

Moralism in theories of secession: a realist perspective¹

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ABSTRACT. Moral reasoning is the most common approach to secession in political philosophy. Just-cause, choice and liberal-cultural theories rely on moral conceptions of political authority. This article examines an alternative view through an exploration of moral theories of secession from a realist perspective. Realism has recently seen a revival as a form of normative political philosophy and focuses on political disagreement and legitimacy rather than rights and moral analysis. I claim that realism would reject utopianism and moralism present in theories of secession. Instead of regarding secession as a right, realism would frame secession as a political option. According to this view, this article explores a realist theory of secession that would be based on the priority of politics and disagreement among other concepts. This would be a middle-ground theory, compatible with liberal values and existing moral theories.

KEYWORDS: legitimacy, moralism, political philosophy, realism, secession

Introduction

Realism has seen a revival over the last few years. This broad tradition of thought has a long record in political philosophy and can be identified in authors such as Machiavelli, Hobbes, Hume, Montaigne, Nietzsche and Weber, among others (Estlund 2017; Rossi 2016; Rossi and Sleat 2014; Sleat 2010, 2014; Williams 2006). Currently, realism in political theory constitutes a heterogeneous ‘family of views’ (Estlund 2017: 365) that share a common set of philosophical characteristics.

In this tradition of thought, the priority of the *autonomy of the political* replaces that of *morality*, although this intellectual attitude does not necessarily entail rejecting any relationship between politics and morality. Rossi and Sleat (2014: 690) claim that ‘mainstream moralist political philosophy fails, from the realist perspective, to take seriously enough the peculiarities of the political and in doing so is unable to appreciate the complexity of the causal and normative relationship between morality and politics’.²

This paper relates to the literature on theories of secession in two ways: on the one hand, through a realist critique of existing moral theories and on the other hand, by exploring what a realist theory of secession would look like.

Therefore, the main contribution of this paper is twofold: first, by pointing out the existence of a moralist bias in theories of secession and second, by proposing a realist normative theory based on the priority of politics and legitimacy, which are the two pillars of realism. Recent literature has raised the necessity for alternative theories to deal with secession disputes beyond traditional moral accounts (Dalle Mulle and Serrano 2018; Sorens 2014). Other authors have already argued in favour of a more contextual and less idealist political theory in federal and multicultural contexts (Bauböck 2008; Carens 2004), but none has proposed an alternative theory of secession beyond the dominant moralism in the field.

Theories of secession describe the right to secede as a moral right. This right is based on justifications derived from normative definitions of justice and legitimacy hardly compatible between them.³ Typically, this moral approach is oriented towards defining the (morally) acceptable conditions of the right to secede by prioritising certain moral values (Beran 1984; Bossacoma 2019; Buchanan 1991, 2004; Margalit and Raz 1990; Moore 1998; Norman 2006; Requejo and Sanjaume-Calvet 2015). In just-cause theories, ‘unjust’ situations create a ‘remedial right’ to secede (Birch 1984; Buchanan 1991, 2004; Costa 2003; Moore 1998; Norman 2006; Seymour 2007). On the contrary however, in choice theories, a *prima facie* right, that does not rest on injustice but on the will of the members of the seceding unit, is the dominant approach (Beran 1984; Copp 1998; Philpott 1995; Wellman 1995). Finally, in liberal-cultural theories, we also find a primary right to secede, in this case based on the self-determination of national groups being a collective moral right (Margalit and Raz 1990; Tamir 1995).

In all these theories, moral reasoning is a common feature. Each author refers to it in order to elicit the values underpinning the final political authority – the sovereign – and to propose a particular theory of secession.

In this article, I develop a realist approach to secession that rejects moral reasoning as the primary normative concern when theorising. I argue in favour of a normative view on secession derived from the realist tradition that is not necessarily incompatible with existing theories and liberal concerns. First, I describe the presence of moralism in theories of secession as a common feature, and I briefly evaluate their coherence. Second, I introduce the advantages of realism in comparison to moral reasoning in secessionist conflicts. Third, I explore what a realist theory of secession would look like in its general formulation and in practice. Finally, I argue that approaching the right to secede with realist eyes would still be compatible with the basic liberal consensus.

Moralism in theories of secession

Declarations of independence have historically referred to morality to justify their political endeavour.⁴ Famously, the American Declaration of Independence, the first modern independence declaration, based the emancipation of

the thirteen colonies from the English monarchy rule on the Laws of Nature and God. Later on, the right to national self-determination, colonial emancipation and democratic will replace references to Natural Law, but morality remained the common currency of independence movements whether peaceful or violent. Woodrow Wilson and later on the USSR promoted the right of peoples to self-determination as a moral value. Furthermore, central governments or/and anti-secessionist groups frame their cause in moral terms as well. Abraham Lincoln's Gettysburg Address is a well-known historical example, but current presidents and prime ministers continue to do so. Similarly, the literature on secession has discussed for a long time the morality of secession. 'When is it morally legitimate to secede?' is the key question of the whole field of theories of secession. Obviously, a moral question requires a moral answer on when it is right, legitimate or just to secede or to demand a right to secede.⁵

Three moral logics: Kantian, Lockean and liberal-cultural

Generally, the literature divides theories of secession into three categories: remedial or just-cause, choice or consent theories and liberal-cultural (Moore 1998). In fact, these three categories are inspired by specific moral logics providing normative legitimacy to states' political authority. Stilz (2009) has described these normative traditions regarding state's territorial rights as Kantian, Lockean and culturalist. Theories of secession follow a similar logic, with the categories listed above corresponding to Stilz's (2009) normative categories on territorial rights (see Table 1).

