Republicanism and Secession: A Normative Analysis

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Als meus pares

Agraïments

Com totes les coses importants que un fa a la vida, una tesi doctoral mai no és el producte solitari d'un mateix. Si més no, no és el cas d'aquesta tesi. Tant en un sentit intel·lectual com emocional, m'hagués resultat impossible arribar fins aquí sense el suport, l'esforç, els recursos i, tot sovint, la paciència de molta gent que m'envolta i que ha cregut en aquest projecte. Aquí em deixaré molts noms, però com a mínim, m'agradaria deixar constància dels més importants.

Encara que pugui resultar tòpic, les primeres persones que em venen al cap en tot plegat són els meus pares. Més enllà dels esforços que tot bon pare i tota bona mare fa pels seus fills, els meus pares han tingut un "extra" de responsabilitat en que jo hagi acabat fent una tesi doctoral. Segurament, més del que es pensen. Des de petit m'han inculcat el valor de la cultura, han estimulat el meu plaer per la lectura i sempre m'han animat a esforçar-me al màxim per treure profit de les oportunitats que ells mai no van tenir, i que gràcies al seu esforç i sacrifici jo he tingut a l'abast. No sempre han compartit les meves inquietuds, les meves preguntes ni les meves respostes, però sempre han procurat que fossin això: meves. I *last but not least*, és a casa, amb els meus pares, on he après valors com l'esforç i l'honestedat, essencials per a tota activitat investigadora.

Abans he parlat d'un altre valor: la paciència. Ningú ha tingut tanta paciència amb mi i amb la meva tesi com l'Elisabet. Em resulta simplement impossible deslligar aquesta tesi d'ella. Ens vam conèixer alhora que començava aquesta recerca, i la nostra relació com a parella ha crescut alhora que la recerca avançava. L'he tinguda sempre al meu costat, m'ha donat forces quan em faltaven i ha cregut sempre en mi (més que jo, diria). No sempre ha estat fàcil, però ha estat *possible*, i això ja diu molt

tant d'ella com de la fortalesa i la intensitat dels vincles que ens uneixen. Per si fos poc, el seu exemple m'ha servit d'inspiració constant: quan un veu de prop els rigors, les fatigues i els sacrificis que exigeixen els estudis i la professió d'arquitecta, els esforços que demana la Teoria Política es relativitzen.

Naturalment, aquesta tesi no hagués estat la que és sense la direcció del meu tutor, en Ferran Requejo, a qui vaig conèixer com a professor al Màster en Ciència Política. Un dels millors, amb diferència. Amb en Ferran tot ha estat ajut, facilitats i empenta. A banda d'aquesta bonhomia personal, d'en Ferran valoro la barreja, de regust anglosaxó, entre escepticisme respecte les grans paraules i les grans idees, d'una banda; i confiança en els conceptes clars i els arguments concrets, d'una altra. Anar treballant aquesta tesi amb ell ha estat com anar escoltant un *blues*: t'abaixa els fums, destapa les trampes, et mostra la realitat i, alhora, et prepara per afrontar-la. La melodia de fons de la tesi té, aquí i allà, *blue notes* que la fan més càlida i terrenal, i que no serien allà si no fos gràcies a en Ferran.

Si la tesi no seria la que és sense en Ferran, el capítol 3 tampoc no seria el que és sense l'Alain-G. Gagnon. També en ell es donen les qualitats que he esmentat d'en Ferran: bonhomia i rigor analític. Gràcies a ell se'm van obrir les portes de la Université du Québec à Montréal; igualment li dec una bona dosi d'ajut per a poder entendre una realitat que, en la superfície, pot aparèixer com a semblant a la catalana, però que a mida que t'hi endinses té mil particularitats que, amb les ulleres catalanes, un pot malentendre o directament no entendre en absolut. A ell, i a tot l'equip de la Chaire de Recherche du Canada en Études Québécoises et Canadiennes. els hi dec tres dels mesos més interessants de tots els que he viscut desenvolupant aquesta tesi doctoral.

Una tesi que, cal dir-ho, també té deutes importants amb a altres

professors. No puc oblidar-me, per exemple, d'en Daniel Raventós de la UB, de qui vaig ser alumne a la carrera de Sociologia, però que va ser qui va despertar el meu interès per la Teoria Política. Ignacio Lago, que treballa en aigües tan allunyades de les que aquesta tesi explora, va ser no obstant un dels que em va animar més directament a sol·licitar la beca que m'ha permès tenir la meva primera experiència professional a l'acadèmia. Amb en Jaume López, l'Ivan Serrano, en Joan Vergès i en Klaus-Jürgen Nagel he pogut discutir en més d'una ocasió sobre el tema d'aquesta recerca, proporcionant-me un *feedback* que m'ha estat molt útil per a poder avançar. També he begut de moltes converses i més d'un seminari amb Peter A. Kraus, de la Universitat d'Augsburg, a qui vaig conèixer com a professor d'un dels cursos de primer any de doctorat, i que ha resultat una de les influències més estimulants que he rebut durant els anys dedicats a l'elaboració d'aquesta tesi.

No ha estat menor el *feedback* que he rebut de periòdics debats, seminaris i converses informals amb el petit però actiu grup de doctorands de la UPF especialitzats en Teoria Política, com ara l'Adam Holesch, en Sergi Morales, en Josep Costa, o l'Anthony Gilliand. Gent que combina dues qualitats que no sempre abunden, i menys de forma simultània: una preocupació profunda i sincera pel millorament de la societat que els envolta, i una resistència a donar respostes fàcils sense, abans, haver-se plantejat seriosament les preguntes ètiques més difícils. Tinc, en particular, un agraïment especial i profund cap en Marc Sanjaume, que també va fer la seva tesi doctoral sobre el dret de secessió sota la direcció d'en Ferran Requejo, i que en tot aquest temps ha estat una mena de "germà gran" per a mi. M'ha proporcionat orientació, ànims i idees, ajudant-me a transitar camins que ell ja havia desbrossat abans, com fan els germans grans. He tingut el plaer de col·laborar amb ell en més d'un projecte al llarg d'aquests anys, i espero que ens tornem a trobar treballant

plegats, ben aviat i ben sovint.

I més enllà del cercle dels teòrics polítics, què dir de la molta bona gent amb la que he coincidit al llarg d'aquests anys al Departament, i amb els que he tingut oportunitat d'intercanviar idees o, simplement, bons moments que han fet molt més agradable aquesta recerca. Gent com l'Iñigo Fernández, l'Ana Safranoff, l'Antonella Levantino, la Kelly T. Rowe o la Natàlia Malancu amb qui no he compartit línies de recerca però sí despatx, converses i riures que trobaré molt a faltar. O en Marc Guinjoan, en Toni Rodon, la Núria Franco, l'Abel Escribà i la Tània Verge, amb qui he compartit dinars i dinars parlant de temes que tot sovint, fruit del moment que viu el país, giraven molt a prop del tema d'aquesta tesi. I tanta altra bona gent que em deixo; en Pablo Simón, la Silvia Claveria, en Juan Carlos Triviño, en Vicent Climent o la Queralt Capsada, per acabar de dir només alguns noms més. De tots ells, sense excepció, estic segur que desenvoluparan carreres professionals brillants, de les que sentiré la mateixa enveja sana que he sentit durant aquests anys en que he tingut el plaer de comprovar, de prop, la seva gran capacitat intel·lectual i de treball.

Em deixo molts altres noms perquè si no no acabaria. En particular, em deixo els noms de tants i tants amics del Prat i de la meva comarca, el Baix Llobregat (l'Alan García, per anomenar només el millor i més vell amic de tots; o la meva germana Mònica, tan germana com amiga), a qui no veig tan sovint com m'agradaria, però que durant aquests anys no només m'han donat ànims i m'han fet desconnectar de tant en tant (tan necessari per seguir avançant!), sinó que també m'han ajudat a no oblidar la realitat que segueix viva més enllà de les parets de l'Acadèmia. Ajudar, modestament, a millorar aquesta realitat en la que viuen les persones reals a qui estimem, és al meu entendre el que dóna sentit a l'existència de la Teoria Política.

Només em resta donar també les gràcies al Ministeri d'Educació i Ciència, que em va finançar quatre anys durant els quals vaig poder desenvolupar el gruix d'aquesta tesi i tenir la meva primera experiència docent, en el marc de les beques de Formació de Professionals Universitaris (FPU). També vull agrair a la Universitat Pompeu Fabra, així com a tot el personal PDI i PAS amb el que he tingut la sort de treballar de prop o de lluny, tota l'extraordinària feina que han fet i segueixen fent per tal de mantenir un programa de Doctorat de qualitat i prestigi com el que tenim. Formar-ne part no només ha estat una gran oportunitat, sinó també un gran orgull.

ABSTRACT

This dissertation aims to answer the following question: *which kind of right to secede from a modern democratic state, if any, can be acknowledged from a democratic republican point of view?* It is structured as a collection of three independent, but related, articles. The first one is an analysis of the normative relationship between democratic republicanism and current theories of right of secession (TRS), in which I show how secession conflicts pose threats for democratic republican principles (particularly, freedom and inclusion), but also how none of current TRS succeeds in overcoming them. The second article explores to which extent a constitutional right of secession, like Quebec's one, could minimize those threats, finding out that it is useful because of its non-unilateral nature, but that its limitation to constitutional law undermines that usefulness. Finally, the third article tries to properly answer the research question, and it does so by proposing a TRS based on a multilateral right of secession for any democratic secessionist community, coupled with a multilateral right to unity for its host state, and with a right for both sides to unilaterally act under certain extreme circumstances. The international democratic community would arbitrate and monitor any secession conflict according to this framework.

RESUM

Aquesta tesi mira de respondre la següent pregunta: *quin tipus de dret a la secessió respecte d'un estat democràtic modern, si algun, es pot reconèixer des d'un punt de vista republicano-democràtic?* La tesi està estructurada com un conjunt de tres articles independents, però relacionats. El primer és una anàlisi de la relació normativa entre el republicanisme democràtic i les actuals teories del dret de secessió (TRS), la qual mostra que els conflictes de secessió presenten perills per als principis republicans democràtics (en particular, la llibertat i la inclusió), però també que cap TRS actual confronta amb èxit aquests perills. El segon article explora en quina mesura un dret constitucional a la secessió, com ara el del Quebec, podria minimitzar aquestes amenaces, tot concloent que la seva naturalesa no unilateral el fa útil de cara a aquest objectiu, però que la seva limitació al marc constitucional mina aquesta utilitat. Finalment, el tercer article mira de respondre pròpiament la pregunta d'investigació de la tesi, i ho fa proposant una TRS basada en un dret multilateral de secessió per a qualsevol comunitat secessionista democràtica, juntament amb un dret multilateral a la unitat per al seu Estat matriu, i amb un dret per a les dues parts a actuar unilateralment en certes circumstàncies extremes. La comunitat democràtica internacional arbitraria i controlaria qualsevol conflicte de secessió d'acord amb aquest marc.

CONTENTS

1. INTRODUCTION

"*The people cannot decide until someone decides who are the people*",

Sir Ivor Jennings

"*A problem is a chance for you to do your best*",

Duke Ellington

1.1. General introduction

The aim of this dissertation is to answer the following question: *which kind of right to secede from a modern democratic state*[1]*, if any, can be acknowledged from a democratic republican point of view?*. This is a small part of a broader debate that, within normative political theory, has been developed around secession (and the right to secede), which is in turn one of the most controversial aspects of the broader normative problem of the justification (or lack of thereof) of the boundaries of

[1] By "modern democracies" or "modern democratic states" I mean those modern polities which combine universal suffrage, free and fair multi-party elections and a robust body of citizens' rights, whether only first-generation rights or also second and third-generation. I prefer to use the term "modern democracies" rather than the more common "liberal democracies", since liberalism is just one of the main sources of the rights and institutions that characterize our current democracies: other traditions such as republicanism, socialism or feminism have not been any less important in conducing modern democracies to adopt some of their key features such as checks and balances, socio-economic rights or universal suffrage. This is a conceptual nuance of certain importance for a normative analysis on secession, since some of the problems related to it have to do with features of modern democracies coming (at least in part) from other traditions different from liberalism (e.g. redistribution of wealth, initially demanded by the labor movement and the socialist parties). I also prefer to speak about "modern" rather than "current" democracies, because there were also "modern" democracies in the past (that is, not "currently"), and indeed modern democracies have been evolving over time, and have been different in different eras; something which, in my view, is better captured by the word "modern" than by the word "current".

political communities. More often than not, political conflicts regarding secession are indeed a focus of instability and turmoil; instability and turmoil that, very often, finish in violence: according to Armitage, out of 296 civil wars from 1816, 109 were fought with the aim of creating a new state (2010: 38).

Surprisingly, this recurring cause of instability and violence has received little attention in the field of normative political theory. While right of secession has been addressed by different political thinkers at different times (e.g. Lenin or Wilson), this has usually been *outside* academic political theory, properly speaking: those thinkers were usually practitioners too, and their ideas on secession were more *ad hoc* political stances in concrete historical situations, rather than political theories properly speaking. It was not until the 1980s that a distinctive body of literature on the normative problems of secession began to emerge within the field of academic political theory. Beyond secession generally speaking, the central object of this literature has been *right of secession*, namely: *which groups of people, if any, have a moral right (or should be legally entitled) to secede from their states?* The scholars who have tried to answer this question, or other related ones, have generally been working under a liberal democratic framework. Thus, the two opening articles by Beran (1984) and Birch (1984) are called "A liberal theory of secession" and "Another liberal theory of secession", respectively. And Buchanan, in his groundbreaking book on the matter, explicitly states liberalism as the foundation of his normative research on secession (1991: xi).

During approximately the same time period, another important body of literature has arisen in the field of political theory: the so-called republican revival. Sometimes presented as an alternative to liberalism (Sandel 1996; Pettit 1997), sometimes referred to as different but not

opposed to it (Kymlicka 2001: 327-346; Sunstein 1988; Sellers 1998; or Dagger 1997), republicanism has in any case become one of the most common approaches among those political theorists seeking to overcome what they see as the shortcomings of liberalism or, at least, of the dominant ways in which liberalism has been understood by political theorists during the 20th century. Despite their differences, all republican scholars share some core ideas (e.g. the importance of civic virtue or of economic equality for individual freedom) drawn from Greek-Latin political philosophy and its Renaissance and Enlightenment followers; these are ideas that are either absent or contested in mainstream liberal political philosophy. Increasingly present in the fields of the history of ideas and of general political theory, republicanism has also been applied to more concrete normative fields, from theories of crime and punishment to theories of democracy.

And yet, literature linking republicanism and secession is rather scarce. Even authors with an affinity to republicanism, such as Weinstock (with Nadeau 2004) or Miller (2008), have not used republican concepts and principles in their works on secession (Weinstock 2000 and 2001; Miller 2003). And when scholars have occasionally worked on the issue, they have done so in a rather exploratory way (McGarry and Moore 2011), usually as a secondary issue within broader works on nationalism (Ovejero 2006: 81-104), international law (Sellers 2006: 158-166) or self-determination broadly considered (Klabbers 2006). Nowadays, I think it is no exaggeration to say that there is no such thing as a democratic republican theory of the right of secession[2]. To develop one, focusing on

[2] Other scholars, like Caminal (2007) or Young (2005) have examined the relationship between republicanism or some republican values (like non-domination) and self-determination, but their works in this sense have been focused on multinational federalism, rather than on secession.

modern democratic contexts, is the purpose of this dissertation. Through the following sections of this introductory chapter, I will describe in more detail: (1) the concept of "secession" and other related concepts that I have been dealing with in this research; (2) the basic tenets of the two bodies of literature I want to link; (3) the relevance of this research; (4) its methodological framework; and (5) its structure.

1.2. What is secession?

I shall start by defining the concepts of *secession*, *secessionist politics*, *target group*, *secessionist community*, *right of secession*, *right to unity* and *secession conflict*, all of which are central to this thesis. Firstly, there is not a universally accepted definition of *secession*: scholars like Pavkovic and Radan (2007) exclude phenomena such as decolonization from their definition, while others like Buchanan implicitly or explicitly include them as types of secession (1991: 10 and 45); and we even hear about "secessions" at non-state levels (e.g. the secession of the Swiss canton of Jura from Berna). I think we can synthesize this diversity of definitions into two different notions of secession, namely a *broad* one and a *pure* or *strict* one. In a *broad* sense, secession is the withdrawal of a territory and its population from a broader polity, either to join another polity or to create a new one; this brings together different types of secession, including decolonization or irredentism. A *pure* or *strict* definition, on the other hand, highlights one of those types: "*the creation of a new state by the withdrawal of a territory and its population where that territory was previously part of an existing state*" (Pavkovic and Radan 2007: 5). Whenever I use the word "secession" alone in this thesis, I will be talking about "pure" secession, while acknowledging there are other types of

“secession” in a broader but no less genuine sense[3].

We must also distinguish secession from three other related, but different, concepts:

1. *Sovereignty*, i.e. the ultimate power over a territory and its population. A regional group claiming sovereignty over a territory can nevertheless choose to remain within a larger state, while a state claiming sovereignty over one of its territories can accept its secession despite this claim.

2. *Self-determination*, i.e. the principle according to which a people is able to decide its political future without external interferences. The ambiguity of this formulation, and the need to define what constitutes a “people", impedes us from plainly identifying self-determination with sovereignty or with right of secession. Thus, sometimes rights to self-determination clearly include right of secession (Lenin 1914); in other contexts, such as in international law, this is considered to be a special case of self-determination (referred to as "external"), and is reserved to colonies and extremely oppressed peoples; at the same time the right to "internal" self-determination (i.e. intrastate autonomy) of ethnic and cultural minorities is acknowledged.

3. *Independence*, i.e. the fact of being a state. While independence is an outcome, secession is a process. Independence is one of the

[3] This polysemy should not be surprising: indeed, a people separating from a given political community is “seceding” in a genuine sense, but since the central political community in the modern world is the state, it is normal that “secession” *par excellence* happens to be secession from a state in order to form a new one.

possible results of a secession, and precisely the one sought by secessionists; but it is not necessarily the only possible result (e.g. if secession fails, there is no independence); and secession, in a strict sense, is only one of the possible processes which can lead to the creation of independent states (another one could be decolonization, for instance).

Secondly, a *secessionist group* is a group of people seeking secession for a broader group of people, namely the *target group*. Whenever secessionists happen to be a majority within the target group, this group qualifies as a *secessionist community*. While every single member of a secessionist group is secessionist, this is not applicable to secessionist communities. And when a secessionist community seeks to establish a modern democratic state through democratically acceptable means[4], it qualifies as a *democratic* secessionist community. By *right of secession*, on the other hand, I mean the right of a secessionist community to effectively secede, without the host state being legally allowed to unilaterally quell the undertaking (particularly by force). In this sense, it is usually forgotten that right of secession necessarily has a negative correlation with what we might call the host state's *right to unity*[5], i.e. the right of a state to retain its unity, without the would-be secessionist

[4] This formulation is deliberately vague, for what is "democratically acceptable" varies from case to case. The resort to force can be an acceptable means of creating a democratic state out of secession, if the host state happens to be an oppressive dictatorship; it would be unacceptable, on the other hand, in a modern democracy.

[5] I prefer to speak of "right to unity" instead of "right to territorial integrity", because in international law this last term is limited to inter-state relations, as plainly stated in the International Court of Justice advisory opinion on Kosovo (2010). Thus, the right to unity would be exercised by the host state in opposition to secessionists, while the right to territorial integrity would be exercised by the host state against other states.

community being entitled to unilaterally secede (particularly by force). Both right of secession and right to unity can be unilateral or negotiated/non-unilateral. And, coherently, whenever we say that a given territorial group is neither legally allowed nor legally banned from seceding, then we should conclude that their host state is neither legally allowed nor legally banned from retaining its unity.

On the other hand, *secessionist politics* can be defined as:

> A continuous spectrum of activities ranging from the legally innocuous activity of advocating secession to the legally and morally dubious activities of unilateral declarations of independence (UDI) and armed insurrection; encompassing, in between, the creation of political parties with secessionist platforms, the contesting of elections by such parties, their organizing referendums on independence when they form regional governments, and so on. (Norman 2006: 190)

When, within a state, secessionist politics grows to a certain degree, it results in a *secession conflict* between secessionists and unionists (i.e. opponents of secession). By *conflict* I understand the opposition between different agents (individual and/or collective) in order to pursue their respective agendas. A secession conflict is a type of *political conflict*, i.e. a conflict between different agents in order to gain *power*, where power is, roughly speaking, *the capability of A to get B to do something that B would not otherwise do* (Dahl 1957: 202-203); as in any political conflict, it may be, but not necessarily will be, violent. In a secession conflict, *unionists* aim to keep their state united and to avoid any international recognition for secession, while *secessionists* seek the successful withdrawal of their target population and territory from that state in order to create a new one of their own, as well as seeking to secure international

recognition for it. In modern democratic states in which secessionists become a majority within their target population, secession conflicts seem to set two democratic majorities in opposition (a state-level unionist majority and a regional-level secessionist majority), hence giving the issue of right of secession a crucial, as well as controversial, relevance.

Historically speaking, we can roughly identify: (1) an era of anti-colonial movements (not secessionist in a strict sense) in America from the mid 16th century to the mid 19th century; (2) an age of irredentism and pure secessionism from the mid 19th century to the mid 20th century, which in Europe was linked to the birth both of modern nationalisms and of the concept of national self-determination; (3) decades of decolonization in Asia and Africa from 1945 to the 1980s, during which international law limited the right of "external" self-determination (i.e. secession in a broad sense) to the colonies, while recognizing "national" minorities a right to "internal" self-determination (i.e. autonomy); and (4) the years from the 1970s onwards, with a new rise of pure secessionism, reaching a turning point in the implosion of the Communist Bloc. The contradictions of the international community in handling these new waves of pure secessionism; the outbreak of violent secession conflicts in places such as the Basque Country or Yugoslavia; and the growth of a reasonably liberal and democratic secessionism in other places such as Quebec; I would say that all these phenomena were (and are) hard to handle through an international legal system that was developed for decolonization. Theories of right of secession (TRS) arose in this historical context.

1.3. Theories of right of secession and republicanism: two unconnected literatures

Current TRS are the first body of literature upon which I have developed this thesis. These theories are usually divided into two groups. First, there are theories of the unilateral right of secession, which is "*the principal focus of interest for theorists of secession*" (Pavkovic & Radan 2007: 200-201). Unilateral TRS try to establish *who* has a moral (i.e. not necessarily a legal) right to secede, and *why*. Though discussions on institutionalization are not excluded from this field, the main concerns of TRS are the two ones just mentioned. Second, we can find theories of the constitutional (normally understood as *consensual*) right of secession, which try to determine whether states (especially liberal-democratic ones) should include a right to secede in their constitutions. I find this division slightly misleading in some senses[6], but since it is the most commonly accepted classification of TRS, I have taken it as a starting point in order to develop this thesis.

Unilateral TRS are usually classified as either *plebiscitarian*, *ascriptivist* or *remedial*. Both plebiscitarian and ascriptivist TRS understand (unilateral) secession as a *primary right*, i.e. a right to which some groups of people are entitled *a priori*. *Plebiscitarianism* (Wellman 1995; Beran 1984; or Philpott 1998) acknowledges this right for any territorially concentrated group asking for secession. *Ascriptivists* (Margalit & Raz 1990; Miller 1995: 84-85, and 2003) restrict this primary right of secession to certain groups linked by some objective features such as language, history, self-government institutions, "world-views" and so on. Finally, *remedialism* (Birch 1984; Buchanan 1991 and 2007; Bauböck 2000; Patten 2002; Seymour 2007), regards the right to secede not as a

[6] For instance, I fail to see why we cannot think about a unilateral and constitutional right of secession, or about a non-unilateral right of secession entrenched in international law instead of in constitutional law. I will repeatedly discuss this point in the three articles of this thesis (especially in chapter 4).

primary right, but as a last resort, which is to be allowed to certain groups subjected to serious and constant grievances by their host states, such as massive human rights violations, or unjust annexation, among others. As I will explain in chapter 2, plebiscitarian theories are usually criticized as promoting instability, blackmailing by powerful minorities and, in the end, the bankruptcy of democracy. Ascriptivist theories are generally criticized on the same grounds, plus (and especially) due to risks in terms of ethnic turmoil. And remedialists, finally, are usually criticized as having a pro-status quo (thus, pro-host state) bias.

On the other hand, constitutional TRS seek to analyze the normative costs and benefits of constitutionalizing a right of secession. Some of them undertake this analysis within the framework of a previous unilateral TRS, usually a *plebiscitarian* (Philpott 1998; Brandon 2003: 275; Andrei Kreptul 2003) or a *remedialist* (Sunstein 1991; Buchanan 1991: 127-149; Norman 1998) one. Others evaluate the appropriateness of such a constitutional right on a purely *ad hoc* basis, i.e. identifying the problems that secessionist politics poses, in their view, to liberal democracies, and then discussing whether a constitutional right of secession would be useful in managing these problems (Weinstock 2001; Aronovitch 2006; Norman 2003). This last trend can be labeled as *pragmatic*. Again, in chapter 2 I will explore the shortcomings of these theories: while pragmatic theories cannot tell us what to do if either secessionists or unionists reject constitutionalizing secession, plebiscitarian and remedial theories of the constitutional right of secession share the pitfalls of the unilateral TRS on which they are based.

The second body of literature upon which this thesis is based is *republicanism*, and more precisely, *democratic* republicanism. This literature emerged from the so-called republican revival of the 1970s, which in turn was the result of the work of different historians about the

ideological roots of the American Revolution (Bailyn 1992; Wood 1993; Pocock 2003). Seeking to prove that these roots were not only to be found in Lockean liberalism, these scholars described a tradition of political thought which originated in the ancient Greek-Latin world, was rediscovered in the Renaissance and updated during the Enlightenment, in which "*the personality was founded in property, perfected in citizenship but perpetually threatened by corruption*" (Pocock 2003: 505). Rather than fearing state interference in the private sphere, this tradition argued that corruption, the citizen's isolation from public affairs, and economic dependence were the main threats for a citizen's freedom. As time went on, an increasing number of political thinkers began to recover and update these ideas, as a way of overcoming what they perceived as the shortcomings of liberalism or, at least, of mainstream liberalism.

A quick look at the work of the most prominent scholars on republicanism shows quite different meanings of this very word (Pocock 2003: 507; Sandel 1996: 4-7; Arendt 1963: 30; Skinner 2002; Pettit 1997; or Sunstein 1988). I think, however, that this fuzziness is rather the norm when it comes to defining any tradition of political thought (e.g. Hayek and Rawls would disagree on the definition "liberalism"). Political traditions are not homogeneous theories with clear sets of principles and proposals, but are rather groups of such theories sharing some common assumptions, principles and vocabulary, forming what Wittgenstein would call a "family resemblance". This point of view has costs in terms of theoretical precision, but also has advantages in terms of historical rigor[7]. Thus, once this "family resemblance" is identified, one can move forward

[7] It also has the advantage of allowing us to place some authors in more than one tradition, which is actually how things often happen. Burke, for instance, is usually seen as a leading figure both of modern conservatism and of classical liberalism, two traditions with their own distinctive features, but which are certainly present, at the same time, in Burke's thought.

by rationally reconstructing it in a more coherent way; this reconstruction will of course be just one of many, challenging us to explain why we consider it to be the best possible one. With this reconstruction at hand, we will be able to use it as a framework to handle concrete normative problems[8].

In this sense, I think that most current republican scholars would agree on the following loose description of the republican "family resemblance": *republicanism is a tradition going from at least Aristotle to Madison, passing through Cicero, Machiavelli or Harrington, among others; it stands for a concept of freedom different from negative freedom; it links this freedom, in some way, to civic virtue; and considers economic autonomy and dispersion of power as necessary conditions for republican freedom and/or civic virtue*. This "family resemblance" has been rationally reconstructed in various ways, which can be summarized roughly in two broad groups: (1) *positive republicanism*, in which freedom and human good are identified with citizen participation in public affairs (Sandel 1996: 4-7; Arendt 1963: 30; or Habermas 1994); and (2) *negarchist*[9]

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[8] This effort to define political traditions may be regarded as historically interesting, but theoretically irrelevant. Indeed, logically speaking, to find connections between past and current normative theorists, on the one hand, and to find solutions for normative problems, on the other, are two different intellectual tasks. However, I think that, in terms of actual research, this second task is greatly reinforced by a proper handling of the first one, for at least three reasons: (1) *authors' location*: identifying traditions of political thought makes it easier to find authors who have studied certain problems we are interested in from values and assumptions we basically agree with; (2) *avoiding repetitions*: related to the previous point, knowing the work of the authors of a political tradition prevents us from wasting time dealing with problems which already have a solution that we could see as satisfactory; and (3) *historical pedigree*: as Pettit (2013: 19) argues, a normative approach, well placed within a tradition with a historical pedigree has a better chance of being taken *a priori* as intellectually plausible ("*how likely is it, after all, that any one of us would discover afresh a wholly novel ideal for political life*"?).

[9] "Negarchy" is the term which Deudney employs in his work on international republican theory (2008: 48) in order to label the kind of political order for which

republicanism, in which freedom means non-domination, and domination means the power of one individual or group to exercise arbitrary[10] interference over another individual or group (Pettit 1997 and 2013; Skinner 2002; or Deudney 2008). Current republican literature generally labels negarchist republicanism as "neo-Roman", and positive republicanism as "neo-Athenian", "neo-Aristotelian" or "civic humanist"; however I find this terminology to be historically and conceptually misleading[11].

This thesis is built upon negarchist reconstructions, and especially upon possibly the main one used nowadays by republican scholars: that of

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republicanism stands (both in the domestic and the international arenas); this is in opposition to hierarchy (where actors are in ordinate and subordinate relations), and anarchy (where actors are not authoritatively ordered). Both anarchy and hierarchy imply unrestrained (thus, arbitrary) power of different actors. In negarchy, on the other hand, actors are authoritatively ordered by relations of mutual restraint. Deudney names his own theory as "republican security theory" or "security-restrain republicanism" (2008: 3-5) and explicitly links it to Skinner's views (2008: 15). Though his work is focused on the arbitrary power founded on violence, he nevertheless acknowledges that "*no complete security theory or even exegesis of all republican security theorizing could be complete without more extensive treatment of ideational factors as well as political economy*" (2008: xiv).

[10] An arbitrary power is a power capable of interfering in our lives and activities without the need of considering our interests and opinions. This definition is based on that of Skinner (2002: 247-248). The word *capable* is crucial here: X can wield arbitrary power over Y without actually interfering in his/her life or activities, or taking his/her interests and opinions into account. The point is that he is *capable* of interfering without needing to take these interests and opinions into account.

[11] Negarchist republicanism is in no sense less "civic" or "humanist" than positive republicanism. Athens was probably far from being the populist ochlocracy that its aristocratic critics have denounced over centuries, being closer to a balanced republic with several power restraint mechanisms over democratic majorities and elected officers (Deudney 2008: 101-102; and Hansen 1991). And Aristotle was one of the first advocates of the "mixed government", balancing elements of oligarchy and democracy, which was the most frequent negarchist model among classical and early modern republicans (especially among the more oligarchic currents of the republican tradition).

Philip Pettit[12] (1997 and 2013), which in turn is built upon the historical works of Quentin Skinner (1998 and 2002). According to Pettit: (1) republicanism stands for freedom as non-domination; (2) it argues that, in order to promote republican freedom, private sources of power (e.g. wealth) must be checked, controlled and dispersed by the state; (3) it argues that, in order to prevent the state itself from becoming dominating, it must be organized as a constitutional republic, with its own powers being checked, controlled, dispersed, prevented from being monopolized by any faction, and kept under the rule of law and the vigilance of a civically virtuous citizenry (i.e. predisposed, whether for intrinsic or instrumental reasons, to participate in politics for the sake of the common good of the republic); and (4) it argues that civic virtue is unattainable without freedom, hence establishing a relationship of mutual dependence between republican freedom and civic virtue. Moreover, *democratic* republicanism, as opposed to oligarchic brands of the republican tradition, (5) seeks this republican citizenship, based on civil freedom and civic virtue, to be extended among as many people as possible.

