with a majority vote (or super-majority, or a referenda procedure) in favour of self-determination and/or secession should justify a group's right to govern its own affairs; 'the good of the members' autonomy is alone sufficient to justify self-determination' (Philpott, 1998, p. 82; see also 1995, p. 363). According to this view, then, a group's right to self-determination and/or secession should be seen as fundamental to liberal democracies because it represents the unified will of all of its individual members.

Primary right theories avoid the moral complications of justifying special group rights (as

the nationalists do) by bestowing it on every individual as part of their liberal freedoms (Beran, 1984, pp. 24-25). A group's self-determination does not require it having any inherent characteristics, such as ethnicity, culture or nationality; it depends only on the voluntary political choice of each person (Beran, 1988, p. 322). For this same reason, and opposed to remedial right theories, their justification does not require a group to suffer from grievances or injustice in order to bear this right: every individual, from a liberal perspective, has a right to choose her political life and associations freely, as long as the same freedom of others is respected. Nonetheless, even these theories have partially addressed, but secondarily, who would be entitled to secession. Beran was the first to sketch such an issue in his pioneering works (1984, pp. 30-31; 1988, pp. 316-323) when he addresses the limitations of the primary right to secede. Beran, as the majority of primary right theorists, agrees that a territorially compact group is required (regardless if they share national identification or other features of ascription).<sup>7</sup> Wellman (2005), on the other hand, would consider that stability and the proper political functioning of the new states would be the fundamental condition for allowing a group to secede. This hints at some of the restrictions that primary rights theorists impose on secession.

We will now give special attention to Philpott's approach to self-determination and secession and the particular restrictions that he considers binding the right to secession while not self-determination. Regarding the conditions for a group to claim this right, Philpott does not only require the two new states to be stable and feasible, by having their political functions and benefits ensured (as Wellman would argue), but goes further to say that seceding groups have to be 'at least as liberal and democratic as the state from which they are separating... to protect

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<sup>7</sup> Beran considers six restrictions to a group's potential primary right to secede: 1) if it is not viable due to its size; 2) if it does not grant the same autonomy granted to it before secession; 3) if it exploits or oppresses groups within its territory; 4) if it creates enclaves due to territorial discrepancy; 5) if its territory is culturally, economically or militarily essential to the existing state; and 6) if its territory hoards a disproportionate amount of the existing state's resources (Beran, 1988, p. 319).

minority rights, and to meet distributive justice requirements' (Philpott, 1998, p. 80). Philpott defends, thus, that meeting certain demands of distributive justice, and upholding fundamental democratic and human rights standards are a necessary condition for a morally permissible secession. The 'claims of slaveholders, oppressors of minorities, or economic thieves', for example, should be restricted just as an individual's same actions would be prohibited (Philpott, 1995, p. 362). The motivations that guide a group's will of self-determination have to be in accordance with the liberal principles that grant them this right.

Remedial Rights theorists have tended to oppose their views to plebiscitary ones such as Philpott's based on the fact that they defend a right to secession solely to groups that have suffered strong grievances and injustices; while, according to them, Philpott's account would allow any group to secede as long as it has a majority in its territory and provided that it respects liberal principles (Buchanan, 1998, pp. 16-22; 1997, pp. 34-36; Norman, 1998, pp. 39-41). Although Buchanan and Norman rightly point at Philpott's requirements, they are misinterpreting Philpott's arguments by assuming that his defence of a right to *self-determination* implies a right to *secession*. This is not true. His justification for self-determination is based on primary liberal rights, but his conditions for secession are actually based on the same grounds as those of remedial right theories. He defends that a 'group may govern exclusively in affairs that are truly its own, but, in matters which affect the larger state, it retains outside obligations' (Philpott, 1995, p. 363); also, 'secession would be a last resort, accorded to peoples victimized by egregious threats or grievances' (Philpott, 1998, p. 86). These statements clearly show that Philpott is not defending a unilateral right to secession justified only by a majority vote on the issue: he is defending a primary unilateral right to *self-determination*, while restricting a right to secession as a 'last resort' insofar as no other option is available to accommodate these groups (Philpott, 1995, p. 382; 1998, p. 87, p. 92). As he defends, 'Any group of individuals within a defined territory which desires to govern itself

more independently enjoys a prima facie right to self-determination—a legal arrangement which gives it independent statehood or greater autonomy within a federal state’ (Philpott, 1995, p. 353).

