

# **Moral and Political Legitimacy of Secession: A Theoretical and Comparative Analysis**

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Als meus pares i al meu germà.



## Agraïments

Aquesta tesi doctoral no hauria estat possible sense el suport que he rebut per part de moltes persones, el mèrit és tan meu com de tots aquells a qui els dec afecte, esforços i recursos. Recordar totes aquestes persones, encara que sigui de forma genèrica, és just perquè així puguin sentir-se part d'aquest treball.

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Tots els companys i membres del Departament de Ciències Polítiques i Socials han estat un suport indispensable per a realitzar aquest treball. Agraïxo tot els comentaris rebuts als seminaris de tesi doctoral dels darrers anys i la companyia de tots els estudiants de doctorat amb qui he conviscut dins i fora del despatx. Amb els companys Marc Guinjoan i Toni Rodon durant aquests anys de doctorat hi he compartit una amistat i un projecte comú que venia d'enrere. Juntament amb la

companya Sílvia Claveria vam iniciar el blog de política *El Pati Descobert* que avui és una pàgina a la secció política del diari Ara. El projecte d'*El Pati* ens ha dut, amb en Marc i en Toni, a guanyar el Premi Irla d'Assaig polític i a publicar el nostre primer llibre. D'ells n'he après el gust per la feina ben feta, gairebé per la perfecció, i l'avantatge de cooperar en l'anàlisi empíric quantitatiu. N'estic segur que continuaran una carrera acadèmica brillant. En Pablo Simón ha estat durant aquests anys de doctorat un fidel company de despatx i amic. La seva capacitat de treball, l'esforç i sacrifici per la ciència política han estat exemplars per a mi i per a tots els doctorands. Li agraeixo de tot cor els matins i tardes de debats inacabables mentre fèiem un cafè, els seus consells per a la vida i la tendresa de saber compartir una intel·ligència excepcional. Desitjo que tingui moltes més oportunitats després de la seva estada a Brussel·les. Finalment, he d'agrair que els darrers cursos els professors Abel Escribà i Tània Verge m'hagin ajudat a escrutar els feréstecs camins de l'acadèmia; a ells la meva admiració i la meva amistat.

En el procés d'elaboració d'aquesta tesi doctoral he viatjat per a fer estades de recerca a dues nacions fredes però acollidores: el Quebec i Escòcia. Al Quebec em va acollir la Universitat de Laval i especialment el professor Guy Laforest. A ell li agraeixo l'amabilitat de tractar-me com un amic des del primer dia i de resoldre'm molts dubtes i curiositats sobre un sistema polític molt llunyà per a mi. També li estic agraït per la generositat de cedir-me el seu propi despatx durant les estades a Europa. A Escòcia, fou l'Institut de Governança de la Universitat d'Edimburg la institució que em va allotjar, voldria agrair a les professores Nicola McEwen i Eve Hepburn haver-me ajudat i encoratjat a participar al seminari del seu departament malgrat la vaguetat dels meus plantejament i un anglès inintel·ligible. Durant aquestes estades, i també a casa nostra, he entrevistat personalitats polítiques i acadèmiques, a tots ells els vull fer partícips d'aquest treball.

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## ABSTRACT

This doctoral thesis examines the legitimacy of secession in the context of liberal democracies. This is a recent debate in political theory since secession has been an excluded issue by liberal theories of democracy. The thesis defends the necessity of incorporating principles and criteria to analyze the legitimacy of secession from a liberal-democratic perspective. The first article is a critical review of the theories of secession through a typology. The review outlines the shortcomings and normative basis of existing theories. The second paper examines three cases of secession legitimisation (Quebec, Scotland and Catalonia) through the discourse of political parties. It concludes that these parties advocate for secession from a moderate and pluralistic approach, a spirit of consensus and a modern conception of the state. The third article discusses recent developments in Catalan politics in relation to the theories of secession. This suggests a lack of accommodation and recognition as a key element. It also concludes that Catalan secessionist discourse is based on diverse normative basis beyond liberal-nationalism. Finally, the fourth article establishes the basis for including the legitimacy of secession within the theory of liberal democracy: plurinational recognition, setting criteria for defining political units and a consent-based legitimacy of the state.



## RESUM

Aquesta tesi doctoral analitza la legitimitat de la secessió en el context de les democràcies liberals. Aquest és un debat recent a la teoria política ja que ha estat un tema exclòs per les teories liberals de la democràcia. La tesi defensa la necessitat d'incorporar principis i criteris que permetin analitzar la legitimitat de la secessió des de la democràcia liberal. El primer article fa una revisió crítica de les teories de la secessió mitjançant una tipologia normativa. La revisió apunta les mancances i les bases normatives de les teories existents. El segon article analitza tres casos de legitimació de la secessió: Quebec, Escòcia i Catalunya, a través del discurs dels partits polítics. Conclou que aquests defensen la secessió de manera moderada i plural, des del nacionalisme liberal, amb voluntat de consens i amb una concepció moderna de l'estat. El tercer article analitza els darrers esdeveniments de la política catalana en relació a les teories de la secessió. Aquest apunta la manca d'acomodació i reconeixement com un element clau. També conclou que el discurs secessionista català troba la legitimitat des de diversos pols normatius més enllà del nacionalisme liberal. Finalment, en el quart article s'estableixen les bases per incorporar la legitimitat de la secessió a la teoria de la democràcia liberal. Es considera que aquesta ha d'incorporar el reconeixement de la plurinacionalitat, criteris per definir les unitats polítiques i una concepció de la legitimitat de l'estat basada en el consentiment.



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# CHAPTER 1

## 1. Introduction

“Nobody can suppose that it is not more beneficial to a Breton, or a Basque of French Navarre, to be brought into the current of ideas and feelings of a highly civilised and cultivated people – to be a member of the French nationality, admitted on equal terms to all the privileges of French citizenship... than to sulk on his own rocks, the half-savage relic of past times, revolving in his own little mental orbit, without participation or interest in the general movement of the world. The same remark applies to the Welshman or the Scottish highlander as members of the British nation.”

JS Mill, *Considerations on Representative Government* (1861)

“You can judge a society by the way it treats its minorities.”

M. Gandhi

### 1.1. General introduction

Secession and its legitimacy is a question that has not been addressed in the academia until very recent times. The existence of political units and its borders was taken for granted by philosophers like Plato, Aristotle and Machiavelli or abandoned to the forces of War and History. The emergence of modern state imbued by the *hobbesian* Leviathan model during the sixteenth and seventeenth centuries, equated the existence of a single absolute authority with the sovereignty over a concrete territory. In this conception, secession had no room and

implied or a *de facto* dissolution of political authority leading to a certain Civil War and anarchy, or a fierce repression of absolute power. It was the Lockean idea of the right to revolution, not to secession, that inspired the first theorizations on this topic emerged in the context of the American Revolution. Thomas Jefferson considered that “a government long established should not be changed for light and transient causes”, however he detailed a “long trail of abuses and usurpations” advancing what would be the just cause theory of secession presented in the Declaration of Independence (Doyle, 2010: 8).

As I explain in this thesis it is not surprising finding a double nature of secession: on the one hand, secession as a pure threat to political authority; on the other hand, secession as a claim of freedom and justice. If we look back to History, the etymology of secession goes back to Rome, at the time of the Republic, when the plebeians organized a series of *secessio plebis* (starting on 494 BC) consisting in leaving their jobs and abandoning the city as a protest against their political exclusion from a regime dominated by the patricians (a sort of general strike). It was through this *secessio* that gradually they got a Tribune and political rights through. Nowadays, the essence of secession remains the same. Withdrawing from an existing political authority can be both portrayed as an act of treason or liberation from oppression. Examples in current politics are abundant. Declaring the secession of part of the ‘national territory’ (unilateral secession) is considered an act of sedition or rebellion (i.e in article 472.5 of the Spanish Penal Code), and the indissolubility and indivisibility of the ‘national territory’ is a commonplace of several democracies constitutions. On the other hand, secessionist political parties and movements use to present themselves as liberation fronts or freedom fighters. The former deny even the existence of a right to decide on secession, the later claim a right to secede or at least to decide on it. As I will show, democratic debates on this topic have been extremely rare, while violent conflicts and repression have been the norm.

The purpose of this thesis is analyzing secession and its legitimacy from a liberal democratic perspective. The question that lies beneath the whole dissertation, namely “Under what conditions is secession from a liberal democratic state legitimate?” is profoundly philosophical. It is a question that requires responses which, far from being ‘value free’ or ‘ethically neutral’, require moral judgments and assumptions. This philosophical approach, though, it is not entirely detached from positive knowledge. Empirically, for instance, we know that in our world minority nations and some indigenous groups are those who pose secessionist demands, and they do it with more intensity when they are excluded from central government decisions (Sorens, 2012). Or we also know that the calculations involved in the decision to push for secession are usually both rational and irrational, looking forward for potential benefits, while being nuanced by worries and uncertainties of a transition period to the new state (Dion, 1996). But the normative judgment on the legitimacy of claims for secession and the ultimate decisions of seceding is a question difficult to be answered with observational data or through formal calculations –in Isaiah Berlin’s (1962) words.

The question of secession is a good example of the difficult relationship between justice, democracy and liberalism and use to be pointed out as an extreme case (Dowding; Goddin; Pateman, 2004). The very idea of seceding from a functioning liberal democratic state pulls our moral intuitions to opposite ways. This becomes evident when analysing the two most popular scholars who have theorised about secessionism: Allen Buchanan in *The morality of political divorce* (1991) and Harry Beran in *A Liberal Theory of Secession* (1984). While the former claims that there is no right to secede from a just state (because there would be no reason for doing that), the later defends that a territorialised majority would be enough no matter the reasons for doing it (Dowding; Goodin; Pateman, 2004: 23). Who is right? Isaiah Berlin would say that nobody, since this kind of questions do not have a

single answer. I do not claim having this single answer, but I suggest that a consistent case for a convincing answer can be made.

## **1.2. Definition of the concept of secession**

Before introducing the literature and contributions of my thesis I think it is a priority defining the central concept that I use thought it, since the literature on secession is far from reaching a consensus on the meaning of secession. In this thesis I follow a simple definition used by Pavkovic&Radan (2007: 5): “Secession is the creation of a new state by the withdrawal of a territory and its population where that territory was previously part of an existing state”. The same authors proposing this basic definition offer a good revision of different meanings of secession in the literature in their chapter *What is Secession?* (Pavkovic; Radan, 2007: 5-30). Before going beyond this basic definition it is worth saying that from it we can observe important features. First, according to the definition secession is a process which requires the existence of a host or parent state and the creation of a new state. Second, the process can be successful or not (in creating the new state) and is considered to end when the new entity proclaims its independence. Third, the definition that we have adopted is neutral and it does not contain a usual negative connotation as it happens in other definitions. For instance, some authors defend that secession always involves the use of force because of the opposition of the parent state and its violent nature (Crawford, 2006). Fourth, the process of secession (being violent or not) involves the transfer of power from the parent state institutions to the new state institutions. Fifth, secession has to be distinguished from other phenomena like decolonization (liberation of a colonial territory not part of the metropolitan territory, e.g. the Algeria case in 1962), annexation and irredentism (transferring of power over a territory of one state to another or its claim, e.g. the Spanish claims on Gibraltar),



or dissolution (collapse of parent state, e.g. Czechoslovakia partition in 1993). Sixth, secession can be unilateral or consensual. In this thesis when I refer to secession, if I do not specify, I mean unilateral in the sense that is not negotiated with the parent state.

Beyond this casuistic and definitional clarification it is worth to mention some concepts closely related to secession: independence, sovereignty and self-determination. *Independence* is widely used as a synonymous of secession but the concept just refers to one of the effects of the process of secession. A new state would be independent as far as could get rid of their former parent state power and being *independent* of it. This word in some languages has more positively connotations than secession.

*Sovereignty* is much more complex to define: “the word ‘sovereignty’ in the present context refers to supreme rule: sovereignty is a political and legal right to control or to rule over all inhabitants on a particular territory which overrides all other rights to exercise power or control.” (Pavkovic; Radan, 2007: 9-10). Hence, sovereignty cannot be used as a synonymous of secession (process), since it defines a quality of political power.

Finally, *political self-determination* is also a close relative to secession and one of its most popular justifications in terms of rights (Mayall, 2011). Firstly, it was proposed by German socialists in the 1896 London Congress of the Socialist International as a tool of the working class for fighting against military or absolutist oppression. Later, it was popularized by Lenin in the USSR Constitution (1922) as a right of the republics within the Soviet Union ((Pavkovic; Radan, 2007: 19) and later on it was promoted by Wilson in his Fourteen Points as a right for dismembering territories of the Ottoman and Austro-Hungarian Empire, as well as for promoting the independence of Poland. Wilson’s self-determination account was highly influenced by strategy and war time (World War I) rather than by philosophical debates (Lynch, 2002). However if we explore its meaning is far from being a synonymous of

secession. Thus, by political self-determination we understand the possibility of a concrete people of determining its constitutional status.

### **1.3. Many or few cases of secession?**

I already sketched my definition of secession and although my thesis is basically theoretical it is worth to mention the historical and potential cases of secession. This task basically depends on the account of secession adopted. A generous definition (including decolonization period) points out that the majority of the existing states have emerged from secession processes. In contrast, through a restrictive definition such as the one I have supported above, it would be hard to find clear cases of secession, and almost none has occurred in a peaceful context after World War II.

Through a generous definition it is possible to identify three waves of state creation. A first wave emerged in the context of the First World War, when the American President Woodrow Wilson promotes the self-determination principle and many states became independent (Austria, Hungary, Poland, or Ireland). After the Second World War II the movement of decolonization increased dramatically the number of states that emerged from the former imperial rule of Britain and France among others. During the period that goes from 1995 to 2002 there have been 67 successful anti-colonial movements (Coggins, 2010: 30). Finally, a third wave of new states emergence occurred after the fall of the Berlin Wall and the collapse of the USSR and Yugoslavia in 1990s. Overall, during the 20<sup>th</sup> century the number of states quadrupled from 50 to almost 200 and the states born as a result of a secession (including decolonization) represent around 70% of the current countries (Coggins, 2010: 28).

However, numbers drastically change when restricting the list of cases to those occurred following Pavkovic and Radan's definition and the requirements of my research question: i) the creation of a new state by the withdrawal of a territory and its population where that territory was previously part of an existing state; ii) in the context of liberal democracies; ii) through peaceful means. Secessions in these contexts have been extremely rare: "In fact, there has never been a single case of secession in democracies if we consider only the well-established ones, that is, those with at least ten consecutive years of universal suffrage" (Dion, 1996: 269). The only cases that use to be considered as secessions in democratic countries are Norway from Sweden in 1905 (without universal suffrage), Iceland from Denmark in 1918 and Ireland from the UK in 1922 (with a violent rebellion). Finally, we have seen some attempts of secession through democratic means such as the case of Quebec in the 1980 and 1995 referendums.

Nowadays, we can observe several secessionist movements in Western liberal democracies. While violent secessionist conflicts have almost disappeared and democratic secessionists increase their votes in Scotland, Welsh, Flanders or Catalonia. It is quite clear that there are few precedents of democratic secessions, but it is also stimulating the fact that secession is starting to be discussed in public sphere. The literature explained in the following lines is precisely a reaction to this situation and other important facts around the world.

#### **1.4. The emergence of two literatures: secession & liberal nationalism**

As I said above secession is a recent topic in academic literature and absent of democratic debate until very recently. During the eighties we had already seen some relevant contributions that later shaped the debate. Harry Beran published the basis of plebiscitarian theories in

1984 *A Liberal Theory of Secession* quickly replied by Birch *Another Liberal theory of Secession*. But from the perspective of political theory field Allen's Buchanan book published in 1991 entitled *The morality of political divorce from Port Summter to Lithuania and Quebec* probably was the starting point of the literature on secession. As Doyle observed "more than any other book, this set the course of the new debate over secession (...). The main thrust of the new conversation on secession has been to detach the question of the right to secede from the passions of nationalism and force of armed might. What are the ethical foundations of claims to national division or unity? What is the moral basis of the right to secession?" (2010: 8).

Precisely these rhetoric questions posed by Doyle are the underlying research questions of this dissertation, although circumscribed to liberal democratic contexts. The emergence of this literature was consolidated in the late nineties when two collective books appeared with important contributions summarizing the most relevant theories on secession and its ethics and morality: Moore, 1998, *Self-determination and secession* and Lehning, 1998, *Theories of secession*. We have also seen during the nineties and the last decade several contributions to the debate, on concret aspects or on general topics: with some articles ordering the existing normative theories of secession like Pavkovic (2003) or Lefkowitz (2008), others discussing the constitutionalization of secession as Norman (1994) or Sunstein (2001), colective books on case-studies by regions and history (Doyle, 2010; Pavkovic and Radan, 2007, 2011) and new quantitative studies specifically focused on secession (Sorens, 2012; Coggins, 2011). While the last theoretical contributions have improved the theories presented in the nineties, quantitative studies have pointed out the multiple factors that explain the emergence of secession and the fact that is a growing phenomenon all over the world.

In parallel to the rise of the literature on secession, a literature on minority rights and liberal nationalism also emerged in the nineties. As

Kymlicka synthesized in 2001 in his book *Politics in the Vernacular*, the first stage of minorities' rights debate confronting communitarian and liberal views during the eighties and nineties was over and transformed in the second and third stage during the nineties. The second stage of the debate, highlighted the fact that many cultural minorities (such as Scottish, Catalans or Quebecois) cannot be portrayed as illiberal but precisely demand their self-government or secession within a liberal framework: "Some of their members may wish to secede from a liberal democracy, but if they do, it is not to create an illiberal communitarian society, but rather to create their own modern liberal democratic society. The Quebecois wish to create a 'distinct society', but it is a modern, liberal society— with an urbanized, secular, pluralistic, industrialized, bureaucratized, consumerist mass culture." (Kymlicka, 2001: 20).

In a third stage of the debate, the authors writing these liberal defence of minority right claimed that, in fact, the states are not neutral in cultural or national terms and also promote their own majoritarian culture. This nation-building had usually meant a nation-destroying (Connor, 1972) and the recognition of minority nations, for example in US or France, is considered as undermining their civic state. The normative challenges (Tierney, 2004) of overcoming these accusations and accepting the existence of "one polity several demoi" (or more than one nation in one state) (Requejo, 2001) were brilliantly addressed by Taylor (1994) in his *Politics of Recognition*. When commenting Taylor's words on recognition Walzer (1994: 99-103) labelled the traditional liberalism committed with individual rights and a (supposed) cultural neutrality of the state as 'Liberalism I', while a "second kind of liberalism ("Liberalism 2") allows for a state committed to the survival and flourishing of a particular nation, culture, or religion, or of a (limited) set of nations, cultures, and religions—so long as the basic rights of citizens who have different commitments or no such commitments at all are protected." (Taylor, 1994: 99).

Some attentive readers may have noted that while the literature on secession tried to detach the ethical questions of secession from literature on nationalism, as Doyle pointed out; the literature on ‘liberalism II’ and liberal nationalism in fact combined traditional liberal views with national pluralism. It is precisely in this tension where this thesis and eventually my contribution takes place. Accounts of national self-determination have been developed making it compatible with democratic and liberal requirements (Margalit; Raz, 1990) and the debate on minority rights reinforced this view (Tamir, 1993; Miller, 1995; Kymlicka, 1995; Parekh, 1995; Requejo, 2001). Finally, it is worth to say that both literatures, on liberal nationalism and secession, have been successfully combined as I explain during my dissertation (Seymour, 2007; Patten, 2002; Costa, 2003, Tierney, 2004).

### **1.5. A ‘timber’ that is still too straight**

The literature presented above did not emerge in the vacuum of academic offices. The background of these theoretical innovations comes from various political events that occurred in the last three decades. This is the case of the Fall of Berlin Wall and the dissolution of the USSR together with the wave of new eastern European states, the wake of sub-state nationalisms in Western Europe and North-America, the referendum on secession in Quebec, the increasing multicultural Western societies with the migration phenomenon, the wars during the dissolution of the Yugoslavian Federation or the rise of the Zapatista Army and their First Declaration in the Lacandon jungle, among others.

Nonetheless, despite the efforts of recent philosophy, paraphrasing Kant the conceptual and normative “timbers” of liberal democracies are still too straight (Requejo, 2011). The recognition of the plurinationality

in diverse democracies let alone the right to secede or self-determine, has been a true constitutional Odyssey (Russell, 2004). In our liberal democracies sub-state nationalisms (and other cultural groups like immigrants or indigenous peoples) have struggled for recognition and accommodation in a context of hostility from their parent states. From before the Canadian patriation of the Constitution in 1982 to the judgment of the Spanish Supreme Court on the Catalan Statute of Autonomy we have seen the difficulties of Western liberal democracies for including a plurinational approach in their legitimacy.

The evolution of political liberalism, an originary emancipatory movement from the Ancient Regime, can be portrayed “as a history of the increasing recognition and institutionalisation of a number of specific demands for impartiality by different (social, economic, cultural, national, etc) sectors of modern and contemporary societies.” (Requejo, 2011: 232). But dominant theories of justice and democracy, still nowadays, display an important blindness towards these demands. Examples of this are the political theories of Rawls or Habermas. The former pretended arriving to principles of justice through the ‘Original Position’ and the ‘Veil of ignorance’ but he took for granted the existence of a political unit, namely a homogeneous nation (Canovan, 2001 in Tierney, 2004: 9-10). Similarly, Habermas proposed the “constitutional patriotism” as a way to overcome the national approach, and his philosophy has not been sympathetic towards cultural and self-determination demands: “While Habermas supports rights to cultural membership, he stresses that this does not imply that we should seek to preserve cultures in the same manner in which we may attempt to preserve endangered species. Cultural rights are legitimate only when exercised as individual liberties (...)” (Baumeister, 2003: 747).

The evolution towards including minority rights and self-determination clauses is also slow if we look at constitutional arrangements. The majority of liberal democracies in the world incorporate clauses of ‘national unity’ or ‘territorial integrity’ as I said above.

The processes of devolution in UK or the *Estado de las autonomías* in Spain are examples of an evolution towards federalization and regionalization (Requejo, 2012) but not of adopting constitutional policies concerning secession. In fact, the right to secede or self-determination are far from being incorporated in it or at least have been only recently considered by these states. Indeed, there are few cases where the right to secede is formally recognised.

Ethiopia in its 1995 Constitution -enacted after a long and devastating War against Eritrea's independence that lasted since the seventies-, recognizes an unconditional right to secede to "a group of people who have or share large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory." (Article 39.2, Ethiopian Constitution). Another exceptional case is found in the Constitution of the the Caribbean federation of Saint Christopher and Nevis, enacted in 1983, in which Nevis holds the right to separate from Saint Christopher (art.113) if a two-thirds majority is achieved. Other democracies have legalized a quasi-right to secede, not at the constitutional level but in their political and juridical domains. The Opinion of the Supreme Court of Canada on Quebec right to secede (*Reference re Secession of Quebec*, [1998] 2 S.C.R. 217) later accompanied by the Clarity Act (2001) recognized the necessity of negotiating secession after a clear majority supported a clear question posed to the Quebec people. The recent agreement, in October 2012, reached by the prime minister of Scotland Alex Salmond and David Cameron to be held in September 2014 is another example of the recognition of self-determination and the right on holding a referendum on sovereignty.

This 'timber' still too straight of liberal democracies, and the fact that secessionism is a growing phenomenon; suggest the necessity of



improving liberal-democratic theories in dealing with secession as I argue in the next section.

### **1.6. The pragmatic, theoretical and contextual necessity of a ‘secession turn’**

In this thesis I argue that there is a need of incorporating principles and criteria for being able to deal with secessionism in liberal democratic contexts. If this possibility exists, it is precisely through the literature I have mentioned before: theories of secession and liberal nationalism; obviously, accompanied with reflections on constitutionalism and international law from legal scholars.

The need of this ‘secession turn’ is threefold. First, I believe that there is pragmatic necessity. Far from vanishing from history, secession seems to be the first preference of several sub-state movements which demand more sovereignty for their minority nations. As we have seen above secession is a growing phenomena. We can affirm that breaking states has been “the most common method of state making during the last two hundred years” (Armitage, 2010: 37). We know that in this process peaceful separations have been a minority (Norway from Sweden, 1905; Iceland from Denmark, 1944; Singapore from Malaysian Federation, 1965; Montenegro’s from Serbia, 2006 or Kosovo from Serbia, 2008); violent means have been by far predominant in these processes. According to Armitage, out of 296 civil wars from 1816, 109 were fought with the goal of creating a new state (2010: 38). From the American Civil War (1861-65) to South Sudan (2011-2013) secession is spotted by blood. Several authors have blamed minority nationalism, always portrayed as ethnic exclusivists, for being intrinsically violent and opposed to democratic procedures when dealing with their own internal minorities (Horowitz, 2003). Even in democratic contexts, such as Quebec, secessionists have been labeled

as “narcissists of minor differences”, with clear psychoanalytical echoes (Ignatieff, 1993).

However secession is rarely the first preference of minority nations, not only in democratic contexts. Minorities seek secession, usually, as a last resort and as a result of a continued exclusion from power or as a result of continued grievances in cultural and economic terms. Empirical evidence seem to suggest “that if one’s goals are to reduce violence between governments against ethnic minorities, and discrimination of governments against ethnic minorities, then a tolerant approach to movements seeking self-government is the right approach (Sorens, 2012: 159). Some authors have argued the necessity of, beyond offering federal agreements or self-government to national minorities, including the legalization of secession in the constitutions of plurinational democracies. Both for normative and instrumental reasons, namely the possibility of controlling a secessionist process, different sorts of secession clauses (as the ones in Ethiopia or Saint Christopher and Nevis) would reduce violent escalations, uncertainties and secessionist support (Weinstock, 1999; Norman, 1998). Knowing the potential devastation of territorial conflicts and the possibility of considering secession from a democratic and inclusive point of view “has been an understandable desire to take the question off the battlefields and put it onto the negotiating tables. Political boundaries might be redrawn according to reason, ethical evaluation of claims, and a process of deliberation guided by international law rather than with blood and bullets.” (Doyle, 2010: 3).

Second, bearing in mind the necessity of addressing secession from a democratic perspective it is also understandable the will of improving theories of liberal democracy and existing theories of secession. In this thesis I argue the need of adopting a plural view on secession considering the strengths of each theory (liberal I, just cause, etc.) but also taking into account their weaknesses. In doing that, I do not claim any explanatory contribution, which would also be desirable, but a

normative and empirical qualitative ones. I follow what Seymour, (2007), Patten, (2002), Costa, (2003), Tierney, (2004), Requejo (2013), and others have already explored. On one hand, the fact that liberal democracies are still reluctant and their theories have important difficulties in dealing with self-determination. On the other hand, the idea that theories of secession have been debating from different categories (just cause, choice, adscriptive), and in fact all categories share some advantages and weaknesses. In combining remedial and primary right approaches and liberal II perspective we can find a solid theory which can contribute to the debate.

Finally, there is a contextual necessity for thinking on secession. The task of the political philosopher (and the social scientist), specifically when doing normative theorization, involves a compromise in advancing a set of propositions that must be internally consistent (Bauböck, 2008: 41). However, this is not the sole compromise. In a problem-driven normative theorization I do not look for offering solutions from a philosopher-king position. I do not support even the idea that political problems have a single solution (Berlin, 2002). Beyond the academic contribution, the compromise in this type of works is “promoting reflexivity in civil society” (Bauböck, 2008: 59). In a context of an open public debate on secession in Catalonia and Spain (as I explain in the third article), where this thesis is written, this contextual necessity of a ‘secession turn’ is also a relevant reason.

## **1.7. Structure & contributions of the thesis**

As I have already said our liberal democracies and the theories underpinning them are still too straight, at least when dealing with secession and national pluralism. The purpose of this thesis is precisely contributing to improve the debate by discussing with the existing theories of secession and improving them in relationship with theories

of liberal democracy. The structure of the thesis is a compendium of four articles. Each article has an independent structure and makes a different contribution to the literature on secession.

The first article is a theoretical analysis proposing a new typology that maps existing theories of secession. The typology links two literatures developed since the early nineties. On the one hand, it discusses the primary right vs. remedial right approaches, which is a traditional classification of theories of secession (Moore, 1998; Pavkovic, 2009). While the former defends the right to secede as *a priori* right according to certain characteristics, the later defends secession as a solution of last resort to injustices. I cross this classification with the discussion on the forms of liberalism concerning individual and collective right and the notion of recognition (Taylor, 1994; Kymlicka, 1995). The result is a complex scheme that allows me to understand and map different approaches to secession. Liberal I theories are divided in four categories: just cause (Buchanan, 1991), plebiscitarian (Beran, 1984), libertarian (McGee, 1994), liberal-republican (Wellman, 1995). I argue that liberal II theories cannot be divided between categories according to the remedial and primary right criteria because following what the authors writing from this perspective have said there is a clear gradation of positions moving from primary right (external self-determination) (Miller, 1995), to very restrictive accounts (internal self-determination) (Gilbert, 1998). All of them share the value of national self-determination but understand it in different ways when dealing with secession. After doing this analysis and placing the main authors and its theories I describe the main tenets of each category and also the critiques that it has received. Finally, I draw some conclusions from the knowledge on each concrete theory.

The second article is an empirical study on how secession is legitimated in three case-studies of secession (Quebec, Scotland and Catalonia) through the political parties discourse. In doing this empirical analysis I select three cases of clear secessionist movements and the parties

represented in its Parliaments: Scottish National Party (SNP) and Scottish Green Party (SGP) in Scotland; *Esquerra Republicana de Catalunya* (ERC) and *Solidaritat Catalana per la Independència* (SCI) in Catalonia; and *Parti Québécois* (PQ) and *Québec Solidaire* (QS) in Quebec; during the period comprised between 2003 and 2011. I have analysed party manifestos, party organization documents and I have conducted interviews to members of these parties. I focus the analysis in three general features of the discourse: the conception of secession, its legitimacy and its procedures. Using this framework I analyze different political party and then I try to highlight the common features of these secessionist movements. The objective of this article is not explanatory (on how different movements or legitimacies emerge) but oriented to theory-building. This article allows me to understand how secession is legitimated in liberal democracies in three cases of clear and significant secessionist movements. The findings show a legitimisation of secession beyond liberal nationalist discourse and a conception of secession much more fuzzy than the traditional Nation-State model. Secessionist political parties use at the same time just-cause, plebiscitarian and adscriptive arguments.

The third article (coauthored with Professor Ferran Requejo) is a case study on the very recent rise of secessionism in Catalonia. The article departs from the debate presented in the first article on recognition, plurinational states and secession theories. The case study explains the recent development of Catalan self-government concerning the reform of the Statute of Autonomy in 2006 and subsequent political events that lead to a secessionist mobilization. Special emphasis is place on the judgment of the Constitutional Court on several aspects of the Catalan Statute of Autonomy such as: national definition, justice, foreign affairs or finances. In the last part of the article the case study is related to the legitimacy of secession in the theories explained before.

Finally, the fourth article, is a normative analysis that criticizes the just cause theory based on traditional individualist values and proposes an

alternative perspective on secession. In this article I point out to normative problems not only of theories of secession but also of dealing with secession from liberal democratic theories. I affirm that the lack of recognition of national plurality and the lack of legitimacy criteria for the politics unit from a democratic position are the most important problems. Then, I show why just cause theories have important shortcomings in dealing with secession. Here I use some empirical arguments derived from my previous analysis but also theoretical reflections derived from normative shortcomings previously identified. My proposal is not an *ad hoc* theory of secession but the defense of dealing with secession from liberal democratic positions. Despite of establishing some principles and criteria I still consider that secession should be analyzed case-by-case since there are several implications of justice and it is not recommendable a general criteria for all cases.

Through these four papers I try to do some contributions to the existing literature from theoretical and empirical perspectives. First, I built a new typology relating two literatures which are just partially related by their authors. This typology places the authors in different categories and helps to a better understanding of theories of secession. Second, through this typology I derive some important logics and conclusions that can be absorbed when theories are classified in it. Third, the empirical work contributes to a better understanding of how secession is legitimated in the cases of study and provides an analysis of the recent events in the Catalan case. Beyond this empirical knowledge I relate it to the existing theories of secession and its values. Fourth, I point out the main advantages and weaknesses of theories of secession through normative and empirical analysis. Fifth, I suggest a hybrid approach to secession based on different theories trying to combine the values of each of them.

## References

- Armitage, D. (2010) "Secession and Civil War" in Doyle, D.H (ed.), *Secession as an international phenomenon*, University of Georgia Press.
- Bauböck, R. (2008) "Normative Political Theory and empirical research", in Della Porta, D.; Keating, M., *Approaches and methodologies in the Social Sciences: A pluralist perspective*, Cambridge.
- Baumeister, A. (2003) "Habermas: discourse and cultural diversity", *Political Studies*, vol.51, iss.4, pp: 740–758.
- Berlin, I. (2002) *The Power of Ideas*, Princeton (edited by Henry Hardy).
- Birch, A. (1984) "Another Liberal Theory of *Secession*," *Political Studies*, vol.32, pp. 596-602.
- Buchanan, A. (1991) *The morality of Political Divorce from Port Sumter to Lithuania and Quebec*, Oxford: Westview Press.
- Beran, H. (1984) "A Liberal Theory of Secession", *Political Studies*, vol.32, pp. 21-31.
- Canovan, M. (1996) *Nationhood and Political Theory*, Oxford.
- Coggins, Bidget L. (2011) "The History of Secession", in Pavkovic, A.& Radan, P. *The Ashgate Research Companion to Secession*, Ashgate.
- Costa, J. (2003) "On Theories of Secession: Minorities, Majorities and the Multinational State", *CRISPP*, vol.6, num.2, pp. 63-90.
- Crawford, J. (2006) *The Creation of States in International Law*, Oxford.

- Dion, S. (1996) "Why is Secession so Difficult in Well-Established Democracies?: Lessons from Quebec", *British Journal of Political Science*, vol.26, num.2, pp.269-83.
- Doyle, D.H (2010) *Secession as an international phenomenon*, University of Georgia Press.
- Gilbert, P. (1998) *The Philosophy of Nationalism*. Boulder: Westview Press.
- Horowitz, Donald L., (2003) "The Cracked Foundations of the Right to Secede", *Journal of Democracy*, vol.14, num.2, pp.5-17.
- Ignatieff, M. (1993) *Blood and Belonging: Journeys into the new Nationalism*, Farrar, Straus and Giroux.
- Keith Dowding, Robert E. Goodin and Carole Pateman (2004) *Justice and democracy : essays for Brian Barry*, Cambridge University Press.
- Lefkowitz, D. (2008) "On the Foundations of Rights to Political Self-Determination: Secession, Nonintervention, and Democratic Governance", *Journal of Social Philosophy*, vol.39, num. 4.
- Lehning, Percy B. (ed.)(1998) *Theories of Secession*, New York: Routledge.
- Lynch, A. (2002) "Woodrow Wilson and the principle of "national self-determination": a reconsideration", *Review of International Studies*, vol.28, pp.419-436.
- Kymlicka, W. (1995) *Multicultural citizenship: A Liberal Theory of Minority Rights*, Oxford: Clarendon Press.
- Kymlicka (2001) *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship*, Oxford.
- Margalit, A.; Raz, J. (1990), "National self-determination", *The Journal of Philosophy*, vol.87, num.9, pp.439-46.



- Mayall, J. (2011) "Secession and International order" in Pavkovic, A.; Radan, P. *The Ashgate research Companion to Secession*, Ashgate.
- McGee, R. (1994) "Secession Reconsidered", *Journal of Libertarian Studies*, vol.1, pp.11-33.
- Mill, J.S, (1861) *Considerations on Representative Government*, accessible in [[http://www.constitution.org/jsm/rep\\_gov.htm](http://www.constitution.org/jsm/rep_gov.htm)].
- Miller, D. (1995) *On Nationality*, Oxford University Press
- Moore, M. (ed.) (1998) *National Self-determination and Secession*, New York: Oxford University Press.
- Norman, W. (1994) "The Ethics of Secession as the Regulation of Secessionist Politics" a Moore, M. (ed.), *National Self-determination and Secession*, New York: Oxford University Press.
- Parekh, B. (1995) "Ethnocentricity and Nationalist discourse", *Nations and Nationalism*, vol.1 , pp.25-52.
- Patten, A. (2002) "Democratic secession from a multinational state", *Ethics*, vol.112, num. 2, pp.558-586.
- Pavkovic, A. (2003) "Secession, Majority Rule, and Equal Rights: A Few Questions", *Macquire Law Journal*, vol.3, pp.73-94.
- Pavkovic, A.; Radan, P. (2007) *Creating New States*, Ashgate
- Pavkovic, A.; Radan, P. (2010) *The Ashgate research Companion to Secession*, Ashgate
- Requejo, F. (2001) *Democracy and National Pluralism*, Routledge.
- Requejo, F. (2011) "Liberal Democracy's 'Timber' is Still Too Straight", N. Walker-B. Shaw-S. Tierney (eds), *Europe's Constitutional Mosaic*, Hart Publishing, Oxford, pp.231-249.

- Requejo, F. (2012) *Federalism, Plurinationality and Democratic Constitutionalism: Theory and cases*, Routledge, London-New York (with M. Caminal).
- Russell, P. (2004) *Constitutional Odyssey: Can Canadians Become a Sovereign People?*, Suny Press.
- Seymour, M. (2007) "Secession as a Remedial Right", *Inquiry*, vol.50, num.4, pp.395-423.
- Sorens, J. (2012). *Secessionism. Identity, interest and strategy*, McGill-Queen's University Press.
- Sunstein, C. (2001) *Designing Democracy: What constitutions do*, Oxford: Oxford University Press.
- Tamir, Y. (1993) *Liberal Nationalism*, Princeton, NJ: Princeton University Press.
- Tierney, S. (2004) *Constitutional Law and National Pluralism*, Oxford.
- Taylor, Ch. (1994) "The politics of recognition", in Guttman, A. (ed.) *Multiculturalism and the Politics of Recognition*, Princeton, Princeton University Press, pp.25-73.
- Vergés, J. (2009) "Ciudadanía global y menosprecio de la nación", *Seminari de Filosofia Política UB 2009-2010*, 11 de desembre.
- Walzer, M. "Comment" in Taylor, Ch.; et.al (1994) *Multiculturalism: examining the politics of recognition*, Princeton University Press.
- Weinstock, D. (1999) "On some advantages of constitutionalizing the right to secede", accessible at [[http://www.philo.umontreal.ca/documents/cahiers/Weinstock\\_Secede.pdf](http://www.philo.umontreal.ca/documents/cahiers/Weinstock_Secede.pdf)]
- Wellman, C. (1995) "A Defence of Secession and Political Self-Determination", *Philosophy and Public Affairs*, vol.24, num.2, pp.142-71.





## CHAPTER 2

### 2. Liberal theories of secession: an analytical typology

#### 2.1. Introduction

Secession was almost a forgotten question in political theory until the last decade of the twentieth century when the first monograph devoted entirely to it was published<sup>1</sup>. This fact would be irrelevant if it were not because secession is one of the most important sociopolitical phenomena of the contemporary world (Beran 1984: 21). Just a glimpse of the history of the twentieth century shows that the creation of new states has been a constant fact. In one hundred years the number of states in the world has quadrupled (from 50 to 194) and almost 70% of these new states emerged as a result of secession (Coggins, 2011: 28). Moreover, nowadays there are secessionist movements in almost all of the states of the world including western liberal democracies, as well as several processes of secession currently in operation<sup>2</sup>. International law does not provide clear guidelines on secessionist disputes as its criteria contain contradictory principles (Brilmayer, 1991:178)<sup>3</sup>. On the other hand, the majority of state constitutions do not foresee the

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<sup>1</sup> Buchanan, A. (1991), *The morality of Political Divorce from Port Sumter to Lithuania and Quebec*.

<sup>2</sup> There is an exhaustive list of current secessionist movements in Pavkovic (2009: 259). In Western Europe alone, Scotland will see a referendum in autumn 2014, Catalonia has a secessionist regional government, the Basque Country is in an ongoing peace process and many other regions have secessionist parties represented in regional, national and European Parliaments (Flanders, Northern Italy, Wales, Galicia, Corsica among others).

<sup>3</sup> The recent Opinion of the International Court of Justice (22 July 2010) could change the international law interpretation on secessions since the Court considered “not illegal” Kosovo’s authorities unilateral declaration of independence in February 2008.

possibility of secession - however almost all of them establish principles of "national unity", "inviolability of borders" or "indivisible territoriality"<sup>4</sup>. Even though there is no clear consensus among theoreticians and social scientists on the definition of the concept, (Pavkovic 2009: 6) in this article we will use the one that Beran proposed: "By secession I mean the withdrawal, from an existing state and its central government, of part of this state, the withdrawing part consisting of citizens and the territory they occupy" (1984: 21)<sup>5</sup>. So, secession means the withdrawal from a parent state jurisdiction of at least some of its territory and population.

### *Literature debates on secession*

One of the debates relating to secession refers to its morality or legitimacy<sup>6</sup>, which means the values and objectives involved in secessionist demands. This considers an essential question: *under what conditions is secession legitimate?*<sup>7</sup> Obviously, this question is associated with other normative considerations: the legitimate subject of secession, the fair or unfair procedures, the arguments and the conditions themselves. A second debate, often hardly distinguishable

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<sup>4</sup> The old Malaysian federation and Serbia & Montenegro had a constitutional clause of secession. Nowadays just St.Kitts Nevis (just for Nevis; Section 113) and Ethiopia (art.39) foresee this possibility under certain conditions. Some experts have argued that Canada (in the case of Quebec) and the European Union also recognise this right (Requejo & Sanjaume 2012: 3). A complete review of world constitutions on this issue can be found in the Venice Commission (CDL-INF 02-2000).

