Liberal Democracy and Secession [*]

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1.1.   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[1] 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[2]. 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 I); firstly, I criticise *remedial right theories* in order to show that they are state biased due to their theoretical shortcomings (section 2); secondly, I provide some theoretical solutions mentioned previously, based on the work of other political

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[1] 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).

[2] See Mann (2005).

philosophers (section 3); and finally, I try to solve some general critiques to secession using my new theoretical framework (section 4). 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.

1.2. 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[3], the same cannot be said for the former[4]. The range of academic responses to this issue covers from the free-for-all secession utopia, as well as the individual[5], 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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[3] The Just Cause approach seems to be the most accepted theory. See: Buchanan (1991, 1992, 1997, 2003, 2004).

[4] In a previous article I build a typology of liberal theories of secession.

[5] Libertarians area 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[6]. 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[7].

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 20th 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 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

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[6] 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).

[7] See: Dahl, 1992.

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"[8] 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 dignity (Requejo, 2010)[9]. 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).

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[8] 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).

[9] See also Mann (2005).

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."[10] 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[11]. 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?

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 "legitimating 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"

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[10] Quoted in Moore (1998) "Introduction".
[11] Besides other criteria.

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[12] and their classification. In the next section (2) I claim that the most accepted theory of secession, *remedial right theory[13]*, 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.

1.3. 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[14], upholds that there is no *primary right[15]* 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[16]. 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

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[12] In fact, I have developed a typology of theories of secession in the previous article: *"Liberal theories of secession: an analytical typology"*. I 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 feasable and just-cause theory is the kind of theory more closely linked to international practices in secessionist conflicts over the world.

[13] Also called just-cause theory.

[14] Buchanan, A. (1991, 1992, 1997, 2003, 2004)

[15] 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.

[16] 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 considerad a just cause only in extreme cases in which there is a clear risk of cultural disappearence 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).

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[17]. 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 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.

1.3.1. Pragmatic approach

Violence promoting paradox

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[17] Wellman has labelled this kind of legitimacy as teleological since the state is legitimated by its functions.

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[18] (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 [19], 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

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[18] If we consider Kosovo's independence as a secession case, it could be seen as an irredentist Albanian claim.

[19] Although *International Amnesty* has reported human rights violations in some Western democracies related to secessionist politics.

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 expulsed 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-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[20] 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

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[20] See the previous article: *Quebec, Scotland and Catalonia. How secessionist political parties legitimise secession.*

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[21] 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).

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

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[21] 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).

proclaimed outside the UN framework. An example of a secessionist conflict without international intervention is Chechnya.

1.3.2. 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 misguiding 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[22]. 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 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

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[22] 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.

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[23].

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 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

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[23] 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).

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[24]. An important shortcoming of this approach is that it seems to be dichotomous; secession occurs or not[25]. 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.

1.4. Solving the shortcomings. A liberal-democratic theory able to deal with secession

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[26]. 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

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[24] 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.

[25] 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.

[26] 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.

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 3.1). 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 3.2); second, political authority legitimacy should be understood as consent- based rather than from a hypothetical contractarian or teleological point of view (section 3.3).

1.4.1. 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. Here, I claim that assuming an approach framed within Liberalism II[27] 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[28] 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

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[27] 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).

[28] A central element in just-cause theories.

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[29].

c) The last point leads us to an old debate: what is a nation?[30] As Seton-Watson wisely considered "Many attempts have been made to define nations, and none have been successful"[31]. 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).

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[32].

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[29] 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 atribute to nations.
[30] See: Canovan, 1996
[31] Quoted in Canovan, 1996.
[32] This view conflicts with cosmopolitan or ethical individualist approaches.

1.4.2. 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 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[33]. But he rectified this, as he admits it "would be an error concluding that nothing more can be said on that"[34], and

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[33] Here I follow what Carole Pateman wrote about Dahl's article in a review of *Liberal Democracy* (1986: 379).

[34] Footnote in *Chapter 13* of *La democracia y sus críticos*.

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[35]:

(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 posses 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 coactive.

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

(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).

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[35] Not to be confused with the famous characteristics of a "Poliarchy".

(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 adition to normative principles, using these criteria in order to balance possible loses of welfare and balance the burdens in secessionist processes.

1.4.3. 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[36]. 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'[37] 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

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[36] Here no matter if these individuals are free and equal by nature or by mutual recognition or whatever.

[37] Note that cooperation to perpetuity means no right to secede.

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.

1.5. 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[38]. 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[39]. 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[40], 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 there is no secessionist movement without a national identity[41]. 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[42]. 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[43]. 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.

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[38] 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.

[39] 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).

[40] 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.

[41] Jason Sorens (2012) provides an important database that confirms the necessary precondition (not suficient) for the emergence of a secessionist movement: the existence of a national community.

[42] As I said Seymour (2007) defends this position calling this requirement 'internal self-determination'

[43] Beran suggested his own list of criteria (Beran, 1984) like economic viability, territorial coherence or minimal size of the population.

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 were 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.

1.6. 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[44].