Republicanism, so conceived, has been applied to many different fields of political and legal thought, from theories of democracy (Pettit 2013) to theories of crime and punishment (Braithwhite & Pettit 1990) or international relations (Deudney 2008; Sellers 2006; Besson 2009; or Cheneval 2009). However, as I have already said, it has rarely been applied to secession. The opposite is equally true: the compliance between republicanism and current TRS has barely been examined, whereas a usual topic among normative theorists on secession has been to what

[12] Although it is hard to know which reconstruction of republicanism is the most followed by modern republican scholars, it is indicative that three well known "state of the art" compilations on republicanism (Weinstock and Nadeau 2004; Honohan and Jennings 2006; Laborde and Maynor 2008) give Pettit's conception a central role.

extent each TRS complies with liberal-democratic principles. Thus, the starting point of this thesis has been to review both literatures in order to analyze the normative relationship between democratic (negarchist) republicanism and current TRS; the result of this analysis is presented in chapter 2.

1.4. Relevance of the research

I consider the above-formulated research question as relevant both for *theoretical* and *practical* reasons. *Theoretically*, the problem of secession is linked to a deeper problem in political theory, and specifically of theories of democracy: the *problem of the sovereign* demos. While "sovereignty" is far from being an uncontested concept, it can be loosely defined as in section 1.2: *the ultimate power over a territory and its population*. In democratic states, sovereignty is theoretically vested on "the people". Etymologically, indeed, "democracy" means "the rule of the people"; however, in the world of independent states in which we live, this begs the obvious question: "who are the people?" Theories of democracy have been largely oblivious to this question, normally assuming that "the people" refers to "the people of the state". However, this is precisely one of the main issues at stake in secession conflicts: secessionists usually regard their target group as "a people" with a "right to decide" or "self-determine" its own future, while unionists tend to regard the people of the host state as "the people". Not by accident, the famous definition of democracy as "the government of the people, by the people and for the people" was espoused by the president of a republic facing a secession attempt.

As a theory of democracy, democratic republicanism is fully affected by the problem of the sovereign *demos*; and vice-versa: in terms of solving the problem of the sovereign *demos*, it is interesting to explore

the capability of each theory of democracy in overcoming it. It could be argued that I should have started the other way around, firstly developing a democratic republican theory of the sovereign *demos*, able to solve those two deep theoretical problems, and then proceeding to apply it to the more concrete problem of secession. However, as I will reassert at the end of chapter 3, one of the most common ways to solve a great theoretical problem is actually to cut it into pieces, and to keep solving them one by one until the whole puzzle can be completed. Before Newton's laws of motion, there were Kepler's laws of planetary motion. This is what I seek in this research, in a much more modest way, concerning the problem of the sovereign *demos*: not to solve it all at once, but to help solve it by working on one of its particular dimensions.

In *practical* terms, I regard this research as relevant due to the practical goals of the two bodies of literature aforementioned. On the one hand, the practical purpose of current republican literature is to use the theoretical tools of the republican tradition in order to assess and improve modern democracies (and, to a lesser extent, the international system in which they are embedded). These democracies are, in many ways, the closest polities ever known to the democratic republican ideal: they are constitutional democracies based on the rule of law, separation of powers, a reasonably inclusive citizenship model, and system of rights protecting citizens from many potential dominators (both public and private). Nevertheless, republican scholars also acknowledge various shortcomings in these democracies: they are based on commercial economies that discourage citizens' involvement in public affairs; they suffer huge social and economic inequalities, thus fueling domination relationships; many of them are sensibly vulnerable to corruption; and they face the tension between the universalistic ideal of an inclusive citizenship and the particularistic reality of the nation-state, leading to normative challenges

ranging from religious diversity management to immigration integration. These are shortcomings that current republican literature seeks to help overcome.

On the other hand, as we have seen, current TRS have arisen in order to face what appeared to be a normative vacuum in the international system which developed after 1945: while it clearly recognized a right to decolonization, it was nevertheless ambiguous in terms of authorizing or forbidding secession. This ambiguity became intensely problematic, both in the international and the national arenas, when, after the end of colonial empires, secessionism emerged around the world, from Quebec to Croatia. In the best cases, this ambiguity has been met with a certain agreement between unionists and secessionists on some procedure to manage the secessionist conflict (e.g. the case of Scotland); in the worst (and most common) cases, this ambiguity has resulted in a "might makes right" logic. The practical purpose of current TRS is, in the end, to give morally grounded answers to questions that would otherwise be answered from that logic: which secessionist (and unionist) claims can be considered as legitimate? Is there any way to overcome the international legal ambiguity on secession, thus clearly classifying secession attempts as legal and illegal? Should states' constitutions recognize a right of secession? And so on.

This thesis is intended to link these two practical purposes, which indeed I regard as mutually supportive. On the one hand, secession is a serious challenge for modern democracies both in terms of stability and legitimacy; so republican theorists, interested as they are in improving modern democracies, have good reasons to be concerned with the management of secessionist conflicts within democratic contexts. On the other hand, if republicanism is actually capable of providing guidance to improve modern democracies (which I will assume as plausible), then

theorists of the right of secession, trying as they do to advise democratic societies on the best ways of handling secession conflicts, have good reasons to explore the ways that democratic republicanism could provide a relevant contribution in this task. Thus, the second chapter of this thesis is devoted to analyzing the normative relationship between democratic republicanism and TRS. But before describing the chapter structure of this dissertation, I will devote the following section to clarifying the methodological framework upon which I have undertaken this research.

1.5. Methodological framework

To begin with, during the first stages of the research I faced two dilemmas concerning the scope of the TRS to be developed: (1) should it address secession in a pure sense, or in a broad one (thus encompassing phenomena like irredentism or decolonization)? And (2) should it address secession in any context or only in democratic ones? Answering these two questions, I decided to focus the research on cases of: (1) *conflicts on secession in a pure sense*; (2) *where the host state is peaceful and democratic, and so are the unionists*; and (3) *where secessionists are also peaceful and democratic*. Hence the strict definition of "secession" that I am employing, as well as the fact that the research question of this thesis does not ask for a right to secede in a general sense, but for a right to secede *from a modern democracy*.

The rationale behind these stipulations is to minimize what we might call *normative noise*, i.e. those normative issues that distract our attention from the ones that we wanted to discuss in the first place. I am not trying to find out whether democratic secessionists are legitimated in seceding from undemocratic states, nor whether democratic states are legitimated in suppressing an undemocratic secessionist attempt, nor am I discussing whether decolonization, irredentism or state dissolutions are

legitimate. What I have tried to find out through this research is whether we can acknowledge, from a negarchist understanding of democratic republicanism, any right to create a new modern democratic state by means of seceding from a modern democratic host state.

That is, indeed, the tricky question. At the very heart of democratic republicanism, in its negarchist understanding, lies the ideal of the republic in its ancient meaning: an independent political community of citizens, mutually protecting each other from domination. Modern democracies are the closest polities to that ideal that have ever existed, however imperfectly. Thus, when we cannot regard neither the host state nor the potentially seceding territory as departing from this political model, then this is when secession appears "naked", in normative terms, as a challenge we must confront from a democratic republican stance (a negarchist one, as I have been specifying). And it is then that we can analyze whether secession, *per se*, is inimical, functional or neither (or both to some extent) to that stance.

In addition to this focus on democratic contexts, another methodological trait of this research is the *non-ideal*[13] *character of the*

[13] Rawls drew a well-known distinction between ideal and non-ideal normative theories (Rawls 1999: 216). Ideal theories assume: (1) that all actors (whether individual or collective) will comply strictly with the principles delivered by the theory; and (2) the existence of reasonably favorable social conditions which make social cooperation possible. Thus, ideal theories do not concern themselves with practical feasibility; and, particularly, they do not concern themselves with *incentives*, i.e. about which behaviors the practical implementation of these theories would encourage, and about which institutional designs could be put in place in order to encourage the actors to comply with the principles espoused by the theory. Non-ideal theories, on the other hand, are developed without the two aforementioned assumptions of ideal theories, particularly the first one. Rawls regards ideal theories as having precedence over non-ideal ones: ideal theories would set the principles to be followed, and non-ideal ones would adapt them, as far as possible, to "*less happy conditions*". In my view, this is not necessarily so: I think that, when developing a normative theory, one can take into account both its logical implications (the realm of ideal theory) as well as its foreseeable consequences should the theory be applied to the real world. Indeed, the bulk of

theoretical work here developed. This has to do with the ways in which normative political theory, not being a scientific discipline, can be handled in a rigorous way. Unlike explanatory theories, we cannot corroborate or refute normative ones through the examination of empirical evidence. This does not mean, however, that normative theory is a matter of opinion. Once we have clarified the normative problem that we are trying to solve, there are different ways to reach a reasonable degree of rigor in the answer. One, particularly, is to specify which are the value or values that we are going to use in order to assess the soundness of different contesting answers; these values will guide either our choice of one of those answers, or our efforts to formulate a new, better answer. In this research, the central values which I will analyze with respect to TRS are *republican freedom* (as non-domination) and *inclusion* (into republican citizenship), as well as any other values that we could regard as promoting the two[14].

I define this research as non-ideal because, when analyzing the compliance between different TRS and democratic republican values, I have not only taken into account the logical implications of those TRS, but also the foreseeable practical consequences of their application to the

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the republican tradition is arguably non-ideal. Recalling Rousseau's formulation, republicanism takes people "*as they are*" (not as they should be) and laws "*as they can be*", in order to ask, "*whether, in the ordering of society, there can be any reliable and legitimate rule of administration*" (1999: 45). The essential topics of republican literature (domination, factionalism, corruption, virtue) are non-ideal in their very nature, since they deal directly with human motivations (whether desirable or undesirable).

[14] This could be criticized as a restriction of value pluralism. Actually, I am not saying that these two values are the only two important values, generally speaking, nor that they are the most important ones. They are so in the theoretical context of democratic republicanism, and specifically in its negarchist understanding. This dissertation is intended to develop a TRS within this framework. Should we change it to another one, the values at stake would be different ones. In the discussions between value monism and value pluralism, and between hierarchic and agonistic views on pluralism, this dissertation will remain basically agnostic, so to speak.

real world, according to the best available social scientific knowledge. An example of what I mean is the criticism according to which plebiscitarian TRS encourage a *secessio ad infinitum* dynamic; this could be regarded, indeed, as a logical consequence of plebiscitarianism, but Sorens (2012: 52-56) has brought up empirical data showing that, actually, only a minority of potentially secessionist populations end up developing strong (not necessarily majority) secessionist movements. Normative political theory, particularly in its non-ideal dimension, inhabits the realm of practical reason, so if we are going to reject plebiscitarianism because of *secessio ad infinitum*, it is not a minor consideration to find out whether this is actually a *practical* problem of the theory. I have undertaken the task of developing such non-ideal theory in three stages, each resulting in one article showing the results of each stage. In the next section I will describe this three-article structure in more detail.

1.6. Structure of the thesis

I have structured this thesis not as a monograph, but as a series of three articles. Each aims to answer a concrete research question. The last one, indeed, is intended to answer the research question of the thesis itself; the other two articles answer secondary questions that I consider necessary to address in order to answer the primary one effectively. The rationale behind this structure is at the same time: (1) *theoretical*: again, I am trying to cut the main theoretical problem at stake into smaller pieces, in order to make it easier to resolve; and (2) *practical*: while I could have presented each answer to each question as a chapter of a monograph, instead of as an independent article, the latter option allows me to deliver each piece of the thesis to the academic world individually, to be improved through discussion and peer review. The improvements thus achieved will in turn allow me, I hope, to use these independent articles as the basis for more

ambitious and extensive work in the future.

This option, admittedly, comes at a cost: since each article is conceived as an independent piece, there are different contents (such as some conceptual definitions) that are reiterated in each one. I have sought to minimize this handicap through inter-article quotations, but I realize that this device has its own limitations. At the same time, in order to make this thesis a readable document as a whole, I have tried to avoid repetitions as much as I can, which results in the fact that these three chapters may appear, at times, as not completely independent. I hope the reader will notice that these three chapters-articles are easy to transform into fully independent articles through minor modifications (like introducing the conceptual definitions I have chosen not to repeat at the beginning of each of the articles); this is the way I will prepare them to submit to academic journals.

The *first article* (chapter 2) tries to answer the following research question: "*which is the normative relationship between democratic republicanism and current theories of right of secession?"* By "normative relationship" I mean to what extent different normative political theories are compatible. Through an overview of both theoretical families, and a mutual examination of each one from the point of view of the other, I find that: (1) current TRS point out how democratic republicanism has failed to address an issue such as secession, which implies threats in terms of *exclusion*, *domination* (either by *blackmailing minorities* or *arbitrary permanent majorities*) and *instability;* (2) democratic republicanism shows that all current TRS, as well as the option of simply rejecting them all, fall into some of these threats; (3) therefore, current TRS and democratic republicanism seem to be in a normative relationship characterized by tension; (4) nevertheless, it is unlikely that they will be better suited to handle the normative problems of secession by simply

ignoring each other; (5) hence, exploring how to reconcile democratic republicanism with the field of TRS is a relevant task to be developed; (6) we have reason to think that we can work on an alternative democratic republican TRS as a feasible way to reach such reconciliation.

Central to this first article, and to the whole thesis, is the notion that secession conflicts must be understood as *factional* ones, and that this has important implications in order to outline a democratic republican approach to them. The bulk of the republican tradition, indeed, has understood societies as being divided among factions competing for political power; this asks, republicans say, for institutional designs that are able to minimize the risks of absolute factional takeovers, since they would subject the defeated factions to the arbitrary power of the victorious ones. A secession conflict, in this sense, is the ultimate manifestation of the center - periphery conflict present in many modern democracies, which can be characterized as a conflict regarding *territory, economy* and/or *identity*[15]. In modern democracies this conflict commonly faces a state permanent majority against a state permanent minority, which, in turn, is a regional permanent majority. Thus, a democratic republican theory of secession should seek to balance the power between unionists and secessionists, respectively the ultimate manifestation of the permanent

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[15] See Rokkan and Urwin (1983) for a good account of how nationalist conflicts (and, we can say, secession ones) are related to these three fields. There, the authors explain nationalism (defined in a sense within which we can place secessionist politics) as a reaction against what is perceived as the peripherization of the people of one given territory in terms of *economy* (i.e. territorial organization of it), *territory (i.e.* territorial distribution of political power*)* and *identity*; this means that in a given territory, a fair number of people come to the conclusion that important decisions in these three fields are being made outside their territory, needlessly (the given territory being perceived as capable of self-government) and without much regard to the prosperity of the people of that territory. Despite Rokkan and Urwin's focus on nationalisms, I think it is reasonable to summarize center - periphery conflicts, in a broader sense, as taking place on at least one of these three dimensions.

majority and the permanent minority aspirations in a center - periphery conflict, wherever they have not been able to reach a stable agreement on how to organize the host state in terms of identity, territory and/or economy.

This democratic republican approach to secession conflicts is the very first step in my development of a democratic republican TRS. It strongly discourages the notion that one of the two factions should have, *per se*, a unilateral right to impose its agenda "unless specific conditions recommend the contrary". Plebiscitarianism and (to a lesser extent) ascriptivism confer this unilateral right to secessionists, while remedialism confers it to unionists (and the host state). As we have seen, current literature on secession takes a *constitutional* right of secession as being synonymous with *non-unilateral*; although I have already expressed my reservations to this alleged synonymy, it might be that a constitutional right of secession would effectively be a helpful resort in order to confront the normative problems that secession conflicts pose to democratic republicanism. This leads me to the research question of the next chapter-article: *to what extent can a constitutional right of secession be useful in order to minimize exclusion and domination (understood in democratic republican terms) stemming from secession conflicts in modern democracies?*

In the *second article* (chapter 3), therefore, my aim is to evaluate the compliance of a constitutional right of secession with that democratic republican approach to secession conflict. This evaluation relies on a normative analysis of the case of Quebec, which since 1998 has been granted, by the Supreme Court of Canada, a sort of (quasi) constitutional right of secession (*Reference re Secession of Quebec*, [1998] 2 S.C.R. 217). In this chapter I explain why I have chosen to focus on the case of Quebec, instead of including other possible cases (e.g. Scotland or St.

Kitts and Nevis, among others). Then, through this normative analysis of the case of Quebec, I show how the *negotiated* nature of the constitutional right to secede minimizes the risks of domination and exclusion (and hence, instability) in the Quebec secession conflict, while its limitation to the *constitutional* framework of a state (Canada) undermines this achievement. The article also suggests the development of an international version of this right to a negotiated secession, as a way to overcome this last weakness in democratic republican terms.

The *third and last article* (chapter 4), is built upon the previous two and seeks to answer the research question of the thesis: *which kind of right to secede from a modern democratic state, if any, can be acknowledged from a democratic republican point of view?* The TRS there exposed proposes a right of secession within the international system but, unlike other TRS also working in the international arena, it relies on non-unilateral, negotiated secession processes rather than on unilateral secession. Thus, this theory is based on three pillars: (1) a *multilateral right of secession* for any democratic secessionist community, coupled with a multilateral right to unity for its democratic host state; (2) a *unilateral right of secession* for extreme cases of democratic secessionist communities dealing with oppressive, unilateralist or failed states; and (3) a *unilateral right to unity* for extreme cases of democratic host states dealing with an oppressive, unilateralist or failing secessionist community. The international community would arbitrate and monitor any secession conflict according to this framework. This article explores its strong and weak points, as well as a gradual and realistic path to entrench it within the international system. This last article is followed by a summary of the main findings and conclusions of this dissertation (chapter 5).

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2. THE REPUBLIC AND ITS BOUNDARIES. DEMOCRATIC REPUBLICANISM AND THEORIES OF RIGHT OF SECESSION

2.1. Introduction

This article aims to answer a theoretical question: *which is the normative relationship between democratic republicanism and current theories of right of secession?* By "normative relationship" I mean to what extent different normative political theories are compatible. Roughly speaking, we can say that there can exist different levels of compatibility between such theories, ranging from *mutual reinforcement* (when they point to similar or mutually reinforcing goals; e.g. egalitarian liberalism and liberal feminism) to *mutual exclusion* (when they point to fundamentally incompatible goals; e.g. capitalist libertarianism and Marxist socialism), with intermediate levels of *independence* (when they point to different but not mutually exclusive goals; e.g. egalitarian liberalism and environmentalism) or *tension* (when they have a mixed relationship of having mutually indifferent or reinforcing goals, on the one hand, and potential or real mutually exclusive goals, on the other; e.g. egalitarian liberalism and socialism). Through the analysis of these relationships we can not only understand the most known controversies between different normative theories, but also find out which problems are being considered by one theory and obviated by others, and vice versa, which in turn may lead us to discover not-so-obvious points of tension between them.

Besides their intrinsic interest, such analyses are helpful in order to understand whether the tensions between different theories can be overcome or not (and if so, how). It is for these purposes that I have analyzed the normative relationship between *democratic republicanism*

and current *theories of right of secession* (TRS); there has hardly been any analysis of this kind, which I regard as a necessary step in order to fill another major gap: the lack of a democratic republican theory of secession. The few scholars who have worked on the issue have done so in a rather exploratory way (McGarry and Moore 2011), usually as a secondary issue within broader works on nationalism (Ovejero 2006: 81-104), international law (Sellers 2006: 158-166) or self-determination considered more broadly (Klabbers 2006)[16][17]. And even scholars with an affinity to republicanism, such as Weinstock (with Nadeau 2004) or Miller (2008), have not used republican concepts and principles in their works on secession (Weinstock 2000 and 2001; Miller 2003). So this article tries to fill this gap, with the aim of being a first step in order to develop a democratic republican TRS. Indeed, in order to further develop such a theory, we need to find out whether it must be based on one current TRS, on a synthesis of them or on a completely new basis.

The article is structured in six sections. In sections 2.2 and 2.3, I summarize the main traits both of current TRS and of democratic republicanism, in preparation for sections 2.4 and 2.5, in which I ask, respectively, what TRS can tell us about democratic republicanism, and

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[16] Other scholars, like Caminal (2007) or Young (2005) have examined the relationship between republicanism or some republican values (like non-domination) and self-determination, but their works in this sense have been focused on multinational federalism, rather than on secession.

[17] Besides, I find Ovejero, Sellers and McGarry & Moore analysis unsatisfying because they all: (1) examine secession and TRS from the point of view of democratic republicanism, but not vice versa; and (2) support one or another version of one TRS (remedialism), which I find partly contradictory with democratic republican values, as I will later explain. On the other hand, Klabbers plainly separates "right of secession" from self-determination, and reduces it to a "*right to be taken seriously*" by the state, which means that "*decisions affecting certain groups should be taken, at the very least, with those groups having been consulted*" (2006: 203). I hope that the findings presented in this article will show why this goal requires the development of a democratic republican TRS.

what democratic republicanism can tell us about TRS. Since TRS are a more diverse group of theories, section 2.5 is longer than 2.4 but, in any case, what I find in both sections is symmetrically important: section 2.4 points out a historical neglect, by democratic republicans, of the normative challenges of nation-building, including secession; while section 2.5 shows how, and why, each TRS fails to provide a framework capable of protecting all factions of secession conflicts from domination, so that in turn it could be seen as fair and reasonable by those same factions. In section 2.6, using these findings, I briefly outline how an alternative democratic republican approach to secession could be developed through further research. Finally, in section 2.7, I summarize my findings and draw conclusions.

2.2. Current Theories on Right of Secession: main features and criticisms

Current TRS are divided in two groups. First, there are theories of the unilateral right of secession, which is "*the principal focus of interest for theorists of secession*" (Pavkovic & Radan 2007: 200-201). Unilateral TRS try to establish *who* has a moral (i.e. not necessarily a legal) right to secede, and *why*. Though discussions on institutionalization are not excluded from this field, the main concerns of TRS are the two just mentioned. Second, we find theories of the constitutional (normally understood as *consensual*) right of secession, which try to determine whether states (especially modern democratic ones) should include a right to secede in their constitutions. I find this division slightly misleading in some senses[18], but it is the most commonly accepted classification of TRS, so I prefer to use it as such in this analysis.

[18] See chapter 1, p. 9, footnote 6.

2.2.1. Theories of the unilateral right of secession

Unilateral TRS are usually classified in three groups: *plebiscitarianism*, *ascriptivism* and *remedialism*. The first two conceive (unilateral) secession as a *primary right*, i.e. a right to which some groups of people are entitled *a priori*, with no need to justify their decision; they only differ on the definition of which people(s) are entitled to this primary right. For *plebiscitarianism*, the subject of it is simply any territorially concentrated group containing a secessionist majority. Wellman (1995), Beran (1984) and Philpott (1998) are some well-known examples of these theories. Despite their differences, they always seem to appeal to the same idea: in liberal-democratic terms, the state is the servant of the people, not vice versa. In second place, *ascriptivism* restricts that primary right to certain groups which are linked by objective features such as language, history, self-government institutions, traditions, "world-views" and so on. Miller (1995: 84-85, and 2003), Nielsen (1998) and Margalit and Raz (1990) are typical representatives of ascriptive theories. Broadly speaking, the idea is that some objective features create a common identity (usually labeled as "national") among the people who share them; this common identity provides some important goods to these people; and this fact makes it justifiable for such people to build their own state if that is their will.

These primary right theories have received different criticisms from other authors working under the same liberal-democratic values underlying them, two of the most common ones being: (1) *secessio ad infinitum*, i.e. the risk that a primary right of secession could lead to recursive secessions, and hence to instability; (2) the *blackmail threat*, that is, the risk of giving privileged minorities the power to threaten the whole polity, and even to undermine rights and social justice (e.g. the Slave States' secession in the US). In addition, ascriptivism has been further

criticized for: (3) *weak operationalization*: it is difficult to give an empirically operational definition of the ascriptive features that a human group must share in order to be considered a "nation" or an "encompassing group"; (4) *unclear normative logic*: it is not clear why an “encompassing group" should have the right to its own state, since the reasons usually pointed out in this sense (e.g. common interests, importance for individual identity and values) are easily applicable to other kinds of groups, such as social classes; and (5) the *threat of exclusion*: those who live in the territory of the ascriptive group entitled to secession, but who don't share its ascriptive (normally meaning *cultural*) features, might be seen as "second-class citizens", be excluded from the decision on secession, or even be excluded of citizenship altogether.

In order to overcome these problems, different primary right theorists propose placing restrictions on this right. Secession would then be a primary right of certain groups, *unless* a set of conditions is not satisfied. Each primary right theorist has his own set of limits to unilateral secession (Wellman 2005: 36; Beran 1984: 30-31; Philpott 1998: 80; or Margalit and Raz 1990: 459-460), but normally all of them refer to the foreseeable capability (and will) of both the seceding state and the former host state to keep fulfilling the obligations of a state in terms both of stability and of accordance with liberal-democratic values. However, the more limits you put on a primary right of secession, the more it needs an arbiter to interpret when those limits have been passed (which, of course, ads us to the problem of "who" should be the arbiter), and the more it looses one of its strong points: the open questioning of the arbitrariness of most boundaries as they have been developed throughout history (since you are assuming that those boundaries can only be modified by those secessionist groups which happen to satisfy a series of conditions that you are not demanding of currently existing states in order to continue their

existence).

Lastly we find *remedialism*, that is, those theories which define right of secession not as a primary right, but as a remedial one. For remedialists, there are no groups that have this right for their own sake. Secession must be seen as a last resort to be used by those groups that are the victims of serious and constant injustices and/or grievances. What these injustices and/or grievances are that legitimize a group to exercise secession is a matter of discussion within this theoretical family, but they generally agree on some basic ones, such as massive and constant violations of basic human rights, or unjust annexation. Buchanan (1991, 2007) is probably the best-known representative of this group, within which we can also find scholars like Birch (1984), Norman (1998; 2003; 2006) or Seymour (2007). The idea is that a state's legitimacy is not based on consent, but on the state's capability and willingness to keep basic standards of justice among its citizens. Hence, in a modern democracy, unilateral secession would be forbidden *a priori*.

These theories have the appeal of avoiding the weaker points of primary right theories. However, remedial theories have also been criticized as biased towards the *status quo*, assuming the legitimacy of current boundaries while putting the burden of proof on secessionists. This is quite problematic since most boundaries are the result of historical processes (e.g. wars) rather far from complying with the liberal-democratic values that remedial theories rest upon. Remedialism seems to imply an answer to this objection: as long as states are reasonably just (in liberal-democratic terms), boundaries are irrelevant. However, between the massively oppressed minority and the privileged, blackmailing one, there are a lot of intermediate stages in which there is an absence of intolerable injustice but there are, nevertheless, genuine discussions on certain issues related to state or nation-building (e.g. language regulations,

decentralization or territorial allocation of economic resources) in which territorialized, permanent minorities (e.g. Quebecers within Canada, Basques or Catalans within Spain) would usually be the weak part under state-majority rule.

There are two main strategies in order to use remedialism while avoiding these problems: (1) to argue for *intrastate reasonable degrees of autonomy* for minorities (Buchanan 2007: 401-424); but this can hardly be seen as a solution since the definition of "reasonable degree of autonomy" would be differently interpreted by majorities and minorities and, again, here the weak part would generally be minorities; and (2) *to extend the catalog of "just causes"* needed to secede in order to include, for instance, the failure of a state to adequately recognize the national identity of the secessionist target group (Bauböck 2000; Patten 2002; Seymour 2007). However, the more we extend the catalog, the more remedialism loses one of its main appeals: clarity in the delimitation of a *demos* with a reasonable claim against staying within its host state. It is relatively easy to determine if a group is a victim of massive violations of human rights, but it will usually be controversial whether a group has a "national" identity, in the first place, and whether it has been, or not, "adequately" recognized by the state.

2.2.2. Theories of the constitutional right of secession

Unlike unilateral TRS, constitutional ones observe a double divide: (1) on the very *introduction* of such a right in modern democratic constitutions, some scholars say "yes", some of them say "no" and some of them just say "it depends", which I label as *positive*, *negative* and *case-by-case* groups; and (2) on the *reasons* to introduce or reject such a right (which of course influences the shape and subject of it), some scholars share a *plebiscitarian* approach, some of them share a *remedialist* view, and

finally, some of them share what I label a *pragmatic* approach, i.e. they do not evaluate the constitutional right of secession as a way to institutionalize a previous unilateral TRS, but as an institutional mechanism designed to minimize those potential threats that they see as linked to secessionist politics[19]. Thus, we find *plebiscitarian* scholars considering the constitutionalization of secession in a *positive* (Brandon 2003: 275), *negative* (Kreptul 2003) and *case-by-case* light (Philpott 1998: 93-98). On the other hand, some *remedialists* argue *for* a qualified[20] constitutional right of secession as a legal proxy for just-cause secessions (Norman 1998); some others *oppose* it considering that it would fuel those risks usually linked to primary right theories (Sunstein 1991); while some others take a *case-by-case* stance (Buchanan 1991: 127-149).

Finally, pragmatic theorists differ from remedialists and plebiscitarians in that their constitutional TRS are not following up any unilateral TRS. Instead, they identify a set of problems that secessionist politics pose to democracies, and then discuss the adoption of a constitutional right of secession as a proper institutional device for handling those problems. Daniel Weinstock, for instance, describes secession as a not-absolute-but-inevitable evil for democracies, that a constitutional right to secede could help to handle (2001). Norman, who (as we have seen) initially defended a constitutional right of secession for remedialist reasons, has lately argued for it more as a pragmatic way to "domesticate secession" (2003). Based on similar reasons and on

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[19] Interestingly enough, it seems to be that no scholar has yet argued for a constitutional right of secession from an ascriptivist approach.

[20] Possible features of such a qualified right could be the need of a democratic referendum to be won by a clear secessionist majority answering a clear question; the requirement of this referendum to be repeated a couple of times in a period of time, in order to ensure that such a clear majority is stable; the establishment of more or less neutral negotiation bodies in order to direct a negotiated secession process if the referenda are won by secessionists; and so on.

comparative research, Miodrag Jovanovic (2007) argues for introducing such a right in federalized states. On the other hand, Hiliard Aronovitch, in his analysis of Quebec's quasi-constitutional right of secession, makes a pragmatic case against it (2006), stating that it would fuel greater problems (like strengthening selfish minorities) than it would solve. Finally, and contrary to the other groups of constitutional TRS we have seen, there appear not to be pragmatic "case-by-case" authors.

2.3. Democratic republicanism: a definition

Now that we have summarized TRS, let us take a look on democratic republicanism. For the purposes of this article, I will use what nowadays is probably the main rational reconstruction of republicanism: that of Philip Pettit (1997 and 2013). For Pettit, republicanism: (1) stands for freedom as non-domination[21]; (2) argues that, in order to promote republican freedom, private sources of power (e.g. wealth) must be checked, controlled and dispersed by the state; (3) argues that, in order to prevent the state itself becoming dominating, it must be organized as a constitutional republic[22], with its own powers being checked, dispersed, prevented from being monopolized by any faction, and kept under the rule of law and the vigilance of a civically virtuous[23] citizenry; and (4) argues that civic virtue is unattainable without freedom, hence establishing a relationship of mutual dependence between republican freedom and civic virtue. Besides, *democratic* republicanism, as opposed to more oligarchic

[21] Where "domination" means the power of one individual or group to exercise arbitrary interference over another individual or group.
[22] Here *republic* does not necessarily, or merely, mean a state without a monarch as its head, but *a political community of citizens mutually granting freedom as non-domination.*
[23] I.e. predisposed, whether for intrinsic or instrumental reasons, to participate in the public sphere for the sake of the common good of the republic.

brands of the republican tradition, (5) seeks this republican citizenship, based on republican freedom and civic virtue, to include as many people as possible. Thus, *domination* and *exclusion,* so defined, are the main concerns of democratic republicanism. Since the first of these six features is central to Pettit's republican reconstruction, I will now describe it in more detail.