<sup>5</sup> In this article we will refer to, except in concrete cases, unilateral secessions. Negotiated secessions such as Norway (1905) or Slovakia (1993) are not discussed. The typology categories gather theoretical frameworks that have not been necessarily formulated as comprehensive theories of secession.

<sup>6</sup> Here I use a theoretical but a not sociological account of legitimacy.

<sup>7</sup> Buchanan considers this question too general, considering that the normative debate should always take into account the international legal context (1998:14).

from the first, refers to the institutionalization of secession<sup>8</sup>. The discussion can involve several legal ranks and usually focuses on the international legality and/or domestic constitutionalism. Finally, a third debate deals with the explanatory analysis. This debate usually posits questions such as: *why do secessionist movements appear? Why do some specific regionalist movements become secessionist?* The independent variables usually include very diverse elements: socio-economic, cultural, religious, linguistic, organizational or electoral<sup>9</sup>.

In this article, I will focus on the first debate in the context of western liberal democracies, but also referring to the other two since it is almost an impossible task to separate them. Indeed, the arguments involved in the morality of secession used to contain empirical considerations as well as institutional designs. I will revise the theories of secession existing in the literature through my own typology based on the central legitimating values of each theory. This typology will allow me to fill the gaps of Buchanan's 'Just Cause' theory (1991, 1998, 2003, 2004) and of the classification of theories that derives from it. This classification suggests that all the theories of secession are divided among (a) those that only concede the right of secession as a remedy to an injustice (Remedial Right Theories); (b) those that concede a right of secession *a priori* by virtue of determinate characteristics: national, cultural, communitarian or consent (Primary Right Theories). We will see that this distinction has analytical validity but oversimplifies the theoretical debate about secession. Through the typology we will address the complexity of this debate aiming to contribute with a new theoretical scope on theories of secession in western liberal democracies.

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<sup>8</sup> See: Buchanan (1991, 2004); Kymlicka (1998); Musgrave (1997); Norman (2009); Pavkovic (2009) Seymour (2007); Sunstein (2001); Weinstock (2001).

<sup>9</sup> See: Barktus (1999); Hechter (1992, 2000); Meadwell (2009); for a quantitative analysis see: Sorens (2004, 2005, 2012)

### *Typology features*

Before defining the typology I have in mind that we should first address the difference between classifications and typologies. According to Mair (2011: 182) when two or more classifications are combined, that is where two or more dimensional classifications cross, we are talking of a typology. Typologies have to accomplish at least two important rules: they must be *exclusive* and *exhaustive*. That means the same item cannot belong to more than one class and “no items should be left out of the typology on the grounds that it does not fit any of the classes” (Mair, 2011: 182). So, the “what-is” question is crucial in placing the labels of each class - in order to distinguish them from each other, we will need clear labels both for *classes* and *types*. In my typology, I combine two classifications of theories of secession being *exclusive* in terms of each class but at the same time *exhaustive* within the range of theories of secession applied to western liberal democracies and liberal-democratic values.

### *Typology criteria*

In order to go beyond the existing classifications, we will need new theoretical approaches. From the second stage of the debate about the cultural minorities, two versions of liberalism can be distinguished if we relate them to the debate on national pluralism (Requejo, 2002). A first version is that based on the individual rights, which are considered of universal character, and on a non-discriminating equality among individuals. The goal of this version of liberalism is to build institutions that allow the regulation of collective decisions without spoiling individual rights. In this line of reasoning, the collective rights are



usually seen as a potential threat that would raise totalitarian risks. This version of so-called classic liberalism, is the one that Walzer (1994) called 'Liberalism I' when commenting on the work of Taylor (1994). Liberalism has inspired general theories of democracy in different versions and has been used and redefined by Habermas or Rawls. A second conception, which Walzer labelled as 'Liberalism II', adds the collective rights that he also considers morally valuable in addition to the individual dimension. So, the public and constitutional sphere of the states, according to this liberal version, should take this collective dimension into account. Liberalism II considers that it would be necessary to adjust these rights to the institutional design of the state, without harming the individual rights (Requejo, 2002: 162). This conceptual jump implies to sort out more clearly the juxtaposition among the paradigm of the equality (equality-inequality) with the paradigm of the difference (equality-difference). Both paradigms legitimate western democracies but tend to be confused (Requejo 2009: 32).

Finally, an unsolved issue within classical liberalism, also criticized by Liberalism II, is the question of the *demos*. In plurinational democracies, the challenge is the distinction between "one polity and several *demoi*". This distinction entails revising many central questions of classical liberalism like the concepts of citizenship and sovereignty (Requejo 2002: 166) defended by classic works on democracy such as Habermasian or Rawlsian conceptions. Moreover, within this paradigm the state must accommodate and recognize national and cultural minorities since their acceptance within the constitutional scheme is part of the democratic legitimacy.

The distinction among Liberalism I and II, as we will see, is useful for us in order to establish types of theories of secession in our own typology. The typology distinguishes the theories that are most

"worried" about the safeguarding of individual rights without taking the collective rights into account, from the theories that attempt to incorporate the collective dimension into the debate about secession. Theories of secession always refer to a collective or group<sup>10</sup> promoting independence but do not always attribute a moral value to collective rights. Including the liberal distinction into the typology is crucial for two reasons: a) it captures two different conceptions of political legitimacy concerning cultural and national diversity; b) it allows us to consider the main theories of secession while being sensitive to group rights and national diversity.

## **2.2. A typology for theories of secession**

The typology presented in this article is constructed by following two main criteria, which have been applied, to the most relevant liberal theories of secession<sup>11</sup> in the literature. Firstly, from the basic values that inspire each theory of secession, I distinguish three main theoretical blocks that have approached secession from different perspectives. Secondly, in order to divide these three main blocks, I include the classic distinction between primary right theories and remedial right theories. The result is a complex typology built up by two types but actually situated in six boxes, with each one containing a particular theory of secession<sup>12</sup>.

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<sup>10</sup> We will leave aside the interesting case of strictly individual secession envisaged by some anarchist conceptions.

<sup>11</sup> As I said above, since my objective is to assess theories of secession in liberal democracies I have not included theories such as anticolonialism or other approaches.

<sup>12</sup> I don't formulate an ideal theory for each box, I just consider which authors theories would fit into the box. So this typology is built through existing theories of secession.

*Two types, six categories*

A first type of theory that draws inspiration from *Liberalism I* prioritises almost exclusively the individual basic rights approach, although it does not always deny the existence of group rights or collective approaches to secession. In this first type, we find *Just Cause*, *Libertarian*, *Plebiscitarian* and *Liberal-Republican* approaches. For example, Buchanan does not deny the existence of group rights and considers the right to secede a collective right, but ultimately, he gives priority to individual rights in his final theory of secession and his account of state legitimacy is not that much concerned with group rights<sup>13</sup> or recognition within the state. A second characteristic of these types is that self-determination is not conceptualized or at least is not central for these authors; they prefer discussing the topic directly in terms of the moral *right to secede* rather than through group self-determination<sup>14</sup>. Despite these general similarities, the final theories differ a lot from each other concerning their degree of permissivity in regard to the moral right to secede or the role of individuals and the legitimacy of the state in conceptualizing the moral right.

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<sup>13</sup> Buchanan says “We have no reason, then, to assume that there is any inconsistency or incoherence in a system of rights that contains both individual and group rights. Whether a particular mixed system is harmonious or not will depend upon the nature of the rights it includes, how they fit together, and whether their various justifications are compatible (Buchanan, 1991: 80-81).

<sup>14</sup> *Liberal-Republican* category emphasizes positive freedoms like the freedom of association or the right of political participation, be it individual or collective. This *Liberal-Republican* perspective includes a basic claim to self-determination. Within this type we find some hybrid theories that borrow some aspects of the liberalism I type and other theories which are more *Republican* oriented. Political community and *demos self-determination* play an important role in these theories although the authors differ in their defence of the application of the *right to secede*. Despite considering individual rights as a priority, this category is closer to liberalism II theories.

A second type of theory, inspired in *Liberalism II*, adds collective rights to both secessionist and state legitimacy and again includes two different subcategories which are internally very eclectic: *internal* and *external national self-determinists*. Since it is difficult to establish a clear distinction between these different categories within these types of theories, I prefer to present it as a continuum from internal to external self-determination. Most of these authors support secession as a last resort, promoting certain degrees and conceptualizations of “one people several *demoi* idea” within the scope of existing federal arrangements and territorial autonomy agreements.

In the following section I develop each type and category of theories and their different approaches through some selected authors that belong to the boxes of my typology. Despite the fact that the typology covers the whole range of theories within liberal-democratic legitimacy (exhaustivity requirement) my explanation of each box does not cover all the authors that have published a theory of secession within the specific doctrines. I limit my focus to the authors that I think represent the category.

### **2.2.1. Liberalism I**

#### **2.2.1.a Just Cause**

Allen Buchanan, the author who pioneered the academic debate about secession at the beginning of the 90s’, almost exclusively dominates

this category<sup>15</sup>. Buchanan's reasoning focuses on morally theorizing secession and seeks to inspire international community norms. Therefore, this theory has a clear institutional approach that other theories do not share. This fact has very clear implications which can be seen in the criteria followed by the author to fix the conditions of secession. In his theory, the burden of proof falls on the secessionists who must have a "fair cause" which legitimates (or not) their secessionist will. In this sense, secession is seen as a remedy to a situation of manifest injustice (Buchanan: 1991, 1998, 2003).

So, what are the conditions of injustice that would make secession legitimate and morally acceptable? Buchanan again has modified the list with his first attempt establishing several conditional situations (1991):

(1) State injustices, which mean the refusal of the state to end serious injustices perpetrated against the secessionist group would justify secession or revolution<sup>16</sup>. They might be the following:

1a) An unjust annexation of a territory, that means military invasion of a previous sovereign entity.

1b) A violation of basic civil and political individual rights, on the part of the state.

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<sup>15</sup> Birch formulated a quasi-identical 'just cause' theory (1984), however, it was largely developed and discussed by Buchanan. Lee C. Buchheit (1978) was a precursor of theorizing secession, offering a utilitarian view of the social contract.

<sup>16</sup> Taking into account the basic difference between revolution and secession -the territorial aspect- secessionist groups should compensate the state for withdrawing part of the territory (1991: 152). However, the question of historical offence is less clear, that is the territory of the secessionist group being part of the state through an old occupation. That is not a sufficient cause of secession according to Buchanan (1991: 70).

(2) A situation of an unfair redistribution of wealth, in other words, exploitation on the part of the state of a group to benefit others.

(3) The necessity to preserve the culture of a group and the need of a group to defend itself from a third party when the state does not do anything to prevent violence<sup>17</sup> would justify secession in very rare cases. More specifically, the necessity to preserve the culture of a group leading to a legitimate secession would be justified on only a few occasions:

3a) The culture in question has to be really doomed; more threatened than the other cultures.

3b) Less drastic ways of preserving the culture have to be impossible to implement: special rights for the minorities, rights of constitutional veto, etc.

3c) The culture in question has to fulfil some standards of moral decency (the Nazis would be a counterexample).

3d) The secessionist group cannot search the secession in order to establish an illiberal society.

3e) Neither the state nor third parts would have valid claims on the territory of the secessionist group.

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<sup>17</sup> Buchanan is clear on the cultural question as I will explain: “Even if one insists on construing the latter as a case of injustice by the state on the grounds that the state has the obligation of justice to protect all its citizens, the case of secession to preserve a culture does not fit under the heading of secession on grounds of injustice” (1991: 153).

This last point (3e) emerges as vital for the secessionist cause. “If the state(...) has a valid title to the territory, then only the most weighty reasons, namely, the grievance of state-perpetrated injustice or the necessity of self-defense against threats to the literal survival of the members of the group, can justify secession” (Buchanan, 1991:153)<sup>18</sup>.

A fourth condition (4) has been established in a more recent work by the author (Buchanan, 2003). The first three conditions would be applicable to cases like the War of American Independence, the Baltic Republics in the U.S.S.R., the Zulus in South Africa or even the case of the Canadian province of Quebec. More recently, the cases of Chechnya (Russia), Sudan, Eritrea and the north of Iraq have inspired Buchanan to introduce the new cause suggested by comparative observations: “Pressures from a minority group eventually result in the state agreeing to an intrastate autonomy arrangement; the state breaks the agreement; in response to the broken autonomy agreement autonomists become secessionists; and then the state violently attempts to suppress the secession” (Buchanan, 2003: 221). So, it is that:

(4) A serious breach(es) of intrastate agreements of autonomy on the part of the State, gauged by internationally supervised research.

In summary, Buchanan’s theory follows a remedial logic of secessionist justification and the source of legitimacy comes from four cases of injustice: unjust annexation, violation of individual rights, unfair wealth redistribution and violation of intrastate agreements. However, those injustices are resolved by prioritizing those that refer to the breach of individual rights although considering group right involved.

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<sup>18</sup> Considering that existing states always claim to have a “valid title to the territory” Buchanan’s theory *de facto* rejects cultural arguments as grounds for secession.

A similar theory, somewhat less popular in the literature, followed the same lines. Birch (1987) proposed four general arguments within the logic of a 'just cause' theory: 1) Continual refusal of the union (because of a previous inclusion by force to the parent state); 2) The national government failure to seriously protect the basic rights and security of the citizens; 3) Democratic system failure to safeguard the legitimate political and economic interests of the region; 4) National government ignorance or refusal to bargain between sections before secession (Birch, 1987: 598-600). As we can see Birch conditions are slightly vaguer (with a certain degree of permissivity concerning secession) but were clearly an inspiration for subsequent authors<sup>19</sup>.

Finally, in the context of a broader theory of the legitimacy of democracy related to territoriality, Christiano (2008) has developed a theory which also belongs to 'just cause'. This author takes Buchanan's theory as the starting point, assuming that "the territorial boundaries of democratic states ought to remain as they are except in the cases of serious injustice" (Christiano, 2006: 82). His thesis is supported by the principles of conservation and remedy. The moral *principle of conservation* can only be defeated by certain conditions that imply the prevalence of the *remedy principle*<sup>20</sup>.

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<sup>19</sup> Birch's proposal contains an important warning in addition to the four conditions established as a just cause which is the necessity, for any theory of secession, to be sensitive to the importance of nationalist aspirations (to recognition for instance) behind secessionist movements (Birch, 1987: 602).

<sup>20</sup> Christiano remains attached to the classic individualist liberal conception: "Examples of such serious injustices are disenfranchisement of a portion of the population, widespread violations of the basic liberal rights of a portion of the population, severe and long-term impoverishment of some significant portion of the population and long-term production of persistent minorities in the population." (Christiano, 2006: 82)



### *Critiques of 'just cause' theory*

The critics to '*just cause*' theory have pointed out normative, procedural and consequential<sup>21</sup> aspects derived from it which might be contradictory or opposed to certain principles envisaged by other theories or '*just cause*' theory itself.

a) A first criticism appears from the combination of deontological and consequentialist elements. Even though this is a strong point of the theory, it is paradoxically one of its weaknesses: the fact that a secessionist cause is only "fair" in extreme cases can encourage the violence on the part of those secessionists seeking state repression in order to justify their demands. Thus, the principles of justice and consequentialist elements (peace and security) appear as steering towards different solutions (Costa 2003: 84).

b) This lack of understanding of secessionist dynamics not only has implications concerning the secessionist subject. Margaret Moore has formulated it as follows "The problem with this as an approach to secession is that many secessionist movements are not primarily about justice or injustice. This understanding of the legitimacy or otherwise of secessionist movements fails to capture the dynamic that is fuelling the movement in the first place." (Moore, 1998).

c) This theory doesn't recognize any difference between national groups and cultural groups and thus demonstrates that it has not abandoned the "second stage" of the debate about the rights of the

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<sup>21</sup> Here I use these adjectives as a description which is useful for considering the critiques. Normative, procedural and consequential critiques are used as general types in *Table 2* for classifying the main critiques received by each group of theories.

minorities (Costa 2003: 71). That is, it denies the fact that unionism (the defence of the territorial integrity *tout court*) can be, in some cases, also a form of nationalism, of the state in this case (Costa 2003: 73) and that the lack of institutional recognition of the cultural or national difference can be a just cause of secession<sup>22</sup>.

d) Another practical problem for theories of '*just cause*' is that of the "impartial referee". Even though the list of injustices that make a secessionist cause legitimate can be detailed, it will always be necessary to have a "referee" (domestic or international) to evaluate it. This is a procedural problem that is not solved by the theories of secession.

e) Buchanan's theory presents another paradox. On the one hand, it is an extremely permissive theory since any group with a "just cause" can legitimately secede (Seymour 2007: 400). On the other hand, it follows a "case by case" methodology which is even more restrictive than the international legality concerning self-determination rights.

f) The "realism" of the theory, claimed by the author, is not so obvious. Even though it considers secession as a remedy, thus corresponding to a certain extent with the position of the UN, it is necessary to say that the UN has only intervened in national secessionist cases such as Eritrea, East Timor or the Western Sahara. In its dealings with cultural groups (not national groups) the UN has proposed alternative solutions to secession (Seymour 2007: 401).

g) The fact that Buchanan's theory can be anti-democratic has also been pointed out. The fact that a part of a state can decide democratically to

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<sup>22</sup> Buchanan firmly rejects any important distinction between cultural and national groups in general (Buchanan, 1996: 283-309).

exert secessionist pressure would propose a problem to the theory. If this decision were taken in the absence of a "just cause" then according to the theory, it would be illegitimate (Moore 1998) (Buchanan 2003: 243).

h) Territoriality, which is an important aspect for any theory of secession as Brilmayer pointed out, has recently been at the core of critiques to 'just cause' theories. According to Catala (2013: 76) if we follow the principles of occupancy and cooperation, the territory does not belong to the state but to the people. That would be an argument against the primary right to territorial integrity assumed by 'just cause' theories that seem to consider the territory as something belonging to the government rather than to the people.

Last but not least, 'just cause' theories face a critique on their congruence. On the one hand, legitimate secession in cases of wrongful annexation, breaching of intrastate autonomy or even the existence of permanent minorities within the democratic process. On the other hand, the right to self-determination as a ground for secession is not even considered in these theories; although the conditions listed above *require* the existence of a self-determination right (Catala, 2013: 77-79).

### **2.2.1.b Liberal-Plebiscitarian**

This category falls within primary theories of secession<sup>23</sup>. In this case, there is a primary presumption of territorial association with certain conditional requirements. Beran's theory is among the most quoted theories since it was formulated before the publication of Buchanan's

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<sup>23</sup> The following theories explained in this section are all primary right theories.

monograph on secession<sup>24</sup>, and is considered to be among the most permissive approaches concerning secessionist demands<sup>25</sup>, which is what makes it such a provocative theory. An updated version argues on the right of secession in the following way: “(a) Normal adults have the right of personal self-determination and, therefore, of freedom of association with willing partners; (b) Territorial communities that have acquired their territory rightfully, have the right of habitation; (c) A group has the right of political self-determination if it is a territorial community (or community of communities)[...] This right is derived from (a) and (b); [...] the community’s right to determine its political status is to be exercised in accordance with the majority principle” (Beran, 1998: 39). Normally, a referendum is required to determine the wishes of the community, but there can be cases where the wish of the community is that there is no need for it. So, a voluntary association of individuals has the right to become independent from the parent state if it does not consent to being part of it through a democratic majority decision of its members.

The exercise of this right, however, is constrained by several conditions<sup>26</sup> which Beran considers ought to be fulfilled by all cases. The initial permissivity that seemed to suggest the theory, that is that every voluntary group could access secession through a plebiscite (or majority will), comes under scrutiny from a list of clauses. In addition, these clauses would need the interpretation of an international organization. The following clauses are not exhaustive: the secessionist should allow internal secession within its territory if it is democratically expressed, the new states should not create an ethnic enclave, it has to

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<sup>24</sup> See: Beran (1984).

<sup>25</sup> Gauthier (1994) and Lefkowitz (2008) also have plebiscitary theories of secession.

<sup>26</sup> The author adds certain conditions and overall distinguishes between an ideal world and the real world, defending himself from the criticisms received after the publication of his first theory in 1984. Moreover, he discusses a possible institutionalization of his theory through some “practical conditions” (1998: 43).

be economically viable and it is necessary to compensate the parent state for the lost resources.

### *Critiques to plebiscitarians*

The main critics to Beran's theory of secession are similar to the ones formulated against external self-determinists that we will see in the following sections (see critiques of national external self-determination theories and liberal-republican theories): fragmentation *ad infinitum*, real inapplicability and their utopian character are among the general critiques. Buchanan rejected these theories considering them a "voluntary secession theory[ies]" a territorialized revolution that could entail negative effects for democratic regimes, undermining political participation, disobedience to majority rule or a "theft" of territory without compensation (Buchanan, 1991).

But here, the main concern of the criticism is the definition of the seceding subject. It is difficult to imagine this associative ideal without common institutions or a criteria for association other than "free-will". On the other hand, where would the border of the seceding unit be? Even considering the possibility that we would not see a general fragmentation, just one case of secession would entail a never-ending dispute over the final border that could even reach the micro-level of house-by-house.

#### **2.2.1.c Libertarians**

These theories take almost the same liberal individual principles, yet they elicit a completely different theory, which, far from searching their institutionalization in current democratic regimes, derives an "ideal

society” from it. Libertarian literature on secession defends secession as a form of privatization against state “invasion”. For these authors, there is an aprioristic right of secession. If the theory of ‘just cause’ asked the secessionist for a “fair cause” in order to legitimate their demands, the libertarians would consider the existence of just a minimal state obeying private interests. The basic values here seem to be *freedom of association* (just for owners) and the *right to private property*.

Boykin<sup>27</sup> describes the right of secession as “First, it is an individual right to engage in collective action for purpose of secession. There is no need for the seceding group to have common ethnic or cultural characteristics. (...) Second, the seceding group must be able to erect a viable political order. Finally, the secessionists must refrain from engaging in unjust forms of market intervention.” (Boykin, 1998: 3). The main goal of secession, for Boykin, is the defence of private property and the free market. The decisions taken in this ideal society reject the majority principle and would be taken individually by the secessionist landowners.

### *Critique to libertarians*

Criticisms to this approach are not common since it has not been considered as serious or “realistic” by the literature and generally has been ignored. In this sense, it is necessary to say that the theory makes a conceptual "trap" avoiding many theoretical problems derived from secession. The privatization of the question, coupled with the legitimate secessionist subjects are landowners, blurs the traditional distinction

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<sup>27</sup> We are referring to Boykin (1998); Rothbard (1998) has also theorized secession from a libertarian point of view. Both owe their perspective to Nozick, Ludwig Von Mises and Hayek and their general theories of democracy and market economy.

between the right of political association and the right of secession (Pavkovic 2003: 76). Moreover, the theory considers that 'non-owner' citizens do not have anything to say about the secession of the 'landowner' citizens (Pavkovic 2003: 76). Finally, it is utopian to consider that the same owners, without exercising the majority principle, could "create" a "viable political order" without entering into conflicts and falling into a problem of *ad infinitum* fragmentation. This political order would be organized according to private property distribution in each society, without clear criteria for distributing public goods.

#### **2.2.1.d Liberal-Republicans**

This last group is still concerned by individual rights but introduces the notion of political self-determination, giving priority to individuals. In this case, the right to secede is based on the right to perform individual and collective political participation within the seceding political community based on the intrinsic value of individual moral autonomy.

Wellman (1995) offers a hybrid theory in which there is a balance of what he calls a teleological account<sup>28</sup> of political legitimacy and political liberty (associated with political self-determination). Wellman's commitment to liberalism is characterized by his emphasis on the right of individuals to have a moral dominion regarding their own affairs (Wellman, 1995: 160), but as a good liberal, the limit of individual political liberty is the harm principle: "We begin with liberalism's presumption upon individual liberty, which provides a *prima facie* case against the government coercion and for the permissibility of secession. Although this presumption in favor of

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<sup>28</sup> In which state legitimacy is based on its capacity to protect its population in terms of satisfying basic liberal rights.

political liberty is not waived via consent, it is outweighed by the negative consequences of the exercise of such liberty” (Wellman, 1995: 161). So, political self-determination is allowed in this case if it is not jeopardizing political stability. Wellman expanded his theory in 2005, considering the notion of group autonomy and self-determination. What is important to understand is the idea that what distinguishes this author from other permissive liberals concerning secession, is that instead of supporting the principle of association (as Beran and others do) he supports the value of self-determination. That’s why, in my opinion, this author belongs to the liberal-republican type<sup>29</sup>. In any case, his defence of the primary *right to secede* is much more generous than in Buchanan’s or Birch theories - however his political liberty presumption is always weighted by the argument of political stability.

According to Philpott (1995, 1998), the central element that justifies secession is individual moral autonomy since it promotes democracy with collective self-government seeming to be the key concept here: “the sort of autonomy I have in mind is Rousseauian, the kind that is realized through governing oneself, shaping one’s own political context and fate – directly, through participation, and indirectly through representation” (Philpott, 1998: 81). If this “autonomy” drives secessionist demands, he does not specify when they will be legitimate or if they will have to be adjusted in the existing state.

Similarly, Copp (1998) defends that international law should consider a procedure for “territorial political societies” that by a majority wish to secede. This secessionist demand would be morally relevant even in the absence of a proven injustice from the parent state. “Political societies”

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<sup>29</sup> Moreover, Wellman has developed his own account of civic duties attached to a liberal-republican view, see: Wellman, 2001. In a similar way, Young (2007: 40) has developed a republican account of self-determination understood as non-domination and related to the concept of “relational autonomy”. Nonetheless, Young’s conceptualization is derived from indigenous demands and not from secessionist debates in western liberal democracies.



must qualify with a certain “intrinsic feasibility” for creating a new state and “it must rightfully occupy a territory” (Copp, 1998: 229). In fact, Copp denies the right to secede even in contexts of severe injustices to groups that are not territorial political societies and have shown a widespread and stable support for secession over time (Copp, 1998: 231).

### *Critiques to liberal-republicans*

The criticism levelled at republican theories of secession has been focused on the notion of self-government and the fact of claiming a primary right. Two differentiated counterarguments can be distinguished: (a) democratic political participation does not mean that the individual "self-governs himself" since this is always subject to the opinion of the majority; (b) the relationship between autonomy and policy-making of the state is not so narrow; it has been argued that the individual can exercise their individual autonomy in many spheres that are not strictly political (Buchanan, 1998:18).

### **2.2.2. Liberalism II**

We have already set forth the basic distinction between liberalism I and II. In this section, we will focus on those authors (from liberalism II) who have theorised on secession. For these authors, secession is correlated with the notion of internal and external self-determination. Self-determination is basically associated with individual and collective rights, recognition and self-government. However, the most important difference with the other categories (*Liberalism I*) is that in this case, cultural defence, national identity and group rights are always involved in the concept of self-determination. The subject entitled to secede is, in

these theories, a national community defined in different ways depending on the author. Internal-self-determination is understood as self-government rights within a federal arrangement within the parent state; external self-determination is considered as secession. Nonetheless, in the context of this article, this distinction must be understood as a continuum between internal and external self-determination. In these types of theories, we still have *primary right* and *remedial right* defenders; however in general, all the authors support federal arrangements as a first option<sup>30</sup>. Moreover, almost every author considers the *right to self-determination* instead of the *right to secede* as the starting point of his/her theory. Secession is usually seen as a last resort in cases where the federation cannot handle a deeply divided society. In any case, in the following section, I still maintain the distinction between internal and external self-determination because some authors defend a *primary right* to external national self-determination, which is the most popular demand among secessionist groups<sup>31</sup>.

An important debate within this group of authors, derived from the internal vs. external self-determination dispute, is the institutionalization of the moral right to secede. While some authors consider that the right to secede should be included in the constitutions of plurinational states, others defend that this would not be a good idea since it would promote secessionist aspirations. On the one hand, ‘constitutional right to secede’ supporters derive the necessity of introducing this right into the constitutional scheme from a ‘moral right’ to secede. On the other hand, authors that reject this idea support the ‘moral right’ to secede but consider that including it in the constitutional setting would entail instability and bargaining strategies

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<sup>30</sup> That means they are remedial but the threshold for being entitled to secede is placed in the capacity of the plurinational state of accommodating territorialized national minorities through internal self-determination. So, this is still a remedial position but more demanding than the ‘just cause’ (liberalism I).

<sup>31</sup> I discuss this demand in the second article of the thesis.

with secessionists using it as a threat. In any case, this is an ongoing debate beyond my typology<sup>32</sup>.

### **2.2.2.a Internal national self- determination**

The authors within this current have theorized the accommodation of collective rights through internal self-determination within contexts of plurinational states<sup>33</sup>. The cases that they have highlighted usually refer to cases of plurinationality or multiculturalism in countries like Canada, United Kingdom, Spain or India. Self-determination can take the form of self-government but has seldom been seen as a justification for secession *per se*. In any case, according to these authors, the defence of the internal self-determination of the several collectives has promoted federal arrangements of different nature, in order to recognize and adjust their cultural or national specificity: “Internal self-government is illustrated by mechanisms such as having a certain political and fiscal autonomy, having a federated state, having a special juridical status, having access to a regime of asymmetric federalism or having the possibility of opting out of a program implemented by the encompassing state, and it also has to do with financial compensation. In general, internal self-government implies that the nation has some kind of political and fiscal autonomy. It can also be illustrated by measures such as the right to participate in the appointment of judges at the supreme court of the state, the right to have a certain control over immigration policies, and the right to play a role on the international arena.” (Seymour, 2007: 410). The specific solution adopted by the

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<sup>32</sup> See this debate in Weinstock (2001), Sunstein (2001), Aronovitch (2000), Norman (2009)

<sup>33</sup> See: Margalit; Raz (1990); Taylor (1992), Tamir (1993), Kymlicka (1995); Lehning (1998), Nielsen (1998), Gagnon-Tully (2001), Norman (2001), Tierney (2004), Requejo (2005, 2010), Requejo; Sanjaume (2012).

majority of the authors in this category consists in the institutionalization of secession through a constitutional clause that fixes more or less severe requirements to be imposed on secessionist demands.

I observe that these authors advocate an instrumental argumentation of internal self-determination and they are not clear on the required conditions. Thus, generally the right to self-determination, which is always a primary right, is fulfilled within the state according to this category.

### *Cultural argumentation*

The defence of self-determination through the defence of a cultural (or national) group with some specific characteristics is an argument advanced by Raz and Margalit (1990)<sup>34</sup>. In the first place, they consider that the right to national self-determination is part of a more general value derived from national self-government. Self-government is seen as an instrument to improve the well-being of the members of the group, with the preservation of the national culture seen as an interest of both the group and its members. In second place, they describe which groups have access to it. Finally, they argue in which cases the right to self-government becomes a right to external self-determination.

(i) *Subjects of right*: even though the authors speak alternatively about nations and peoples, they describe six characteristics to be fulfilled by the subjects, these are: 1) common character and common culture, that

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<sup>34</sup> Tamir develops a similar argument based on cultural rights and “the right of individuals to express their national identity, to protect, preserve, and cultivate the existence of their nation, as a distinct entity” (1993: 74). Kymlicka (1995) argues largely on cultural rights from a liberal perspective.

is, that it encompass several aspects of life; 2) the members of the group adopt this common culture; 3) there has to be mutual recognition among the members; 4) being a member of the group has to be part of personal self-identification; 5) being a member of the group is something given, it is not a question of attaining determinate goals (it does not have to be demonstrated); 6) the group is anonymous, but cultural characteristics are easily recognized. Those are the so-called *encompassing groups* (Raz; Margalit, 1990: 443), which is a synonym of nations or peoples.

(ii) *Justification of external self-determination*: this justification is instrumental and analogous to the one that they use for justifying the need for self-government. Five conditions would make it possible (Raz; Margalit, 1990: 458): (1) the exercise of this right has to be realized by qualified majority; (2) it does not generate a new minority within the seceding territory; (3) the right is conditional on being exercised as a protection against abuse; (4) it is necessary that its exercise respects the fundamental rights of the inhabitants and it has to minimize the harm to third parties that it could cause; (5) the right to the national self-determination generates a duty to the state of helping to exercise it.

Thus, even though the theory can seem to be promoting secession, in fact the opinion of the authors is clearly favourable to federal agreements instead of secession: There is nothing wrong with plurinational states, in which members of different communities compete in the political arena for public resources for their communities. Admittedly, prejudice, nationalism or fanaticism, can sometimes make a peaceful and equitable sharing of the political arena impossible, as they may lead to friction and persecution. This may constitute a good argument for the value of self-government, but it is an instrumentalist argument of the kind canvassed above (Raz; Margalit, 1990: 444).

### *Argumentation for common goals*

David Miller offers instrumental reasons in favour of the defence of national culture for achieving "common goals". The basic argument is that a common national culture facilitates individuals to cooperate amongst each other; therefore, the "nationalities"<sup>35</sup> have the right to the self-determination. "Where a national state exists, it can develop and regulate a set of institutions- what Rawls has called "the basic structure of society" – which together allocate rights and responsibilities to people in the way that their conception of social justice demands" (1995: 83).

However, this instrumental defence of self-determination doesn't derive a general right to secession. Miller compares nationalities in the state by distinguishing them from ethnic groups through the definition that we have seen. Thus, he considers that "It is quite possible for a state to include several groups with separate ethnic identities but a common national identity: Switzerland and the United States are both in different ways good examples of this." (Miller, 1995: 113). In those cases where there are minority nations within a state he does not completely discard the possibility of secession if those minorities cannot be protected through an agreement of self-government. But he clarifies that "we can see that the principle of national self-determination is very far from licensing a separatist free-for-all" (Miller, 1995: 115).

#### **2.2.2.b External national self- determination**

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<sup>35</sup> As Margalit and Raz, Miller defines a "nationality" by taking certain characteristics.

Given that the main concern for those who are identified under the liberalism II banner is the accommodation of collective rights in plurinational states through agreements of self-government, there are few authors who defend the so-called *normative nationalist principle*<sup>36</sup> even though this has been the main principle used by secessionist movements in order to legitimate their demands<sup>37</sup>. Obviously, the defenders of national self-determination do not distinguish between the internal and external element. The nation always has to be able to be endowed with some knowledgeable political institutions such as its own state according to this reasoning.

The idea that nations have a right *per se* to external self-determination has been defended by Gilbert “although common adversity or just common difference, can create communal ties, are these communal ties, and not common adversity or a common difference, that sustain a claim to national secession” (Gilbert 1998: 216). He argues, as nationalist movements do, that “if we wish to deny that the right of national self-determination exists at all, then (...) we must deny that there are nations” (1998: 16)<sup>38</sup>.

Caney (1998) offers an even more complex argument in favour of secession also based on the right to external national self-determination. He bases self-determination on a triple argument: i) the instrumental value of national practices and culture in promoting well-being through political institutions; ii) the “Rousseauian” idea of being in favour of

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<sup>36</sup> For Gellner, nationalism is “primarily a principle that holds that the political and national unit should be congruent” (1983: 1).

<sup>37</sup> Even in cases where there is no common institutional structures or languages, like in Northern Italy, pro-secessionist groups present their demands through a nationalist discourse with an anthem, a territorial definition, a national history and a flag (Oneto, 1997).

<sup>38</sup> Quoted in Costa (2003: 64).

self-government as a mean to liberty; iii) the prevention of unjust treatment in a plurinational state.

We can consider that Caney's position is a combination of republican and liberalism II arguments still attached to the individual rights approach of liberalism. His theory, according to the third argument could be understood as a 'remedial right' theory instead of a 'primary right'. However, the author considers the principle of national self-determination as a sufficient condition for the right to secede, rejecting two general critiques from 'just cause' theories: the possible breach of individual rights and the presumption in favour of stability. According to Caney, the first objection should be rejected because of his liberal definition of national self-determination "Someone adhering to the latter may simply argue that national self-determination is defensible, but only if the nation in question will respect individual rights." (Caney, 1998:169). On the second objection, the author considers that past secessions show a limited impact on international stability (like Norway from Sweden in 1905 or Iceland from Denmark in 1945). Caney makes a causal (empirical) claim while defending the necessity to not fetishize international order: "it is worth making the point that trying to contain divergent nationalities within a multinational state may frequently generate instability and unrest." (Caney, 1998: 169).

### *Critiques to liberalism II*

a) The argument that each nation has to have a state *per se* is a *non sequitur* principle. That is, it would be necessary to know the reasons that lead a group to imagine itself as a nation (even if it fulfils determinate characteristics) and to demand to have its own state structure (Norman 1998: 36).

b) Determining what a nation is presents certain problems despite the



range of definitions that I have already mentioned. The nationalistic principle seems to simplify the question considering that all groups claiming to be a nation, are a nation indeed. But the fact is that the ethnic, cultural, linguistic and national identity borders are not always clear-cut. On the contrary, they tend to overlap (Miller 1995). Jennings was clear when talking about the Wilsonian conception of self-determination: “On the surface it seemed reasonable: let the people decide. It was in practice ridiculous because the people cannot decide until someone decides who the people are (Jennings, 1956: 56).

c) If the criterion to exert the right to secession is in having a certain internal national homogeneity, to demonstrate that there is a national subject, the incentives of the state authorities or the secessionist leaders would then be enormous for the repression of internal minorities. On the other hand, if the criterion were universal, the internal minorities of each nation could also claim the right to external self-determination (Buchanan 2003: 254).

d) If we take into account the fact that in the world there are approximately 5.000<sup>39</sup> ethnic groups (cultural, religious, linguistic, etc) and if each of these groups evoked a legitimate claim to exercise the right of secession, it would provoke a multiplication and non-desirable fragmentation of states (Norman 1998: 36). That was Boutros Boutros-Ghali’s position in 1992: “if every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation, and peace, security, and economic well-being for all would become ever more difficult to achieve”; although he did not close the door to the formation of new states (Mayall 2008: 13).

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<sup>39</sup> See Minahan, J. (1996).

e) Finally, if the option of external self-determination was affordable for minority nations within multinational states, it has been argued that it would discourage negotiations to achieve federal agreements especially on the part of the state. On the other hand, it would encourage using secessionist threats as a tool of negotiation (blackmail, for instance) on the part of the minorities (Norman 2009).

### **2.3. Conclusion**

The typology presented in this article differs from the classification that usually divides the theories of secession between ‘just cause’ and ‘primary (plebiscitary or nationalist) rights’. The new typology - Liberalism I and Liberalism II - has allowed us to observe several issues, which the classical classification does not allow us to distinguish. Firstly, I have applied two basic criteria: a) central values (Liberalism I or II) and priority of secession (primary vs remedial right); in order to build the typology. Secondly, I have applied several considerations that have been addressed while also presenting them: degree of permissivity concerning the right to secede, main subject qualified for secession, justifications, objectives, institutional approaches and the role of self-determination and procedures.

#### *Two logics in theorizing secession*

In the first place, this typology has allowed us to observe two differentiated logics within theories of secession: the *protective* and the *democratic* ones.

(1) *Protective logic*: the authors framed in liberalism I and those of liberalism II tend to see secession as a protective resource<sup>40</sup>. Overall the goal is the defence of individual rights that can be understood in different ways; some use basic human rights (narrowly understood or not) while others prioritize the right to property. However, the results of this logic are quite different depending on the position that we adopt. *Libertarians* and *external national self-determinists* adopt a clearly permissive position with respect to the right of secession without consequential considerations; even so, they have few academic defenders. For these authors, the possibility of secession would be justified *ex ante* even though they impose conditions of application. However, ‘just cause’ and internal national self-determination theories materialize as less permissive theories, seeking the accommodation of individual and collective rights within the state.

(2) *Democratic logic*: whilst always accompanying *protective logic*, this logic also refers to democratic values. Here, it is argued from the majority principle, the individual autonomy, collective self-government or freedom of association depending on the author’s position (republican or plebiscitarian). However, this logic is not strictly used by these categories, since all the authors embracing any form of self-determination refer to it. In this case, secession is not seen as a resource but as a right<sup>41</sup> sometimes without very concrete requirements about the group that has to exercise it.

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<sup>40</sup> A broad theory of legitimacy could explain this logic; however, this is not the goal of the present article. I agree with Buchanan’s statement: “An adequate political theory of secession would be the application to the special case of the state of a more general theory, if we could attain it” (Buchanan, 1998: 162).

<sup>41</sup> This aspect should be discussed in depth since the distinction between these two kinds of right could be expressed following liberty rights and claim rights distinction as Joan Vergés has suggested (informal talk).

### *Other outcomes of the typology*

In the second place, the typology helps us to see that the debate over secession has been developed in parallel to the one on collective and individual rights (Liberalism I and II) and to the debate about minority rights. Thus, a theory of secession in the context of plurinational democracies should be much more concrete in: (a) the criteria of justice that it adopts when evaluating the fair causes taking into account ethno-cultural (recognition and accommodation) and socio-economic justice (redistributive criteria); (b) the definition of the morally salient subjects taking into account the moral value of the groups and not only individuals; (c) the institutionalization or not of the right of secession in the constitutional domain (few countries have incorporated this constitutional clause as I said earlier<sup>42</sup>); (d) the rights and duties of the involved parties in a negotiated solution of secessionist conflicts. It is very difficult to understand secession without taking into account its link with cultural demands and national recognition. On the one hand, it is almost impossible to find a secessionist organization without a nationalist discourse. And on the other hand, not all minority nations articulate secessionist demands<sup>43</sup>.

### *Shortcomings and pluralism*

In the third place, I observe that all theories have important shortcomings and any alternative to the main theories analyzed in this paper should take into account three dimensions: deontological,

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<sup>42</sup> The constitutions of Ethiopia and Saint Kitts and Nevis are the two clearest, but rare, cases of the explicit inclusion of the right to secession.