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."[45]

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

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[44] These counterarguments were already listed by Buchanan (1991) but are a commonplace among those who are opposed to incorporating secession into democratic theories.

[45] *Considerations on representative government*, Chapter 16

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 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[46]. 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

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[46] 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.

an important question with few theoretical examinations[47]; 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' 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[48].

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 were secession is implicitly or explicitly outlawed and few where it is permitted[49]. 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 3.3, being a member of a democratic state should be considered, in the end, a matter of willingness rather than an imposed contract.

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[47] 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).

[48] These duties could also be of an emotional nature linked to the cultural and relational value of the seceding unit, territory and population.

[49] 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.

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" (Seshaguiri, 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). 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 4, could undermine to a great extend 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[50]. 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.

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[50] Dion (1996) has theorised why it is so difficult to secede in a democratic state by analysing the dynamics in the 1995 Quebec referendum.

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. 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 coactive, 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.

1.7. 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 liberaisml 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*, XXXII, 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*, ed. By Henry Hardy Oxford : Clarendon.

Buchanan, A. (1989), *Assessing the Communitarian Critique of Liberalism*, Ethics, 99, 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*, 45:347-65.

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

Buchanan, A. and 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 Ed. Hurst Hannum. *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 (Topics), Article 5.

Catala, A. (2013), "Remedial Theories of Secession and Territorial Justification". *Journal of Social Philosophy* 44 (1):74-94.

Christiano, T. (1995), "Secession, Democracy and Distributive Justice", *Arizona Law Review*, 37.

Connor,W., (1999), "Nationalism and political illegitimacy", Canadian Review of Studies in Nationalism, VII, Fall: 201-228.

Connor, W. (1972), "Nation-Building or Nation-Destroying?", *World Politics*, Vol. 24, No. 3 (Apr., 1972), pp. 319-35

Costa, J., (2003), "On Theories of Secession: Minorities, Majorities and the Multinational State", *CRISPP*, Vol.6, No.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*, 26:2, 269-83.

Donatella Della Porta and Michael Keating (eds), (2008) *Approaches and Methodologies in the Social Sciences. A Pluralist Perspective*, Cambridge University Press:365.

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

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

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*; 35: 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*, 14:2, 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, 23 (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, No.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*, 7:1.

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*, Koninklije Brill NV.

McKim, R. and McMahan, J. (1997), *The Morality of nationalism*, New York [etc.] : Oxford Unversity Press.

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

Mill, J.S [1860] "Considerations on the representative government" in Gray, J. (Ed.) (1992) *On liberty and other essays*, Oxford [etc.] : Oxford University Press

Miller, D. (2003), "Liberalism and Boundaries: a response to Allen Buchanan". In Buchanan, A. and 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, 37, 3, 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*, XLV, pp.900-913

Mouffe, C., (1999), *El retorno de lo político*, Paidós

Näsström, S., (2007), "The Legitimacy of the People, Political Theory", 5:2, 624-658

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.

Orentlicher, D., (1998), "Separatism and Democratic Entitlement", *Yale Journal of International Law,* 23:1

Patten, A., (2002), "Democratic Secession from a Multinational State", 112, 558-586

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

Pavkovic, A., Radan, P. (2007), *Creating New States: Theory and Practice of Secession*, Aldershot, UK: Ashgate.

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*, 16, 1, 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*, 10, 51-70

Requejo, F.; Sanjaume, M., (2010), "Secession and liberal democracy. The case of the Basque country", Working Paper: GRTP.

Pateman, C., (1979), *The Problem of Political Obligation: A Critical Analysis of Liberal Theory*

Pateman C., (1986), Problems of Liberalism:Nomos XXV: Liberal Democracy. J. Roland Pennock, John W. Chapman. Ethics 96 (2):375-.

Patten, A., (2002), "Democratic secession from multinational state", *Ethics* 112, 558-586

Pavkovic, A., (2007), Creating New States: Theory and Practice of Secession (with Peter Radan). Aldershot, UK: Ashgate.

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

Pennock f J. Roland Pennock and John W. Chapman, eds., (1983), NOMOS XXV: Liberal Democracy (New York and London: New York University Press,).

Rothbard, M.N (1998) "Nations By Consent: Decomposing the Nation-State" a Gordon, D. Secession State & Liberty.

Sánchez-Cuenca, I. (2010), *Más democracia, menos liberalismo*, Katz

Serrano, I., (2008), Ciutadania i identitat nacional en els processos de devolution a Gran Bretanya i a França. BARCELONA: Departament d'Interior, Relacions Institucionals i Participació. ISBN. 9788439377566

Seshagiri, L., (2010), "Democratic Disobedience: Reconceiving Self-Determination and Secession at International Law", *Harvard international law journal, ISSN 0017-8063, Vol. 51, Nº 2, 2010 , págs. 553-598.*

Tamir, Y., (1993), *Liberal Nationalism*, Princeton, 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 161-83

Venice Comission 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. "Comment" in Taylor, Ch.; et.al (1994) *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*, 24/2: 142-71.