The right to secede is related to the powers that Stilz (2009: 696) calls metajurisdictional: 'Metajurisdictional powers are powers over powers: they confer authority on certain agents to decide who has powers to make primary rules over which pieces of territory.' These powers differ from other rights and mere jurisdictional powers since they define the borders of the political community. Therefore, following Stilz, each theory of secession has a specific response of (a) who is entitled to secede and (b) why or how this entitlement is morally justified.

Table 1. *Normative categories on the morality of the right to secede*

	<i>Kantian</i>	<i>Lockean</i>	<i>Liberal-cultural</i>
Right to secede	Just-cause/remedial	Purely primary	Qualified primary
Moral background	Rights protection	Consent and property rights	National groups self-government
Group	Unprotected/ invaded group	Viable group of individuals	Encompassing groups

Source: Own elaboration based on Stilz (2009).

Each moral approach has a specific answer to the moral question on secession: remedial and justice based (Kantian), freedom and choice based (Lockean) and national groups driven.

Remedial right theories are based on a Kantian approach. According to this view, in a just state, there is no right to secede unless certain injustices occur. The state is taken as *prima facie* legitimate since it acts as an agent granting rights to its citizens and therefore has a legitimate right to maintain its borders. As in Rawls' (1999) theory, the state is regarded as a cooperation scheme that confers legitimacy (and duties) to the existing political community. Allen Buchanan (1991, 2004), a remedial theory proponent, explicitly refers to its endeavour as a moral approach and largely relies on a Kantian framework. According to this author, there is, in some cases, a moral right to secede, but this is highly qualified and based on specific injustices. In his first theory, serious injustices perpetrated by the parent state against citizens' basic rights (i.e. physical violence), discriminatory redistribution and wrongful annexation (no valid title to territory) would count as moral reasons to secede with some nuances, depending on the cases and historical considerations among others (Buchanan 1991). A minimal realism clause (to be balanced with its morally progressive objective) is also considered by the author: 'if it has a significant prospect of eventually being adopted in the foreseeable future, through the processes by which international law is actually made' (Buchanan 1997: 42). In his later theory, Buchanan expanded the theory as part of moral reasoning on international norms. In this case, discriminatory redistribution is not counted as being a sound argument qualifying for secession, but the action of breaching inter-territorial agreements is included (Buchanan 2004).

From a totally different perspective, Beran (1984: 24) proposed a 'choice' theory of secession entirely based on a Lockean consent approach in stating that 'I assume that all people have a moral right to a fair share of the habitable territory'. This author proposes a primary right to secede based on the existence of a moral right to freedom of every individual. Rejecting an individualist libertarian approach, Beran (1984) establishes empirical limits of 'viability'⁶ to the proposed territorial unit that should be accomplished to exercise such primary right as a 'viable' seceding group.

A third alternative to both Kantian and Lockean approaches in theories of secession is the liberal-cultural logic. In this case, the moral right of nations to self-determination is the basis of the right to secede. Margalit and Raz (1990) justify this position as a matter of how the world is 'naturally' constituted.⁷ In this liberal-cultural approach, there is also a primary right to secede but framed as a collective right of national groups to self-government defined by an encompassing national culture (1990: 442).

The literature on theories of secession is diverse, and theories mix with each other. Recent theories have proposed, modified and hybridised, new versions of these three simplified categories. Since 1990, liberals have long discussed the existence of group rights (Guibernau 1999; Kymlicka 1996; Requejo

2001; Taylor 1992), and as a result, the Kantian approach has been challenged by other approaches defending group rights and collective identities (Requejo 2015). From a cultural rights perspective, a remedial right theory for cultural or/and national groups has been proposed under diverse forms. That is, justice has been expanded from the protection of individual rights to the rights of cultural groups as both being bearers of moral consideration.⁸ I consider these theories as part of the Kantian approach, although some of them recognise the existence of group rights beyond individualistic conceptions. The basic structure of these theories remains remedial and bound to existing cooperation between individuals (and groups in some cases).

The moral right to secede and its coherence

Moral theories of secession are ideal theories in the sense that they operate from a moral standards perspective to be accomplished by all involved actors. The three approaches described above have been challenged because of their incoherence (Moore 1998). This is a common feature in moral theories, and since they are, in principle, incompatible, the relevance of their internal robustness is high.

The normative positions described in the last subsection do not only offer a different solution to the question of why there is (or there is not) a right to secede, but also the question on who is entitled to secede. Liberal-culturalists assume the existence of nations as a social fact in our current world – the demos entitled to secede is somehow part of the social ‘landscape’. Not all national groups want to secede (Sorens 2014), but the ones that opt for doing so require a qualified majority of their members. Although this solution seems on the surface to be the simplest one, the reality suggests a very complicated option. On the one hand, there are several definitions of nation beyond the encompassing groups defined by Margalit and Raz; on the other hand, secession conflicts are, almost by definition, a dispute over the borders of the polity defined as a nation. In many secession disputes, members of the seceding unit nationally identify with their parent state and members of the parent state consider the seceding unit as part of their nation. Moreover, this theory has been criticised by its potential multiplication of the number of states in the world, although we know that not all cultural groups aspire to form a new state.

