

## **The Moral Value of Collective Self-determination and the Ethics of Secession.**

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On October 27, 2017, the Catalan regional parliament, acting on what they regarded as a right of self-determination, held a referendum on the independence of Catalonia. Voting in the referendum was suppressed by the Spanish state, on the grounds that the referendum was illegal, by which they meant in violation of the Spanish constitution. This led to what is arguably the most serious constitutional crisis in western Europe since the end of the Second World War.

A striking feature of the period immediately following the 2017 referendum on Catalan independence was the massive numbers of people who came out to demonstrate on both sides of the debate, in defence of the unity of the Spanish state, which they saw as a just political order, and in defence of Catalan self-determination, which they associated with holding the referendum and respecting its decision.

The street demonstrations against and in favour of Catalan independence have a parallel in the theoretical literature on justified secession.<sup>1</sup> They invoke, directly or indirectly, either the view that secession should be theorized in terms of state legitimacy, typically theorized in justice terms, or the view that it should be theorized in terms of the group's exercise of the right of self-determination, which, in the literature on secession, is assumed to be synonymous with a referendum. What is the appropriate theoretical lens to adopt in this case? Is this a case of rival and incommensurable political values or is there something further that can be said about these arguments, which would be helpful for theorizing justified secession?

In this paper, I argue that we should resist two temptations. The first is the tempting - because attractive and theoretically neat - view that the conditions for establishing state legitimacy also determine the legitimacy of a secessionist claim. On this view, unilateral secession from a

legitimate, justice-respecting state is not justified, but unilateral secession from an unjust state would be justified. This is the central insight of just-cause theories of secession, such as advanced by Allen Buchanan. But is the relationship as direct as that would imply? Some secessionist movements seem to be motivated, not by escape from an unjust regime, but primarily by the value of self-determination. They assume that any thwarting of the group's aspiration to be self-determining is itself an injustice, and de-legitimizes the political order. The justice view doesn't seem to accord value to collective self-determination, and as a result is unable to explain certain central features of international law and international practice, which do seem to vindicate the value of collective self-determination.<sup>2</sup> To address this sort of argument, we need to examine the value of self-determination and its role in justifying political orders.

There is another, almost mirror opposite view that is also tempting, but which should be resisted: this is that, in any examination of the legitimacy of secession, we should accord normative authority to the claims that are actually made by secessionists. Most secessionist politicians seem to think that secession of a particular unit and/or group in the state is justified if it represents as an act of self-determination and that other groups in the state and the international order are under a duty to recognise it. They seem to assume that the group has a right, or justified claim, to be self-determining and that a majority vote in favour of secession represents an act of self-determination. But is this true? After all, the fact that some group claims these things doesn't mean that these claims are justified.

For their part, anti-secessionists have claimed that the problem is with the idea of self-determination, which is so loose and indeterminate that it is dangerous to political order. But is the problem with the value or with political elites on both sides (secessionist and unionist) who invoke emotive values to mobilize their support base, without any procedural or moral guidelines to manage such crises? Is there a way of understanding the grounding argument – in collective self-determination – that would justify an institutional process for secession that is

consistent both with that value and with other values such as peace, justice, stability and democratic governance?

The main aim of this paper is to develop a distinctive account of secession which is not vulnerable to some of the problems that afflict the two dominant accounts - the plebiscite view of self-determination on the one hand and the just-cause account on the other. On the *plebiscite view* of secession, a majority of any territorially concentrated group acquires the right to secede if that decision is reached through a democratic procedure (such as a referendum).<sup>3</sup> The *just-cause* account holds that there is a right of secession when a group has been the victim of egregious injustice at the hands of the state, which is defined in terms of the violation of human rights, but also includes unjust annexation and the violation of internal agreements, and the appropriate remedy is the establishment of a separate state.<sup>4</sup> In this paper, I show that both are flawed: the first by assuming that self-determination can be equated with majoritarian decision-making in a referendum on the question; and the second, in failing to consider the central value of self-determination in its theory of the legitimacy of secession. However, I do not attempt to offer a hybrid view. My view is firmly rooted in collective self-determination, properly understood. While I think that justice is important, I think that that value is connected to justifying *regimes*, not the basic institutional framework of states. I also gesture at a pluralist understanding of the fundamental normative values that underlie the global institutional order, and suggest that self-determination is one of these values, though not the only one.

My main aim is to develop a complex account of the relationship between self-determination, state legitimacy and secession, which is not captured by either the just-cause view of Buchanan (and the Spanish state which invokes a version of it) or the plebiscite theory (and the Catalan nationalists who invoked it). In section I, I offer some conceptual clarifications about self-determination, and a discussion of the moral value of self-determination which explicates why it is a value for communities and for their members; and explains its relationship to other cognate

concepts, such as individual self-determination, democracy and justice. In sects. II – III, I explain the problems with the dominant theories of secession and in IV, I return to the concept of self-determination and apply it to the case of secession. In this section, I attempt to address what I think is an important objection to the idea of constitutive self-determination – that it is fundamentally de-stabilizing and therefore problematic.

### **I What is collective self-determination and why is it valuable?**

Before I begin, it is important to have at least a preliminary account of the concept of collective self-determination on the table. This is necessary to vindicate my argument at the end, but it is also important because most secessionist movements are motivated by self-determination and conceive of the referendum on independence as an expression of collective self-determination.

The first issue that arises with any attempt to clarify the idea of collective self-determination is that of *the self* that is thought to be self-determining. The concept of collective self-determination can be applied to many different collective entities, such as a churches or universities or sovereign states. My concern in this paper is with collective self-determination as it applies to *peoples*.

This may raise an initial objection: Why am I not interested in the self-determination of the state? There is a straightforward sense in which a state that is at liberty to make its own decisions, enter into legal relations with other states and so on, can be described as self-determining. In my view, however, although we often express concern about the self-determination of states, and their capacity to make decisions free of external domination, the right of self-determination recognized under international law is described as the right of peoples to self-determination, and although this is understood to apply in the first instance to states, it has also been used as grounds for decolonization. This suggests that referencing ‘self-determination of states’ is short-hand for concern for the collective autonomy of the people who live in the state, and for whom the state represents an institutional mechanism through which they can be self-determining. It is the people for whom we are ultimately concerned.

Indeed, it is unclear why we should care whether a state – which after all is a coercive entity – is collectively self-determining in the sense above. If it is a repressive state, from which people are deeply alienated, the question of its self-determination would not be morally interesting or valuable.