<sup>43</sup> According to Sorens' data in 2003, there were 283 minority nations in the world and among these just 38% (107) have secessionist organizations (Sorens, 2012: 56).

consequential and procedural<sup>44</sup>. We know that establishing equilibrium between the first two criteria allows us to formulate a robust theory, prioritizing the protective logic of individual rights. However, there is still ongoing debate about the principles of justice and its desirable consequences. Concerning the procedural criteria, all theories accept negotiated solutions but do not foresee what should be the terms or the criteria used by an "impartial referee".

Finally, the plurality of theories explained in this paper show the inexistence of a unique way of legitimizing secession even within the liberal-democratic scope. The legitimacy of secession in liberal democratic contexts has a similar structure to that of democratic legitimacy itself: there is a plurality of perspectives with a common liberal pole<sup>45</sup>. The poles of legitimacy vary according to each theory and none of them is based on one exclusive pole; in general authors writing on secession combine different normative perspectives in order to make their theories more robust.

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<sup>44</sup> Usually the conflict is evident in the conclusions of these theories, that drives me to the intuition that a theory of secession might be case-by-case rather than uniform and it also might be a balance between values (mainly protection vs democratic requirements).

<sup>45</sup> See an approach to normative pluralism in liberal democracies through 'nine normative poles', in Requejo (2005: 22).

## 2.4. Appendix: tables

Table 1. Liberal theories of secession

	<b>LIBERALISM I</b>	<b>LIBERALISM II</b>
<b>REMEDIAL RIGHT</b>	<p><b>Just Cause</b></p> <p>Birch (1984); Buchanan (1991, 1997, 1998, 2003, 2004), Christiano (2006)</p>	<p><b>Internal National Self-determination</b></p>
<b>PRIMARY RIGHT</b>	<p><b>Plebiscitarian</b></p> <p>Beran (1984,1998); Gauthier (1994); Lefkowitz (2008)</p>	<p>Margalit and Raz (1990); Tamir (1993); Miller (1995); Caney (1998); Kymlicka (1998); Norman (1998); Nielsen (1998) Weinstock (1998); Gilbert (1998); Bauböck (2000); Gagnon-Tully (2001); Patten (2002); Costa (2003); Tierney (2004); Requejo (2005, 2010); Seymour (2007); Shorten (2010); Requejo and Sanjaume (2012)</p>
	<p><b>Libertarian</b></p> <p>McGee (1994); Gordon (1998); Boykin (1998); Rothbard (1998); Kreptul (2003)</p>	
	<p><b>Liberal-republicans</b></p> <p>Wellman (1995, 1998, 2005); Philpott (1995, 1998); Copp (1998)</p>	

Table 2. Critiques to liberal theories of secession

		<b>Deontological</b>	<b>Procedural</b>	<b>Consequential</b>
<b>Liberalism I</b>	<b>Just Cause</b>	<ul style="list-style-type: none"> <li>• Justice conception based on liberalism I</li> <li>• Burden of proof on the secessionists</li> <li>• State-building/Nation-building</li> <li>• Misunderstanding of secessionist motivation</li> <li>• Intrastate agreements voluntary by the state</li> </ul>	<ul style="list-style-type: none"> <li>• Impartial international referee</li> <li>• Role of Great Powers</li> <li>• Checking intrastate agreements</li> <li>• Military intervention</li> </ul>	<ul style="list-style-type: none"> <li>• Perverse incentives</li> <li>• Violation of democratic principles</li> <li>• Institutionalization</li> </ul>
	<b>Plebiscitarian</b>	<ul style="list-style-type: none"> <li>• Definition of the subject</li> <li>• Violation of majority principle</li> <li>• Fragmentation ad infinitum</li> <li>• “Russian dolls” problem</li> </ul>	<ul style="list-style-type: none"> <li>• Practical definition of the territorial subject</li> <li>• Definition of collective borders</li> </ul>	<ul style="list-style-type: none"> <li>• Protection of disperse internal minorities</li> <li>• State instability</li> <li>• De-incentives for democracy and distributive justice</li> </ul>
	<b>Libertarian</b>	<ul style="list-style-type: none"> <li>• Discrimination between citizens (owners)</li> <li>• Total privatization</li> <li>• Fragmentation</li> <li>• Democratic principles</li> </ul>	<ul style="list-style-type: none"> <li>• Revolution necessarily linked to secession</li> <li>• Entitlement</li> <li>• Privatization</li> <li>• Constitutional arrangement</li> </ul>	<ul style="list-style-type: none"> <li>• Weakness of the state</li> <li>• Minimization of public space</li> <li>• Anarchy individualism</li> <li>• Unavoidable statehood</li> </ul>

	<b>Liberal - Republican</b>	<ul style="list-style-type: none"> <li>• Subject definition</li> <li>• Individual member value</li> <li>• Meaning of political participation</li> <li>• Majority principle</li> </ul>	<ul style="list-style-type: none"> <li>• International and domestic impartial referee</li> <li>• Territorial borders of the political subject</li> <li>• Constitutionalization</li> <li>• Partition</li> </ul>	<ul style="list-style-type: none"> <li>• Homogenization</li> <li>• Democratic costs</li> <li>• Instability</li> </ul>
<b>Liberalism II</b>	<b>External/Internal National self-determination</b>	<ul style="list-style-type: none"> <li>• Definition of nation</li> <li>• Violation of majority principle</li> <li>• Discrimination between minorities</li> <li>• Dual identities</li> <li>• External/Internal debate</li> </ul>	<ul style="list-style-type: none"> <li>• International and domestic impartial referee</li> <li>• Territorial borders of the nation</li> <li>• Constitutionalization</li> <li>• Partition</li> </ul>	<ul style="list-style-type: none"> <li>• Veto of the minorities (blackmail)</li> <li>• De-incentive to federal agreements</li> <li>• Federal instability</li> <li>• International fragmentation</li> <li>• Ethno-cultural homogenization</li> <li>• Protection of internal minorities</li> <li>• Federal instability</li> <li>• Secession of "vanity"</li> </ul>



## References

Agranoff, R. (ed.) (1999), *Accommodating diversity: Asymmetry in Federal States*, Baden-Baden: Nomos.

Aronovitch, H. (2000), "Why secession is unlike divorce", *Public Affairs Quarterly*, vol. 14, 1, pp.27-37

Bartkus, V. (1999), *Dynamics of Secession*, Cambridge University Press,

Bauböck, R. (2000), "Why Stay Together? A Pluralist Approach to Secession and Federation" in Kymlicka, W. *Citizenship in diverse societies*, Oxford: Oxford University Press.

Beran, H. (1984), "A Liberal Theory of Secession", *Political Studies*, vol.32, pp.21-31.

Beran, H. (1998), "A democratic theory of political self-determination for a new world order" in Lehning, Percy B., *Theories of Secession*, New York: Routledge.

Bickerton, J. & Gagnon, A.G. (2008), "Regions" a Caramani, D. *Comparative Politics*, New York: Oxford University Press

BingBing, J. (2009), "The independence of Kosovo: a unique case?", *Chinese Journal of International Law*, vol. 8, num. 1, pp.27-46

Birch, A. (1984), "Another Liberal Theory of Secession," *Political Studies*, vol. 32, pp.596-602.

Boykin, S. (1998), "The Ethics of Secession" a Gordon, D. *Secession State & Liberty*

Buchanan, A. (1991), *The morality of Political Divorce from Port Sumter to Lithuania and Quebec*, Oxford: Westview Press.

Buchanan, A. (1992), "Self-determination and the Right to Secede", *Journal of International Affairs*, vol.45, pp.347-65.

Buchanan, A. (1996), "What's So Special about Nations?" in J. Couture, K. Nielsen & M. Seymour (eds.), *Rethinking Nationalism*, Supplementary Volume, Canadian Journal of Philosophy, University of Calgary Press, pp.283-309.

Buchanan, A. (1997), "Theories of Secession", *Philosophy and Public Affairs*, vol.26, num.1, pp.30-61.

Buchanan, A. (et.al) (2003), *Secession and Self-determination*, Nomos.

Buchanan, A.(2004), *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, Oxford: Oxford University Press.

Buchheit, Lee C. (1978), *Secession. The legitimacy of self-determination*, Yale University Press.

Brilmayer, L. (1991), “Secession and Self-Determination: A Territorial Interpretation”, *Yale Journal of International Law*, vol. 16, pp.177

Caminal, M. (2007), “Una lectura republicana i federal de l’autodeterminació”, REAF, num, 5, pp.11- 38.

Caney, S. (1998), “National self-determination and national secession: individualist and communitarian approaches” in Lehning, P.B. *Theories of Secession*.

Catala, A. (2013), “Remedial Theories of Secession and Territorial Justification”, *Journal of Social Philosophy*, vol.44, num.1, pp.74-94.

Christiano, T. (2006), “A Democratic Theory of Territory and Some Puzzles about Global Democracy”, *Journal of Social Philosophy*, vol.37, num. 1, pp.81–107.

Coggins, Bidget L. (2011), “The History of Secession”, in Pavkovic, A.; Radan, P. *The Ashgate Research Companion to Secession*, Ashgate.

Costa, J. (2003), “On Theories of Secession: Minorities, Majorities and the Multinational State”, CRISPP, vol.6, num.2, pp.63-90.

Copp, D. (1998), “International Law and Morality in Theory of Secession”, *The Journal of Ethics*, vol. 2, pp.219–245.

Elazar, D. (1987), *Exploring federalism*, Tuscaloosa, AL: University of Alabama Press.

Gauthier, D. (1994), “Breaking Up: An Essay on Secession”, *Canadian Journal of Philosophy*, vol.24, pp.357-72.

Gellner, E. (1983), *Nations and nationalism*, Oxford: Basil Blackwell.

Gilbert, P. (1998), *The Philosophy of Nationalism*, Boulder: Westview Press

Glaser, D.J. (2003), “The right to Secession: an Antisecessionist Defence”, *Political Studies*, vol. 51, pp.369-386.

Gordon, D. (1998), *Secession State & Liberty*, London: Transaction Publishers.

Hechter, M. (1992), “The Dynamics of Secession”, *Acta Sociologica*; vol. 35, pp.267-283.

- Hechter, M. (2000), *Containing Nationalism*, Oxford: Oxford University Press.
- Jennings, I. (1956), *The approach to self-government*, Cambridge: Cambridge University Press
- Kymlicka, W. (1995), *Multicultural citizenship: A Liberal Theory of Minority Rights*, Oxford: Clarendon Press.
- Kymlicka, W. (2000), *Citizenship in diverse societies*, Oxford: Oxford University Press.
- Kymlicka, W. (2002), “El Nuevo Debate sobre los derechos de las minorías” in Requejo, F., *Democracia y pluralismo nacional*.
- Kreptul, A. (2003), “The Constitutional Right of Secession in Political Theory and History”, *Journal of Libertarian Studies*, vol. 17, num.4, pp.39-100.
- Lefkowitz, D. (2008), “On the Foundations of Rights to Political Self-Determination: Secession, Nonintervention, and Democratic Governance”, *Journal of Social Philosophy*, vol.39, num. 4.
- Lehning, Percy B. (ed.) (1998), *Theories of Secession*, New York: Routledge.
- Linz, J. (1997), “Democracy, Multinationalism and Federalism”, Working Paper. 103, Madrid: Instituto Juan March.
- Lynch, A. (2002), “Woodrow Wilson and the principle of “national self-determination”: a reconsideration”, *Review of International Studies*, vol.28, pp.419-436.
- Mair, P. (2011), “Concepts and concept formation”, Della Porta, D.; Keating, M. (ed.) *Approaches and methodologies in Social Sciences*, Cambridge.
- Margalit, A.; Raz, J. (1990), “National self-determination”, *The Journal of Philosophy*, vol.87, num.9, pp.439-46.
- Mayall, J. (2008), “Nationalism, Self-determination, and the Doctrines of Territorial Unity, in Weller”, M.; Metzger, B. (eds.) *Settling Self-determination Disputes: Complex Power-Sharing in Theory and Practice*, Koninklijke Brill NV.
- Meadwell, Hudson (2009), “The Political Dynamics of Secession and Institutional Accommodation”, *Regional & Federal Studies*, vol.19, num.2, pp.221-235.
- Miller, D. (1995), *On Nationality*, Oxford University Press.
- Minahan, J. (1996), *Nations without States: Historical Dictionary of Contemporary National Movements*, Westport, CT: Greenwood Press.

Moore, M. (ed.) (1998), *National Self-determination and Secession*, New York: Oxford University Press.

Musgrave, T.D. (1997), *Self-Determination and National Minorities*, Oxford: Oxford University Press.

Nielsen, K. (1998), "Liberal Nationalism and Secession" a Moore, M. (ed.), *National Self-determination and Secession*, New York: Oxford University Press.

Norman, W. (1994), "The Ethics of Secession as the Regulation of Secessionist Politics" a Moore, M. (ed.), *National Self-determination and Secession*, New York: Oxford University Press.

Norman, W. (2001), "Secession and (Constitutional) Democracy" a Requejo, F., *Democracy and National Pluralism*, London: Routledge.

Norman, W. (2009), "Teoria federalista de la secessió" a Requejo, F., Caminal, M. (eds.) *Liberalisme polític i democràcies plurinacionals*, Barcelona: IEA.

Oneto, G. (1997) *L'invenzione della Padania*, Foedus.

Patten, A. (2002), "Democratic secession from a multinational state", *Ethics*, vol. 112, num. 3, pp.558-586.

Pavkovic, A. (2003), "Secession, Majority Rule, and Equal Rights: A Few Questions", *Macquire Law Journal*, vol.3, pp.73-94.

Pettit, P (2000), "Minority Claims under Two Conceptions of Democracy", a Duncan, I., *Political Theory and the Rights of Indigenous Peoples*, Cambridge: Cambridge University Press.

Philpott, D. (1995), "In Defence of Self-Determination", *Ethics*, vol. 105, num. 2, pp.352-85.

Rawls, J. (1999), *The Law of Peoples; with the idea of public reason revisited*, Cambridge: Harvard University Press.

Requejo, F. (1999), "Cultural pluralism, nationalism and federalism: A revision of democratic citizenship in plurinational states", *European Journal of Political Research*, vol. 35, pp.255-286.

Requejo, F. (2002), *Democracia y pluralismo nacional*, Barcelona: Ariel.

Requejo, F. (2005), *Multinational Federalism and Value Pluralism: The Spanish Case*, London: Routledge.

Requejo, F.; Caminal, M. (eds.) (2009), *Liberalisme polític i democràcies plurinacionals*, IEA.

Requejo, F.; Sanjaume, M. (2012), “Secession and liberal democracy. The case of the Basque country”, Working Paper: GRTP.

Requejo, F.; Sanjaume, M. (2013), “Political Recognition from regionalism to secessionism. The Catalan Case”, Pavkovic, A. (ed), *Secessionism and Separatism in Europe and Asia: To Have a State of One's Own*, Routledge, pp.110-126.

Rothbard, M.N (1998), “Nations By Consent: Decomposing the Nation-State” in Gordon, D. *Secession State & Liberty*.

Seymour, M. (2007), “Secession as a Remedial Right”, *Inquiry*, vol.50, num.4, pp.395-423.

Sorens, J. (2004), “Globalization, Secessionism, and Autonomy”, *Electoral Studies*, vol 23, num. 4, pp.727-752.

Sorens, J. (2005), “The Cross-Sectional Determinants of Secessionism in Advanced Democracies”, *Comparative Political Studies*, vol 38, num. 3, pp.304-326.

Sorens, J. (2012), *Secessionism. Identity, interest and strategy*, McGill-Queen's University Press.

Starks, H. & Trinidad S.B. (2007), “Choose Your Method: A Comparison of Phenomenology, Discourse Analysis and Grounded Theory”, *Qualitative Health Research*, vol.17, num.10.

Sunstein, C. (2001), *Designing Democracy: What constitutions do*, Oxford: Oxford University Press.

Taylor, Ch. (1994), “The politics of recognition”, in Guttman, A. (ed.) *Multiculturalism and the Politics of Recognition*, Princeton, Princeton University Press, pp.25-73.

Tamir, Y. (1993), *Liberal Nationalism*, Princeton, NJ: Princeton University Press.

Young, I.M. (2005), “Self-determination as non-domination”, *Ethnicities*, vol.5, num.2, pp.139-159.

Walzer, M. “Comment” in Taylor, Ch.; et.al (1994) *Multiculturalism: examining the politics of recognition*, Princeton University Press.

Webb, M.J. (2006) “Is there a liberal right to secede from a liberal state?”, *Trames*, vol.10, num.4, pp.371-386.

Weinstock, D. (2000), "Toward a Proceduralist Theory of Secession", *Canadian Journal of Law and Jurisprudence*, num.13.

Weinstock, D. (2001), "Constitutionalizing the Right to Secede", *The Journal of Political Philosophy*, vol.9, num.2, pp.182-203.

Wellman, C.H. (2005), *A Theory of Secession: The Case for Political Self-Determination*, Cambridge University Press

Wellman, CH. (2001), "Friends, Compatriots and Special Political Obligations", *Political Theory*, num.29, pp.217-236.

Wellman, C.H(1995), "A Defence of Secession and Political Self-Determination", *Philosophy and Public Affairs*, vol.24, num.2, pp.142-71.

Young, I.M (2007), *Global Challenges: War, Self-Determination and Responsibility for Justice*, Cambridge.







## CHAPTER 3

### 3. Quebec, Scotland and Catalonia: How secessionist political parties legitimise secession\*

#### 3.1. Introduction

Since much of the world was divided into nation-states as units of political authority following the Peace of Westphalia in 1648, secession has been by far the most common means of creating of new nation-states. Between 1816 and 1916, 63% of all new states were created by secession, with the twentieth century seeing a dramatic rise in this phenomenon as the numbers grew to 73%<sup>46</sup>. However, none of these political divorces, being peaceful or not, happened in territories where democracy was more than ten years old (Dion, 1996). In fact the success rate of anti-colonial secessionist movements in 1970s was 75%, whereas non-colonial movements had a success rate of 18.5%. Despite being the main source of new state creation, secessionist movements in a given year had an estimated chance of achieving independence of just 2% (Coggins, 2011: 28). Then secession *per se* is not an unknown phenomenon – one finds secessionist movements in almost all the states of the world, but secession in liberal democratic contexts is extremely rare. That makes these cases especially interesting. On what grounds can the arguments be made for seceding from a democratic parent state?<sup>47</sup>

#### *Argument*

In this paper, I focus on three secessionist cases located in democracies that are more than ten years old<sup>48</sup>, with significant popular support and political representation: Quebec (Canada), Scotland (UK) and Catalonia (Spain). My interest is in comparing and theorising how these movements legitimise their claims. In doing so, I focus on secession as a moral political problem<sup>49</sup>. The research question relates to how secession

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<sup>46</sup> See: Bridget L. Coggins “The history of secession: an overview”. She has collected data about secessions from 1816 onwards.

<sup>47</sup> This question is the basis of my thesis but not of this paper.

<sup>48</sup> Canada and the UK are first-wave democracies and Spain is a third-wave democracy (Huntington, 1991).

<sup>49</sup> That means placing my work in the field of political philosophy, I’m attached to Kymlicka’s view of this field: “So political philosophy, as I understand it, is a matter of moral argument, and moral argument is a matter of appeal to our considered convictions (...). A central aim of political philosophy, therefore, is

is legitimised in these cases and through which specific discourse do secessionist parties justify political independence. So, I focus my research on the political parties with political representation at regional level that are officially committed to a secessionist objective<sup>50</sup> in these cases. That means studying six formations: the Scottish National Party (SNP) and Scottish Green Party (SGP) in Scotland; *Esquerra Republicana de Catalunya* (ERC) and *Solidaritat Catalana per la Independència* (SCI) in Catalonia; and *Parti Québécois* (PQ) and *Québec Solidaire* (QS) in Quebec<sup>51</sup>.

### *Contribution*

The contribution of this research question to the literature is twofold. Firstly, it offers an account of how secession is legitimised in liberal democracies is something new; secessionist demands have been a subcategory of ethno-regionalist parties studies often depicted as an extreme form of this demand but not as an object of study by itself<sup>52</sup>. Through qualitative methodology and theory building I consider new aspects of secessionist legitimisation beyond normative theories of secession. Secondly, a deep understanding of how these demands are legitimised can allow us to better theorise the phenomena of secession in liberal democracies, shedding light on how democratic theory should solve these cases.

In the context of broad research, this article aims to provide knowledge on how secessionists pose their claims in plurinational democracies, since traditional theories of secession have been too general or derived from historical cases not related to democratic contexts. Nonetheless, it is not in the scope of this work to formulate a general theory of secession for liberal democratic cases<sup>53</sup>.

### *Sections*

This article is structured into four sections. In *section 3.2*, I present the typology of arguments that I will use for analysing the cases. In *section 3.3*, I develop my findings using the typology presented earlier on a case-by-case basis. In *section 3.4*, I sketch my general findings gathering the analyses of the cases. Finally, I conclude in *section 3.5*. Tables are in *the Appendix*.

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to evaluate competing theories of justice to assess the strength and coherence of their arguments” (Kymlicka, 2002: 6).

<sup>50</sup> I have excluded political parties with some MP’s supporting secession but not officially secessionists. By officially secessionist, I mean that they include this goal in their last *party conference statutes*.

<sup>51</sup> The period studied in this paper is from 2003 to 2010. The political scenario has changed in the three cases and new secessionist parties have appeared while others have disappeared (for instance: Option Nationale in Quebec created in 2011 or the historical Catalan regionalist party *Convergència i Unió* in Catalonia that turned to secessionism in 2012).

<sup>52</sup> See: DeWinter&Türstan (1998, 2006) or Hepburn (2011).

<sup>53</sup> I will do that in further research.

### 3.2. Comparative framework

The concept of legitimacy<sup>54</sup> used in this paper is a pragmatic one. Since the objective is mapping and theorising how secessionist parties defend, in their respective discourses, political independence in Quebec, Scotland and Catalonia, I focus on a legitimacy account related to both descriptive and normative values<sup>55</sup>. Political science used to refer to legitimacy in its descriptive sense, namely, as a set of beliefs and attitudes shared by a population. However political philosophy relates legitimacy to justice and morality, in so doing, it refers to normative values. Theories of secession, a subfield of political theory, are normally thought of as using moral values to be preserved and correlating secession legitimacy to justice. Nonetheless, there are theories, like free choice or plebiscitary perspectives that derive normative values from descriptive stands.

In order to classify the arguments used by the political parties analysed here to legitimise their secessionist aspirations, I use a framework based on Barreda & Galofré (1999) and designed by Requejo (1995), which consists of normative and descriptive announcements formulated by political actors. I have adapted the original framework (arguments typology) to the present circumstances, adding some criteria and simplifying its complexity. The aim is to use my findings derived from applying the typology to political parties' (and politicians') discourse for theory building purposes<sup>56</sup>. Therefore, the categories included in my framework are used as an *heuristic device*, in this case generalisation (theorisation) is provided by ideal types and not by statistical regularities (Della Porta, 2008: 198). Through narrative, interviews and documents<sup>57</sup> I analyse the arguments underpinning secessionist claims in three cases and in six political parties. That means a small-N case-oriented analysis that aims to provide an understanding of how secession is legitimised. As I said earlier, the final objective is theorising the claims of political independence in these cases. Rather than causality, my goal is a deep knowledge of only a few cases, as Della Porta has stated "case-based logic tends to explore diversity (and deviant cases) by thick description of one or small number of cases, often contrasted on several dimensions" (Della Porta, 2008: 207).

#### *Dimensions included in the typology*

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<sup>54</sup> For a summary of accounts of political legitimacy see: Stanford Encyclopedia: <http://plato.stanford.edu/entries/legitimacy/>.

<sup>55</sup> I have addressed normative values related to secession in the previous article through a typology of liberal theories of secession.

<sup>56</sup> The general research question of my thesis is: "Under what conditions is secession legitimate in a liberal democratic context?".

<sup>57</sup> See: *Table 2*.

As I show in Table 3. *Analytical* framework, the typology has three main dimensions with their corresponding categories. I will illustrate the typology outlined in Table 3. *Analytical* framework with a classic masterpiece of political independence doctrine: Thomas Paine's *Common Sense*, written in 1776 during the American Revolution. I choose this example not only because it's a well-known pamphlet in favour of political independence, but also because it is probably one of the first texts written in a 'modern rhetoric' and a piece of applied political theory written in a simplistic language<sup>58</sup>.

#### *Dimension (A): Meaning of secession*

In dimension (A) I refer to the whole secessionist project<sup>59</sup>. Empirically, in my cases, there is a lack of clear "official positions" on this aspect since secessionist parties in our democracies used to focus on arguments and conflicts with central government rather than on post-secession scenarios. However when they define the project (as they used to do) it reveals a lot of information about the foundations of their demands. Related to this topic, there is a much more theoretical aspect which refers to the idea of sovereignty. How secessionists envisage the future degree and nature of sovereignty is also related to their legitimacy. Paine offers us an ideal account of a republican government created by a colony of newcomers for the common good (namely: America): "Some convenient tree will afford them a state-house, under the branches of which the whole colony may assemble to deliberate on public matters" (Paine, 1976: 3). Sometimes, secessionists also stress the importance of internal vis à vis external sovereignty or they rely on supranational networks, Paine referred in his pamphlet to the *Continental Conference* as middle ground between governors and governed (Paine, 1976: 38).

#### *Dimension (B): Legitimacy arguments*

In dimension (B) I deploy a range of arguments divided into two categories: *descriptive* and *normative*. This distinction is purely analytical since political actors used to confuse and mix both argumentations at the same time; nonetheless, in order to clarify my analysis, I try to distinguish both categories. Within the *descriptive* (B.1) positions there are diverse possibilities or subcategories that I briefly describe: firstly, those referring to

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<sup>58</sup> "Paine's title represented more than a characterisation of his views; it encompassed his endorsement of "reason" grounded in "nature," his rejection of rhetorical artifice and ornamentation, his celebration of collective deliberation, and his endorsement of the emerging egalitarian ethos of revolutionary America." (Hogan&Williams, 2000).

<sup>59</sup> In theories of secession it usually means: "By secession I mean the withdrawal, from an existing state and its central government, of part of this state, the withdrawing part consisting of citizens and the territory they occupy" (1984: 21)<sup>59</sup>. However in real secessionist conflicts the meaning and content of this "withdrawal project" tend to be less clear than it can be in theory. Both withdrawal and final scenario (independence, federal arrangements, supranational structures...) tend to be crucial in the definition of political independence but at the same time is somehow blurred through strategic rhetoric.

*ontological* aspects that in practice means how the political subject is depicted; secondly, theoretical constructions oriented to describe a situation, usually concerning economy and culture. An example in *Common Sense* would be: “Europe is too thickly planted with kingdoms to be long in peace, and whenever a war breaks out between England and any foreign power, the trade of America goes to ruin, *because of her connection with Britain*” (Paine, 1976: 27; cursive mine); finally there are types of descriptive argumentation that are practical examples/analogies (often referred to historical cases) used as analogies. In Paine’s argument Holland (and Switzerland) play this role: “Holland, without a king, hath enjoyed more peace for the last century than any of the monarchical governments in Europe” (Paine, 1976: 9)<sup>60</sup>.

But pure normative arguments (B.2) play an important role too. Again in my framework, there are at least three diverse possibilities within this normative category, values, derivative reasons and legality. Legitimacy can be based on fundamental values, which are the core of its consistency. In our example, Paine chose a divine/natural right-based argumentation as the core of his argument, also related to justice, in an effort to convince the population of the Colonies, “A government of our own is our natural right” (Paine, 1976: 40), but liberal freedom and republicanism were also in his mind “Society is produced by our wants, and government by our wickedness (...) the first is a patron the later a punisher”. Related to this “natural right” normative foundation Paine found some instrumental arguments such as economic growth and the efficiency of having America’s own government based on exploitation of natural resources “No country on the globe is so happily situated or so internally capable of raising a fleet as America” (1976: 46). Finally, some normative arguments can be based on legality (domestic or international).

### *Dimension C: Strategies*

A third dimension (C) is focused on the role of transition to political independence – in other words, strategies, in the legitimacy discourse. Here, many considerations could be included as categories but we have at least some core categories to take into account such as the role of self-government, the road map and third-party alliances. The first category refers to current self-rule of the seceding political unit, in Paine’s time, it was a colony and he complained about that while defending the common features of American

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<sup>60</sup> There are many examples of this type of argumentation in *Common Sense*: “The republics of Europe are all (...) in peace Holland and Switzerland are without wars” (1776, 37). The Jewish people were also in his mind as an example of revolution against oppressive governments: “The children of Israel being oppressed by the Midianites, Gideon marched against them with a small army, and victory, through the divine interposition, decided in his favour” (1776: 11).

colonies. The second refers to the transition, for instance Paine's Constitutional Conference idea. The third refers to the role of other parties or external agents, for instance France or Spain in Paine's pamphlet who were seen as potential but non-compromised allies.

*Data and method: a case-oriented application of the framework*

In the next section, I apply the framework explained above to three cases of secessionist demands through the discourse of the six political parties analysed case-by-case. In this analysis, I consider the main arguments posed by these parties in order to build a legitimising discourse for secessionist aspirations. For this analysis, I use bibliographical references on each case, interviews<sup>61</sup> and party manifestos<sup>62</sup>.

### **3.3. How secession is legitimised in Quebec, Scotland and Catalonia**

The cases studied below are typical examples of what has been labelled *stateless nations*. According to Guibernau, *stateless nations* are “cultural communities sharing a common past, attached to a clearly demarcated territory, and wishing to decide upon their political future which lack a state of their own” (Guibernau, 1999: 1). In these *stateless nations*, secession has been claimed in different ways and has been a political option with a long tradition. I have selected these cases precisely because this political option has been largely developed in comparison with other possible candidates (Basque Country, Galicia, Brittany, Corsica, Wales, Northern Ireland, South Tyrol, Padania or Alsace). Quebec, Scotland and Catalonia share a set of characteristics that place them in the context of the liberal-democratic debate<sup>63</sup>. Firstly, secessionism has significant popular support, above 25% according to the polls<sup>64</sup>. Secondly, there is at least one secessionist party represented in the Parliament and secessionism has more

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<sup>61</sup> The interviews included in this paper were conducted in Quebec (Montreal and Quebec City) between April and June 2010; Scotland (Edinburgh) between January and February 2011; and Catalonia (Barcelona) between June and July 2011 (See: *Table 2*).

<sup>62</sup> I analyse the party manifestos of the parties in the period between 2003 and 2011. During this period, in Scotland and Catalonia, there was a clear movement towards secessionist positions. In Scotland, the SNP won by absolute majority in 2012 and the PQ returned to power in a minority government in 2011 (See: *Table 4*. List of primary and secondary sources).

<sup>63</sup> As Keating puts it, the kind of political conflict aroused by these cases is a “clash of two projects occupying the same moral ground” (Keating, 2009: 79).

<sup>64</sup> On the support for secession and its evolution in the three cases see: Catalan case (Requejo&Sanjaume, 2012); Scottish case (Keating, 2013); Quebec case (Richez, Bodet, 2012). While in Quebec support for secession remains stable, in Catalonia it has dramatically grown during recent years and in Scotland it has declined or remained stable. Nonetheless, is not the objective of this paper explaining changes in support for secession.

than 10% of electoral support. Thirdly, these are clear cases of secessionism<sup>65</sup> and cannot be confused with other phenomena like irredentism, annexation to existing states, partition, dissolution or disintegrations<sup>66</sup>. Fourthly, the political strategy chosen by their secessionist movements during recent decades has been democratic debate and not violent conflict despite some violent episodes<sup>67</sup>. Fifthly, the political unit claimed by secessionists already has a certain degree of political power (self rule), a devolved Parliament and clear borders. Finally, it is possible to identify through the results of the electoral process, secessionist parties and their ideology<sup>68</sup>.

Constitutional debate on independence has been an issue in these three cases but in different manners, whereas in Canada and the UK there seems to be a constrained right to secede<sup>69</sup>, whereas in Spain, secession is explicitly forbidden by law. Despite the similarities explained above, and with them being cases in a liberal-democratic context, as I will show there is a diversity of legitimacy discourses if we analyse it by parties and dimensions. Beyond a general discourse, we will find some similarities and differences.

### 3.3.1. Quebec

#### *Historical context*

In Quebec, secessionism has been part of the constitutional debate over the last 30 years<sup>70</sup>. Two referenda on the constitutional position of the province have been organised during recent decades: in 1980 and 1995. The first referendum was organised by René Lévesque's government on a project that fell short of secession based on an association with the rest of Canada (ROC) in economic and political terms. Cultural

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<sup>65</sup> A minimal definition of secession would suggest that a minority in a certain state promotes: "secession plus state formation" (Baer, 2000).

<sup>66</sup> As I said in the previous note, I argue that secession involves the separation of a minority population and its territory from the parent state for creating a new state rather than joining with an existing state or dissolving the parent state. South Tyrol, Northern Ireland or Aland Islands can be considered irredentist or pro-annexation cases while, the emergence of new republics from the USSR can be considered as a case of dissolution.

<sup>67</sup> Low intensity violent groups have been registered in the three cases but disappeared more than two decades ago and are not part of the political discourse and practice anymore.

<sup>68</sup> It could be argued that these cases are national biased since there are no cases of significant secessionism (gathering the characteristics listed above) legitimating without a national background in Europe.

<sup>69</sup> In Canada since the 1995 referendum experience, the *Reference re Secession of Quebec*, [1998] 2 S.C.R. 217 of the Supreme Court can be considered as a negotiated right to secede. Moreover, *The Clarity Act* (2000) establishes the conditions for a negotiated referendum on secession, see: (Norman, 2009). In the UK, the Scottish and British government reached an agreement on holding a referendum on secession on 18 September 2004 (*The Guardian*, 15 October 2012).

<sup>70</sup> See: Dion (1996), Gagnon (1998, 2008), Guibernau (1999), Laforest (1995), Keating (1996, 2001b), Tierney (2004: 68-100).

protection and the idea of “*peuple fondatrice*” were at that time, the core of the project based on the CEE ideal; the Lévesque project was rejected by a majority of 60/40. The second referendum was organised by Jacques Parizeau through a pact between three parties (PQ, BQ, ADQ) that included the idea of an economic *partenariat* with ROC, but a full political sovereignty for Quebec province. The project envisaged an economic and social union and an internationally recognised entity for Quebec. The result of the referendum was extremely tied, the “No” won by a margin of 50.000 votes with a turnout of 93%. Currently, support for the secessionist option is still high and secessionist deputies represent almost half of the National Assembly although it is not a salient issue nowadays in Quebec politics. As a result of the last referendum experience, secession is now more regulated in Quebec; the province has a “constrained right to secede”. In 1998, in answering the questions posed by the Canadian government, the Supreme Court of Canada established its famous ruling that a hypothetical secession of a province should never be unilateral and requires a “clear question” and a “clear majority”. The Clarity Act passed in 1999 in the federal Parliament regulates that the “question” and the “majority” must be decided in the federal Parliament in the future. In 2000, the Quebec National Assembly responded passing legislation (Bill 99) reaffirming their right to exercise self-determination on their own (Lynch, 2005).

### *Political Parties*

The National Assembly of Quebec has two secessionist parties represented: *Parti Québécois* (PQ) and *Québec Solidaire* (QS). The PQ was founded by the charismatic leader René Lévesque in 1968 with the fusion of two nationalist movements<sup>71</sup> and is considered a centre-left and nationalist party. Quebec’s modern nation-building cannot be understood without this political party. Following the period called the *Quiet Revolution* the PQ emerged as a solid political project gathering the newly shaped Quebec nationalism and abandoning the Catholic and closed society of the previous *Grand Noriceur*. The first PQ government led by René Lévesque adopted the famous Bill 101 establishing French as the official language, introduced Bill 89 which reformed civil law and family law and organised a referendum on sovereignty-association in 1980. The PQ opposed to Trudeau’s repatriation of the Constitution,, a long period of constitutional negotiations excluded Quebec from the constitutional scheme of the Canadian confederation. In 1994, the new leader Jaques Parizeau organised a second referendum focused on offering a *partenariat* with Canada. After losing this second *souveraineté* plebiscite, the government of Lucien Bouchard (former leader of the BQ) fixed economic growth as a priority and set aside the constitutional dossier. Bernard Landry (former finance minister) followed Bouchard’s path but the PQ lost ground and was defeated by a strong Liberal Party and threatened by the emergence of the

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<sup>71</sup> *Movement Souveraineté-Association* and the *Rassemblement pour l'indépendance nationale*. The former was in fact a split of the Liberal Party when René Lévesque and other liberals could not win their program entitiled *Pour un Québec souverain dans une fédération canadienne*.



conservative ADQ. Although under André Boisclair's leadership in 2005, and following the publication of the Clarity Act, the party stressed its secessionist profile promising a third referendum. The current leader Pauline Marois, is attached to the gradualist strategy of the *conditions gagnants* and to a Downsian approach to the left-right question. In recent years, the party has suffered many leadership problems and splits, the last one ending up with the creation of the new platform/movement called *Option Nationale*. Moreover the former *péquiste* Health Minister François Legault founded a centre-right party and merged with the existing organisation ADQ.

*Québec Solidaire* (QS) is a leftist formation led by its only deputy in the *Assemblée Nationale* elected in *Mercier* (Montreal) district Amir Khadir. Secession is not its priority but according to their leading policy documents, it defines itself as backing *souveraineté*. This political platform defines itself as something between a political party and a social movement “*Québec solidaire est actif sur le terrain électoral. Il s'engage également sur le terrain des luttes sociales. Il s'inspire des revendications des mouvements sociaux et environnementaux progressistes, tout en reconnaissant l'indépendance respective du parti et de ces mouvements* » (Statuts, 2006). Its foundation was in 2006 as a result of merging the leftist UFP and the alter-globalist *Option Citoyenne*. QS leaders had previously written the manifesto *Pour un Québec solidaire* as a response to the neo-liberal approach to the problems of Quebec shown by Bouchard and other leaders in an article entitled *Pour un Québec lucide*. François David and Amir Khadir, among others, defended that Quebecers are much more committed to social justice and not to neo-liberal solutions as Bouchard suggested.

#### A. Meaning

The province of Quebec is seen by secessionists as an unrecognised national reality in the Canadian constitutional scheme. Despite some asymmetries, Quebec is considered to be “treated as any other province” instead of being at the same constitutional level as Anglophone Canada<sup>72</sup>. Strongly based in their francophone origins and identity, Québécois secessionists envisage a sovereign country engaged in international organisations and regional agreements like NAFTA. Territoriality is defined by the current borders of the Quebec province as was established in 1867, by the *British North America Act*. Although there are other francophone realities, Quebec secessionism is not claiming other historically francophone regions like the Acadian nation (situated in New Brunswick, Nova Scotia and Prince Island)<sup>73</sup>. The experiences of 1980 and 1995 have defined the concept of secession in Quebec. The PQ refers to secession as *souveraineté* and this term used to be defined “as a new relationship with Canada”. In 1995, the PQ Government organised a referendum where a project of political independence was offered with an economic *partenariat* to be negotiated with Canada. This position is still

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<sup>72</sup> B.Landry (Personal interview).

<sup>73</sup> A. Maltais (Personal interview)

dominant among party leaders. As I said, the concept of *souveraineté* is attached to full sovereignty, but also to breaking the existent constitutional relationship with Canada. According to Alexandre Cloutier (PQ, MQNA), an economic agreement would be unavoidable with the rest of Canada and especially with their neighbouring provinces Ontario and New Brunswick. *Québec Solidaire* (QS) shares the PQ approach to the meaning of political divorce but used to refer to *independence* instead of *souveraineté*.

## B. Legitimacy

### B.1 Descriptive

Historically, Quebec used to be presented by secessionists as a founding people of Canada, together with the Anglophones and First Nations. This conception of the Quebec nation as a historical continuation of the French-Canadian identity has been dominant within Quebec nationalism, presenting the existence of the nation as a survival exercise since the British Conquest in 1759. Quebec identity is defined around French language and culture: “Le français est au cœur de l’identité, de la créativité et de la culture québécoises. Il marque le caractère particulier du Québec en Amérique du Nord. Son usage comme langue commune constitue un outil indispensable à l’obtention de la convergence souhaitée entre toutes les citoyennes et tous les citoyens du Québec. Il est tout aussi incontournable à la réalisation du désir du peuple québécois d’exister par lui-même dans le respect de la diversité de sa population” (PQ, *Projet de Pays*, 2005: 19).

Nevertheless, Quebec secessionists have worked on an inclusive discourse during the last decade and have built a definition of the Quebec nation based on common values and rights beyond a cultural definition attached to French heritage. Several initiatives have pursued this goal in recent years like the *Bouchard-Taylor Commission* or the *Loi sur l’Identité Québécoise*. This *Loi* was presented in 2007 by the PQ leader Pauline Marois and promoted the creation of a Quebec Constitution based on establishing the rights and duties of Quebec citizens and a certain conception of “Quebec citizenship”. Fostering citizenship was a way of renewing Quebec’s identity according to Alexandre Cloutier (PQ, MQNA) and Amir Khadir (QS, MQNA). This new citizenship was built around certain “*valeur partagée*” like the predominance of French language (instead of its historical weight), rights of minorities (Anglophones, Allophones, and First Nations), equality between men and women and the principle of *laïcité*. As I said in the last section, Quebec is considered by secessionists to be different than the other provinces. The repatriation of the Canadian constitution in 1982 was a breaking point for Quebec’s aspirations and since then, they have considered that Quebec is *de facto* outside Canada’s constitutional scheme. Being a permanent minority without mechanisms of protection against the Ottawa government and not having a constitutional recognition as

a different nation or a *peuple fondateur* is considered a crucial grievance against the Canadian confederation<sup>74</sup>.

