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ARTICLE

Legalizing Secession: The Catalan Case

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Abstract

In this article we review the main theories of secession from a normative point of view, relating them to the debate on the constitutionalization of secession and the Catalan case in particular. Our conclusion is that secession conflicts are complex because several issues related to justice and democracy are involved. For the Catalan case, we defend the idea of adopting a constitutional or (quasi-)constitutional approach as a peaceful and reasonable way to handle the secessionist debate. This would take into account what authors such as Norman or Sunstein have suggested in their analyses. Liberal democracies are able to consider secession as a way of solving territorial disputes, which need to be approached from a pragmatic and reasonable point of view.

Keywords

ascriptivism, Catalonia, constitution, independence, plebiscitarianism, Quebec, rationality, reasonableness, remedialism, right to decide, secession, self-determination

1. INTRODUCTION: A REASONABLE APPROACH TO SECESSION

In his book *Return to Reason* (2003), Stephen Toulmin described two ways of using human reason. The first is rationality, based on theory and universal certainties, inspired by a mathematical way of thinking. The other is reasonableness, based on personal experience and practice, rooted in what we call "common sense". The first way is that of Descartes, the second of Montaigne. While Toulmin acknowledges the enormous power of rationality, particularly in the field of science and its technological applications, he is also concerned with the importance of reason in the realm of human affairs. He is skeptical about the relevance and success of attempts to establish overarching theoretical systems to explain what, or what should, happen, in human affairs. Toulmin rejects the idea that the challenges of our unpredictable societies can be confronted only from inflexible and abstract theoretical positions; instead, he argues for the need to handle this task with a down-to-earth reasoned way of thinking, which could take into account the unavoidable complexity of human societies.

However, when confronting the problems of secession processes and how they should be handled, most scholars have adopted a stance that is much more rational than reasonable. What we aim to show in this article is that most political philosophers, in trying to find out who is right in secessionist processes, have produced normative theories, which, though interesting, are seriously challenged by reality. Secession processes are the result of complex historical dynamics which are quite difficult to confront from the point of view of abstract principles

attempting to determine who has a "right" to secede.[1] Instead, taking into account that secession processes may lead to instability and, more often than not, violence, we think that the relevant question is the following: is it possible to regulate secession processes in a way that could make them peaceful?

This article is by no means an attempt to give a definitive answer to this question, for this would obviously require going into greater depth. Here, we first review the existing literature in the light of this question, even that which was not designed to answer it. As we will see, there are two major ways of confronting secession from a normative point of view: by discussing (1) a universal (normally unilateral) right of secession; and (2) a constitutional (normally negotiated) right of secession. We explore both approaches, trying to identify their advantages and problems in terms of establishing regulations geared towards peaceful secession processes. Then we take a reasoned, peacefulness-oriented normative look at an emerging secessionist process within the Western democratic world: the Catalan case,[2] not to find a solution, but to test the integrity of the theoretical approaches we first described. With this brief look at the proposals for a concrete case, we hope to make a significant contribution in the progress towards an answer to the question framed in this article.

2. THEORIES OF SECESSION AND THEIR SHORTCOMINGS

Moral theories

Regulating secession needs a moral basis. The development of theories on secession is something relatively new in political theory; the early 1990s saw a wave of literature on this topic generated in parallel with the emergence of new states. We should remember that there were no more than fifty states in the world at the beginning of the 20th century, but almost two hundred at the end (Coggins, 2011). Moreover, nowadays there are secessionist movements (with more or less force) in almost all liberal democracies. So, although secession has been neglected in political theory, it is important to consider its relevance in the real world.

The classic distinction in moral theories is between Primary and Remedial Right approaches (Moore, 1998). Primary Right theories consider secession a fundamental right of certain groups or even individuals, ruling out any requirement to justify it. On one hand, adscriptivist theories (also called nationalist theories) limit the right to cultural or national groups (Tamir, 1993; Margalit and Raz, 1990; Miller, 1993). These theories usually present arguments related to preservation of cultural and national values, and correlate self-determination with the right to secede from the parent state. Despite the popularity of the nationalist position among secessionist movements, the idea of equating nations with states is not defended by many scholars due to the shortcomings that we will mention later. On the other hand, associative or plebiscitary theories derive the right to secession purely from democratic principles without previously constraining the relevant subject bearer of this right (Beran, 1984; Gauthier, 1998).[3] In this case, the priority is to satisfy basic rights such as individual autonomy or the expression of democratic demands. Political authority is inevitably linked to the consent of a population. If the parent state loses the consent of a territorialized minority, that population has the right to secede, independently of its characteristics. Obviously, the authors defending this position include the need to consider the viability of the would-be state.