Kantian normative positions have a different view on the question. In these theories, the seceding unit is neither naturally existing, as in liberal-national theories, nor a matter of democratic will, but a product of injustice. In the absence of injustice, the demos has no justified right to secede but, most importantly, is not ‘pre-constituted’ as an independent ‘demos’ since it is still part of the parent state demos (Catala 2013). This is somehow inconsistent if we consider unjust annexation as a viable form of injustice for secession. In remedial theories, as in Kant’s concept of usurpation, unjust historical annexation demands arise from a previous (its pre-political existence) justification of the demos (i.e. historical occupation), while in other cases, such as present injustices,

history does not matter at all in this theory. Moreover, the justification of the legitimacy of the borders of the parent state seems to remain somehow weak, since it is tautologically justified by its own capacity to protect basic human rights and a cooperation scheme (Sanjaume-Calvet 2018).

Lockean normative positions based on consent tackle the limitations of defining groups as cultural groups (and their borders) by the acceptance of the legitimacy of all-viable proposed units (Beran 1984; Philpott 1995; Wellman 1995). The seceding unit is 'self-constituted', that is, it appears when there is a will to do so by its own members. Those contiguous members of parent state M that do not consent to its authority over them and do consent to the authority of S are the ones that constitute the demos. This is a different solution to the one proposed by liberal-culturalists but is hardly simpler in practice. Besides the viability of the proposed unit, which according to its proponents must be subject to strict viability requirements, there also seems to be an evident issue that requires attention. Who defines the borders of the proposed unit (if viable) when some members do not consent to be part of it? (Verschoor 2018). Metajuridical powers, as Stilz (2009) would put it, generally imply the inclusion of members that do not explicitly consent to be part of the new political unit in its borders.⁹

Realism challenges moral theories partly because of this incoherence when it comes to specific contexts. Once we opt for a specific moral view, we reject competing approaches and miss relevant elements in empirical cases. A realist critique of moral theories of secession should certainly move beyond this first step as I explain in the next section.

Realism and moral political philosophy on secession

The distinction between 'political moralism' and 'political realism' drawn by the philosopher Bernard Williams offers a clear idea of realism's core concepts (Galston 2010: 387). The task of the moral political philosopher is somehow detached from the political world; therefore, the risk of reducing political philosophy to applied morality is high. Rawls himself denied that he was doing applied political philosophy; the American philosopher regarded solutions beyond the scope of morality as 'mere *modus vivendi* arrangements' (Galston 2010: 388). Shklar's 'liberalism of fear' is an example of an alternative conception to mainstream liberal political philosophy.¹⁰ That is, a liberal branch of thought that, instead of focusing on ideal thinking, would be focused on avoiding the well-known evils rooted in our historical memories and experiences.

It is not the objective of this article to develop a complete view of this tradition of thought that I consider realist and liberal, but to briefly highlight its main critiques to moral political philosophy of secession.

Three failures of applied moralism to secession

A realist would disagree on the way moralism frames secession. Instead of the moral justice or legitimacy of the right to secede, realists would place the political nature of secession as the point of departure of their normative reasoning.¹¹ Realism would highlight a similar critique to the moral approach to secession by pointing out at least three problems of moral assessment related to its consequences and utility for secession demands:

- (a) *Moralism as window dressing.* A realist critique to moralism is that moral theories serve as a narrative for rationalising political preferences (Estlund 2017: 368). The right to secede is far from being codified in international law or domestic constitutions as I said. Therefore, the recognition of this right is often contextual, conflict driven and dependent on power relations. Coggins has consistently shown that secessions are successful (and therefore recognised) when supported by great powers. Cetrà and Harvey (2018) found the Edinburgh Agreement (2012) allowing Scotland to secede if the 'Yes' campaign had won the 2014 referendum to be a strategic concession from David Cameron's executive. Actors often use moral theories as rationalisation narratives. When facing secession right demands, parent states tend to rely on a Kantian logic. The duty to obey the constitutional prohibition to secede is a common response, framed in a legal-moral narrative, that often entails the use of state coercion (allegedly legitimate) to prevent secessions. Russia, Turkey, Spain, the Ukraine and other parent states have recently engaged in this dynamic to prevent secessionists from campaigning or succeeding in their own territories. These policies are combined with double standards at international or even domestic level by justifying the right to secede of certain groups (based on national self-determination, injustice or other reasons) while denying it to others. Kohen referred to those double standards when commenting on the case of Crimea: 'Are the accusers being consistent? They are the ones who encouraged the secession of Kosovo by any means, who supported the secession of South Sudan, who used force without Security Council authorization and conducted a policy that led to the de facto fragmentation of Iraq, Afghanistan, and Libya. [...] When the Kosovo parliament declared independence, those same governments affirmed that the violation of the Serbian Constitution was irrelevant and that international law did not prohibit unilateral declarations of independence. [...]. Vladimir Putin's government is paying them with the same coin. [...].'¹² Similarly, secessionist actors generally use moral theories depending on the context to justify their unilateral right to secede. National self-determination has been the historically dominant moral approach to the right to secede used by seceding groups. Moral justifications range from national self-determination to purely consequential arguments in current pro-independence movements (Dalle Mulle and Serrano 2018).