## B.2 Normative

The leading values in legitimising Quebec's secession are cultural protection, national recognition, rights over natural resources and freedom as non-domination from the former colonial structure. The protection of French culture in North America is at the top of the reasons for seceding, this culture is identified with language but also with certain values: "Nous avons une façon de vivre, une façon de penser, des valeurs sociaux, des préférences et des habitudes culturelles, et des opinions politiques qui nous sont propres et qui consacrent notre différence. Après une décisions démocratique du peuple de vivre dans un Québec souverain et au lendemain de la souveraineté les Québécois seront mieux outillés pour assurer l'avenir de la nation québécoise et d'occuper sa place dans le monde" (PQ, *Argumentaire pour la souveraineté*, 2008:2). The PQ position considers the current language policy insufficient for assuring its survival as the central language of Quebec, they consider that the *Loi 101* should be applied to federal enterprises and as a criterion for selecting immigration<sup>75</sup>. National recognition of French-Canadians has been an issue throughout the last century in Canada. Following the repatriation of 1982, several attempts have been made in order to include Quebec in the constitutional scheme. The PQ leaders refused the recognition as a "distinct society" in Meech and Charlottetown's attempts to reform the Canadian Constitution.

Secession is also presented instrumentally as a way to renew relationships with internal minorities and First Nations since it is considered that the current situation is not allowing the Quebec government to relate normally with these minorities. According to PQ documents, a sovereign Quebec would establish a recognition of the eleven First Nations and the Inuit following the treaty established in 2002 with the Cree nation called *Paix de Braves*.

References to legality are complex especially after the 1995 referendum. The basis for Quebec's secession can be found and defended, according to the PQ and the QS, in the *Loi sur l'Exercice des droits fondamentaux et des prérogatives du peuple québécois et de l'État du Québec* (Bill 99) passed during Lucien Bouchard's Government. The law was implemented as a response to the Clarity Act in 1999. Article 1 establishes: "The right of the Québec people to self-determination is founded in fact and in law. The

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<sup>74</sup> B.Landry (personal interview).

<sup>75</sup> Agnès Maltais PQ (Personal Interview).

Québec people are the holder of rights that are universally recognised under the principle of equal rights and self-determination of peoples”<sup>76</sup>.

### C. Strategy

The secessionist strategy of the PQ has been based on a gradualist approach since 1995. In the party document *Plan pour un Québec souverain* (2010) the party designed the guidelines for a governance *souverainiste* for each field, a strategy which began in the 2008 elections. The leader Pauline Marois, presented a governance *souverainiste* project leaving aside the necessity of holding a referendum during its first mandate. This gradualist approach included: demanding full competences in legislation, blocking federal spending on Quebec competences, improving the situation of the French language, intensifying international relationships through delegations or revising schools national history curriculum (*Le Plan Marois*, 2008)<sup>77</sup>. However, in the 2005 Declaration of Principles we still find an approach similar to the path followed in 1995 that means holding a referendum and negotiating the conditions of the new status with the Canadian government and international community. QS’s approach is based on participatory democratic principles and inspired by Latin American leftist governments. Their proposal for a secessionist process is based on the idea of constituent power and envisages the creation of a Constituent Assembly with the participation of all the regions of Quebec, then: “*en fonction des résultats de cette démarche, qui devront être connus de la population et dont l’assemblée constituante aura l’obligation de tenir compte, proposer aux Québécois et québécoises les changements désirés aux institutions politiques et les valeurs qui fondent le «vivre ensemble» québécois ce qui doit apparaître dans une constitution de même que l’avenir constitutionnel du Québec. Les propositions de l’assemblée constituante seront soumises à la population québécoise par voie de référendum. Celui-ci comprendra deux questions distinctes : l’une portant sur l’avenir politique et constitutionnel du Québec, l’autre, sur une constitution québécoise*” (QS, 2008). According to its leader, Amir Khadir, Québec currently has a democratic deficit and secession would be an opportunity for changing this situation – in the same process, this approach would imbricate secession with a democratic revolutionary process<sup>78</sup>.

### 3.3.2. Scotland

#### *Historical context*

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<sup>76</sup> Supported by B. Landry (Personal Interview).

<sup>77</sup> A. Cloutier MQAN (Personal interview) refers to this strategy.

<sup>78</sup> Amir Khadir, MQP (Personal interview).

Scotland has a much more recent history of debating secession although this possibility has long been considered by several movements such as the longstanding SNP<sup>79</sup>. In 1998, the *Scotland Act* devolved the parliament to the Scots but this agreement did not contain any provision for a secessionist option. Nonetheless, the Good Friday Agreement (Northern Ireland Act, 1998) establishes the right to hold a referendum on secession (which could be seen as an irredentist option) not for the Northern Ireland Assembly but for the Secretary of State for Northern Ireland. In the past, the UK has promoted a right to secession linked to democratic endorsement through referenda for post-colonial cases such as Hong Kong or Gibraltar. Recent political events suggest that the right to secede for Scotland is not denied by the Westminster Government but is open to political discussion and negotiation. As Keating has written: “even the most unionist of politicians accept the legitimacy of Scottish independence, on condition only that is the will of Scottish people” (Keating, 2009). The current Scottish Government led by Alex Salmond (SNP) is endorsing a secessionist plan that envisages a referendum on secession in 2014; its absolute majority in the Parliament has allowed them to pass a consultation paper (*Your Scotland, Your Referendum*) which contains a secessionist roadmap. Similarly, the UK Government published some weeks before, its own paper (*Scotland’s Constitutional Future*) on the issue dictating some legal and political remarks on procedural aspects of the referendum. Negotiations are taking place during these months between Edinburgh and London governments on the date, question, competences, franchise, and supervision and campaigning<sup>80</sup>.

### *Political parties*

Scotland has currently two parties supporting secession in its Parliament: the Scottish National Party (SNP) and the Scottish Green Party (SGP). The SNP, born in 1934, has been the core of the Scottish nationalist movement during recent decades despite its electoral success only coming very recently. Until the mid 1970s, the party was ideologically undefined and had a poor electoral performance. However the rise of the Group 79 during the 70s (competing with the old guard), the failure of the 1979 referendum on devolution and Thatcher’s economic policies with their deep impact on the Scottish economy and society changed the SNP (DeWinter, 1996: 113). The 80s shaped the party in two ways: firstly, a consensus on a centre-left orientation was achieved and popularised throughout the campaign against the poll tax; secondly, “Independence in Europe” became their new position, instead of the old guard’s ‘sovereign national state’, as a way to overcome the English majority representing

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<sup>79</sup> See: Keating (1996, 2001a, 2001b, 2009, 2013), Guibernau (1999), Tierney (2004).

<sup>80</sup> The Scottish government (Alex Salmond) reached an agreement with the Westminster government (David Cameron) in October 2012 for holding a referendum on independence in September 2014 (See: *The Guardian*, 15/10/2012).

Scotland in Brussels. Nonetheless, the SNP position was close to the one of France, supporting intergovernmental agreements but not supranational Treaties (Keating, 2001a: 225). In 1997, the SNP supported the devolution referendum as “a step towards real Independence” (Lynch, 2002: 223) in a successful *Yes, Yes campaign*, which was a victory for gradualists, like Alex Salmond, over fundamentalists within the party. Devolution changed the political status of the SNP and the entire nationalist movement (Lynch, 2002: 239). The SNP obtained a new political arena that constrained nationalism (that was one of the Labour objectives), but at the same time, was an incredible political platform. From being an irrelevant force in Westminster, they became the second force in their own Parliament. In 2007, a simple majority led the SNP to its first term in office backed by the SGP and the independent deputy Margo McDonald. In 2011, the party obtained an absolute majority achieving a historic result of 69 deputies and 45.4% of the vote and it has been in office since then<sup>81</sup>.

The Scottish Green Party has been represented in the Holyrood Parliament since the very first legislature. Until 1990, the party was part of the UK Greens, but while taking part in the Constitutional Convention, it reached an agreement with the rest of its UK colleagues in order to constitute a separate Scottish brand, federated with the rest of the UK. The SGP supports the celebration of a referendum on secession and “an independent Scotland with a written Constitution” (*Manifesto* 2011, 24), however this is not part of their main goals. In their basic principles, they have some elements common to other European Green parties and others which are particular to their Scottish identity: participatory democracy, accountability, subsidiary and equality of opportunity. In 2007, its two deputies supported the first Alex Salmond government who, in return, passed some bills concerning climate change. Currently it has two MSP’s and supports a multi-option referendum.

#### A. *Meaning*

Scottish independence is not territorially disputed. The Anglo-Scottish border has remained stable since the Treaty of York in 1237 and there is no argument about the territory claimed by secessionist parties. According to the SNP, secession would entail full sovereignty within the European Union – however the creation of a new Scottish State would not mean breaking every relationship with the UK. The political union would be replaced by a social union, a new relationship with the rest of the UK, keeping the Crown and probably the currency (Pound). In the last consultation paper published by Alex Salmond’s Government, the SNP detailed its secessionist project, assuming the right of devolved institutions to hold a referendum although this position has been

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<sup>81</sup> The division between fundamentalists and gradualists is no longer a crucial issue in party organisation (I. McKee, Personal Interview).

argued for by several personalities including the Secretary of State for Scotland<sup>82</sup>. According to the UK Government the referendum should be organised from London. The secessionist political project of the SNP includes as key aspects, a written constitution, fostering public health and education, removing nuclear weapons and promoting green energy (*SNP Manifesto*, 2011).

Independence is not the central policy of Scottish Green Party but they have a certain vision of how an independent Scotland should be. In an independent Scotland, sovereignty should be transferred to the local level and governed in a decentralised way (*SGP Manifesto*, 2011). This idea is central to the concept of full political powers for Scotland that would back the SGP, since sovereignty is linked to the principle of subsidiary and local self-government rather than a national definition of the political subject.

## *B. Legitimacy*

### *B.1 Descriptive*

Scottish secessionism is not fully inspired by a nationalist self-determinist approach but by a political community vindication. National references are not a central element of the discourse at least in terms of culture, language or religion. The fact that the majority of Scots speaks English and has a sort of British culture is not discussed in the political arena. Ian McKee expresses this idea “Culture is not a matter for the State that’s the thing...I have been to Scottish meal in Singapore and Argentina, Uruguay, Caledonian societies they keep the culture more alive than we do here in Scotland”<sup>83</sup>. In fact, it is hard to find any cultural vindication in SNP or SGP party manifestos, at least linked to secession legitimacy and, therefore, cultural survival is not an issue for justifying independence.

The SNP presents Scotland as a politically historical subject which is no longer benefiting from the Treaty of Union in 1707, which established the union of Parliaments<sup>84</sup>. After 10 years of devolution, Scotland has developed its self-government thanks to an institutional continuity dating back to 1707. Alex Salmond summarised its position in the following terms: “Scotland is not oppressed and we have no need to be liberated. Independence matters because we do not have the powers to reach our potential. We are limited in what we can do to create jobs, grow the economy and help the vulnerable. We shouldn’t have a constitution which constrains us, but one which frees us to build a better society. Our politics should be judged on the health of our people, the welfare of young and old and the strength of our economy”<sup>85</sup>. For the SNP,

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<sup>82</sup> See:3 *Scotland’s constitutional future*.

<sup>83</sup> Ian McKee, personal interview.

<sup>84</sup> Linda Fabiani (Personal Interview)

<sup>85</sup> *Your Scotland, Your Referendum* (foreword)

secession is seen as a natural evolution of its political community towards building a better Scotland but not as liberation from oppression. Nonetheless the Union is seen as unequal by Scottish secessionists; Gil Paterson (SNP, MSP) considers that the UK is not accommodating Scotland since there are no real shared powers in London by the nations within the UK (Wales, Scotland, England and Northern Ireland). In terms of identity, British identity is seen as a form of English nationalism and not compatible with Scottish identity; moreover, Britishness is seen as an obstacle for developing the old nations forming the UK: “I think, I actually think, that is very sadly...for England British identity has become English identity and the terms are interchangeable and that’s a great shame(...)Because English culture is a fascinating culture an ancient culture and I think is a shame the things become(...) Scotland has very much kept his own identity Wales has very much kept its own identity, and I think is a shame(...)”<sup>86</sup>.

Scottish identity is related by secessionists to the idea of egalitarianism and public-policy preferences, which are considered to be different than the ones promoted by London politics. In descriptive terms, the legitimacy of secession in the SNP discourse seems to be rooted in three aspects, namely: constitutional identity, political agenda and some instrumental advantages related to the economy. The political agenda, it is argued, is different from the rest of the UK since Scotland is considered more leftist than the rest: welfare state, public service, nuclear weapons or foreign policy is not the same as in London. The idea that small nations perform better in a global economy is a recurrent argument in SNP manifestos and used to refer to Norway and Ireland as models of full-sovereign states. The turn from a social-democratic discourse to a much more business-oriented position of the SNP has strengthened this idea (Lynch, 2009). Concerning the EU an important argument for being in the European Union is related to majorities and minorities. Ian McKee argues that in the European Union every country is a minority and “if look the small countries in Europe who have much more influence because they are independent countries small Luxemburg has 15 MEP we have 7...and is 5 million people...and countries like Ireland...who hears Scotland?”<sup>87</sup>.

## *B.2 Normative*

As I said above, Scottish secessionists appeal to the political values of Scottish society as something to be preserved through statehood. Linda Fabiani (SNP, MSP) wants Scots to take their own decisions in order to fulfil their political agenda such as on “war, human rights, international obligations and leftist policies”. Patrick Harvie (Green MSP) goes further and states “I personally would vote yes in a referendum on independence, I

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<sup>86</sup> Linda Fabiani (Personal Interview).

<sup>87</sup> Ian McKee, (Personal Interview).



don't describe myself as a nationalist because my politics don't rely on any national identity and that's not my reason for supporting independence"<sup>88</sup>.

Instrumentalism is here, an important part of the legitimisation of secession. I have mentioned the economic performance of small nations as an important argument but there are other aspects to be considered like pursuing the values mentioned above. The SGP relies on this instrumental conception of secession when it defines its political project for Scotland, keeping politics closer to the citizen and establishing Green local policies is their main goal to be achieved through independence<sup>89</sup>.

Legality is not a fundamental aspect of secessionist legitimacy in Scotland, the Scotland Act (1998) provides, according to the SNP, enough powers to hold a referendum on secession and if not could be provided through section 30 of the Scotland Act. A hypothetical secessionist process is left in the hands of political negotiations between the Governments of Edinburgh and London but the political mandate for holding the referendum is understood as the result of an electoral majority<sup>90</sup>.

### *C. Strategy*

The approach to secession as a stepping-stone is the dominant position among Scottish secessionist parties. The logic is clear "(...) the more powers we have the less powers are held by London"<sup>91</sup>. The gradualist position took over within the SNP after devolution and then, former fundamentalists pushed for a mandate on secession instead of a referendum approach. However, the SNP in its first term governed in a minority Cabinet (2007-2011) and preferred to keep the Referendum Bill for a second term to show the Scottish electorate that they were ready for governing Scotland. A much more business-like approach was taken, as I said earlier, and a number of studies were devoted to the issue of secession including a White Paper and the National Consultation<sup>92</sup>. Following the gradualist approach, the first referendum bill and the current plans of Alex Salmond's government included a multi-option referendum with an intermediate position falling short of secession called 'Devo-Max'. This position has been criticised by former fundamentalists but is backed by the SNP deputies. The SGP accuses the SNP of not going far enough in exploring the current powers<sup>93</sup>. From their point of view

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<sup>88</sup> Patrick Harvie, SGP (Personal Interview)

<sup>89</sup> Patrick Harvie, SGP (Personal Interview).

<sup>90</sup> During the negotiations for holding a referendum legal aspects were an important issue in the meetings between Scottish and British Government. Finally the competence for holding a referendum was transferred to Scottish government through the *Edinburgh Agreement* (see: <http://www.scotreferendum.com>).

<sup>91</sup> Advisor 1 (Personal Interview)

<sup>92</sup> See: <http://www.scotreferendum.com>

<sup>93</sup> Patrick Harvie and (Personal Interview)

self-government could be much more powerful if current powers were decentralised at local level. The Greens have strongly pushed for a multi-option referendum and endorse the idea of receiving a mandate from a referendum before negotiating the terms of secession.

### **3.3.3. Catalonia**

#### *Historical Context*

Catalonia neither has a recognised right to secede nor the right to hold a referendum on this issue on its own<sup>94</sup>. Spanish legality rules out any hypothetical secession of an Autonomous Community or any region of the national territory. Firstly at the constitutional level, Art.2 proclaims the indissolubility of the “Spanish nation” and Art.8 gives to the Armed Forces the duty to guarantee the “territorial integrity of the State”. Secondly, the Spanish Criminal Code<sup>95</sup> categorises “secession” (declaring the independence of part of the national territory) at the same level of “rebellion offence”. Thirdly, in fact the Constitutional Court has already ruled out the possibility of secession or a referendum on this issue for the Basque case<sup>96</sup> referring, among other laws, to Art.1.2 of the Constitution which establishes that “sovereignty lies in the Spanish people”. At the turn of twenty-first century, support for secession and pro-secessionist movements within Catalonia have increased (Guinjoan;Muñoz, 2012). The reform of the Statute of Autonomy, which was negotiated in Madrid and approved in a referendum in 2006, with less than 50% turnout,(and subsequently amended by the Constitutional Court) fuelled pro-secessionist initiatives (Requejo;Sanjaume, 2013). Between 2009 and 2011, hundreds of unofficial local referendums on independence were organised by civil society and mobilised more than 800.000 citizens and popularised the independence idea. The current moderate nationalist government of Catalonia, led by Artur Mas (CiU), is not promoting any secessionist plan. Secessionist parties constitute a minority in the Parliament (14 out of 135 deputies) and public support for secession is between 30% and 45% depending on the question wording (Guinjoan&Muñoz, 2012).

#### *Political Parties*

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<sup>94</sup> A referendum on secession could be allowed by the Central Government but none of the main Spanish Political parties (PP and PSOE) support this policy or recognise Catalonia as a nation. Territorial integrity and national unity are specifically protected by the Spanish 1978 Constitution.

<sup>95</sup> Art. 478.

<sup>96</sup> STC 103/2008.

The Autonomous Community of Catalonia has two officially secessionist groups represented in its Parliament<sup>97</sup>: Esquerra Republicana de Catalunya (ERC) and Solidaritat Catalana per la Independència (SCI). ERC is a historical political party, deeply rooted in the Catalan nationalist movement and the republican leftist tradition. Founded in 1931, it was the hegemonic political force during the Republican period and emerged from a coalition of radical nationalists and leftist parties (Marcet&Argelaguuet, 2006). Although their Republican political leaders, Companys and Macià, led some secessionist episodes, during this period, ERC was, in fact a federalist/confederalist party, supporting the idea of a “federation of Iberic people’s”. In 1978, it rejected the Spanish Constitution and suffered a clear ideological disorientation, maintaining its leftist positions, while at the same time, supporting the right-wing Government of CDC and UDC in the Generalitat. At the beginning of the 90s, ERC renewed its ideological declaration and became a secessionist party supporting the “independence of the Catalan nation within a United Europe as an inalienable right” to be achieved through peaceful and democratic means<sup>98</sup>. This renovation was not only ideological but also stemmed from party leaders and supporters. Former members – those who had experienced the Civil War – were displaced by younger activists coming from radical movements and Marxist political organisations, such as Catalunya Lliure, MDT<sup>99</sup> or TL<sup>100</sup>. ERC was in office from 2003 to 2006, and from 2006 to 2010, as a minority partner in a coalition with the Catalan Socialists (PSC) and the post-communist Greens (ICV).

SCI is a coalition of five organisations and its creation is very recent in comparison to ERC. The party was founded in 2010, following the reform of the Statute of Autonomy. This political organisation is defined as a political movement rather than as political party, even though their organisation is similar to the latter. It was created as a reaction to a specific political context which originated following the ruling of the Constitutional Court on the new Statute of Autonomy that considered some basic articles of the legal text unconstitutional concerning: national recognition, fiscal and political powers and international representation<sup>101</sup>. The nationalist movement, supported by civil society and ERC, expressed its disagreement over this ruling by organising local unofficial referendums on secession and generating massive demonstrations. In this context, former members of ERC, CiU and civil society<sup>102</sup> founded SCI and finally stood for the Catalan elections in November 2010. SCI was presented as a break with the historical

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<sup>97</sup> In this section, I refer to the legislature of 2010-2012. After the 2012 electionscampaign which was centred on referendum issues, the historical regionalist/nationalist party CiU changed their party manifesto defending the “right to decide” and proposing a referendum on secession.

<sup>98</sup> See: *Declaració Ideològica*, 1993

<sup>99</sup> Moviment de Defensa de la Terra, was a unitarian front of extra-parliamentary Marxist and secessionist activists. Nowadays, it is a political party not represented in the parliament and supports the new party Candidatura d’Unitat Popular (CUP).

<sup>100</sup> Terra Lliure (TL) was a secessionist and Marxist armed group created in 1978 and dissolved in 1995 which campaigned for secession through violent actions in Catalonia, Valencia and Mallorca.

<sup>101</sup> See: Requejo&Sanjaume, 2013.

<sup>102</sup> Including the highly popular former president of Barcelona Football Club, Joan Laporta.

nationalist movement including ERC, because they had been negotiating the Statute of Autonomy in Madrid and rejected the acceptance of a popular request for a referendum on independence in the Catalan Parliament.

#### A. Meaning

The meaning of secession in Catalonia has four features to be considered in my categories: territoriality, project, federalism and supranational alliances. ERC and SCI coincide in promoting a sovereign state for the Catalan nation. They define the “nation” related to the would-be state in cultural terms, referring to the Catalan Countries (Països Catalans). Nonetheless, their political representation is circumscribed to the parliament of the Autonomous Community of Catalonia. This distinction is crucial because their short-term political project does not encompass the whole “cultural nation”. This fact implies a sort of paradox: ERC and SCI claim the secession of the Catalan nation but they promote the independence of the Autonomous Community – this poses two challenges. Firstly, it poses a serious reformulation of the project since it can be seen as a ‘piece of the nation’ or a basic political community but not the whole ‘cultural nation’. Secondly, the project for the Autonomous Community places the question firmly within the Spanish logic and makes the parliament in Barcelona the focus of secessionist activity – this dynamic circumscribes the secessionist conflict in the parameters of the Spanish regional state. Anna Simó (ERC, MCP) expresses this tension: “We are committed to the Principat (Autonomous Community) for tactical reasons (...) but also because in Catalonia there is a Parliament, everybody has to give up something and you cannot defend something that is not shared by anybody in the Parliament. This doesn’t mean that you renounce to your operational framework”<sup>103</sup>. References to history do not clarify the issue since the Crown of Catalonia and Aragon, commonplace of Catalan nationalism, is commemorated as an example of shared rule. This idea introduces a complex definition of sovereignty for the secessionist political project explained by Oriol Junqueras (ERC): “Historically we were a state of states, statehood in middle ages and modern times did not belong to a unique sovereignty but to a shared composed state where sovereignty belonged nor to the Kingdom of Aragon neither to the County of Barcelona (...) We are conscientious of this complexity and we should make a discourse complex enough to encompass all this”<sup>104</sup>.

Concerning the political project, there are competing views. ERC has a historical background and a left-wing orientation (see its description) that shape its secessionist political project: an independent republic organised along social-democratic and republican lines. In this scheme, the idea of political independence is linked with social change and, in principle, the priority of the party is to achieve secession and social change at the same time. This approach links two traditions within the party. On the one

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<sup>103</sup> Anna Simó, ERC (Personal Interview)

<sup>104</sup> Oriol Junqueras, ERC (Personal Interview)

hand, as I said previously, their liberal and leftist orientation which have been at the official core of the party ideology since the Second Spanish Republic. On the other hand, the massive influence of older members of the Marxist political movement which influenced the independentist doctrine and introduced an approach linked to the anti-colonialist movement. SCI is not claiming any specific organisation for a post-secession scenario. In this sense, their position is not like ERC's project and has no specific characteristics. SCI is focused on the transition to the post-secession scenario following a kind of "procedural approach" to their secessionist objective. They stand for independence for being as "any other state" while ERC stand for being as any other "people" with its own values.

ERC envisages a kind of post-sovereign scenario for a would-be independent Republic of Catalonia. Secession, according to their ideological declaration, should be achieved in the context of a united Europe, a Europe of the peoples. The primary framework of action should be the Mediterranean area, considered as its "natural area of action"<sup>105</sup>, but secession would mean full access to the European area according to its leaders. SCI is also promoting independence in Europe but has no provision of any change in international relationships.

## B. Legitimacy

### B.1 Descriptive

Catalonia is often described by Catalan secessionists in two complementary ways: first, as a nation with its own specific character built around a common language and history; second, as an oppressed people in a liberal democratic context. The fact of being a permanent minority within the Spanish State with no institutional mechanisms for correcting this situation, and therefore having an institutional recognition at the same level of any other Autonomous Community, is considered oppressive by ERC and SCI. This double ontology has led Catalan secessionism to a historical defence of the right of self-determination understood as a "national" right. ERC has an explicit reference in its ideological declaration to this right as a "national right"<sup>106</sup>. In this sense, the fact of being a nation is considered as attached to this right. The nation is usually defined in liberal-nationalist terms as it is done by ERC: "The nation is the community of persons tied by a territory, history, traditions, culture, language, economy, and with a conscientiousness of these ties and the will of asserting and respecting them"<sup>107</sup>. The historical defeat in the War of Succession, in 1714, is seen by secessionists as the moment of the loss of political independence. Catalonia is portrayed as a minority nation caught in a centralist Spanish State from this point. Recent developments in the

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<sup>105</sup> See: *Declaració Ideològica*, 2005.

<sup>106</sup> See: *Declaració Ideològica* (2005: 13).

<sup>107</sup> See: *Declaració Ideològica* (2005: 12).

secessionist discourse have added new perspectives beyond this historical and national portrait. Some voices, especially from within civil society, have stressed the idea of the right to decide as a non-nationalist version of the classic self-determination right. The former leader of ERC Josep Lluís Carod-Rovira expressed his personal view on that in 2009, labelling the mainstream nationalist discourse as “essentialist” and expressed his desire to promote a “social welfare secessionism” rather than defending the nation as a cultural minority<sup>108</sup>. Along the same lines but with a different approach, the SCI deputy Alfons López-Tena claims that the legitimacy of independence is not linked to any “national” definition – according to López-Tena, citizenship of a political community is the relevant definition of the political subject “as it is in any other sovereign state”<sup>109</sup>. ERC is now defending what they call a “new catalanism” as is expressed in the last strategic document of the twenty-fifth congress: “(...) we have started the transition from a Catalanism based on asserting its ethnocultural characteristics, but compatible with the Spanish state, towards a Catalanism with a civic base, without resigning to its national features, formulating its vindications in terms of “what we do?” instead of “who are we?””<sup>110</sup>. Gnoseological legitimacy arguments are related to recognition, culture, economy and institutional organisation usually formulated in the form of a list of grievances to central government. Both ERC and SCI concur in describing the Spanish State as a centralist structure that is not allowing Catalonia to have its own self-government, and is constantly threatened by central government if the *status quo* is maintained. The ruling of the Constitutional Court on the Statute of Autonomy, in 2010, is presented as proof of the impossibility of obtaining more self-government in the scheme of the Spanish State of Autonomies. A basic stance of this gnoseological legitimacy is the lack of recognition of Catalonia as a national reality at the same level of the Spanish nation. ERC promoted the reform of the Statute of Autonomy in 2005, in order to achieve more powers in a “federal and plurinational Spain”<sup>111</sup> but after harsh negotiations in Madrid and a pact between Spanish socialists (PSOE and Catalan regionalists (CiU) withdrew its support from the project and was expelled from the coalition government in Catalonia. According to their leader Oriol Junqueras, this initiative, endorsed together with unionist and federalist parties PSC and ICV, was an attempt to achieve a certain degree of recognition within Spain. He affirms “Catalonia is not recognised because if it was recognised it should have full-competences in many fields (...) these decisions are now interfered with by central Government”<sup>112</sup>. Among these fields, language and economy seem to be at the core of the list of grievances. Language is considered a central piece of Catalan identity which is scorned by the State institutions that do not recognise the language at State level and used to threaten the language policies of Catalan government. The economy related to fiscal policy is also considered a major grievance by Catalan secessionists; the fact that Catalonia provides

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<sup>108</sup> See: *Adéu al Nacionalisme, Visca la nació*, Speech (4/11/2009).

<sup>109</sup> Alfons López-Tena, SCI (Personal interview).

<sup>110</sup> *Document Estratègia Política* (2011: 6).

<sup>111</sup> *Manifest per la Independència* (2006)

<sup>112</sup> Oriol Junqueras (Personal Interview)

more funds to the rest of Spain than it takes in (around 8%) is used as a political demand against central Government policies. This kind of grievance has been exploited by both ERC and SCI but in different ways. Firstly, in a context of economic crisis, in recent years, both parties have blamed Madrid for being responsible for plundering Catalonia's economic resources and have demanded full-fiscal powers. This discourse has been linked to wealth as an asset belonging to the Catalans and to be protected from external interferences; from this point of view, the territorial redistribution designed by Central Government is seen as illegitimate since Catalonia does not have full-fiscal powers. SCI has used this idea to popularise the slogan "Spain steals from us"<sup>113</sup> referring to the welfare "lost" in this territorial redistribution. This idea has been linked to wealth redistribution within Catalonia both by ERC and SCI. Practical experience examples and analogies are a commonplace for ERC and SCI. While ERC used to refer to stateless nations in Europe such as the ones forming the peoples of Europe Alliance with a certain degree of self-government and recognised as similar to Catalonia<sup>114</sup>; SCI is much more keen to use international examples of statehood which are not necessary related to the European Union context like Kosovo or Montenegro.

## B.2 Normative

As I have said previously, the right of self-determination used to be at the core of the secessionist discourse but that has changed to include new elements to the nationalist approach discourse. The idea of the right-to-decide has emphasised democratic values rather than national values as the basic demand of the secessionist discourse, although taking a national approach for defining the political subject. This change is linked to the notion of welfare and self-rule in the grievances listed by ERC and SCI. Democratic oppression is another aspect to be considered; freedom is not expressed in terms of interference in self-government competences but also in terms of oppression for changing the constitutional structure of the Spanish State as a permanent minority within it. Justice is also a commonplace of secessionists, understood both in cultural and economic terms. In addition to the traditional ethnocultural justice (namely cultural rights) there is a new conception of this value related to the necessity of democratic and collective self-rule.

Instrumental values are also related to the legitimisation of secessionist demands. As I said earlier, welfare is at the core of this kind of argument since secession is seen as the solution to the constant loss of welfare in the Spanish cooperation scheme. This idea is always linked to efficiency. An example of this idea is the strategic document developed by the organisation linked to SCI *Cercle Català de Negocis*<sup>115</sup> devoted to economic policies of a hypothetical "Catalan State". In this document, the idea of focusing on

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<sup>113</sup> The slogan "Espanya ens roba" has been widely used during political campaigns by this party.

<sup>114</sup> Corsica, Brittany, Scotland, Wales, etc.

<sup>115</sup> "Catalan Business Center". A business oriented pro-secessionist association.

logistics, based on having full control of the seaport and airport is presented as an advantage of seceding<sup>116</sup>.

References to “national values” are also part of this discourse, although they have emphasised issues like welfare or efficiency. Communitarianism contrasts with a discourse of modernisation and welfare. We can find a portrait of national characteristics following the classic nationalist approach, with for example, SCI arguing that an advantage of secession would be “(6.) Recovering our dignity and fostering our values: only if we are free we can recover our dignity. We will not have to withstand this contempt and insults from Spain anymore and we will foster our own values like: work, effort, initiative, entrepreneurship and innovation”<sup>117</sup>. ERC presents a similar portrait in its recent strategic document “We are not a rich country in terms of natural resources, but we are very rich (...) in values like effort, saving and entrepreneurship, these values have raised the country during difficult moments along its history”<sup>118</sup>.

Domestic legislation is not used as a source for legitimising any secessionist demand since the Constitution is not offering any possibility of self-determination as I said earlier. International legislation used to be the commonplace of Catalan secessionists. Firstly, in comparative politics, it was used to stress the behaviour of other “federal states” like Canada or the experience of Eastern Bloc countries (USSR) in relation to their national minorities in order to denounce their oppressive situation. Secondly, international treaties signed by the Spanish authorities recognising the rights of people to self-determination are used as a legitimisation tool by ERC and SCI – for instance, Article 1 (part 2) of the UN Charter or Article 1 of the International Covenant on Civil and Political Rights (ICCPR). Finally, the recent ruling of the International Court of Justice (ICJ) on Kosovo is presented as proof that, in public international law, the creation of new states is not forbidden by any specific law. The ICJ ruling on Kosovo allows SCI to promote a “unilateral declaration of independence” adjusted to international law according to its manifesto (*Raons per la Independència*, SCI).

### C. Strategy

ERC and SCI have opposed strategies for achieving their main objective. In 2003, ERC gave priority to being in office in order to institutionalise and promote their cause and formed a coalition government in Catalonia with Catalan socialists and Green post-communists (PSC and ICV). The strategy, which included the reform of the Statute of Autonomy, pursued achieving a social majority in favour of secession in the scheme of a gradualist approach to secession. Anna Simó, who was a member of the coalition

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<sup>116</sup> See: *Avantatges de tenir Estat propi*, CCN.

<sup>117</sup> See: *Raons per la Independència*, SCI

<sup>118</sup> *Document Estratègia Política* (2011).



government, defines their strategy in the following terms “The strategy is clear, working for normalizing the secessionists, we the secessionists can manage public affairs as any other party, we are not a marginal group but we have the capacity of managing, we have a model of a country (...) This is our first strategy”<sup>119</sup>. During their second mandate, ERC promoted the Referendum Law in order to allow the Catalan Government to hold a referendum on “the future of Catalonia”, although in their last manifesto (2010), defended a “declaration of independence” if they had a majority of deputies. ERC is committed to holding a referendum, although the party has no specific road map at the moment and has always stood for Spanish elections proposing constitutional reforms.

SCI has a different approach since it is a party created ad hoc for declaring Catalan secession and only stands for Catalan elections (and local). In 2010, it presented a party manifesto declaring: “(we) are not presenting a political program for managing self-government but for organizing public power for the constitution of our own State. In case SCI does not achieve alone or in a coalition the necessary majority for unilaterally declaring independence, our project will be a constant denouncement of the lack of resources and capacity of decisions of the current self-government arrangement”<sup>120</sup>. In their road map, they envisage direct negotiation with the international community instead of negotiating with the Spanish Government; this negotiation would be followed by a declaration of independence or a referendum on this issue<sup>121</sup>.

### 3.4. Analysis of secessionist legitimizing

In my analysis on how secession is legitimised by political parties promoting independence in Quebec, Scotland and Catalonia, I find some theoretical tensions that can be considered using the same analytical framework: *Meaning, Legitimacy and Strategy*. Theories of secession used to present categories and subcategories in a pure and organised way<sup>122</sup> following a coherent set of propositions. However reality is much more fuzzy and chaotic than theories. In this section, I deal with the most important points of my analysis, organised by the main dimensions I have used. I relate the findings to theories of secession in some cases.

#### A. Meaning: A full Nation-State approach? (What)

With more or less intensity, in the cases analysed above, there is a secessionist project that follows the common definition of “separation plus state formation”. As I said from

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<sup>119</sup> Anna Simó ERC MCP, (Personal Interview)

<sup>120</sup> *Manifest eleccions* (2010: 29)

<sup>121</sup> *Ponència Política* (2012)

<sup>122</sup> I have outlined a typology of theories of secession in a previous paper.

the very beginning, these are clear secessionist cases, not related to annexation or irredentism although some of them (Catalonia) could develop irredentist claims in themselves due to the territorial definition of the nation. However, despite this clarity concerning their project, none of them include in their objectives a radical breakaway approach in terms of strategy nor a fully-fledged Nation-State project à la nineteenth century.

The secessionist parties analysed in each of the three cases promote types of shared sovereignty, political and economic relationships with other states and their parent state, and the maintenance of social unions with their current fellow-citizens. Some examples of these policies are economic *partenariats* (Quebec), social unions and institutional relationships (currency, army, monarchy) (Scotland) or supranational agreements like the EU considering even confederal arrangements (Catalonia). Secessionists in these cases seem to be reluctant to present a political project based on statehood, at least understood as classic Nation-States: they rarely talk about creating new borders or immigration policies regarding their fellow parent-state citizens, creating their own army or full external sovereignty<sup>123</sup>. As I said, their political project is used to present a kind of Lockean approach to sovereignty<sup>124</sup> referring to building relationships with the parent state and the international community.

On the other hand, the meaning of secession is characterised and related to concrete political projects in different ways. Some of these parties are not compromised with a certain type of social regime (SCI) while others link secession to an institutional change, both in terms of welfare policies and participatory democracy (QS), the institutionalisation of republican values (ERC) or the promotion of Green policies (SGP). In between, there is a broad conception of secession as an opportunity for changing the central policies towards leftist or Green policies in the new political community.

The dominant discourse on sovereignty among secessionists seems to be related to what Pogge (1994) described as a cosmopolitan sovereignty although they aspire to have their own state. This idea is developed by other authors like Simmons (2001) and promotes an account of sovereignty based on persons rather than territory<sup>125</sup> (Scotland), internal diversity (Catalonia) or new deals with minorities and indigenous peoples (Quebec). Moreover, the approach of the parties to secession seems to be less radical than the definition that used to be considered by general theories of secession. These theories

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<sup>123</sup> Of course this position could be related to strategic positions in order to minimise the “costs of transition” to a fully-fledged Nation-State, but it does not seem to be the case. These parties have been in office or in opposition and their secessionist project has remained as a nuanced form of sovereignty in comparison to the existing Nation-States.

<sup>124</sup> Rather than a Hobbesian view.

<sup>125</sup> This authors criticise Rawls and Buchanan for being too conservative in terms of territoriality and territorial integrity.

tend to assume that the project envisaged by these political parties is unilateralist and inspired by a traditional conception of the Nation-State. This finding is consistent with other points of view and theorists of secession should take note of that. Beyond Pogge or Simmons' approaches to sovereignty, these findings highlight what Keating (2001a) considers as a challenge to the old model of the Nation-State<sup>126</sup>. This is highly paradoxical: on the one hand, secessionists envisage protection for their own culture, economy and institutions and used to refer to internal and external sovereignty for building a different society. On the other hand, it looks like there is a reluctance to reproduce the same Nation-State scheme of their parent state<sup>127</sup> stressing the importance of diversity, supranational institutions and multiple identities. This secessionism seems to be aware of what Charles Taylor calls the "constitutive tensions" of diverse democracies<sup>128</sup> rather than defenders of the Wilsonian dream of "one nation one state" (Taylor, 2001: xiv-xv).

## B. Legitimacy: *Why? Beyond liberal nationalism*

There is a dominance of the so-called liberal nationalism among secessionist parties in legitimising secession but expressed in different ways and through competing arguments. None of them deny the plurality of their societies and all of them attribute some specific common characteristics that legitimise the existence of a different political subject. However, beyond this cultural approach there are other important arguments that have to be taken into account when analysing their political discourse, such as political identity, efficiency or democratic institutions and practices.

### *Descriptive: Political Subject*

The question of the political subject has been largely debated within the parties and secessionist movements studied above. Cultural differences related to history, language or identities are used as the main source of legitimacy on the lines of what has been theorised as liberal nationalism<sup>129</sup> and the liberal defence of national self-determination. This view is based on the commonplaces of liberal-nationalism preservation of cultural diversity, the value of cultural identity and history. Following this position, the portrait of the political subject is related to a cultural definition. However, there are differing

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<sup>126</sup> According to Keating this old Nation-State model is not over but globalization and economic interconnections related to supranational structures challenge it in several ways (2001a: 134-135).

<sup>127</sup> Bernard Landry highlights the evolution of Quebec secessionism and the external conditions from the 1980 and 1995 referenda to the present, the most important change he points out is globalization and the fact that power is no longer in the hands of Ottawa (or Quebec City) but in international markets and global economy. (personal interview).

<sup>128</sup> In fact, their legitimacy is based on the three elements mentioned by Charles Taylor: national identity (and diversity), republican identity and common goods provision (Taylor, 2001: xv).

<sup>129</sup> See: Tamir (1993), Margalit&Raz (1995), Miller (1995) or Kymlicka (1995).

views on that which can be observed. Firstly, a nation's culture changes but the value that secessionists defend is related to the political attachment of citizens to national identity, rather than to any cultural essence. They seem to understand that "the identity of the nation cannot be the puppet of its culture" (Moore, 1999: 46). Whereas in Quebec and Catalonia, the Catalan and French languages are an important element of this cultural identity besides history and institutions, in Scotland there is a customs and constitutional identity rather than a language-based one. Secondly, an economic or functional approach overlaps this "cultural" approach presenting the secessionist subject as an economically viable political unit to be governed in a different manner<sup>130</sup> and capable of developing the same functions of the parent state in a more efficient way. This view is usually supported by studies of "economic viability" and modernisation projects. Finally, a third approach emphasises the existence of a political unit with different political values, agendas and democratic institutions. In Quebec or Scotland it is commonplace to stress the social orientation of their political culture and juxtapose it with the conservative majorities in the rest of the parent states. This idea is related to the notion of citizenship or republican values considering the existence of a sub-state *demos* rather than an *ethnos*. While in Quebec and Scotland, this democratic culture tends to be presented as a matter of political preferences and, as I said, in Catalonia the plurality and tendency to achieve consensus is highlighted as a common feature.

### *Normative*

In fact, there are competing values presented as sources of legitimacy in the secessionists' discourse. We find clear liberal-nationalist positions (PQ, SNP), republican interpretations (ERC) and other sources of legitimacy (SCI, SGP).