Remedial Theory however, instead of examining the priority of certain principles or the characteristics of the seceding subject, considers a set of "just causes" that justify secession under certain conditions. The most popular theory in this category claims that violation of individual rights, unjust annexation and unfair redistribution are in themselves strong enough reasons to justify secession. Depending on the author's considerations, the list of relevant grievances varies. Nonetheless, what is clear is that the legitimacy of the state in this case is teleological: the state is a legitimate authority if it serves to protect, usually individual, rights.

Three relevant questions: who, why and how

The moral theories of secession normally answer three different questions which are, as we have seen in the previous section, interconnected. First, *who*: the subject involved in secessionist disputes is often the object of controversy, with some considering individuals as the only bearers of the right to secede while others refer to group or national rights. Second, *why*: the reasons for secession are relevant for just-cause defenders but virtually irrelevant for those supporting Primary Right theories. Finally, the *how*: supporters of plebiscitarian theories are concerned about procedures, but they are not considered by other theories or at least not as a crucial element.

1 We do not deny the importance of moral theories of secession but wish to point out the necessity of applying them to reality in case-by-case analyses. These theories are, usually, good instruments for evaluating the reasonableness of certain claims from different moral points of view, and their institutional solutions.

2 Our proposal will be limited to general guidelines derived from what we know in terms of institutionalization and moral theories of secession.

3 For a discussion of the democratic principle in theory and international order see: López-Bofill (2009).

In general we can say that each theory has advantages and shortcomings. Adscriptivist theories focus their attention on national culture which is empirically the fuel for secessionist aspirations. However, we know that national cultures are dynamic and controversial, that citizens of minority nations normally have shared identities and the borders of these identities are usually not clear. In some contexts, applying the principle of national self-determination for solving secessionist disputes does not seem to be wise or even possible since the dispute is precisely over the national identity or the existence of a national subject. As their major criterion, Plebiscitarian or associative theories are sensitive to the democratic will of the citizens. Nevertheless, this theory has several shortcomings, since the political unit that would vote on secession is not clearly defined. A current criticism against the theory refers to the potential fostering of instability, given that the political unit would only be defined *after* the vote on breaking up with the parent state.

Triple justifications, hybrid theories and cultural liberalism

Brief reflection on the three main theories of secession is enough to see that each theory has major shortcomings and none solves the complexity of secessionist disputes. Should we consider a majority secessionist claim illegitimate in the absence of severe grievances? Are territorial groups entitled to secede though they lack a national culture? Is there a limit to recursive secessions even if they are legitimately following democratic procedures? In recent theories of secession there is a certain flexibility and permeability between categories that has lead to hybrid approaches and major changes in the positions of the authors. Focusing on the debate in liberal democratic contexts (such as Catalonia, Scotland and Quebec) we can already see this tendency in older theories.

New theories apply several criteria to plurinational democracies, and the debate on minorities is evolving in parallel with that on secession. In the fourth stage of the debate (Kymlicka, 2001) ethnocultural justice, national recognition and accommodation of minorities become part of the legitimacy of the state. As Tierney has pointed out "debates over constitutional accommodation of substate nations should not be characterized, as they often have been, as struggles between liberal democratic, 'civic nationalist' host states on one hand, and communitarian, 'ethnic nationalist' sub-state national societies on the other; in fact, both sides to these disputes derive their ideological framework from liberalism" (Tierney, 2004: 9). With this perspective, some authors have reformulated remedial theories, taking into account ethnocultural justice and minority self-government as crucial elements of state legitimacy and including them in the list of just grievances legitimizing secessionism. Two examples are Seymour (2007), who includes a Primary Right to self-determination within the parent state, and Patten (2002), who establishes lack of recognition as grounds for secession in the case of minority nations. Both mix democratic requirements and ascriptive reasons linked to Primary Right theories with a remedial approach, treating secession as a last-resort solution to territorial conflicts. Older theories of secession have also evolved to include new elements. An example is the comparison between Allen Buchanan's first formulation of a remedial theory, published in 1991, and the prologue to the 2013 Spanish edition, 21 years later, in which Buchanan comments on the Catalan secessionist demands. While the restrictive 1991 theory defended secession as a very exceptional measure, the new edition is more flexible, seeing the unfair territorial distribution of tax revenue in the *Estado de las Autonomías* and the breaching of agreements between central government and autonomous regions as just causes, or at least, as things that should be taken into account when evaluating secession claims.