It is not mysterious why we should care about the collective agency of the people who act through their institutional political structures. For them, collective self-determination is a good: it involves the power to shape the collective character of their political communities, to choose modes of leadership and representation that reflect their conception of political legitimacy, develop their own processes of collective deliberation and decision-making, and make policies and laws that reflect their own values and priorities. This account of the value of collective self-determination presupposes that most individuals see themselves, not as free-floating individuals, but as embedded in a complex of relations with other people, and with place, and that often these group-based identities and attachments and relations are an important part of what gives value to their lives. Institutions of collective self-determination are the means by which individuals, as members of groups, control the collective conditions of their existence, shape their relations with each other, and their interactions as members of these groups.<sup>5</sup>

What do I mean by ‘the people’ who are self-determining and what is their relation to the state or sub-state unit? First, the ‘people’ have to be a collective agent at least in the sense that the actions of the collective are not reducible to the actions of any of the individuals in the group. For that, they must be able to act as a group and this typically requires some kind of institutional structure through they make decisions, either in a state or sub-state entity or even less formal mechanisms of collective action, such as an organized liberation group fighting against imperial control. The ‘people’ are a specific kind of collective agent in which members (1) share a conception of themselves as a group – they subjectively identify with co-members, in terms of either being engaged, or desiring to be engaged, in a common political project and they are mobilized in actions orientated toward that goal. (2) They have the capacity to establish and maintain political institutions, through which they can exercise self-determination.

(3) The people have a history of political cooperation together; it is possible to identify objective and historically rooted bonds of solidarity forged by their relationships directed at political goals or within political practices. Elsewhere,<sup>6</sup> I have argued that the conditions that mark 'peoplehood', with its explicitly political focus, make it the right kind of collective agent to be the subject of duties and holder of political rights.

Self-determination – regardless of the entity to which we ascribe self-determination- typically has two distinct dimensions: (1) Constitutive self-determination, which is the liberty and/or power to make decisions about the group's own status, powers, procedures, membership and boundaries; and (2) Ongoing self-determination, which refers to the group's control over significant areas of its collective life, free of external domination.<sup>7</sup>

What is meant by the idea of *constitutive self-determination*? This typically refers to the collective agent making decisions about its own status. A church, for example, is a collective agent, which may be self-determining in the sense that it makes decisions about its own status, membership and legal relations – as for example when the Canadian Methodist church, the Congregational Branches of the Church of Christ in Canada, and a large (70%) portion of the Presbyterian Church united in 1925 to form the United Church of Canada. We would think it a violation of the churches' constitutive self-determination if the state or some other body prevented them from being able to unite in this way or if one of the units coerced the other into such a union.

The *constitutive dimension* of self-determination is particularly relevant in cases of secession. When supporters of Catalan independence expressed shock at the violent and repressive response of the Spanish State to their democratic referendum, they appealed to the violation of Catalan self-determination, by which they meant the constitutive aspect of self-determination. This concerns the power of the group – the Catalan people - to control their own status, including the scope and extent of their decision-making, and their ability to determine the character and boundaries of the political community itself.

*On-going self-determination* involves independent control over some significant aspect of the group's common life. To return to the church example, this aspect of self-determination refers to the fact that the decisions made by a church should reflect the entity's own internal deliberations and decision-making procedures, free from external pressure. There are two dimensions to this, internal and external. The external dimension is directed at other political communities or agents (such as other churches or the state), and generates a duty to respect the group's own practices and collective life. The internal dimension requires that the processes and procedures that the group has adopted to make collective decisions are ones that members of the group identify with, and they regard the policies and practices that emerge as ones that they have made. Although it's possible that the procedures that the group has adopted, as central to their constitutive self-determination, are not formally democratic – they do not involve competitive elections, voting and so on - it is difficult to see how a group can enjoy on-going self-determination without some degree of input into the decisions and policies that are made. It would also be difficult, as an epistemic matter, to be confident that the elites are reflective of the values and commitments of the community, on whose behalf they make these choices.<sup>8</sup>

With this conception of collective self-determination on the table, it's possible to examine the plebiscitary-referendum 'theory' of secession, to see if it really is an adequate expression of either democracy or self-determination (which do seem like the underlying values that would justify it), and also see the inadequacies of the justice-based account, which is often appealed to by just states.

## **II The Plebiscitary-Referendum Account.**

One of the dominant theories of secession, both in the academic literature and in the popular press, appeals to the idea of a majority vote in favour of secession as an act of collective self-determination. This is often connected to democracy via the assumption that a plebiscitary right to secede is required by democratic values, and to self-determination because an important

aspect of self-determination is deciding on the boundaries, membership and rules of the institutional order itself.<sup>9</sup> On this latter point, there is widespread agreement: it is, as I've argued above, central to the constitutive dimension of self-determination.<sup>10</sup>

The appeal to referendums as a procedure in the secessionist (or indeed state-making) tool-kit exerts a powerful pull on the imagination. Historically, it was the basis of some of the most successful boundary-drawings in Europe after the First World War. One of the most notable cases of plebiscites yielding a stable solution to an ongoing border conflict is that of North Schleswig, which was claimed by both Denmark and Germany, and whose fate was determined by a plebiscite in 1920.<sup>11</sup> In other cases, plebiscites are not held, but proponents of the practice seem to believe that they would have provided a resolution of the thorny issue of borders and jurisdictional authority. A case in point is Kashmir, which was claimed by both India and Pakistan at the point of both countries' decolonization from British India. Lord Mountbatten, the Governor General of British India, stipulated, in a letter accompanying the 1948 Instrument of Accession, that the status of the princely state could not simply be decided by the prince of Jammu and Kashmir, nor by another state (India or Pakistan) but should be ultimately decided through a plebiscite. The promised referendum was never implemented by the Indian government, and pro-Pakistani literature on Kashmir characterizes the non-holding of the plebiscite as the "original sin of the Government of India".<sup>12</sup>

Referendums are often employed in contexts where the powers and jurisdictional status of the self-determining unit will be altered in significant, but not profound, ways. This has been true of the decision to join the European Union (even though there is no legal requirement to hold a referendum to join, and to legitimize independent states in the context of a disintegrating state structure<sup>13</sup>; and referendums have also been employed to legitimize independent states in the context of a disintegrating state structure.<sup>14</sup>

In addition, in many places throughout the world where there is a mobilized nationalist movement seeking to secede from the state that it is in, referendums on independence are held to justify secessionist claims to an independent state.<sup>15</sup> For example, Independence referendums have been held in Iraqi Kurdistan, in 2005 and 2017<sup>16</sup>; in Quebec, in 1980 and



1995; Scotland in 2014 (though preceded by two other referendums on devolution, called by the UK government); Catalonia, in 2014 and 2017, East Timor in 1991 and South Sudan 2011, to name only a few.