Pettit distinguishes republican freedom from those other two concepts of liberty described by Berlin (2005): compared to *positive* freedom, republican freedom does not consist in having resources (including political participation) to fulfill one's own potential. Compared to *negative* freedom[24], Pettit says, republican freedom is neither sufficiently nor necessarily limited by interference[25]. I have to say that, in my view, Pettit fails to point out that Berlin's definition of negative freedom, which is actually Hobbes' definition, only considers *physical* interference[26] as a limit, while republican freedom can *also* be threatened by other sources of interference (e.g. wealth). It is easy to track, in early modern political thought, this distinction between freedom as absence of physical interference and freedom as invulnerability in the face of any power capable of arbitrary interference, which in the 17th and 18th

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[24] Which Pettit labels as “liberal”; I will discuss this point later.

[25] Pettit illustrates this through the example of the slave and the good master (1997: 22-23): in negative freedom terms, if a master doesn't interfere at all in the daily choices of his/her slave, then the slave is as free as he could be; and only if and when the master interferes, then the slave's freedom would be limited. Republicans think otherwise: the simple fact that the master could interfere in a slave's choices as he wishes, whenever he wishes, makes the slave essentially unfree; and, on the contrary, a citizen of a free and self-governed political community (that is, a republic, in the classical sense of the word) who is subject to an interference which is not arbitrary (namely, a law against which he can protest and effectively try to change by legal means, and which has been passed by legislators responsible to him/her) remains free, despite this interference.

[26] “*(...) liberty, or freedome, signifieth (properly) the absence of Opposition; (by Opposition, I mean externall Impediments of motion)*” (Hobbes 1968: 262).

centuries were respectively labeled as *natural* and *civil freedom*[27]. On the other hand, Pettit regards republican freedom as a consequentialist ideal: it can vary in terms of *intensity* (i.e. the strength of a person in the face of arbitrary power) and/or *extension* (i.e. the number of people enjoying enough civil freedom as to be considered free citizens).

In terms of extension, from its very beginnings, republicanism has been divided between *democratic* currents, which have advocated for a greater extension of civil freedom, and *oligarchic* currents, which have argued for a lesser one. In Greco-Roman times, this division was centered on social class, the debate being whether: (1) to effectively exclude the have-not citizens from full citizenship (e.g. by giving more political rights to the haves) for they were considered as dominated by the haves, and therefore politically unreliable, since subjection to a dominant power undermines civic virtue; or (2) to effectively include the have-not citizens in full citizenship by removing or checking the bases of this domination (e.g. paying salaries to poor magistrates or promoting debt relief); of course, these are ideal types, and intermediate positions (e.g. that of Aristotle) also existed. Exclusions based on gender, birthplace or slavery were assumed in Greco-Roman republics, but were taken into discussion by democratic republicans from the Enlightenment onwards. Of course, Pettit includes himself within the field of democratic republicanism.

On the other hand, there is a point implicit in Pettit's work that I think he does not properly highlight: the key importance that, for republicanism, is held by the conflict between factions, which we can generally define as *groups of people with some common perceived interest translated into a common political purpose*. Almost all historical

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[27] Locke (1980: 17-18), Ferguson (2001: 148-161 and 247-257), or Rousseau (1994: 59) are just a few examples of thinkers who took this distinction into account.

republican thinkers understood that every political community was divided between factions contending for political power; whether they observed this conflict with sympathy (such as Machiavelli) or with dislike (such as Madison), they all agreed in asserting that the dispersion of a state's power among different institutions was not only needed in the face of the natural tendency of government officers to abuse their power, but also in the face of the risk of a factional takeover, leading to the oppression of rival factions, and ending the definition of the political community as a *res publica* (public matter) by transforming it into a *res privata* (private matter) of the ruling faction. This feature of the republican tradition would be, as we will later see, central to my analysis of the normative relationship between TRS and democratic republicanism.

Currently, those polities closer to democratic republican values are modern liberal and social democracies, in which rights (civil, political and socioeconomic), separation of powers and constitutionalism protect citizens against arbitrary power to degrees of depth and extension unparalleled in history. Pettit acknowledges this, while pointing out serious weaknesses of these polities in democratic republican terms (e.g. lack of civic virtue or unchecked economic power) (2012: 23). However, this critical support is a bit surprising since Pettit contrasts republicanism with liberalism, linking the latter to negative freedom. This article does not aim to explore this issue, but nevertheless I would like to point out, in order to make my own view clear, that many scholars regard liberalism and republicanism as distinct, but not necessarily opposed (Kymlicka 2001: 327-346; Sunstein 1988; Sellers 1998; or Dagger 1997); that Pettit himself vindicates as republicans some thinkers who are usually considered liberals (e.g. Locke); that this might indicate a trend in liberalism that would share the republican concept of freedom, thus forming a "liberal republicanism" or a "republican liberalism"; and that, in

any case, here I follow Pettit in regarding modern liberal and social democracies as the currently (though imperfectly) closer polities to democratic republican values[28].

This has been a summary of Pettit's view, to which I think we should add a more historical approach to domination[29]. Democratic republicanism, so defined, has been developed to deal with different topics of political theory: the definition of concepts like freedom or civic virtue; the proper institutional design to promote republican values; the tense relationship between civic virtue and commerce; the place of republicanism in national or international law; or even the translation of republican principles to the relations between states, thus looking to avoid domination between them and promote peace, security and the common good of all humankind[30]. However, there is a field in which, historically, democratic republicans have remained essentially silent: secessionist

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[28] Of course, if this view of republicanism and liberalism as distinct-but-not-necessarily-incompatible philosophies were correct, there would nevertheless be a need to clarify what exactly differentiates republicanism from liberalism without making them necessarily incompatible. For the purposes of this article, I think it would be enough to point out that: (1) liberalism, whatever the differences between its different trends, tends to have a common concern: that of protecting a private sphere (whether larger or smaller) for individuals; in my opinion this is not necessarily opposed to republicanism (one can see a large private sphere as desirable and, at the same time, push for a maximization of non-domination within it), but it does not belong to republican historical heritage; and (2) in any case, we can assume this distinctiveness as given even before we can deliver a precise theoretical description of it, if only because of the fact that it is commonly accepted that liberalism emerged as a distinct philosophy around the end of 17th century, while discussions on the relationship between freedom, property, dispersion of power and civic virtue (and that is, as we have seen, what republicanism is all about) are as old as Western political philosophy.

[29] What is considered a source of domination to be controlled has changed over the time, and this is something we must take into account when applying theories coming from Ancient Greece or Rome, or from the Enlightenment, to our contemporary world.

[30] For an exploration of the legacy of republicanism in the fields of international law and International Relations (probably, the farthest issue from original republican interests) see Greenwood (1998); Sellers (2006); or Deudney (2008).

politics. What, therefore, could be said of democratic republicanism from the point of view of TRS?

2.4. What can TRS tell us about democratic republicanism?

It may be interesting to start this section by comparing this quote:

> Any people anywhere, being inclined and having the power, have the *right* to rise up, and shake off the existing government, and form a new one that suits them better. This is a most valuable –a most sacred right– a right, which we hope and believe, is to liberate the world. Nor is this right confined to cases in which the whole people of an existing government may choose to exercise it. Any portion of such people that can, *may* revolutionize, and make their own, of so much of the territory as they inhabit. More than this, a *majority* of any portion of such people may revolutionize, putting down a *minority*, intermingled with, or near about them, who may oppose their movement.

with this second one:

> Plainly, the central idea of secession is the essence of anarchy. A majority, held in restraint by constitutional checks and limitations, and always changing easily with deliberate changes of popular opinions and sentiments, is the only true sovereign of a free people. Whoever rejects it does of necessity fly to anarchy or to despotism.

The first quote seems to legitimize secession as long as the secessionist group is strong enough to win it, while the second one clearly condemns secession as a path to anarchy. The striking fact is that the author of both

quotes is the same well-known republican leader: Abraham Lincoln. The first quote is an excerpt from a speech before the House of Representatives in 1848, concerning the Mexican-American War, in which then Congressman Lincoln criticized the war while acknowledging the legitimacy of the secession of Texas from Mexico (2008a: 87-88). The second quote, on the other hand, is taken from his First Inaugural Address in 1861, with Southern Secession already in place and with the Civil War about to begin (2008b: 585-586). Unless we assume Lincoln simply changed his mind between 1848 and 1861 for some unknown reason, we can only conclude that either (1) he thought that secession was not a moral issue, but a plain matter of power in which "might makes right"; or (2) he plainly morally contradicted himself on grounds of "national interest".

Indeed, "might makes right" stances and/or moral contradictions have been historically common whenever republicans have had to deal with secession. Thus in 1794, Georges Couthon, who like all French Jacobins was a staunch defender of the indivisibility of the French Republic, advocated before the French Convention to support Catalonia's secession from Spain in order to create a friendly republic south of the Pyrenees. That same year, the same Jacobins fiercely fought a Corsican secessionist movement led by another republican, Pasquale Paoli, who tried to restore the independent Corsica he founded in 1755 and which the Kingdom of France forcibly annexed in 1768. However, rather than "might makes right" stances and moral contradictions, the predominant republican stance in the face of secession has been silence. Thus, the *first* point we can see in democratic republicanism through the lens of TRS is a weak one, as obvious as it is important: republicans have historically been oblivious to a phenomenon, secession, that can and must be normatively

considered[31]. Neither silence, nor moral contradictions “for the sake of the national interest", nor the "might makes right" logic, are morally acceptable in republican terms.

Related to that, a *second* point we can see is that, until very recently, it has been difficult to find major republican theoretical works on issues such as language regulations, immigration policies, cultural diversity or, of course, secession conflicts; that is, issues related to nation-building and its problems. An oblivion shared, we must notice, by almost all theories of democracy until recent times. As Requejo and Caminal have said, *“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 that characterize the nation-building processes”* (2011: 2). Liberalism has incorporated these concerns in what has been called "liberalism 2"[32]. I would not suggest the need to formulate a “republicanism 2”, for democratic republicanism over the centuries has already been gradually updating the list of political conflicts in which domination and exclusion may operate[33], and therefore it is hard to make such a sharp distinction between two stages, such as for liberalism.

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[31] A criticism, we must recall, that can be directed towards almost all theories of state of all time, since all them have tended to take for granted the legitimacy of states' boundaries.

[32] Walzer (1994) distinguishes between liberalism 1 (centered on individual rights while indifferent or hostile to claims of recognition by national and ethnic minorities) and liberalism 2 (including both a defense of individual rights and a concern for minorities' demands for national recognition and accommodation).

[33] If in Greek-Roman ancient times the main concern of democratic republicans was to prevent exclusion and domination based on social class or political party, early modern republicanism incorporated a concern about exclusion and domination based on religion, while further developments also developed concerns about exclusion and domination based on gender or race, as well as regarding domination between states or different levels of government between multilevel states.

Instead, I would say democratic republicanism must simply once again update its catalog of political conflicts to be handled, this time to include those that, like secession conflicts, (usually) have to do with nationality and/or ethnicity.

Thirdly, TRS implicitly point out another, deeper flaw in democratic republicanism, which again is common to all theories of the state: the problem of *sovereignty*, a controversial term that, nevertheless, can be loosely defined as *the supreme power over a territory*. The existence of a sovereign political unit with clear boundaries has always been an axiom in many of the fields within which democratic republican thinkers have worked. Theories of democracy have the *demos*, the sovereign people, at their core; International Relations regard the sovereign state as a basic unit; and democratic constitutionalism is based on the idea that the source of any legitimate constitution lies in a constituent power whose holder is a sovereign people. The problem, of course, is how to determine who is or, rather, who should be sovereign, in each of these fields. TRS, in the end, try to deal with a subdivision of this problem, hence pointing out that what democratic republicans have taken as an axiom is, actually, intensely problematic.

Fourthly, the debate and mutual criticisms between different TRS highlight four threats for democratic republican values: (1) *exclusion:* some people who would be directly affected by secession may be excluded from deciding on the issue and/or from full citizenship in the new state (e.g. an ethnic minority within the seceding territory); (2) *domination by blackmailing minorities:* in case of being entitled to secession, powerful minorities (e.g. wealthy ones) might be able to blackmail the rest of the polity; (3) *domination by arbitrary permanent majorities*: secession conflicts are usually (though not always) the ultimate expression of particularly deep center - periphery conflicts in

which the politics of the center and of a given regional periphery of the state are respectively hegemonized by a permanent majority and a permanent minority[34], both of them defined along constant disagreements on how the state should be conceived and organized in terms of *economy* (i.e. territorial organization of it), *territory* (i.e. territorial distribution of political power) and *identity*[35][36], so that *without a feasible exit option, permanent minorities would be at mercy of arbitrary permanent majorities*; and (4) *instability*, i.e. the risk that *a bad handling of secession conflicts, and even more so the absence of any handling at all, is likely to promote instability*[37], eventually triggering exclusion and/or domination.

There is still a *fifth* and last lesson that democratic republicanism

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[34] This permanent minority being, in turn, a permanent majority in that regional periphery.

[35] Thus, what defines these permanent majorities and minorities (apart from, obviously, number and geography) is a *political* factor, namely their permanent disagreement over economy, territory and identity, rather than their cultural, ethnic or linguistic traits. For instance, Catalan speakers are a demographic minority in Catalonia, but since the recovery of Catalan self-government a huge majority of Catalan voters have been supporting, in each Catalan election, political parties that stand for Catalan language normalization policies (such as the linguistic immersion system used in Catalan schools) which are deeply controversial in the rest of Spain. Of course, cultural, ethnic and linguistic differences between these peripheries and the rest of the state always play a role in fomenting these kind of disagreements, but they are not always sufficient. For instance, in political terms, this structure of permanent majorities and minorities is inexistent in a country as culturally diverse as Switzerland, since there is a large consensus between Switzerland's different linguistic, cultural and religious indigenous groups on how their common host state should be conceived and organized in terms of economy, territory and identity.

[36] See chapter 1, p.23, footnote 15.

[37] Here, "instability" means "political instability", i.e. a state of things in which the exercise and holders of political power over a given territory are highly uncertain: laws come and go (and are easily overlooked), governments quickly rise and fall, their decisions are constantly challenged in the streets by mass movements (whether peaceful or not), different institutions and administrations virulently fight each other, and separation of powers and basic rights are usually threatened. We must recall that: (1) stability doesn't necessarily exclude changes (even deep ones); and (2) instability doesn't necessarily mean violence (though it can imply it, depending on the case).

can draw from current TRS, and particularly from primary right theories: *in absence of a right of secession, the federal state, usually defended on republican grounds as a way to handle center - periphery tensions, is nevertheless vulnerable to the threat of arbitrary permanent majorities*. This has to do with the modernization of republican conceptions on the relation between the size of the republic and its political health. In ancient times as well as in early modernity, the lack of modern representative institutions caused the city-state to be regarded as the only fertile soil for a republic[38]. However, the rise of the modern state during the 18th and the early 19th century brought the challenge of adapting republicanism to this far larger political community. Most republicans regarded representative governments as the way to overcome this challenge, but this posed the question of how to handle the tensions between an increasingly powerful central government and the peripheries of the state.

In some cases, like the French one, most republicans stood for a unitary territorial model[39], arguing that the representative character of the government ensured that the interests and opinions of all full citizens

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[38] Deudney explains how this consensus, nevertheless, faced a security dilemma: city-states were vulnerable to foreign domination. The obvious answer to this vulnerability, in absence of representative institutions, was military expansion; however, the example of Rome shows that a successful expansionist republican policy was followed by chaos and civil war, due to the huge domestic social imbalances triggered by imperialism. Thus, all republicans agreed that city-states were the soil in which a republic could flourish, but then disagreed on what was the lesser threat to the republic once it was established: foreign conquest or internal disorder. But that large extensions were inimical to republican institutions was unquestioned. (Deudney 2008: 107-113).

[39] That was, for instance, the case of Condorcet, who, in the exposition of motives behind the Girondin constitutional project, described the "problem to solve" as follows: "*to give to a territory of twenty-seven thousand square leagues, inhabited by twenty-five million individuals, a constitution which, being founded solely on the principles of reason and justice, insures to citizens the fullest enjoyment of their rights*" (1847: 335). In this same exposition, Condorcet defended a unitary state model for the new French Republic, rather than a federal one (1847: 337-340).

throughout the state territory had equal influence in the direction of the republic. In practice, though, this put permanent minorities (e.g. linguistic ones) at the mercy of arbitrary permanent majorities on policies concerning economy, territory and identity[40]. In other cases, in which the formation of the modern state depended to a great extent on the consent of sovereign or quasi-sovereign constituent units, the center - periphery conflict was not that easy to ignore. Thus, during the American Revolution, many republican thinkers, like "Brutus"[41], recalled the old republican warning against large states in order to justify their opposition to the federal Constitution of 1789 (1981: 368); while others, like Madison, without denying this threat, *also* warned that small geographical distances facilitated factional patronage and corruption (2008: 52-55). The latter argued for a strong federal government combined with equally strong state governments, as a way to further disperse and check power against power (2008: 53).

American federalists envisioned a federal republic diverse enough as to prevent absolute factional power, but homogeneous enough as to keep united[42]. The problem arises when this last condition of homogeneity does not apply; where center - periphery tensions regarding economy, territory and identity put a permanent majority and a permanent minority in opposition. In these contexts, indeed, a federal constitution softens the arbitrary power of permanent majorities, but it arguably leaves it largely

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[40] And this led, in some cases, to the rise of republican secessionisms within already republican host states (e.g. the aforementioned Corsican case), whose supporters sought to build a republic as well, but nevertheless a republic *of their own*, so to speak.

[41] Pseudonymous of an anonymous writer, generally identified with Robert Yates (Storing 1981: 358).

[42] Jay congratulated the fact that the United States' population were "*one united people—a people descended from the same ancestors, speaking the same language, professing the same religion"* (Jay 2008: 15).

operative, since the resort to constitutional reform and interpretation will rest anyway, in the end, at hands of the permanent majority. Even many asymmetric formulas and veto rights can, eventually, be constitutionally outmaneuvered or undermined by a resolute arbitrary permanent majority, precisely because it is *permanent*, and therefore its need to form coalitions, make concessions and act in good faith is not crucial to its capability to implement its agenda in the long run[43]. It is in these contexts where some republican-minded path to secession is needed, in order to overcome the threat of arbitrary permanent majorities without falling into the other aforementioned traps. In this sense, a democratic republican TRS could be seen as a refinement of republican federalist theories.

In my view, as I previously said, democratic republicanism can start to fulfill this task, and therefore overcome the weaknesses we have just seen, by updating its catalog of political conflicts, in order to include those ones that, like secession conflicts, usually have to do with nationality and/or ethnicity. In the concrete case of secession conflicts, this means that *its contenders must be understood as factions of an ultimate expression of center - periphery conflicts, usually confronting permanent majorities and permanent minorities, and therefore a normative analysis of secession and secession conflicts must include a democratic republican concern on minimizing the risks of factional takeover and/or exclusion*. In order to develop such a democratic republican approach to secession conflicts, the next section will develop the same kind of analysis of this last one, but in the opposite direction.

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[43] In fact, there is some evidence that the existence of a legal path towards secession favors the promotion and protection of self-government agreements (Sorens 2012: 139-152).

2.5. What can democratic republicanism tell us about TRS?

We have just seen how, from the point of view of TRS, we can point out the failure of republicanism to take into account many of the factional conflicts arisen by the fact of nation-building, including secession conflicts. Now is time to look the other way around: what can democratic republicanism tell us about current TRS? Since TRS are a more diverse family than democratic republicanism, we will start from the division between unilateral TRS and constitutional TRS, in order to analyze them separately.

2.5.1. What can democratic republicanism tells us about unilateral TRS?

As we have seen, all current unilateral TRS are in some way criticized of being unfairly or dangerously biased either towards the state or towards secessionists. This is not an ultimate reason to reject them all, but we must explore the reasons behind this common weakness. In this sense, I would say that the main reason is that all current unilateral TRS choose an *a priori* winner in secession conflicts, an actor who is not expected to prove their legitimacy to unilaterally define the boundaries of the state. This poses an evident problem in terms of building a consensus between the two usual main actors in any secessionist controversy, i.e. state-majority unionists and regional-majority secessionists. And, as we have seen, there do not seem to exist clear ultimate reasons to impose the burden of the proof on either of them. In my view, this common trait is the consequence of a common search: the search for the *demos* of democracy. All current unilateral TRS implicitly assume that, once you find this *demos*, the moral problems of secession conflicts are basically solved.

I think this way of looking at secessionist politics is, to a great extent, an inheritance of the three basic modern conceptions of *nation*, which in the end is one of the most common ways to name the *demos* of modern democracy: (1) a *voluntaristic* conception which Renan (1996) famously summarized in the metaphor of the nation as a "*daily plebiscite*"; (2) an *organic* conception of nation as a group of people linked by some common objective traits (e.g. language, culture or even race), as we can read in Fichte (2008); and (3) a *legalistic* conception of nation as the citizenship represented in the legislature of the state, which can be found in Sieyès (1964). It is easy to see links between these conceptions and plebiscitary, ascriptive and remedial unilateral TRS, respectively, and it is important to recall that all three were designed in order to argue for concrete state and nation-building projects[44]. This means that to handle secession conflicts from one of these three conception*s* is the equivalent of handling it from a point of view raised by one of the conflicting factions in order to win[45]. That is not an ultimate

[44] Thus, Renan, in 1882, wanted to argue for the continuity of Alsace-Lorraine within the French Republic, which was the will of the majority of their inhabitants despite their German ethnolinguistic heritage. Fichte, in 1808, was concerned with the unification of the German-speaking states. And Sieyès, in the wake of the French Revolution, wanted to identify the French state with its citizenship, thus replacing the old absolutist identification between the state and the monarch. And, in different times, different movements have assumed one of these concepts of nation in order to legitimate their aspiration to create a state or to keep one united.

[45] Some remedial TRS are linked to some notion of plurinational federalism (Baübock 2000), and therefore it could be argued that they don't share this link with these three brands of nationalism, since they are combining a recognition of the internal national pluralism of certain states with the defense of its unity (as long as this internal pluralism is properly recognized and protected through federal arrangements, and as long as those arrangements are respected by the federal government). However, I think this would miss one important point: such view of plurinational federalism recognizes, indeed, the existence of internal "nations" in a certain sense, but nevertheless it does not question the very fact of the sovereignty of the federal state (unless the federal state infringes what plurinational federalism considers to be the rights of national minorities). And

reason to reject current unilateral TRS, but it is a way of understanding the roots of their difficulties in reaching a consensus on how to handle secession conflicts; and it is therefore interesting to ask whether there may not be a better normative approach to them.

So rather than ask who is right in secession conflicts, we must conceive and develop rules and institutions able to channel these conflicts in civilized ways. I think that democratic republicanism, with its *republican* conception of factional conflicts as a source of domination, *and* its *democratic* concern regarding inclusive citizenship, is well suited to face this challenge; it will only need to include secession conflicts in its catalog of factional conflicts to deal with. Thus, we have reached the same conclusion as in the previous section: *contenders of secession conflicts must be understood as factions of the ultimate expression of center - periphery conflicts, usually confronting permanent majorities and permanent minorities, and therefore a normative analysis of secession and secession conflicts must include a democratic republican concern regarding minimizing the risks of factional takeover and/or exclusion*.

However, there is a key point in which secession conflicts are different from any other factional conflicts: what is at stake is not how the state should be governed, who should govern it, or even how power must be distributed within the borders of the state; instead, the object of the

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what those classical theorists of the nation had in mind when they formulated their theories was the justification of certain claims of sovereignty. In this very crucial sense, a remedial TRS grounded on plurinational federalism is certainly reserving to the state what those classical theories reserved to the "nation": sovereignty. Therefore, whatever recognition of other *demoi* may represent, a federal-plurinational remedial TRS is nevertheless recognizing the state as a whole as the *a priori* sovereign demos, whose sovereignty can only be discussed in certain cases on remedial grounds. It would, therefore, have a legalistic background à la Sieyès, for sure with an important difference: the citizenship of the state will be thought as forming part at the same time of the state-wide, sovereign *demos*, and of different internal, non-sovereign *demoi*.

conflict is precisely these borders. A problem that traditional republican solutions are ill-prepared to handle, for they are designed to work *within*[46] the state. Republicanism, as we have seen, takes the boundaries of the republic to be given. However, the idea of preventing the arbitrary rule of one faction over the other, I think, still makes full sense in secession conflicts. Therefore, the principles inherited from the republican view of factional conflicts are still valid, although we need to translate them into rules and institutions which are likely to be sensibly different from others previously envisioned by republican thinkers, since this particular conflict is also essentially different from any others previously considered by them. To preventing factional takeover, common to all republicans, we must also add the concern regarding political inclusion specific to democratic republicanism. Starting from this approach, what can we say about current unilateral TRS?

I think we must evaluate the ability or inability of each TRS to overcome the four threats for democratic republican values that we pointed out in section 2.4. To begin with, I see the *threat of exclusion* as particularly present in ascriptive TRS. If, for instance, we define Quebecois people in linguistic (French-speaking) terms, and we give this people the right to secede, then English-speaking Quebecers might be excluded from a referendum on the secession of Quebec [47]. Besides, some scholars have argued that this threat is also present in plebiscitary theories (Ovejero 2011: 155-201). The argument goes like this: civil freedom requires, as we have seen, the citizens' right to participate in politics and

[46] Or, at best, between states (as in republican International Relations theories -see footnote 30).

[47] Of course, this situation could be avoided by compromises in order to make the referendum politically viable, or even for the sake of balancing Quebec's self-government with other important values (such as inclusion itself), but the point is that it would not be a consequence of the ascriptive point of view and, indeed, it would go against its very logic.

their disposition to do it seeking the common good; on the other hand, democracy requires a maximal inclusive citizenship. This ideal is realized, however imperfectly, in modern democracies. To give some people the unilateral right to secede from a democratic political community would therefore mean: (1) to let some people decide over a matter that affects the whole political community; and (2) to declare all the rest of the political community as strangers; that is, as non-citizens.

In my view, these are misleading objections. Concerning the first one, we can only consider that secession affects "the whole political community" if we take for granted that "*the* political community" (the "nation", one could say) is the host state. If not, secession may "affect" the host state very much like many decisions taken by the government of the host state (e.g. concerning tariffs or immigration policies) may affect its neighbors. If this is an argument against plebiscitarian secession, it should equally be an argument against the independence of the host state[48].

Concerning the second objection, we must realize that secession doesn't "exclude" the people at the other side of the new border in the same way in which, for instance, African-Americans were excluded from full citizenship in the Southern U.S. before the 1960s. Taking again the example of Quebec: if Quebec secedes unilaterally after a referendum in which all Quebec residents have been able to participate, and if all Quebec residents are entitled to the new Quebecer citizenship, then the people of the rest of Canada (ROC) would not have been more "excluded" from Quebec than they currently are from the U.S.; in any case, they would be excluded from the new Quebecer citizenship, but not from "democratic

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[48] And, certainly, it would be reasonable to argue that, in the end, the very existence of independent states is contradictory with a universalist view of democracy. However, the thing is that no remedialist republican scholar actually questions this core feature of the international system.

citizenship", globally speaking, as it was indeed the case of African-Americans: the people of ROC will continue to be full members of a well-functioning democratic community. The territorial borders of their democracy will be smaller; their inclusion within that democracy will not.

Nevertheless, a threat that indeed affects both ascriptive and (particularly) plebiscitary unilateral TRS is the *threat of blackmailing minorities.* As we have seen in section 2.2, primary right theorists propose overcoming this risk, as well as the risk of exclusion, by putting restrictions on such primary right, normally linked to the foreseeable capability (and will) of both the seceding state and the remainder one to keep fulfilling the obligations of a functional and modern democratic state. However, we have also seen the weaknesses of this solution: (1) the need of an arbiter; and (2) the weakening of the open questioning of the arbitrariness of most states' boundaries. These two threats of exclusion and blackmail, linked as they are with primary right unilateral TRS, have led republican scholars like Ovejero (2006: 81) or Sellers (2006: 158 -166) to embrace remedialism. I regard remedialism, however, as ill-prepared to handle *the threat of arbitrary permanent majorities*, since *by stating that secessionists must bear the burden of the proof in a secession conflict, remedialism gives the high ground to state-level permanent majorities to arbitrarily decide what degree of autonomy, recognition or economic promotion they will give to permanent minorities*[49][50].

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[49] Certainly, remedialism places a limit on this arbitrariness: the state, and therefore a ruling permanent majority, is not allowed to commit evident injustices against minorities. But a permanent majority can be highly dismissive towards permanent minorities' identitary, territorial or economic aspirations while essentially respecting the limits imposed by basic human rights and modern democratic institutions. For instance, it can decide, through strictly democratic procedures, to remove the teaching of the indigenous language of a permanent minority (if it happened to have one) from public education across the state.

[50] It could be argued that this will not be the case with those remedial TRS that include, among the just causes for secession, failure of the central government to

From a democratic republican point of view, this criticism of remedialism can be answered by arguing that, that in order to protect civil freedom and civic virtue, democracy should be understood in a deliberative way, in which people do not have fixed preferences which they try to impose on other people by using their respective political force; on the contrary, citizens of a democratic republic have to be open to argue their views and, in the process, to convince and to be convinced by other people. Every political proposal has to be argued in the agora using public reasons, i.e. reasons that appeal to the common good of all citizenship, and not just to the particularistic interest of one individual or faction. This deliberative model of democracy would thus be the most efficient tool against factional domination. Starting from this point, it is easy to follow: if the regional majority's claims can be sustained on reasons of common interest, they will prevail; if not, they will fail. And in no way could this be attributed to their permanent minority status, but only to the fact that their claims would have a factional nature. To give them a primary, unilateral right of secession would undermine all this deliberative architecture.

In my opinion, this view confuses wishes with reality. This

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give proper recognition and self-government to internal national minorities. We have seen the shortcomings of this solution in page 39. Related to this, it can also be argued that federal constitutions (particularly, plurinational ones) provide a guarantee against this arbitrary power; therefore, remedialism will not present this problem when it comes to plurinational federations. Indeed, a plurinational federal constitution softens the arbitrary power of permanent majorities, but it arguably leaves it largely operative, since the resort to constitutional reform and interpretation will rest anyway, in the end, at hands of the permanent majority. Even many asymmetric formulas and veto rights can, eventually, be constitutionally outmaneuvered or undermined by a resolute arbitrary permanent majority, precisely because it is permanent, and therefore its need to form coalitions, make concessions and act in good faith is not crucial to its capability to implement its agenda in the long run. In fact, there is some evidence that the existence of a legal path towards secession favors the promotion and protection of self-government agreements (Sorens 2012: 139-152).

deliberative ideal has indeed a good republican pedigree (Pettit 2002: 187-190; Sunstein 1988), and from a republican point of view it is clearly desirable for democracies to work, as far as possible, in a deliberative way, and therefore to design their institutions to promote this deliberative dynamic. The fact is, however, that more often than not, our modern democracies do not work that way; the main reason why, for instance, one or another law is passed in a parliament is not because, after a rational and well-informed debate, the MPs deliberate and try to rationally find the best way to serve the common interest of the political community, but rather because one given political party (or a coalition of them) has the majority in that parliament and has the will (whatever the reasons behind that will) to pass or not to pass the given law. That is not to say that rational discussion and common interest have no place in our modern democracies, but they do not have a clear, ultimate place which is strong enough as to discredit any secessionist claim as "anti-deliberative".

Factional conflict does not disappear, nor it is well handled, just by saying that "we should not be factional" and that "we should think about the well-being of the whole political community"; it is rather the other way around: only a good handling of factional conflict, by means of a proper institutional design, can minimize factions' chances of plainly and arbitrarily imposing their will onto other factions, thereby forcing their supporters to publicly discuss and convince each other through public reasons. And in terms of conflicts over identity, territory and economy, permanent state majorities (specially in non-federal states) have no particular incentives to listen to regional majorities which happen to be permanent state minorities; they could either do it or not, but it is basically at their arbitrary will; an arbitrary power which is greatly upheld by remedialism when it only asks for the respect of very basic standards of justice, beyond which a state majority is enabled to act at its will, without

any real need to act in such deliberative way[51].