To sum up, in present-day plurinational, liberal democratic contexts, few authors defend a single-dimension approach to secessionist disputes. The plurality of legitimating discourses and interests, the complexity of the notions of justice and democratic legitimacy and the existence of competing visions of liberal legitimacy make it impossible. As mentioned earlier, beyond certain guidelines provided by moral theories, a case-by-case analysis is necessary. In addition, we consider that an institutional approach should be adopted to integrate general principles into the constitutional framework of the parent state (See section 3).

3. CONSTITUTIONALIZING SECESSION

So far, we have presented a summary of the academic normative debate on the right of secession, but it should be noted that general theories on the right of secession usually refer, implicitly or explicitly, to a *unilateral* right of secession. This tends to greatly favor one side of a secessionist conflict in those peaceful countries which aim to protect basic human rights, particularly in the case of liberal democracies: Primary Right theories (either adscriptivist or plebiscitarian) tend to favor secessionists, while remedial theories tend to favor states, with the burden of proof falling on the secessionists. Given these observations, it seems unlikely that either theory would be widely accepted by both sides in a secessionist conflict taking place in a peaceful and civilized country. Some scholars have defended the idea of constitutionalizing the right of secession to overcome the problems of a unilateral right to secede and pro-

vide a framework for peaceful development and resolution of secessionist conflicts. Others, however, argue against this idea, saying it would create more problems than it would solve. We will now examine this debate, to see to what extent a constitutional right of secession could provide a peaceful-oriented framework for secessionist conflicts.

Main theories developed within the debate

When trying to link the theorists in this debate to the three main theories of secession described (adscriptivist, plebiscitarian and remedial), we found that none followed the tenets of adscriptivism. In contrast, there are those who clearly link their theory on constitutional right of secession to a remedial theory, either to prove or discard it. Others analyze this subject within a plebiscitarian framework. And finally, there are scholars who do not evaluate the constitutional right of secession for its compliance with an ideal theory, but for its practical use as an institutional mechanism designed to minimize the potential dangers they see as linked to secessionist politics. For the sake of simplicity, although not entirely accurate, we label this latter approach as *pragmatism*. Another division between the authors analyzed here is that some of them are in agreement with a constitutional right of secession, others not, and some simply consider that it depends on the case. We labeled them as "positive", "negative" and "case-by-case" groups of theories. The following table shows authors in relation to the approaches.

Figure 1: Theories on constitutional right of secession

	Positive	Negative	Case-by-case
Remedialism	Wayne Norman (1st)	Cass Sunstein[4]	Allen Buchanan
Plebiscitarianism	Mark E. Brandon	Andrei Kreptul	Daniel Philpott
Pragmatism	Wayne Norman (2nd)[5] Daniel Weinstock Miodrag Jovanovic	Hilliard Aronovitch	

Source: own elaboration

In the following detailed description of these combinations, we consider, for those authors involved in the debate on constitutionalized secession, their stance (or lack of) in the general debate on the right of secession.