Underlying the increased use of referendums to effect significant constitutional change and justify secession is the eminently plausible and attractive underlying view – a view that I endorsed in Part I above – that the state is a vehicle for the self-determination of its members. It also helps to address an epistemic concern: we rightly worry that political elites claiming to be operating in the interests, and in ways consonant with the aspirations of the people living in the political community, do not. Further, in line with the constitutive dimension of self-determination, it seems obvious that the people, if they are to be self-determining, ought to have a say on important questions of the structure, membership, boundaries and powers of the state (or sub-state unit) and there is, or ought to be, some concern about the extent to which the state reflects the interests and aspirations of the people living in a political community. This is why a referendum or plebiscite is often regarded as a central plank in the secessionists' armoury, as a tool of 'democratic voice' and self-determination, and justification for seceding from the state.

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There are however reasons to be skeptical of the assumption that voting in a referendum is an institutional expression of the more foundational idea of self-determination, both in a constitutive and an on-going sense. Self-determination in the constitutive sense is about a group making decisions over its own affairs, free from external pressure or external domination, and in accordance with their own values about their basic principles and practices. This might seem to imply a very close, indeed often symbiotic relationship between democracy and self-determination, such that the exercise of democratic choice via a referendum is at the same time an exercise in self-determination, but this is questionable. In ordinary language, democracy refers to the institutions of governance which ensure that the governed have equal political voice in the making of political decisions, usually through the election of political elites. Yet, we can imagine members of a group that seeks to organize its rules and procedures according to a hierarchical religious conception, rather than one that entrenches democratic political equality, which means that a democratic mechanism is not required by constitutive self-determination.

What matters is that the members of the group identify with the procedures of decision-making that the group has adopted, and see the resulting policies as policies that emanate from them. The fact that democracy and self-determination are distinct can be seen by considering the (hypothetical) case of Tibet within a democratic China. Even if China were to transform itself democratically, into a society that recognizes equal individual voice and equal individual influence over decision-making, this would still involve a denial of the political associational life of Tibetans as a group, who are demographically outnumbered by Han Chinese and who cannot make rules or instantiate principles to govern their own affairs.

This brings us to a fundamental, and widespread problem with the referendum tool. This is that a referendum, as a tool, presupposes a single, undifferentiated *demos*, which might exactly be what is in question in the political scenario of a nationally-mobilized group, seeking its own state. Although theorists of plebiscitary-rights to secede generally accept the idea of recursive secessions (up to the point where they will result in a non-viable state), the political elites that hold them do not hold out the possibility of recursive secessions. And while recursive secessions do help to maximize the number of people who achieve their first choice, it also makes it clear that the referendum tool itself - majority voting across a domain - assumes a single *demos*. Consider, for example, the referendum on British exit from the European Union (Brexit), which has been helpfully diagnosed by Stephen Tierney, emphasizing the nationalist angle. The referendum presupposed what was exactly in question – that there was a single British people, a majority of which could decisively answer the question of whether British should be in or out of the European Union. The referendum process had the effect of creating a *demos* – a pan-UK *demos* – but in that process it denied or negated a rival vision of the United Kingdom, as consisting of four different nationalities - English, Welsh, Scottish and (Northern) Irish. On this rival union-of-nationalities view, what would be needed for Brexit is four majorities in the referendum.<sup>17</sup> Given that this rival view underpins many people’s understanding of United Kingdom (certainly in Scotland, Wales and Northern Ireland) it is hard to see how the referendum can claim to be an exercise in constitutive self-determination – at least, it can only

answer it when there's already a clear and uncontested understanding of the people who are to be self-determining.

More seriously, a referendum is a very blunt instrument, offering only a binary and non-dynamic choice. Let's consider the problem of its binary nature, with reference to the Scottish independence referendum of 2014. Prior to the referendum, it was clear that most people in Scotland preferred increased devolution of powers to the Scottish Parliament over either of the two options posed in the referendum: independence or status quo. This had been clear for some time, and the Scottish Government in its 2012 White Paper (setting out the independence proposal) initially debated whether a third option might be on the ballot, though there were serious disagreements in practical terms about how to hold a referendum with more than two options. In the end, the British government insisted that the referendum deliver a "decisive expression of the views of the people of Scotland" and that it could pose only a single question on independence. This, clearly, is not an adequate expression of constitutive self-determination, where the people themselves decide their own powers, membership, and rule-based structure, not only because it was the British government that dictated that requirement, but because the option that the majority of people supported was not on the ballot.

It was not clear that people did in the end vote in a way that delivered a clear and decisive result, since the Yes campaign argued that independence would be consistent with ongoing connections in the UK (no borders with the rest of the UK, retention of the pound sterling, retention of UK passport for those Scottish citizens who wished to keep them) and the No campaign also made it clear, as a way to bolster their support, that a NO vote would be consistent with increased devolution.<sup>18</sup> The binary nature of the choice, then, neither expressed the first-choice preference of most voters, nor facilitated real democratic deliberation about the various alternatives, as the resulting discussion was unclear as a result of being shoe-horned into either "yes" and "no" sides.

Finally, referendums are non-dynamic in the sense that it is a one-off decision that has to be made in a strategic environment, where the ranking of alternatives is impacted by the decisions and policies of other actors which will be revealed only after the referendum itself. For this reason, referendums often fail to track in any realistic way the identities, interests and preferences of the participants. For example, suppose citizen X is offered a choice of being in or out of the European Union. When an individual ranks his/her preferences, he or she considers both the anticipated costs and benefits and what the alternatives are. Let's imagine that citizen X decides for exit – reasoning that this will result in more negotiating flexibility internationally, less bureaucracy, and X also believes that it would not involve giving up some of the benefits of being included in a larger political association (will be able to retain a free trade zone, relatively unencumbered travel, etc). Under those conditions – but only those conditions – exit then that might be first choice. But since the preference orderings depend on assumptions that necessarily involve the actions of other parties (in this case, the remaining EU) which as yet are unknown, since there are a range of optimistic and pessimistic scenarios, the choice is really a leap in the dark, based on beliefs that are necessarily unknown and untested, about the dynamic that will evolve in the post-referendum scenario. It will very likely end up that the choice that people make, even if we set aside the various other problems discussed above, does not reflect their preferences, aspirations or identities. This is because the choice is made without the benefit of knowing the other party's reactions to that choice. Not only does this tool fail to realize constitutive self-determination, it is deeply sub-optimal: in this kind of context, there are strategic reasons why unionists want to make the cost of exit harder than it need be; and secessionists want to deny this possibility.