Nationalism fuels secession movements; there is no secessionist movement without national identity, whereas there are minoritarian cultural and national groups without secessionist movement (Moore 1998). These facts are obviously not a reason to abandon the ambition of constructing and promoting moral theories of secession. However, a realist would argue that the effects of this moralisation on secession right demands tend to exclude politics from the equation. Actors employ moral arguments to transform what is primarily a political debate and probably one of the most political ones since it affects the membership of the political community, into a debate on good and evil. Therefore, the effects of moralising a disagreement on the right to secede instead of fostering more stability and order (a very liberal and realist concern) promote moral entrenchment and social division. Empirical research has consistently found that deepening the moral foundations of political disagreements makes political debates harder to develop (Sauer 2015; Valentini 2013). We also know the potential violence associated with secession conflicts (Coggins 2014; Sorens 2014). Territorial demands are at the heart of an important number of civil wars around the world, and it is not necessary to restate just how explosive these conflicts tend to be (Toft 2012). A realist would conclude that moralising secessionist actors through moral rights' narratives might be dangerous and not beneficial for addressing these kinds of conflicts through politics.

- (b) *Moralism as monism*. In each perspective described in this article (Kantian, Lockean and liberal-cultural), there is one prevailing value. Namely, moral theories of secession rank their moral values in order to provide a normative framework for morally permissible secessions. Each theory of secession presents its own moral perspective as I described in previous sections based on justice (understood as individual and/or group rights protection), freedom of choice (as consent to political authority) and cultural groups self-government as self-determination. These monist perspectives do not fit well with conflicts raised by the right to secede demands. Firstly, in violent contexts, several moral considerations are balanced in practice. From an applied justice perspective, secession conflicts require empirical analysis of specific contexts. Often in these conflicts, the consequences of institutional solutions must be assessed, and this involves a contextual reasoning rather than moral or principle-based decisions. Cases such as Kosovo, South-Sudan, Timor or Crimea show the necessity of balancing moral and practical perspectives regardless of general theories on secession rights. Secondly, in non-violent contexts, debates on the right to secede tend to combine moral perspectives with more instrumental or/and contextual arguments. Electoral campaigns and regionalist parties' manifestos allow for analysis on the arguments on secession. The experiences of Scotland, Catalonia or Flanders show the existence of these political debates and their pluralism in terms of actors and arguments. Dalle Mulle (2016: 224) analysed the arguments on secession in the Scottish and Flanders cases and concluded that the peculiarity

of pro-independence parties' rhetoric 'lies in their reluctance to use principled arguments based on the intrinsic value of self-determination or to resort to claims of alien rule, persecution and victimisation. What these parties have rather focused on are instrumental arguments concerning the economic and social consequences of external self-determination in terms of competitiveness, well-being, delivery of social services, good governance and democracy'.¹³ Again, this does not mean that moral theories do not have a valuable contribution to make. However, one single theory can hardly fit into a debate on secession alone. A practical example of applied moral reasoning in a specific context is the Quebec Secession Opinion of the Canadian Supreme Court (1998). In this case, instead of applying a single approach, the Supreme Court balanced four values that in practice, suggested contradictory solutions to the political question (federalism, democracy, constitutionalism and rule of law, and protection of minorities). The Court introduced the, paradoxically unclear, concept of 'clarity' referring to the required majority (Taillon 2014).

- (c) *Secession as a political option*. Finally, from a realist perspective, moral normativity on secession offers a distorted image of this phenomenon. As Pavkovic (2011) has suggested, secession is a process rather than a right. This does not mean that actors involved in secession conflicts (violent or not) do not advance arguments on their 'right' to secede or to impede secession. Realism regards the political sphere as a priority instead of the moral evaluation that, as I have stated, can be contradictory when applying different theories. It is normal that moral reasoning works based on moral problems. Political theory can be defined as an 'investigation into the nature, causes, and effects of good and bad government' (Miller 2003: 2), and this obviously involves moral reasoning at some point. Nonetheless, the existence of moral political theories (Gutmann and Thompson 2000) does not preclude the necessity of alternative normative theories attached to contexts and political disagreement. In this alternative normative approach, we can see secession as a disagreement on a particular institutional setting that involves moral reasons, but not exclusively. Moreover, narrowing secession conflicts to a moral issue can have pervasive effects on the political debate. More specifically, in liberal democratic contexts involving electoral campaigning and deliberation, moral theories might offer a distorted view of secession as a moral issue rather than a political disagreement occurring in the existing institutional setting. Secessionists might see their demands as a moral duty to be 'obeyed' by the parent state authorities, while parent state actors might see secession demands as something excluded from political debate depending on the case.

In the next section, I try to transform these critiques into an exploration of what a realist theory of secession would look like and some practical implications inspired by the Quebec case.