- *Remedialism*: Some remedialists (Norman, 1998) argue for a constitutional right of secession, mainly because they see a qualified constitutional right of secession as a proxy for just-cause secessions. Determining who has a just cause for secession is a task that requires an arbitrator, but one who is not biased towards one side or another. A feasible solution could be to establish a procedural constitutional right of secession with major democratic hurdles (e.g. qualified majorities in a referendum on secession), which only groups with very good (just) reasons would be able to overcome. However, other remedialist authors (Sunstein, 1991) state that, if secession is regarded as a remedial right, then its place is strictly in the realm of moral principles, not of legal rights. They regard secession as similar to revolution or civil disobedience: a form of resistance that can only be legitimized when it is exercised against a deeply unjust authority. But it makes no sense to "legalize" them as forms of resistance. Finally, there are also remedialists for whom there is no general answer to whether a constitutional right of secession should be introduced for the sake of remedialist guidelines. For them, it depends entirely on the context. A constitutional right of secession is only one of a number of tools to be used to face the problem of unjustly treated minorities. Sometimes it will be the best tool, sometimes not. Buchanan, in his earlier publications, was a clear supporter of this point of view (1991: 127-149).
- *Plebiscitarianism*: Some plebiscitarians see constitutionalism and secession as two sides of the same coin: the idea that governments should serve the will of the people, the reverse. Mark E. Brandon argues that at the heart of constitutionalism lies the idea that governments are human creations and that any assumption of perpetuity of political communities is "wrong in principle" (2003: 274). Andrei Kreptul (2003) is far more skeptical. A libertarian, Kreptul applies this approach, strongly anti-statist, to secession, stating that secession is an individual right: only individuals have the right to decide to which political community they and their properties should belong. Kreptul's mistrust of the state, however, leads him to discourage any attempt to constitutionalize secession, for it would probably become an attempt to domesticate secessionism, rather than protect the individual, plebiscitarian right of secession he wants to promote. Finally, Daniel Philpott (1998), one of the first proponents of a plebiscitarian approach to secession, considers that the value of

4 It proved difficult to place Sunstein in a category. His strongest reasons for opposing a constitutional right of secession are largely pragmatic. However, his argument, in general terms, is clearly based on concerns about legitimacy, in a remedialist fashion. What differentiates him from Buchanan is that, while agreeing with remedialism, Sunstein rejects constitutionalization of secession, even where there is just cause.

5 Wayne Norman appears twice because we observed a shift from an initial remedialist approach towards a more pragmatic one. In 1998, the main reason to accept a (qualified, that is quite difficult to achieve) constitutional right of secession, was its instrumental potential as a proxy to just-cause secession. Norman later became doubtful of its soundness, and focused more on the defense of a constitutionalized right of secession as part of a *modus vivendi* between rival nation-building projects within a single state.

a constitutional right of secession must be evaluated case by case, as it highly depends on the context.

- *Pragmatism*: Pragmatic theorists do not formulate their views on a constitutional right of secession as an extension of any ideal theory of secession, but as a way to handle secessionist conflicts and their (especially negative) consequences in practice. Daniel Weinstock (2001), for instance, states that it is reasonable to legalize a morally problematic practice when it: 1) is inevitable; 2) does not violate any absolute moral principle; and 3) the consequences of forbidding or not regulating the practice are worse than those of legalizing and therefore regulating it. Weinstock considers that secession matches the two first criteria, and that constitutionalizing a right to secede matches the third, allowing governments to set a reasonably high threshold to make it quite difficult to engage in the legal process but not confine secessionists to a juridical impossibility they would be unlikely to accept. Norman (2006) and Jovanovic (2007) share similar views but, though based on the same pragmatic approach, Hiliard Aronovitch (2006) argues that there may be or not be good reasons to defend a right of secession. He states that a constitutional right of secession will always have weak points which would be hard to overcome: futility, risk of misuse, weakening of both the unity of the plural states and of the diversity of their constituent units, over-commitment with legal rights, less flexibility.

In this article, we are closer to the pragmatic point of view. We are not as interested in discussions on legitimacy or sovereignty, as we consider it very difficult to promote consensus between the two sides of current secessionist processes, but rather in determining how to handle these processes in the most peaceful and reasonable way. To see if a constitutional right of secession promotes those pragmatic goals (as in Weinstock) or hampers them (as in Aronovitch), we think it is useful to study the only case of a well-established liberal democracy recognizing a (quasi-) constitutional right of secession: Canada. It is well-known that, after two referendums on sovereignty, held against the background of the disagreement between Quebec City and Ottawa over Quebec's right of secession, the Canadian federal government asked the Supreme Court whether Quebec had a right of secession under constitutional or international law.[6] The ruling, pronounced in 1998, was that while Quebec did not have the right of unilateral secession, compliance with the underlying democratic, liberal, constitutional and federalist principles would nevertheless force Ottawa to take into account a majority "yes" in a referendum with a clear question on Quebec's independence, and negotiate with the secessionists.