Let us now sum up. All these considerations suggest that referendums - which are typically one-off, binary and non-dynamic – are not the appropriate instrument for giving effect to constitutive self-determination. This doesn't of course mean that there is no role for a referendums in democratic decision-making or even as one, among many, elements to negotiate a successful secessionist process. A referendum is not problematic if the democratic decision is made within an uncontested domain, in which the holder of the referendum has

competence and the question admits of a binary answer and the answers are not predictions about strategies or responses by various different players. There is no problem holding a referendum on questions such as: Should firearms be registered? Should the death penalty be repealed? These admit of binary answers, and, most crucially, are not strategic environments.

The same is not true in the secessionist context, where we simply cannot conflate plebiscitary devices with the exercise of self-determination, which is standard in the secessionist literature. In spite of the inappropriateness of the referendum tool in a dynamic and strategic context such as secession, there have been so few opportunities for democratic input, and so little theoretical discussion at a micro-normative level about when different tools ought to apply, that people themselves have accepted the referendum as a procedure that gives effect to their will. And this last fact suggests that it does meet the central test for constitutive self-determination, viz., that it is one that the people themselves accept or endorse.

At this point, then, it's clear that we are in a paradoxical situation. I've argued that referendums are clearly inadequate for a number of very powerful reasons, particularly in a secessionist context; yet they do seem to be the central mechanism that confers legitimacy on decision-making, and so seems to meet the central criterion for constitutive self-determination: that it is a tool that the people themselves have accepted or endorse. This suggests that it may be important to incorporate a referendum as an element in a more managed negotiated process of secession, perhaps at the beginning of negotiations, to empower the parties as their representatives, to begin the process of negotiations; and at the end of negotiations, to ensure that the resulting 'deal' is acceptable to 'the people'. This would also address epistemic worries about the extent to which the secessionist or unionist leadership have addressed the central concerns of the people.

### **III The Institutional Moral Argument in favour of the Just-Cause Theory of Secession**

The main rival account of justified secession ignores the value of self-determination and focuses only on whether the people have a just-cause to secede, which is related to whether the state is a legitimate state.<sup>19</sup> This was obvious in the first wave of writing about secession, stemming from Buchanan's seminal work, *Secession; the morality of political divorce from Fort Sumter to Lithuania and Quebec*, in which he defended very clearly the singular importance of establishing a just-cause to justify unilateral secession. A referendum on secession without a justice justification had no moral force. This view had some real attractions: principally, it suggests a strong internal connection between the right to secede and human rights, and so grounds the argument about secession within a generally accepted framework of international legitimacy, namely the language of human rights.

The main disadvantage of this theory is that it gave no significance to the moral value of self-determination. This is problematic, because collective self-determination is itself an important moral and international legal value, which is part of customary international law,<sup>20</sup> and is explicitly mentioned in Article 1 of the United Nations Charter, and Article 1 of both the 1966 Covenant on Economic, Social and Cultural Rights and the 1966 Covenant on Civil and Political Rights. The value of self-determination also seems to underlie our deeply held intuitions about the wrong of colonialism and the importance of individual and collective agency.<sup>21</sup> An argument that simply ignores self-determination as a value turns out to be unpersuasive to those people who think that collective self-determination *is* valuable;<sup>22</sup> and these are the very people who tend to be sympathetic to nationalist or secessionist causes. It's not simply that these people sympathize with that value and are sympathetic to people who appeal to it. Institutions of collective self-determination deliver important goods, not perhaps the kind of instrumental or interest-based goods of distributive justice, but it confers value on the commitments and relationships that people have, and facilitates people in being able to control the collective conditions of their existence. Without addressing the agency goods that motivate many people, the just-cause account is limited in its appeal. It leaves us with the two rival theories, one focusing on justice and denying the importance of self-determination; the other, focusing on self-determination.<sup>23</sup> It appears then that the impasse between these two theories of

secession is rooted in a deeper conflict about values, with no real conversation between the proponents of the two values.<sup>24</sup> This is a problem.

However, in the intervening years between 1991 and the publication of *Justice, Legitimacy and Self-determination; Moral Foundations for International Law* in 2004, Buchanan developed a much more sophisticated response to the plebiscite theory of secession, rooted in a distinctive methodological approach to institutions, which he has called ‘institutional moral reasoning’. I accept at least some version of this methodological approach, if we understand it as the view that moral reasoning about institutions ought to be different from moral reasoning as it applies to the actions of individual actors and especially that the consequences of implementing various principles are very important to their moral evaluation. However, his particular version as it relates to secession, is, I argue below, problematic for the same reason as the original account was: despite the title of his book and the recognition of the importance of self-determination in other components of the theory (for example, in the internal design of states) it simply ignores the issue of whether self-determination itself is a value when applying this to the analysis of the justifiability of secession, as I will explain.

Part of the point of Buchanan’s analysis in *Justice, Legitimacy and Self-determination* and also an influential paper, “Theories of Secession” is to reject what he calls primary right theory – essentially the idea that groups have a right to secede and that the central instrument for realizing this right is the plebiscite.<sup>25</sup> His argument for this is very original, because he develops a distinct methodological approach, claiming that moral reasoning about the rights that ought to be incorporated in international institutions require a distinct set of criteria for their evaluation from the concept of non-institutional or natural moral rights.