On the other hand, McGarry and Moore (2011) provide, from a republican point of view, a brief and interesting exploration of how, within democracy and the rule of law, the majority group in a state can "*ensure its domination over state institutions, and, through this, over the society as a whole*" (2011: 436). However, I find some gaps in their analysis: (1) they don't explore the threats of domination that other TRS pose for republican freedom; (2) they describe the ways in which a state-level majority can "cheat" within the democratic game in order to ensure its permanent hegemony (e.g. gerrymandering or a self-favoring design of the electoral system), but they don't clearly consider the fact that, even with reasonably fair democratic rules, a permanent majority still retains an *a priori* power to arbitrarily ignore consistently predominant demands and views of permanent minorities, unless they become entrenched with the means to counter such arbitrary power; and (3) they conclude that remedialism should include a republican perspective on domination and apply it to this sort of "democratic domination" of majorities over minorities, but they neither explore the possibility of just choosing another TRS instead of remedialism, nor realize that there are reasons that remedialism as such can be unsuitable for a republican reformulation. Let's see this point.

As we have already seen in section 2.2, there are two remedialist strategies in order to overcome this threat of arbitrary permanent majorities. The first one was the defense of reasonably high degrees of intrastate autonomy; unfortunately, we have also seen a critical weakness

[51] And I must insist: any attempt to solve this problem by including "recognition" or "autonomy" issues within the catalog of "just causes" for unilateral secession weakens the most interesting features of remedialism without actually solving the problem.

in this strategy: it is rather hard to establish objective criteria on what should be seen as a "reasonably high level of autonomy". In certain, profound disagreements over territory, economy and identity, permanent minorities would likely regard permanent majorities as the strong part in negotiating, interpreting and implementing any intrastate autonomy arrangement; while for those majorities, concessions to permanent minorities, especially asymmetric ones, would likely be seen as a privileges, and probably not the last ones such minorities will ask for.

The second strategy was, on the other hand, the inclusion of insufficient self-government, discriminatory redistribution and/or failure of recognition within the catalog of "just causes" for unilateral secession. Bauböck (2000), Patten (2002) and Seymour (2007) argue for this strategy, while Buchanan dismisses it because of "*the difficulties of forging a reasonable agreement on what counts as fundamental issues of value*" at stake in controversies between permanent majorities and minorities (2007: 363)[52]. Indeed, as we have also seen, this strategy weakens the most interesting feature of remedialism: its clarity in defining who has a right to secede without allowing exclusion or minority blackmailing. While dismissing this strategy, Buchanan points out the example of the opinion of the Supreme Court of Canada on Quebec's secession as a way of giving minorities a vehicle for secessionist politics without giving them a unilateral right of secession (2007: 362-363); however, I think he misses the fact that the Court argumentation *also* questions the right of the rest of Canada to ignore a secessionist majority in Quebec. I will come back to this point in the next section.

The last of the four threats we saw in the previous section was *instability*. It is the only one that, in my view, is common to all three

[52] Recently, Buchanan seems to be considering this strategy as plausible in the Catalan case (2013: 19-21).

unilateral TRS and, more importantly, also to the option of rejecting all three without an alternative. Under rules which could be reasonably presented as biased towards one faction of secession conflicts, the disadvantaged faction (whether secessionists or unionists) is likely to reject such rules, which in turn will lead to instability and to a "might makes right" logic, the nemesis of republican freedom. In the absence of any rules at all, unless both factions are spontaneously reasonable and open to dialogue, such instability and logic will arise even more quickly. So it seems that all current unilateral TRS, when reviewed from the point of view of democratic republicanism, share the same mistake: *they all favor one faction of the conflict at stake, instead of looking for a way to balance the power between them so that no-one can dominate the other*. Could, then, any current constitutional TRS be a suitable alternative for building a democratic republican normative theory of right of secession?

2.5.2. What can democratic republicanism tell us about constitutional TRS?

As we have seen in section 2.2, there are currently three different kinds of constitutional TRS: *plebiscitarian*, *remedialist* and *pragmatic*. The first two are different from the last one in the fact that they establish a link between the recognition of a right in moral terms and the practical recommendation of giving or not giving some sort of legal recognition to it. This is what Weinstock (a pragmatic theorist) calls the “one-stage view”, in which “*the question of whether a right exists and whether it ought to be granted are not distinguished, or rather, the latter question is taken as disposing of the former*” (2001: 184). In contrast, Weinstock himself (and, implicitly or explicitly, all pragmatic theorists in general) starts from what he calls the “two-stage view”, which “*invokes different*

considerations to determine, on the one hand, whether a right exists, and on the other, whether it ought to be recognized". We can have good reasons for rejecting the idea that someone has a moral right to do X while at the same time recommending that their legal right to do it be recognized, normally in order to "domesticate" an inevitable-but-not-absolute evil, hence preventing it becoming bigger and worse.

Hence, in plebiscitarian and remedialist constitutional TRS we can distinguish a purely *moral* aspect (based on plebiscitarian and remedialist unilateral TRS, respectively) as different from an *instrumental* one, in which the positions on the idea of constitutionalizing secession are based on what each plebiscitarian or remedialist scholar thinks will be the real (not only logical) consequences of it in relation to the moral aspect of the theory. If they are expected to be positive to what plebiscitarianism or remedialism stand for, then the position on constitutionalizing secession will be positive as well; if they are expected to be negative, the position will also be negative; and if the scholar thinks the consequences will greatly vary depending on the context, then a case-by-case position will be adopted. Pragmatism, in contrast, only presents the instrumental aspect, in which the consequences of constitutionalizing secession are analyzed as positive or negative *prima facie*, independently from any previous unilateral TRS. Since we have already observed the threats that plebiscitarian and remedial unilateral TRS pose in democratic republican terms, and since pragmatism has no unilateral TRS behind, it is clear that in this subsection the key point must be the analysis of what democratic republicanism tells us about the instrumental part of constitutional TRS.

I will start by analyzing the most clearly instrumentally-focused of the three constitutional TRS: pragmatism. Let us begin with its virtues, though. Pragmatism aims to decide whether to constitutionalize secession or not by evaluating its foreseeable consequences in terms of a different

set of threats. Whether they adopt a positive or a negative answer to this question, many of the threats addressed by pragmatic scholars can be subsumed within the four we have already seen. Thus, in making his pragmatic case for a constitutional right of secession, Weinstock imagines a hypothetical "veil of ignorance" in which negotiators of different nations must establish a multinational state, without knowing whether their respective nations will be the majority or a minority within the new state. In this hypothetical situation, and assuming risk aversion, Weinstock says that

> my hypothetical negotiators would want their constitution to include a right to secede which balanced (…) two concerns. They would not want it to be too destabilizing, aware as they are of the advantages which a well-functioning, prosperous multination state affords; yet they would not want it to be unduly restrictive, conscious as they are of the risks of finding themselves in the position of the "least favored nation", and of finding their most fundamental, group- specific interests compromised with no possibility of exit. (2001: 1999)

Here, Weinstock is indeed addressing both the threats of instability and arbitrary permanent majorities; and, when he details his view of the first threat, it is clear that he is subsuming the threat of blackmailing minorities within it[53]. While he doesn't directly address the threat of exclusion, his

[53] "(...) *hypothetical negotiators would want to make it difficult for a national group to quit the union, as too easy a secession procedure would make the attainment of the goods of political union precarious. For example, a multination federation will almost by definition be one in which richer regions will often be called upon to transfer resources to poorer regions. If secession were too easy, richer groups might be tempted to wield the secessionist stick to lessen their distributive burden. The threat of secession might, as opponents of a constitutional right to secede have noted, unacceptably infect the process of everyday politics, in particular by making just policies more difficult to*

theory doesn't lead to it; and actually, his insistence on a Rawlsian handling of secessionist politics allows us to infer that no resident (or at least no resident *and* currently full citizen) of a territory will be allowed to be excluded from the decision on secession of that territory, if his constitutional TRS were to be followed. Norman, in his later works on the issue (2003 and 2006) also makes a case for a constitutional right of secession by pointing out reasons that can be subsumed within the threats of instability and blackmailing minorities. In a different light, Aronovitch (2006) argues against such a right by pointing out that it will be futile in order to protect vulnerable minorities, and dangerous because it will empower blackmailer ones and promote instability and exclusion (because it will weaken the unity of the plural states as well as the diversity of their constituent units).

Hence, pragmatism seems to be the more promising candidate for becoming the base of a democratic republican normative TRS. However, I see different weaknesses in pragmatism if it were to try and fulfill this role. First of all, precisely because of its lack of a previous theory on a moral right of secession, pragmatism does not offer clear guidance on how we can distinguish the "negative" and the "positive" outputs of constitutionalizing secession. Some scholars might think, against Aronovitch, that weakening the unity of plural states may not be such a bad idea, if this weakening is a peaceful result of the freely expressed will of the people of that state; some others might object, against Weinstock, that secession is indeed violating some absolute moral principle (e.g. popular sovereignty, if identified as the indivisible sovereignty of the whole population of the state). Pragmatism could answer this in two ways: (1) by asserting that the guide for making this distinction lies in a

implement when they place unequal burdens upon a particular group" (Weinstock 2001: 198).

broader political philosophy (e.g. democratic liberalism); and (2) by asserting that making this distinction is rather an intuitive job, without the need of a previous moral theory in order to fulfill it. In any case, aside from deciding whether these answers actually overcome that weakness, and related to it, each positive and negative pragmatic constitutional TRS presents other serious flaws.

On the one hand, when pragmatic scholars like Aronovitch reject to constitutionalize a right of secession, they leave the threat of arbitrary permanent majorities basically unresolved: even if we consider, with Aronovitch, that a constitutional right of secession would be futile in order to protect vulnerable minorities, it does not follow that they will be much better off if we kept the status quo. On the other hand, positive pragmatic constitutional TRS, because of not being based on a previous unilateral TRS, are not able to provide guidance in a situation in which one of the two actors of a given secession conflict happen to unilaterally reject the constitutionalization of secession. If this rejection comes from secessionists, it is almost sure that all pragmatic scholars will agree that the state has the right to prevent them, even by force, from unilaterally attempting to reach secession. But what happens when the state is the one who rejects constitutionalizing secession? Does it create a unilateral right of secession for those secessionists initially willing to enter into a constitutionalized version of secession conflicts?

Plebiscitarian and remedialist constitutional TRS have an implicit answer to this question, for they have a previous unilateral TRS behind them: in the absence of a constitutional management of it, right of secession is reserved *a priori* to secessionist regional majorities or to deeply oppressed groups, respectively. However, this answer obviously shares the threats linked to plebiscitarian and remedialist unilateral TRS. And, in any case, they both share a common last flaw with pragmatism:

the lack of a clear, impartial arbiter to guide, interpret and manage the constitutionalization of secession. This flaw makes it problematic to answer two key questions: (1) who should decide the concrete features of a constitutional right of secession (e.g. supermajorities for referenda on secession)?; and (2) who should interpret and guide the implementation of such a constitutional right (e.g. clarity, or lack of thereof, of the question in a referendum)? If, to either of these two questions, we answer "the state" (or a majority of the population of the state), we fall into the risk of arbitrary permanent majorities. If we answer "the secessionists" (or a majority of the population of the potentially seceding territory), we fall into the risk of blackmailing minorities. And if we answer "both", we still need an arbiter to decide how this consensus should be built, and what happens if negotiations to build it fail.

In the end, we seem to be stuck in a cul-de-sac: on the one hand, we have seen in section 2.4 how TRS point out that there are serious weaknesses in democratic republicanism, resulting from it neglecting to deal with the issue of the legitimacy of states' boundaries; on the other hand, we have just seen in this section 2.5 that no current TRS is fully satisfactory for democratic republicanism. So, answering the research question of this article, *democratic republicanism and current TRS seem to be in a normative relationship characterized by tension*. However, it is unlikely that neither democratic republicanism, nor current TRS, would be better suited to handle secession by simply ignoring that tension. So the exploration of the best way to reconcile both theoretical fields seems to be a relevant issue to be explored. But then, new questions arise: is this reconciliation possible? Are we forced to choose between one of these TRS, thus accepting its perils in terms of domination, exclusion and instability? Or can we think instead about developing a democratic republican alternative TRS? I think we can, and before finishing this

article I would like to point out the basic tasks that must be fulfilled in order to develop such democratic-republican TRS.

2.6. Towards a democratic-republican theory of the right of secession

I have argued that current TRS share a common weakness based on a common search: the search for a sovereign *demos*, a group of people morally entitled to exercise sovereignty over a territory. In all cases, sovereignty has clear limits, but also a clear holder as long as the holder respects those limits. In my opinion, in contrast, the idea of popular (or national) sovereignty is an abstraction with no intrinsic, but only instrumental, value, based on a twofold usefulness: (1) to the extent that it prevents states arbitrarily interfering in the affairs of other states, unless in case of extraordinary circumstances, hence promoting peace and order in the international arena; and (2) to the extent that it establishes the state as servant, and not as master, of the people, therefore protecting common people from tolerating domination and tyranny by governments and elites. But it is still an abstraction: "peoples" exist in a certain sense, but they do not exist in the same sense as individuals do. Peoples do not "decide" anything, nor do they "violate" any right or become "oppressed", literally: individuals do, either alone or in conjunction with other individuals. Therefore, the idea of a "people" holding sovereignty despite what individuals might think is, in my opinion, a case of reification, in which we are treating an abstraction as if it was a concrete, objective real event.

As long as the individuals who happen to be citizens of one given state recognize each other as members of the same "people" or "nation", the idea of "popular" or "national" sovereignty remains useful in the two senses I have pointed out; let us label these cases as *uncontested political*

communities, with examples such as Iceland, Switzerland or Japan, to name very different cases of the same concept. But then let us think of a situation in which a good number of the individuals who happen to live in one given part of one given state happen, on the contrary, to challenge this assumption of being "a people" together with the rest of the citizens of the state, and more concretely happen to campaign for secession; we could label these cases as *contested political communities*, with pairs of examples such as Canada and Quebec, Spain and Catalonia, UK and Scotland, or Belgium and Flanders. To use the concept of "popular" or "national" sovereignty as a way of discrediting the aspirations either of unionists or of secessionist members of such communities does not have any usefulness in terms of promoting peace and non-domination, but rather the opposite, as we have seen when analyzing current TRS from a democratic republican point of view.

Then, from the democratic republican approach to secession conflicts that I outlined in the previous sections, in contested political communities, the question should not be "*who is the* demos*?*", but rather "*how can a contest over who is, or should be, the* demos, *be handled in a way that maximizes people's protection against exclusion and domination of any sort?*". A democratic republican TRS of any kind must therefore be thought of as an answer to this question. Rather than finding the "legitimate holder" of "popular" or "national" sovereignty, we must find a way to manage secession conflicts by which secessionists and unionists could feasibly pursue their goals within rules that on the one hand minimize threats of exclusion, blackmailing minorities, arbitrary permanent majorities and instability, and that on the other hand appear to both factions as reasonably fair, precisely because of their minimization of those four threats.

It is clear that, from this point of view, a *unilateral* right of

secession must be a last resort in the face of very concrete grievances committed by the state or the state-level unionist majority. A democratic republican TRS would therefore agree with remedialism in this sense; the difference would be that such theory would also consider the *unilateral* right of the state to suppress an attempt of secession as a last resort in the face of very concrete grievances by the regional-level secessionist majority. Therefore, in the absence of these very concrete grievances by either faction, neither the right of secession of the regional-level secessionist majority, nor the right to territorial integrity of the state-level unionist majority would be unilateral *a priori*; instead, some institutional design, based on a non-unilateralist logic, would be in place in order to handle a negotiation process between the two parts. Therefore, the two basic theoretical tasks of a democratic republican TRS would be: (1) to develop this institutional design as the *normal* framework for handling secession conflicts; and (2) to specify under which concrete conditions one of the two parts would be allowed to unilaterally impose its will.

Concerning the first task, I think my analysis of constitutional TRS must be complemented by a democratic republican normative analysis of one of the very few cases of a (quasi) constitutional right of secession within a modern democracy: that of Quebec[54]. By and large, this right was shaped in 1998 by the Supreme Court of Canada, which stated that Quebec had no right to unilaterally secede from Canada, while also questioning the right of the rest of Canada to unilaterally abort Quebec's secession, should a clear majority of Quebecers vote "yes" to a clear question on the issue. Instead of acting unilaterally, both parts had to negotiate in good faith on secession. In my view, this solution falls very

[54] It is not the only example, but the other ones are located either in very small-sized democracies (e.g. St. Kitts and Nevis) or in not very well-established democracies (e.g. Ethiopia).

close to how a democratic republican theory of right of secession might look like. Nevertheless, it is clear that the Court reference is full of important gaps. To recall just some of them: who decides what is a "clear" question and a "clear" majority? Who is the judge of the "good faith" in the eventual negotiations? What happens if they fail or get blocked? In the next chapter, I will address these and other issues surrounding Quebec's constitutional right to secede, in order to analyze its usefulness as a model for a democratic republican TRS.

2.7. Conclusions

I started this article by asking a question: *which is the normative relationship between democratic republicanism and current theories on right of secession?* Through an overview of both theoretical families, and a mutual examination of each one from the point of view of the other, I have answered that: (1) current TRS point out how democratic republicanism has failed to handle an issue like secession, which implies threats in terms of exclusion, minority blackmailing, arbitrary permanent majorities and instability*;* (2) democratic republicanism shows that all current TRS, as well as the option of simply rejecting them all, fall into some of these threats; (3) therefore, current TRS and democratic republicanism seem to be in a normative relationship characterized by tension; (4) nevertheless, it is unlikely that neither two will be better suited to handle the normative problems of secession by simply ignoring each other; (5) hence, to explore how to reconcile democratic republicanism with the field of TRS is a relevant task to be developed; and (6) that we have reasons to think that we can work on an alternative democratic republican TRS as a feasible way of reaching such reconciliation. Indeed, I hope this article will be seen as a first step in this direction. That is, nevertheless, a small part of a longer road that,

however, I think is worth taking.

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3. A CRACKED FIREWALL: QUEBEC'S CONSTITUTIONAL RIGHT OF SECESSION AS A DEVICE AGAINST DOMINATION

3.1. Introduction

This article tries to answer a question: *to what extent can a constitutional right of secession be useful in order to minimize exclusion and domination (understood in democratic republican terms) stemming from secession conflicts in modern democracies?* My aim here is to evaluate the compliance of a constitutional right of secession with the democratic republican normative approach to secession conflicts that I have developed in chapter 2, by means of a normative analysis of the case of Quebec, which has been granted, by the Supreme Court of Canada, a sort of (quasi) constitutional right of secession (*Reference re Secession of Quebec*, [1998] 2 S.C.R. 217).

By undertaking this normative case study, I have reviewed and linked at least three bodies of literature: (1) republicanism; (2) theories of right of secession (TRS), and more specifically theories of the constitutional right of secession; and (3) empirical research on constitutional right of secession (and, specially, on the case of Quebec). I will present my results in the following six sections: (1) an outline of the theoretical and methodological framework here employed; (2) a summary of the historical path towards Quebec Secession Reference; (3) a description both of the Reference and the constitutional right of secession it outlines, and of its strong points in terms of minimizing domination in the Quebec secession conflict (and in secession conflicts in modern democracies, broadly speaking); (4) a critique in the opposite direction, highlighting the unresolved issues that undermine those strong points, and

particularly of the Reference's failure to designate an arbiter for a potential non-unilateral secession process; (5) an outline of a possible way to overcome them, consisting of an international, democratic republican version of the right to a non-unilateral secession outlined in the Reference; and (6) a summary of my findings and conclusions.

3.2. Theoretical and methodological framework

This article is based on the democratic republican approach to secession developed in chapter 2, according to which (1) "freedom" means "non-domination"; (2) domination means vulnerability to arbitrary power; (3) one of the main goals of institutional design is to ensure the most robust possible freedom to all citizens; and (4) one of the key elements in order to minimize domination is to minimize the threat of factional takeover in any political conflict, including secession conflicts. By relating current TRS and democratic republicanism, we have revealed four threats that secession conflicts may pose in democratic republican terms: (1) *exclusion*; (2) *domination by blackmailing minorities*; (3) *domination by arbitrary permanent majorities*; and (4) *instability.* We have also seen that no current TRS seems to be completely satisfactory in dealing with these threats[55].

In my view, a democratic republican TRS, able to overcome those threats, must start from (without being limited to) three assumptions: (1) unilateral right of secession should be seen as a last-resort device in the face of certain grievances by unionists (including the state itself) against the secessionists' target group; (2) nevertheless, the unilateral right of the state to suppress a secession attempt should *also* be seen as a last-resort tool in front of certain grievances by secessionists or their target group

[55] See chapter 2 pp. 54-70.

against the rest of the state; and (3) in absence of these grievances suffered by either of both factions, and in the presence of a democratic will of the secessionists' target group to actually secede, some sort of non-unilateral institutional framework must be put in place, conducive to a negotiation process between the two parts, in order to settle the conflict while attending to the legitimate interests and opinions of both parts.

The first assumption is in tune with remedialism, while the second one departs from it and gets closer to primary right theories (especially to plebiscitarianism); the third assumption is the main one, prescribing an arena in which both factions could pursue their goals while their potential tendencies to domination and/or exclusion are rejected. This third assumption requires us to explore how a balanced negotiation framework for secession conflicts could look. In this sense, we must recall that, in current literature on secession, "constitutional", "consensual", "negotiated" and "non-unilateral" secession are understood as synonymous (Buchanan 2007: 338-339). For reasons that I will point out in section 3.6, I regard this as doubtful. However, in order to develop the third assumption of my democratic republican approach to secession, I think that it is worthwhile exploring what possibilities a constitutional right of secession has for minimizing domination and exclusion in secession conflicts in modern democracies. I have just explained why current constitutional TRS do not correctly develop this point, either because they rely on a unilateral TRS biased towards one of the sides of the conflict, or because they do not rely on any other sort of pre-constitutional, normative account of right of secession.

Indeed, a constitutional right of secession would not be enough for a democratic republican normative theory of secession; the other two starting assumptions are there precisely because of this. However, one thing is to say that a constitutional right of secession would not be *enough*

for a democratic republican theory of right of secession, and another thing is to say that it would not be *useful* for that theory. Since there are a few countries in which a right of secession has been constitutionally entrenched, we do not need to discuss the usefulness of a constitutional right of secession for democratic republicanism in purely theoretical terms; instead, we can see: (1) *what actually happens when you entrench such a right in a constitution*, and (2) *how what happens fits with the purposes of a democratic republican theory of secession*. The first task involves the *descriptive* and *explanatory* study of the practice of constitutional right of secession; the second involves the *normative evaluation* of the findings of such studies from the point of view of the democratic republican approach to secession conflicts developed in chapter 2.

This article focuses on that second task, carrying out a normative evaluation both: (1) the empirical findings of researchers on constitutional right of secession in practice, particularly in the case of Quebec; and (2) the content of some relevant primary sources related to this case (e.g. legislative bills, press opinion articles or juridical documents), paying particular attention to the Quebec Secession Reference by the Supreme Court of Canada. Therefore, this is not a *causal* or a *descriptive*, but a *normative*, case study: my aim has not been to get descriptions or to infer causal explanations, but rather to analyze the compliance between an institutional device (Quebec's constitutional right of secession) and a normative theoretical approach (democratic republicanism), in order to draw lessons for the management of a type of conflict (secession conflicts) in a broader number of cases (modern democracies) from the point of view of that approach.[56].

[56] For a brief description of the role of case studies in normative theory, see Bauböck (2008: 56-57).

Here arise, however, two methodological questions: (1) why this focus on modern democracies, instead of also examining constitutional right of secession in authoritarian contexts?; and (2) why give primacy to Quebec over other cases of constitutional right of secession in modern democracies? In both questions, the answer has to do with a concern for minimizing what we may call *normative noise*[57]. In order to use cases of constitutional right of secession to evaluate its usefulness for democratic republican purposes, the absence of democracy is one of the most disturbing sources of normative noise. Despite different criticisms directed towards modern democracies in their current form by contemporary republican theorists (Pettit 1997 and 2013), it is clear that, among current polities, they are the ones closest to democratic republican aspirations. The usefulness of a constitutional right of secession for democratic republican purposes will therefore be better analyzed by focusing on modern democracies than on authoritarian regimes[58]. It is when someone seeks to create a modern democratic state out of the territory of another one, that we find the tricky questions for democratic republicanism.

On the same grounds of minimizing normative noise, I decided to sidestep those cases of constitutional right of secession in democratic contexts in which: (1) until very recently violence has played a prominent role in the secession conflict (*Northern Ireland*); or (2) size and geography

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[57] See chapter 1, pp. 18-19.

[58] In an authoritarian regime, a secession legitimized by some sort of democratic republican primary right theory (whether plebiscitarian or ascriptivist) could be also legitimized, or at least not specially discouraged, by some sort of democratic republican remedialism (Sellers 2006: 153-166; Ovejero 2006: 81-104), since the authoritarian regime can't be seen by democratic republicanism as a properly legitimate state. It is in modern democracies where the conflict fully arises, and where the constitutional right of secession should show its capability to manage it.

makes it quite problematic to extrapolate results to the bulk of modern democracies (*St. Kitts and Nevis*, *Liechtenstein*). I also considered it better to discard: (3) *Scotland*, since what we find there is not a constitutional right of secession as such, but rather an *ad hoc* agreement between Holyrood and Westminster that, constitutionally speaking, relies on the good faith of the British Parliament[59]; (4) *Norway*, *Iceland* and *Puerto Rico*, since in these cases the seceding or potentially seceding territory was not exactly integrated intro the host state, but rather formed a quasi-sovereign unit under the umbrella of a larger, associated sovereign state; and (5) *Ethiopia*, since it is far from being a functioning and stable modern democracy, having become in fact a hegemonic party system following the categorization of Sartori (2005).

Quebec, in contrast, does not present these problematic features. The only serious struggle for violent secessionism, led by the far-left Front de libération du Québec, only lasted for about 7 years, indeed before Quebec secessionism actually became a major political force with real political power. Quebec's size and geography are fairly comparable to other major potentially secessionist territories, such as Scotland, Catalonia, the Basque Country or Flanders. Its constitutional right of secession is implicitly recognized in a judicial Reference, which actually imposes obligations on the federal government on that score. It is not a colony, nor an associated state, but an integral part of the sovereign state of Canada. And both Quebec and Canada are stable and well-functioning modern democracies. There are, however, two characteristics that could be seen as problematic in terms of drawing lessons for the rest of modern democracies: (1) Canada is a federal country; (2) compared to other

[59] Thus, had the "yes" won in the recent referendum on the matter, Scotland may have seceded constitutionally, but not properly speaking by means of a constitutional *right* of secession.

modern democracies, both Canada and Quebec have normally been flexible in terms of nation-building, accommodation of minorities and management of cultural diversity.

However, in terms of providing an answer to the research question of this article, I have handled this twofold problem using a prudent approach: since Canada is a federal country, and since both Canadian and Quebec nationalisms share a relatively reasonable and flexible mindset, I have not taken the strong points of constitutional right of secession in the case of Quebec as given in other modern democracies but, on the contrary, I have assumed that its weak points can reasonably be expected to be reproduced in other democratic contexts. Thus, I have been demanding with the institutional device that I am assessing. With this prudent approach in mind, I have built my normative analysis of Quebec's constitutional right of secession upon historical, politological, sociological, juridical and journalistic information about the following aspects: (1) the historical, political, cultural and economic context of the Quebec secession conflict; (2) content and context of the Quebec Secession Reference by the Supreme Court of Canada; (3) content and context of different laws and documents linked to the Reference, particularly the Clarity Act and Bill 99; and (4) views of the relevant actors in the Quebec secession conflict about Quebec Secession Reference and its outcomes. I show the results of this analysis in the following four sections.

3.3. The path towards the Quebec Secession Reference

The Quebec secession conflict is an outcome of the history of this territory since colonial times. The formation of Quebec was the result of a double colonization: firstly with the foundation of New France in the early 17th century, secondly with the British conquest in the 18th century. This

conferred Quebec its peculiar composition and character: an Aboriginal minority, a Francophone majority and a prosperous (even privileged) Anglophone minority. Together, British colonial authorities, Anglophone businessmen, Francophone landowners and Roman Catholic clergy dominated the politics of the colony, which changed its name and borders over the years. In the early 19th century the influence of the American Revolution triggered the formation, in the then called colony of Lower Canada, of the largely (though not exclusively) Francophone *Parti Patriote*, which coupled Enlightened revolutionary ideals with a sort of French Canadian proto-nationalism, less based on a clear nationalist project than on the fact that most of the discontented people of the colony were working and peasant Francophones.

The *Patriotes* asked for a responsible government, extended franchise and respect for the French language, among other claims. This eventually resulted in a pro-independence rebellion in 1867[60], parallel to another one (basically on the same grounds minus the cultural issues) in the largely Anglophone Upper Canada. Both rebellions were crushed, but in his subsequent report Lord Durham, Governor General of the Canadas, recommended that the demand for a responsible government should be met. However, he also recommended, for Lower Canada, an assimilationist approach based on Anglophone immigration and the unification with Upper Canada. Both Canadas were indeed unified in 1840 in what, according to Gagnon and Iacovino, was the first attempt to use constitutional politics in order to (re)design Quebec's society (2007: 30). They were re-divided in the Confederation of 1867 as Ontario and Quebec, provinces of the new Dominion of Canada. The Dominion remained within the British Empire, though enjoying self-government

[60] Curiously enough, the Declaration of Independence of Lower Canada was drafted, in French, by the Anglophone *Patriote* Robert Nelson.

which gradually evolved into complete independence, first *de facto* (in 1931) and, much later, *de iure* (in 1982). Quebec's borders evolved during the formation of Canada, consolidating into its current configuration in 1912.

After the defeat of the 1867 rebellion, the *Patriote* movement began to be substituted by a moderate, liberal nationalism articulated in the Quebec Liberal Party (QLP), on the one hand; and a conservative and ultramontane Catholic nationalist movement epitomized by Lionel Groulx, on the other. This last current was one of the main influences on the Quebec conservatives who converged, in 1935, in the *Union Nationale* (UN). Both the UN and the QLP presented themselves as defenders of a French-Canadian people which had its bulwark in Quebec, thus campaigning for provincial self-government and a vision of Canada as a union of two founding peoples (Anglophones and Francophones), with no secessionist claims. The Union Nationale's leader, Maurice Duplessis, became Premier and dominated Quebec politics between 1936-1939 and 1944-1959. This period became known as “the Great Darkness” (*Grande Noirceur*) by its critics, whom described it as an era of corruption, patronage, Catholic clericalism, and repression against the Labor movement. Duplessis' regime functioned due to a *de facto* repartition of power between the UN (over provincial politics), the Catholic clergy (over education, social services and public morality) and American and English Canadian-owned corporations (over Quebec's economy) (Keating 1996: 67; and Gagnon 1998: 76).

Duplessis died in 1959, and in 1960 Jean Lesage, Quebec's Liberal leader, became Premier. His premiership entailed a period of profound, sudden and peaceful changes in Quebec all through the 1960s, known as the Quiet Revolution: Quebec corruption and patronage networks were fought, a welfare state was put in place, society and

politics were modernized and secularized, and the provincial government started to develop a strong interventionist economic stance. This last trait was in part due to the Keynesian mindset of the era, but also to an explicit will to use the Francophone-dominated government in order to reverse the Anglophone economic hegemony in Quebec, under the slogan *Maîtres chez nous* (“Masters of Our Own House”) (Keating 1996: 91-94; and Gagnon 1998: 77). Along with this sort of economic nationalism, there also arose an increasing concern about the status of the French language in Quebec's society, which eventually led, in the 1970s, to the adoption of increasingly demanding legislation favoring a preeminent role for French language in different spheres, from business to public administration (Keating 1996: 85-91).