The great virtue of this ruling was that it built consensus on the legitimate aspirations of both sides by providing them with a mechanism to peacefully battle for or against independence (Young, 1999), while denying the legitimacy of unilateral action on this issue. However, the solution comes with problems of its own. What happens if negotiations fail? Who determines what a clear majority is? And others. These problems are recognized in the Supreme Court's ruling, but we believe that having a practical, reasoned solution for problems is far better than having none at all. This is especially the case when taking into account the certain prominence of the violent, extreme left-wing branch of the Front de Libération du Québec (FLQ) in the early days of the modern Quebec liberation movement. We cannot establish a direct causal relation without deeper analysis, but we think it is reasonable to assume that the rise of a moderate, peaceful and democratic secessionism organized around the Parti Québécois, and the credible democratic and peaceful channels through which it could fight for its goals, were major contributions in preventing the FLQ taking over Quebec's secessionist movement. In our view, the 1998 Supreme Court ruling was a step forward in providing secessionism with channels to credibly push for its demands without harming the reasonably peaceful, stable and democratic environment provided by the constitutional order.

4. THE CATALAN CASE

We have observed that the main normative theoretical approaches to secession focus on a general discussion of the right of secession (normally understood as unilateral) or on the constitutional right of secession. All these theoretical tools can be used to confront a specific, recent case of growing secessionist conflict within a peaceful and democratic society: Catalonia, within Spain. With social support for Catalan independence having grown gradually for at least ten years, most opinion surveys show that, in the past two years, a majority of the population backs the claim. This is a relatively sudden shift away from traditional Catalan nationalism, whose mainstream supporters have always been in favor of an accommodation of its demands within the framework of a pluri-national, highly decentralized Spanish state.

A good description of this shift and its likely causes is given by Requejo and Sanjaume (2013) and Guinjoan, Rodon, Sanjaume (2013). However, to form an idea of the environment in which this rise of Catalan secessionism

6 See: "Reference re Secession of Quebec", [1998] 2 S.C.R. 217 available on [http://scc.lexum.org/decisia-scc-csc/scc-csc/scc-csc/en/item/1643/index.do]

has developed, without going into details on the history of Catalan nationalism, we mention five important events: (1) the reform of Catalonia's autonomous constitution (*Estatut d'Autonomia*) between 2004 and 2006, which was completely insufficient for some defenders of Catalan nationalism; (2) the 2010 ruling by the Spanish Constitutional Court, on the lawsuit the conservative People's Party filed against the *Estatut*, seen by most Catalan nationalists as an unacceptable curtailment of an already insufficient autonomy; (3) the economic crisis, which hit at a time when a majority of Catalans were convinced that Catalonia was suffering from discriminatory redistribution of revenue by Spanish governments, left or right-wing; (4) the massive demonstration in Barcelona on September 11, 2012, demanding Catalonia become "the next state of Europe"; and (5) the subsequent regional elections in Catalonia, which resulted in a Parliament with a majority of seats in the hands of pro-sovereignty[7] parties, growth of the most explicitly secessionist parties, and an agreement on parliamentary stability between the right-wing, pro-sovereignty Convergència i Unió and the left-wing, secessionist Esquerra Republicana de Catalunya parties. The deal included a commitment to hold a referendum on independence before the end of 2014.