He develops four criteria for the incorporation of a theory of secession into international institutions:

1. Minimal realism, by which he means that there must be a “significant prospect of eventually being adopted in the foreseeable future through the processes by which international law is actually made”.<sup>26</sup>
2. Consistency with well entrenched, morally progressive principles of international law: A proposal should not contradict the more morally acceptable principles of existing international law.<sup>27</sup> His principal example, though by no means the only possible one, is the principle of territorial integrity.
3. Absence of perverse incentives. A proposal should not encourage behaviour that undermines the maintenance of morally sound principles of international law.
4. Moral accessibility. A proposal should be morally acceptable to a broad international audience and the justifications offered in support of the proposal should not require the acceptance of one particular religious doctrine or of overly specific ethical principles.<sup>28</sup>

The fourth criterion is not particularly salient to the issue of secession, but the first three count against primary rights to secession (the plebiscitary theory of secession) and in favour of remedial right theory (where unilateral secession is justified only to remedy egregious injustice in an illegitimate state). Plebiscitary theories of secession fail the first criterion because it is unlikely that states would accept a principle that directly threatens their territorial integrity. Plebiscitary theories of secession, Buchanan claims, are also inconsistent with well entrenched, morally progressive principles, which is the second criterion, because they leave just or legitimate states open to dismemberment. Plebiscitary-secession theories also fall foul of the third criterion. They would generate perverse incentives. An easy route to secession via a simple majority vote would make the exit option viable, which would have two deleterious consequences. It would decrease the incentive (for the potential secessionist unit or group) to persist in exercising ‘voice’ (democratic means); and it would enable them to gain unfair leverage over other parts of the state by threatening to secede.

In the analysis of these three criteria, Buchanan places heavy stress on the principle of territorial integrity of existing states. Why does this principle have such an important role to play in the normative analysis of secession? On its face, the principle of ‘territorial integrity’ does not look



particularly 'morally progressive'. It seems primarily to protect the self-interest of pre-existing (coercive, and largely self-interested) states, which then begs the question of why this should be relevant to moral analysis in the first place.

The worry above is not that Buchanan is some kind of crude or shameless realist.<sup>29</sup> Buchanan offers a very nuanced account of moral institutionalism, which is quite different from realism as we know it in international relations, which presumes "that issues of justice and injustice are subjective and unilateral and therefore not enforceable in any authoritative way".<sup>30</sup> By contrast with international relations realists, Buchanan is explicit that his criteria are primarily *moral criteria* - even that of territorial integrity - because they are further grounded in individual interests such as "the protection of individual security, rights, and expectations, and the interest in the integrity of political participation".<sup>31</sup>

We are however now at the crux of the problem. It's clear at this point in the exposition that the important, foundational move is done through creating a list of which interests 'count' as 'morally progressive'. Buchanan does not explicitly mention a right to self-determination in this set of protected rights and interests. Yet one might argue that a right to self-determination is a morally legitimate right of groups, and that it should be included, because such a right would protect individual's interests as members of groups. On that view, the interest in collective self-determination should be included in the list of fundamental interests that then generate the analysis on which Buchanan's institutional morality rests. And if it was included in said list, then we might have a right to secession which is specified in different ways than Buchanan's own fairly restrictive just-cause principle, and perhaps different from a straightforward plebiscitary right. It would be one that recognizes the individual and group interest in self-determination but would have to balance that with other interests that individuals have, which might also be important or relevant to a morally defensible institutional order.

In his discussion of which morally legitimate interests ought to be included, as the baseline for assessing the criteria above, Buchanan clarifies that these principles have to be "well

entrenched". This, though, doesn't rule out collective self-determination, because, although there may be different understandings of what that means, it is, as I've argued above, a basic principle of the current international legal order, and prominently appealed to in the central United Nations documents. But – even if that weren't so – why does it matter to Buchanan that the moral principles are 'well entrenched'? After all, there is no irreducible moral importance attached to the way the current state system is organized. The state system does protect certain interests but if it also denies certain legitimate interests or overlooks some valuable social relations, then that is a problem. Requiring that the foundational principles be 'well entrenched' gives us a very statist and status quo account of the moral values that the international order should realize.

If we incorporate the moral importance of self-determination into the list of 'morally progressive and well entrenched principles' of the international order, we potentially fall foul of the first criterion which states that the principle has to be 'minimally realist' and then elaborates that this requirement means that it has to have a "significant prospect of eventually being adopted in the foreseeable future, through the processes by which international law is actually made".<sup>32</sup> International law is made principally through treaties: it relies on what states would agree to. But that criterion is deeply question-begging. Why limit our moral theory to what states would agree to? This is especially pertinent in the current world order, where the rules are created by self-serving and powerful states, against the interests of individual people and groups who have little voice. Since Buchanan is offering a moral theory, and not just a theory that appeals to the importance of the consistency of international principles and mechanisms, we ought to be able to reject some things that are pretty important to the international state system, and accept others: what is crucial is that they protect morally legitimate interests.

Buchanan anticipates this worry and suggests that he is trying to navigate between a shamelessly realist, power-infested international law, and a moral theory that is action-guiding. I agree that principles of institutional design ought to be action-guiding, and ought not to be

principles in ideal theory that have no bearing on people's actions or lives or the design of the institutional framework of their world. There is, though, still a question whether Buchanan's own interpretation of 'minimal realism' is appropriate for a moral theory. The conception of minimal realism shouldn't be that states would agree. The requirement of state consent (admittedly not immediate state consent) fails to appropriately track normative considerations. Indeed, many principles that ought to guide our institutional order would not meet that test, including moral principles connected to our behaviour with the environment and human-induced global climate change.

### **III Theories of Secession and Self-determination.**

Let us now return to the idea of collective self-determination and the possibility of implementing a morally progressive approach to secession that incorporates self-determination as a foundational value, using Catalonia – the case with which the paper began – as a reference point. And while self-determination is an important value, I also argue that it is not the only value that should structure the international order: peace, stability, and justice are also important values that should not be sacrificed.

What kind of constitutional and negotiated process might we develop to regulate self-determination claims? It is beyond the scope of this paper to put forward proposals for specific institutional structures, but they should be guided by the following four insights. First, we have to be clear about the groups and territories over which one can make self-determination claims. It is implicit in the argument advanced thus far that territorially concentrated peoples ought to have the authority to decide on their fate and that the people in the larger state do not have the authority to make self-determination claims over the territory that the members of the potentially secessionist group live in. Obviously secession or other forms of self-determination that impact the unionist state is going to be less problematic if the remainder group is indifferent over whether the secessionists remain or go. But on my argument their claims do not have weight as self-determination claims, because they are not entitled to have

jurisdictional authority over groups that do not want to be included in the political project.<sup>33</sup> They do have weighty claims for a negotiated constitutional process and there may be duties that arise from past institutional reciprocity, as I will argue below, but they do not have a claim of self-determination over the other group (secessionist 'people') or the territory in which the group is concentrated.<sup>34</sup> On this view, it is problematic – not just for peace and stability but problematic for the self-determination view of state legitimacy – that the Spanish constitution had a no-secession rule embedded in it. What we need to do is develop internal constitutional, and external international (or regional) structures to appropriately manage such negotiations with appropriate input from both parties - the aspiring group and representatives of the existing, unionist, state.