Theorising secession from a realist perspective

Advancing a realist normative theory of secession might seem awry since realism criticises moral theories precisely on their normative dimension. Indeed, the realist research agenda is not focused on the construction of grand theories (Rossi and Sleat 2014: 694), but this does not mean that from a realist point of view, it is not possible to propose a normative theory. Between moralism and *realpolitik*, there is a middle ground that might be a better way to tackle conflicts in our societies (Sleat 2014). Moreover, avoiding moralism does not mean that moral values do not play a role in a realist theory. A realist theory is a liberal theory just as moral theories are, albeit with some limitations.

A realist view on theories of secession

The right to secede is far from being entrenched in international law, and few domestic constitutions include this right.¹⁴ Stateless nations across the world do not enjoy any primary right to secede, although many of them hold a right to autonomy and populations willing to secede (rarely majoritarian over the territory they claim) very often see how this demand is forbidden or even persecuted. When secession occurs, pre-existing borders inherited from the internal borders of the parent state tend to be taken as valid borders. Borders, in many cases, do not encompass entire nations or willing-to-secede populations but reflect former administrative divisions.

A realist viewpoint would challenge the very idea of moralising the theorisation of secession. Realism challenges the idea that this right should depend on justice considerations as Kantian approaches suggest. From a realist perspective, it is not useful at all to judge as legitimate a secession right demand because of an external principle of justice in the absence of internal legitimacy. Also, and vice versa, it would be unacceptable to stop a strongly legitimate secession because it lacks a just-cause according to a certain external idea of justice. The latter case has been labelled as ‘vanity secession’ by proponents of just-cause theories although this kind of secession has never been recorded (Sorens 2014). For example, Slovenian secession in 1991 could be regarded as a sort of ‘vanity secession’ since this was a richer nation in the Yugoslavian context. According to this view, Slovenian secession was morally illegitimate since its duties of redistribution to the rest of the Yugoslavian territory should have prevailed. It is hard to imagine how this judgement can be compatible with the 95.71 per cent Yes vote for independence in the 1990 referendum. Were these redistribution duties a justification of the Yugoslavian People’s Army attack that provoked the Ten-Day war after the independence declaration? Similarly, Dietrich (2010) has discussed the difficulties of morally assessing the final status of Kosovo through the lens of theories of secession. Dietrich concludes that Kosovo’s secession was morally permissible, in spite of the absence of a referendum on secession or any border modification for accommodating minority demands.

In its turn, choice and liberal-cultural approaches clash with the empirical reality of secession. The right to secede is far from being available to any willing-to-secede population; in fact, not only do most of the world's constitutions forbid secession, international law and international jurisprudence also restrict the right to self-determination to colonial and very specific contexts although it remains neutral on secession.¹⁵ Nationalities and cultural groups are numerous, and few of them have the right to secede from their parent state.¹⁶

In a nutshell, a realist normative approach recommends an anti-utopian reasoning to the right of secession, that is, by including contextual and historical records to my analysis. I agree with Sorens' (2012, 2014) works on the importance of matching normative and explanatory approaches to the phenomenon of secession. Existing moralist theories already warn of their 'feasibility' by including recommendations and references to existing cases. From a realist perspective, building a theory of secession would mean providing sources of legitimacy internal to the context rather than external and universal. This does not necessarily imply a sort of 'moral nihilism' or 'relativism' detached from any moral consideration. However, the priority of morality would be replaced here by a minimal notion of empirical legitimacy, existing sources of normativity as values accepted by actors, power relationships and so on (Williams 2006).

A realist theory of secession

A realist theory should include the basic arguments developed in the last sections. This would be an applied theory, in the sense that it would not offer a final answer to secession as a moral debate. Instead, a realist theory would define the minimal conditions of political compromise on secession. Secession would be framed as a political disagreement, and this might include moral disagreements as well. In other words, secession might be regarded as a moral right (or as an immoral option) in political debates on this issue, but a realist approach would argue that before this occurs, we must assure the existence of a political debate on this political option.

A normative approach to secession from a realist perspective would at least include the following six characteristics:

- i) *The priority of politics.* A realist theory of secession refuses to frame the right to secede primarily in legal or moral terms. This does not mean that brute force or *realpolitik* should prevail or that rule of law and morality do not play a role in this debate. The middle ground between ideal moralism and *realpolitik* or *brute force* is the political sphere. Therefore, this approach frames secession as a political possibility (as much as union) on which parent state and secessionist unit political actors generally disagree. Therefore, secession primarily presents itself as a political problem rather than a moral problem.