The Quiet Revolution also brought a significant shift in Quebec's nationalism, at least in its self-conception: from being a provincial expression of French-Canadian nationalism, it became a self-centered, Quebec territorial nationalism (Keating 1996: 71-80). From describing Quebec as a bulwark of the French-Canadian people, Quebec nationalists started to present the province as a “distinct society” or, more plainly, as a “nation”, whose cultural and linguistic backbone was built upon Francophone heritage, but whose national borders were not the ethnic ones of French Canadians, but the territorial ones of the province itself. This shift occurred during a time in which Canada was still being built as a country, abandoning its colonial heritage to embrace (and build) a distinctive national identity. Soon, Quebec and Ottawa political elites started to clash over a broad range of issues concerning economy, territory and identity. Ottawa tended to favor an increasingly centralizing as well as symmetrical view of Canada, while Quebec stressed the need for achieving special powers for the province as well as recognition of its cultural and social distinctiveness. Paradoxically, the main champion of

Ottawa's vision was the Francophone Quebecer Pierre Trudeau, who would eventually become Prime Minister, holding office almost without interruption between 1968 and 1979.

During the 1970s, the Liberal forces that triggered the Quiet Revolution eventually split into three factions: (1) federalist nationalists, who dominated the QLP and campaigned for a multinational vision of Canada, with special powers and recognition as a “distinct society” for Quebec; (2) sovereignists, who converged in the center-left Parti Québécois (PQ), which advocated for a “sovereignty” that ranged from full independence to independence plus some sort of economic association with Canada; and (3) status-quo federalists, a minority within the province and the QLP, but who dominated the Quebecer caucus of the Liberal Party of Canada (LPC), campaigning for a strong central government, a symmetrical and mono-national view of Canada, as well as a multicultural and bilingual nation-building project for the federation. The alliances between these factions have been variable since then: federalist nationalist and sovereignists have fairly coinciding views on linguistic policies, Quebec's national recognition and the defense of provincial self-government in the face of centralizing attempts in Ottawa, while both federalist factions (whether nationalist or status-quo) have always opposed the secessionist project of sovereignists.

Since this realignment of Quebec politics following the Quiet Revolution, the PQ has attempted secession on two different occasions. The first attempt, under the leadership of René Lévesque, ended with the sovereignist defeat in a referendum over the issue in 1980, in which 40% of the voters favored secession while 60% of them opposed it. After that referendum, in 1982, Pierre Trudeau “patriated” the Canadian constitution, which formally was still in the hands of Westminster, through an agreement between Ottawa and the provinces; an agreement from

which Quebec, as well as its aspirations of a special place in the federation, were excluded. Laforest (1995) has argued that this move was tantamount to the destruction of a "Canadian dream" of dualistic federalism, in which Canada was understood as being constituted by two peoples, namely French and English; a dualistic conception that was central, according to Laforest, to Quebec's own understanding of its place within Canada. Indeed, to this day, no Quebec premier, whether of the QLP or the PQ, has ever given his or her consent to the 1982 Constitution.

This feeling of alienation in Quebec was addressed by Henri Bourassa Liberal government of Quebec and Ottawa's cabinet led by the Progressive-Conservative leader Brian Mulroney, which was supported by many Quebec nationalist MPs. Both governments negotiated two consecutive constitutional agreements (Meech Lake in 1987, Charlottetown in 1992) giving special powers and recognition to Quebec. Both agreements failed[61]. These two failures triggered the formation of a strong sovereignist federal party, the *Bloc Québécois* (BQ), and led to the election of the hard-liner secessionist Jacques Parizeau (PQ) as Premier. Parizeau called for a second referendum on sovereignty, in which many polls predicted a victory for the "Yes" side; it was eventually defeated by strikingly narrow margin of around 55.000 votes. It was in this context that the Supreme Court of Canada was asked about Quebec's right to secede.

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[61] Meech Lake, conceived in 1987, was abandoned three years later due to the opposition of many actors, specially the aboriginal peoples, whose rejection of the accord was epitomized by Aboriginal Elijah Harper's filibuster against the accord in the Legislative Assembly of Manitoba. The subsequent Charlottetown agreement attempt was submitted to a referendum in 1992 and defeated both at a national level, in 1 of the 2 territories, and in 6 out of 10 provinces; one of them was Quebec itself.

3.4. The Quebec Secession Reference: a firewall against domination

3.4.1. Context and content of the Quebec Secession Reference

The narrow margin of the "no" victory in 1995, as well as the many polls predicting a victory for the “yes” vote, triggered the debate of what would have happened in the event of a “yes” victory. According to Dion (1995) the positions in this debate could be divided between two broad groups. On the one hand, he distinguished the *impossibilists*, for which the absence of a clear right of self-determination for Quebec, a likely economic crisis produced by the uncertainty of the referendum and the absence of a clear interlocutor that could speak in the name of the rest of Canada (ROC) would make negotiations on secession impossible, forcing Quebec sovereignists into a unilateral declaration of independence (UDI) which would not be recognized by Canada. This would lead to a contest between Quebec and Ottawa to assert their control over the province. Quebec would be unable to win, forcing the sovereignists to return to the bargaining table. In the process, Quebecers would realize that the “smooth transition” towards sovereignty would not happen, and this realization would lower support for sovereignty. This would be shown in a new referendum or in a federal election, in which a new anti-sovereignty Quebecer majority would nullify the “yes” victory, thus ending the secession process.

The second view on this debate was that of the *inevitabilitists*. According to them, Quebec's secession would be the inevitable outcome of the deep economic uncertainty following a “yes” victory. Such uncertainty would force the ROC to achieve a negotiated settlement with Quebec as fast as possible, and only the ROC's acceptance of the

inevitability of secession, under the lead of the federal government itself, would make such negotiation possible. As Dion recalls, both inevitabilitists and impossibilists assumed that a “yes” victory would have opened a period of economic and political uncertainty; the difference was that impossibilists focused on the effects that such uncertainty would have had over Quebec, while inevitabilitists' attention was mainly on the effects that it would have had over the ROC. I would say, more precisely, that each position was the result of a calculation of which of the two sides would be stronger in the face of such uncertainty, both in order to resist its negative effects and to harm the other side in that uncertain situation. Here we can see the instability and the "might makes right" logic that goes hand in hand with a legal void on right of secession.

It was due to this uncertainty that the federal government, in part pressured by the actions of Montreal lawyer Guy Bertrand (Sauvegau, Schneiderman and Taras 2004: 93-94), submitted the request of an advisory opinion of the Supreme Court on the following three questions: (1) under the Constitution of Canada, can the National Assembly, legislature, or government of Quebec effect the secession of Quebec from Canada unilaterally?; (2) does international law give the National Assembly, legislature, or government of Quebec the right to effect the secession of Quebec from Canada unilaterally? In this regard, is there a right to self-determination under international law that would give the National Assembly, legislature, or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?; and (3) in the event of a conflict between domestic and international law on the right of the National Assembly, legislature, or government of Quebec to effect the secession of Quebec from Canada unilaterally, which would take precedence in Canada?

This submission was part of the strategy of the Liberal cabinet at

Ottawa, led by Jean Chrétien, to prevent Quebecers from supporting sovereignty. Such strategy was divided between two lines of action, the so-called Plan A and Plan B. Plan A included effecting adjustments, whether constitutional or of other kind, in order to offer to Quebecers a renewed federalism which would reduce the appeal of sovereignty. Plan B, on the other hand, would try to convince Quebecers that secession would be a costly and almost impossible bid. The three questions submitted to the Supreme Court by Ottawa were part of this Plan B (Turp 2003: 168). Indeed, most people were convinced that the Court would play this game, plainly discrediting the idea that Quebec had any constitutional or international right to secede.

Thus, in a book written shortly before the release of Quebec Secession Reference and published shortly after, Young affirmed that the Court's decision would be a "critical element" of Plan B: "*no doubt this will be a carefully written and nuanced judgment, but it will very likely state that secession is illegal under domestic law unless accomplished through an amendment of the Canadian constitution*" (Young 1999: 127). We should notice that federalists were not discussing the legitimacy of the Quebec secession as such, but only the legality of *unilateral* secession. They didn't want Canada, some of they assured, to retain Quebec against the will of Quebecers: they only wanted to remove unilateralist threats[62]; we will later see how this is crucially important in order to understand the potential of the Reference in terms of containing domination by arbitrary permanent majorities. On the other hand, sovereignists denied the

[62] This was, for instance, the case of Yves Fortier in the first hearings before the Court. Fortier was a prominent Montreal lawyer and former Canadian ambassador before the United Nations. He assured Quebecers that the federal government was not going to force them to remain within Canada if they decided otherwise, but that the whole process must be conducted in accordance to Canadian constitutional order and the rule of law. (Sauvegau, Schneiderman and Taras 2004: 108).

legitimacy of the Court to rule on the matter, accusing the Court of having a pro-federalist bias, and asserting that Quebecers, as a people, had an inalienable right to decide their own future (Sauvegau, Schneiderman and Taras 2004: 105-107).

To the surprise of many, but as some keen commentators predicted (Sauvegau, Schneiderman and Taras 2004: 113), the Reference eventually appeared not to be the definitive constitutional blow against sovereignism that Ottawa sought and the sovereignists feared. Certainly, the Court denied Quebec the right of unilateral secession either under constitutional or under international law; and since no conflict was seen between those two legal bodies, the Court deemed it unnecessary to answer the third question. The originality of the Reference lied in the fact that, in addition to that denial of Quebec's right to unilaterally secede, it also denied Ottawa (and the ROC) the right to unilaterally ignore a democratic secessionist will, expressed by a clear majority of Quebecers in front of a clear question on secession. A clear "yes" victory should be followed, according to Quebec Secession Reference, by negotiations in good faith between Quebec and the ROC, in order to reach an agreement; an agreement which could naturally include secession, although the Quebec Secession Reference did not clearly specify to which point secession was a just a possibility or an almost sure outcome of that negotiation, as I will discuss in section 3.5.

The bulk of the reasoning of such a balanced reference lay in the answer that the Court provided to the first of the three questions. There, the Court stated that the Canadian Constitution is not only made up of words, but also of underlying principles (both written and unwritten). Based on constitutional text, jurisprudence and historical context, the Court listed four of those principles: (1) federalism; (2) democracy; (3) constitutionalism and the rule of law; and (4) protection of minorities.

These principles should not be viewed, the Court said, as independent of each other: their effect on the Constitution came from their interactions. According to these principles, Quebec could not claim a unilateral right to secede. However, should a clear majority of Quebecers answer “yes” to a clear question on secession, then we would not be looking at a secessionist minority in the context of a unionist Canadian majority; instead, we would have two democratic majorities with opposing agendas. This would allow Quebec's government to pursue a secessionist agenda (although not through a UDI), while obligating both parts to negotiate in good faith in order to find an agreed settlement.

Thus, the Court expelled the unilateralist positions of both sides from the field of what was constitutionally acceptable, while outlining an arena in which the reasonable aspirations of both parts could be expressed and pursued by peaceful and democratic means and, in the end, be negotiated with the other part. According to Requejo, this was tantamount to "*recognizing the legitimacy of the right to self-determination for the peoples of a multinational federation*", but regulating it "*from a federal rather than from a nationalist perspective*" (2005: 60). As a result, the two sides seemed to be pleased, generally speaking[63]. Thus, Chrétien (1999) stated that the Quebec Secession Reference was "a victory for Canada" since it declared that a unilateral declaration of independence was illegal, and that for a new referendum to be valid both the question and the "yes" majority were to be clear; while sovereignist Quebec premier, Lucien Bouchard (1999), saw the Reference as a defeat for the federal

[63] Of course, this was not unanimous. Some sovereignists thought that the Quebec Secession Reference placed Quebec's right of secession in Ottawa's hands (Legault 1999), while some federalists regarded the Quebec Secession Reference as a watered-down recognition of a right of secession for Quebec (Morton 1999). However, generally speaking, the Quebec Secession Reference was fairly well received, even by the PQ, which, as we have seen, expected a hostile reference to be combated in the arena of public opinion.

government, since it recognized Ottawa's obligation to negotiate secession in case of a "yes" victory.

As Young said, the Reference "*delivered something to each side*" (1998: 15); thus, the Supreme Court gained legitimacy as an impartial actor among initially reluctant Quebec sovereignists, while conserving it among federalists who would have been disappointed by an excessively generous stance of the Court towards secessionists. Thus, the Reference can be described as a balanced and moderate one, which has given Quebec a (quasi) constitutional right of secession. Now, the question is: to what extent is this constitutional right of secession, as outlined in the Quebec Secession Reference, a useful device in terms of overcoming the four threats for democratic republican goals that we have seen linked to secession conflicts?

3.4.2. Quebec's constitutional right of secession as a firewall against domination and exclusion

The threat which is most obviously confronted by the Reference is the *threat of instability*. As we have seen at the beginning of this section, the two most common diagnostics of what would have been the outcome of a "yes" victory in a referendum on secession were impossibilism and inevitablism. Both diagnostics were actually based on the prediction that a "yes" vote would be followed by serious political and economical instability. The Quebec Secession Reference provides an answer to what would (or, at least, legally should) happen after a "yes" victory: a process of negotiations in good faith between two distinct democratic majorities. As we will see in the next section, this solution is not problem-free; however, it is a step beyond the pre-Reference situation. On the other hand, concerning the *threat of blackmailing minorities*, the Reference

plainly addresses it by forbidding Quebec's right to unilaterally secede, which obviously undermines Quebec's capacity to blackmail the ROC by recurring to the threat of secession: if that secession were to occur, it would have to be through a negotiation conducted in good faith by both parts.

Concerning the *threat of exclusion*, the Reference implicitly addresses it in different ways. On the one hand, it points out an affirmative vote by “a clear majority of Quebecers” to a “clear question on secession” as the basic element that would create an obligation for Ottawa to negotiate with Quebec. Since the Court doesn't seem to equate “Quebecers” to “Francophone Quebecers”, the Reference counts therefore with a plebiscitarian element, thus avoiding any of the would-be residents of the independent country being excluded from the vote[64]. Besides, the Court explicitly includes the First Nations' interests among the ones that should be considered during those negotiations (269 and 288). Again, these provisions are not problem-free, but they are better placed to confront exclusion than the pre-Reference situation.

However, where the Quebec Secession Reference is most innovative is, in my view, when it comes to confronting the *threat of arbitrary permanent majorities*. We can see this by asking a counterfactual question: what would have happened in the case that the Reference had not included Ottawa's obligation to negotiate in the case of a "Yes" victory? Initially, it would seem that Quebec's secession would have been impossible, at least in legal terms: Quebec's unilateral right of secession would have been plainly denied, and so Ottawa would have been entitled to suppress any attempt by the government of Quebec to secede. However, we have seen federalists asserting that they did not want

[64] Sometimes, it has been argued that plebiscitarian secessions are also exclusionary, but I disagree (see chapter 2, pp. 57-59).

to retain Quebec within Canada against the will of Quebecers. They just wanted to remove the threat of unilateral secession from the table; thus, it seems that even without the Reference imposing that obligation to negotiate on Ottawa, nevertheless Ottawa would have negotiated with a secessionist Quebecer majority, had it been clearly expressed in a referendum. But then, what has changed after the Reference? Why was it so gladly received by those same Quebec secessionists who, like Bouchard, were initially so reluctant about the Court having a role in this matter?

The answer is that, in case of a "Yes" victory, without the Reference imposing that obligation to negotiate on Ottawa, the actual opening of those negotiations would have depended on the good will of Ottawa's federalists to maintain their promises. And, even in the case that Ottawa were to open those negotiations, it would have been in Ottowa's hands, legally speaking, to end them whenever it wanted. That is: Ottawa would have arbitrary power to deal with this conflict in the manner that it considered appropriate. In republican terms, Ottawa, or more precisely the federalist and Pan-Canadian nationalistic permanent majority controlling the federal government, would have *dominated* the permanent minority of (nationalist) Quebecers in a conflict that, actually, was just an ultimate phase of a broader conflict on economy, territory and identity between them. We must recall that domination, in republican terms, is not necessarily a synonymous of interference, but only of the *power* of someone to *arbitrarily* interfere with someone else. A dominated individual or group can be prosperous and respected despite that fact of being dominated. The fact that X has arbitrary power over Y does not mean that X will be cruel, oppressive or exploitative towards Y. We can understand this by recalling an extreme example pointed out by Pettit:

> I may be dominated by another—for example, to go to the extreme case, I may be the slave of another without actually being interfered with in any of my choices. It may just happen that my master is of a kindly and non-interfering disposition. Or it may just happen that I am cunning or fawning enough to be able to get away with doing whatever I like. (2002: 22)

Put in these terms, it could seem that domination is morally irrelevant unless the dominator chooses to actually interfere with the dominated. However, domination poisons any relationship between different actors in the benefit of the dominating one. This is so because both the dominator *and* the dominated know that, in the end, the latter is (totally or partially, in general or in a specific matter) at the mercy of the first one. Even if the dominator is kind, the dominated will be careful not to do anything that could bother the dominator so that this kindness might come to an end; and the dominator will know that, if he is being kind with the dominated, it is basically because he *wants* to, not because he *needs* to. A relationship of domination is thus poisoned by fear[65], which varies in strength with the power of the dominator to arbitrarily interfere with the dominated (which means that domination, and thus republican freedom, is a matter of degree).

Take, for instance, the case of the two Quebec referenda: in both cases, during the last days before the vote, the Prime Minister of Canada (Pierre Trudeau and Jean Chrétien, in each case) made imprecise promises of building "a new Canada", thus assuring that a "no" vote was *not* a vote for the status quo of the Quebec - Canada relationship. These promises are particularly significant if we take into account that those two PMs, despite

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[65] "(...) *in the absence of what would count, even by the most demanding standards of their society, as mere timidity or cowardice.*" (Pettit 2012: 84).

the fact of being native Francophone Quebecers, were actually Pan-Canadian nationalists, frontally opposed to the recognition of Quebec as a nation within Canada, to the notion of Canada being a state of two constituent nations, or to giving Quebec special powers; all of these demands were shared by a qualified majority of Quebecers, whether sovereignists or federalists, since at least the years of the Quiet Revolution. Whether those promises were fulfilled or not in the sense that most moderate Quebec nationalists would have liked is quite another thing (and clearly, it was not the case of Trudeau's 1982 constitutional patriation), but it is reasonable to assume that such promises would never have been made without the threat of Quebec leaving Canada.

Had the Court plainly denied Quebec any right of secession, there is no reason to think that Ottawa would have started to behave as an oppressive, uniformistic and centralistic government. But it *is* reasonable to assume that any new constitutional negotiation on the status of Quebec within Canada would have been conducted from the perspective that, in the end, Quebec would have had no option (at least in constitutional terms) but to take what Ottawa was willing to give, or to leave empty-handed. That is: in the conflict between the permanent minority of Quebec nationalists (a permanent majority in Quebec) and the permanent majority of Pan-Canadian nationalists in the Rest of Canada (ROC) on how to organize economy, territory and identity in Quebec and Canada, Pan-Canadian nationalists would have been, to a large extent, dominating the Quebec ones. And the normal devices of modern democracies that could be seen as protecting people from domination (separation of powers, the rule of law, universal suffrage, free elections, multi-party competition, individual rights, even federalism) would have left this relationship of domination largely untouched. This is how the threat of arbitrary permanent majorities looks like.

On the other hand, had the Court plainly asserted that Quebec had the right to unilaterally secede, a relationship of domination could have emerged in the opposite direction, due to the threat of blackmailing minorities. And had the Court refrained from ruling on the issue, the threat of instability (and hence, of a "might makes right" scenario) would have been left in place. By forbidding each side of the conflict to pursue its goals without taking into account the interests and views of the other side, the Quebec Secession Reference minimized the chances of each side dominating the other one. This does not mean that the issue of secession (and, generally speaking, the Quebec - ROC issues) was to have "no winners or losers", but rather that whoever was to be the winner would *need* to take into account the interests and views of the loser in order to enjoy the fruits of its victory. At least, if he wanted to win within the framework of the Canadian constitution as interpreted by the Court. And, provided that this framework, so interpreted, appears to be fair and reasonable to both sides, it would be difficult for any of them to unilaterally break with it and at the same time appear as a reasonable and fair player in the face of public opinion, either domestic or international; a cost in terms of political legitimacy which is briefly pointed out in the Reference itself (272-273).

Thus, it seems that the Quebec Secession Reference, and the constitutional right of secession it outlines, acts as a firewall against exclusion, domination and instability in the Quebec secession conflict and, broadly speaking, in the Quebec - ROC conflict on the definition of Canada in terms of economy, territory and identity. However, the Reference left an important number of issues open and unresolved due, not to negligence by the Court, but to its explicit will to refrain from playing a political role in the conflict, preferring only to define the general limits and rules that the political actors should observe within the limits of

the Canadian constitution. Those unresolved issues are cracks in the anti-domination firewall raised by the Court. Let us have a look at them.

3.5. Cracks in the firewall: the unresolved issues of the Quebec Secession Reference

There are at least six great unresolved issues in the Quebec Secession Reference: (1) *lack of clarity in concluding whether Quebec has a constitutional right of secession or not*; (2) *what is a clear question?*; (3) *what is a clear majority?*; (4) *what should be considered as "good faith" by the actors during a negotiation after a "yes" victory in Quebec?*; (5) *would Quebec retain its current borders in the event of secession?*; and (6) *who would be the arbiter of the whole process?* As we will see, the last one is the main crack the Reference reveals when assessed as a firewall against domination.

Concerning the *first unresolved issue*, we should notice that the Quebec Secession Reference, while typically considered as recognizing a sort of (quasi) constitutional right of secession for Quebec, nevertheless contains some assertions that could blur this point. It says that it would be mistaken to consider that, in case of a "yes" victory in a Quebec secession referendum, the ROC would have no choice but to negotiate the logistical aspects of secession (266); negotiations should follow, and secession should be considered as an option, but it should not be a necessary outcome. However, other parts of the Reference seem to imply a stronger obligation by the ROC to negotiate secession in the event of a "yes" victory: "*the negotiations that followed such a vote would address the potential act of secession as well as its possible terms should in fact secession proceed*" (221).

The Court was well aware of this lack of clarity, and it said that it

was rejecting at the same time two "absolutist propositions": (1) that a "yes" victory would create the obligation of the ROC to accept Quebec's secession (with the only right to negotiate its details); and (2) that such victory would create no obligations at all on the ROC (266-268). The Reference tries to reconcile the rejection of both propositions by re-asserting the need of both sides to negotiate (268). However, the question persists: should they negotiate Quebec's secession, taking into account the legitimate interests of the ROC? Or should they negotiate Quebec's place within Canada, taking into account both the will of Quebec to secede *and* the will of the ROC to avoid secession? As I said, the Reference is normally regarded as acknowledging a constitutional right of secession for Quebec (Buchanan 2004: 338; Weinstock 2001: 195-196; Norman 2006: 176-177) and, in fact, if a "yes" victory in a referendum on Quebec's secession were to create a constitutional obligation for the ROC to negotiate with Quebec, it would be strange to assert that the main issue at stake would be something other than secession. Nevertheless, this lack of clarity persists, and should not be overlooked.

A *second unresolved issue* is the clarity of the question in a referendum on secession. Though unresolved, it is relatively uncontroversial, at least theoretically: it is easy to see that the questions of the two Quebec referenda were at least complex[66], while (for instance) the question asked in the recent Scottish referendum on independence was quite clear and simple[67]; though, of course, it is a matter of controversy to determine who should, in practice, be the judge of that clarity, which has

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[66] The first one contained 108 words, and it did not ask about independence as such, but about an agreement giving political "sovereignty" to Quebec while remaining in an "economic association" with Canada. The second contained 48 words, and again it didn't ask about independence, but about "sovereignty" and "economic partnership" with Canada.

[67] It contained 6 words, and it directly asked about Scottish independence.

to do with the sixth unresolved issue (the arbiter). We will get back to that point later.

More controversial is, of course, the *third unresolved issue*: what is a clear majority? It has a *quantitative* dimension and a *qualitative* one. *Quantitatively*, it has to do with the percentage of the "yes" vote that would be considered as "clearly" forming a majority, either over the electorate or over the voters (i.e. taking or not taking into account the turnout). Quebec secessionists tend to favor a lower threshold, normally fifty-plus-one of the voters, arguing that if is problematic for a fifty-plus-one to impose its will over a fifty-less-one, then the opposite should be even more problematic[68]. Federalists tend to favor a higher threshold, regarding secession as a particularly serious case of constitutional reform which, like any other serious case, cannot be decided by a slight majority. The *qualitative* issue is even more problematic: should a quantitative majority of all Quebecers (even a qualified majority) be enough to consider the "yes" as a clear winner? Or, considering the demographic composition of Quebec (with Anglophone and Aboriginal minorities, normally opposed to independence) should we also require a certain percentage of non-Francophone minorities to support secession? And what if such percentages are not reached but the majority of Quebecers favoring secession (regardless of their ethnic or linguistic affiliation) is actually huge?

A *fourth unresolved issue* has to do with the nature of negotiations. Here, the Court listed most of the issues that can reasonably be expected to be negotiated should Quebec secede from Canada, from

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[68] Some scholars also recall that it is not that uncommon to decide important territorial changes through fifty-plus-one-or-so majorities. According to Turp, "*Newfoundland joined Confederation* (on its third try) *with 52% of the valid votes cast*" (2003: 173).

national debt to minority rights (269). And, as we have seen, the Reference implies that, should one of the actors reject negotiations, it will be breaking its constitutional obligations under a fair and reasonable interpretation of the Constitution, thus incurring huge costs in terms of legitimacy, both domestically and internationally. However, there are many ways of rejecting a negotiation while apparently trying to negotiate: one can, typically, put on the table a number of unreasonable demands as "unwaivable" knowing that the other side will never accept them (e.g. concerning the share of the national debt that each side should assume). This is the reason why, in case of a clear "yes" victory, the Reference imposes on both sides the obligation of negotiating "in good faith". However, who is the judge of "good faith"? Who decides which demands are "reasonable" and which are not? And what if negotiations happen to fail? Would any of the actors, in that case, have the right to unilaterally pursue its agenda? All these questions lead us again to face the issue of the arbiter.

But before exploring that last unresolved issue, let us have a look at the *fifth one:* would Quebec retain its current borders after secession? In the Canadian public debate, this is known as the debate on the *partition* of Quebec. It achieved particular prominence around the 1995 referendum, though its roots can be traced to the foundational years of the modern Quebec secessionist movement. Thus, in 1976, less than a year before the first provincial victory of the PQ, William Shaw, a conservative Quebecer politician, publicly suggested that Quebec could be partitioned in the event of secession (Shaw and Albert 1980: 22). This idea was echoed by Trudeau during the campaign for the 1980 referendum, when he famously stated that "*if Canada is divisible, then so is Quebec*", since then the motto of the partitionists. Needless to say, partitionists are almost always federalists (particularly, status-quo federalists), and anti-partitionists are

almost always sovereignists. The reasons of both sides can be classified in two groups: *legal* and *democratic* ones.

Legal arguments try to defend or oppose partition by asserting that the partition of Quebec is either implied or forbidden in some legal framework to which Quebec should comply. For instance, it could be argued that the original territory of Quebec was extended with the Confederation, and that it should be consequently reduced were Quebec to secede (Radan 2003). Or it could be argued that the territorial integrity of Quebec as a province is protected under Canadian constitutional law, and that it would remain protected under international law should Quebec become a state (Franck, Higgins, Pellet, Shaw and Tomuschat 1992). I will not discuss here the strong and weak points of each side, for my aim is not to discuss the constitutional right of secession of Quebec in its legal aspects, but in its normative (ethical-political) dimension. And, in the end, laws, treaties and other juridical rules, while legally relevant, are not self-sustainable in normative terms. It is here where democratic arguments become relevant.

"*If Canada is divisible, then so is Quebec*" normally means is that, if a majority of Quebecers favoring secession from Canada is enough to justify secession, then a majority of inhabitants of any part of Quebec can also invoke the same principle in order to secede from Quebec. An extreme application of this principle would say that, in case of a "yes" victory in a referendum in Quebec, those parts of the province in which a majority of the inhabitants voted "no" would have to remain within Canada after Quebec's secession. However, this is misleading: one thing is to vote "no" to Quebec's secession, and quite another one is to vote "yes" to secede from Quebec in order to remain within Canada; just as much as one thing is to vote "yes" to Quebec's secession and quite another one is to vote "yes" to create an independent Quebecer state within those parts of

the province which happened to vote "yes" in the event of a "no" victory in the province. And if we take into account the strong national Quebecer sentiment which is widespread among Francophone federalists almost as much as among secessionists, it is reasonable to expect that most Francophone federalists will oppose Quebec's secession without nevertheless supporting Quebec's partition.

Quite another thing is to consider what would happen in those territories inhabited by a majority of non-Francophones within Quebec. Basically, there are two particular cases usually taken into account in this sense: (1) territories inhabited by an Anglophone majority; and (2) territories inhabited by an Aboriginal majority. For the sake of space, I will focus on the case of Aboriginals, for I regard it as normatively far more relevant for this debate[69]: they inhabit the vast and economically important region of Northern Quebec, full of some of the most important natural resources of the province; they are a minority within Quebec just as Quebecers are a minority within Canada; and they have hundreds of years of history of defending their cultures and self-government within Quebec and Canada.

However, if Quebec is divisible because Canada is divisible, it follows that Quebec would be divisible under the same terms as Canada. That means: there should be a clear majority of Northern Quebecers (whether Aboriginal or not) answering "yes" to a clear question on secession of Northern Quebec from the rest of the province (whether to

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[69] Anglophones are concentrated in extremely small enclaves (particularly within Montreal), they are a permanent majority within Canada, and they have never expressed any will of self-government within Quebec (as a permanent majority in federal terms, they probably never felt the need). Normatively speaking, all this doesn't dismiss, *per se*, a potential Anglo-Quebecer claim for secession, but I think that the Aboriginal question is more difficult to dismiss on any ground that could not be equally applied to dismiss Quebec secessionissim; therefore, for the purposes of this article, is far more illuminating.

remain within Canada or to became independent), and after that "yes" victory, then negotiations should follow between Quebec and Northern Quebec (and the ROC?) in which the legitimate interests of each side (e.g. concerning the natural resources of Northern Quebec) should be taken into account in good faith by the other side. Moreover, following this line of applying the logic of the Reference to Northern Quebec, then we will again encounter all the unresolved issues that we have already seen. And, interestingly, we would probably find that if Quebec is divisible under the same terms that Canada is, then Northern Quebec is divisible under the same terms that Canada and Quebec are[70].

Here, a prudent point of view could regard all this as madness; as the demonstration of one of the evils that a too permissive approach to secession is expected to promote: *secessio ad infinitum*. Or, as it is sometimes known, balkanization. However, we have reasons to consider this risk as unlikely: people tend to be risk averse, and there is evidence showing that only a limited range of groups with some sort of "ethnic" or "national" identity show a relevant share of its members as supporting secession (Sorens 2012: 52-56)[71]. Indeed, there is also some evidence that the existence of a legal path towards secession tends to promote a peaceful and stable development of secession conflicts (Sorens 2012: 112-138) and the promotion and protection of self-government agreements (Sorens

[70] This is not a minor conclusion: while inhabited by an Aboriginal minority, Northern Quebec also has a 40% non-Aboriginal population, a majority of whom are Francophone Quebecers. We can see the importance of this demographic composition when we recall that, in 1995, nearly 47% of the voters in Ungava (the electoral district covering Northern Quebec) supported the "yes" side.

[71] Examining over 283 ethnonational groups, Sorens found that, in 2003, only 38% of those groups had secessionist organizations, without those organizations necessarily having the support of a majority of their ethnonational target group. It is even more undermining for the *secessio ad infinitum* fear when we recall the broad concept of "secessionism" used by Sorens: "*I define 'secessionism' broadly to include movements that aim at substantial territorial autonomy for a minority group and do not rule out independence in the future*" (2012: 5).