Second, self-determination is only one value among others, and itself encompasses both constitutive and on-going self-determination, which can also conflict with one another. There is however no reason to think that self-determination is, in principle, incompatible with either justice or democratic governance. Indeed, the empirical evidence on this shows the following: there is little reason to worry about self-determination that occurs in democratic and broadly just societies, such as Catalonia, Scotland and Quebec: we have good reason to think that the resulting entities would be at least equally just and equally democratic (or at least no reason to think otherwise); and there are good reasons to think that secession from unjust and undemocratic states will also result in unjust and undemocratic states, in part because there is in such places inadequate traditions to rely on, and possibly also because such states live in pretty bad neighbourhoods, which make it more likely that elites will be authoritarian. But that doesn't give us special reason to worry about secession.

Third, we should assume that the interests of the seceding unit and the state as a whole will diverge and that there's a danger of antagonisms spiralling out of control. Here the interests of peace and stability can be met by avoiding the political and moral vacuum that characterizes the current world order, and has come close to bringing both Spain and Catalonia to the brink of a political crisis. We need clear procedures that help manage the process and also a number of

procedural hurdles that would stand in the way of easy secession. At the same time, we should avoid empowering the existing states and unionists with a threat advantage that would make it less likely that they would embark on fair negotiations, and more likely that they will seek to impose the status quo on the unhappy minorities. To manage this process, it may be necessary to develop clearly specified benchmarks or guidelines that have to be met by the group that seeks to be self-determining.<sup>35</sup> There are different justifiable procedures, but one possibility is for negotiations to proceed under the auspices of a third party or a guarantor (perhaps a third party agreed to by representatives of both the secessionists and unionists to assist in a fair and negotiated new relationship). It may also be possible to defer some of the complicated and technical elements of this new relationship (such as the fair apportionment of debt or access to resources on which one of the parties has developed a reliance interest) to expert organizations, which may have the power to make binding decisions.

Fourth, in many cases of secession from a previous state order, especially one that was relatively just, there will be duties that arise from ongoing institutionalized reciprocal cooperation over time. I have discussed elsewhere how to conceptualize the idea of ‘reciprocity’ in this context, and specifically what the appropriate baseline is for the core idea of ‘mutual benefit’.<sup>36</sup> Since political communities are typically cross-temporal associations, mutual benefit should be conceived of as operating over time, and the duties that arise from a previously shared institutional context have to be worked out in the context of these negotiations. These arise, for example, when a group or sub-unit has supported one region or group in the state through its redistributive practices, then finds that the tables have turned, the previously poor unit is richer, and the people living there seek to secede. This wouldn’t mean that secession or self-determination is rendered impossible, but it does mean that self-determination has to be pursued in a way that is consistent with its special duties of reciprocity to the remainder state. Since institutionalized reciprocity primarily characterizes just (liberal-democratic) political orders, and is markedly lacking in unjust states, this result may mirror to some extent a more flexible policy of recognition when secession occurs in unjust states, which we typically associate with Buchanan’s just-cause theory.

Once we accept that the legitimacy of the state requires that its constituent groups have to view it as a state *for them*, through which they can be self-determining, the goal of said negotiations is to reconstitute the political institutions so that they align with constitutive self-determination as well as other goods (justice, democracy, and so on). I am doubtful that, in many cases, and especially not in cases such as Catalonia or Quebec, secession will be the preferred option. There are many internal autonomy or federal arrangements which permit various degrees of collective self-determination, and in most cases where the group seeks greater self-determination from relatively just states, this is the kind of arrangement that the group seeks. This was true, as I argued above, in the two cases that I know best: the Scottish referendum and in both Quebec referendums.<sup>37</sup> In both cases, it was the binary and non-dynamic nature of the referendum process, and the problematic nature of the choices that are then offered by the unitary state, which made this process so problematic – both as an exercise of self-determination, and as a source of deep seated political instability.

## **Conclusion.**

In this paper, I have argued that the value of self-determination, properly understood, has an important role to play in a morally defensible institutional order. I have argued that collective self-determination has two dimensions – a constitutive dimension and an on-going dimension – which are both important, and potentially in tension with one another, and with other goods such as peace, stability and justice. I have also argued that principles endorsing these goods should be embedded in morally defensible state and international institutions. Focusing primarily on constitutive self-determination as relevant to the ethics of secession, this paper has argued against the two dominant positions on secession: the view that there is a plebiscitary right to secede; and the view that the right to secede ought to be rooted in a theory of justice. Instead I have argued that secession is primarily motivated by the aspiration to be collectively self-determining, which is, quite properly, a moral good, but that current understandings of how to realize this good are limited and counter-productive. The paper concludes by suggesting the

appropriate normative perspective and type of institutional design that would help manage a constructive and dynamic process of self-determination for different collective agents, through avenues that are consistent with the value of collective self-determination and that of other values.

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<sup>1</sup> The classic statement of a just-cause theory of secession is Allen Buchanan, *Secession: The Morality of Political Divorce from Fort Sumter to Lithuania and Quebec* (Boulder, Colo.: Westview, 1991) and for the importance of a referendum, see Daniel Philpott, "In Defense of Self-Determination", *Ethics*, vol. 105 (Jan. 1995), 353-385; and Christopher H. Wellman, *A Theory of Secession; the case for political self-determination* (Cambridge: Cambridge University Press, 2005).

<sup>2</sup> The standard example that would explain why self-determination is important is that of a just state taking over an unjust state, perhaps even in a defensive war. We don't necessarily think that more just states should have territorial rights over unjust states, and that intuition can't be explained by a justice based arguments. When the regime in Nazi Germany was defeated in a war in which they were aggressors (and they were an egregiously unjust, indeed murderous and genocidal regime) we don't necessarily feel that the Allied powers (Britain, France, the United States) should have gained territorial rights there. In some sense we feel that the regime was illegitimate but the people had rights of collective self-determination there, and that they should be able to erect their own (just) institutions of governance on that territory.

<sup>3</sup> For a Lockean-type consent theory of secession, see Hary Beran, 'A Liberal Theory of Secession', *Political Studies*, vol. 32 (1984), 21-31. For an associative account that endorses some aspects of a referendum view, see Wellman, *A Theory of Secession*.