- ii) *Disagreement, not rights.* The debate on secession as a political possibility is, therefore, not a debate on rights (although rights might be involved in it) but on creating a new state or maintaining the parent state union as both political (institutional) solutions to the existing disagreement. That is, once the debate has been institutionally and/or socially present through political channels, it shall not be suppressed by appealing to moral/legal issues or by using physical coercion. The political arena is where disagreement takes place; a realist approach would regard this disagreement as the possibility of holding a pluralist debate on secession. Disagreement occurs both between the pro-secession actors (or authorities) and the parent state actors, as well as within the pro-secession unit between pro-secession and pro-union actors and even more nuanced or conditioned positions.
- iii) *Legitimacy as internal justification.* The justification of any political solution to this disagreement is not external but internal to political disagreement. That means it has to be justified in the political arena in which it is debated instead of being focused on obeying normative values external to this disagreement. In a secession debate, there are (at least) two arenas of justification: the parent state population and the seceding unit population. In both cases, a realist approach would evaluate the legitimacy of proposed solutions by their capacity of being justified to the involved populations. It obviously distinguishes between legitimate and illegitimate power, such as brute force domination (see footnote 2 for its relationship with justice). In this sense, in order to legitimate its power, the existing authority must satisfy a 'basic legitimation demand' (Williams 2005). Explicit consent might be part of this legitimation (i.e. through referenda), but this will depend on the context (Sleat 2014).
- iv) *Power relationships, domination and history.* The necessity of internally justifying secessionist and anti-secessionist positions entails an inclusive political arena. Therefore, the absence of domination is relevant in a realist account. Domination does not allow a politically free environment for democratic debates¹⁷ and civic engagement. Civic engagement is taken for granted in a normative theory that prioritises politics and disagreement. In a secession conflict, this would also mean the absence of domination between political arenas – that is, an institutional solution cannot be imposed from a majority (parent state population) to a permanent minority (seceding unit population). History, and historical understanding of institutions, is also an important and contextually sensitive matter.
- v) *Moral neutrality.* The institutional outcome of the political debate is not prejudged in this theory. There is no externally morally justified solution as mentioned in point (iii). Therefore, a realist approach cannot be labelled as being 'permissive' or 'restrictive' regarding the right to secede as moral theories of secession tend to do. The number of existing states (in the world) and disposition of borders as far as it follows the general 'no irreparable harm principle' (see next point) and an absence of domination is regarded as arbitrary from a realist perspective. What matters is its

internal justification; it must be regarded as legitimate as possible by the population involved.

- vi) *General no-harm clause*. I see this approach as consistent with Pavkovic's proposal of a 'no irreparable harm principle' to be applied in secession disputes. This principle would not be attached to any duty arising from a right to secede (or unity) but to a minimal moral constrain: 'Thou shall not kill non-threatening non-combatants or evict them in pursuit of any claim, secessionist or anti-secessionist.'¹⁸ This is a basic requirement linked to stability, an important concern for realist liberals.

Practical implications

The six points described in the last section do not intend to provide moral advice. Instead of moral judgement, what these points aim to do is provide a normative guideline of the primacy of politics and internal legitimacy for political compromise over the moralisation or suppression of a political conflict. The suppression of self-determination demands is a common pattern across the globe. Generally, violence and repression are an important part of the response to secessionist movements (peaceful or violent) in both authoritarian and democratic regimes. Liberal democracies tend to use other means to defeat peaceful secessionism, although in many cases, policies against these political demands involve the use of violence. Politics are often suppressed through these means. As I mentioned in the previous sections, morality is often used to justify violent measures precluding the exercise of democratic politics. Slobodan Milosevic relied on the morally flawed foundations of the right to secede of Yugoslavian republics, arguing on the eventual loss of diversity within Yugoslavia, to justify its military campaign against Slovenia, Croatia and Bosnia Herzegovina (Antic 2007).

A counterfactual example to the paradigmatic and almost unique case of Quebec might be useful to illustrate the potentiality of a realist approach.

In 1994, the pro-secessionist *Parti Québécois* (PQ) won the Quebec general elections. Its party manifesto was clearly committed to a referendum on independence to be held in the first part of the mandate. On the one hand, PQ and independence supporters' reasons for independence were a mix of liberal-nationalism, freedom as choice, just-cause and instrumentalism. Quebec evidently regarded itself as a francophone stateless nation with French roots and oppressed by Canada – since the province had not signed the Canadian Repatriated Constitution in 1982 and a majority of the electorate was expressing preferences for an independent State detached from the British imperial institutional and societal heritage. On the other hand, the federal Liberal government regarded Quebec province as a 'distinct society' (rather than a nation), rejected the existence of any 'oppression' qualifying for secession and opposed the secession of Quebec. Prime Minister Jean Chrétien was himself a federalist Quebecker from Shawinigan, and he denied the existence of any solid majority in favour of independence.

After reaching an agreement with the *Bloc Québécois* (BQ) and the pro-autonomy *Action Démocratique du Québec* (ADQ), the PQ leader and Quebec Prime Minister Jacques Parizeau called for a referendum in October 1995 under the Quebec referendum Act of 1978. The independence option was defeated by a narrow margin and that was a major changing point for the Quebec pro-independence movement – it did not attempt to promote its secessionist plans anymore, although secession support remained above forty per cent for two decades after, with the level of support on recently declining.

The postreferendum legal reaction of the Canadian Government was the famous three questions that were addressed to the Supreme Court on Quebec's right to secede under domestic and international law that produced the well-known 1998 Opinion on Secession.¹⁹ Less known are the efforts of the Quebec federalist lawyer and former secessionist, Guy Bertrand, to stop the referendum and therefore the campaign for and against independence arguing that Quebec's Government was not entitled to hold the consultation. Bertrand litigated against the referendum in Quebec's Superior Court and asked for an injunction against the holding of the referendum. Justice Lesage, the judge in Quebec's Superior Court, considered that a unilateral declaration of independence was unconstitutional since it should follow the constitutional amendment procedure but did not take actions against the referendum being held (Haljan 2014).