National self-determination is the basis of legitimacy the right to secede for the parties analysed. However, the approach to the question of national self-determination is not as straightforward as a Wilsonian supporter would consider and used to be presented in different ways for justifying a primary right to secession. Firstly, although the national definition is a common feature among the secessionist parties, they present it related to the right to self-government within the parent state. This approach is linked to the existence of current self-government structures and rather than presenting it as a primary right, it tends to be considered as derivative from self-government failure<sup>131</sup>. Secondly, national self-determination is inevitably linked to democratic processes and the support of a majority of the population. All the political parties are committed to a majoritarian referendum strategy and envisage a unilateral declaration as a last resort.

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<sup>130</sup> This approach can be related to plebiscitarian theories of justice and collective approaches to primary right theories of secession, See: Beran (1984), Gauthier (1994) and Wellman (1995, 1998, 2005).

<sup>131</sup> A clear example of this position is the argument based on the constitutional interpretation from the Tribunal Constitucional in the Catalan case, which was very restrictive with the Statute of Autonomy reform process. This judgement is considered as a "failure of accommodation"; another example is the Canadian constitutional reform in 1982 (See: Sanjaume&Requejo, 2013; Laforest, 1995).

Then, self-determination is considered to be a primary right within the parent state when it refers to national and cultural recognition and accommodation but, it turns into a right to secede linked to democratic principles. National self-determination *per se* is presented as a remedial approach rather than as a primary approach whereas the expression of the democratic will to secede is seen as a primary right. On the right to secede, there is a prioritisation of democratic support beyond the national and cultural protection argument.

However democratic expression and national and cultural arguments are not the sole defence of self-determination. There are other values involved in the defence of a primary right to secede. The right to preserve a different set of political preferences (leftist, ecologist, etc.) is also considered to be a primary right involving a protection against political interferences of different political agendas. Territoriality and natural resources are important elements too. The oil resources in Scotland or natural resources in Quebec are presented as something belonging to their political community<sup>132</sup>. In Catalonia, the arguments rely much more on infrastructures and economic cooperation networks operating within the territory. Moreover, in Catalonia the specific claim for fiscal rights is based on a primary right to dispose of the resources generated by the political community and to the notion of fair fiscal balances. Instrumental values are also linked to this primary defence of the right to secede: economic advantages, enhancing efficiency and welfare, or displaying an own institutional setting like a decentralised institutional structure are the most common arguments in these cases. The functionalist approach is a ‘weight argument’ in the legitimacy discourse of all the parties: administrative reforms and decentralisation policies are part of an argument based on efficiency and responsibility.

### C. Strategy: *How? Gradualism and alliances*

Gradualism is the preferred strategy by secessionists in the studied cases. That means seeing political autonomy and self-rule in a positive manner and promoting a step-by-step approach to full sovereignty. Fundamentalism seems to fade away and only in Catalonia do we find an organisation that could be labelled as fundamentalist in terms of its strategic approach to secession (SCI). Within the gradualist tactic, there is a certain consensus on the idea that a new State should be built as a result of a referendum and political negotiations with the parent state and international community. A social union with the parent state (society) is envisaged by almost all parties and negotiations in good faith are at least in all political programs.

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<sup>132</sup> The relationship between secession and territory was pointed out by Brilmeyer (1991) and is an important element in the new literature on secession (See: Buchanan, 2013).

### 3.5. Conclusion

To sum up, secessionist parties in Catalonia, Scotland and Quebec envisage a secessionist project rooted in the liberal-nationalist tradition that goes beyond the Nation-State project, looking for supranational and parent-state alliances. They defend the right to secede from this liberal-nationalist perspective, envisaging cultural protection, together with democratic and instrumental values like efficiency, political agenda and economic resources. The preferred strategy is consensual and gradualist rather than unilateralist, based on referenda and negotiations with their parent states and supranational institutions.

This conclusion is relevant for the philosophy of secession. Theories of secession have mostly been focused on a general conception of secessionism, based on contexts far from plurinational democracies<sup>133</sup>. These findings provide a framework that should be considered by these theories. A political project based on shared sovereignty, consent, multiple legitimacies, functional reasons (like efficiency) and a gradualist approach seem to be the dominant position among Catalan, Quebecker and Scottish secessionisms.

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<sup>133</sup> Some exceptions can be found during recent years: Costa (2003), Seymour (2007), Patten (2002) or (Requejo&Sanjaume, 2013).

### 3.6. Appendix: tables

Table 3. *Analytical framework*

Arguments typology		Definition	
<b>A. Meaning of secession</b>  (what?)	<i>A.1 New entity</i>	Project for the political unit after secession: full-fledged sovereign, supranational membership.	
	<i>A.2 Sovereignty</i>	Concept of sovereignty presented in their secessionist project.	
<b>B. Legitimacy arguments</b>  (why?)	<i>B.1 Descriptive</i>	<i>B.1.1 Ontological</i>	Features of the seceding political subject, that means definition of the people/nation, global vs partial approaches.
		<i>B.1.2 Gnoseological</i>	Theoretical aspects applied to the seceding case group related to culture, history or economy.
		<i>B.1.3 Practical experience</i>	Examples/Counterexamples of historical events or similar cases applied to the case
	<i>B.2 Normative</i>	<i>B.2.1 Values</i>	Deontological and fundamental values for defending the secessionist demand: self-rule, left-right, democracy, and justice.
		<i>B.2.2 Instrumental</i>	Derivative advantages related to secession: organisational, technical, efficiency.

		<i>B.2.3 Legality</i>	Laws on which base their position being domestic or international.
<b>C. Procedures (how?)</b>	<i>C.1 Role of self-government</i>		Position towards current arrangement of powers and its use for secessionist demands
	<i>C.2 Road map / Negotiations</i>		Strategy and steps towards independence in party manifesto or strategic documents
	<i>C.3 Third parties alliances</i>		Position on alliances with third parties, civil society organisations and supranational organisations



Table 4. List of primary and secondary sources

Primary sources	Interviews	Documents
<p><b>Parti Québécois</b> (PQ)</p>	<p>Bernard Landry – <i>former Quebec Prime Minister</i> [2<sup>nd</sup> June 2010, 12:00 am, Montreal]</p> <p>Agnès Maltais – <i>Member of Assemblée Nationale</i> [15<sup>th</sup> June 2010, 12:00 am, Headquarters PQ Quebec]</p> <p>Alexandre Cloutier – <i>Member of Assemblée Nationale</i> [15<sup>th</sup> June 2010, 10:00 am, Office Parliament]</p>	<p><i>Un projet de pays. Statuts du Parti Québécois</i> (2005)</p> <p><i>Argumentaire pour la souveraineté</i> (2008)</p> <p><i>Le Plan Marois. Des actions pour un Québec gagnant</i> (2008)</p> <p><i>Manifeste pour la souveraineté</i> (2008)</p> <p><i>Agir en toute liberté. Programme du Parti Québécois</i> (2011)</p>
<p><b>Québec solidaire</b> (QS)</p>	<p>Amir Khadir – <i>Member of Quebec Parliament</i> [5<sup>th</sup> June 2010, 12:00 am, Headquarters Montreal]</p>	<p>Engagements – <i>Assemblée Nationale</i> (2008)</p> <p>Souveraineté Congrès (2009)</p> <p>Statuts (2006)</p> <p>Source : website and headquarters</p>

<b>Scottish National Party</b> (SNP)	Linda Fabiani – <i>Member of the Scottish Parliament</i> [19 <sup>th</sup> January 2011, 12:00 am, Holyrood] Gil Paterson – <i>Member of the Scottish Parliament</i> [2 <sup>nd</sup> February 2011, 12:00 am, Holyrood] Ian Mckee – <i>Member of the Scottish Parliament</i> [11 <sup>th</sup> January 2011, 10:30am, Holyrood] Advisor 1 – Parliament advisor [19 <sup>th</sup> January 13:00 am, Holyrood] Advisor 2 – Headquarters advisor [19 <sup>th</sup> January 14:00 am, Holyrood] Stephen Maxwell (79 Group Member) – <i>historical party member</i> [17 <sup>th</sup> January evening, Edinburgh bar]	Party: 2011 Holyrood Manifesto 2010 Westminster Manifesto 2007 Holyrood Manifesto <a href="http://www.snp.org/system/files/manifesto+programme.pdf">http://www.snp.org/system/files/manifesto+programme.pdf</a>  SNP Government: Choosing Scotland’s Future (White Paper) (2010) An Independent Scotland: <a href="http://www.scotland.gov.uk/Publications/2007/08/13103747/5">http://www.scotland.gov.uk/Publications/2007/08/13103747/5</a> A National Conversation: <a href="http://www.scotland.gov.uk/Resource/Doc/293639/0090721.pdf">http://www.scotland.gov.uk/Resource/Doc/293639/0090721.pdf</a>
<b>Scottish Green Party</b> (SGP)	Patrick Harvie – <i>Member of the Scottish Parliament</i> [17 <sup>th</sup> January 12:00 am, Holyrood]	2007 - Holyrood Manifesto

	<p>James Mackenzie – Media advisor [17<sup>th</sup> January 14:00 am, Holyrood]</p>	<p>2011 – Holyrood Manifesto Basic Principles (website) Source: Website</p>
<p><b>Esquerra Republicana de Catalunya</b> (ERC)</p>	<p>Pere Aragonès – <i>Member of the Catalan Parliament</i> [31<sup>st</sup> May 2011, 13:15 am, Catalan Parliament]</p> <p>Anna Simó – <i>Member of the Catalan Parliament</i> [13<sup>th</sup> July 2011, 13:00 am, Catalan Parliament]</p> <p>Oriol Junqueras – <i>current President of the party</i> [8<sup>th</sup> July 2011, 17:00 pm, Private home]</p>	<p>“<i>La Catalunya que volem</i>” Miquel Pueyo, Josep Lluís Carod-Rovira, Jordi Portabella, Joan Puigcercós, Josep-Maria Reguant (1991) <i>Declaració Ideològica</i> (1993) <i>Ponència Política</i> (2011) <i>Programa Polític</i> (2010) Documents 24th Party Conference (2008) Documents 25th Party Conference (2011) Source: ERC headquarters library/Website</p>
<p><b>Solidaritat Catalana per la independència</b> (SCI)</p>	<p>Alfons López-Tena – <i>Member of the Catalan Parliament</i> [31<sup>st</sup> May 2011, 17:00 am, Catalan Parliament]</p>	<p><i>Manifest eleccions</i> (2010) <i>Declaració ideològica i estatuts</i> Programa electoral (2010) Documents on Independence: “Raons per la Independència”</p>

	<p>Toni Strubell – <i>Member of the Catalan Parliament, President of the party</i></p> <p><i>[2<sup>nd</sup> June 2011, 16:00 am, Catalan Parliament]</i></p>	
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## References

- Argelaguet, J.; Marcet, J. (1998), "The Catalan Nationalist Parties: Convergència Democràtica de Catalunya and Esquerra Republicana de Catalunya" in De Winter, L. *Regionalist parties in Western Europe*, Londres: Routledge.
- Baer, J. (2000), "Who, Why and How: assessing the legitimacy of secession", *Swiss Political Science Review*, vol.6, num.3, pp.45-69.
- Barreda, M.; Galofré, M. (1999) "La legitimación de las decisiones legislativas en los parlamentos de Cataluña, Euskadi y Galicia (1990-1995)", *Revista catalana de dret public.*, num.24, pp.163-181.
- Beran, H. (1984), "A Liberal Theory of Secession", *Political Studies*, vol.32, pp.21-31.
- Brilmayer, L. (1991) "Secession and Self-Determination: A Territorial Interpretation", *Yale Journal of International Law*, vol. 16, pp.177.
- Brown, C. (1994), *Political restructuring in Europe: ethical perspectives*, Routledge
- Buchanan, A. (2013), *Secession*, Sanford Encyclopedia
- Coggins, B. (2011), "The History of Secession: An Overview" in Radan, P. and Pavkovic, A. (Eds.) *The Research Companion to Secession* UK: Ashgate Publishers, Ltd.
- Costa, J. (2003), "On Theories of Secession: Minorities, Majorities and the Multinational State", *CRISPP*, vol.6, num.2, pp.63-90.
- De Winter, L.; Türsan, H. (ed.) (1998), *Regionalist parties in Western Europe*, Routledge.
- De Winter, L. (ed.) (2006), *Autonomist parties in Europe : identity politics and the revival of the territorial cleavage*, Barcelona:Institut de Ciències Polítiques i Socials.
- Dion, S. (1996), "Why is Secession so Difficult in Well-Established Democracies?: Lessons from Quebec", *British Journal of Political Science*, vol.26, num.2, pp.269-83.
- Donatella Della Porta and Michael Keating (eds), (2008), *Approaches and Methodologies in the Social Sciences. A Pluralist Perspective*, Cambridge University Press.
- Doyle, Don H. (2010), *Secession as an international phenomenon: from America's civil war to contemporary separatist movements*, London: University of Georgia Press.
- Gagnon, A. (1998), *Quebec y el federalismo canadiense*, Consejo Superior de Investigaciones Científicas, Instituto de Estudios Sociales Avanzados.

Gagnon, A.; Taylor, Ch. (2001), *Multinational democracies*, Cambridge University Press

Gagnon, A. (2008), *D'un référendum à l'autre : le Québec face à son destin*, Presses de l'Université Laval.

Gauthier, D. (1994), "Breaking Up: An Essay on Secession", *Canadian Journal of Philosophy*, vol.24, pp.357-72.

Glaser, B. G. (2002) "Conceptualization: On Theory and Theorising Using Grounded Theory", *International Journal of Qualitative Methods*, vol.1, num.2.

Guibernau, M. (1999), *Nations without States: Political Communities in the Global Age*, Cambridge: Polity Press.

Guinjoan, M; Muñoz, J. (2012), "Accounting for Internal Variation in Nationalist Mobilization: Unofficial Referendums for Independence in Catalonia (2009-11)", *Nations and Nationalism*, vol.19, num.1, pp.44-67.

Hepburn, E. (ed.) (2011), *New challenges for stateless nationalist and regionalist parties*, Routledge.

Hogan, J.; Williams, G. (2000), "Republican Charisma and the American Revolution: The Textual Persona of Thomas Paine's 'Common Sense'", *Quarterly Journal of Speech*, vol.86, pp.1-18.

Huntington, S.P. (1991), *The Third wave: democratization in the late twentieth century*, University of Oklahoma Press.

Kymlicka, W. (1995), *Multicultural citizenship: A Liberal Theory of Minority Rights*, Oxford: Clarendon Press.

Margalit, A. & Raz, J. (1990), "National self-determination", *The Journal of Philosophy*, vol.87, num.9, pp.439-46.

Miller, D. (1995), *On Nationality*, Oxford University Press

Moore, M. (1999), "Beyond the cultural argument for liberal nationalism", *Critical Review of International Social and Political Philosophy*, vol.2, num.3, pp.26-47.

Laforest, G. (1995a), *De l'urgence*, Boréal

Laforest, G. (1995b), *Trudeau and the End of a Canadian Dream*, McGill University Press.

Lynch, P. (2002) *SNP: the history of the Scottish National Party*, Welsh Academic Press.

Lynch, P. (2009), "From Social Democracy back to No Ideology?—The Scottish National Party and Ideological Change in a Multi-level Electoral Setting", *Regional & Federal Studies*, vol.19 num.4-5, pp.619-637.

Keating, M. (1996), *Nations Against the State: the new politics of nationalism in Quebec, Catalonia and Scotland*, London: Macmillan.

Keating, M. (2001a), *Plurinational democracy: stateless nations in a post-sovereignty era*, Oxford University Press.

Keating, M. (2001b), *Nations against the state: The New Politics of Nationalism in Quebec, Catalonia and Scotland*, Palgrave

Keating, M. (2009), *The Independence of Scotland: self-government and the shifting politics of union*, Oxford University Press.

Keating, M. (2013), "Nationalism, unionism and secession in Scotland" in Cabestan, J.P and Pavkovic (ed.) *Secessionism and Separatism in Europe and Asia: To have a state of one's own*, Routledge.

Kymlicka, W., (2002), *Contemporary Political Philosophy*, Oxford.

Paine, T. (1976), *Common Sense*, New Patriot.

Patten, A. (2002), "Democratic secession from a multinational state", *Ethics*, vol.112, num.3, pp.558-586.

Pogge, T.W (1992), "Cosmopolitanism and Sovereignty", *Ethics*, vol. 103, num. 1, pp.48-75

Requejo, F. (1995), "Legitimidad democrática y legitimación política. Los criterios de legitimación de las decisiones legislativas de los parlamentos de Cataluña y País Vasco. Un modelo analítico", in Pau, F. (ed.), *Parlamento y Opinión Pública*, Madrid, Tecnos, pp.241-266.

Requejo, F.; Sanjaume, M. (2013), *Political Recognition from regionalism to secessionism. The Catalan Case*, Working Paper: GRTP.

Richez, E ; Bodet, M.A (2012), "Fear and disappointment: Explaining the Persistence of Support for Quebec Secession.", *Journal of Elections, Public Opinion and Parties* vol.22, num.1, pp.77-93.

Seymour, M. (2007), "Secession as a Remedial Right", *Inquiry*, vol.50, num.4, pp.395-423.

Simmons, J. (2001), *Justification and Legitimacy: Essays on Rights and Obligations*, Cambridge.



Sorens, J. (2012), *Secessionism. Identity, Interest and Strategy*, McGill-Queen's University Press

Starks, H. & Trinidad S.B. (2007), "Choose Your Method: A Comparison of Phenomenology, Discourse Analysis and Grounded Theory", *Qualitative Health Research*, vol.17, num.10.

Tamir, Y. (1993), *Liberal Nationalism*, NJ: Princeton University Press.

Tierney, S. (2004), *Constitutional Law and National Pluralism*, Oxford University Press

Wellman, C.H. (2005), *A Theory of Secession: The Case for Political Self-Determination*, Cambridge University Press

Wellman, C.H (2001), "Friends, Compatriots and Special Political Obligations", *Political Theory*, vol.29, pp.217-236.

Wellman, C.H (1995), "A Defence of Secession and Political Self-Determination", *Philosophy and Public Affairs*, vol.24, num.2, pp.142-71.



## CHAPTER 4

### 4. Recognition and political accommodation: from regionalism to secessionism. The Catalan case.

*(Coauthored with professor Ferran Requejo)*

#### 4.1. Introduction

Having lived through a bloody civil war in the 1930s followed by four decades of General Franco's dictatorship, the Spanish state carried out a transition to a democratic system at the end of the 1970s. The 1978 Constitution was the legal outcome of this transition process. Among other things, it established a territorial model – the so-called “Estado de las Autonomías” (State of Autonomous Communities) – which was designed to satisfy the historical demands for recognition and self-government of, above all, the citizens and institutions of Catalonia and the Basque Country<sup>134</sup>.

In recent years support for independence has increased in Catalonia. Different indicators show that pro-independence demands are endorsed by a majority of its citizens, as well as by most of the political parties and organizations that represent its civil society. This is a new phenomenon. Those in favour of independence had been in the minority throughout the 20<sup>th</sup> century. Nowadays, however, demands of a pro-autonomy and pro-federalist nature, which until recently had been dominant, have gradually lost public support in favour of demands for self-determination and secession.

This paper analyses the massive increase in support for secession in Catalonia during the early years of the 21<sup>st</sup> century<sup>135</sup>. After describing the different theories of secession in plurinational liberal democracies (section 4.3), we analyse Catalonia's political evolution over the past decade focusing on the shortcomings with regard to constitutional recognition and accommodation displayed by the Spanish political system. The latter have been exacerbated by the reform process of Catalonia's Statute of Autonomy (2006) and the subsequent judgement of Spain's Constitutional Court regarding the aforementioned Statute (2010) (section 4.3.1). Finally, we present our

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<sup>134</sup> The “Estado de las Autonomías” is a model that occupies an intermediate position between the classic federal and regional models of comparative politics, but has more regional than federal features (Requejo, 2010d).

<sup>135</sup> This case study, as we show, challenges the main theories of recognition and secession. This is a clear contrast with the cases of Quebec or Scotland where there have been a certain degree of national recognition and procedural mechanisms for exercising self-determination.

conclusions by linking the Catalan case with theories of secession applied to plurinational contexts (section 4.4).

## 4.2. Recognition, plurinational states and secession

A few years ago, the United Nations clearly established that a *politics of recognition* is an integral part of the struggle for human dignity (*Human Development Report*, 2004). Moreover, it established that national and cultural freedoms, which include both individual and collective dimensions, are an essential part of the democratic quality of a plurinational society. Furthermore, it stated once again that when analysing legitimacy in plurinational contexts one often observes a juxtaposition between the perspectives of the paradigm of equality (equality vs inequality) and the paradigm of difference (equality vs difference). This juxtaposition interacts with the individual and collective rights of liberal democracies. As a result, values such as dignity, freedom, equality and pluralism become more complex in plurinational contexts than in those of a uninational nature. The overall challenge of plurinational democracies can be summed up in the phrase “one polity, several *demoi*”<sup>136</sup>.

On the other hand, if we turn our attention to liberal democracies, it is clear that all of them conduct processes of nation-building that promote the predominant national identity among their citizens, even when this kind of state nationalism is implicit or “invisible”. Over the last two decades, analyses of democratic liberalism have shown the normative and institutional biases of traditional approaches (liberalism 1), which are of an individualist, universalist and *stateist* nature that favour the majority national groups of plurinational democracies. An alternative liberal-democratic approach (liberalism 2) has stressed the value that the national and cultural spheres have for individuals, both in terms of their self-image and self-respect, as well as in practical terms and in terms of the understanding of the societies in which they have become socialized or in which they live. Therefore, this second perspective uses political and moral reasons to demand that state institutions and practices adopt measures in favour

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<sup>136</sup> Normative definitions of minority nations (nations without their own state) tend to be controversial. One way to determine whether a specific case may or may not be regarded as a minority nation is by incorporating empirical criteria to the more classic normative definitions found in studies on nationalism. In earlier papers we have put forward two empirical criteria which could be added to the more traditional ones (e.g., the existence of historical, cultural, and linguistic singularities and the wish to establish some kind of self-government). These are: 1) the existence of a system of parties which is different from that present at state level; and 2) the presence of at least one secessionist party within that distinct party system (Requejo, 2010d). As we did in previous works we prefer to use the term “plurinational” instead of using the most common “multinational” for descriptive and prescriptive reasons. See Requejo-Caminal 2012: 12-13).

of the political and constitutional recognition and accommodation of a state's national pluralism<sup>137</sup>.

The classic institutional measures offered by comparative politics in order to achieve the practical accommodation of national pluralism are basically of three types: federalism (in a broad sense, including processes of “devolution”, confederations, associated states, etc), consociationalism, and secession. While the first two types of measures have been studied for a number of decades through both theoretical and normative models and the analysis of different empirical cases and comparative analyses, secession has received renewed analytical attention in recent years, especially in plurinational contexts. One consequence of this has been the analytical refinement of the literature on normative theories of secession<sup>138</sup>.

A fundamental motive behind these theories is the justification of secession based on three key aspects: the political subject (who), the reasons that legitimize it (why) and the procedures (how). An established typology divides secession into two basic groups: *Remedial Right Theories*, which link secession with a “just cause”, in other words, they regard secession as a remedy for specific “injustices”; and *Primary Right Theories*, which regard secession as a right belonging to certain collectives that fulfil a number of conditions. These latter theories are subdivided into those of an adscriptive or nationalist nature and those of an associative or plebiscitary nature.

**1.1 Remedial Theories**, or those relating to a “just cause”, give priority to a number of reasons or specific cases that justify political “divorce”<sup>139</sup>. Secession is not regarded as a primary right of specific collectives, but as a legitimate remedy for a series of circumstances, such as territorial annexation by force (the case of the Baltic states and the USSR), the violation of the basic rights of a group of citizens by the state, genocidal practices, permanent negative discrimination regarding redistribution or socio-economic development, non-compliance with previous agreements of self-government or collective rights by the state, etc<sup>140</sup>.

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<sup>137</sup> For normative arguments in favour of liberalism 2, see Norman, 2006; Parekh, 2000; Kymlicka, 2001; Taylor, 1992. Regarding “invisible” state nationalism, see Billig 1995.

<sup>138</sup> The creation of a *new state* involves (a) a transfer of *sovereignty* from the mother state to a new political unit, which will be (b) *independent* from the mother state. Even this most basic description, however, is not universally accepted by academics. Some have pointed out that it is necessary to add that the secessionist unit did not have a colonial relationship with the mother state, and that the latter is not dissolved once the secession has taken place. See Pavkovic, 2007. See also Moore, 1998; Lehning, 1998; Pavkovic, 2003, 2007.

<sup>139</sup> Here we use the term “political divorce” as synonymous with secession, despite the fact that this is a somewhat controversial analogy. See Aronovitch, 2000.

<sup>140</sup> See Beran 1984, Birch 1984, Buchanan 1991, 2003.

These latter theories have received most analytical attention in recent years, despite the fact that, as we will see, they do not appear to be the most suitable ones for the study of political legitimation in plurinational contexts. The first difficulty is how one should characterize an “unjust” situation. This obviously depends on the theory of justice one uses. Moreover, there are differences of degree in empirical situations that make it difficult to decide when the line of what could be considered morally reprehensible has been crossed (regulation of collective rights, fiscal treatment, redistribution, policies concerning education, culture, the media, etc.). These theories assume that the burden of proof resides with the minorities. In other words, they are theories that are biased in favour of the state, regardless of how the state was historically created. In this sense, they are conservative theories which legitimize state power.

In general terms, they are basically theories associated with the individualistic, universalist and stateist postulates of liberalism 1 –state respect for individual rights and democratic principles, as well as the non-discrimination principle. They therefore turn a blind eye to democratic states’ lack of neutrality with regard to national and cultural issues (nation-building policies), marginalizing minorities’ collective demands for national recognition and accommodation –which are usually formulated nowadays through liberalism 2<sup>141</sup>. Nevertheless, a number of authors have recently tried to enlarge the conditions of “just cause” by including the state’s obligation to carry out policies of recognition and accommodation towards its minority nations.

An initial approach is the one formulated by Bauböck, which is based on a revised conception of federalism in plurinational contexts. The federal solution is given priority<sup>142</sup> over the creation of “culturally homogeneous states”, which are linked, somewhat impulsively in our opinion, to adscriptive and associative theories. This author believes that the legitimacy of secession cannot be established at the normative level, but must be based on empirical situations: when support for secession appears and it is impossible to continue within the federal system, a process of legitimation of the new state will take place. Thus, secession is the result of the practical failure of plurinational federalism in specific contexts. However, this theoretical conception of plurinational federalism contrasts with that defended by other authors, who include secession within federal rules as a normative and institutionalized right of minority

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<sup>141</sup> Despite the comments Buchanan makes regarding this question in his first book (1991), he explicitly refuses to incorporate nations or any other adscriptive criterion into his conception (Buchanan, 1998). See Hechter, 2000, Sorens, 2012.

<sup>142</sup> Bauböck formulates four kinds of reasons designed to defend the priority of federal structures: i) concession: permits the fulfilment of self-government; ii) moderation: limits the strength of extreme forms of nationalism through competitive elections; iii) participation: representation of minorities at state level; iv) multiple identities: promotes the mixing of citizens and therefore a state citizenry (Bauböck 2000:381).

nations in the rules and procedures of liberal democracy in terms of the recognition and accommodation of the national pluralism of the state<sup>143</sup>.

Seymour reformulates Buchanan's theory in order to incorporate the issue of the accommodation of national diversity<sup>144</sup>. He coincides with Buchanan regarding the idea of a right to secession as a remedy rather than a *primary right*, as is the case of adscriptive and associative theories. Seymour believes it is necessary to adopt a political conception of liberalism, distinct from moral individualism, which contemplates individuals and groups from an institutional perspective. In this way, he does not rule out a conception of people which gives priority to their aims, but it is also necessary, he says, to include moral value related to peoples. Thus, nations have a primary right to self-determination within the state to which they belong. However, the right to external self-determination, that is, secession, is acceptable if the right to internal self-determination is denied. Seymour's defence of this reformulation is based on the idea that it fulfils the same conditions of institutionalization as those demanded by Buchanan<sup>145</sup>.

Finally, Patten (2002) adopts a different strategy. His starting points are the formal conditions associated with associative or plebiscitary theories: 1) valid claim to the territory by the secessionists; 2) fair secessionist demands; 3) non-probability that the new state will generate rights violations according to liberal-democratic standards; 4) that the citizens of the secessionist unit form part of a territorially-concentrated group; 5) that the secession is not a threat to peace and security. For Patten, these five conditions are insufficient, as the theory would lead to excessively permissive interpretations of the right to secede. In order to restrict it, he adds a sixth condition: the *failure of recognition* by the state. This condition means that in a context of dual identities (such as Scotland, Quebec or Catalonia), the state must establish a democratic forum where national identities (especially minority ones) can take distinct collective decisions. This means that structures, rules and formal or informal practices must be established that make it possible to ensure the recognition of each national group. The specific arrangements that permit this recognition to be satisfied may vary in each case

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<sup>143</sup> Requejo has formulated a model of plurinational federalism as an institutional expression of Isaiah Berlin's value pluralism. The contrast between liberalism 1 and 2 is linked here with a broader theoretical question: the contrast between the Kantian and Hegelian paradigms as background philosophies for the accommodation of pluralism in plurinational democracies (Requejo 2005 chap 1-4, 2010).

<sup>144</sup> Seymour 2007. This author's "philosophical" approach has similarities with Requejo's (2005, 2013), above all because it regards the Hegelian paradigm of *recognition* as normatively and institutionally complementary to the Kantian approach of individual *dignity* in plurinational liberal democracies. Requejo, however, does not limit secession normatively to internal processes of self-determination.

<sup>145</sup> These would be: i) conformity with the progressive moral principles of international law; ii) minimal realism; iii) absence of perverse incentives; iv) morally accessible to different cultures. Although it is true that the international community adheres to a conception of secession as a remedy (with just cause), it is also true that most international treaties are less conservative than Buchanan. This reformulation is presented not only as being consistent with Buchanan's principles of institutionalization, but also more realistic (Buchanan 2007: 398).

by incorporating elements of a symbolic nature (anthems, flags, etc.). Their absence would constitute a failure of recognition<sup>146</sup>.

**1.2 Primary Right Theories** regard secession as a fundamental right associated with specific collectives. Adscriptive or nationalist theories take as their central element that the nation is a legitimate political subject endowed with this right. Thus, the legitimacy of secession would be based on a previous political unit that possesses this right, which would basically be understood nowadays in inclusive and universal liberal-democratic terms<sup>147</sup>. This is the sphere of liberal nationalists who, in liberalism 2 terms, are critical of the practical consequences of the implicit state nationalism defended by traditional liberals (liberalism 1) –despite their habitual legitimizing rhetoric based on moral individualism and state universalism. The collective rights of minority nations are seen as complementary to individual rights, not antagonistic to them. And in many empirical cases the best and possibly the only way to promote and safeguard collective values would be the creation of one's own state. Nationalist theories of secession have their own problems, prominent among which is the regulation of the rights of minorities within minorities (trapped minorities) following secession, and that of the dual or plural identities of the citizens of minority nations<sup>148</sup>. Adscriptive theories are often criticized due to the difficulty in defining a priori which groups have a primary right to secede. Once it has been determined which groups would have this right, the theory may provoke contradictions with regard to strict democratic normativity, as the minority nation may become a state without the need for majority demand. Moreover, it is commonly argued that, from a practical point of view, giving the right of secession to nations would multiply by thousands the number of secessionist demands in the world, which is associated with a high level of instability, above all where national groups overlap territorially. However, the advantage of nationalist adscriptive theories is that they regard elements of a “historical” and of a socio-political nature designed to personalize subjects to be legitimate in order to exercise the right to secede, to which could be added elements of a political nature (see note 2).

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<sup>146</sup> In order to defend this requirement for recognition, Patten puts forward two main arguments: a) *equality of recognition*; b) *democratic pattern*. The former is designed to reject any theory that fails to take *failure of recognition* into account. The second points out that, in the last resort, one must recognize the secessionist unit's right to decide if it wishes to secede from the mother state, especially in a context where there is a failure of recognition by the federal or central structures of the state (Patten, 2002: 565-579).

<sup>147</sup> See Tamir 1993, Margalit&Raz 1990. The last two authors use the concept of *encompassing groups* instead of the nation as the subject of the right to secede. See also Walzer 1994.

<sup>148</sup> We do not develop these two issues in this paper. In recent years, theoretical and comparative analyses have revealed liberal-democratic institutional solutions for the accommodation of these two questions. See Gagnon-Tully 2001, Amoretti-Bermeo 2004



Finally, associative or plebiscitary theories give priority to democratic *procedure* in order to legitimate secession, whether this is through a referendum or based on the decisions of representative institutions<sup>149</sup>. The key values here are individual moral autonomy and the right to choose voluntary political associations. They represent the pillars of the consensual legitimacy of a democratic political authority. If this consensual base regarding the state's authority is not shared by the majority of individuals of a collective, secession is a legitimate act and constitutes a right that must be legally regulated. Thus, in this kind of theories secession is not regarded as a possible solution to the infringement of the rights or interests of a collective, nor is it linked to any kind of specific national or ethnic group. Rather it is a *primary right* of a political and territorialized nature based on the individual preferences of the members of a group of citizens. The authors who have formulated this kind of approach establish a series of conditions that must be met when this right is established<sup>150</sup>. For example, the state must be feasible in empirical terms –number of citizens involved, guaranteed rights for (trapped) minorities, that secession does not prevent the viability of the former state, that it does not generate political instability, etc. “Historical” considerations are alien to the internal logic of this perspective. This may mean, for example, that it is considered potentially legitimate for a group of relatively recently territorialized immigrants to secede. Moreover, it is argued, on the one hand, that an a priori right to secession established in these terms might result in the fragmentation ad infinitum of political communities and, on the other, would not permit the correct development of democracy as it would be permanently threatened by fragmentation<sup>151</sup>.

In the international sphere, there are relatively few empirical examples of the constitutionalization of secession. The constitutions of Ethiopia and Saint Kitts and Nevis are the two clearest cases of the explicit inclusion of the right to secession. The former adopts an adscriptive approach, as the “nationalities” and “peoples” that constitute the state have access to the secession clause. The latter permits the secession of the island of Nevis through a referendum which must have the support of a majority of two-thirds<sup>152</sup>. The most recent cases of the secessions of Montenegro (2006) and Kosovo (2008) from Serbia occurred, in the first case, in accordance with international regulations based on a referendum with clear rules monitored by the European Union and, in the second case, as a result of a unilateral declaration of independence by the Kosovar parliament, which was recognized by a majority of international actors once negotiations had broken down. These two cases are examples of international mediation

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<sup>149</sup> Beran (1984) states that any group that has inhabited a given territory for a (small) number of generations has the right to create a state there if this is carried out democratically.

<sup>150</sup> See Beran 1984, Wellman 2005.

<sup>151</sup> See Moore 2001, Buchanan 1997, 1991.

<sup>152</sup> While in Ethiopia there have been no secession proposals since that of Eritrea, which was preceded by a long armed conflict and occurred before the current constitution came into force, the island of Nevis conducted a secessionist referendum (1998) in which 61.7% voted in favour of secession without reaching, however, the legal minimum of two thirds.

when a state of deadlock has been reached regarding internal constitutional rules. Another case of constitutional regulation, albeit less conclusive than the previous ones, is that of Canada which, following the referendum on the secession of the French-speaking province of Quebec (1995) in which the anti-secessionist option won by a narrow margin of votes, established, based on a much-discussed *Opinion* of the Supreme Court, that political and constitutional negotiations must take place if a “clear majority” of Quebec citizens responded to a “clear question” regarding secession (Secession Reference, 1998)<sup>153</sup>. In the next section we analyse the case of Catalonia and the emergence of a growing secessionist movement in recent years. As we will see, the legitimation of the secessionist process in Catalonia may be able to draw on normative and institutional elements present in the three kinds of theories and empirical references that have been briefly outlined in this section.

### 4.3. Catalonia in the 21st century: the emergence of secessionism.

Catalan politics has undergone two important changes at the beginning of the 21<sup>st</sup> century. On the one hand, the end of a long period of political hegemony by CiU (1980-2003)<sup>154</sup> as the governing party in favour of a coalition of three left-wing parties (PSC-ERC-ICV/EUiA)<sup>155</sup> which governed the country for seven years (2003-2010). On the other hand, the process to reform the Catalan Statute of Autonomy, which was passed in a referendum (2006), but which was seriously weakened, both in terms of its content and its capacity to protect self-government and with regard to its finance system, by the judgement of the Spanish Constitutional Court (2010)<sup>156</sup>.

If, for the 2003 elections, the majority of Catalan parties included in their manifestos a wish to reform the Statute in order to ensure full recognition of Catalonia’s national reality, a better finance system and an improved and more protected system of self-government, one decade later virtually the same parties incorporated into their political

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<sup>153</sup> These two references to “clarity”, however, have not been without controversy. Thus, the regulations of the Canadian Clarity Act (2000), following the Supreme Court’s *Opinion*, were countered when Quebec’s National Assembly passed the *Loi sur l’exercice des droits fondamentaux et des prérogatives du peuple québécois et de l’État du Québec* (2000).

<sup>154</sup> CiU: *Convergència i Unió* is a federation of two centre-right and nationalist political parties: *Convergència Democràtica de Catalunya* (founded in the late 1970s and led by Jordi Pujol until 2003 and by Artur Mas since then) and *Unió Democràtica de Catalunya* (founded in the 1930s and led by Josep A. Duran i Lleida since the 1980s).

<sup>155</sup> The PSC is formally independent from the PSOE, but the two maintain a “federal” relationship and a single vote in the Spanish parliament. ERC is a left-wing pro-independence party founded in the early 1930s and ICV/EUiA is a coalition between ICV, a post-communist and ecologist organization and EUiA, also a left-wing organization linked to communist ideology.

<sup>156</sup> For an analysis of the Constitutional Court’s judgement (2010) on the Catalan Statute, see Requejo 2011.

programmes the desire to exercise the “right to decide” about the future of Catalonia by means of a referendum on a possible future separation from the Spanish state.

While, at the beginning of the century, the Catalans who expressed a preference for Catalonia to be an “independent state” were in a minority (less than 15%), today, according to surveys and opinion polls, this figure has risen to around 50% of the Catalan electorate. The key to explaining this change – which could be described as a shift from regionalism to secessionism – is to be found in the political, economic and cultural events of the past decade.

#### **4.3.1. Changes in Catalan politics (2003-2013): two tripartite governments (2003-2007) and two minority governments of CiU (2007-2013)**

The year 2003 marked the beginning of two changes in Catalan politics. Despite the fact that the nationalist coalition CiU once again won more seats, a lack of parliamentary support and the fact that the opposition parties were able to form an alternative coalition (PSC, ERC, and ICV-EUiA) brought about a change of government. This followed six consecutive legislatures of CiU hegemony under the leadership of Jordi Pujol (1980-2003). This period saw the development of the “autonomous” institutionalization and self-government established by the Spanish constitution of 1978. The government of Catalonia (Generalitat) played a key role in the transfer of powers from the central government to the 17 “autonomous communities” (AC), often leading the decentralization process. CiU also became a political force capable of guaranteeing the stability of the central government through parliamentary agreements during the 1990s, when neither the PSOE (1993-1996), nor later the PP (1996-2000) had absolute majorities in the Spanish parliament.

However, during the early years of the 21<sup>st</sup> century, a legislature marked by CiU’s state-level support for the PP –which enjoyed an absolute majority after 2000– in exchange for reciprocal support for CiU in the Catalan chamber, and in a context of neo-nationalist Spanish policies driven by the central government, prepared the ground for a major change in Catalonia. CiU’s reverse in the 2003 Catalan elections –the party lost ten seats– was paralleled by the consolidation of ERC’s pro-independence position in parliament (23 seats) and the rise of the post-communist and ecologist party ICV-EUiA. This situation permitted the formation of the so-called *Pacte del Tinell* (Tinell Pact), an agreement to establish a coalition government by the main left-wing parliamentary parties (PSC, ERC, and ICV-EUiA). The signatories of the Tinell Pact undertook to promote policies of a social-democratic and ecologist nature which, according to its text, would require the Generalitat to have wider powers, as well as requiring changes to the finance model and greater political and legal status for Catalonia within the Spanish state. All this resulted in a need to reform the Statute of Autonomy, which had originally been passed in 1979. Notwithstanding, the new coalition government, led by

the Socialist and former mayor of Barcelona Pasqual Maragall, did not enjoy a great deal of stability in the 2003-2006 period. In fact, it ended abruptly following the expulsion from the government of the pro-independence partner (ERC) when this party finally opted to vote “No” in the referendum on the new text of the Statute. Having said that, this first tripartite government managed to achieve the main political objective established by the Tinell Pact: to pass the new Statute of Autonomy, despite the watering down of its most important aspects relating to recognition, self-government and finance in the initial text during its passage through the central parliament (in which the PSOE, led by J.L. Rodríguez Zapatero, had been the hegemonic party since 2004)<sup>157</sup>, and the low turnout for the referendum on a significantly “mutilated” text.

The second tripartite government (2006-2010) was very different from the first, despite the fact that it was made up of the same parties (ERC rejoined it after the 2006 elections) and that its main concern continued to be its social policies. This time, having passed the Statute, it gave priority to carrying out specific public policies. The instability of the first tripartite government was addressed by incorporating the leaders of the different political parties. The president of the Generalitat was the socialist leader José Montilla, who had, until then, been minister of Industry, Tourism and Trade in the Spanish government, and was much closer in political terms to the ideas of the PSOE than his predecessor Pasqual Maragall, who was more Catalanist<sup>158</sup>. That said, it should be mentioned that the new tripartite government did not enjoy the same degree of electoral support as it had in 2003: 43.96% of the electorate abstained in the 2006 elections. This decline in support for the left-wing tripartite government has been attributed to two causes: its own instability and the final outcome of the troubled process to reform the Statute of Autonomy.