Although, as we have shown, Plebiscitary Primary Right theorists such as Philpott are more restrictive than what is usually assumed, it is nonetheless true that their theories entail a *prima facie* moral permissibility of secession in a far greater range of cases than Remedialist theories allow. Wellman is quite explicit in this vein, arguing that ‘many groups have a primary right to secede even in the absence of past injustices’ (1995, p. 170). Altman and Wellman (2009, pp. 54-58), for example, have claimed that demands of distributive justice and other requirements (such as sustaining democratic legitimacy) do not constraint the right to secede (2009, pp. 50-52). But this does not imply that no conditions apply to approaches such as theirs. In a sense, their claim that the two new states must ‘be able to perform the requisite political functions’ (2009, p. 65) can impose important limitations on a right to secede, thus limiting the possibility of considering it as a unilateral affair.

In a limited sense, certain conditions of compensatory justice (at the moment of secession) could be required in order for the old state to be able to keep on performing its political functions. This could even entail obligations of distributive justice if the old state does not have the capacity to sustain its economy at a level which would allow it to perform at an adequate level. Take the case of Padanian secessionism in Italy. If Padania (the richest region of the Italian state) were to secede making the new state of Italy incapable of sustaining its political institutions appropriately due to an absence of economic input that came from the Padanian region, Altman and Wellman’s would have to concede to the requirements imposed on the new state, in order to justify their claim to secession as a matter of what distributive justice would require. Thus, for some of the most prominent plebiscitary theories, the right to secede is conditional. It may not be limited exclusively to past injustices (as Remedial theories), but it

does require being limited when future grave injustices derive from its exercise.

### *National Primary Right*

Nationalists are in agreement with plebiscitary primary right theorists concerning the content of the right, but differ in its potential bearers. National primary right theories argue that ‘the right to self-determination does not attach to individuals... but is held collectively, by nations’ (Moore, 1998, p. 7). Its justification does not rely on liberal arguments of individual rights, but on the groups themselves, and the instrumental role that national membership and identity has for individuals.

Following David Miller, we take a ‘nation’ to mean ‘a community constituted by shared belief and mutual commitment, extended in history, active in character, connected to a particular territory, and marked off from other communities by its distinct public culture’ (Miller, 1995, p. 27; see also pp. 19-27). Despite various concerns regarding the difficulty of defining a nation, and what this would entail for secession in practice (Norman, 1998, p. 37), we consider Miller’s sufficiently clear in its objective for us to explain the fundamental claims that are grounded on it. A nation’s basic characteristics, thus, are its distinct and common beliefs, history and territory. Following these characteristics, a nation’s right to self-determination would be based on a perception of nationality that: first, has an intrinsic moral significance for individuals; is instrumentally valuable for them; has a particular public culture; and is linked to a particular territory (Miller, 1998, p. 65; Moore, 1998, p. 7). Because of these values that the nation plays for individuals, these collectives should have a right to govern their own affairs and to determine their political system free from coercion. This, we argue, is different from a right to secede. Secession is, in this case, one possible alternative (of many) to exercise a nation’s right to self-determination. In any case, for all the positions in discussion (both nationalist and plebiscitary), the right to self-determination is grounded in individual

autonomy as a fundamental individual interest.<sup>8</sup>

Avishai Margalit and Joseph Raz (1990, p. 451) defend this right to self-determination through four stages: first, a nation is a fundamental aspect of an individual's personality and, as such, her well-being depends on her free expression of this nationality; second, for this free expression to be achieved, there has to exist an open public culture that supports it; third, a fundamental part of this open public culture is the free expression of political activities; and fourth, because open political culture is required, then a nation must bear a right to self-determination that supports this political dimension. Looking at it from this perspective, it seems clear that for an individual to be able to openly express her nationality she must be allowed to govern her national affairs free from external restraints. Miller supports Margalit and Raz's claims, while adding that national self-determination might also contribute 'to ends that liberals support, such as democracy and social justice' (2003, p. 269).

This has left the case for national self-determination relatively clear but, does this imply a unilateral primary right to secession? Just as with the case of plebiscitary primary rights, critics of national self-determination have tended to obviate the distinction between a unilateral primary right to self-determination and a unilateral right to secession. Relative to the latter, theorists have varying perspectives on what could justify secession. And, surprisingly, it seems as with Philpott's case mentioned before, that secession is generally not primarily justified, but rather included when a nation's rights have not been fulfilled or because less radical alternatives have not worked out. Both Moore (2004 [2001]) and Miller (1995), the two most prominent defenders of the nationalist ideal, reject a purely secessionist approach to national self-determination. For example, Miller (1995, p. 113) argues that it is an 'error of thinking that the principle of national self-determination requires every cultural group to have its own state.' Just as with plebiscitary primary rights, most of the defendants of a nation's right to secession argue

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<sup>8</sup> For a bright explanation of why nationalists ground most of their claims in individual autonomy, see Kymlicka (1995).

that this right is not necessarily unilateral and absolute: the principle of harm applies in these cases as well, stating that one nation's right to self-determination cannot harm the same right of another national group (Miller, 1998, p. 75); following the same principle, a nation's self-determination only applies 'so long as any change is peaceful and orderly, consistent with standard liberal rights, and does not involve any unjust taking of territory or unfair terms of separation' (Patten, 2002, p. 558). Moore (2004 [2001], p. 235) adds 'secession should not be viewed as a general model of solving ethnic conflict, for it is only appropriate in certain contexts.'