The Catalan secessionist process being developed is based on this agreement. Supporters defend it as completely legitimate for various reasons, but mostly on the grounds of popular support. However, critics of the process present it as a deliberate attempt to break Spanish constitutional order, and therefore as a threat towards democracy. How to react to this? In our view, before discussing the convenience of constitutionalizing a right of secession, we should first look at the issue from the point of view of the theories on (unilateral) right of secession we have so far discussed.

a) *Ascriptivism*: Catalan nationalism has usually justified its demands by rooting them in the distinct cultural identity of Catalonia, especially in linguistic terms. This, however, is not so usual in the current secessionist discourse, much more focused on plebiscitarian and economy-oriented remedial reasons, as we make clear below. Nevertheless, it does play a role; for instance, in the original draft of the *Estatut d'Autonomia* approved by the Catalan parliament in 2005, Catalonia was defined as "a nation" with "historical rights". This idea has consistently been repeated in some of the largest demonstrations for the *right to decide* (which usually includes the right of secession), such as the march in 2010 against the Spanish Constitutional Court's ruling on parts of the Statute, under the slogan "*We're a nation. We decide*". However, those contesting the idea of Catalonia having a right of secession, normally affirm that the "nation" is Spain as a whole, and that Catalonia is simply a region within it. This is the stance of Ciutadans and the People's Party, the only two parties in the Catalan parliament which are completely against a call for a referendum on independence.

b) *Plebiscitarianism*: the most frequently used line of reasoning in favor of Catalan secession, or at least for a referendum on independence, is based on the implicit affirmation that, simply stated, a majority of Catalans want it, and that it would be undemocratic to ignore them. The results of the last Catalan elections, and almost all public-opinion surveys on the issue conducted in Catalonia over the last two years, are solid proof that this majority actually exists. This observation is reinforced by the massive mobilizations for Catalonia's right of secession that have taken place during the last 5 years, along with the unofficial referendums on independence which started in 2009 in different cities around Catalonia (Guinjoan and Muñoz, 2013). However, the line of reasoning is subject to the same criticism that plebiscitarianism normally receives: if the will of any group of people is enough to legitimate secession, then the door is opened to all sorts of undemocratic evils, particularly strategic actions by privileged minorities, and "recurring" secessions (Ovejero, 2012).

c) *Just-cause theories*: defense of Catalan secession (rather than the right of secession as such) is usually based on a denunciation of the unfair distribution of revenue by the Spanish government among the autonomous communities. In the words of the leader of the left-wing, independentist party Esquerra Republicana de Catalunya, "we are 16% of Spain's population, produce 20% of the GDP, pay 24% of the taxes, and then receive 10% of the revenue" (Miró, 2013). Within the just-cause framework, others base themselves on the assumption that the Spanish Constitutional Court ruling which marked down parts of Catalonia's *Estatut*, arguing that it proves that Spain's restrictions on regional autonomy reject several reasonable demands made by Catalan nationalists, providing a justification for secession. Allen Buchanan, a leading proponent of just-cause theories of right of secession, has recently stated: "In my judgment, a stronger case for Catalonia having the nonconsensual right to secede can be made

7 In political discourse on Catalonia, a distinction is usually made between independentist organizations, which are straightforward secessionists, and pro-sovereignty ones, which, though explicit in their support to Catalonia's right of secession, contain within their ranks both clear secessionists and people who push for some sort of middle ground between full independence and the current autonomy. While this distinction is rather fuzzy, we prefer to maintain it in this article, to give a realistic description of Catalonia's parliamentary and political landscape.

> on the basis of allegation that Spain has not shown good faith in responding to Catalan pleas for greater intrastate autonomy." (Buchanan, 2013). Opposed to this line of reasoning, and usually drawing on Buchanan's earlier ideas, some remedial theorists assume that the right of secession is only legitimate in the case of extreme injustices, such as major violations of basic human rights. Any other grievance against the current legal order in a democratic state has to be presented, reasoned and accepted by the whole population of the democratic state (Ovejero, 2012).