### ***A) The reform process of the Statute of Catalonia***

***a) Launching the reform.*** As laid down in the Spanish Constitution, the reform process of the Statute of Catalonia had to be carried out in three stages: it had to be passed by the autonomous parliament, and by an absolute majority of the members of the Spanish parliament (because it has the status of an organic law) and finally it had to be approved in referendum by the autonomous community itself. The 2003 elections put the reform of the Statute on the Catalan political agenda and the beginning of the journey towards its discussion and passing by the Catalan Parliament. All the parties that stood for election included the reform of the Statute in their manifestos with the exception of the Popular Party.

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<sup>157</sup> Other significant measures promoted during this period by the first tripartite government were the neighbourhood law, the education plan and the infrastructures plan.

<sup>158</sup> During the electoral campaign attention was drawn to the fact that Montilla was standing for the presidency of the Generalitat despite having been born outside Catalonia (Andalusia).

Efforts to reach a consensus among the different Catalan parties went on for months (from the beginning of 2004 until 2005) and the main bones of contention were those related to the finance model. A first version of the Statute was sent to the *Council of Statutory Guarantees*, but this body rejected a number of articles relating to finance, exclusive powers and the “historical rights” of Catalonia. The Statute was finally passed by the Catalan parliament in September 2005 by a majority of 120 of the 135 MPs (89%) –the PP was the only party that failed to support it. Thus, the group in favour of the Statute consisted of four political forces: CiU, PSC, ERC and ICV-EUiA, who had managed to reach agreement despite their ideological differences.

The new Statute approved by the parliament was an ambitious text –within the limitations of the constitutional framework– which recognized the distinct national reality of Catalonia, and increased its level of self-government in several ways, as well as “protecting” it legally against the Constitutional Court. The new text contained aspects such as the definition of Catalonia as a nation; the Catalan language became the “preferred language” within the administration and it became a citizen’s duty to be familiar with it throughout the territory of Catalonia together with Spanish; it established the right of the Generalitat to collect all taxes as well as conduct bilateral negotiations with the Spanish state; it established a thorough protection of Catalonia’s autonomous powers and; among other aspects, it drew up a list of rights and duties for the citizens of Catalonia.

**b) Negotiation.** Once the new Statute had been passed by a large majority of the Parliament of Catalonia, it also had to be approved by its Spanish counterpart. The Catalan political forces entered into a negotiation process in order to obtain the support of the PSOE, which was in power at the time and enjoyed a parliamentary majority. However, lacking a clear idea regarding how the negotiation should be conducted, during the final months of 2005 and the beginning of 2006 a process began in which the political forces negotiated separately in Madrid and the President of the Generalitat (Pasqual Maragall) failed to play an active role.

During this phase, party-political dynamics brought about a breakdown of the unity among the four political forces that had made it possible for the Catalan parliament to pass the text. In this context, Artur Mas, leader of the opposition and of the most-voted party in Catalonia (CiU), embarked on secret talks with Prime Minister Zapatero in order to unblock the negotiations. The Mas-Zapatero Pact was subsequently supported by the PSC and ICV, but not by ERC.

During this negotiation the version of the Statute that had been passed by the Catalan parliament was significantly diluted in order for it to be accepted by the PSOE and, by extension, by the central parliament. Among the changes made to the text were the following:

- a) The national definition of Catalonia: this was moved from the articles to the Preamble of the Statute (which lacked legal value) and had the following somewhat idiosyncratic wording “Expressing the feelings and the wishes of the citizens of Catalonia, the Parliament of Catalonia has defined Catalonia as a nation by an ample majority”.
- b) Justice: the justice administration would not adopt a decentralized model and the High Court of Catalonia would not be the court of last resort.
- c) Powers: watering down of the bilateral negotiation procedures and the exclusive powers of the Generalitat in many areas (education, immigration, ports, airports, industry, research, universities, foundations, businesses, local administration, etc).
- d) Foreign affairs and relations with the Spanish state: the Generalitat would not have the right to examine treaties with the European Union when these affected its own exclusive powers; nor would it be able to participate directly in the Council of Ministers or the COREPER. Moreover, other fundamental aspects for Catalonia’s presence abroad were eliminated: limitations on foreign delegations; elimination of Catalonia as constituency in European electios; its exclusion from UNESCO; the Generalitat’s inability to sign external agreements within the scope of its own powers; the Generalitat was also not permitted to designate members of the Constitutional Court or establish agreements with other AC.
- e) Finance: elimination of bilaterality and fiscal responsibility on taxes. Watering down of the role of the Tax Office with no guarantees of changes in the solidarity model nor of respect for the ordinal principle following transfers. Elimination of gradual harmonization with the economic agreement enjoyed by the autonomous communities of the Basque Country and Navarre.

The Statute of Autonomy was eventually passed in March 2006 in the Spanish Parliament with the support not only of the PSOE, but CiU, the PNB, IU, the BNG and Coalición Canaria. Subsequently, in May 2006, it was also passed by the Senate without any changes. During these votes, ERC clearly dissociated itself from the reform process by abstaining because it believed that the changes made to the original text had been too serious for it to receive the party’s support. In June 2006, a referendum was held to approve the new Statute (Table 5) in which it received the support of 73.9% of the Catalan electorate, although the turnout was low:

Table 5. Referendum on the Catalan Statute of Autonomy (2006)

<b>Yes</b>	1.899.897	73,24%
<b>No</b>	533.742	20,57%
<b>Turnout</b>	2.594.167	48,85%

Source: Catalan Government

The referendum should have marked the end of the reform process by closing a legislature devoted to this issue. However, political events took a different turn. On the one hand, the tension within the tripartite government caused by ERC's opposition to the new Statute resulted in it being expelled from the government as well as serious instability. On the other hand, the appeals of unconstitutionality lodged, above all, by the Popular Party, caused the controversy to drag on and ended up hindering the deployment of the powers contained in the new text.

*c) The judgement of the Constitutional Court (2010).* The Popular Party (PP), the Ombudsman, and several autonomous communities (La Rioja, Murcia, Valencia, Aragon and the Balearic Islands) lodged appeals against different aspects of the Statute's text. These were mainly related to the definition of Catalonia as a "nation", linguistic aspects, powers, the remaining underlying bilaterality, the establishment of specific rights and liberties for the citizens of Catalonia, the regulation of Catalonia's foreign affairs, and rules relating to its finance system.

The 12 judges of the Constitutional Court (appointed by the Congress, Senate, central Government and the General Council of the Judiciary) took nearly four years to deal with the appeals, generating constant uncertainty regarding the final outcome which would have consequences for the overall operation of the system of autonomous communities. Over these four years the process became increasingly convoluted and politically convulsive. The Court's impartiality was questioned, seriously damaging the institution's legitimacy<sup>159</sup>. Finally, the Constitutional Court published its ruling on the most extensive of the PP's appeals in July 2010<sup>160</sup>. The Court's judgement affected the constitutionality of 14 articles and "interpreted" 27 others. The aspects revised by the Court can be divided into three areas<sup>161</sup>:

- 1) Recognition: the judgement states that the Preamble (in which Catalonia is defined as a nation) has no legal value. Regarding the Catalan language, the wish to make it the preferred language within the administration and the media, and the duty to know it were eliminated; the linguistic rights of consumers and users and its role as the primary language in the education system were limited.

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<sup>159</sup> A number of challenges of a political nature were made between members of the Court. This resulted in the marginalization of Judge Pablo Pérez-Tremps, at the request of the PP, for having published an academic study on the powers of the Generalitat some years earlier. Moreover, disagreement between the two largest state-level parties, the PP and the PSOE, made it impossible to replace several of the Court's judges. As a result, some of its members' terms of office ran out. During the writing of the judgement, disagreements between the informally so-called "conservative" and "progressive" judges made it necessary to draw up a total of seven versions of the final draft, some of which were leaked to the press.

<sup>160</sup> STC 31/2010, 28 June 2010.

<sup>161</sup> See Requejo 2011.

- 2) Powers: in this area the Statute's regulation limiting the scope of "base laws" (the central government's main way of invading Catalonia's autonomous powers) was cancelled. Moreover, the concepts of exclusive powers, executive powers and spheres such as international relations, culture, civil law or immigration were reinterpreted.
- 3) Finance: in this area, two articles referring to the levelling of incomes taking into account similarity of fiscal effort and legislation on local taxes were declared unconstitutional. The interpretative part affected regulations regarding the ordinal principle and state investments according to GDP, among others.

In conclusion, the process resulted in a clear watering down of the objectives of recognition and political accommodation that had been established at the beginning of the reform process of the Statute. This is a key element to understand the subsequent emergence of secessionist demands in Catalonia. First of all, the reform had demanded the legally binding recognition of the national reality of Catalonia within the framework of the Spanish Constitution. Article 1 of the reform proposal approved by the Parliament of Catalonia established that "Catalonia is a nation"<sup>162</sup>. This demand had been stripped of all legal value by the end of the process. Secondly, greater depth and protection for self-government had been sought in order that the Generalitat could further develop its own distinct powers, but we have already seen that this demand resulted in extremely modest gains. Thirdly, it was not possible to attain a finance model which ended a system of territorial "solidarity" regarded as unjust (quantified as between 7% and 10% of Catalonia's GDP, figures that have provoked use of the term "fiscal despoliation" in political debates), nor respect for the ordinal principle once the territorial transfers have been made.

The combination of the extremely long-drawn-out process to reform the Statute (7 years) and its final outcome generated a widespread feeling in a large part of the Catalan citizenry of a lack of institutional legitimacy and reluctance on the part of the Spanish state to permit the effective recognition and accommodation of the distinct national reality of Catalonia.

### **B) Mobilizations of the citizenry, "right to decide" and secessionism**

In parallel with the process to reform the Statute there was an increasing mobilization of the citizenry which had not occurred in previous years. In 2005, the Platform for the Right to Decide (PRD) was formed, bringing together over 500 entities. While the Statute was being negotiated in the Spanish Parliament (February 2006), the PRD organized a demonstration that was attended by hundreds of thousands of citizens who marched through the streets of Barcelona under the slogan "We are a nation and we

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<sup>162</sup> Parliament of Catalonia (Bulletin), October 2005.



have the right to decide”. This mobilization gathered together the main pro-Catalan associations in Catalan civil society, but only received the support, in the party-political sphere, of ERC and EUiA, as the rest of the political parties considered this to be a time to negotiate. Subsequently, when the Statute was being implemented (December 2007), the PRD led another large mobilization demanding greater investment in Catalonia, during a crisis involving the functioning of the railway network. This second mobilization under the slogan “We are a nation and we say enough is enough!” attracted even more people than the previous one, and was supported by the majority of the Catalan political groups, apart from the PSC and the PP.

In November 2009 all twelve newspapers with offices in Catalonia published a joint editorial in Catalan and Spanish entitled “The Dignity of Catalonia” which denounced the injustice done to Catalonia following the watering down of significant aspects of the Statute after it had been approved by referendum in the Spanish and Catalan parliaments. A third mobilization of the citizenry took place following the Constitutional Court’s judgement on the Statute (July 2010). On this occasion more than a million people took to the streets according to the local police force (the total population of Catalonia is 7.5 million people) under the slogan “We are a nation, we decide!”, organized by the principal Catalan cultural organizations –led by Òmnium Cultural– and supported by the main trade unions, the president of the Generalitat José Montilla himself and all the Catalan parliamentary parties, with the exception of the PP and Cs<sup>163</sup>.

Apart from these mobilizations of the citizenry, which were basically the product of the strong tradition of civil associations in Catalan society, a new and original kind of mobilization appeared. Between September 2009 and April 2011, 552 municipalities (out of a total of 947, representing 77.5% of the total population of Catalonia) organized unofficial referendums on independence, which were run by voluntary municipal associations. In many villages and towns citizens were asked, in imitation of an electoral process, if they wished Catalonia to become an independent democratic and social state within the European Union. It is estimated that some 800,000 people participated. The majority obviously voted in favour of secession, as only those citizens most sympathetic to this option opted to cast their vote, but this wave of plebiscites constituted a significant propaganda tool and as a result secessionism gained ground on pro-autonomy and federalist positions<sup>164</sup>. But in this context, the emergence of the movement in favour of the “right to decide” (or right to self-determination) was not presented exclusively as a pro-secessionist movement, but also as a defence of the “right” to decide the country’s future democratically.

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<sup>163</sup> C’s (Ciutadans/ciudadanos-partido de la ciudadanía: Citizens-the party of the citizenry), is an organization created in 2006 which is critical of Catalan nationalism and, from implicit pro-Spanish nationalist positions, defends the constitutional model of 1978, secularism and bilingualism in Catalonia.

<sup>164</sup> See Guinjoan-Muñoz 2012.

The elections held in November 2010 saw the decline of the political forces that made up the coalition government, which had been seriously affected by the economic crisis that had begun in Spain in 2008<sup>165</sup>, and resulted in the return to power of a (minority) CiU government. In a context of budget cuts, economic crisis and a low level of implementation of the powers laid down in the 2006 Statute of Autonomy, the new government prioritized the attainment of a new fiscal agreement by proposing that Catalonia leave the common finance regime<sup>166</sup> and began a “bilateral negotiation” with the Spanish state. This was the second time that Catalonia had attempted to leave the framework of the common regime as the new Statute had also included this possibility. Moreover, in March 2012 the Catalan National Assembly (ANC) was formed. This is a civil organization, made up of a wide cross section of Catalan society, it is pro-independence, and present throughout the territory of the country and organized the massive demonstration held on 11 September, 2012, which mobilized over a million citizens and was widely reported in the foreign media.

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<sup>165</sup> During the first quarter of 2008 the unemployment rate in Catalonia was 7.6%, by the last quarter of 2010 it had risen to 18%, and at the end of 2012 it stood at 24% (IDESCAT) (more than 26% in Spain).

<sup>166</sup> The finance model of the 15 autonomous communities, the so-called “Common Regime” (which comprises all the AC except for the Basque Country and Navarre, which are regulated by an asymmetric agreement called the “Economic Accord”) is laid down in the Organic Finance Law of the Autonomous Communities (LOFCA). National tensions in Catalonia, in contrast with the Basque Country, have been expressed in a largely non-violent way. For more information regarding politics in the Basque Country, see Requejo–Sanjaume (2012).

The demand for the “right to decide” was included in their manifestos by the Catalanist parties in the elections held on 25 November 2012, obtaining over two-thirds of the seats in the Parliament, after the president of the Generalitat (Artur Mas) had made a last attempt to negotiate a “fiscal agreement” similar to the model of the existing economic accord in the Basque Country and Navarre which had been flatly rejected by the president of the central government (Mariano Rajoy)<sup>167</sup> (Table 6).

Table 6. Catalan Parliament: electoral results (1999-2012).

	1999	2003	2006	2010	2012
<b>CiU</b>	37,7 (56)	30,9 (46)	31,52 (48)	38,4 (62)	30,7 (50)
<b>PSC</b>	37,9 (52)	31,2 (42)	26,8 (37)	18,4 (28)	14,4 (20)
<b>PP<sup>168</sup></b>	9,5 (12)	11,9 (15)	10,7 (14)	12,4 (18)	13 (19)
<b>ERC</b>	8,7 (12)	16,4 (23)	14 (21)	7 (10)	13,7 (21)
<b>ICV-EUiA</b>	2,5 (3)	7,3 (9)	9,5 (12)	7,4 (10)	9,9 (13)
<b>Ciutadans<sup>169</sup></b>	-	-	3 (3)	3,4 (3)	7,6 (9)
<b>CUP<sup>170</sup></b>	-	-	-	-	3,5 (3)
<b>SCI<sup>171</sup></b>	-	-	-	3,3 (3)	1,3 (0)

Source: Catalan Government. Percentage (number of seats)

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<sup>167</sup> For access to all the electoral manifestos of the 2012 Catalan elections, see the *Regional Manifesto Project* : <http://www.regionalmanifestosproject.com/>.

<sup>168</sup> Partido Popular (PP) is a state-wide, right-wing party and centralist, the current president of Spain Mariano Rajoy belongs to this party and nowadays has an absolute majority in central Parliament.

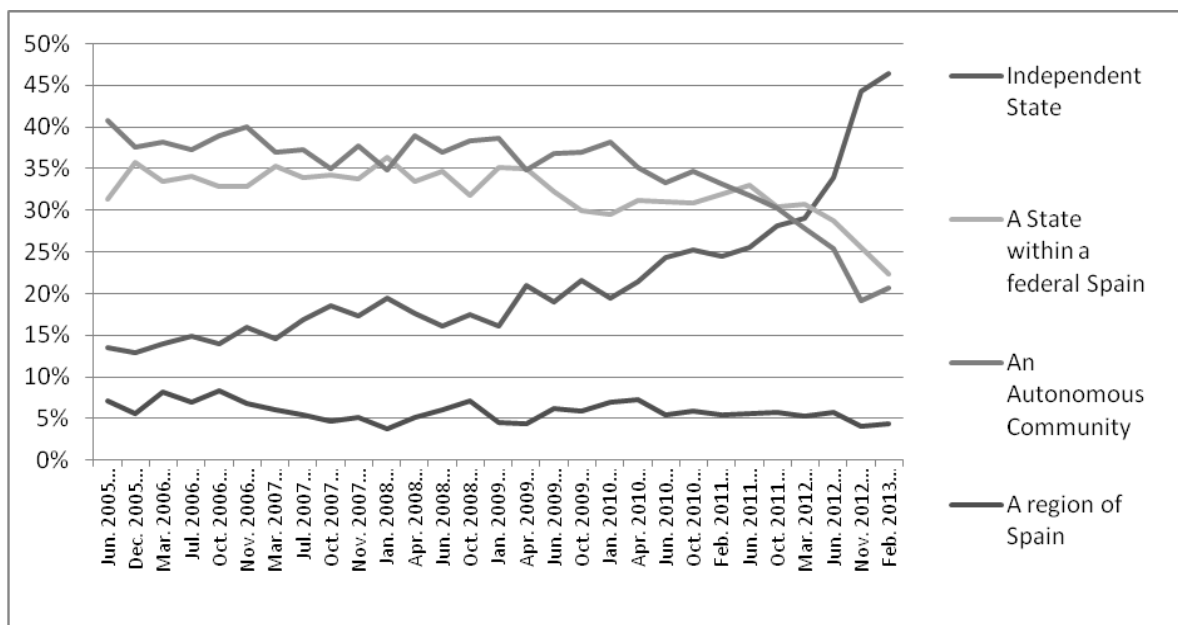
<sup>169</sup> Ciutadans-Partido de la Ciudadanía (C's) is a centrist party, centralist and defender of Spanish speakers in Catalonia.

<sup>170</sup> Candidatura d'Unitat Popular (CUP) is a secessionist and leftist party which comes from local secessionist movements and leftist minor organizations.

<sup>171</sup> Solidaritat Catalana per la Independència (SCI) is a centrist platform created for declaring secession unilaterally in Catalonia.

Similarly, surveys show that support for secession, on the one hand, and the right to decide, on the other, have not ceased to grow over the last few years<sup>172</sup>.

Figure 1. Evolution of Catalans' territorial political preferences (2005-2013)



Source: CEO

It is worth noting that the opposite has happened in the rest of the autonomous communities (with the exception of the Basque Country); as the pro-independence option gained ground in Catalonia, the number of people in favour of decentralization and federalization dwindled in the rest of Spain<sup>173</sup>.

The new (CiU) minority government has sought stability through a “Agreement of Government” with ERC (December 2012). ERC remains in opposition but supports the government on constitutional issues and those relating to governability. This agreement between CiU and ERC includes aspects connected with the economic crisis as well as three aspects pertaining to the “right to decide” the country’s constitutional future: a) a “Declaration of Sovereignty” in the Catalan Parliament; b) the creation of an advisory body called the Advisory Council for National Transition made up of experts; and c) the calling of a referendum on the constitutional future of the country within the framework of the EU.

<sup>172</sup> The evolution of the territorial preferences of the Catalans has varied drastically: in a multiple-choice question on the preferred territorial model for Catalonia (regional, autonomous community, federated state, independent state), in June 2005 13.6% of respondents preferred an independent state, while in June 2012 no fewer than 34% chose this option. More recent polls (2013) show even higher results (between 40% and 45%) (CEO, Barometer of Public Opinion).

<sup>173</sup> See Grau 2011.

The Declaration of Sovereignty was passed by the Catalan Parliament (January 2013) by a majority of 85 out of a total of 135 members. It establishes that Catalonia has the right to decide its own future. Although this declaration lacks legal validity, the Spanish government has lodged an appeal against it with the Constitutional Court as it considers it to be in contravention of the 1978 Constitution. The CiU parliamentary group in the Spanish Parliament subsequently put forward the initiative to hold a referendum on the future of Catalonia within the Spanish legal framework, which was supported by 74% of the Catalan members of parliament. Ninety per cent of the other Spanish MPs (basically the PP and the PSOE) voted against this proposal. However, the Catalan socialist MPs voted in favour of the resolution. This was the first time that they had voted differently from their PSOE colleagues. The same resolution was also presented and voted on in the Catalan Parliament, where 104 out of 135 MPs voted in favour<sup>174</sup>. There is therefore a very pronounced contrast between the two parliaments.

Finally, the autonomous government of Catalonia (Generalitat) has created the Advisory Council for National Transition (CATN) (April 2013) which has been tasked with advising the government on the different scenarios, procedures, legal frameworks, international experiences, institutions, etc relating to the exercise of the right to decide<sup>175</sup>.

#### **4.4. Conclusions: Legitimizing national pluralism and theories of secession. The case of Catalonia.**

With regard to the legitimizing positions put forward by the different political actors, there is a clear contrast not only between the values and objectives they defend, but also between the different “paradigms” or theoretical frameworks they employ. On the one hand, the central government and the main Spanish political parties put forward reasons of a legal-constitutional nature to argue that, in the Spanish case, it is not possible to enter into a dynamic similar to that which occurred in the case of Quebec and Canada or the one that is currently taking place in Scotland with regard to the United Kingdom. These are different situations, they say, which must be approached in different ways. The underlying implicit democratic approach employed here is that which is associated with liberalism 1. Moreover, a number of actors have employed arguments relating to the potential economic decadence of an independent Catalonia or its automatic exclusion from the European Union (in contrast with the Scottish debate). Thus the two avenues chosen by those actors that reject the possibility of the independence of

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<sup>174</sup> The PSC and ICV have supported the “right to decide”; that is, the calling of a referendum in which the citizenry can express their majority wishes regarding their future, despite the fact that the former is against independence and the latter has made no statement on the matter.

<sup>175</sup> This council has 13 members, most of who are university professors and researchers, mainly from the areas of political science, economics, and constitutional and international law.

Catalonia and the possibility of calling a referendum on the issue are that of the unconstitutionality of territorial separation, and that of “fear” of the potential consequences that an independent Catalonia would have for the Catalan people.

On the other hand, the Catalan actors put forward two kinds of legitimizing argument depending on whether the aim is to justify the holding of a referendum on secession, or to justify the advisability of Catalonia becoming an independent state. The fundamental reason used to justify the referendum is its democratic nature. The prior assumption is that Catalonia is a specific *demos* that has the right to decide about its future according to liberal-democratic rules. The differentiating roots of this *demos* are of a historical and national nature. Thus the legitimizing arguments for the right to decide usually combine the perspective of adscriptive or national theories of secession with the perspective of democratic and plebiscitary theories. The different advocates of this position, both in the political sphere and in civil society, put different emphasis on these two avenues of legitimation, but, broadly speaking, the approaches that they adopt are linked either to traditional minority nationalist traditions, or to values and attitudes associated with liberalism 2. In fact, the contrast between the normative and analytical frameworks represented by liberalism 1 and 2 are in line with the more basic and abstract contrast between, on the one hand, the Kantian paradigm based on the value of *dignity* and the perspective of *moral individualism*, and, on the other hand, the Kantian-Hegelian paradigm, which complements the former with *recognition* and the perspective of *moral collectivism*<sup>176</sup>.

In contrast, the legitimizing arguments in favour of independence –whether this is achieved by means of a referendum or through alternative avenues such as a unilateral declaration of independence by the Parliament of Catalonia– add to the two avenues mentioned earlier that associated with theories of just-cause secession. In this case, “injustice” is present both in relation to the systematic mistreatment at the economic and fiscal levels that Catalonia receives from the Spanish government (fiscal deficit of around 7%-10% of GDP<sup>177</sup>), lack of infrastructures, centralism with regard to Barcelona’s airport and other infrastructures, lack of recognition of the distinct national reality of Catalan society, linguistic policies favouring Spanish to the detriment of Catalan (absence of linguistic pluralism in state institutions and practices, etc), marginalization of Catalonia from the European and international spheres, shortcomings in the use of political symbols (use of flags, anthems, etc) in sporting competitions, etc. This avenue is reinforced by the traditional lack of inclination displayed by Spanish institutions to reach agreements that permit recognition and political and constitutional accommodation of the state’s national pluralism. The refusal to include an explicit recognition of the Catalan nation in the new Statute by the Spanish parliamentary majority and subsequently by the Constitutional Court represents a failure of

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<sup>176</sup> This point is developed further in Requejo 2013.

<sup>177</sup> Catalonia’s fiscal deficit with regard to the state is in the order of 15,000-20,000 million euros a year, according to a number of studies. The accumulated negative balance since the year 1986 is calculated to be around 230,000 million euros (Bosch-Espasa-Solé 2012).

recognition (Patten). Moreover, the economic mistreatment of the fiscal balances and the unwillingness to resolve the ambiguity regarding powers which benefits the central government are clear examples of a lack of respect with regard to self-government or internal self-determination (Seymour) and of unfair redistribution (Buchanan). Finally, regarding the right to decide, the Spanish territorial model is always interpreted in a unitary way rather than in a plurinational federalist fashion which is sympathetic to value pluralism (Requejo). This response prevents an approach to the question based on negotiation and multilateralism such as that established, for example, by Canada's laws or in the Scottish case.

In short, it is clear that the conflict between the Spanish and Catalan institutions has escalated and become more radical since the last elections (November 2012). While this paper was being written (April 2013), the future prospects of Catalan and Spanish politics regarding the territorial question remain open. There are a number of different possible scenarios: either through agreements –which currently seem unlikely– within the context of the Spanish state, or through agreements with European or international mediation, or through an institutional rupture and the mobilization of the citizenry (which we do not deal with here). Moreover, it is an issue that is juxtaposed with the management of the economic crisis in Europe (in which the Generalitat does not participate). In practical terms, macroeconomic decisions (management of the public deficit and public debt) remain in the hands of the central government, as do decisions relating to the management of the main taxes and money transfers which enable the Generalitat to pay everything from the salaries of its employees to its suppliers. The economy is currently one of the central government's key instruments for putting pressure on the Catalan government. Moreover, the latter has yet to approve the budget for 2013, due to the fact that ERC does not agree with the cutbacks put forward by CiU, which are designed to meet the objective of controlling the public deficit (the approval of the budget is not part of the Agreement of Government signed by these two political forces).

The Catalan case within the context of the Spanish “state of autonomous communities” thus illustrates the practical juxtaposition of the legitimizing arguments put forward by the different normative theories of secession. The reform process of the Statute has marked the most recent political cycle of this empirical case, causing the predominant Catalan demands to shift from being regionalist or pro-autonomy in favour of secessionism. Throughout this process, the lack of recognition and accommodation shown by the Spanish state has played a decisive role. These recent political events have placed the Catalan case as a clear empirical reference within the sphere of comparative politics on secessionist processes and as to check the normative theories of secession in plurinational democracies.

## References

Amoretti U - Bermeo N (eds), (2004), *Federalism, Unitarism and Territorial Cleavages*, The Johns Hopkins University Press, Baltimore-London

- Aronovitch, H. (2000), "Why secession is unlike divorce", *Public Affairs Quarterly*, vol. 14, num. 1.
- Bauböck, R. (2000), "Why Stay Together? A Pluralist Approach to Secession and Federation" in Kymlicka, W. *Citizenship in diverse societies*, Oxford: Oxford University Press.
- Beran, H. (1984), "A Liberal Theory of Secession", *Political Studies*, vol.32, pp.21-31.
- Birch, A. (1984), "Another Liberal Theory of Secession," *Political Studies*, vol.32, pp.596-602.
- Billig, M. (1995), *Banal nationalism*, The Cromwell Press.
- Bosch; Espasa; Solé (eds.) (2010), *The political economy of inter-regional fiscal flows*, Edward Elgar Publishing Ltd, Cheltenham
- Buchanan, A. (2007), *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, Oxford University Press.
- Buchanan, A. (2003), *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, Oxford University Press
- Buchanan, A. (1991), *Secession. The Legitimacy of Political Divorce from Sumter to Lithuania and Quebec*, Westview Press
- Burgess, M.; Gagnon, A. (eds) (2010), *Federal Democracies*, London-New York: Routledge.
- Gagnon, A.; Tully, J. (eds), *Multinational Democracies*, Cambridge University Press.
- Grau, M. (2011), "Self-Government Reforms and Public Support for Spain's Territorial Model: Changes and Stability (1992-2010)", *Revista d'estudis autonòmics i federals*, num.13.
- Guinjoan, M; Muñoz, J. (2012), "Accounting for Internal Variation in Nationalist Mobilization: Unofficial Referendums for Independence in Catalonia (2009-11)", *Nations and Nationalism*, vol.19, num.1, pp.44-67.
- Hechter, M., (2000), *Containing Nationalism*, Oxford: Oxford University Press.
- Kymlicka, W. (2001), *Politics in the Vernacular: Nationalism, Multiculturalism and Citizenship*, Oxford University Press.
- Lehning, P. B. (ed.) (1998), *Theories of Secession*, New York: Routledge.
- Margalit, A. & Raz, J. (1990), "National self-determination", *The Journal of Philosophy*, vol.87, num.9, pp.439-46.
- Moore M. (2001), *The Ethics of Nationalism*, Oxford University Press



- Moore, M., (ed.) (1998), *National Self-determination and Secession*, New York: Oxford University Press.
- Norman, W. (2006), *Negotiating Nationalism. Nation-Building, Federalism, and Secession in the Multinational State*, Oxford University Press
- Norman, W. (2001), "Secession and (Constitutional) Democracy" in Requejo, F (ed), *Democracy and National Pluralism*, London: Routledge.
- Parekh, B. (2000), *Rethinking Multiculturalism. Cultural Diversity and Political Theory*, Londres: McMillian.
- Patten, A. (2002), "Democratic Secession from a Multinational State", *Ethics*, vol.112, pp.558-586
- Pavkovic, A., Radan, P. (2007), *Creating New States: Theory and Practice of Secession*, Aldershot, UK: Ashgate.
- Pavkovic, A., (2003), "Secession, Majority Rule, and Equal Rights: A Few Questions", *MacquireLaw Journal*, vol.3, pp.73-94.
- Requejo, F. (2013), "Plurinational Federalism and Political Theory", in J.Loughlin-J. Kincaid-W. Swenden (eds), *The Routledge Handbook on Regionalism and Federalism*, London-New York: Routledge.
- Requejo, F. (2011), "Catalogue. Reconnaissance Politique et Autonomie Nationale (1979-2010)", *L'Action National*, Montréal, vol.CI, num.6-7, pp.143-167
- Requejo, F. (2010a), "The crooked timber of liberal democracies is still too straight", in N. Walker-B. Shaw-S. Tierney (eds), *Europe's Constitutional Mosaic*, Hart Publishing, Oxford.
- Requejo, F. (2010b), "Federalism and Democracy. The Case of Minority Nations: a Federalist Deficit", in M. Burgess-A. Gagnon (eds), *Federal Democracies*, Routledge, London.
- Requejo, F. (2005). *Multinational Federalism and Value Pluralism*, London-New York: Routledge.
- Requejo, F.; Caminal, M (eds), (2012), *Federalism, Plurinationality and Democratic Constitutionalism. Theory and Cases*, Abingdon: Routledge.
- Requejo, F.; Sanjaume, M, (2012), "Secession and liberal democracy. The case of the Basque Country", in Pavkovic A (ed), *Secessionism and Separatism in Europe and Asia: To Have a State of One's Own*, Routledge, pp.110-126
- Seymour, M. (2007), "Secession as a Remedial Right", *Inquiry*, vol.50, num.4, pp.395-423.

Sorens, J. (2012), *Secessionism. Identity, Interest and Strategy*, McGill's-Queen's University Press.

Tamir, Y. (1993), *Liberal Nationalism*, Princeton, NJ: Princeton University Press.

Taylor, Ch., (1992). "The Politics of Recognition", *Multiculturalism and the "Politics of Recognition"*, New Jersey, Princeton University Press

Walzer, M (1994), *Thick and Thin: Moral Argument at Home and Abroad*, Notre Dame Press

Wellman, A (2005), *A Theory of Secession: The Case for political Self-determination*, Cambridge University Press.





## CHAPTER 5

### 5. Liberal Democracy and Secession: the difficult marriage of political divorce\*

#### 5.1. Introduction

In this paper, I argue that theories of liberal democracy are not prepared for dealing with political divorce and I propose a solution to this problem. My conclusion is that at least a Liberalism II approach<sup>178</sup> beyond classic individualist liberalism, a set of criteria for a legitimate political unit and a “consent approach” to political authority, should be incorporated into traditional liberal-democratic theories of democracy in order to deal with secessionism. In this paper, I consider secessionist demands as a major challenge for liberal democracies in the twenty-first century and not a strategic form of bargaining empty of intrinsic political value. Moreover, I argue that it is crucial for our democratic regimes to have new tools when dealing with secessionism. History shows that territorial disputes have rarely been solved through peaceful means but through violent confrontation<sup>179</sup>. Three-quarters of all civil wars have been caused by territorial disputes during the twentieth century and “millions have died in conflicts over autonomy and independence” Sorens (2012: 161).

Although I do not support *ad hoc* theories of secession, I do support the marriage between secession and traditional liberal-democratic theories, I discuss the main questions that one finds in the theoretical field on theories of secession. My intuition is that, as Buchanan (1991) wisely envisaged, theories of secession will be incorporated into a more general approach and understanding of political legitimacy.

In the following sections, I address two deficits that, in my opinion, should be overcome (section 5.2); firstly, I criticise *remedial right theories* in order to show that they are

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<sup>178</sup> Michael Walzer distinguishes between a 'Liberalism I' covering basic liberties, and a more Communitarian oriented 'Liberalism II' which encompasses collective rights. See Walzer's comment in Taylor (1994).

<sup>179</sup> See Mann (2005).

state biased due to their theoretical shortcomings (section 5.3); secondly, I provide some theoretical solutions mentioned previously, based on the work of other political philosophers (section 5.4); thirdly I offer an hybrid approach to secession (section 5.5); and finally, I try to solve some general critiques to secession using my new theoretical framework (section 5.6). The contribution of this paper is twofold. On the one hand, it considers a possible marriage between secession and liberal democracies, which is an unexplored topic despite the existence of several theories of secession. On the other hand, it relates two theoretical shortcomings that have followed different paths in political theory literature: national pluralism and the legitimacy of the political unit.

The conclusions contained in this paper are constrained by the context of plurinational democracies. The analysis of the theories of secession and democracy assumes that secessionist disputes arise in these contexts and not in other circumstances. I do not pretend to be establishing general guides for secessionist disputes since the ones taking place in contexts of extreme oppression and non-democratic situations are by far the majority in the world. I do believe that in these situations, a ‘just-cause’ based legitimacy is enough for allowing unilateral secessions since there is no room for democratic debate or consent-based solutions.

## **5.2. Two deficits that explain why secession has been largely ignored by the political theory of liberal democracy**

The question of *under what conditions is seceding from a liberal democracy legitimate* is still an ongoing debate in political theory literature. In the last two decades many efforts have been undertaken that seek to provide a “theory of secession” that could be applied to democratic and non-democratic contexts. While in the last context, a certain consensus has been reached<sup>180</sup>, the same cannot be said for the former<sup>181</sup>. The range of academic responses to this issue covers from the free-for-all secession utopia, as well as the individual<sup>182</sup>, to the sacred unity and integrity of the State. Despite some *ad hoc* theories of secession, theories and philosophers of liberal democracy have been reluctant to address this debate. When normative theories of liberal democracy attempt to deal with such claims, they present important shortcomings. As Requejo has written “what seems increasingly untenable is not what traditional democratic liberalism and other ideologies say, but what they do not say because they take it for granted: a series of theoretical assumptions and common places of a *statist nature*” (2010: 2).

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<sup>180</sup> The Just Cause approach seems to be the most accepted theory. See: Buchanan (1991, 1992, 1997, 2003, 2004).

<sup>181</sup> In a previous article I build a typology of liberal theories of secession.

<sup>182</sup> Libertarians are an example of this theory. See: Rothbard (1998).

In this paper we argue that secessionism is a difficult claim to deal with because it simultaneously points out at least two deficits of liberal democracy. The *first deficit* refers to the evidence that although the existing nation-states present themselves as civic, as opposed to nationalist political demands of ethnically defined minority nations, they also have an ethnic core and deploy nationalist policies<sup>183</sup>. The *second deficit* refers to the idea that theories of liberal democracy, although having been based “on the name of the people”, have largely ignored the legitimacy of the people; the constitution of the *legitimate polity* has been abandoned to the force of history instead of any democratic process. In the following paragraphs we present these deficits<sup>184</sup>.

### ***First deficit: national pluralism***

Using Margaret Canovan’s terminology, we could say that secessionist demands are fuelled by the battery of nationalism (Canovan, 1996). It is difficult to imagine any secessionist movement in the present world which is not attached to a certain form of this appeal. Even where the usual adscriptive characteristics associated with a national conscience are apparently inexistent, thus making it hard even for a full-blown constructivist defender to “build the imagined community”, secessionists strive to present themselves as members of a different nation. The cases of the so-called *Padania* claimed by the Northern League in Italy or Alaska in the US, with vivid secessionist movements, are paradigmatic of this behaviour. Secession and the so-called “national question” although not synonyms, in practice are always close friends, even brothers. Nationalism has been extremely uncomfortable for social scientists and philosophers throughout history. Great thinkers like Durkheim, Marx or Weber failed in their efforts to provide a complete theory on this topic although many of them were nationalists themselves (Guibernau, 1996). The Romantic movement in the nineteenth century was widely considered to be “a passing phase” that “would disappear with its causes, which in their turn would be destroyed by the irresistible advance of enlightenment (...) the claims and ideals of mere national groups would tend to lose importance, and would join other relics of human immaturity in ethnological museums” (Berlin, 1991: 340). This idea has remained deeply rooted in the minds of 20<sup>th</sup> century philosophers. Even in the early nineties of the last century, Hobsbawm or Habermas considered nationalism as something condemned to disappear (Tierney, 2005; Seymour 2010). Of course, sub-state national identities were even more commonly dismissed even by alternative ideologies to liberalism like socialism. “Marx and Engels, for example, accepted the right of ‘the great national subdivisions of Europe’ to independence (...) But they

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<sup>183</sup> The starting point of my reflections on this topic comes from Kymlicka (1995, 2001), Requejo (2001) in the third and fourth stages of minorities debate on the majority nation-building and stability (Requejo, 2001:34).

<sup>184</sup> See: Dahl, 1992.

rejected the idea that smaller ‘nationalities’ had any such right such as the Czechs, Croats, Basques, Welsh, Bulgarians, Romanians and Slovenes. The great nations (...) were the carriers of historical development. The smaller nationalities were backward and stagnant” (Kymlicka, 1995: 69). The practical and theoretical consequences of these shortcomings have been twofold.

On the one hand, Western philosophical tradition has been, in a certain sense, ‘blind’ to the fact that its projects were based on the nation-state. The theories developed by the most important philosophers have been thought to work within the context of the nation-state but have almost never explained why. An example is the famous theory of justice written by John Rawls, probably one of the most influential works of political theory in recent decades. In his book, he refers to “the basic structure of society”, a “society” that surprisingly is conceived to exist in perpetuity. This “society”<sup>185</sup> is defined in terms of a nation-state, so his theory must be applied within its boundaries (Kymlicka and Straehle, 1999: 65). The same could be applied to the great names of philosophy that usually have thought about the legitimacy of governments or regimes and its justification, such as Plato (justice), Aristotle (virtuous actions of the citizens) or even Hobbes (peace and order), but few have stressed the fact that what should also be legitimised is the *polity* (Connor, 1999:28). We can see the conceptual confusion on this question, essentially when analysing the use of the terms “nation” and “state” that in English language used to be considered as if they were synonymous (Connor, 1999:24).

On the other hand, the existing liberal-democratic nation-states have not been neutral in terms of culture and national identity. The nation building of the states has been based on a particular culture, and national identity, promoted by the state institutions: government, bureaucracy, courts and schools (Kymlicka, 1995, 2001). Nation-states used to present themselves as civic and committed to individual rights opposed to ethnic and group demands. Two examples of this behaviour are the US and France that officially don’t recognise the concept of national minorities or minority nations because it would undermine their civic state (Kuzio, 2002: 31). However, demonising the nationalism of smaller groups of people and their political claims is quite hypocritical, taking into account that large nation-states already have their own identity secured and political institutions to defend themselves (Moore, 1997: 904). As Requejo has pointed out, this behaviour reveals a “dark side” of liberal democracies in the interpretations of its main legitimizing values such as: equality, liberty, pluralism or

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<sup>185</sup> In *The Law of Peoples* Rawls refers to Yael Tamir’s definition of nation and when he talks about the ‘people’ he seems to be talking about a nation. It has been suggested that Rawls’ theory is in fact nationalist (Vergés, 2009).



dignity (Requejo, 2010)<sup>186</sup>. In summarizing, we can say that the classic paradigm of the nation-state is a nationalist project that has promoted a nation-building, but also a nation-destroying process (Connor, 1972).