2012: 139-152). This, in fact, is one of the core expectations of the republican tradition concerning factional conflicts: whenever they are channeled through institutional devices which force all sides to take into account the rival factions' interests and views, then peace and stability follow. And yet, this fifth unresolved issue, as well as the four previous ones, casts a shadow over the potential of the Quebec Secession Reference to control domination (either by blackmailing minorities or by arbitrary permanent majorities), exclusion and domination in the Quebec secession conflict.

One possible answer to these five unresolved issues is considering them as actually unsolvable, at least in theoretical terms. What is a clear majority and even a clear question can vary in time; the borders of an independent Quebec would be one of the issues at stake in a post-"yes" victory negotiation; and so on. In fact, this seems to be the approach of the Supreme Court of Canada: there is no option but to leave the resolution of all these issues to the political actors. But if we are going to deal with these issues on a contextual basis, then it is imperative to know who would be the arbiter that would eventually monitor the resolution of them. Here, the Quebec Secession Reference remains as silent as on the other five issues. And here we have the *sixth* and final unresolved issue.

Unsurprisingly, soon after the Reference was issued, this became a new matter of controversy between Ottawa and Quebec. Thus, in 2000, the Parliament of Canada passed the so-called Clarity Act, sponsored by Liberal Minister of Intergovernmental Affairs, Stéphane Dion. The Act put into the House of Commons the power to assess the clarity of the question in a referendum on secession before the vote, as well as the power to assess the clarity of the "yes" majority (had the "yes" won) after the vote. The Act required as well the implication of Aboriginals in the negotiations which were potentially leading to secession, and stated that Quebec's

secession would require an amendment of the Canadian constitution. In Quebec, both federalists and sovereignists denounced the Act (Gagnon and Hérivault 2008: 178). Thus, in angry reaction, a PQ-dominated National Assembly of Quebec (NAQ) passed, two days later, the so-called Bill 99, which gave the people of Quebec (presumably, through its representatives in the NAQ) the sole power to unilaterally define how to exercise their right to decide their political status (including sovereignty), as well as putting the threshold for a clear "yes" victory in 50% of the votes plus one.

So the Canadian Parliament defined itself as the arbiter of any new Quebec referendum on independence, both in its process and in its results; while the National Assembly of Quebec claimed this role for itself. So in the end, it seems that the Quebec Secession Reference just returned the problem to its starting point: to the impossible task of locating the "subject of sovereignty". Was it to be Canada as a whole, then naturally the federal institutions would be the most natural choices to be supervisors of a negotiation on Quebec's secession; was Quebec the sovereign, then the NAQ should be the one charged with the arbiter's job. And in both cases, the answer will be based on a mixture of historical, cultural and legal arguments that, in the end, will run into the same normative *cul de sac* in which all claims of sovereignty fall[72] when we try to use them in order to manage secession controversies. The greatness of the Quebec Secession Reference was, precisely, that it refused to choose a winner on a who-is-the-sovereign controversy, preferring instead to force both sides of the controversy to democratically compete and, eventually, negotiate, instead of unilaterally pursuing their agendas by means of the "might makes right" logic.

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[72] See chapter 2, pp. 54-56.

Unfortunately, by prescribing a sequence of competition and negotiation while avoiding a clear definition of who the arbiter was to be, the Court left those five previous issues not only unresolved, but *unresolvable;* at least, if we want their resolution not to rely on a "might makes right" logic, whose removal made the Quebec Secession Reference interesting (in democratic republican terms) in the first place. In my view, this round-trip journey from domination to domination is caused by the fact that the Reference, while designing a useful anti-domination firewall based on a recognition of a "soft" right of secession for Quebec, is nevertheless limited to the framework of the Canadian constitution: national constitutionalism, when applied to secession conflicts, inevitably leads to who-is-the-sovereign controversies. Thus, the Reference let us, in the end, face to face with precisely the controversy that the Court wisely decided to not resolve in favor of any of the involved parties. So it seems that, in terms of preventing domination, exclusion and instability in secession conflicts, the Reference designs the right device only to put it in the wrong locus. This, however, doesn't imply that a democratic republican approach to secession should totally reject the Quebec Secession Reference. It may, on the contrary, ask: *what if we retain the device while changing its locus?*

3.6. Secession beyond borders: the need for an international approach to secession conflicts

That last question can be divided between two sub-questions: (1) *is it possible?*; (2) *is it desirable?* Concerning the first one, I think we can discuss the usual synonimization between the notions of "constitutional", "consensual", "negotiated" and "non-unilateral" right of secession, on the one hand; and between the notions of a "moral" and a "unilateral" right of

secession, on the other hand. To begin with, we can actually distinguish between "consensual" (i.e. when the host state is not fundamentally opposed to secession, e.g. Serbia/Montenegro) and "negotiated" or "non-unilateral" ones (i.e. when the host state is opposed to secession, but accepts negotiating it as a result of a democratic process, e.g. UK/Scotland). In the second place, the fact that a right of secession happens to be "constitutional" or "non-constitutional" doesn't tell us anything about its unilateral, consensual or negotiated/non-unilateral nature, and vice versa. We can think of a moral right to a non-unilateral secession, while preferring not to constitutionalize it, or of a constitutionalized unilateral right of secession. The fact that practically all actual cases of constitutional right of secession have been non-unilateral or consensual in nature is an empirical matter, not a theoretical need.

The Quebec Secession Reference, in this sense, confers upon Quebec a *constitutional right to a non-unilateral secession*. We have examined it in order to find out whether it would be useful to defend its adoption in other modern democracies, in order to provide them with a device to minimize the normative threats that secession conflicts pose in democratic republican terms. And if we find, as I think we did, that in those terms the non-unilateral nature of Quebec's constitutional right of secession is useful, while its limitation to constitutional law is problematic, then it makes full sense to think about the possibilities of a non-unilateral right of secession outside national constitutional frameworks.

Concerning the second sub-question, it could be useful to point out the deepest roots of the original problem which we wanted the Quebec Secession Reference to solve: the shortcomings of current TRS in terms of minimizing domination, instability and exclusion in secession conflicts.

As I have argued in chapter 2[73], my view is that this common weakness has a common origin: explicitly or implicitly, almost all TRS link the right of secession to some previous idea of who is the sovereign people, the *demos* of democracy. In this sense, the Quebec Secession Reference goes a step beyond all TRS. Unlike unilateral TRS and its constitutional derivatives, it does not start by choosing an *a priori* winner of the who-is-the-sovereign contest, preferring instead to describe a "yes" victory in a secession referendum as creating a conflict between two legitimate democratic majorities (a provincial one and a federal one). Unlike pragmatic constitutional TRS, the Reference is not only based on prudential reasons, but on principled ones, which allows the Court to tell us what would happen in case that one of the two sides of the conflict chose not to comply with the Court's constitutional view on secession: it could lead to a situation in which the other side would appear, in the eyes of the world, as legitimated to unilaterally pursue its agenda in the face of an unfair and unreasonable rival.

However, as we have seen, this reasonable framework fails to designate an arbiter to supervise this democratic conflict, which in the end means leaving the two sides to compete over who is strong enough to become the arbiter: a new version, indeed, of the who-is-the-sovereign controversy. It seems that we are trapped in a theoretical circle: as soon as we try to design a framework to minimize domination, exclusion and instability in a controversy over one particular feature of sovereignty, we fall into a controversy on another of its particular features. At least, this happens as long as we limit the scope of our designs to the framework of (national) constitutionalism. Constitutionalism, as any other theory of the state, is based on the assumption that the borders of the sovereign people

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[73] Pp. 54-56.

are given (and, more often than not, that those borders coincide with those of the state). This is why all theories of the state (including republicanism) fall into difficulties when they try to deal with the most extreme who-is-the-sovereign controversies: secession conflicts.

In my view, a way for democratic republicanism to escape from this circle of perplexity is to adopt an *international approach to secession*. Wherever secessionists happen to be a majority within their self-described homeland, their conflict with the host state is normatively more comparable to a conflict between states for the control of a contested territory than to a conflict between domestic factions for the control of the government. Thus, its natural place is within the realm of international and/or universal moral law, rather than in the realm of constitutionalism. Constitutions do not discuss who is the sovereign people: they presuppose it. And, as we have seen, there does not seem to exist any theoretical reason to think that the right to a non-unilateral secession described in the Quebec Secession Reference can only be thought to be a constitutional one.

This is not to say that such a right *should not* be introduced into modern democratic constitutions; I mean that *it is not enough* to defend the inclusion of a non-unilateral right of secession in democratic constitutions. Without its entrenchment within international law, the application of a non-unilateral right of secession will always be arbitrated by the strongest faction in each concrete secession conflict, which more often than not will happen to be the unionist one (since they will normally be in control of the government of the host state). This is comparable to what happened to the notion of human rights: initially a moral concept which was supposed to be protected by every modern democratic constitution, it ended up being entrenched in international law in order to provide a legal framework and common arbitrage to all states (whether

this has been more or less effective is another story). Thus, nowadays all modern democracies subscribe (at least in theory) to the Universal Declaration of Human Rights, while each country gives to these rights a different level of constitutional recognition, related to each one's circumstances and political tradition.

The task of developing this international, democratic republican version of the Quebec Secession Reference is quite another one, of course, exceeding the purposes of this article. In order to fulfill that task, I will devote the next chapter of this dissertation to undertaking the following two sub-tasks: (1) to outline, with some detail, an internationally entrenched right to a non-unilateral secession which could act as the normal practical framework to handle secession conflicts; and (2) to specify under which concrete conditions any side of those conflicts would be allowed to act out of that framework and unilaterally pursue its goals. Needless to say, there is no assurance that these tasks will necessarily be fulfilled successfully. In the end, this attempt to escape from the circle of perplexity on sovereignty may prove to be hopeless, which would mean that the issue at stake was normatively intractable and that it can only be left to the "might makes right" logic or, at best, to some form of *modus vivendi* as suggested by pragmatic constitutional TRS. I think, nevertheless, that the nature of secession conflicts, particularly prone to triggering domination, exclusion and instability, makes undertaking this theoretical effort worthwhile.

3.7. Conclusions

The opening question of this article was "*to what extent can a constitutional right of secession be useful in order to minimize exclusion and domination (understood in democratic republican terms) stemming from secession conflicts in modern democracies?*". Through an

examination of the Quebec Secession Reference (which recognized a constitutional right of secession for Quebec) from the democratic republican approach developed in chapter 2, I have come to the conclusion that this Reference designed a useful device in democratic republican terms, while putting it in a problematic locus. The Reference not only recognized a constitutional right of secession for Quebec, but a constitutional right to a *negotiated/non-unilateral* secession. It denied Quebec the right to unilaterally secede, but it also denied the ROC the right to unilaterally ignore a clear majority of Quebecers asking for secession. Thus, it created for both sides the obligation to resolve the controversy by negotiating in good faith, therefore minimizing the threats of domination (either by blackmailing minorities or by arbitrary permanent majorities), exclusion and instability.

However, the Reference also left an important number of unresolved issues about the shape and content of this potential sequence of referendum plus negotiation, without ever defining who would be the arbiter of the resolution. The fact that this right to a non-unilateral secession was placed within the boundaries of constitutional law meant that selecting the arbiter would imply a new who-is-the-sovereign controversy, with Quebec and Ottawa fighting to assume this role. And this returned the problem to the "might makes right" scenario whose removal made the Reference interesting (in democratic republican terms) in the first place. If we take into account that both Quebec and Pan-Canadian nation-building projects are comparatively flexible and reasonable, this means that any attempt to apply the Reference logic to other modern democracies, in order to manage secession conflicts according to democratic republican principles, will probably be doomed from the very beginning.

My last conclusion, concerning this *cul de sac*, is that we should

explore the possibility of overcoming it by retaining the innovative device of the Quebec Secession Reference (non-unilateral secession) while changing its locus (constitutional law) to a new one (international law). Thus, I think that the democratic republican approach summarized in chapter 2 (in which secession conflict is conceptualized as a factional conflict) could be better developed from an international perspective, which instead of designating *a priori* winners and losers in who-is-the-sovereign controversies, would design rules and institutions in order to channel these controversies in civilized and non-dominating ways. To find out whether such a democratic republican and international approach to secession is possible and desirable is a task I have started to explore in the last part of this chapter, but which I will fully develop in the next one, where I hope to outline a new TRS, better suited to managing the threats of exclusion, domination and instability linked to secession conflicts.

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4. CREATING NEW REPUBLICS. A DEMOCRATIC REPUBLICAN THEORY OF RIGHT OF SECESSION

4.1. Introduction

The purpose of this article is to answer the following question: *which kind of right to secede from a modern democratic state, if any, can be acknowledged from a democratic republican point of view?* By answering this question, I hope to make a contribution both to republican literature (in which secession has hardly even been analyzed) and to normative literature on secession (in which liberalism has been the main normative background). My answer relies, *firstly*, on a negarchist[74] understanding of democratic republicanism, and particularly on Pettit's work (1997 and 2013), in which freedom as non-domination is seen as the core value (or one of the main ones) of the republican tradition; and, *secondly*, on the findings I have presented in the two previous chapters, also built on that understanding of republicanism: (1) an analysis of the normative relationship between democratic republicanism and current TRS[75]; and (2) an exploration, through a normative case study of Quebec, of the extent to which a constitutional right of secession can be useful in minimizing exclusion and domination stemming from secession conflicts in modern democracies[76].

In chapter 2, I have shown: (1) how secession conflicts are normally the ultimate stage of factional conflicts between central permanent majorities and peripheral permanent minorities, in terms of

[74] See chapter 1, pp. 12-14.
[75] See chapter 2.
[76] See chapter 3.

economy, territory and identity[77]; (2) how those conflicts imply risks for democratic republican values, concretely in terms of *exclusion*; *domination by blackmailing minorities*; *domination by arbitrary permanent majorities*; and *instability;* and (3) how no current TRS (whether unilateral or constitutional) seems to be completely satisfactory in dealing with those four threats. In chapter 3, on the other hand, I have found (through a normative analysis of the case of Quebec): (1) that a non-unilateral right of secession is a good device in order to manage those threats; (2) that, in order to be effectively exercised, it inevitably needs an arbiter; and (3) that limiting this right to constitutional law turns choosing that arbiter into a who-is-the-sovereign controversy, subject to the profoundly anti-republican "might makes right" logic; and (4) that we could retain Quebec's innovative device (non-unilateral secession) while changing its locus (constitutional law) to a new one (international law).

Taking those findings as a starting point, I have developed a democratic republican TRS, focused on the international system[78] instead of being limited to national institutions. The core of this TRS is *the recognition of a multilateral right of secession, under the rule of international law, for any democratic secessionist community*[79] *within a modern democratic state*, meaning that those communities would have the right to express their secessionist will and to pursue it by non-unilateral means; symmetrically, *the democratic host state would have a non-unilateral right to pursue the preservation of its unity*. The international democratic community would monitor and arbitrate secession conflicts in

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[77] See chapter 1, p.23, footnote 15.

[78] I use the term "international system", instead of only using the narrower "international law" (contained within the first one), because I am not only interested in what the law (whether customary or treaty law) should say, but also on the institutional design able to ensure its rule on the matter.

[79] For a definition of "democratic secessionist community", see chapter 1, p. 6.

modern democracies within this framework. The article presents this theory along the following five sections: (1) an overview of republican international thought, coupled with an overview of the regulation of secession conflicts in the international system, and an assessment of its compliance with my democratic republican approach to those conflicts; (2) the presentation of my democratic republican TRS as such, including the definition of the main concepts on which it relies; (3) a discussion of foreseeable criticisms of the theory; (4) an exploration of a realist, gradualist path to its institutionalization in the international system; and (5) a summary of my conclusions.

4.2. Republicanism, the international system and secession

4.2.1. International republicanism and secession

This chapter is based on the democratic republican approach to secession developed in chapter 2. According to it: (1) "freedom" means "non-domination"; (2) domination means vulnerability to arbitrary power; (3) one of the main goals of institutional design is to ensure the most robust possible freedom to all citizens; and (4) one of the key elements to minimize domination is to minimize the threat of factional takeover in any political conflict, including secession ones. This approach is based on negarchist republicanism[80], and particularly on Pettit's work (1997 and 2003). However, since I want to link my democratic republican TRS to the field of International Thought, it is necessary to explore what, if any, have been the contributions of the republican tradition to it.

International Thought is an umbrella concept under which we can

[80] See chapter 1, pp. 12-14.

find two disciplines: International Relations (IR) and International Law, respectively. While the first one analyzes the international system from the point of view of Political Science, the second one is a subfield of the broader discipline of Law. Both are concerned, nevertheless, with studying the international system, whose main elements are states (and, by implication, their citizenries), while also observing the growing importance of non-state, non-domestic elements, whether private (e.g. churches, transnational corporations, terrorist organizations or NGO's) or public (e.g. the United Nations, the World Bank or the IMF)[81]. The structure of this system is, indeed, formed by these same public international bodies, as well as by international law. And, as in any other political system, the glue that binds this structure is *power*. And where there is power, republicanism has a concern: to minimize the existence, and extent, of *arbitrary* power.

However, republicanism has not been a major, identifiable force in contemporary International Thought. The republican revival that has arisen since the 1970s has been applied to many fields of political and legal thought (from theories of democracy to theories of justice or crime and punishment), but International Thought has certainly not been the most prominent one. Nevertheless, a few republican scholars have been making significant contributions in this field. Most of them can be placed between history of ideas (by trying to "recover" a republican tradition of International Thought, or those elements of republicanism present in contemporary schools of International Thought) and normative (political and legal) theory (by trying to apply that tradition, or those elements, to

[81] This is, indeed, controversial. According to traditional Realists' views (largely dominant in IR), states are practically the only actors in the international system, due to their sovereign condition. However, I think it is increasingly difficult to deny the role of non-state actors, as well as of domestic citizenries (particularly in democratic countries) in international politics.

current concerns in International Thought). Just like other republican scholars, not all these authors share Pettit's view of republicanism[82]. However, we can see many of them sharing, at least to some extent, Pettit's conception of freedom and his reconstruction of the republican tradition (Deudney 2008; Sellers 2006; Besson 2009; or Cheneval 2009).

In any case, republicanism is far from reaching the influence of the two dominant traditions of thought in International Relations: Realism and Liberalism[83]. Realism is a broad range of ideas and currents in IR, that share a common view of the international system as an anarchic one, in which states are rational actors seeking their own interest, rather than the fulfillment of further ethical principles. A good summary of the common features of all realist schools is the one provided by Wayman and Diehl (1994: 5). According to them, realists state that: (1) the international system is anarchic; (2) states pursue their national interests, conceived in terms of power; (3) states are fearful of conquests by other states, leading them to build up national capabilities (e.g. armament) and to form coalitions, especially in the face of revisionist states (i.e. states willing to use violence to overthrow the status quo, e.g. Nazi Germany or Imperial Japan before World War II); (4) we must be skeptical of international law, international organizations and ideals attempting to transcend nationalism (e.g. communism, world brotherhood or environmentalism); (5) balance of power (in the face of revisionist states) is the main goal of national policies, in order to preserve national independence.

Liberalism, on the other hand, departs from this plainly anarchic

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[82] Onuf (1998), for instance, works within a "communitarian" version of republicanism, in which freedom and the common good are synonymous to active participation in public life.

[83] Though dominant, they are far from being the only ones: constructivism, Marxism or, of course, republicanism, have all made distinctive and significant contributions to the field of IR.

view of the international system. According to Moravcsik (1997), International Liberal schools share three basic assumptions: (1) *primacy of societal actors*, i.e. the basis of politics is individuals' and groups' pursuit of their material and ideal welfare, it being liberalism's concern to discover the conditions "*under which the behavior of self-interested actors converges toward cooperation or conflict*" (Ibid: 517); (2) *representation and states' preferences*, i.e. "*states (or other political institutions) represent some subset of domestic society, on the basis of whose interests state officials define state preferences and act purposively in world politics*" (Ibid: 518); and (3) *interdependence and the international system*, i.e. state behavior reflects varying patterns of state preferences, but those preferences are not only a function of domestic dynamics, but on the contrary each state "*seeks to realize its distinctive preferences under varying constraints imposed by the preferences of other states*" (Ibid: 520). These three assumptions found liberals' confidence on the role of international organizations, their emphasis on international interdependence rather than on international anarchy, and their study of the effects of the political organization of each state based on its foreign policy.

Moravcsik speaks about "republican liberalism" in terms of this last concern: according to this trend of liberalism, the more representative a state is, "*when particularistic groups are able to formulate policy without necessarily providing off-setting gains for society as a whole, the result is likely to be inefficient, suboptimal, policies from the aggregate perspective—one form of which may be costly international conflict*" (Ibid: 530-533). Hence, the more representative (and, eventually, democratic) a state is, the more efficient and international conflict-avoiding it will be. It is this point of view that informs, for instance, the democratic peace theory, according to which democracies tend not to go

to war to one another "*because influence* (on state foreign policy) *is placed in the hands of those who must expend blood and treasure and the leaders they choose*" (Ibid: 531)". The adjective "republican" added to this trend of liberalism is probably due, indeed, to the fact that one of its first examples was precisely an early version of democratic peace theory put forward by Kant, who labeled representative governments as "republics".

However, Kant's contribution is just one part of the republican tradition in International Thought and, according to Deudney, not the most relevant one (2008: 21). According to him, international realism and liberalism are actually partial successors of international republicanism (2008: 5-16). International realism is concerned with balancing the power of states and handling the threats of international anarchy, while largely ignoring the problem of hierarchy within states and its impact in their foreign policy. On the other hand, international liberalism is largely concerned with this last issue but, while not ignoring the problems of international anarchy, it has largely ceded considerations on balance of power to realism. Republicanism rather seeks to design political orders capable of avoiding hierarchy *and* anarchy, both in the international and domestic arenas. Deudney identifies three ideas associated with realism that, according to him, were actually formulated in republican terms before realism as such was born: the *anarchy problematique*, *balance of power*, and *society of states*. The same happens with another three ideas, in this case associated with liberalism: *democratic peace*, *commercial peace*, and *international institutions* (2008: 5).

According to Deudney, republican domestic and international concerns converge in debates on the ideal *size* of the republic (2008: 16), a common topic among modern republicans like Machiavelli, Rousseau or Madison. On the one hand, small republics were vulnerable to external foreign conquest in an anarchic international system. The way of solving

this security problem was through external expansion; however, the example of the Roman Republic showed how expansion led to internal imbalances of wealth and power among citizens, which eventually resulted in civil war and anarchy, only overcome by the rise of an autocratic hierarchy. According to Deudney, "*the culmination of Enlightenment republican international theory is the U.S. Constitution of 1787, which its architects characterized as a 'compound republic' or 'federal union'. It was explicitly designed to prevent North America from becoming a Westphalian system of hierarchic units lodged in anarchy*" (2008: 16). In this view, the American Union would have been firstly conceived as a federal union of states, rather than as a federal state *stricto sensu*. Only the Civil War transformed the U.S. into a federal state, properly speaking (2008: 174-176). Thus, republican international theory would be based on a sort of international federalism[84].

According to Deudney (2008: 186), the logic of the Philadelphian system so conceived in 1787 is, whether explicitly or not, the root of what he describes as "*the republican security agenda of* (American) *Liberal internationalism*", which seeks "*to populate the international system with republics and to abridge international anarchy in order to avoid the transformation of the American limited government constitutional order into a hierarchical state*[85]*"*. Concerning this second task (abridging international anarchy), Deudney stands for what he calls federal - republican nuclear one worldism, which holds

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[84] This reading of the American constituent process is not standard in the field of political theory, but I recall it in this part of the article because it suggests a compelling translation of negarchist demo-republican principles into international terms.

[85] Whether American foreign policy has actually followed this agenda and the republican logic behind it, and whether it has been fully successful, are entirely different stories; and certainly Deudney does not seem to be completely optimistic about them (2008: xiii-xiv).

> that nuclear weapons have rendered the statist approach to security nonviable, and that (...) instead of either the continuation of interstate anarchy or the establishment of a world state, a federal-republican union of strong mutual restraint is needed to provide security. This view holds that a world hierarchical government would entail an uncheckable concentration of power, and is unnecessary in the absence of an interplanetary threat. (2008: 248)

Interestingly, current negarchist republicans, in their contributions to International Thought, usually stand for this very same combination of: (1) promoting democracy; and (2) overcoming anarchy and hierarchy in the international arena through international organizations and law, rather than through the formation of a world state rendered unfeasible and/or undesirable. We can see this reasoning, for instance, in Besson (2009) and Cheneval (2009). This latter labels this middle ground between international anarchy and a world state as *multilateralism.* According to him, an institution is multilateral (in opposition to bilateral or unilateral) "*if it follows generalized behavior principles and implies elements of creation of common law and collective action by more than two states*" (2009: 246); the main difference that it has with domestic federalism is that in a multilateral order the member states are sovereign. The specificity of republican multilateralism lies in the fact that "*all the Member States of the process adhere to republican principles, and take an effort for a better realization of republican principles through the international institutions to which they adhere*" (2009: 246). Of course, republican multilateralism, in this pure form, is an ideal type.

Pettit himself (2010) proposes that non-dominating, representative states (i.e. modern democracies) should pursue twin goals in the international arena: (1) assure that they will not be dominated by other

states or by multinational and international agencies; (2) do whatever is feasible and productive in order to promote representative, non-dominating regimes in less fortunate countries, and to incorporate them into a non-dominating international order. This order would be based on two pillars: (1) the existence of *international agencies and forums*, where states cooperate and deliberate on areas of common interest; and (2) the formation of *coalitions and common fronts between small weight states* which are devoted to avoiding their domination by more powerful ones, since those agencies and forums can only impact on the legitimacy of transgressor states, but they will not be able to punish them. Pettit considers this model to be more realistic than the (according to him) utopian project of a world republican state, and more compliant to republican principles than the mere existence of international organizations or the emergence of a "benevolently dominating" state. Thus, Pettit shares the idea of a multilateral international order as the proper embodiment of republican principles in the international arena.

There are two important assumptions underlying these republican proposals for a multilateral international order: (1) the existence of independent states; and (2) that humanity is not willing to merge them into a world state. However, there has been little reflection on the legitimacy of the borders of these states. Concretely, secession is largely absent as a topic in international republican considerations. And among the few who have dealt with secession, an unjustified bias towards the existing states is rather the norm. Sellers, for instance, is highly illustrative: on the one hand, he criticizes the idea of a world republican state as utopian and undesirable, among other reasons for the sake of diversity (2006: 25); however, on the other hand he shares a remedialist view of secession (2006: 153-166). In addition to my former criticisms of remedialism on

republican grounds[86], it is easy to see a double standard in Sellers' view: diversity seems to justify the existence of current independent states, but not the creation of new ones.

4.2.2. Secession in international law

It might be, of course, that secession is actually regulated in the international system largely in compliance with international republican principles. But my view is that, unfortunately, that is not the case. I think that a review of literature on secession and international law (Pavkovic & Radan 2009: 232-239; Crawford 2006: 374-449; Musgave 1997; Kohen (ed.) 2006) shows, broadly speaking, the following picture:

1. International law considers the existence of a state as a primary fact, based on the effective existence of a sovereign government over a stable and well defined territory and population[87].
2. As a primary fact, international law merely takes notices of the existence of a state, but it does not decide whether it exists or not.
3. What international law actually does, since the foundation of the United Nations and the age of decolonization, is to make some cases of state creation easier, while discouraging others.
4. In some extreme cases, international law recognizes the right to "external" self-determination (i.e. secession or decolonization) in typically remedial cases: colonization, illegal annexation, or massive Human Rights violations, among others.

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[86] See chapter 1, pp. 59-63.

[87] This would be so regardless of what stance we might take in the debate between *declaratory* theories, according to which a state exists regardless of the recognition by other states; and *constitutive* theories, according to which recognition by other states is indispensable in order to properly exist as a state (Dugard and Raic 2006: 97).

5. On the opposite extreme, international law forbids the creation of a state in cases in which fundamental principles of law are being violated; particularly, the right to self-determination (e.g. secessions based on systematic discrimination on racial or ethnic grounds, such as the case of South-African Bantustans during the Apartheid regime) and the ban on the use of force by third state actors (e.g. Northern Cyprus, which seceded after a Turkish invasion of this part of the island).
6. In any other case, international law neither authorizes nor forbids secession, considering it an internal affair of states.
7. The principle of territorial integrity and of the use of force are only applied to inter-state relationships; since secession is regarded, by international law, as an internal affair, secessionists are not legally affected (internationally speaking) by those principles. And when secession is explicitly authorized by international law (cases of right to external self-determination), the host state is deprived of the protections to which states are entitled under those principles.
8. Nevertheless, politically speaking, there exists a growing trend among states and international bodies (including courts) to condemn violent attempts of secession[88].

[88] In addition to this eight points, some scholars also point out that the application of the *uti possidetis* principle (i.e. the principle of the retention of certain previous borders in the event of secession), widely acknowledged in international law for cases of decolonization, has also been legally extended to cases of pure secession (particularly, in cases of federated units seceding from federal states) (Shaw 1997). However, neither this general assertion, nor its concrete scope and application, reflects an academic consensus, so I decided not to include it in this summary list. For a skeptical point of view on the matter, see Johanson (2011: 314-317).

To sum up, we can say that *international law (and, generally speaking, the international system) neither forbids nor authorizes secession, except when it is authorized as external self-determination due to particular grievances experienced by the secessionist group, or when it is forbidden due to secessionists' violations of fundamental principles of international law (particularly, self-determination and the ban on the use of inter-state force); in any other case, secession is considered an internal affair to be resolved, in most cases, by following a "might makes right" logic*. This is precisely the logic that is the nemesis of everything for which republicanism stands. Thus, it makes sense to apply the logic of the Quebec Secession Reference[89] (non-unilateral secession in the event of a clear democratic will on behalf of the secessionist target group) at an international level, in order to provide rules for managing secession conflicts within modern democracies in those cases which are, nowadays, regarded as internal affairs. This would be the core of my democratic republican TRS, which I develop in the following section.

4.3. A democratic republican theory of right of secession

4.3.1. The core of the theory

I have already argued[90] why a republican TRS should stand for a non-unilateral right of secession, embedded in the international system. But why, from the opposite point of view, should republican international theory argue for international law regulating what, nowadays, is regarded as an internal affair of states (except in concrete cases)? My answer is that a secession conflict, unlike other factional conflicts, does not confront

[89] See chapter 3, pp. 97-108.
[90] See chapter 3.

factions of a political community contending "who" should rule it or "how" it should be ruled, but between factions of humanity (so to speak) contending the borders of the political community to be governed by whoever in a given territory. In this sense, it is closer to a conflict between two states than to, let us say, a conflict between national political parties. Most republican international theorists work under the assumption that a realistic republican international order will, and actually should, be built over multiple sovereign states (Sellers 2006; Besson 2009; Cheneval 2009; Pettit 2010; Deudney 2008). Taking into account that changes in states borders are far from being a rare fact, republican international theory should therefore stand for the rule of international law in those changes; including, of course, those triggered by secession. Otherwise, those changes will follow the deeply anti-republican "might makes right" logic.

Of course, one could say that the contending factions of a secession conflict belong to the same political community, regardless of the fact that one of them wanted to break away from it; thus, secession would be, indeed, an internal affair. I regard this view, however, as methodologically nationalist, according to Wimmer and Glick Schiller's definition[91]. It is true that a majority of citizens in each state usually regard themselves as forming one single political community. But it is equally true that a majority of citizens of secessionist communities usually regard themselves as a different political community (whether they call it a "people" or a "nation"). The only reason to favor the first view over the second one is to assume (consciously or not) a pro-status quo bias. But

[91] "*Methodological nationalism is the naturalization of the nation-state by the social sciences. Scholars who share this intellectual orientation assume that countries are the natural units for comparative studies, equate society with the nation-state, and conflate national interests with the purposes of social science*" (Wimmer and Glick Schiller 2003: 1).

this is everything but a reason. Nationalism is no less nationalist when it coincides with status quo. And unless we reach a clear, unequivocal and unbiased definition on what a "people" or "a nation" is, the proper concern of republicanism in the face of secession conflicts should be to balance the power of contending factions, not to decide "who is actually a nation" and who is not.