<sup>4</sup> On this view, a unilateral right to secede is only legitimate if it is necessary to remedy an injustice (in Buchanan's terminology, it is a remedial right only account). See Buchanan, *Secession*; Wayne Norman, "The Ethics of Secession as the Regulation of Secessionist Politics" in Margaret Moore, ed., *National Self-Determination and Secession* (Oxford: Oxford University Press, 1998), 34-61. The two additional requirements – no unjust annexation and no violation of internal autonomy agreements – do give some weight to self-determination, but it's puzzling that they take this form, and only this form, as I will argue below.

<sup>5</sup> On this account, the value of self-determination ultimately derives from the value it has for individuals. This means that my account is value-individualist even if the autonomy – and the political rights (liberties, powers, immunities) that enable this autonomy - are collective in the sense that they attach to collective agents.

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<sup>6</sup> Margaret Moore, *A Political Theory of Territory* (New York: Oxford University Press, 2015), p. 50.

<sup>7</sup> These dimensions are distinguished by James Anaya, and usefully elaborated by Buchanan. See James S. Anaya, *Indigenous Peoples in International Law* (New York: Oxford University Press, 1996), p. 81; Allen Buchanan, *Justice, Legitimacy, and Self-determination; Moral Foundations for International Law* (Oxford: Oxford University Press, 2004), pp. 332-333.

<sup>8</sup> There is however the potential for tension between these two facets of self-determination. I have argued that *on-going self-determination* is typically realized through democratic institutions of governance, which give citizens political voice in the deliberations of their community, through at the minimum periodic competitive elections that allow debate and choice amongst some spectrum of alternatives and some forms of accountability. *Constitutive self-determination*, though, was not described in terms of democratic voice, but in terms of group identity, values and some mechanisms of control of the fundamental terms of the political order. This opens up the possibility of tension, indeed conflict, between these two dimensions in two different ways. There is the possibility that the people, in exercising constitutive self-determination, would prefer not to organize their collective institutions in ways that we would understand as democratic. This means that the very exercise of constitutive self-determination – establishing the processes by which policies are decided – could potentially undermine the possibility of on-going self-determination. Some might argue that this is rather like the liberal dilemma of people using their freedom to sell themselves into slavery; and we should respond to this in negative terms, claiming that any justification in terms of self-determination is contradictory unless provision is also made for democracy. I am not uncomfortable with this possibility, since I think that both are essential to robust forms of self-determination - one is not conceptually or temporally prior to the other – and we should aim for a political order that instantiates both, and each should be institutionalized in ways that do not undermine the other dimension of self-determination.

<sup>9</sup> The clearest argument for this is Philpott, who seems to assume that both democracy and plebiscitary self-determination are required by an underlying commitment to democracy. Daniel Philpott, “In Defense of Self-determination”, *Ethics*, 105 (1995), 352-85. For a similar argument, see David? Copp, “Democracy and Communal Self-determination”, in J. McMahan and R. McKim, eds, *The Morality of Nationalism* (New York: Oxford University Press, 1997).

<sup>10</sup> In order to ascribe constitutive self-determination to a group, we need to be confident that the group in question is the right kind of group, namely, that there are (1) stable group affiliations and identities (2) that are based on relationships among people which persist over time, are valuable, and give rise to moral reasons for action, and (3) that involve aspirations to control the basic institutions that govern the collective life and physical location of people’s lives, and that it capable of acting collectively. There is however an epistemic problem with



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knowing whether these conditions obtain, especially when the group is situated within a coercive state with no opt-out clause. We don't need a referendum to ascertain this – in fact, for reasons discussed in sect. 2, it's probably the wrong kind of tool – but we do require persistent (over time) evidence of relationships, shared identities and political aspirations, and evidence of group mobilization. Evidence for this can be garnered from a wide variety of sources, and a referendum can be one of them. But in that case a referendum is (a) only one of a number of such tools, (b) has to be supplemented by other ways of measuring public sentiment, such as deliberative opinion polls and on-going group-based mobilization, and (c) is not conceived as a referendum on secession but merely as evidence of whether there are long-standing group-based shared aspirations to political self-determination, which can serve as a basis for negotiations among the relevant collective parties to work out better terms of cooperation and self-determination.

<sup>11</sup> It would be a mistake to think that plebiscites were the go-to mechanism for implementing Woodrow Wilson's 'nationality' principle however. In many other jurisdictions, boundaries were drawn without the use of a plebiscite, by appealing to a linguistic principle, which was applied selectively, in part, to enlarge territory for the victors of the war, and punish the losers by dismembering their empire.

<sup>12</sup> Such literature is cited in Neera Chandhoke, *Contested Secessions: Rights, Self-determination, democracy and Kashmir* (Oxford: Oxford University Press, 2012), p. 26.

<sup>13</sup> Although there is no legal requirement to hold a referendum amongst the population in order to join the European Union, they have been widely held – by France in 1972 to approve the idea of European Community enlargement, and by three of the four candidate countries (Ireland, Denmark and Norway) regarding whether they should join; and by the UK in 1975. Britain did not at that time hold a referendum, and the pro-EU side did not get a majority in Norway. In 1994, four countries (Austria, Finland, Sweden, Norway) and one dependency (the Åland Islands) held referendums to join as part of the 1995 EU enlargement, with majority votes in favour in the first three countries; and nine (Malta, Slovenia, Hungary, Lithuania, Slovakia, Poland, Czech Republic, Estonia and Latvia) of the ten countries admitted in 2004 (with the exception of Cyprus) held referendums on joining. This practice is intensifying, as many countries employ referendums before accepting treaties negotiated in the framework of the EU.

<sup>14</sup> The breakup of the Soviet Union was effected by declarations of independence by the government in different soviet socialist republics, but many of them also called referendums on independence, presumably to enhance their legitimacy by demonstrating wide-spread support for independence: in Latvia, Estonia, Ukraine, Armenia, Azerbaijan, Georgia, Uzbekistan, Turkmenistan, Ukraine, all in 1991, and Moldova in 1994. Some groups that didn't have a defined institutional structure of a soviet socialist republic also appealed to referendums on independence as for example, the referendum in Trans-Dniestria in 2006, and the Donetsk area of Ukraine in 2014. See Paul Kolstoe, *Russians in the Former Soviet Republics* (Bloomington, Ind.: Indiana University Press, 1995).