In our opinion, it is evident from this brief summary of normative theories on right of secession applied to the case of Catalonia that none provide a stance that could easily be adopted by Catalan secessionists as well as unionists, without speaking of the rest of Spain. Catalonia's right of secession (not just Catalonia's secession itself) is a highly divisive issue which cannot be easily solved with ideal theories of a moral right of secession. To ensure that debate around Catalonia's secession develops peacefully and reasonably, we find it much more promising to defend the notions of pragmatic theories of constitutional right of secession. Rather than discussing who has and who does *not* have a "moral" right of secession (which is, of course, a relevant and legitimate discussion), we should start to envision a constitutional design which can channel Catalonia's secessionist debate towards a peaceful resolution by offering, both to unionism and secessionism, a credible prospect that their demands will be treated fairly. In this context, the approach of the Supreme Court of Canada seems highly promising. On the one hand, it requires secessionists abandon the idea that Catalonia has an unrestricted right to secede; on the other hand, it does not allow the Spanish government to use a restrictive interpretation of the Constitution as a way to forbid a referendum on Catalonia's secession, or to ignore a clear "yes" victory in a referendum on the grounds that the Spanish people as a whole are the only "sovereign" of Spanish territory.

This is not to say that this approach would be free of problems. First of all, there is the fact that Canadian and Spanish constitutional traditions are quite different, with the first one being rooted in the idea of Canada as a federation of provinces, and the second one being highly influenced by a vision of the state as being equivalent to the nation and both to the sovereign. Apart from this, even if both the Spanish government and Catalan secessionists agreed to call a consensual referendum on independence followed by a negotiated secession process in the case of a yes vote, we argue they would need to talk about issues such as the framing of the question, what majority is required for a clear "yes" victory, what would be discussed in possible secession negotiations, and what to do in case negotiations fail. Mutual recognition of a legitimate say in this process would be a good starting point for a peaceful and reasonable resolution of this democratic conflict. Or, at least, it would be better than the situation where both sides insist on having unrestricted "sovereignty" over Catalan territory, regardless of the normative reasoning underlying their claims.

It should be noted that the Catalan government, led by the pro-sovereignty Convergència i Unió and sustained by the *Pacte per la Llibertat* deal negotiated with the pro-independence party Esquerra Republicana, has repeatedly affirmed its will to explore every possible way to conduct a referendum under an agreement with the Spanish government. What should then be done if Madrid ignores or denies the offer? In the opinion of Allen Buchanan "if Spain ignores a strong mandate for secession in a well-conducted referendum and at the same time does not make a credible offer of greater autonomy, then I think the Catalan government should seek regional (EU) or international (UN) support to pressure Spain to cooperate" (Casulleras Nualart, 2013). We take the opposite view: it is not the Catalan, Spanish or any other government who should look for international support for its cause in a secessionist conflict if the other party does not want to begin reasoned dialogue. The international community should search for mechanisms of arbitrage and mediation to promote pragmatic, reasonable and peaceful solutions to the conflict, particularly in countries which already enjoy the stability and peace granted by a democratic government.

5. CONCLUSION

Secession processes are highly complex, with a multitude of normative and equally complex issues intervening: self-determination, basic human rights, redistribution of resources, the center-periphery distribution of power, cultural diversity, equality among citizens, etc. It is not hard to understand why debates on secession processes are much more complex than those on the general moral right of secession: they are hard to solve by just applying a general theory to a particular case. The "rational" approach described at the beginning of the article is rather unsatisfactory when applied to specific cases, and we stated that we believe in the "reasoned" approach, trying to balance the demands of both sides of secessionist conflicts rather than to determine which demands are legitimate and which are not. Our point of view is that a set of demands gains legitimacy to the extent that it recognizes and respects the other side's equally respectful set of demands, however opposed they may be. The next step is to look for ways to channel this contradiction by means that ensure any confrontation will be peaceful, fair and democratic.

We believe, following the "reasonable" approach, that the (quasi-) constitutional strategy envisioned by the Supreme Court of Canada for the case of Quebec is the most

promising for channeling a secessionist conflict, particularly within a liberal democracy, as defended at a more theoretical level by scholars like Weinstock, Norman or Jovanovic. However, when applied to other cases such as Catalonia, the strategy reveals its limitations and problems, such as the difference between constitutional traditions, the lack of provisions for handling failed negotiations between secessionists and the central government, and the lack of arbitration mechanisms to oversee the process. Further research is necessary to establish ways to overcome these limitations. The main concern of this article was not to answer a question, but to reformulate it. Instead of asking who has a right of secession it is better to ask if there is a way to regulate secession processes so that they are peaceful. For us, this is what it means to have a "reasonable", rather than a "rational", normative approach to secession.

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