At that point, the federal government had the opportunity to stop the referendum. Under moral and legal considerations, holding the referendum was unconstitutional, and the objectives of Quebec's government were morally unacceptable in the eyes of the federal executive. Nonetheless, after some cabinet discussions, Chrétien's federal executive decided not only to let the referendum take place but also to campaign against independence as they had already planned. Federal government officials stated that it was a political rather than a legal (and moral) question to be solved (Young 1995: 106). However, when the federal government was publicly asked to commit to accepting the result of the referendum, it was less clear and never did so (Young 1995: 54).

The application of moral normative approaches would probably have concluded in contradictory positions in this case. The existence of a just-cause was at least as controversial as the concept of nation was. Moreover, the Lockean approach was also disputed, since in principle, it implied supporting the referendum, but it also inspired first-nations populations within Quebec to voice their own concerns, with some of them holding their own referendums and voting to remain in Canada (Oklopčić 2012; Young 1995). Partition proponents challenged the territorial integrity of Quebec precisely on the bases of choice theories. Had the Canadian Government remained attached to one moral approach, the situation would have probably been even more difficult. Instead, the referendum was mainly treated as a political issue rather than as a strictly moral one. This did not preclude political actors from using moral arguments in their democratic deliberation.

It may be argued that the Canadian Government was facing a referendum on independence but not a unilateral declaration of independence. This is true,

although a Yes vote in the referendum would have been difficult to ignore by Ottawa. The efforts of the No campaign made by the federal government and the incredible turnout (93.52 per cent) serve as proof of this crucial vote (Hébert and Lapierre 2014). The Supreme Court, in its 1998 Opinion on the issue, reminded everyone of the extremely political nature of the issue: 'The role of the Court in this Reference is limited to the identification of the relevant aspects of the Constitution in their broadest sense. We have interpreted the questions as relating to the constitutional framework within which political decisions may ultimately be made. Within that framework, the workings of the political process are complex and can only be resolved by means of political judgments and evaluations. The Court has no supervisory role over the political aspects of constitutional negotiations.'²⁰

Facing a secessionist parliamentary majority and a referendum on independence, the Canadian Government could have acted as Iraq's Government did in Kurdistan or the Spanish Government did in Catalonia in 2017, that is, acting to suppress self-determination demands based on moral and legal considerations formulated by the Constitutional Court. Instead, the Ottawa Executive acted with more realism than moralism.

This case shows the potentiality of realism in secession disputes. First, by framing the dispute as a political issue, the existing actors could advance instrumental and moral arguments on the federation, self-government, secession and so on. Second, the priority of politics (and political disagreement) instead of focusing on the 'right to secede' (which remained unclear but out of the focus) allowed for a political compromise on first holding a referendum campaign and a vote on independence. Third, morality did not diminish politics but the other way around. Political discourse allowed for an 'internal' justification of the proposed political options instead. Neither brute force nor moralism trumped the political arena as the main source of legitimacy.

A liberal and limited theory

A realist theory of secession is still a liberal theory. Anti-utopianism and normative approaches directed to avoiding harm instead of building universal normative constructions are part of the liberal tradition. Berlin (1990), Shklar (1989), Gray (2002) or Rorty (1989) provide liberal accounts grounded on a firm pragmatism and anti-utopian strands. None of these authors ceased to be a 'liberal' in some way. The normative view proposed in this article is oriented to the protection of individual rights and the prevention of the abuses of power in favour of political compromise. This is a far less ambitious attitude than the one proposed by moral theories, but it remains somehow connected to the basic moral convictions provided by liberal theories.²¹ Its concern with legitimacy, power and politics makes it compatible with the republican tradition as well.

The limits of a realist viewpoint, since as an anti-utopian and applied theory, the limits of a realist viewpoint are obvious. The first limit of realist

theories is clearly their incapacity to provide a morally progressive horizon on the issue (secession disputes in this case) beyond the minimal points described above. For this reason, I consider the realist approach presented in this article as a compatible approach with other theories of secession, far more ambitious in their commitment to moral progress from diverse perspectives.

I have analysed moral theories elsewhere, and I do think that they are valuable and have converging elements combining justice, democracy and cultural groups rights. Recent literature on the right to secede (Brando and Morales-Gálvez 2018; Dalle Mulle and Serrano 2018; Guibernau 2013, 2015; Sorens 2014) point out the existence of a certain liberal democratic consensus among theories on the morality of secession. This is a path towards more sophisticated versions of moral theories of secession. Obviously, there will always be disagreement on the moral values to be prioritised, and I think this debate should not cease to exist both in academic literature and in political debates. An applied theory might be useful in our day-by-day politics, while other theories remain a relevant field of academic and political debate on how international and domestic institutions and laws should look like in the future.

A second limit of a realist theory is the justification of including moral values in it when it is presented as an anti-moralist theory. A realist criticism would point out that the six points described earlier already contain too much morality by referring to no-harm and non-domination principles. I defend that a minimal moralism is necessary to preserve values such as respect for human dignity and civic capacities, but this does not mean that this normative proposal is falling again into a sort of moralism. The priority of this realist normative theory is political disagreement instead of dealing with secession as a moral problem.