Another restriction on a nation's right to secession which David Miller adds to the debate is the compatibility among the various national groups that form a unified state. Miller argues that secession should be considered as justified (leaving injustices aside) only if the accommodation of different national groups inside a unified state cannot be achieved due to insurmountable differences (Miller, 1998, p. 69). As an example, Miller compares the situation of the Kurds in Turkey and the Catalans in Spain. Miller suggests four relevant features for his distinction between these two cases: (1) the existence of dual or nested identities within the unified state (more prominent in the Catalan case rather than in the Kurdish), (2) inter-group hostility (present in the Kurdish case while not in the Catalan one)<sup>9</sup>, (3) cultural overlap (less present in the Kurdish case), and (4) similar living standards or socioeconomic conditions (more equal in the Catalan example). Despite that the Catalan nation is clearly distinct from the Spanish, their public cultures, their ways of life, their living standards and their identities overlap in such a way that it is conceivable to see them both as having more potential in being fully accommodated in the same political entity.<sup>10</sup> On the other side, the Kurd public culture, their

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<sup>9</sup> Possible variations in the assessment of the Catalan case may be needed. See footnote 10.

<sup>10</sup> Regarding the Catalan case, Buchanan considers that it may seem feasible to argue that the accommodation of Catalans in Spain is losing force due to present circumstances (the increasing incompatibility of their public culture and the Spanish, the rise of secessionist support since 2012 and, especially, the Spanish violent reaction to the unilateral Catalan referendum in 2017). If this were so, Miller may have to revise his empirical examples. See Buchanan (2013, pp. 11-22).

way of life, their living standards and their identities (and that of the Turkish) cannot find a middle ground where to stand, thus, they would have less probability of being accommodated in a unified state under Turkish authority (Miller, 1998, p. 66). In this situation, the Kurds' secession seems more closely justified than that of Catalonia; a process of accommodation of the Catalan nation within the Spanish state should be attempted before the Catalans can legitimise their secessionist claims.<sup>11</sup>

Accommodation of national minorities, for Miller, is not a black-or-white issue but is rather a nuanced affair (Miller 1995, p. 81): the more a national minority can flourish within the unitary state, the costs (or risks) attached to staying together can outweigh the *prima facie* claim to secede. In this line, Miller conceives the justifiability of a group's secession as a continuum from a point in which secession is not only just but also necessary (grave human rights violations and injustices), passing through instances where its justifiability may be conditioned by various factors (such as the degree of accommodation of the minority within the state, the existence of alternative political devices for ensuring self-determination), to instances in which secession is not justified. The existence of alternative mechanisms for adequate and full accommodation of national minorities within the unitary state (such as a true federal system, and the assurance of sub-state autonomy) would limit a minority's secessionist claims.

### **Secession: a Remedial *and* a Primary Right?**

It can be concluded from the past explanation that, despite of the differences between the various perspectives, at least most of them concur on a basic guideline for why and when secession should be considered as a legitimate option for a group. Leaving aside the libertarian approach that strictly defends a primary and unilateral right to secession for any group that

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<sup>11</sup> It can be claimed that in the Catalan case accommodation has already being attempted through the Statute of Autonomy reform in the 2006-2010 period. It is an open debate whether this counts as a breaking point to claim secession or not in the Catalan case and we are not going to go further into this debate in this paper.

achieves a territorial majority, all the other proposals seem to converge in three fundamental normative conclusions: first, that a liberal democracy should ensure the complete fulfilment of its citizens' right to internal self-determination (both as individuals and as collectives); second, that secession can only be considered as legitimate if the alternative measures for pursuing this internal self-determination for all citizens inside a unitary state has either failed or is unfeasible; and third, that once it is clear that a group's right to self-determination cannot be achieved inside the larger polity, this group is justified to decide unilaterally if it wants to secede or not from the state. Of course, a relevant difference remains: whereas for Remedial Right theories a relevant moral justification is required to permit secession, this is not the case regarding Primary Right theories. As Harry Beran says (1988, p. 317), for Remedial Right theories there is 'a presumption against groups which wish to secede being permitted to opt out, whereas in my theory there is a presumption in favour of their being permitted to do so.' However, as we have shown before, the normative conclusions for both theories are more convergent than what it is usually recognized in the literature.