In my view, when it comes to secession conflicts in modern democracies, the proper place to undertake this balance of power is the meta-community that bring them all together: the *international democratic community*. If the international community can be loosely defined as the set of internationally influential actors, the international *democratic* community would be a sub-set of those actors committed to, or favoring, modern democracy as a system of government. This would include, at least: (1) modern democratic states; (2) internationally active sub-state modern democratic governments; (3) international organizations composed exclusively, or mainly, by modern democracies; and (4) internationally influential non-state actors committed, in some way, to democracy (e.g. pro-democratic think tanks and non-profit institutions) or to causes strengthening democratic tendencies (e.g. pro-Human Rights NGO's, feminist organizations, labor unions).

Given all these definitions and cautions, how should a democratic republican TRS for modern democracies look? In my view, it should be based on three pillars: (1) a *multilateral* right of secession for any democratic secessionist community, coupled with a *multilateral* right to unity for its democratic host state, with this pair of multilateral rights forming the standard international legal framework to manage secession conflicts in which there are no reasons to entitle any of both factions to unilateral action; (2) a *unilateral* right of secession for extreme cases of democratic secessionist communities dealing with an oppressive,

unilateralist or failed state; and (3) a *unilateral* right to unity for extreme cases of democratic host states dealing with an oppressive, unilateralist or failing democratic secessionist community. Throughout the rest of this section I will better define and develop each of these pillars.

4.3.2. A multilateral right of secession (and a multilateral right to unity)

In the first place: a non-unilateral right of secession can nevertheless by bilateral, i.e. it can require deliberation, negotiation and agreements between the two contending factions. This is the case of Quebec's constitutional right of secession, and it has the weaknesses that I have already shown[92], particularly, the absence of a reasonably unbiased arbiter. Thus, a non-unilateral right of secession embedded in international law would necessarily be *multilateral*: it would imply deliberation, negotiation and agreements between the two contending factions, but it would be arbitrated and monitored by an international democratic community that, itself, is organized in a multilateral order and institutionalized in different global and regional international organizations under the rule of international law.

With the important difference of designating a third party as an arbiter, this multilateral right of secession would meet the elements drawn up by the Quebec Secession Reference: (1) a *democratic* (therefore, *inclusive*) *referendum* among the members of the secessionist target group, with a clear question concerning secession, in order to find out whether they actually are a (democratic) secessionist community; and (2) in the case of a clear "yes" victory, a *negotiation in good faith* between the host state and the secessionist community through elected representatives,

[92] See chapter 3.

monitored by the international democratic community, in order to reach an agreement on the matter. While the secessionist community has the (multilateral) right to pursue secession through this negotiation process, the host state has also the (multilateral) right to pursue unity through it. The role of the international democratic community would be to monitor the whole process. In order to reach a full understanding of how this multilateral right of secession would look, we must discuss: (a) *what is a clear question?*; (b) *how can a referendum be inclusive?*; (c) *what is a clear "yes" majority?*; (d) *how would a "negotiation in good faith" between unionists and secessionists look?*; (e) *why, and how, should the international democratic community arbiter the whole process?*

Concerning the referendum, in the first place, the question on secession must be *clear*; this, at least in theoretical terms, is hardly a challenge: for external observers it will not be that controversial to realize that the question of the Scottish referendum in 2014 was clear, while the question of Quebec's referendum in 1980 was not. Secondly, the referendum should be *inclusive*, and the "yes" majority should be *clear* in order to make sure that we are have a secessionist community. The *inclusiveness* of the referendum has to do with "who" should vote in order for it to be considered a legitimate vote (in democratic republican terms); the *clearness* of the majority has to do with the "how many" should vote "yes" in order to determine that we are indeed before a democratic secessionist community.

The "who" of the vote has two dimensions: *territorial* (which territory is to secede in case of a "yes" victory) and *human* (who should vote in the referendum). Concerning the territorial dimension, I think it is reasonable to let secessionists determine which is the territory which will potentially secede, that is, the territory in which the referendum should be held; in the end, they would be the ones actually claiming that this

territory is inhabited by a "people" who should have their own state. This rule should have, however, a precondition: there must be a broad consensus all through the plebiscitarian territory that they want to be part of it. This has some problematic implications that I will discuss later; for now, let us just assume that in the territory drawn by secessionists there exists such consensus. The human dimension, on the other hand, should not be decided by secessionists, for obvious reasons concerning the threat of exclusion. *A priori*, due to the inclusive nature of democratic republicanism, the decision on whether a new state should be created must rely on the shoulders of those who would be under the authority of that state. To me, this includes, at least, the *citizens residing in that territory*[93], without necessarily excluding other possible groups depending on the

[93] Here, we should take into account two possibilities that might encourage us to introduce nuances to this general rule: (1) *intrastate ethnic colonization*, i.e. cases in which a state has deliberately sent a population of a given ethnic origin (usually, from the ethnically dominant groups of the state, if there are any) to the would-be secessionist territory, in order to turn its indigenous population into a minority; and (2) *the unionists' lack of fair play*, e.g. cases in which the unionist faction deliberately promote, in the run-up to a secessionist referendum, the circumstantial transfer of citizenry of the rest of the state to the would-be secessionist territory in order to vote "no" in the referendum. The last issue is relatively easy to combat by restricting the census of the referendum to those who were residing in the territory at the very moment in which the referendum was called, or even before if it is reasonable to do so (e.g. to the very moment in which the referendum was proposed by the secessionist sub-state government). The first issue is more complicated to manage, since it is not always clear who could be considered a colonizer, i.e. it would not be reasonable to consider the Spanish-speaking migrants of the 1960s to Catalonia as "colonizers", since it was part of a regular intrastate migration process (albeit one of vast dimensions), but not the result of an intrastate colonization policy; or, to mention another example, it would not be reasonable to consider current Ulster Scots as colonizers, even if they are descendants of people who settled in Northern Ireland as a result of a deliberate policy of colonization. Furthermore, the accusation of "being a colonist" can be a useful tool in hands of secessionists to justify undemocratic exclusion not only from voting in the referendum, but even from citizenship in the future state. Thus, once again we face a highly context-dependent issue that can only be managed on a case-by-case basis by a reasonably impartial arbiter.

case[94].

Concerning the clarity of the "yes" majority (the "how many"), the question is: *what turnout, and how much support for the "yes" option, is enough in order to consider that its victory has been clear?* In my view, this problem is highly context-dependent, and hence this threshold must necessarily vary depending on each case. However, I think that we can delineate two guiding criteria. In the first place, *the more historically continuous the identity of the target group as a political community* (a "people") *has been, the lower the threshold should be*. And secondly: *the more inclusive and cohesive (not necessarily uniform) the target group is, the lower the threshold should be*. According to these two criteria, the threshold for a "yes" victory in Padania and in the Bosniak-Croat Federation of Bosnia and Herzegovina, respectively, should be higher than in Scotland. The rationale behind these criteria is that high vote thresholds in secessionist referenda are mainly justified as an instrument against: (1) *decisions based on volatile and circumstantial passions* (which in "recently invented peoples" like Padania can be supposed, *ceteris paribus*, to play a higher role in secessionism than in "historically consistent peoples" like Scotland); and (2) *oppression of minorities* (which can be particularly threatening in the cases of societies divided by deep-seated, long-standing ethnic rivalries).

These two criteria can be coupled in one single principle: *in a secession referendum, the more the secessionist target group can be considered a people (in terms of history, cohesion and inclusion), the lower the threshold for a clear "yes" victory should be*. I call this the *people clarity principle*. This might seem to contradict something that my approach to secession is based on: that there is not one clear, unequivocal

[94] For instance, citizens residing overseas but with strong links with the secessionist community; or permanently residing non-citizens.

and unbiased definition on what is a "people"[95]. However, it does not. The people clarity principle is formulated as a matter of degree. Unlike current TRS, I am not looking for a clear-cut definition of what is a "people", in order to reach a clear-cut decision on who has a right to secede. Instead, I am trying to capture an intuition that, indeed, arises as a matter of degree: despite the lack of a clear, unequivocal and unbiased definition of what is "a people" (or "a nation"), and even if we acknowledge that all "peoples'" identities are somehow constructed, it is nevertheless reasonable to be skeptical of the authenticity of a "people" whose identity is practically made from scratch few decades ago, or of the capacity of a deeply divided society to form a decent state. The people clarity principle does not deny them a path to secession, but only asks them for further proof of the seriousness and decency of their secessionist aspirations.

On the other hand, in order to retain the normative symmetry of the theory, the same people clarity principle should also be applied to the state. This means: *in a secession referendum, the more the state can be considered a people (in terms of history, cohesion and inclusion), the higher the threshold for a clear "yes" victory should be*. This simultaneous application of the same principle to both actors can have, of course, contradictory implications: what if both the state and the target group can be equally considered "peoples"? In this sense, again, the arbiter should settle the question case-by-case. The people clarity principle is intended to discriminate more legitimate claims from less legitimate ones, but it can't discriminate between two equally legitimate claims.

Nevertheless, a caution must be taken into account in order to preserve that normative symmetry: what counts here, in terms of historic continuity, is not the continuity of the state as such, but *the continuity of*

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[95] See chapter 2, pp. 54-56.

the identity of the state as a political community. This means that states that have historically been contested political communities (e.g. in which, since centuries ago to the present, there have been constant struggles on economy, territory and identity between the central government and strongly supported peripheral nationalist movements) will rank lower as a "people" according to this principle, than states that have not, regardless of how much years of continuous existence they have behind them. In this respect, the unity of Switzerland will be more favored by this principle, for instance, than the unity of the United Kingdom.

One last problem is who should be able to call the referendum. In my view, since the target group would be the subject of the referendum, ideally it should be called by an autonomous democratic legislature and/or executive representing the target group, in the case that a majority of the institution decides on this; this is classically the case in target groups organized as autonomous units within federal or decentralized modern democratic states (e.g. Scotland or Quebec). However, this will not always be the case, for the target group may belong to a unitary state. Provided that the host state has repeatedly ignored claims for decentralization, the target group should provide itself with some kind of representative institution[96] in order to call for a secession referendum if that is its desire.

Let us now assume that a secession referendum has been held in a territory; that it has been held in compliance with the requirements I have just described; and that it has resulted in a clear "yes" victory. If this result was not to have any legal consequences, the target group would be vulnerable to the threat of arbitrary permanent majorities. If that result, on

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[96] For instance: in 1919, during their war against the British government, Irish secessionists formed a revolutionary Parliament which, at its first meeting, issued a Declaration of Independence. One can think in a similar move to call for a secession referendum.

the other hand, was to lead to unilateral secession, this would make the host state (and its citizenry) vulnerable to the threat of blackmailing minorities. The Quebec Secession Reference states that, from this point, both democratic majorities (the territory-level secessionists and the host state-level unionists) would have an obligation to negotiate *in good faith*. While the Reference is not very concrete in defining "good faith", I think we can suggest the following definition: *two actors negotiate in good faith when both pursue their own agendas while, at the same time, acknowledging each other's legitimate interests, and trying to attend them reasonably*. Thus, for instance, if the potentially seceding territory contains a natural resource which happens to be crucial for the host state's economy, neither part should claim an absolute rule over the resource *a priori* [97]; instead, they should seek some kind of agreement in order to have an equitable share in administering and benefiting from the resource.

The expectation that a regional minority could hold a secession referendum under international supervision is an evident check against the threat of arbitrary permanent majorities. On the other hand, the expectation that a negotiation in good faith should take place after a "yes" victory is a check against the threat of blackmailing minorities: it does not make much sense to threaten the host state with secession in order to reach unreasonable demands if the only way to (at least, legally) reach secession is through a reasonable negotiation with that host state. However, up until now there remains an important void in this institutional framework: should the negotiation process address secession and its details? Or should it also include the possibility of a third way

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[97] I say "a priori", because other circumstances could justify such a claim; for instance, a history of exploitation of this resource by the host state, coupled with an unjustifiable lack of investments by the host state in the target group territory (in terms, for instance, of infrastructures or welfare services).

between secession and the status quo (e.g. a decentralization agreement)? The Quebec Secession Reference is, for instance, rather unclear on this matter[98].

The key point is how the host state regards this negotiation. After a clear "yes" victory, it is foreseeable that the democratic secessionist community's negotiators would only be interested in negotiating the terms of secession. The host state, on the other hand, could take two stances: (1) to only negotiate the terms of secession; and (2) to offer and negotiate a unity agreement able to satisfy the secessionist community's aspirations within the host state, so that it would cease to be secessionist in the first place. In the first case, the problem disappears; in the second case, in contrast, we must face the dilemma that the Quebec Secession Reference deliberately avoided. In my view, at this point we should recall the symmetry between the multilateral right of secession of the secessionist community, on the one hand, and the multilateral right to unity for its host state. Applied to the negotiation, this means it should enable both parts to pursue their agendas, and the final agreement should reflect the legitimate interests of both. If the host state takes the second stance, this will mean that it wanted to make a last push for unity through negotiation.

This does not mean that "there should not be winners and losers". This notion would be, indeed, frankly naive: in the end, if the territory ends up seceding, unionists would not attain their goal (the unity of the state) however reasonable and balanced the secession agreement happened to be; and, vice versa, if the negotiation ends up with an agreement securing the unity of the host state, secessionists would not reach their goal (secession), even if the agreement resulted in a generous devolution of powers by the central government to the secessionist target group[99]. But

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[98] See chapter 3, pp. 108-109.

[99] This is, at least, true for "pure" unionists and secessionists, so to speak:

republicanism is not about avoiding factional victories, but about avoiding factional arbitrary power. Checks and balances in modern democracies, for instance, are not regarded by republicans as a means of avoiding the victory of one political party in an election, but rather as a means of minimizing any chances to abuse the power it may obtain through such a victory.

One obvious risk to this approach is the possibility of reaching a stalemate, in which the host state and the secessionist community, without being particularly unreasonable, would nevertheless be most reluctant to give up their respective primary goals. One way to handle this risk would be to adopt an iterative approach to this negotiation process, intermingling it with other democratic procedures in order to unblock negotiations. For instance, if the host state offers further autonomy in exchange for keeping the state's unity, and neither the secessionist representatives are willing to accept it, nor the host state willing to withdraw it (and accept secession), then a new referendum could be held among the secessionist community; in this new referendum, voters would be able to express whether they still prefer secession or if, on the contrary, they would rather accept what the host state is proposing. The result, especially if it is very clear, should be taken into account in order to reach a final agreement. The more solid and constant the secessionist community happens to appear in its preference for secession, the less reasonable it would be for the host state to negotiate anything but secession.

Once an agreement were to be reached (easily or with more difficulty), further democratic ratification would be required not just by

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instrumental unionists could prefer secession rather than giving the target group a set of special powers that could be seen by them as privileges, e.g. special fiscal powers; and instrumental secessionists could prefer to remain within the state if they are offered a generous decentralizing agreement.

the secessionist community, but also by the host state. The form in which these last ratifications should take place would vary from case to case: we could consider two new referenda (one in the host state as a whole and another one in the territory of the secessionist community), a purely representative vote in the legislatures of each community, or a mix between these two models, among other possibilities. The ratifying formula should, in any case, be careful not to facilitate a stalemate; in fact, it should be regarded as the last of a series of checks and balances, designed to make negotiations between the host state and the secessionist community possible and reasonable, certainly not to block them.

Related to this, a victory of the "no" doesn't present many of the problems here discussed, since it will not be followed by negotiations on secession. However, it presents a question: should the secessionist government that has called for the referendum have the power to call for another one, should it not, or should it have it but only after a cooling period? In my view, allowing secessionists to call for as many referendums they want whenever they want will place the unionists and the host state under the threat of blackmailing minorities; while forbidding any new referendum on the matter will put the secessionist target group under the threat of arbitrary permanent majorities. Thus, it seems in tune with my theory to allow secessionists governments to call for new referendums after a "no" vote, but only after a cooling period. The extent of this period should inevitably be settled case-by-case, so again the existence of international arbitrage becomes important[100]; but, in any case, should be settled before the present referendum takes place, so that voters

[100] Again, this doesn't preclude us from delineating some criteria on how this issue can be settled. Particularly, I think that the people clarity principle has a role to play here (the more the secessionist target group can be considered "a people", the shorter the cooler period must be; the more the state can be considered "a people", the longer the period must be).

could take it into account before deciding their vote.

4.3.3. Some problems: the role of unilateral secession

For the sake of prudence, we should acknowledge that when this general scheme is actually applied to each concrete case, even if it happens to solve all the aforementioned problems, it could encounter three further problematic scenarios, when: (1) one part of the territory proposed by secessionists as potentially seceding is actually a politically separated territory on its own, and is not part of the political unit in which the secessionist movement holds the democratic power to call for a referendum (e.g. Navarre in the case of an hypothetical secession referendum in the Basque Country[101]); (2) one identifiable part (a county, a city, a province...) of the territory proposed by secessionists as potentially seceding is, in fact, inhabited by a majority of people opposing secession (e.g. the indigenous-populated parts of Northern Quebec); and (3) either unionists and/or the host state, or secessionists and/or the secessionist community, explicitly reject all this non-unilateral scheme. Concerning the *first scenario*, I think it would be reasonable, for democratic reasons, not to include the territory on the secessionist referendum unless the inhabitants of that territory democratically decide so.

The *second scenario* can be handled, I think, by simply applying the very same scheme of non-unilateral secession to it, with the seceding

[101] The province of Navarre is regarded by Basque nationalism as an integral part of the Basque Country; indeed, the capital of Navarre, Pamplona, is regarded by many Basque nationalists as their "historical capital". However, during the Spanish democratic transition, this province became an autonomous region on its own, separated from the autonomous region comprised by the provinces of Álava, Biscay and Gipuzkoa, which took the name of "Basque Country". All this would be, for obvious reasons, an additional matter of controversy for a hypothetical Basque secession referendum.

sub-territory and the broader one fulfilling the roles that, in my previous development, were played respectively by the secessionist target group and the host state. The application of this scheme to this "internal secession" would be justified on the same democratic republican grounds that justified its application to the "external" secession scenario. However, I think that we must divide this "internal secession" scenario into two further sub-scenarios: (2.1) a majority of the sub-territory's population wants it to secede from the broader territory; (2.2) a majority of the sub-territory's population wants it to secede from the broader territory *in the case that the broader territory happens to secede from the host state*. I think that, *ceteris paribus*, the clarity threshold for a "yes" majority should be higher in the second sub-scenario than in the first one. The rationale behind this consideration is the people clarity principle: an "internally secessionist" will independent of the potential secession of the broader territory shows, on the part of the sub-territory's population, a stronger identity as a people than if they only wanted to "internally secede" in the case of the broader territory seceding from the host state.

Finally, the third scenario implies one of the two actors attempting to unilaterally impose its agenda. In the case of the democratic host state, I think that this is only justified when: (1) secession implies a serious risk of outright oppression towards minorities inhabiting the potentially seceding territory (particularly, ethnic cleansing or discrimination, religious persecution, and other violations of basic Human Rights); and (2) the target group would be, far from any reasonable doubt, a failing secessionist community, i.e. incapable of establishing a functional sovereign state (e.g. it is not territorially concentrated); or (3) secessionists are clearly attempting to unilaterally secede in the first place. Symmetrically, unilateral secession by a democratic secessionist community would only be justified when: (1) there is outright oppression

by the host state (particularly, ethnic cleansing, ethnic or racial discrimination, religious persecution and other violations of basic Human Rights, as well as illegal annexation); (2) the host state is a failed one; or (3) the host state is clearly intending to unilaterally keep its unity and suppress a secession attempt in the first place. Thus, the conditions for having a right to unilaterally act would be symmetrical for both factions: they would only have such a right in case of the opposing faction happened to be *oppressive*[102], *failing* or already *unilateralist*.

4.3.4. International arbitrage

Up to this point, it should be recalled that although detailed, this scheme leaves many unanswered questions when it comes to applying it to each concrete case: (1) even if *theoretically* uncontroversial, how could a *political* controversy on the clarity of the referendum question be settled?; (2) should only citizens vote on the referendum, or should we include other groups (e.g. immigrants or the secessionist community's diaspora)?; (3) how can it, in each case, be determined to which extent the secessionist target group is a people, taking into account that this would further determine the threshold for the clarity of the "yes" majority?; (4) what would be this threshold?; (4) in case of a referendum called by a non-official representative institution, how can it be determined whether it actually has the democratic legitimacy to do so?; (5) in the case of a clear "yes" victory, how can it be decided whether the host state and the secessionist community are actually negotiating in good faith?; (6) how can it be determined whether the host state or the secessionist community

[102] This condition might seem redundant, given that this TRS only targets conflicts between modern democratic secessionists and modern democratic host states. However, even modern democracies can develop authoritarian behaviors in some of their policies towards concrete groups; this could arguably be the case of Kurds in Turkey.

are confronted with any of the scenarios that justify them to unilaterally act?

The answers to these questions would inevitably be context-dependent. Thus, the point is to determine *who* should answer them: i.e. who should be the arbiter of the whole process. In this sense, I would like to point out that, up until now, I have only been formulating general principles, rules and procedures for secession conflicts. They are not logically connected, *per se*, to any specific legal and political framework (or lack of thereof), hence neither to any specific arbiter. They could simply be regarded as moral guidelines to assist, and assess, the development of a secession conflict (and, indeed, they are already valuable as such); or, on the contrary, the intention could also be to entrench them in some form of legal and political framework. As I explained in chapter 3, a normative analysis of the case of Quebec, from my democratic republican approach, shows that national constitutions have significant shortcomings if they were to include a non-unilateral right of secession within themselves. Instead, I have developed these principles, rules and procedures with the explicit intention of embedding them in the *international* system. Thus, the arbiter of the process above described must be an international one; that is why I speak of a *multilateral* right of secession as the core of the whole scheme.

In a broad sense, this arbiter should be the international democratic community. However, this is still too general. This community is not a single and clearly organized actor, but rather a conglomerate of different ones, as we saw at the beginning of this section. This raises the question: of all those actors, who should be in charge of arbitrating a secession conflict according to the multilateral scheme outlined above? In my view, a specific international agency would ideally be charged with this task. One possibility that immediately comes to mind is to entrust this

responsibility to the International Court of Justice. However, to handle secession conflicts according to the principles, rules and procedures that I have described would not be a juridical task, but a legally-based political one; here, the role of the Court would be to ensure, in case of doubt, that the entire process is being conducted according to the rule of international law. Besides, the Court works for the international community as a whole, not specifically for its democratic members. Therefore, I think it would be better if a specific international agency was in charge of monitoring secession conflicts.

The instrument for creating this agency would necessarily be a treaty or a set of treaties, which would specify how the agency should be composed, how it would function, and what general principles, rules and procedures the agency should use to apply to each secession conflict[103]. Those general principles would thus become part of international law (as treaty law), being applicable to all the signatories of the treaty or treaties. This treaty or treaties would also need to be written in consensus with the rest of the main actors of the international democratic community, including sub-state governments of territories in which secessionism is a relevant political actor[104], even if in the end they would be signed and ratified by the only actors capable of signing treaties in current international system: states.

[103] To discuss these issues far exceeds the possibilities of this article in terms of scope and extension. However, I would say that, in all these points (especially, in the agency's composition), sub-state minorities, and specially secessionist communities, should be given a say, and that the agency should be as independent from states as possible. Otherwise, there is a risk of the agency simply becoming an institution biased towards the status quo.

[104] The rationale behind this consideration is that such territories are possible candidates, in the mid run, to be monitored by such agency in a secession process. Possible criteria to determine which are those territories can be Requejo's criteria to empirically locate minority nations: (1) the existence of a differentiated party system; and (2) the existence, within that system, of at least one secessionist party (2010a: 277-278).

We must recall that the existence of this arbiter doesn't mean that it should intervene in all cases and at all stages of all secessions conflicts. In fact, it would be desirable that both sides of a secession conflict were able to reach agreements and consensus on each of the points of the secession process by themselves, with no need of external arbitrage. In this sense, I think that the agency must only intervene if one of the two sides of the conflict asks so. This would be a safeguard of the weaker part of the conflict, and thus an incentive to the stronger part to be reasonable.

To be sure, this TRS is not the first to propose an internationally entrenched and monitored right of secession, but it has two distinctive, related particularities: (1) it is built upon a democratic republican approach to secession conflicts; and (2) it refuses to acknowledge unilateralist claims either from unionists or secessionists, even in moral terms, except in particularly harsh circumstances[105]. Naturally, from the current status quo to the institutional design here developed there could be a lot of intermediate stages; and, of course, a political path whose stages would probably have to be walked through until reaching crystallization at an international level. In this sense, I would advocate for a gradualist approach towards such a goal; section 4.5 will briefly explore how this

[105] For instance, Buchanan (2004: 331-400) and Copp (1998) defend an international framework for their TRS; a remedialist and a primary right one, respectively. Copp's theory particularly bears various resemblances with the democratic republican TRS here articulated: (1) he designates an arbiter for his international institutional design (namely, the International Court of Justice); and (2) he foresees a negotiation process between the state and secessionists in case of a "yes" victory in a referendum. However, our theories diverge in the following respects: (1) his theory is not at all based on republican views of factional conflicts; (2) he restricts the right of secession to what he calls "territorial political societies", charging the International Court of Justice with the responsibility of deciding, in the case of controversy, when a group reaches this qualification; (3) the negotiation process he envisions has to do with the logistical details of secession, so to speak, thus taking for granted that secession should be the outcome of such a process (coherently with the fact that his TRS is a primary right theory).

gradualist path could look. Now, however, I will discuss the foreseeable criticisms of this theory.

4.4. Criticisms and answers

I think that ten main criticisms can be directed towards this democratic republican TRS: four *republican*, two *nationalist* and four *practical* ones. I will consider each group separately.

4.4.1. Republican criticisms

The first republican criticism would be the *deliberative* one. Republicanism has a natural preference for deliberative democracy, since it would be the most efficient shield against factional domination: a deliberative democracy is governed by reasons oriented to the public common good, not by the correlation of forces between factions (Pettit 2002: 187-190). Thus, it would not be justified for a deliberative democracy to recognize any right of secession, apart from a remedial one: if regional majority claims are persistently a minority view in the host state, they would be so because of having a factional nature. In my view, on the contrary, factional conflict does not disappear, nor it is well handled, just by saying that "we should think about the well-being of the whole political community"[106]; rather, it is the other way around: only an institutional design that keeps factional arbitrary power in check will force all factions to publicly discuss and convince each other through public reasons. And in terms of center-periphery conflicts on economy, territory and identity, state majorities, particularly in non-federal states, have no particular incentives to listen to peripheral majorities which happen to be permanent state minorities as well; they can either do so or not, but it is at

[106] See chapter 2, pp. 60-62.

their arbitrary will.

The following republican criticism, namely the one of *civic virtue*, consists in recalling that republicanism gives primary importance to citizens' disposition to participate in public affairs by looking after the common good. This can only arise from a shared allegiance to the common political community; secession can only undermine it, and therefore a republican TRS should condemn secession except in very specific remedial cases. As in the previous criticism, I think this one confuses wishes with reality. Secession conflicts arise precisely when such shared allegiance disappears or at least, is considerably weakened. To force people to share a state does not mean, in any sense, that they are going to share an allegiance to it. And before arguing that this allegiance should be based upon "shared democratic values", it is better to recall, as Requejo points out, that "*the fact that two societies share the same values is not particularly informative regarding their willingness to live together (examples: the secessions of Norway and Sweden at the beginning of the twentieth century and Slovakia and the Czech Republic in the 1990s)*" (2010: 152-153).

In this sense, a system of checks and balances channeling and civilizing secession conflicts, aside from preventing factional domination, can only produce two outcomes if accepted by both unionists and secessionists: (1) an agreement of secession; or (2) an agreement of unity through decentralization and recognition. In the first case, the host state, as well as the seceding one, will be much more cohesive political communities than the host state prior to secession; in the second case, the host state will have accommodated the secessionist community so that it ceases to be secessionist in the first place; as a consequence, again, it will become a much more cohesive political community. Thus, it is reasonable to expect that this democratic republican TRS, if practically applied, will

be helpful, rather than harmful, in terms of promoting political communities which are able to cultivate civic virtue among their citizenry.

A third republican criticism, the *permanency* one, goes as follows: the republican tradition is concerned about guaranteeing that republics will endure a long time (Pocock 2003: viii). Thus, secession will be anathema to any republican project. However, I think this is misleading. The "permanency" that ancient and early modern republicans like Aristotle, Polybius or Machiavelli where looking for was basically permanency in the face of corruption leading to the extremes of anarchy and civil war on the one hand, and of despotism and autocratic rule on the other. This partly had to do with the fact that they all assumed that republican regimes could only be applied to city-states. Once republicanism started to be applied to nation-states, it started to experience contradictions regarding secession; thus, at some point in his career, Lincoln defended the secession of Texas based on republican claims, while later on he condemned the secession of the American Southern States on the grounds of other, contradictory republican arguments[107]. In the end, what matters for democratic republicanism is to prevent domination and exclusion[108]; and I have already argued why I

[107] See chapter 2, pp. 46-47.

[108] It could be argued that the continuity of the territorial status quo is inherently positive, *ceteris paribus*, in terms of promoting democratic self-government (and therefore, of preventing domination and exclusion), for reasons concerning the expectations of the self-governing citizenship. If they happened to think, the argument goes, that their polity, with its current borders, will not long endure, they may not have incentives to take care of the welfare of future generations or to invest into interregional redistribution and development (I'd like to thank Rainer Baübock for pointing me this possible criticism). In this respect, I would argue that: (1) the continuity of the territorial status quo may have this positive outcome, but still will not have an inherent value in democratic republican terms, but an instrumental one; (2) therefore, that will not be a definitive argument (actually, not even a pure normative one) against secession, but an instrumental one; and (3) actually, in our modern international system, territorial changes (and, particularly, successful secessions), while not constant, are far from being rare, so

think my democratic republican TRS could be useful in this sense.

A fourth republican argument, the *self-government* one, would argue that international arbitration in a secession conflict could infringe the right of both the secessionist target group and the host state to democratic self-government, in placing them under the authority of an external, non-elected body. I think this criticism is not entirely wrong (it points out a real threat), but it is insufficient: according to my theory, international arbitrage would only intervene in case it was called upon by one of the two sides of a secession conflict. It is reasonable to expect that none of them will make that call unless it is the weaker part of the conflict and is reasonably convinced that the other part is not being reasonable at all. Thus, in any case, only the self-government rights of the stronger part will be somehow threatened; and they will be so in order to assure that it will not dominate the weaker part, which is what republicanism is all about.

4.4.2. Nationalist criticisms

The two nationalist criticisms, the *state nationalist* and *stateless nationalist* one, have to do with the perception that hardcore nationalists (whether state or stateless ones) could have about the multilateral approach defended in this article, as being harmful for their final agendas. State nationalists could complain that, within this scheme, they would periodically be in need of appeasing potentially seceding minorities, and that their state will not reach a stable and closed model of economy, territory and identity. On the other hand, stateless nationalists could complain that in this scheme, secession would usually be rendered

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in absence of a definitive normative prohibition against those changes, democratic republicanism is still in need of a TRS able to civilize the political struggles that such changes usually imply, as I think my TRS does.

impossible, since many host states would prefer to offer decentralizing agreements to lower social support for secession, rather than accepting it. In answering those criticisms I would ask: so what? There are many other fields in current politics that are not closed and fixed, and in which different factions are constantly fighting, negotiating and deliberating. What this democratic republican TRS does is to apply the logic of federalism to a last point that it has not usually dealt with[109]. And we should recall that most current republican scholars think about international republicanism as committed to a sort of "world federalism" which, in practical terms, means multilateral institutional designs such as the one I am defending in order to manage secession.