### *Second deficit: legitimacy of the people*

As Sir Ivor Jennings wisely wrote about the legal principle of self-determination which informs the sovereignty of the states in current international law: “On the surface, it seemed reasonable: let the people decide. It was in fact ridiculous because the people cannot decide until somebody decides who the people are.”<sup>187</sup> Secession points directly to this deficit, claiming sovereignty for a minor part of a larger *people*, since this part is seen by the secessionists as a different *people*, the bearer of their own sovereignty. For example, when the Basque president presented a referendum proposal on sovereignty to be held in the three provinces of Euskadi (Araba, Vizkaia and Gipuzkoa) the resolution of the Spanish Constitutional Court rejected the proposal arguing that “the recognition of a new sovereign subject called the Basque Country (...) requires a previous constituent decision politically imputable to the constitutional sovereign (the Spanish people; art.1.2 SC)” (STC, 9/11/2008).

As I have said above, one of the main concerns of political philosophers has been the legitimacy of the government. Any liberal-democratic theorist would agree that some form of consent of the governed is a *prima facie* rule to know if a government is legitimate or not<sup>188</sup>. The concept of secession has some problems related to “consent” and legitimacy of political authority that we will address later; however, the legitimacy of the people (not the government) itself is much more complicated and the root of the deficit presented here. Robert Dahl wrote, “how to decide who legitimately make up the people is a problem almost totally neglected by all the great political philosophers who write about democracy” (Dahl, 1992). In fact, it has been said that there is a lack of a theory of the *demos* in the theories of democracy that is an “absence of conceptions regarding legitimate demarcations (borders)” (Requejo, 2010: 3). But in the twenty-first century, there are not just secessionist movements that have pointed out this theoretical shortcoming in traditional theories: globalisation with its transnational, political and economic relationships together with immigration has raised a similar question. How has this theoretical challenge been solved by liberal democracies?

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<sup>186</sup> See also Mann (2005).

<sup>187</sup> Quoted in Moore (1998) “Introduction”.

<sup>188</sup> Besides other criteria.

The usual solution to what is called the “democratic or border paradox” has been by drawing a line between democratic legitimacy on the one hand and history, on the other. This has been called the *Maginot line*: the answer to the question of who legitimately constitutes the people is a result of “the contingent forces of history” (Näsström, 2007: 625). Instead of solving the paradox from within the theories of democracy, at least listing certain criteria to be held by “legitimizing peoples”, the constitution of the legitimate *polity* has been externalised from history. Here emerges the deficit that cosmopolitans, sub-state nationalists and others have pointed out: this “force of history” has usually meant the arbitrary forces of power, contest or civil war, and such things have nothing to do with any democratic requirement. But at the same time, states are extremely jealous of their territorial integrity and would require strong (the most permissible) democratic requirements in order to change this *status quo*.

### ***Secession: a theoretical challenge***

I claim that these two deficits are the main obstacles that liberal-democratic theories have to deal with when confronting secessionist demands. Recognising the nature of the existing nation-states and the criteria used to define a *legitimate people* seem to be the trickiest questions. In this paper, I do not pretend to offer a general theory of democracy to solve these deficits but just to offer a contribution for establishing useful criteria in addressing them when dealing with secessionism. I have addressed elsewhere the existing theories of secession<sup>189</sup> and their classification. In the next section (5.3) I claim that the most accepted theory of secession, *remedial right theory*<sup>190</sup>, is state-biased and presents several problems related to the deficits presented above. Concretely, it is not sensible enough to the debate on minority rights and it does not have a list of criteria for establishing a legitimate political unit. After revising the main shortcomings of remedial right theory I will propose certain criteria for addressing secessionist demands.

### **5.3. Remedial right-only theory: a state-biased theory**

Theories of secession, both in practice and in academia, have been dominated by the so-called *remedial right theory*. This theory, according to its most influential proponent<sup>191</sup>,

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<sup>189</sup> In fact, I have developed a typology of theories of secession in the previous article: “*Liberal theories of secession: an analytical typology*”. In this article I focus my discussion on the remedial right theory or just-cause theory because alternative theories (primary right or libertarian) are still considered less feasible and just-cause theory is the kind of theory more closely linked to international practices in secessionist conflicts over the world.

<sup>190</sup> Also called just-cause theory.

<sup>191</sup> Buchanan, A. (1991, 1992, 1997, 2003, 2004)

upholds that there is no *primary right*<sup>192</sup> to secede, but a *remedy right* to be implemented as a last resort to an unjust situation. Its formulation suggests five scenarios in which secession is legitimate<sup>193</sup>. Firstly, when it is necessary in order to avoid a grand-scale human rights violation perpetrated by the parent state or a third party. Secondly, when it is necessary in order to avoid an unjust redistribution – that is a situation of territorialized exploitation. Thirdly, when sovereignty is devolved to a particular territory that had been unjustly annexed by the current parent state. Fourthly, when that group had an intrastate autonomy agreement that has been violated. Finally, when secession is achieved by consensus. Political theorists and international organisations have recognised the value of this secession theory. It presents a robust balance between moral deontological principles (human rights) and consequential (stability) elements that fit in the liberal-democratic tradition. Moreover, it draws a parallel with Locke since it adapts its revolutionary right to secession, introducing secession in the contractarianist tradition. In this theory, secession, as revolution (but beyond its classic defence), is a remedy against tyranny associated with a certain territory (a small portion of the parent state). This appeal to the Lockean theory of revolution is complemented with its reference to justice: secession is not legitimate *per se* except when in correcting an unjust situation, namely when the *status quo* is unjust<sup>194</sup>. The theory is also keen to introduce cultural and group rights to justice considerations although its final version is not that permissive in terms of these kinds of justifications. The final theory only allows secession in extreme cases in which there are violations of human rights or violent conflict situations.

Although there is an apparent engagement of this *remedial theory* to liberal-democratic theories, it has been hardly criticised. In the light of the deficits presented in the preceding section, we will try to sketch the main arguments against approaching secession as a *remedial right* in liberal-democratic contexts. Those arguments will allow us to address the shortcomings presented by liberal-democratic theories when having to deal with secessionist demands. We will try to address these shortcomings in the next section by offering new criteria based on other theories of secession. Two intellectual attitudes are necessary when we deal with national pluralism, namely a *pragmatic approach* and a *moral approach*. While the former addresses the question of how to deal with conflicts between majorities and minorities in order to promote stability in a

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<sup>192</sup> Other authors have suggested that there is a *primary right* to secede on the basis of certain subject-based characteristics: Margalit&Raz, Tamir; or on the basis of democratic rights: Beran, Gauthier, Wellman.

<sup>193</sup> The first three scenarios were formulated in his first book on secession in 1991, while the fourth was included in his later book in 2004. The fifth is not contemplated in his theory which is a theory of unilateral secession. Cultural reasons are considered a just cause only in extreme cases in which there is a clear risk of cultural disappearance that according to Buchanan would not justify, for instance, the secession of Quebec, at least under this argument because it cannot provide a territorial claim (Buchanan, 1991: 52-64).

<sup>194</sup> Wellman has labelled this kind of legitimacy as teleological since the state is legitimated by its functions.

costless way; the latter deals with justice between permanent majorities and minorities in a democracy (Requejo, 2010: 57). The formulation of *remedial right theory* combines both approaches and we organise the criticisms raised against this theory in the same way.

### 5.3.1. Pragmatic approach

#### *Violence promoting paradox*

The first criticism raised against this theory is its *violence promoting paradox*. Unilateral secession is mainly considered as a “proper solution” in cases of serious state-perpetrated injustices such as human rights violations and genocide; in these cases it is said to be “just” and can lead to a unilateral declaration of independence. This statement seems to be intuitively right, however if we look closer at it, we face a tricky paradox: legitimating the break-up of the parent state in the case of state-perpetrated large-scale violence could be seen by *secessionist groups* as an incentive to promote violence. The popular slogan “worse-is-better” could rapidly gain support among those promoting secession and finally result in large-scale warfare where independence would be the final trophy for the *radical-wing* of secessionists. In short, a remedial right-only institutionalisation would lead to *perverse incentives* (Costa, 2003). This is not an abstract, normative-guided conclusion – as David Miller suggests, secession is hardly a remedy for serious injustice. At best it can lead to *fewer* rights violations, as the Kosovo case has shown<sup>195</sup> (Costa, 2003). Violent conflicts involving secession issues where large-scale violence has been deployed seem to point in this direction. When warfare takes over, it is not easy to say if secession solves either the conflict and/or human rights violations. Such examples are Chechnya in Russia, Tamil Eelam in Sri Lanka, Biafra in Nigeria, Katanga in Congo, Western Sahara in Morocco, Kurdistan in Turkey and Iraq, Kosovo in Serbia and South Ossetia in Georgia.

#### *Minimal realism*

Following the criticism presented above, we find a second challenge raised by Michael Seymour against *remedial theory*: its lack of a *minimal realism*. According to this author the UN have never encouraged an “all-oppressed” minorities right; on the contrary, they have a very restrictive definition: “The United Nations has assisted the secession process of nations involved in Eritrea, East Timor and Western Sahara, but it has never favored secession for other cultural groups.” (2007: 401). Moreover, in the liberal-democratic context, large-scale human rights violations are hardly conceivable

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<sup>195</sup> If we consider Kosovo’s independence as a secession case, it could be seen as an irredentist Albanian claim.

<sup>196</sup>, at least the *unjust* threshold seems to be far away from these types of warfare scenarios. So, this interpretation suggests an important point to be considered when assessing the *remedial theory*; the secessionist subject is not well defined.

### *Misunderstanding of secessionist movements*

The criticism raised by Seymour highlights our third criticism: its *misunderstanding of secessionist movements* (Moore, 1998). In a brilliant article published a few years ago, Donald L. Horowitz argued against the right to secede, exposing a certain view of secessionist movements, which coincided, with a common understanding of those claims by the advocates of remedial-right only theory. According to their perspective, secessionists assume the creation of a homogeneous successor state where internal minorities would be expelled or subordinated (2003: 5-6). He stated that “(...) it is often the desire of regional majorities to deal with minorities – and not to deal with them in a democratic way – that motivates or contributes to the secessionist movement in the first instance” (2003: 8). This view is shared by many scholars based on historical and current examples of violent well-known secessionist disputes around the world. As we saw in the last section, the literature used to equate secessionists with ethnic and non-democratic nationalism, whereas parent states are identified with forms of civic and democratic attachment. However, this view is at odds with Western democracies’ secessionist claims. Although secessionist disputes have generated a certain degree of violence in advanced industrial democracies, as is the case of the Basque Country, Corsica and Northern Ireland (the last could be seen as an irredentist rather than secessionist example) where some -a minority- of the actors involved have opted for violent tactics; the rest of them have remained peaceful and distant from the above mentioned situations. “In Western democracies, the armed conflicts in the Basque Country and Northern Ireland are the exception: the majority of territorial disputes in favor of higher levels of self-government by national minorities are peaceful in nature” (Requejo and Caminal, 2010: 6). Sub-state nationalists in Western democracies have expressed secessionist demands, achieving more or less support, through democratic channels in their constitutional democracies during the last 30 years. Three of them emerge as paradigmatic sub-state nationalist movements with widespread support: Quebec, Catalonia and Scotland. A glimpse of the political agendas of the Scottish National Party (SNP), Scottish Green Party (SGP), *Parti Québécois* (PQ), *Québec Solidaire* (QS), *Esquerra Republicana de Catalunya* (ERC) or *Convergència i Unió* (CiU) suggests a completely different picture to the one posed by Horowitz, above. The majorities of these parties have been in office for at least one term in their respective sub-state autonomous governments and offer a complete range of policy proposals in their manifestos as any other state-wide party while standing for secession or self-

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<sup>196</sup> Although *International Amnesty* has reported human rights violations in some Western democracies related to secessionist politics.

determination of their respective minority nation. Concerning the legitimating of their secessionist demands seem to be much more plural than a full-blown nationalist approach would suggest. Recognition and cultural policies involving language and education are an important part of their demands but not the only ones. I have worked on these legitimating discourses elsewhere<sup>197</sup> but a characterisation of their demands can be summarised as follows:

a) Their secessionist claims used to be more moderate than is usually depicted (Tierney, 2005). Those parties accept and even encourage a “gradualist” way to secession that includes intrastate pacts far from full sovereignty. This moderate position could be interpreted as “strategic bargaining” as many authors have suggested (Buchanan, Norman, Bartkus). However, even concerning their final objectives, few of them consider a new and isolated political unit separate from the parent state as a desirable outcome.

b) The range of arguments posed for legitimate secessionist aspirations are far from being reducible to a full-blown ethno-cultural preservation defence. These parties suggest a whole range of arguments involving: culture, language, history, constitutional design, economy, efficiency, redistribution or accountability. The formulation of secessionist demands posed by those movements has more to do with so-called democratic/civic nationalism and democratic legitimacy than with the “one nation, one state” normative nationalist principle (Gellner, 1983).

c) A certain degree of cosmopolitanism<sup>198</sup> used to be associated with those parties since they can be acknowledged more as a form of “civic patriotism” rather than in the fanaticism or obsession of national patriotism. The traditional opposition between nationalist and cosmopolitan perspectives here seems to be challenged (Requejo, 2010). The international dimension plays an important role in those parties strategies, usually translated in their activities in suprastate organisations (Hepburn, 2009).

d) Finally, the practice of a “radical democracy” used to be one of the characteristics of those sub-state movements. When their proposals conflict with the parent state, antagonistic politics emerge. The dialectics involved in their political position used to include tensions that conflict with the common understanding of democratic institutions. In this case, secessionists behave beyond their political parties and deploy social movements tactics based on “power relationships” and the vindication of “difference” (Mouffe, 1999).

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<sup>197</sup> See the previous article: *Quebec, Scotland and Catalonia. How secessionist political parties legitimise secession.*

<sup>198</sup> Cosmopolitanism, as a normative concept, is the idea that all human beings belong to the same moral collective. It creates obligations on the other members of that collective regardless of their specific characteristics such as nationality, language or religion (Requejo, 2010).

### *Partial referee problem*

A practical but not a minor problem of remedial right theories is the *partial referee problem*. Who defines the *injustice* suffered by the secessionists and the violence perpetrated by the State seem to be difficult to find. Secessionist conflicts used to remain a domestic issue until very recently. It can be argued that an international commission could act as an *impartial referee* but this solution leads us to the *perverse incentives problem* commented earlier: the international community gets involved in those conflicts when violent clashes have occurred and even in this case, the final decision is the establishment of an international referee commission. An example of the first case would be Kosovo's secession. The Ahtisaari Plan designed within the UN Interim Administration mission was an example of an impartial referee attempt; nonetheless the final unilateral secession declaration by Kosovo's government was proclaimed outside the UN framework. An example of a secessionist conflict without international intervention is Chechnya.

### **5.3.2. Moral approach**

As I said previously, remedial right theory doesn't provide any specific criteria capable of defining the legitimate subject of a secessionist claim. Morally speaking the right to secede is deserved by those who are brutally oppressed by their parent state. However, as primary right theories have suggested, this seems to be a misleading criteria. As we have seen in the first section, remedial theory derives from the Lockean 'right to revolution' against tyranny, but secession in liberal-democratic contexts has more differences than similarities with revolutions<sup>199</sup>. Revolutionaries seek to overthrow the existing government in their parent state and to promote a complete regime change. But they do not question the political unit. Secessionists do not have as a political objective the promotion of any government or regime change, what they seek is to withdraw a small portion of the state territory in order to achieve political independence for a new political unit, namely a new *demos*. As I will suggest in the next section, secession has more similarities with civil disobedience than with revolution. In any case, to bestow the right to secede using the *oppressed groups*' criteria seems peculiar. In addition, what about the current sovereign nation-states? They enjoy the right to political independence without being oppressed. One could argue that a handful of them have been constructed, in the past, on the basis of a foreign military aggression. But this observation just

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<sup>199</sup> Here it could be argued that the US was created in a secession that was at the same time a revolution, but here we are dealing with proposed political units that emerge in liberal democracies and not in colonial contexts. Some secessionist groups appeal to "internal colonialism" as an argument for seceding but this idea must not be confused with colonialism as it was in 1776.

complicates the situation for *remedial right theory* defenders. Proponents of this theory did not use to be in favour of applying it to past injustices, but just for current human rights aggressions. This problem is pointed out by proponents of two *primary right theories of secession*, *adscriptive* and *plebisitarian*, which suggest two serious criticisms.

#### *Absence of a substantial theory of legitimacy*

The criticism raised by *adscriptive theories* leads us to a central tenet against secession as a remedy. As I pointed out earlier, there is a clear contradiction in promoting the legitimating criteria proposed by this theory. Paradoxically, it considers unjust annexation, intrastate pacts and negotiated secession in its legitimate secessionist scenarios, without considering that those cases contain a substantial theory of political legitimacy. Otherwise, on what grounds can we consider the legitimacy of the “just situation” before the annexation? On what grounds are the intrastate pacts achieved or the *negotiated secession* parts legitimated? The negative account of secession legitimacy provided by *remedial theory* fails to provide a response to these questions. As Miller wisely pointed out when discussing Buchanan’s theory “It is not clear (...) what positive account of legitimacy he favours, other than that a legitimate state must be one that respects liberal principles.” (Miller, 2003: 268) which implies that in liberal-democratic contexts, following this theory, we face a huge paradox. “But what if a liberal state annexes a second liberal state, or indeed a non-liberal state? Would the remedial right-only theory apply to such a case, and if so how?” (Miller, 2003: 268). Here I claim that we are facing the statist bias explained in the previous section. Miller, formulating an *adscriptivist theory* of secession, solves this problem by suggesting that liberals should value national self-determination as a criterion for determining the legitimate subject of secession. I will discuss this tenet in the next section, but what I would like to point out here is that proponents of a *remedial theory* seem to suffer the ‘blindness’ towards national pluralism explained before<sup>200</sup>.

#### *Undemocratic nature*

An obvious criticism to the *remedial theory* is its undemocratic nature. In liberal-democratic theory, the legitimacy of government is assumed to be based on the consent of the governed or at least of its majority. But in this case, consent seems to be completely absent from the whole picture. Even in a hypothetical case, were all the

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<sup>200</sup> An alternative or complementary view to the adscriptivist position is the territorial justification offered by Catala (2013); she claims that we should consider territory belonging to the people not to the state. The type of legitimacy of the political unit and territorial integrity promoted by remedialist theories is labelled as “functional” by Catala (2013) since Buchanan prefers the *status quo* in case of two entities competing for a territory (the existing state and a potential secessionist group).



citizens of a secessionist part of the parent state in favour of secession, this theory would consider it as an unjust case in the absence of violence from the parent state. Given the fact that minority nations are permanent minorities within their respective parent states, they would have to depend on the will of the rest of the parent state. This entails at least two problems. The idea that a minority nation, namely a permanent minority, cannot be allowed to legitimately secede even if all their members support this option fails to accomplish the internal and external preferences distinction developed by Ronald Dworkin. Preference over how one lives one's own life (internal preferences) are legitimate from a liberal point of view but preferences on how others live their lives are unacceptable or illegitimate in liberal political philosophy (Moore, 1997: 206). Remedial theory directly promotes this idea considering "out of discussion" a democratic challenge to political unity based on consent.

#### *Dichotomous process*

Finally, this theory contains few reflections on how a secessionist process should unfold in a liberal-democratic context. As I said before, framing secession in the *remedial theory* leaves almost no room for legitimate claims in a liberal democracy<sup>201</sup>. An important shortcoming of this approach is that it seems to be dichotomous; secession occurs or not<sup>202</sup>. This understanding is motivated by its exclusion of negotiated secessions but in a liberal-democratic context, we probably will face negotiations even if secessionists support a unilateral process. The cases that have occurred in Western democracies suggest this approach. In Quebec, the question posed by secessionist parties in the 1995 referendum was in fact a negotiation proposal although with a secessionist nature. As we have seen before, the Basque president secessionist proposal was sent to the Spanish central government in order to establish a negotiation on a new status for three Basque Provinces. Cases of successful secessions have also involved negotiations, for instance: Norway from Sweden in 1905, Iceland from Denmark in 1918 and Ireland from the United Kingdom in 1922.

#### **5.4. Solving the shortcomings. A liberal-democratic theory able to deal with secession**

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<sup>201</sup> Buchanan considers two legitimate secessions that could occur in a liberal-democratic context leaving aside a large-scale human rights violation: cultural rights violation and intrastate agreement. However as we said previously, he remains very restrictive in addressing these reasons.

<sup>202</sup> I am not sure about the relevance of the distinction between negotiated and unilateral secession since almost all secessionist processes could fall in both categories: firstly, it is unilateral by the seceding part; and then they are obliged to negotiate since coming from the parent state there is always something to negotiate on a wide range of matters: citizenship, economy, infrastructures, borders, etc.

According to the criticisms described earlier, we have seen that the most accepted theory, *remedial right-only*, presents a *state bias* and overcomes neither the national pluralism nor the political-unit legitimacy deficits. Nonetheless, in the light of the first section, it seems to be a *bias* not only attributable to the proponents of this position concerning the specific case of secession, but to liberal-democratic theory and existing liberal democracies<sup>203</sup>. I claim that the deficits presented in the first section must be solved in order to overcome this *state bias* when we address the issue of secession. That means working on a liberal-democratic theory capable of dealing with secessionist demands should revise some important aspects. Considering the criticisms and deficits that I have presented, I claim that at least three aspects must be revised in order to accommodate secessionism. First, following the first deficit of national recognition, new principles should be included in at least in two ways: understanding the existing states as entities promoting the values of the majoritarian national identity and recognising the existence of more than one nation in the case of plurinational states (section 5.4.1). According to the second deficit, two questions would need a theoretical clarification: first, the political unit criteria of legitimacy and viability should be considered (section 5.4.2); second, political authority legitimacy should be understood as consent- based rather than from a hypothetical contractarian or teleological point of view (section 5.4.3).

#### **5.4.1. National recognition**

Secessionist claims, as I have argued before, involve a claim for national self-determination. Therefore, when theorising on this phenomenon, I claim that there should at least be a consideration of the existence of stateless nations (and nation-states) compatible with liberal-democratic tenets. This is a crucial criterion when assessing secession – however, as I show in the characterisation of secessionist movements sketched earlier, the legitimising discourses are more plural than a cultural or national preservation approach would suggest. In any case, secessionists’ appeal to the existence of ‘their own nation’ attached to a certain territory which does not coincide with the parent state “national territory”. The so-called literature of liberal-nationalism has solved this question in different ways and it is not the aim of this article to discuss it.

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<sup>203</sup> Ethiopia and Saint Christopher and Nevis are the sole states in the world that include secession clauses in their constitutions. The USSR is a historical case of a big federation including a secession clause at constitutional level and the extinct federation of Serbia and Montenegro also considered the secession (of Montenegro but not other units). Canada and UK could be considered cases of quasi constitutionalisation of the right to secede concerning the processes in Quebec (1995), Northern Ireland (1999) and Scotland (2014). The majority of States in the world include a clause of territorial integrity or national unity in their constitutions.

Here, I claim that assuming an approach framed within Liberalism II<sup>204</sup> is unavoidable if we have to deal with such a topic since certain groups raise it. Following this statement, we can use this approach in order to establish certain criteria that may affect the legitimacy of a liberal democracy:

a) Any definition of a legitimate liberal-democratic state must contain the requirement not only of the recognition of basic individual rights but also of cultural and national rights (of both majorities and minorities) (Requejo, 2010: 3). So the idea of justice<sup>205</sup> in a liberal democracy must incorporate what Kymlicka calls ethnocultural justice, in addition to the traditional socio-economic justice perspective.

b) In a “second stage” of this debate it is important to note that there is a distinction between minority nations and cultural groups. This distinction is crucial for any debate on secession. As we have said, secessionist demands are raised by territorialised nations. Many arguments have been raised for defending this distinction and there is an ongoing debate on the moral value of nations. But it is not necessary to take part in this discussion in order to defend the distinction. As Costa says, “nations are not special; it is states that usually make them special” (2003: 72). What makes them special is that the State struggles to be identified with a single nation and at the same time their target used to be minority nations within it<sup>206</sup>.

c) The last point leads us to an old debate: what is a nation?<sup>207</sup> As Seton-Watson wisely considered “Many attempts have been made to define nations, and none have been successful”<sup>208</sup>. Here I claim that in dealing with secessionist issues the most practical definition is the subjective one if we do not want to fall into an endless characteristics debate. Following this view, a nation “refers to a group of people who identify themselves as belonging to a particular nation group, who are usually ensconced on a particular historical territory, and who have a sense of affinity to people sharing that identity” (Moore, 1997: 205). An empirical criterion for considering the existence of a minority nation could be the one used by Requejo. According to this author, the general theoretical criteria such as certain characteristics (language, culture, religion...) and the political will of being self-governed usually are very diffuse and controversial. So we can consider two empirical criteria in addition to the subjective definition sketched above: (a) the existence of a different party system at the minority nation self-government level, and (b) the existence of at least one secessionist party (2006:3).

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<sup>204</sup> Here I follow the terminology of Walzer when commenting on the work of Taylor on the politics of recognition of cultural minorities. Liberalism II opposes traditional account of Liberalism (I) which only considers individual rights. See: Walzer on Taylor (1994).

<sup>205</sup> A central element in just-cause theories.

<sup>206</sup> Despite the weight of historical reasons in defining a nation I would consider a territorialised community of immigrants a Nation if they developed a certain attachment to territory and accomplish the conditions that we usually attribute to nations.

<sup>207</sup> See: Canovan, 1996

<sup>208</sup> Quoted in Canovan, 1996.

d) The existence of nations is compatible with liberal-democratic tenets, even if we confer moral value to them. In my opinion, the most plausible explanation of this idea is the one provided by Seymour (2007). As a Rawlsian, he follows an institutional conception of nations derived from a particular type of liberalism, which is political liberalism. This conception is concordant with a subjective approach; the existence of a nation is not written on a list of characteristics but based on a shared national consciousness (Seymour, 2007: 404). This conception entails many theoretical considerations but what we want to highlight is that: (i) an institutional conception of persons and peoples makes them compatible with different views of the individual: those who represent themselves as having an individualistic identity and those who have a communitarian identity. (ii) Many features may form the institutional identity of a nation: political institutions, language, history, a flag, different rituals, celebrations, and commemorations. So the nation “is not an ontological entity but it is simply a population organized around a certain number of institutions and sharing a certain specific self representation” (Seymour, 2007: 403). (iii) Finally, the value of its existence is the promotion of cultural diversity. According to this view, nations are seen as the *ultimate* source of cultural diversity, which is by consensus, a value that we all share<sup>209</sup>.

#### 5.4.2. Political unit criteria

As we have seen in the second deficit, not only is political authority and its legitimacy the central question for secessionism, but also the legitimacy of the political unit in itself. Here once again, we have seen a clear shortcoming in liberal-democratic thought. As in the case of “political authority” contractarians and by extension liberal-democratic theories, they take the relevant “political unit” for granted. But we know that addressing secession still obliges us to formulate the question of which is the legitimate people, since it claims the legitimacy of a different and smaller people than the parent-state people. Here, we face two important considerations that must be taken into account by liberal-democratic theories.

First, addressing this problem from within liberal-democratic theory is generally rejected by political philosophers. A possible solution to the impossibility of overcoming the challenge, instead of hiding it behind what Näsström (2007) calls the Maginot line, is assuming the theoretical problem as a constitutive element. That’s what Robert Dahl seems to do when he states that in the real world, the answer to this question is provided by the political action in itself and “political conflict” which usually involves coercion and violence (Dahl, 1992: 253). Keenan and Honing consider that the idea of solving this problem definitively should be abandoned because it is

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<sup>209</sup> This view conflicts with cosmopolitan or ethical individualist approaches.

simply a chicken-and-egg question: the constitution of the people never ends (Näsström, 2007: 640). An alternative solution to this problem is considering the existence of the people and its legitimacy as simultaneous processes. Assuming this alternative, the people are no longer the source, but the object of legitimacy, therefore from this point of view, it seems reasonable considering that “We cannot first stipulate who the people are only then to go on doing democratic politics as usual. Rather people-making is what legitimacy is all about. It raises continual quest for legitimacy. The criteria of legitimacy are such construed that they cannot be fulfilled.” (Näsström, 2007: 641). Of course, this conception of the legitimacy of the political unit challenges the common understanding of the constitution of the people. However, it fits much better into what a liberal-democratic understanding of people-making would suggest if this problem could be addressed from within this tradition. All things being equal, at least it fits better than the commonplace of history as people-making. History matters, as we have seen, in order to constitute valuable institutions for the individuals but fails when we have to morally legitimate a people.

Second, having said that, I think is worth not falling into the trap of externalising the solution through history or just abandoning it to the arms of “political conflict”. Robert Dahl almost took the last option considering that it was just practical judgement rather than theoretical reasoning that had to inform such decisions<sup>210</sup>. But he rectified this, as he admits it “would be an error concluding that nothing more can be said on that”<sup>211</sup>, and proposed a set of seven (six plus one) criteria to be accomplished by a political unit in order to be legitimate. Five criteria are intrinsic in the sense that they refer to principles, but the last two add a utilitarian criterion to the political unit definition. According to Dahl, the following five characteristics are necessary but not sufficient<sup>212</sup>:

(a) The reach and jurisdiction of the political unit must be clearly identifiable. This is one of the reasons why territorial limits, although not essential in establishing the jurisdiction, are used in defining the political unit especially to reflect historical or geophysical characteristics. The higher the indeterminacy of the jurisdictional limits, the higher will be the probability of jurisdictional disputes and civil war.

(b) The people who constitute the proposed jurisdiction must possess the will to enjoy political autonomy on the questions included within the reach of the aspects proposed for this unit – being the local control of a school board or national sovereignty. As long as disagreement between members of the unit exists, any solution will be coercive.

(c) The members of the proposed jurisdiction must have the willingness of being governed by themselves according to the norms of a democratic process.

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<sup>210</sup> Here I follow what Carole Pateman wrote about Dahl’s article in a review of *Liberal Democracy* (1986: 379).

<sup>211</sup> Footnote in *Chapter 13 of La democracia y sus críticos*.

<sup>212</sup> Not to be confused with the famous characteristics of a “Poliarchy”.

(d) The proposed scope of the jurisdiction must be within the justifiable limits, namely it cannot violate primary political rights or other fundamental rights. As long as the proposed jurisdiction is expected to violate these fundamental rights, it will damage seriously its own members and other people outside its scope.

(e) Within the proposed jurisdiction, the interests of the members of the unit are significantly affected by decisions that they cannot control. That is to say, any pretension of inclusion or independence will be justified if it is presented by individuals whose interests are not affected in a significant way by the decisions of this political unit.

In the light of secession in a liberal-democratic context, these five principles would suggest a robust framework for a legitimately proposed seceding unit. They help to solve the usual problems raised by secessionist conflicts and provide some answers to aspects that are not solved by remedial right theorists. In a case-by-case analysis considering criteria of: human rights respect, territoriality, democratic expression and self-interest affected authority must be involved is always a necessity. However, according to Dahl, practical judgement still would have a priority over any other condition, so he establishes two criteria which are respectively utilitarian (f) and a final general reflection on the rationality of the whole decision over the political unit (g).

(f) Among those affected in a significant way, the consensus will be higher than if the unit had different boundaries. Namely, all things being equal, according to this criterion certain limits are better if they allow more individuals to do what they want.

(g) Using all the criteria listed above; in creating the new political unit the benefits must outweigh the costs.

These final utilitarian remarks should be taken into account when we deal with case-by-case negotiations of secesión or moral evaluations. I propose, in addition to normative principles, using these criteria in order to balance possible loses of welfare and balance the burdens in secessionist processes.

### **5.4.3. Consent, Social Contract and Legitimacy**

As we have seen, secession points towards the idea of “legitimacy” which is correlative to “political authority”. Thinking in these terms, secession appears to be subversive because it threatens an existing political authority although, as we have seen, it is not fully comparable with revolution. Taking the position of democratic theories of secession, what really matters is the individual will, consenting or not to the parent-state authority over them. This approach leads to one of the oldest questions of political thought: how and why any free and equal individual could legitimately be governed by anyone else at all. The well-known liberal-democratic solution to this question has been

the idea of a social contract. In a liberal democracy, political authority over the citizens cannot be derived from divinity or a perfectionist ideal of human nature but on a pact of free and equal individuals<sup>213</sup>. Although classic formulations of this theory differ, Hobbes, Locke, Kant or Rousseau would agree on the definition sketched here. Contractarianism has survived over centuries as a commonplace for theorists in order to legitimise political authority. Moreover, political theorists have continued working with it up to the present day; a famous contemporary example of the contractarian strain is John Rawls (1999, 2003).

But as Carole Pateman suggests, at the beginning of contractarianism as a doctrine in the sixteenth century, it was forcefully endorsed concerning the problem posed to political authority by the ideas of the recently “invented” individual liberalism against the *ancien regime*: in a liberal state, political authority must have a voluntarist justification since the individuals that take part in it must agree. However, a risk of this theory is taking political authority for granted through a hypothetical social contract. That is what, according to Pateman, contemporary philosophers of democracy such as Rawls or Habermas do nowadays. (1979: 22). For instance, the Rawlsian ‘scheme of cooperation to perpetuity’<sup>214</sup> mentioned above is derived from a theoretical ‘original position’ pact, which is a clear example of a hypothetical social contract. So, this theory provides the general guidelines for an institutional design of a just society but fails when it has to provide a democratic legitimacy of political obligation because ultimately, the pact rests upon a hypothetical contract. Therefore, Pateman suggests that we should distinguish “social contract” theory from “consent” theory and this distinction is crucial for addressing the legitimacy of secession in a liberal democracy as Beran has noted. While “social contract” refers to how in the beginning, coming from the state of nature, free and equal individuals can join together in a political community and put themselves under political authority; “consent refers to how those who are born into the state created by the original contractors come in turn to be under the political authority of this state.” (Beran, 1987: 154). This theoretical distinction has important implications for addressing secession.

In many states, the founding pact, not to mention a previous “state of nature”, occurred a long time ago. So, it seems reasonable to think of political authority and legitimacy in terms of consent rather than “hypothetical contract”. A constitution can act as a “founding moment” especially when it has been sanctioned by a positive referendum. In this case, if the seceding population agree on the constitutional framework, it should be taken into account. However, this solution (a) lasts just one generation, taking a “consent” approach, and at least should be endorsed again, or reformed, after one generation; (b) is not a direct question on the political unit but a legal document providing rights and framing the institutions.

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<sup>213</sup> Here no matter if these individuals are free and equal by nature or by mutual recognition or whatever.

<sup>214</sup> Note that cooperation to perpetuity means no right to secede.

## 5.5. A hybrid approach to secession: principles and criteria

I have sketched elsewhere the existence of several theories of secession that claim to be compatible with liberal-democratic theory but in this paper, I just address the most popular and realistic theory. Just-cause theory, as Buchanan formulated it in his first book on this topic, is probably the most restrictive approach to secessionist demands. But I do agree with Wellman (1995: 160) that we cannot fall into the trap of the alternative extreme and adopt a simple consent-based theory in which even unilateral individual secession would be permissible both for stability and practical reasons. However, Wellman establishes a general theory of secession, while my approach is much more modest and focused on adopting certain principles and criteria for secession in plurinational democracies. In my case, I try to combine a hybrid approach that we find in national self-determination just-cause theories and a primary approach based on consent. While the former offer a teleological approach to state legitimacy based on national recognition and accommodation the latter assert the existence of a primary right to secede based on democratic legitimacy.

I defend that theories of democracy should consider the principles and criteria explained in the previous subsections in addressing democracy<sup>215</sup>. Firstly, my intuition is that in a democratic context, we should follow a priority for democratic principles in establishing the existence of new political units, which means rejecting the prevalence of the “democratic gap” in defending the legitimacy of the parent-state political unit<sup>216</sup>. That would entail the constitutionalisation of the right to hold referenda on the sovereignty of existing self-governing political units (or groups of political units) under precise rules of majoritarianism and electoral processes. Since the state political unit is defined teleologically<sup>217</sup>, I claim that new political units should be able to adopt a consent-based approach at least in its foundation. This primary right to a democratic definition of legitimacy would not entail a direct right to unilateral secession but the right to negotiate vis a vis central/federal government intrastate agreements. Secondly, since these debates are always linked to national identities and recognition, I assume that

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<sup>215</sup> My position is inspired by the Opinion of the Canadian Constitutional Court on the Quebec case in 1998: Reference re Secession of Quebec, [1998] 2 S.C.R. 217, but derived from theories of secession and the paradoxes previously explained.

<sup>216</sup> Catala has discussed the presumption in favour of the existing political units in restrictive views of secession like the just-cause theory described above: “This claim, in turn, seems to rely implicitly on a political interpretation of Ockham’s razor: “Do not multiply states or political entities beyond necessity,” where necessity is understood as major injustice or failure to provide adequate protection. But why adopt this narrow understanding of necessity, which seems to amount to little less than an unwarranted fetishism of the status quo, to the detriment of considerations of self-determination?” (Catala, 2013: 77).

<sup>217</sup> Wellman defines teleological legitimacy as “the state’s claim to territory is grounded in the function it serves rather than in its having emerged through a consensual process” (Wellman, 1995: 157). I have the intuition that new entities in the world should be based on consent, beyond its teleological functionalist legitimacy and maintain this characteristic.



there is no secessionist movement without a national identity<sup>218</sup>. Therefore a second principle should be the national recognition approach from the parent state as a matter of principle. That would mean the federalisation of the state, including a territorial model that requires “both the institutional concretisation of the self-government of these minorities and a kind of specific protection and participation in the shared government of the federation.” (Requejo, 2010: 154). It would be impossible to establish criteria and negotiations for a secessionist minority without recognising its existence through their right to self-government and institutional organisation<sup>219</sup>. Finally, a negotiation between seceding units should follow certain criteria; I suggest Dahl’s thoughts as the starting point for considering the viability of a seceding political unit although some other criteria should be included as some primary right theorists suggest<sup>220</sup>. At the level of politics and negotiations some utilitarian criteria should be adopted in terms of maximising the benefits of the adopted solution for all affected citizens. That would mean considering the claims that the rest of the population in the parent state could have in terms of socio-economic or cultural links.

This hybrid approach is more permissive concerning secession than alternative theories like the just-cause theory as it has been formulated by Buchanan (1991) or by some adaptations to liberalism II like Costa (2003) or Seymour (2007). I support a unilateral right to secede if the clause of respecting the consent-based legitimacy expressed by a self-governing entity is not satisfied. Since we know that secessionism emerges in contexts where minority national identities exist, I consider that the state should also adopt the national recognition approach. My position, concerning secession, is a primary right one, but based on the empirical assumption that majoritarian secessionism can only be achieved in contexts where there is a minority national identity which has not been recognised.

## 5.6. Assessing counterarguments with new tools

In the light of the issues discussed in the previous section, we are now prepared to address some general counterarguments that have been made against accommodating secession in liberal-democratic theories. These counterarguments have usually been used by *remedial right-only* theorists against *primary right theorists*. I use the criteria presented above for addressing the counterarguments<sup>221</sup>.

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<sup>218</sup> Jason Sorens (2012) provides an important database that confirms the necessary precondition (not sufficient) for the emergence of a secessionist movement: the existence of a national community.

<sup>219</sup> As I said Seymour (2007) defends this position calling this requirement ‘internal self-determination’

<sup>220</sup> Beran suggested his own list of criteria (Beran, 1984) like economic viability, territorial coherence or minimal size of the population.

<sup>221</sup> These counterarguments were already listed by Buchanan (1991) but are a commonplace among those who are opposed to incorporating secession into democratic theories.

### *Illiberal groups and soft paternalism*

This objection to considering secession as a plausible option is based on the idea that within liberal democracy, there may flourish or coexist groups which are against liberal-democratic values and that those groups should remain within the parent state because it is better for them. This argument is deeply based in liberal roots, as this quotation from John Stuart Mill suggests – although it was not directed towards the idea of secession: “Experience proves that it is possible for one nationality to merge and be absorbed in another: and when it was originally an inferior and more backward portion of the human race the absorption is greatly to its advantage. Nobody can suppose that it is not more beneficial to a Breton, or a Basque of French Navarre, to be brought into the current of the ideas and feelings of a highly civilised and cultivated people — to be a member of the French nationality, admitted on equal terms to all the privileges of French citizenship, sharing the advantages of French protection, and the dignity and prestige of French power — than to sulk on his own rocks, the half-savage relic of past times, revolving in his own little mental orbit, without participation or interest in the general movement of the world. The same remark applies to the Welshman or the Scottish Highlander as members of the British nation.”<sup>222</sup>

This objection is empirically difficult to sustain at least for western liberal-democracies. Secessionist claims, when they exist, are raised by political parties which have a clear commitment to liberal democracy. As I have shown in a previous article, secessionist parties in Western democracies (in the cases of Quebec, Scotland and Catalonia) are far from being illiberal or promoting the exclusion of minorities. As Tierney has defended commenting Ignatieff critiques on this topic “In fact, the hijacking of nationalism by reactionaries and anti-liberals is as likely to manifest in a majority societal culture as in a minority one.” (Tierney, 2004: 59).

If we analyse this objection in the light of the criteria for a legitimate political unit according to Dahl, the *soft paternalist* position would be endorsed since a political unit which breaches the basic rights should not be considered legitimate. In my hybrid theory, the state should not recognise or promote these self-governing communities.

### *Counter-majoritarian objection*

Based on the *principle of majority rule* this argument objects to the fact that secession would be counter-majoritarian, since a minority would decide the fate of the whole state population (a). As in the example of the Spanish Constitutional Court and the Basque president, in the case of a secessionist proposal, it should be the whole political unit of the parent state and not the proposed unit who eventually decide on that question according to this objection. A consequentialist variation of the argument (b) considers

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<sup>222</sup> *Considerations on representative government*, Chapter 16

that accepting the *possibility* of secession would undermine the basis of a constitutional democracy with a continuous threat of secession.