Looking at it from this perspective, it seems that secession is not the focus point of this discussion on collective rights; rather, the overall concern lies with ensuring self-determination<sup>12</sup> and protecting groups from grave injustices. As Buchanan notes, discussing secession is a secondary issue when the more pressing demands for internal self-determination have not been cleared out (Buchanan, 1995, p. 55). Secessionism is a consequence of 'the ineffectiveness of modern states in accommodating national minorities' (Webb, 2006, p. 377), and insofar as our present political systems cannot fully accommodate various groups, secession can be considered as a legitimate and justified option. This is so, not because of an inherent value of secession; but rather because it is the *only* available option for many national groups

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<sup>12</sup> Uriel Abulof (2015) reaches a similar conclusion regarding how central the concept of self-determination is for the debate. Yet, there are some differences between Abulof's position and ours. Namely, he intends to detach *people's* self-determination from *state's* self-determination (which is a claim we make), but we intend to add a further distinction between the right to self-determination and the right to secession.

to achieve internal self-determination. But this does not tackle the root of the problem; it just trims off the bad leaves. Focusing the discussion on the right to secession traps the debate on the rectification of present (and past) wrongs, but does nothing to deal with the elimination of future wrongs, nor with the structural problems that affect the relation between groups within a state. As long as the ‘ineffectiveness of modern states’ is not amended, secession will not solve the problem; it will only postpone it.<sup>13</sup>

In order to actually confront the problems that are affecting minority groups all around the world, we have to think of measures to amend the current system so that it can properly accommodate various groups within a territory and protect their right to self-determination. It seems obvious to say that a neat and clear-cut Westphalian system of nation-states is an impossible (and undesirable) solution to fulfil every group’s claim to self-determination. There is no use, then, in focusing on a right to secession when it is clear that there will always be national minorities inside larger states, and these minorities’ rights to internal self-determination will keep on being infringed until this issue is directly confronted. Federal arrangements, for example, tend to be considered as capable of ensuring internal self-determination of minorities within larger states in many cases. Constitutional entrenchment of the status of the group as a self-determining entity, some form of fiscal and political autonomy, control over cultural and social affairs, among others, are routes that can ensure self-determination without resorting to secession (Watts 2007; Gagnon 2010; Seymour and Gagnon 2012).

A potential concern against our argument is that the political-historical appeal of the principle of self-determination lies precisely in its secessionist potential. If the right to secession is compromised, self-determination itself could be unduly limited, and federal alternatives would not be able to compensate for this loss.<sup>14</sup> This argument, indeed, could limit the validity

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<sup>13</sup> For a clarifying democratic test of seceded nations and pro-independence movements, see Etzioni (2015).

<sup>14</sup> We thank an anonymous reviewer for raising up this potential critique to our main claim.

of disentangling the right to self-determination from that of secession, if the two are seen as completely separate rights. Nonetheless, we can consider them as different while acknowledging their interconnected nature. One could argue that the right to secession is inherent to self-determination *in a latent form*; that is, self-determination implies the potential right to secede, but the latter is neither equal to the former, nor unconditionally exercisable. As long as internal self-determination is not compromised within the unitary state, a group cannot directly appeal to secession.

The theories that have been presented in this article offer some of the most relevant justifications for a right to secession. Despite that the various perspectives differ in many ways (who should bear the right, and when it should be granted), most of them seem to agree that, be there or not a right to secession, the fundamental point that must be tackled is that of self-determination. A liberal democratic system must ensure that each of its citizens has her rights and freedoms fully protected and fulfilled, this including each individual's right to self-determine her own needs and interests (as individuals or as part of a larger group). This entitlement may be fulfilled for some citizens through a state's assurance of some general individual rights, but there are cases, such as those of stateless minorities or national groups, that require special rights that may allow them to self-govern their own affairs. A state is responsible for the full protection of these special collective rights, and, as long as this is not ensured, the lack of alternatives can justify a group's right to secede.

## **Conclusion**

The conditions that ground a group's justified right to secede from a state has been the centre of a heated debate between Remedial and Primary Rights theorists. This article has explored some of the most prominent approaches in the contemporary literature on the subject, and has claimed that certain fundamental commonalities among them may outweigh their differences.

We flagged three such commonalities: the fulfilment of the right to internal self-determination, secession is legitimate if alternative measures for pursuing this internal self-determination has either failed or is unfeasible, and if the latter stands, this group is justified to decide unilaterally if it wants to secede. Secession, it has been defended, is a possible mechanism for ensuring a group's right to self-determination. However, it is self-determination in itself, and not secession, which grounds a group's moral claim, and conditions the justifiability of a group's secession from a larger state. If self-determination is not threatened, the legitimacy of a secessionist claim should be questioned.

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