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<sup>15</sup> For a very good discussion of these criticisms of referendums, although applied to the EU primarily, see Stephen Tierney, “Referendums in the United Kingdom and the European Union: challenging federalism?”, Paper delivered to the *Diplocat* project, Edinburgh, UK., February, 2017

<sup>16</sup> Galip Dalay, “After the Kurdish Independence Referendum”, *Foreign Affairs*, October 2, 2017. <https://www.foreignaffairs.com/articles/middle-east/2017-10-02/after-kurdish-independence-referendum> Accessed Jan. 6, 2018.

<sup>17</sup> The Scottish Government argued that, as a matter of constitutional convention, the consent of the Scottish Parliament was essential to trigger Article 50. The Court did not read the Scotland Act 2016, sect 2 in this way however, arguing that this convention did not have the force of law. That may be true, but it nevertheless serves as a damning indictment of the idea of referendums as a mechanism for constitutive self-determination.

<sup>18</sup> <http://www.bbc.com/news/uk-scotland-scotland-politics-29213418>

<sup>19</sup> Just-cause theories, among which the best-known is Buchanan’s, typically argue in favour of a remedial right to secede. The term ‘remedial right to secede’ means that there is a general right to secede for groups that have suffered certain kinds of injustices, and for which there are grounds for believing that these injustices could not be ended until the group is no longer in the state. Buchanan’s later account focused on the fact that a just or legitimate state had conferred on it the right to territorial integrity, whereas unjust states did not.

<sup>20</sup> Antonio Cassese, *Self-determination of Peoples; a legal reappraisal* (Cambridge: Cambridge University Press, 1995), pp. 67-115. Cassese documents the ways in which the concept of self-determination is appealed to in treaty rules, and therefore is a part of customary international law.

<sup>21</sup> On this, see my “the Taking of Territory and the Wrongs of Colonialism”, *Journal of Political Philosophy* (forthcoming).

<sup>22</sup> I can imagine someone who took the Buchanan view arguing that they don’t dismiss self-determination, they just think it should generally be granted to established states i.e. that people can enjoy adequate self-determination as members of state A even if ideally they would like to have their own state B. For a critique of this position, see David Miller, “Neo-Kantian theories of self-determination; a critique”, *Review of International Studies*, 2016, vol. 42, no., 5, 858-875; and Margaret Moore, “Which people and what land? Territorial right-holders and attachment to territory”, *International Theory*, 2014, vol. 6, no. 1.

<sup>23</sup> This doesn’t mean that they deny the importance of justice, but only that they claim that there is something intrinsically valuable about self-determination quite apart from justice considerations

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<sup>24</sup> Buchanan would reject this formulation I think. In his book, he devotes a whole chapter to intrastate autonomy arrangements, and begins the chapter with the claim that “[t]his chapter should forestall the charge that the normative theory of secession set out in the preceding chapter gives short shrift to the value of self-determination.” Buchanan, *Justice, Legitimacy, and Self-Determination*, p. 401. I do not think that addresses the concerns raised in this section and it’s puzzling too why the foundational principle of self-determination only works *within* states, has no bearing on the international order itself. In practice, this would mean that smaller units, seeking self-determination, have less leverage to make their arguments within the state, because they have no other options. It also makes them persistently vulnerable to majorities in their own state, especially if that state is not particularly stable, peaceful or just.

<sup>25</sup> Allen Buchanan, “Theories of Secession” in *Global Justice: Seminal Essays* (), pp. 581-611. (originally published in *Philosophy & Public Affairs*, 26/1 (winter 1997): 31-61.

<sup>26</sup> Buchanan, “Theories of Secession”, p. 591.

<sup>27</sup> Buchanan, “Theories of Secession”, p. 591.

<sup>28</sup> Buchanan, “Theories of Secession”, p. 593.

<sup>29</sup> I am grateful to Stefan Macleod who made me see why it was important to clarify this point, and also for elaborating the appropriate response to it.

<sup>30</sup> Catherine Lu, *Justice and Reconciliation in World Politics* (Cambridge: Cambridge University Press, 2017), p. 119.

<sup>31</sup> Buchanan, “Theories of Secession”, p. 597.

<sup>32</sup> Buchanan, “Theories of Secession”, p. 591.

<sup>33</sup> At this point, someone might argue by analogy that this should apply also to individuals and that either my account assumes that all groups are homogenous, or it can justify, by analogical argument, individual choice over political associations. Let me clarify. I do not assume that all individuals share in the same political identity, but I have suggested that rights of collective self-determination – rights to have jurisdictional authority over the group and the territory – are rights that can be held only by collectives, not by individuals. Some rights are rights held by collectives, others are rights held by individuals. Of course I believe that individuals have basic human rights, such as the right not to be tortured, a right to a decent life and so on. But the value of collective self-determination can only give us a right that attaches to a group, because only a group can exercise jurisdictional authority over itself. It is possible that what underlies this objection is an anarchist worry about the justifiability of political authority itself, but I think there are possible answers to the anarchist objection.

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<sup>34</sup> This last point requires a longer discussion. See Margaret Moore, *A Political Theory of Territory* (New York: Oxford University Press, 2015), chapter six.

<sup>35</sup> Some procedural requirements have been specified as necessary by the Canadian Supreme Court in the reference case on Quebec secession, which I think should be viewed as a model of the kinds of rights and procedures that should be incorporated in the constitutions of liberal-democratic states. The Court argued that four norms underlie the Canadian constitution – federalism, democracy, the rule of law, and respect for minority rights – and these have to inform the procedure on secession., See Reference re: Secession of Quebec, S.C. C. no. 25506 (20 August, 1998). <http://www.droit.umontreal.ca/doc/csc-scc/en/pub/1998scr2>

<sup>36</sup> Margaret Moore, *A Political Theory of Territory* (New York: Oxford University Press, 2015), pp. 128-134.

<sup>37</sup> Both Quebec referendums involved very ambiguous questions. IN the 1980 referendum, the Quebec government, which was in the hands of the nationalist Parti Quebecois, refused to put the term ‘country’ after the term ‘sovereign’. , and claiming that a Yes vote would result in something called ‘sovereignty-association’. and in 1995, the yes campaign promised that a Yes vote would be to negotiate an ‘economic and political partnership’ with the rest of Canada. The Spanish case is less clear since the holding of the referendum was in the face of a central Spanish state that declared it illegal, so it was hard to credibly claim that it would result in a reconstituted Spanish state, but the referendum result revealed a very divided society.