Firstly, in addressing this objection (a) we should bear in mind that the seceding group is a permanent minority and is the proposing population of the new political unit legitimacy; if the new political unit has to be democratically legitimated, it must be decided by those who belong to it. So it seems reasonable that it should be the proposed political unit population who choose on the seceding option or not in a referendum<sup>223</sup>. This would be derived from their democratic rights within the parent state and the “consent approach” outlined in the last section. However, this does not mean that they would be released of any duty upon their former fellow citizens. At least three considerations should be taken in account: first, transitional costs should be considered such as the investments of the former parent state or shared public budgets; second, the cooperation scheme in which they were engaged would imply certain duties for the seceding population, especially if they were a better-off region in the parent state; this is an important question with few theoretical examinations<sup>224</sup>; third, the population with ties with the former parent state would have valid claims to maintain certain ties with their former fellow-citizens.

At least two competing principles have to be considered in this situation. Firstly as we have said, a liberal intuition defended by Ronald Dworkin is that external preferences are not legitimate in the sense that it is not permissible to impose your preferences on how *others* live their lives. This consideration can be applied to minority nations in the sense that the majority nation cannot legitimately impose their view on the minority nation. However, a counterbalancing principle would be Dahl’s idea of ‘all-affected’

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<sup>223</sup> A reasonable approach to the referendum question is provided by Pavkovic: “Therefore, all citizens residing on a territory (but no others) should be invited to vote in the referendum regardless of their national belonging or of their views on the secession.[28] But since every citizen, and any group of citizens, has the same right of petition (apart from the initial group of secessionists) other groups of citizens residing on the territory may want to petition to secede other, smaller pieces of territory on which they live from the initially selected piece of territory and/or to remain within the parent-state. The same right to petition entitles those potentially secessionist groups to hold further referenda for secession (or separation) from the initially seceding territory.” (2003); the idea of a possible internal secession leads to the “threat of anarchy” or “fragmentation” objections which are addressed below.

<sup>224</sup> This discussion is theoretically complex and involves considerations on distributive justice. On the one hand it is obvious that after seceding, the former fellow-citizens of the unit population become “strangers” and it is a commonplace considering stronger justice duties towards fellow-citizens than towards strangers (this is David Miller’s argument in favour of national states). On the other hand, it seems intuitively odd considering the duties suddenly extinguished with those who have been fellow-citizens for a long time. A *justice as reciprocity* approach would consider extinguished the obligations of the new unit after seceding since the contribution would be terminated. On the contrary, a *subject-centered* approach would suggest obligations for the seceding unit since their duties towards the worse-off fellow citizens would not be extinguished after seceding. However there is a strong argument against preventing secession on grounds of distributive justice, if this argument had a prior weight then it would be legitimate to invade another country in order to force it to share its wealth. That was the argument used by Saddam Hussein in the conquest of Kuwait (Buchanan, 1991: 121). Nonetheless this example raises an important distinction: the existence of important natural resources in the seceding unit would increase the complexity of the case. Although beyond liberal democracy the case of Katanga is still a commonplace in the secession literature. See also Christiano (1995) and Dietrich (2013).

principle. According to this criterion, the persons affected by the decisions of a government should have the right to participate in such decisions. This last criterion would suggest that the parent-state population should have something to say on the secession process. My view here is that the secession decision should be taken by the proposing unit population, otherwise we could legitimise unjust annexation as has been pointed out by Beran (1984), Wellman (1995) or Catala (2013), but following distributive justice requirements and the all-affected criterion further negotiations should establish certain duties for the seceding population<sup>225</sup>.

Secondly, the idea that it undermines democracy, (b) which far from being a theoretical consideration, this objection intuitively leads to an empirical analysis. The problem is that we have many cases where secession is implicitly or explicitly outlawed and few where it is permitted<sup>226</sup>. However, what we can say here is that it could be the other way around in the sense that institutionalising secession would undermine secessionist demands instead of encouraging them as Norman (1998, 2001) and others have suggested. But following our criteria, we still have something to say on that objection. A consent-based approach should be careful with the secessionist option since, as we saw in section 5.4.3, being a member of a democratic state should be considered, in the end, a matter of willingness rather than an imposed contract.

Moreover, there is a strong argument that supports the opposite position, namely that instead of undermining democracy, it promotes a better one; the picture changes when replacing the revolution analogy with a civil disobedience one. The main argument here is that secession could be seen as a “democratic disobedience” (Seshaguirri, 2010) a framework which is correlative to any theory of liberal democracy. Civil disobedience is (in common with liberal-democratic secession that is not directed towards overthrowing the government) a non-violent action, which is based on the grounds of political morality and appeals to the majority. As Pateman reminds us, political dissent is necessary for any democracy. (Pateman, 1985: 162). Sorens (2012) reaches a similar conclusion through an empirical quantitative and qualitative analysis of secessionist movements in the world.

### *Fragmentation and the threat of anarchy*

That was Boutros Boutros-Ghali’s position in 1992: “if every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation, and peace, security, and economic well being for all would become ever more difficult to achieve”; although he did not close the door to the formation of new states (Mayall 2008: 13).

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<sup>225</sup> These duties could also be of an emotional nature linked to the cultural and relational value of the seceding unit, territory and population.

<sup>226</sup> As I said before, only two constitutions in the world consider a secessionist process: Ethiopia and Saint Christopher Nevis. While a majority of the states include “state unity” or “indivisibility” clauses in their Constitutions. See: Venice Commission CDL-INF(2000)002.

This ‘slippery slope’ argument is again based on a consequentialist approach since Boutros-Ghali does not deny the right to secede but considers this possibility a threat. The response from a liberal-democratic theory, incorporating the criteria presented in section 5.4, could undermine to a great extent this argument. Firstly, despite the multiple existing minorities within western liberal democracies, few of them are minority nations. Of course, a constructivist approach could object that a common national identity could be “invented”, however the institutions involved in the nation’s definition that I mentioned above cannot be improvised (Seymour, 2007:404). Secondly, it is dubious that the criteria for a legitimate unit could be accomplished by many groups within the existing liberal democracies and even more difficult that these minorities reach a majoritarian level of popular support for secession<sup>227</sup>. Finally, the fragmentation argument assumes that there is a “limit” in the number of states in the World but this seems to be difficult to decide, the number of states in the world has nearly quadrupled since the beginning of the twentieth century passing from fifty-seven to the current one hundred and ninety-six (counting Taiwan).

#### *Better ways of accommodating permanent minorities*

Some authors have adapted the *remedial right theory* to liberal-democratic contexts (Costa, 2003), (Patten, 2002), (Seymour, 2007) assuming that secessionist demands occur in plurinational democracies, where measures short of secession have been implemented in order to accommodate minority nations such as self-government. Following what Buchanan suggested in his revised version of remedial theory, they include the “failure of recognition” clause to the list of just causes. In doing so, they accept what I call the “national question recognition” – according to these authors a legitimate state must have the ethnocultural justice paradigm. If the state does not recognise minority nations and breaches intrastate agreements then there is a remedial right to secede.

I claim that these authors do not overcome the main problems of remedial right theory; despite being formulated from a liberalism II perspective, they still have a *statist bias*. Firstly, it does not solve the problem of the legitimacy of the political unit. We still face the critique presented before; there is a substantial conception of legitimacy and it is not explained as to why the parent-state legitimacy should prevail. The reasons proposed by these authors are based on the consequentialist objections analysed in the preceding point. Secondly, the perverse incentives problem is still there. If the right to secede depends on the degree of recognition achieved by the parent state, then, if there is a secessionist will, the situation generates incentives for not being recognised and, again, for fostering conflicts with the parent-state government in order to achieve the right.

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<sup>227</sup> Dion (1996) has theorised why it is so difficult to secede in a democratic state by analysing the dynamics in the 1995 Quebec referendum.

Thirdly, the impartial referee problem still must be considered, since who decides if the minority nation is recognised enough or not is again not clear.

### *Overlapping nations objection*

It has been pointed out that usually, the seceding units are not homogeneous and present a certain degree of different identities. As the case of many minority nations shows, the population within the seceding unit can be divided between those that feel members of the parent-state people, those that feel members of the secessionist people or those that feel members of both communities at the same time. This objection clearly requires a practical judgement in a case-by-case analysis – however, the criteria considered in this article suggest the following remarks. Firstly, any solution would be coercive, even the *status quo*, since the general consensus is difficult to achieve. Secondly, the guiding rule should be the utilitarian criterion (f). Namely that all things being equal, the new political unit would be legitimate if it allowed more people to do what they want. I have to recall that the legitimacy of the seceding unit would not be based on national characteristics (although empirically there is always a national identity involved) but on the consent of the majority of the population. Finally, the seceding unit should be committed to the recognition of its internal diversity, since a liberalism II approach to political legitimacy would require this premise in order to legitimate the state.

## **5.7. Conclusion**

In this paper, I have argued in favour of incorporating a secessionist perspective within liberal-democratic theories instead of considering secession in an *ad hoc* manner. In doing this exercise, I have outlined my position in the theoretical debate on secession. Firstly, I have addressed two major deficits that in my opinion, point to what is wrong in these theories for being able to deal with secessionist demands. I claim that they present a *state-biased* view in terms of national recognition and the legitimacy of the people. While the former means that the majoritarian culture is promoted by the nation-state regardless of its internal pluralism, the latter means a complete gap in contemporary political philosophy concerning the legitimacy of the political unit. Secondly, I have shown that the most popular theory of secession (remedial right-only theory, also called just-cause theory) fails in dealing with secessionist demands, at least in liberal-democratic contexts, for moral and pragmatic issues generally derived from a misunderstanding of secessionist demands and the lack of an appropriate theoretical liberal-democratic framework. Thirdly, I have suggested three aspects to be adopted by liberal-democratic theories in order to deal properly with secession and to overcome the deficits presented earlier. I have proposed adopting a liberalism II perspective capable of conferring certain moral values to national groups in addition to the traditional

individual values. Adopting a political liberalism perspective minority nations are institutionally defined and can be clearly distinguished from the other cultural groups. Their unique value derives from the idea that they are the ultimate source of cultural diversity and this value must be preserved. I claim that secessionist movements always rely on the existence of a minority nation. I have also shown that something can be said from within liberal-democratic theories about the legitimacy of the people. I propose a set of criteria designed by Robert Dahl as the best option to define a legitimate political unit. Those criteria are a combination of deontological and utilitarian considerations. Fourthly, I consider that political authority legitimacy is also affected by the second deficit and should be revised in order to admit a consent-based legitimacy rather than a contractarian-based view, which seems to be incompatible with a democratisation of the *demos* legitimacy. Finally, I have addressed some general objections that used to be raised against secession in order to show that the suggested aspects help in dealing with secessionist demands from a liberal-democratic perspective. Of course, the theoretical guidelines cannot solve all the problems raised by secession but at least it is better to use a sophisticated approach to deal with it.

Theories of secession each point to different problems raised by these phenomena. While *remedial right* defenders are basically concerned about the consequences, *adscriptivists* and *democratic* theorists point towards the secessionist subject and procedural aspects (Costa, 2003). I share with *remedial right theorists* such as Allen Buchanan, Seymour (2007) or Patten (2003) the same worries about the consequences of endorsing a “right to secede” prior to injustices. However, I cannot accept that the argument against endorsing the right of peoples to decide their own future can be based on speculative considerations on stability and a teleological account of legitimacy. I also share with adscriptivists like Margaret Moore, the idea that secessionists have certain characteristics that can be described as forming a nation, but I consider that in a liberal democratic theory, there are no aprioristic nations that have the right to secede. Finally, I share with democratic theorists that a given territorialised population have the democratic right to secede through a plebiscite, but again I dissent with them on the point that the seceding group must accomplish very strict criteria. I argue that in practice, these criteria are only accomplished by minority nations because the institutional nature of those territorialised groups cannot be improvised, as Seymour has defended. Nonetheless, as I said at the very beginning, I am not in favour of designing *ad hoc* secession theories but of incorporating a secessionist perspective to liberal-democratic theories. This is the best way to promote these values and to correct the usual state bias that these theories present. Secession forces liberal democracy to its theoretical and practical limits and the response to this phenomenon has to be thought through from these limits.

## References

- Bartkus, V. (1999), *Dynamics of Secession*, Cambridge University Press.
- Beran, H. (1984), "A Liberal Theory of Secession", *Political Studies*, vol.32, pp.21-31.
- Beran, H. (1987), *The Consent Theory of Political Obligation*, London: Croom Helm, International Series in Social and Political Thought.
- Berlin, I. (1991), *Against the current : essays in the history of ideas*, Oxford: Clarendon.
- Buchanan, A. (1989), *Assessing the Communitarian Critique of Liberalism*, *Ethics*, vol.99, num.4, pp.852-882.
- Buchanan, A. (1991), *The morality of Political Divorce from Port Sumter to Lithuania and Quebec*, Oxford, Westview Press.
- Buchanan, A. (1992), "Self-determination and the Right to Secede", *Journal of International Affairs*, vol.45, pp.347-65.
- Buchanan, A. (1997), "Theories of Secession", *Philosophy and Public Affairs*, vol.26, num.1, pp.30-61.
- Buchanan, A.; Moore, M. (ed.), (2003), *States, Nations, and Borders. The Ethics of making boundaries*, Cambridge University Press
- Buchanan, A. (2004), *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law*, Oxford: Oxford University Press.
- Buchanan, A. (2006), "Uncoupling Secession From Nationalism and Intrastate Autonomy From Secession", in Hannum, H. (ed.) *Negotiating Self-Determination*, Routledge
- Buchheit, Lee C. (1978), *Secession. The legitimacy of self-determination*, Yale Univeristy Press
- Canovan, M. (1996), *Nationhood and Political Theory*, Oxford
- Neera, Ch., (2010), "What Sort of a Right is the Right of Secession?" *Global Jurist*: vol.10, iss. 1.
- Catala, A. (2013), "Remedial Theories of Secession and Territorial Justification". *Journal of Social Philosophy*, vol.44, num.1, pp.74-94.
- Christiano, T. (1995), "Secession, Democracy and Distributive Justice", *Arizona Law Review*, vol.37.



Connor, W., (1999), "Nationalism and political illegitimacy", *Canadian Review of Studies in Nationalism*, vol.7, pp.201-228.

Connor, W. (1972), "Nation-Building or Nation-Destroying?", *World Politics*, vol.24, num. 3, pp.319-35

Costa, J., (2003), "On Theories of Secession: Minorities, Majorities and the Multinational State", *CRISPP*, vol.6, num.2, pp.63-90.

Dahl, Robert A., (1992), *La Democracia y sus críticos*, Paidós.

Dietrich, F. (2013), *Secession of the rich: a qualified defense*, Politics, Philosophy & Economics.

Dion, S., (1996), "Why is Secession so Difficult in Well-Established Democracies?: Lessons from Quebec", *British Journal of Political Science*, vol.26, num.2, pp.269-83.

Della Porta, D.; Keating, M. (eds), (2008), *Approaches and Methodologies in the Social Sciences. A Pluralist Perspective*, Cambridge University Press.

Franck, Thomas M., (1992), "The Emerging Right of Democratic Governance", *The American Journal of International Law*, vol.86, num.1, pp.46-91.

Gauthier, D., (1994), "Breaking Up: An Essay on Secession", *Canadian Journal of Philosophy*, vol.24, pp.357-72.

Guibernau, M. (1996), *Nationalisms : the nation-state and nationalism in the twentieth century*, Cambridge: Polity Press.

Guibernau, M. (1999), *Nations without States: Political Communities in the Global Age*, Cambridge: Polity Press.

Hechter, M. (1992), "The Dynamics of Secession", *Acta Sociologica*, vol.35, pp.267-283

Hechter, M. (2000), *Containing Nationalism*, Oxford: Oxford University Press

Hepburn, E. (ed), (2010), *New Challenges for Stateless Nationalist and Regionalist Parties*. London and New York: Routledge.

Horowitz, Donald L. (2003), "The Cracked Foundations of the Right to Secede", *Journal of Democracy*, vol.14, num.2, pp.5-17

Horowitz, Donald L. (1998), "Self-Determination: Politics, Philosophy and Law", in Moore, M. (ed.), *National Self-determination and Secession*, New York: Oxford University Press.

Kauffmann, E. (2000), "Liberal ethnicity: beyond liberal nationalism and minority rights", *Ethnic and Racial Studies*, vol.23, num.6, pp.1086-1119

Keating, M., (2008), "Territorial Autonomy in Nationally Divided Societies. The experience of the United Kingdom, Spain and Bosnia Herzegovina", *Conference on Assessing Territorial Pluralism*, Kingston, Ontario.

Kuzio, T. (2002), "The myth of civic state: a critical survey of Hans Kohn's framework for understanding nationalism", *Ethnic and Racial Studies*, vol.25, num.1, pp 20-39.

Kymlicka, W. (1995), *Multicultural citizenship*, Oxford.

Kymlicka, W. and Straehle, C., (1999), "Cosmopolitanism, Nation-States, and Minority Nationalism: A Critical Review of Recent Literature", *European Journal of Philosophy*, vol.7, num.1.

Kymlicka (2001), *The politics of the vernacular: nationalism, multiculturalism and citizenship*, Oxford.

Mann, M. (2005), *The Dark Side of Democracy: Explaining Ethnic Cleansing*, Cambridge.

Mayall, J., (2008), "Nationalism, Self-determination, and the Doctrines of Territorial Unity, in Weller" in M.; Metzger, B. (eds.) *Settling Self-determination Disputes: Complex Power-Sharing in Theory and Practice*, Koninklijke Brill NV.

McKim, R. and McMahan, J. (1997), *The Morality of nationalism*, New York: Oxford University Press.

Margalit, A. & Raz, J., (1990), "National self-determination", *The Journal of Philosophy*, vol.87, num.9, pp.439-46.

Mill, J.S. [1860], "Considerations on the representative government" in Gray, J. (Ed.) (1992), *On liberty and other essays*, Oxford: Oxford University Press.

Miller, D. (2003), "Liberalism and Boundaries: a response to Allen Buchanan" in Buchanan, A.; Moore, M. (ed.) *States, Nations, and Borders. The Ethics of making boundaries*, Cambridge University Press

Miller, D. (2009), "Democracy's Domain", *Philosophy and Public Affairs*, vol.37, num.3, pp.201-228.

Moore, M. (ed.), (1998), *National Self-determination and Secession*, New York: Oxford University Press.

Moore, M. (1997), "On national self-determination", *Political Studies*, vol.XLV, pp.900-913

- Mouffe, C. (1999), *El retorno de lo político*, Paidós
- Näsström, S. (2007), “The Legitimacy of the People”, *Political Theory*, vol.5, num.2, pp.624-658.
- Norman, W. (1994), “The Ethics of Secession as the Regulation of Secessionist Politics” in Moore, M. (ed.), *National Self-determination and Secession*, New York: Oxford University Press.
- Norman, W. (2001), “Secession and (Constitutional) Democracy” in Requejo, F., *Democracy and National Pluralism*, London: Routledge.
- Orentlicher, D. (1998), “Separatism and Democratic Entitlement”, *Yale Journal of International Law*, vol.23, num.1.
- Pateman, C. (1979), *The Problem of Political Obligation: A Critical Analysis of Liberal Theory*
- Pateman C. (1986), “Problems of Liberalism”, *Ethics*, vol.96, num.2, pp.375-385.
- Patten, A. (2002), “Democratic secession from multinational state”, *Ethics*, vol.112, pp.558-586.
- Pavkovic, A. (2003), “Secession, Majority Rule, and Equal Rights: A Few Questions”, *Macquarie Law Journal*, vol.3, pp.73-94.
- Pavkovic, A.; Radan, P. (2007), *Creating New States: Theory and Practice of Secession*, Aldershot, UK: Ashgate.
- Pennock, J; Chapman, J.W (ed.) (1983), *NOMOS XXV: Liberal Democracy* , New York and London: New York University Press.
- Rawls, J. (1999), *A Theory of justice*, Harvard University Press.
- Rawls, J. (2005), *Political liberalism*, Columbia University Press.
- Requejo, F. (2001), *Democracy and national pluralism*, Routledge.
- Requejo, F. (2005), *Multinational federalism and value pluralism. The Spanish Case*, Routledge.
- Requejo,F., (2006), “Federalism and democracy: The case of minority nations: a federalist deficit”, *Political Theory Working Paper*.
- Requejo, F. (2009), Revealing the dark side of traditional democracies in plurinational societies: the case of Catalonia and the Spanish ‘Estado de las Autonomías’, *Nations and Nationalism*, vol.16, num.1, pp.146-148

- Requejo, F.; Caminal, M., (2010), *Political Liberalism and plurinational democracies*, Routledge
- Requejo, F. (2010), “El fuste de la democracia sigue siendo demasiado recto”, *Foro interno*, vol.10, pp.51-70
- Requejo, F.; Sanjaume, M., (2010), “Secession and liberal democracy. The case of the Basque country”, Working Paper: GRTP.
- Rothbard, M.N. (1998), “Nations By Consent: Decomposing the Nation-State” in Gordon, D. *Secession State & Liberty*.
- Sánchez-Cuenca, I. (2010), *Más democracia, menos liberalismo*, Katz.
- Serrano, I. (2008), *Ciudadanía i identitat nacional en els processos de devolution a Gran Bretanya i a França*, Barcelona: Departament d'Interior, Relacions Institucionals i Participació.
- Seshagiri, L. (2010), “Democratic Disobedience: Reconceiving Self-Determination and Secession at International Law”, *Harvard international law journal*, vol.51, num. 2, pp. 553-598.
- Tamir, Y. (1993), *Liberal Nationalism*, NJ: Princeton University Press.
- Tierney, S. (2004), *Constitutional Law and National Pluralism*, Oxford University Press.
- Tierney, S. (2005), “Reframing Sovereignty: Sub-state national societies and contemporary challenges to the nation-state”, *International and Comparative Law Quarterly*, vol.54, num.1, pp.161-183.
- Venice Commission, 12/01/2000] CDL-INF(2000)002 *Self - determination and secession in constitutional law*, Council of Europe.
- Vergés, J. (2009), "Ciudadanía global y menosprecio de la nación", Seminari de Filosofia Política UB 2009-2010, 11 de desembre.
- Walzer, M. (1994), “Comment” in Taylor, Ch.; (et.al), *Multiculturalism: examining the politics of recognition*, Princeton University Press.
- Wellman, C.H. (1995), “A Defence of Secession and Political Self-Determination”, *Philosophy and Public Affairs*, vol.24, num.2, pp.142-71.





## CHAPTER 6

### 6. General conclusions

The purpose of this dissertation has been to analyse secession from the perspective of liberal democracy. The strategy in so doing has been twofold since I have analysed the legitimization of secessionism both from normative and empirical points of view. Firstly, I have developed a theoretical analysis of theories of secession in the context of liberal democracies. I have shown that existing theories of secession can be divided between those taking seriously a liberalism II approach and those that remain attached to a classical version of liberalism, basically defending individual rights and the *status quo*. I have built a typology in which this classification overlaps with the well-known primary vs just-cause approach. Moreover, I have shown that this complex typology is not surprising since the debate on the morality of secession has evolved in parallel with the debate on minority rights and nation-building in liberal democracies. Secondly, I have analysed through qualitative methodology (interviews and documents analysis) the legitimating positions of secessionist political parties in Quebec, Scotland and Catalonia, showing similarities between them and analysing their legitimating discourse. The Catalan case has been analysed in a separate chapter. The conclusions on the legitimization discourses of these movements are consistent with what other authors that defend liberal nationalism have already said. The conclusion of this double analysis, empirical and theoretical, is the necessity of adopting at least three elements within theories of democracy when dealing with secessionist demands. First, principles for the recognition of national pluralism (the existence of sub-state nations) should be considered in order to overcome the blindness towards state internal plurinationality and to understand what fuels secessionist groups. Second, a consent-based legitimacy in order to overcome the problem of the *demos* definition of the parent state, since its legitimacy is never addressed from a democratic perspective. Finally, some criteria on the viability of political units should also be considered together with utilitarian considerations on a case-by-case analysis.

The structure of the thesis is a collection of four papers. The papers are written in order to be independent pieces but all of them work in the same direction. The first and the last paper are much more theoretical and deal almost exclusively with the moral debate on secession and the shortcomings of liberal-democratic theories. It is in the last paper where I defend my position on the analysis of secession in relationship with theories of liberal democracy. The second and the third papers are empirically oriented and describe the legitimacy of secession in Quebec, Scotland and Catalonia, analysing recent events in Catalan politics and the rise of secessionism in this Spanish Autonomous Community. In the following sections, I summarize the main findings of

each paper and the position that I defend concerning the moral right to secede. Finally, I consider future research guidelines and topics.

### **6.1. The literature on secession: a new typology**

The traditional classification of secessionist theories has been between primary and remedial theories. I have worked on a new and different typology, following the debate between liberalism I and II. I place several authors in the categories of the typology in order to classify them. In this exercise of ordering authors, I observe two types of general logic. First, there is a clear protective logic. While liberalism I theories are much more worried about individual rights (Just Cause, Plebiscitarian, Libertarian, Liberal-Republican) liberalism II theories (from internal to external National self-determination) include national group rights in their considerations (with different accounts of “national” characteristics). However, depending on the position of the author, we obtain contradictory results concerning secession rights: libertarians or plebiscitarians emerge as extremely permissive while just-cause advocates appear very restrictive. Among liberalism II theories, we cannot talk about categories but a continuum between remedial and primary-right positions. The majority of national self-determination supporters adopt a federalist position, leaving secession as a last resort solution; however unilateral secession is envisaged as a primary-right option in some cases. Depending on the author, there are variations in the causes of remedial secessions. Second, there is a democratic logic that is justified from individual or collective freedom and considers secession as a liberty right rather than as a solution to a situation or a remedy to injustices.

The typology also points out a certain evolution of the theories. Since the debate on secession developed during the nineties, it has been argued in parallel to the debate on minority rights. It seems very clear that no theory of secession can deny this evolution today. That means at the very least adopting a conception of justice beyond the socio-economic domain. It also entails an ethnocultural approach (considering national group rights) and the necessity of institutionalising the recognition of national pluralism, the logics of protection and democratic rights.

The revision of theories of secession also points out the necessity of taking into account deontological, consequential and procedural elements. Since every theory has important shortcomings as I have shown, a balance between protective and democratic logic will be unavoidable in order to build a theory. While protective elements are always restrictive in terms of allowing secessions because constrain the bearers of this right through procedures or principles; democratic elements can finally override individual or collective rights. To sum up, the new typology has the advantage of mapping the existing theories of secession and shedding some light on their relationship with the



evolution of minority rights. However, it also points out the difficulties of theorising on the moral right to secede in liberal-democratic contexts.

## **6.2. The shortcomings of the existing theories of secession**

As I said in the previous subsection, the analysis of the existing theories of secession points out their partial shortcomings. Each theory, regardless of its internal coherence and solidity, has some gaps considering secession and, when comparing theories, it is easy to find certain contradictions between them. A summary of the problems of each theory should take into account the pre-eminence of ‘just cause’ as the most accepted position in academia concerning the right to secede. Starting with this theory, it has received a range of critiques from being consequentialist to being deontological (including some procedural questions). Firstly, some authors say that the just-cause approach can produce perverse incentives: the secessionist group can create its own just-cause seeking a violent escalation and backlash from the parent state. Secondly, it has been accused of misunderstanding secessionism since it does not consider national cultures. Thirdly, it is considered as undemocratic since it would reject a secessionist demand even in the case of majoritarian support if there were no just cause. Finally, the competed nature of just-cause evaluations would require an impartial referee that is difficult to find in secessionist disputes. More developed theories, including the liberalism II perspective (but following the just-cause approach) are not exempt from these critiques. Despite accepting the existence of nations, the just-cause logic applies to the right to secede, although with a new list of grievances including the failure of recognition from the parent state or the respect of self-government institutions.

Primary right theories also have some shortcomings and critiques. Plebiscitarian approaches have been criticised and labelled as utopian. Their proponents have limited the majoritarian and plebiscitarian approach to certain circumstances but it still has been accused of promoting instability and recursive secessions. In its most extreme form - libertarian defences- this approach could lead even to individual secessionism and an endless demand of state creation. These critiques might be exaggerated but it is clear that a free-for-all secession approach would be highly problematic in a context of conflict. A mitigation of these critiques has been avoided by liberal-republicans; in this case, the bearers of the right to secede would be institutionalised communities instead of just considering groups of individuals. In any case, leaving aside the instability critiques, none of these approaches consider the existence of nations. On the other hand, the few proponents of the national self-determination approach also defend a primary right to secede but in this case, just of minority nations. The authors defending this position (also the proponents of a remedial national self-determination approach) have problems in dealing with the national definition, since we know that in secessionist disputes there are always multiple identities and/or overlapped nations on the same territory.

Before proposing a hybrid approach, I first describe and analyse how secession has been legitimated in some cases of secessionist movements. This empirical work helps me to establish my position in the last paper of the thesis and supports a hybrid approach to secession prioritising a primary democratic right but also by considering a national recognition principle and political unit criteria.

### **6.3. Common features in Quebec, Scotland and Catalonia secessionisms**

I selected the cases of Quebec, Scotland and Catalonia because they are clear examples of secessionist vindications in the context of liberal democracy. In the three cases, there is a significant popular support to secession and there are secessionist parties represented in the respective Parliaments. Moreover, in territorial terms, these are cases of pure secessionist demands not mixed with other common territorial disputes such as irredentism, partition or annexation. Finally, the cases have remained peaceful concerning secession during the last two decades, ensuring an environment of democratic debate on the issue instead of overlapping with a violent conflict. The methodology I have followed has been to analyse party manifestos and to interview secessionist political leaders of the independentist parties represented in the Parliaments of the cases: PQ, QS (Quebec); SNP, SGP (Scotland); ERC, SCI (Catalonia). I analyse their demands during the period between 2003 and 2011. To do so, I have analysed the arguments presented by these political actors using a triple dimension framework: definition of secession, legitimacy and procedures.

The main findings have been the discovery of a common ground in defending secession among these parties; beyond their differences, there emerges a coherent approach to secession in a liberal-democratic context. Firstly, all of them belong to the liberal nationalist approach with more or less intensity. However, the definition of the national subject is usually formulated beyond the cultural approach, highlighting institutional and political preferences related to citizenship as a common identity beyond language. This approach is much more present in Scotland and in QS and ERC.

Secondly, the characterisation of the political project is less clear, as it used to be defined by theories of secession. Despite their secessionist approach and the common objective of “separation plus state formation” we can see a moderate approach to some features of these statist demands: in their political agenda, we find the proposal of including economic *partenariats* with the former parent state, fostering even institutional and social relationships (concerning a range of aspects, for example currency, monarchy and the army) and establishing supranational agreements NAFTA (Quebec) or EU (Scotland, Catalonia). Promoting internal diversity and respecting minorities is part of the discourse in all three cases.

Thirdly, relating the legitimacy of secession formulated by the political parties with existing theories of secession, we observe a plurality of legitimacies. A commonplace is associating minority nations with the right of self-determination. A brief analysis of their discourse is enough to see that a primary right to national self-determination is part of the legitimacy, but it is much more complex than a unilateral demand based on this idea. Before that, we observed a previous consensus for a primary-right vote on the constitutional future. This demand is related to a unilateral right to secede based on just-cause legitimation, considering a failure of accommodation and recognition in the Constitutional scheme. Whereas in Quebec or Catalonia, it is argued as a historical grievance, overlapped with a lack of shared rule and a self-rule in respect of current institutions; in Scotland there is a feeling of misrepresentation in the political agenda. Other sources of legitimacy are also included in just-cause theories, such as an unjust redistribution of wealth or environment policies affecting their territory – besides the right to use natural resources or inefficient policies on infrastructures. Unjust annexation, rather than being considered a moral source for secession, is seen as a cause of lack of recognition and accommodation in Quebec and Catalonia.

Finally, unilateralism is a last resort and there is a preference for consensual secession. With the exception of SCI in Catalonia, the rest of the parties envisage a consensual secession following legal referendums on independence. Negotiations of certain burdens such as economic resources and even negotiations with third actors such as the international community, together with a gradualist strategy, are the first preference in these cases.

To sum up, normative theories of secession appear to be part of the legitimisation process in each case, overlapping primary and remedial approaches together with liberalism I plus liberalism II legitimacy of the political subjects. These observations lead to the conclusion that incorporating the secession legitimacy into theories of democracy would require a hybrid approach, more complex than a single theory, and the incorporation of case-by-case criteria, since many values and calculations seem to be involved in secessionist demands (i.e concerning redistribution). Finally the cases show that evaluating secession requires the taking into account of many aspects such as the value of efficiency, the right to natural resources, the right to territory, the scope of unjust redistribution or the definition of the political subject beyond national and cultural characteristics.

#### **6.4. The Catalan case**

The recent development of secessionist demands in Catalonia requires an in-depth analysis, which I undertake (co-authored with Professor Ferran Requejo, my supervisor) in a separate paper analysing political events from 2006 to 2013. The conclusions of this paper are related to previous findings and the theoretical debates envisaged above. The

secessionist escalation in Catalonia precisely shows the juxtaposition and complexity of normative theories of secession and their counterarguments. The legitimising positions put forward by the different political actors are a clear contrast between paradigms and theoretical frameworks. On the one hand, the Spanish government remains attached to a strong liberalism I position, rejecting national recognition to minority nations and both the right to secede and to vote on secession. On the other hand, political actors in Catalonia show a plurality of legitimations depending on the aims. Firstly, primary right theories are used for legitimising a referendum on secession and defining a political subject as *demos*, not an *ethnos*. Secondly, national self-determination theories are related to the right to secede from a remedialist perspective, blaming Spanish institutions of a lack of recognition and accommodation, especially since the ruling of the Constitutional Court on the Statute of Autonomy, and pursuing policies of assimilation (appealing language policies). This remedialist approach is also related to fiscal mistreatment (fiscal deficit, unjust redistribution) and lack of efficiency in infrastructure policies among other grievances. Beyond possible political scenarios, another important conclusion emerges concerning procedural aspects from the Catalan case. Unilateralism seems to be the preferred strategy of Central government instead of secessionist political actors. Among secessionists, there is a dominant approach to a consensual and multilateral institutional solution, envisaging a negotiated secession within the European Union through a referendum.

Again, the analysis of the Catalan case shows the necessity of improving existing theories of secession and looking for a hybrid approach to the normative legitimation of secession. The distinction between the right to decide and the right to secede emerges as an important element to be considered in order to include primary right theories; besides a liberalism II approach for offering an account capable of understanding the national dimension. We observe different ways of defining the political subject and grievances related to values such as the property of resources and their redistribution (together with efficiency and functional approaches) that would require a case analysis.

### **6.5. A hybrid approach overcoming democratic deficits**

Coming back to the theoretical debate, I argue that the approach to secession should overcome democratic deficits that I observe both in classical theories of liberalism and democracy. Two main reasons suggest the necessity of incorporating a secessionist perspective in theories of liberal democracy instead of looking for *ad hoc* theories of secession. On the one hand, the context in which secessionist demands are formulated in functioning liberal democracies shows the possibility of adopting new principles for understanding secessionisms within this framework; on the other hand, the possibility of exploring negotiated and multilateral secessions supports this view as well. I claim that *ad hoc* theories of secession, such as the just-cause approach share the same deficits that

we can see in theories of liberal democracy and the currents of thought that inform them.

The decision on the relevant political unit and the fact of national pluralism are always involved in territorial disputes. But traditional theories of democracy deny both questions, thus leaving important gaps. The majoritarian culture used to be promoted from state institutions as has been pointed out in the debates on minority cultures, nation-building and the negation of the existence of minority nations is a common denominator. Moreover, an important and surprising shortcoming of political philosophy (from Aristotle to the present day) is the inexistence of any democratic criteria for defining the limits of the people. Those limits (the existing borders) are abandoned to the forces of history and taken for granted. The consequences of this theoretical approach are obvious since secessionists in liberal democracies precisely ask for national recognition and the democratic decision of the political unit.

I argue that the just-cause approach to secession contains important biases related to the shortcomings explained before but also to pragmatic considerations. Just cause, in its liberalism I formulation described in the first paper, precisely lacks a substantial theory of political legitimacy of the *status quo* political unit. Besides this deficit, there is also the problem of not considering any moral value of national groups, despite the fact that secessionists are always a national group in liberal democracies. Moreover, from a pragmatic perspective, I have argued that this can create perverse incentives and promote violent escalations; it also requires a partial referee that can cause controversy when there are competing views of the injustices suffered by secessionists. I do not claim that other single approaches (plebiscitary, libertarian, liberal-republican or national-self-determination) display a full solution to the question of secession. Therefore, from my perspective, we should find a middle-ground solution, adopting different perspectives from theories of secession in a hybrid combination of principles and criteria.

This perspective is not just based on my theoretical analysis but also on the empirical one. As I show in the empirical articles (second and third) secessionists in Quebec, Scotland and Catalonia base their demands on national-self-determination but from a just-cause position. Therefore, they argue that there is a case of failure of recognition and accommodation due to the lack of respect of their self-rule and opportunities of shared-rule. However, they present the right-to-decide on their constitutional future as a primary right following consent-based legitimacy. Moreover, other important values are involved in their legitimating of secession such as efficiency or unfair redistribution. The Catalan case shows how the secessionist escalation has been based on this lack of recognition and accommodation but also on the demand of holding a referendum on secession.

Having analysed all the theoretical and empirical aspects, in the fourth paper, I defend a triple approach to the issue of secession: i) the adoption of a plurinational recognition perspective oriented towards a less individualist framework, much more based on the

notion of recognition and collectivism than individualist approaches (while respecting individual rights and dignity). But this perspective should be aware of the changing nature of national identities and its subjective character despite the fact that history and institutional features shape the existence of these identities; ii) the inclusion of the primary right to consent legitimacy in order to establish the political unit and challenge the teleological framework of the status quo defence. The consent-based legitimacy suggests the necessity of ensuring a primary right to vote on the political unit definition; iii) finally, a third important concern on secession is the requirement of adopting some criteria for a “viable” unit. Territoriality, self-governing minimal institutions and respect for internal minorities would be among these criteria together with some utilitarian considerations that should be applied to a case-by-case analysis in order to establish, at least, a list of duties and balances of an economic and cultural nature.

In doing this triple theorisation of the moral right to secede, I share some elements with the main theories of secession although related between them in different ways. Just-cause theorists are restrictive on secession and are concerned about the consequences of a free-for-all secession right. I share with them the worries on political instability but I do think that secessionism only appears in the context of mistreatment of national minorities as empirical works suggest. That means I share with national self-determination supporters the idea that behind secessionist movements, there is always a national group, but I do not support the idea of an aprioristic right to unilateral secession just for the fact of being a nation. Finally, I adopt from plebiscitary theories the principle of a consent-based authority as a primary right, especially when the parent state is precisely based on the absence of a consent-based legitimacy but on a what has been called a teleological legitimacy that hides the origin of the political unit behind the so-called Maginot line.

## **6.6. New topics and future research guidelines**

I am aware that this dissertation far from exhausts the entire theoretical (not to mention empirical) implications of secession and secessionist movements. My modest contribution is a revision of the existing theories, the study of its legitimisation in some cases and the proposition of a combination of criteria for overcoming theoretical shortcomings. In future research, I envisage other debates related to theories of secession.

Recent literature has tried to relate theories of territorial justice to secession. Since all theories of secession include a valid claim to territory, it is necessary to theorise on which reasons qualify for this right. This has been pointed out as an important shortcoming of both theories of democracy and secession since it is used to refer to independentist populations but rarely develops its link to territory with the exception of theories on indigenous rights that are not labelled as theories of secession. For instance,

just-cause theory includes unjust annexation in the list of grievances leading to a valid claim to territory, but we don't know where this right comes from. From a nationalist perspective, it is a commonplace relating national groups to a national (historical) homeland but its concrete limits used to be highly controversial and also its moral value (i.e. irredentist claims are involved in this debate).

Unfair redistribution is an argument used by secessionist groups as a weighty reason for unilateral secession. However, there is an important disagreement both in empirical cases and theoretical debates about the characteristics of an unjust redistribution. While some authors deny the existence of a moral case for unfair territorial redistribution (taking an individualist perspective), others consider the necessity of establishing some criteria of fairness as theories of justice have done for individual redistribution. Within these theories, we find criteria of efficiency (utilitarian), subject-based or reciprocity-based ideas. However, related to the right to secede, we find few contributions to the debate and it could be much more theorised than it is.

The nature of secessionist vindications in democratic contexts opens the door for the thinking of new possibilities or institutional solutions envisaging a supranational integration of sub-state political units beyond a Nation-State. Theories of secession have included the debate on the necessity of its legalisation (through constitutional clauses) in the context of liberal-democratic constitutions. I would like to apply my conclusions to this debate, contributing to the defence of a constitutional clause based on the right-to-decide of minority nations within plurinational states. Nevertheless, there are more constitutional implications of secessionist demands in liberal democracies. As I show in my empirical analysis and in the description of the recent development of the Catalan case, secessionists are less clear on their political project than theories used to assume. We saw the proposal of a gradualist strategy in Scotland and almost all secessionist parties analysed in this dissertation envisage supranational alliances and political projects that differ from classic Nation-State promoting, sharing crucial elements (depending on the case: military, currency, borders, or concrete policies) with their former parent state and supranational community. Bearing that in mind, secession in the twenty-first century, in the context of liberal democracies and supranational institutions such as the EU, could be theorised as an institutional solution – very different from simply replicating the nineteenth century Nation-State model. From this perspective, secessionism could be seen, not as the fragmentation of the world into small Nation-States following the lines of ethnic or national divisions, but as the beginning of the decline of the Nation-State and the starting point of consent-based legitimacy. Moreover, this new perspective could extend to other domains like supranational institutions and economic powers.