4.4.3. Practical criticisms

The first practical criticism is the one of *usefulness*, arguing that this TRS, even if implemented, would not be useful. Modern democracies are sovereign states, and as such they conduct themselves according to their own interests, not to ethical standards. Thus, an international framework intended to monitor secession conflicts in modern democracies would simply not have a relevant effect in the real world[110]. However, take Human Rights, for instance. The theoretical notion of the human being having a set of "natural" rights was, before the foundation of the U.N., a useful standard in order to morally assess the legitimacy of states'

[109] In this sense, this theory has many points in common with the federal theory of secession developed by Norman (2006), with the difference that: (1) Norman seems to endorse a sort of moral remedialism, considering the non-unilateral right of secession as a way to "domesticate" an inevitable evil; (2) Norman does not work under a democratic republican framework (although his theory is perfectly able to be reformulated in democratic republican terms); and (3) he argues for entrenching his version of a non-unilateral right of secession in the national constitutional framework, while I am arguing that it should be embedded in the international system.

[110] This criticism is evidently linked to an international realist approach.

treatment of their inhabitants. Its embodiment in an international framework which was aimed to promote them has obviously not being enough in order to ensure states' respect for them. But "not being enough" is not synonymous with "not being useful". That international framework: (1) has provided a legal standard to judge states' legitimacy in their treatment of their own peoples and to humankind as a whole; something that, prior to 1948, could only been done from each particular theoretical view of "natural" law; and (2) connected to this, it has named Human Rights as an element of soft power for states; especially, but not only, for those particularly sensitive to public opinion, like modern democracies.

In this sense, this republican TRS has, in my view, the following practical benefits concerning secession conflicts in modern democracies: (1) whatever its institutional implementation or lack of thereof, it provides us with a set of moral standards which enable us to assess the accordance of unionist and secessionist actions in a given secession conflict with a democratic republican normative logic; (2) if actually implemented, it would place this democratic republican logic, applied to secession, as a legal standard to judge the legitimacy of unionist and secessionist actions in a secession conflict; and (3) it would therefore give this democratic republican logic an element of legitimacy, and thus of soft power, for both unionists (and, therefore, host states) and secessionists. If this is not enough (and it certainly is not), I find it to be far better than the "might makes right" scenario in which most current secession conflicts are taking place. In my view, it goes no further, but not less, than the international democratic community could actually go within the contemporary international system; so I regard this theory, in practical terms, as both *realist* and *ambitious*.

A related practical criticism, the *states' incentives* one, would say that the institutional part of this theory is unrealistic, since states are

simply not interested in limiting their power by putting it under the rule of international law, just for the sake of normative principles. But again, even in that case, this democratic republican TRS would be useful as a moral standard in order to normatively analyze how each secession conflict is actually conducted. But I also think that many democratic states could actually have incentives to embrace the idea of an international supervision of secession conflicts in modern democracies[111]: (1) this theory, if it provides secessionists with a legal path to secession (which could be seen as threatening the unity of states), nevertheless offers those states with powerful secessionist movements the chance to defend their unity out of a "might makes right" scenario; (2) this theory could minimize the threat of instability related to secession conflicts, which in the eyes of third states is, *ceteris paribus*, one of the most worrying traits of these conflicts; and (3) the pressure of domestic elites and public opinions, persuaded of the soundness of this theory, could push democratic states to defend its implementation in the international system.

The third practical criticism, the *autonomic* one, argues for adopting other, "softer" solutions for center - periphery conflicts, rather than secession; particularly, intrastate autonomy arrangements[112].

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[111] Again, the entrenchment of Human Rights in the international system provides an example of how, and why, states could be receptive to putting some spheres of their power under the rule of international law.

[112] This is, for instance, a point in Buchanan's remedialist TRS (2007: 344). It is also the case of different scholars working, more or less, under republican assumptions: Iris M. Young, while not exactly a republican scholar, has nevertheless used Pettit's notion of freedom as non-domination to reformulate the notion of self-determination of peoples, in a manner that would justify a bi-national, federal solution for the Israeli - Palestinian conflict (2005). Similarly, Caminal draws on this notion of freedom as non-domination, and the republican tradition generally speaking, argues for a kind of federalism that would overcome both state and stateless nationalisms without, however, closing the door to negotiated secessions as outlined by the Supreme Court of Canada in the Quebec Secession Reference (2007).

However, I think that: (1) my democratic republican TRS does not exclude the possibility of reaching such agreements, and therefore if they are not actually reached it would either be because unionists and/or secessionists were not interested in them, or because they were interested but incapable of reaching a consensus on how such an agreement should look; (2) secession has, for any minority, a comparative advantage over intrastate autonomy: it transforms the minority into a majority within its own sovereign state, which provides the ultimate protection for self-government (Pavkovic & Radan 2009: 246) compared to an intrastate autonomy arrangement in which, *ceteris paribus*, the strongest part will be the state's permanent majority. Thus, the possibility of initiating a secession process, and not just in the face of outright oppression, is also the ultimate resource for a permanent minority to discourage that permanent majority from unilaterally removing or reviewing an intrastate autonomy arrangement[113].

Finally, a fourth practical criticism of this democratic republican TRS could be one of *feasibility*, holding that TRS is too ambitious to be feasible in current conditions, compared to the current status quo of the international system regarding secession conflicts. This is why I argue for

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[113] It could be thought that the permanent minority's self-government could simply be strengthened by: (1) declaring the violation of intrastate autonomy agreements as one of the grievances which would justify, in a remedial approach, unilateral secession; and (2) charging the international community with the task of monitoring the honoring of such agreements, and thus with the authority of deciding when they have been violated to a point that justifies unilateral secession. This is Buchanan's stance (2007: 363). However, I think that this is far too complex to be actually implemented: the international community could efficiently monitor a process with a beginning and an end, as an attempted or successful secession process would be, but it would be far more difficult for them (and for any other more or less impartial arbiter) to remain permanently monitoring the enactment and maintenance of an intrastate autonomy agreement. Besides, what constitutes a "violation of autonomy" is not always a crystal clear matter, becoming more often than not a matter of point of view in which the permanent minority will be, *ceteris paribus*, the weakest part of the controversy.

a gradualist approach for its practical implementation, which I will briefly explore in the next section.

4.5. A gradualist approach

One thing is to delineate normative principles, another one is to describe which would be their most feasible institutional entrenchment, and a third one is to draw a path from the current status quo towards the actual crystallization and consolidation of such institutional design. This section will briefly explore this third task concerning the democratic republican TRS that I have developed in this article. I will argue for a gradualist path towards the institutionalization of the principles of this theory within the international system, based on three consecutive, but overlapping, tasks: (1) *the formation of a coalition of the weaker* (in secession conflicts within modern democracies) *and the persuaded*, willing to push the international democratic community for the adoption of a multilateral framework to manage secession conflicts, by means of a global debate on the matter; (2) *the very undertaking of such global debate*; and (3) *an initial* de facto *management of secession conflicts by the international democratic community, according to the principles of this TRS*.

I will begin by describing the *third* stage, the closest one to the full institutionalization of the democratic republican TRS developed in this article. Before forming an international agency for monitoring secession conflicts within modern democracies from democratic republican principles, it would be a good starting point that the community itself started to manage secession conflicts *de facto* according to those principles. This would basically mean that international democratic organizations[114], whether global or regional, could start

[114] I mean: organizations composed exclusively by modern democracies.

offering mediation and arbitrage to those democratic host states and secessionist groups willing to accept it. However, before reaching this point, a critical mass of the international democratic community need to be convinced that this is an effort worth taking. In this sense, a previous, *second* step would be for the community to undertake a global, long-term debate on how to manage secession conflicts within the international system, through the usual devices employed in global debates on matters such as racism, colonialism or the environment (world conferences, reports, summits, and so on). It would be here that this democratic republican TRS should be compared with other TRS in order to win the critical support of the entire international democratic community.

However, for this global debate to take place, there should previously be a group of international actors pushing for it in the first place. In this sense, as a *first* step of this gradualist approach, we can think of a *coalition of the weaker and the persuaded*. This takes its inspiration from an idea that we have seen in Pettit's international thought: the need for coalitions and common fronts between small weight states, in order to push for the compliance of all actors, especially the most powerful ones, with international law. Similarly, we can think in a set of links between actors willing to push the international democratic community for the adoption of a multilateral framework for secession conflicts, by means of a global debate. Such actors would basically be: (1) *secessionist groups and host states* which, in the event of a foreseeable secession conflict, could expect to be *the weaker faction*; and (2) *non-state actors*, whether public or private (e.g. think tanks, international organizations), persuaded of the benefits or the justice of this multilateral framework for secession conflicts within modern democracies. If this *coalition of the weaker and the persuaded* succeeds in implementing this multilateral framework, it would remain the closest thing to an enforcing actor that this framework

would have.

4.6. Conclusions

The democratic republican TRS here developed can be summarized as follows: (1) secession conflicts must be regarded as factional ones (indeed the ultimate stage of center - periphery conflicts), being particularly problematic when occurring within modern democracies; (2) the international system seems to be the proper locus to entrench a democratic republican framework for these conflicts; (3) current regulation of secession conflicts in the international system leaves most of them suffering under a "might makes right" logic; (4) a democratic republican framework for secession conflicts within modern democracies would consist of a multilateral right of secession for any democratic secessionist community, a multilateral right to unity for its democratic host state, a unilateral right of secession for extreme cases of democratic secessionist communities dealing with an oppressive, unilateralist or failed state, and a unilateral right to unity for extreme cases of democratic host states dealing with an oppressive, unilateralist or failing secessionist community; (5) the monitoring and arbitrage of the framework would be undertaken by an specialized international agency, created by means of a treaty or a set of treaties between democratic states (with the consensus of the rest of the democratic community); and (6) we can envision a gradualist path from the status quo to the enablement of that framework.

This theory mixes several elements of other TRS; it is, in this sense, a *hybrid* theory[115]. The multilateral right of secession is clearly close to plebiscitarian TRS, while the unilateral right of secession is rather

[115] I owe this term to Marc Sanjaume, who employed it in an article we co-authored (Pérez-Lozano and Sanaume 2013: 5).

close to a remedialist view; the difference, however, with plebiscitarianism and remedialism, is that coupling these two rights, in the manner specified by the theory, establishes a symmetry of rights and obligations for both unionists (and the host state) and secessionists (and the secessionist community). They are both expected to be functional, and forbidden from being unilateral or oppressive. As long as they fulfill these obligations, they are allowed to pursue their agendas within an international multilateral framework. And the failure by one side to fulfill any of those obligations is what justifies unilateral action by the other side.

At this point, it could be surprising that I have barely discussed the concept of "sovereignty", linked as it is to secession conflicts. In fact, I have deliberately considered secession conflicts as not having a theoretical resolution based on answering to the "who is the sovereign?" question, contrary to what almost all current TRS implicitly do[116]. Theoretical efforts aimed at giving a normative answer to that question would ideally provide us with a solid foundation for a TRS; however, I think that such efforts are useless, for that answer does not exist in purely theoretical terms, and it inevitably has to be answered through politics. Asking if only states are to be considered sovereign or if "stateless nations" (however defined) also hold legitimate sovereignty, is like asking whether left-wing parties or right-wing parties should govern. What a democratic republican theory should do with this sort of power disputes is not to decide "*who is right?*", but rather to design institutions able to channel those disputes using civilized and non-dominating means.

Another thing is to acknowledge that secession conflicts are a particular type of sovereignty conflicts, and that this TRS would be

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[116] See chapter 2, pp. 54-56.

incomplete until a democratic republican theory of sovereignty happened to be developed. I regard this to be true. However, actually one of the most common ways to solve a great theoretical problem is to cut it into pieces, and to keep solving them one by one until the whole puzzle can be completed. Here I have presented a set of principles, rules, procedures and institutions intended to manage secession conflicts within modern democracies according to democratic republican principles. In my view, this represents a contribution which fulfills two current gaps in political regulations: (1) the lack of a TRS establishing a symmetry of obligations between unionists and secessionists, acceptable by both parties; and (2) the lack of a democratic republican TRS. My hope is that, by fulfilling this last gap, this article could be a first step in developing a broader democratic republican theory of sovereignty.

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5. CONCLUSIONS

5.1. General conclusions

The purpose of this dissertation has been to formulate a democratic republican theory of the right of secession. It has been developed as an answer to a research question: *which kind of right to secede from a modern democratic state, if any, can be acknowledged from a democratic republican point of view?* The strategy that I have followed in order to provide an answer can be described as a round trip from theory to the real world and back to theory, according to my methodological decision of developing a non-ideal normative theory. Thus, the core of this thesis is a collection of three articles, the first and the third sailing basically into theoretical rivers, with the second trying to establish a bridge between both articles through the normative analysis of one theoretically relevant case. It is this bridge, as well as my attention to empirical literature on secession, that has allowed me to go from the normative analysis of different theories in the first article, to the formulation of an empirically informed, non-ideal theory in the third.

Through employing this strategy, I have found: (1) how democratic republicanism has ignored the threats that secession conflicts pose in terms of domination, exclusion and instability; (2) how current theories of right of secession (TRS) are vulnerable to one or more of these threats; and (3) how a democratic republican TRS should rely heavily on a non-unilateral right of secession. Then I have analyzed the usefulness of constitutionalizing a right of secession, through a normative analysis of the case of Quebec; it has shown that Quebec's non-unilateral right of secession is, indeed, useful for democratic republican purposes, but also that its limitation to a constitutional framework undermined that

usefulness. I have subsequently developed a TRS which entrusts the international democratic community with the task of monitoring secession conflicts in modern democracies, within an institutional framework based on: (1) a *multilateral right of secession* for any democratic secessionist community, coupled with a *multilateral right to unity* for its democratic host state; (2) a *unilateral right of secession* for extreme cases of democratic secessionist communities dealing with an oppressive, unilateralist or failed state; and (3) a *unilateral right to unity* for extreme cases of democratic host states dealing with an oppressive, unilateralist or failing secessionist community.

Through this dissertation I have tried to develop a democratic republican theory of the right of secession. The most important word in this last sentence is "a". That means: I don't claim that the content of this dissertation is "the" only possible democratic republican TRS, for a number of reasons. *Firstly*, and obviously, because this is just a first and modest step in a theoretical undertaking that will require long, protracted debates between different scholars. *Secondly*, because the rational reconstruction of democratic republicanism upon which I have built the dissertation (that of Pettit and others, which I, following Deudney's work, have labeled as *negarchist*) is only one of several different views on what the republican tradition stands for[117]. And *thirdly*, because the democratic republican TRS developed in the fourth chapter of this dissertation leaves, inevitably, a number of open questions that must be answered through further research. I will briefly enumerate and describe these open questions at the end of this concluding chapter, but first I am going to summarize the main findings of each one of the three articles that form the

[117] In this sense, however, this dissertation has an advantage: Pettit's view on republicanism is arguably the mainstream (while not the consensus) view among current republican scholars.

core of this dissertation.

5.2. Tension between democratic republicanism and current theories of right of secession

This research started from a weak point: republican literature on secession was rather scarce. Thus, the first task I undertook was to put together the two literatures on which this dissertation was to be built, namely democratic republicanism and current TRS. I conceived this stage of the dissertation as an answer to a research question: *what is the normative relationship between democratic republicanism and current theories of right of secession?* As a starting point for an answer, I showed how democratic republicanism can be understood through different rational reconstructions, and how current mainstream reconstruction is *negarchist*, i.e. focused on freedom as non-domination, where "domination" means "arbitrary power of interference". I also pointed out how republicanism has always regarded political communities as divided between factions contending over political power, with these factional conflicts being a potential source of domination to be controlled through the dispersion of power and constitutional checks and balances.

On the other hand, we have also seen how most TRS focus on the *unilateral* right of secession, while some others deal with the idea of a constitutional right of secession. We have then recalled the standard typology of unilateral TRS, which distinguishes between those TRS which conceive the unilateral right of secession as a primary right for any territorially concentrated group in which a majority of people seeks secession (*plebiscitarianism*), those TRS restricting this primary right to certain groups defined on ascriptive traits like language, history, culture, "world-views" and so on (*ascriptivism*), and those TRS that regard this

right not as a primary, but as a remedial one, restricted to groups that are severely oppressed or aggrieved by their host states (*remedialism*). We have also seen different constitutional TRS that try to constitutionalize the principles of some of these TRS (mostly plebiscitarian or remedial), while some others argue for or against a constitutional right of secession purely on pragmatic grounds, i.e. in terms of its ability to "domesticate" secession as a not-absolute-but-inevitable evil. I have also described the most common criticisms that these TRS direct towards each other, and thus their respective strong and weak points.

The analysis of the compatibility between these two theoretical families has been, in turn, built upon two sub-questions: (1) *what can TRS tell us about democratic republicanism?*; and (2) *what can democratic republicanism tell us about TRS?* In answering the first question, we have seen how secession conflicts are usually an ultimate expression of a particularly problematic form of center - periphery conflicts: those between permanent majorities and minorities in modern states on the territorial organization of economy and political institutions, as well as on identity. At a certain point, these conflicts evolve into secession ones; and these secession conflicts imply serious threats for democratic republican principles: those of *exclusion*, *domination* (either by *blackmailing minorities*, or by *arbitrary permanent majorities*) and *instability*. Moreover, we saw that the federal state (one of modern republicanism's preferred methods to manage center - periphery tensions) did not properly handle the threat of arbitrary permanent majorities.

Neither did, according to my analysis, current unilateral TRS. Plebiscitarian and, to a lesser extent, ascriptive theories imply the risk of blackmailing minorities, while ascriptivism itself could also ground the threat of exclusion on ethnic grounds. Because of their bias towards the status quo, remedialist theories strengthen arbitrary permanent majorities.

And they are all, due to their bias towards one of the two sides, highly unlikely to be accepted by the other side, thus leading to instability. Naturally, constitutional TRS based on a plebiscitarian or remedialist approach share the same weak points in this sense. And pragmatic theories also present different weaknesses, the main ones being: (1) *ceteris paribus*, in the case of rejecting the constitutionalization of secession they are clearly biased towards the status quo, hence being weak in the face of the threat of permanent majorities; and (2) those pragmatic theories that accept constitutionalizing a right of secession do not tell us what to do if one of the two sides in the conflict rejects the idea. To make things worse, instability is also the likely result of simply rejecting all TRS without providing any alternative.

One of the sources of unilateral TRS weaknesses is, as we have seen in chapter 2, its common search for the sovereign *demos* of modern democracies. There, each TRS coincides, essentially, with one of the three great brands of modern nationalist thought: *voluntaristic* nationalism, in which the nation is "a daily plebiscite"; *organic* nationalism, in which the nation is linked by objective traits (like language, culture or even race), beyond the conscience or the will its members; or *legalistic* nationalism, in which the nation is the citizenship represented in the legislature of the state. All three of them were designed in order to argue for concrete state and nation-building projects, like the permanency of the ethnically German region of Alsace-Lorraine within the French Republic, the reunification of Germany, or the identification between the French Republic and its citizenship during the French Revolution. All three of them can be answered by means of counterexamples. Thus, by interpreting as a theoretical question what is essentially a set of political conflicts, unilateral TRS (and their constitutional equivalents) have been unable to design institutions able to civilize these conflicts. Pragmatic

constitutional TRS have been the closest ones to fulfilling this task, but their lack of a broader theoretical framework has led to the two weaknesses that we have seen in these theories.

Thus, I have found democratic republicanism and current TRS to be in normative tension. In my view, it was worth breaking out of this cul-de-sac by developing a democratic republican TRS, able to overcome the threats that secession conflicts posed to democratic republican values, by drawing on the strong points of current TRS while avoiding the weak ones. The findings presented in chapter 2 have thus led me to conclude, with remedialists, that a unilateral right of secession should be a last resort in the face of specific wrongs made by the state or by unionists; but agreeing with primary right TRS I have also concluded that, symmetrically, a unilateral right of the state to suppress an attempt of secession should *also* be a last resort in the face of specific grievances made by secessionists. In any other circumstance, a democratic republican TRS should envision an institutional framework able to channel a negotiation process between the two factions. Given that normative literature on secession usually identifies a "non-unilateral" right of secession with a "constitutional" one (and though I had reservations on this alleged synonymy), I decided to undertake a normative analysis, from a democratic republican point of view, of a unique case of a (quasi) constitutional right of secession: that of Quebec.

5.3. Lessons learned from Quebec

Chapter 3 has also been presented as an answer to a question: *to what extent can a constitutional right of secession be useful in order to minimize exclusion and domination (understood in democratic republican terms) stemming from secession conflicts in modern democracies?* I tried to answer, as I said, through a normative analysis of the case of Quebec,

which was granted with a sort of (quasi) constitutional right of secession by a Reference issued by the Supreme Court of Canada at Ottawa's request. According to this Reference, under the Canadian Constitution, in the case of a clear secessionist majority in a referendum on a clear question on secession, neither would Quebec have a unilateral right of secession, nor would the rest of Canada (including the federal government) have a right to unilaterally ignore that secessionist majority. Instead, a negotiation in good faith between these two democratic majorities would have to take place. This closely resembles the kind of democratic republican TRS I foreshadowed in chapter 2, so it was worth taking a closer look.

My analysis of Quebec's right to secede has not been a descriptive or a causal analysis, but a normative one. Through this analysis, I have found that the non-unilateralist framework designed by the Quebec Secession Reference was useful in terms of minimizing the threats of exclusion, domination and instability. In fact, this analysis has been particularly illuminating in pointing out the difference between domination and non-domination in secession conflicts. We have seen how, before the Reference was issued, federalist voices assured everyone that Ottawa's request to the Supreme Court on Quebec's secession was not intended to retain Quebec within Canada against the will of Quebecers, but just to eliminate the threat of unilateral secession. This opens the question: what changed after this Reference? Why was it so well received by Quebec secessionists as well as by federalists, if the latter got what they wanted from a proceeding that was heavily criticized by the former until the Reference was eventually issued? The answer was that, before the Reference, in the case of a "yes" victory, the actual opening and running of those negotiations in good faith would have depended on the good will of Ottawa's federalists, while after its pronouncement, the

Reference made it mandatory. And it is here that we can see the difference between not being dominated and being benevolently dominated.

However, we have also seen how the Reference also left many open questions. To name just the most important ones: what is a clear question? What is a clear majority? What happens if negotiations fail? The answers to these questions would, to a great extent, rely on context, so the inhibition of the Court is understandable; however, precisely because of this, these answers, as well as the whole process, cry out for an arbiter, something which the Reference does not designate. This silence led to the reproduction of what the Reference tried to avoid in the first place: a who-is-the-sovereign controversy, with Quebec and Ottawa trying to appropriate this role through legislation. A controversy which was subject, again, to a "might makes right" logic. In order to dismantle it, the first step has been to challenge the synonimization of "constitutional" and "non-unilateral" right of secession: a constitution may recognize a unilateral right to secede, and a non-unilateral right of secession could be embedded in international law, or even be regarded as a moral right without a juridical translation. In particular, I think that it is possible to build a democratic republican TRS based on the strong points of Quebec Secession Reference (the right to a non-unilateral, negotiated secession) while changing its locus (national constitutionalism) to a new one (the international system). This has been the point made in chapter 4.

5.4. A multilateral right of secession

Chapter 4 was intended to answer the research question that motivated this dissertation in the first place: *which kind of right to secede from a modern democratic state, if any, can be acknowledged from a democratic republican point of view?* According to the previous two chapters: (1) a democratic republican approach to secession must regard secession

conflicts as factional; (2) secession conflicts imply, in this sense, threats in terms of *exclusion*, *domination* (either by blackmailing minorities or by arbitrary permanent majorities) and *instability*; (3) all current TRS, either unilateral or constitutional, are vulnerable to one or another of these threats; (4) a democratic republican TRS should restrict a unilateral secession from a modern democratic state to very concrete cases, while at the same time outlining a non-unilateral right of secession for any other case; (5) the right of secession delineated in the Quebec Secession Reference is promising in the way that it faces those four threats from its non-unilateral nature, but it has serious shortcomings in the same field due to its limitation to the framework of national constitutionalism; and (6) the key to a democratic republican TRS could be a non-unilateral right of secession like that of Quebec, but entrenched in the international system instead of being limited to national constitutionalism.

Starting from these premises, we have seen how negarchist republicans, when theorizing about international law and International Relations, tend to reject two extreme scenarios: (1) interstate anarchy; and (2) a world state. Instead, they tend to point to two complementary goals: (1) promoting democracy around the world; and (2) overcoming anarchy and hierarchy in the international arena through international organizations and law, rather than through the formation of a world state, considered unfeasible and/or undesirable. This last tenet has been called *multilateralism*. An institution is multilateral, in opposition to bilateral or unilateral, when it follows certain general behavior principles resulting in elements of creation of common law and collective action by more than two sovereign states. Besides, *republican* multilateralism implies that those multilateral institutions, as well as their member states, adhere to republican principles and push forward for them through that multilateral action. This differs greatly from the current situation of secession conflicts

in international law, which except in concrete cases tends to fall into a legal vacuum, hence becoming subject to a "might makes right" logic, inimical to republican multilateralism.

My democratic republican TRS proposes a way of filling this vacuum for secession conflicts in modern democracies. The theory is based upon three pillars: (1) a *multilateral right of secession* for any democratic secessionist community, coupled with a *multilateral right to unity* for its host state; (2) a *unilateral right of secession* for extreme cases of democratic secessionist communities that are dealing with an oppressive, unilateralist or failed state; and (3) a *unilateral right to unity* for extreme cases of democratic host states that are dealing with an oppressive, unilateralist or failing secessionist community. The multilateral right of secession would, in turn, consist of two elements: (1) a *democratic* (therefore, *inclusive*) *referendum* among the members of the secessionists' target group, with a clear question concerning secession, in order to find out whether they actually are a (democratic) secessionist community; and (2) in the case of a clear "yes" victory, a *negotiation in good faith* between the host state and the secessionist community via elected representatives, monitored by the international democratic community through a specialized agency, created and regulated by a means of a treaty or a set of treaties between modern democratic states.

The most important pillar of the theory is this first one, and I have devoted a great deal of chapter 4 to discussing its complex details, whose solution in most cases would inevitably be context-dependent. The theory can be described as a hybrid one: the multilateral right of secession is clearly close to plebiscitarian TRS, while the unilateral right of secession is quite close to a remedialist view. Coupling these two rights of secession, as well as their correlative rights to unity, makes the theory resilient to the threats of exclusion, domination and instability that we

have encountered in current TRS. Moreover, the theory establishes a symmetry of rights and obligations for both unionists (and the host state) and secessionists (and the secessionist community).

As we have seen, we can expect this theory to be criticized for *practical*, *nationalist* and *republican* reasons. Answering these criticisms I have argued how, contrary to how it might seem at first glance, this theory: (1) does not undermine, and probably strengthens, *civic virtue* and the chances of *deliberative democracy*; (2) puts nationalistic controversies in modern democracies within the framework of a sort of "world federalism", in which they are able to clash with other national projects through multilateral mechanisms; (3) though not a definitive solution to the threats of secession conflicts, it is nevertheless *useful* in terms of controlling them; (4) there could be, among many states, different *incentives* to embrace it; (5) it presents clear *advantages* in the face of alternatives centered exclusively *on intrastate autonomic agreements*; and (6) it could be *realistically* applied through a gradualist path, outlined towards the end of the chapter.

In my view, this theory makes a relevant contribution to the two bodies of literature aforementioned, in different senses. To democratic republicanism, this theory makes, in my opinion, a twofold contribution: (1) it deals with a topic that, as I have been saying, has been little considered in republican literature; (2) it is a step towards making democratic republicanism deal with another, broader topic which this tradition has unjustifiably taken for granted: *sovereignty*, or more concretely, *the problem of the sovereign* demos *of democracy*. I regard this dissertation as also making a twofold contribution to the field of TRS itself: (1) it introduces a new theoretical framework - democratic republicanism - to a field that has normally been worked on within a liberal framework; and (2) it delivers a theory that can be regarded as fair

by both sides of a secession conflict, since it doesn't force one of them to bear the exclusive burden of the proof regarding the legitimacy of its aspirations. Both are granted a reasonable and fair arena for conflict, and they are both expected to conduct themselves in a reasonable and fair way. In my view, although this is not the most important point of the theory in purely theoretical terms, in practical terms it probably represents its strongest point.

5.5. Questions open to future research

In undertaking this dissertation, I have tried to be both ambitious and realistic. My intention has been to determine, from a democratic republican point of view, which kind right to secede could be acknowledged for modern democracies. It seemed a really challenging question to me: since modern democracies are (though imperfectly) the closest polity to democratic republican ideals among all the polities that have ever existed, this was tantamount to asking whether there could be a legitimate secession from the most legitimate state among all the states that have ever existed. In answering, I wanted to make a relevant contribution both in theoretical and practical terms. I hope that I have actually made that contribution. However, this is far from exhausting all the problems of secession, nor does it leave no open questions on the horizon. These questions can provide guidelines for further research, in order to expand the scope of the theory, as well as to refine its content. Concretely, I identify three open questions.

The *first* and, to me, the most obvious question is *whether this theory could also be applied to non-democratic contexts*, i.e. to cases in which either the host state or the secessionist community (or both) happen to be non-democratic, to have undemocratic goals, or to use means

unacceptable in a democracy in order to reach those goals. At first glance, it could seem that the theory provides an answer: since both unionists and secessionists are entitled to unilateral action in the case that they happen to be facing an oppressive, unilateralist or failing foe, then democratic actors in secession conflicts would be entitled to unilateral action in the face of non-democratic actors. However, I think that things are more complicated, for a number of reasons: (1) this theory requires, as an ultimate goal, the assumption of a role by the international democratic community, from which non-democratic actors are excluded by defect; (2) in practical terms, in a world full of authoritarian governments, it poses serious practical problems to ask the international democratic community to acknowledge a unilateral right of secession in non-democratic states, due to the diplomatic turmoil it would generate. So secession in non-democratic situations needs specific treatment.

A *second* question is whether this theory could be applied to other territorial conflicts besides secession in the pure sense, like irredentism or other inter-state territorial disputes. Again, at first glance it could seem that the theory has an easy translation: let us simply apply to these conflicts the same mechanisms that the theory provides for secession conflicts. But, again, I think that the reality is far more complex: while most secession conflicts are in an international legal vacuum (for they are considered internal affairs of states), interstate relations are regulated by a rigid adherence by the international community to the principle of territorial integrity. This is regarded, rightly or wrongly, as a peace-promoting stance. To ask for a place in international law for irredentism is usually regarded as a dangerous idea. However, it is legitimate to ask whether we can theorize how to manage irredentist controversies according to democratic republican principles, committed as they are to stability and power restraint. It is not only legitimate, but coherent with

the democratic republican approach to secession outlined in chapter 2: despite their differences, irredentism shares with secession conflicts the fact of being, more often than not, an ultimate expression of broader conflicts between permanent majorities and permanent minorities on economy, territory and identity.

A third question, already pointed out in chapter 4, is if, and how, this theory can be expanded until eventually a democratic republican theory of *sovereignty*. As I said there, I do not think that it is a matter of developing a theory of sovereignty and then applying it to more particular problems, such as secession; but quite the contrary: the problem of sovereignty is so abstract, and so elusive, that it would probably be better undertaken if understood as a jigsaw puzzle, to be solved piece by piece. In this sense, I hope this dissertation can be understood as a first, though modest, step in this direction. By inquiring about the legitimacy of secession in modern democratic contexts from a democratic republican point of view, we are also calling into question what democratic republicanism has almost universally implied as self-evident: the legitimacy of states' borders. A canonical republican like Benjamin Franklin said that "*a great Empire, like a great cake, is most easily diminished at the edges*". The same could be said, I think, about great theoretical problems. My intention, in this dissertation, has been to start solving one such problem by one of its edges.