Finally, the degree of legitimacy is also a vulnerable element in a realist theory of secession. Consent theorists might argue that this account opens the door for tyranny if explicit consent is abandoned when precisely its objective is to avoid tyranny, while Kantian theorists would object to its lack of compromise with the rule of law and established moral norms. The priority of politics would prevail here, therefore, depends on the case context.

Conclusions

Moral theories are contradictory among themselves and suffer from plausibility problems when applied to reality. Moralism can be, in practice, a narrative that helps to rationalise political preferences making political disagreement deeper by confronting agonistic moral positions. In fact, in secession conflicts, political actors typically use moral theories to reinforce their positions. Moreover, moral views tend to be monist by ranking moral values and reducing political debates to rights and duties. A realist regard tries to overcome problems attached to the moralisation of secession debates and proposes a different approach based on legitimacy and the priority of politics. Between moralism

and *realpolitik*, there is room for an applied normativity on secession. I have explored this middle-ground terrain proposing a theory of secession detached from moral reasoning. Realism would consider secession as a political rather than a strictly moral question.

Therefore, a normative theory of secession focuses on the existing political disagreement on secession rather than on the right to secede. This is an applied theory, since it remains contextual and morally neutral on the final institutional result. Moreover, realism only accepts arguments justified to those involved in the political arena; that is *internally justified* and not *externally justified* by moral theories. At the same time, the theory remains linked to moral values since it is based on a no-harm principle and basic liberal values.

A realist theory of secession is compatible with existing theories of secession. When addressing secession conflicts, realism and moralism ought to be balanced to find a stable and legitimate way out. Moral theories remain ambitious theories aiming to provide a framework to regulate the right to secede. However, applied approaches such as the realist one allow us to have less ambitious normative tools to deal with secession conflicts. In these conflicts, the priority of politics and tackling political disagreement is a first step to avoiding the displacement of politics by force and morality. Further research should explore the potentiality of realism to inform legal and policy-making actors in these types of conflicts beyond existing theories while balancing moral values.

Notes

1 I owe a debt of gratitude to Mireia Grau, Ferran Requejo and two anonymous reviewers for their useful comments on an earlier version of this article. All errors are mine.

2 Authors such as Mouffe (2006) have taken a form of realism, agonism, somewhat incompatible with liberal thought. However, particular forms of liberalism (Berlin 1990; Gray 2002; Rorty 1989; Shklar 1989) can be regarded as being close to realist tenets.

3 Many theories refer to justice and legitimacy as synonymous concepts. A realist approach does not deny the relationship between these pairs of core concepts in political philosophy but assumes a definition of legitimacy as a less demanding concept than justice. Sleat (2014) develops a realist theory of justice, expanding the works of Williams (2005) and other authors, based on the justification of power to its subjects as a political dynamic rather than as an external evaluation derived from moral principles. This does not mean that moral principles do not play a role in it, but the main issue in legitimacy 'from within' is not justice but the justification of political power to involved individuals.

4 For a compilation of declarations of independence, see Armitage (2008).

5 That means a political scenario in which the smaller portion S unilaterally secedes (or attempts/demands to secede) from the parent state M, without M's permission. The moral right of S to secede from M without M's consent has been framed through three moral logics developed in the next section. Secession is, by definition, replacing a sovereign political authority in a portion of its territory by a newly created sovereign political authority (Pavković and Radan 2007). The answers to the question of the morality of the right to secede mirror classical debates on power and obedience. Existing theories of secession have generally taken as point of departure of their normative constructions, the hypothesis of a unilateral secession right (or its absence).

6 (1) The group which wishes to secede is not sufficiently large to assume the basic responsibilities of an independent state. (2) It is not prepared to permit subgroups within itself to secede although

such secession is morally and practically possible. (3) It wishes to exploit or oppress a subgroup within itself which cannot secede in turn because of territorial dispersal or other reasons. (4) It occupies an area not on the borders of the existing state so that secession would create an enclave. (5) It occupies an area which is culturally, economically or militarily essential to the existing state. (6) It occupies an area which has a disproportionately high share of the economic resources of the existing state (Beran 1984: 30–1).

7 ‘We assume that things are roughly as they are, especially that our world is a world of states and of a variety of ethnic, national, tribal, and other groups. We do not question the justification for this state of affairs. Rather, we ask whether, given that this is how things are and for as long as they remain the same, a moral case can be made in support of national self-determination’ (Margalit and Raz 1990: 440).

8 See Norman (2006), Seymour (2007), Costa (2003) and Patten (2014).

9 A utilitarian criteria could be applied here in order to maximise explicit consent. However, as Sorens (2014) has suggested, the utilitarian solution would end up turning against the seceding right since the consent of the majority in the parent state would trump the minority.

10 See Forrester (2012) for a discussion on this point.

11 Pavkovic (2011) raised a similar view questioning the utility of a moral right to secede in the politics of secession. He criticised its consequences as providing moral arguments to secessionists and ultimately deepening conflicts instead of solving them: ‘The transfer of sovereign political power from one elite to another and from one set of political institutions/offices to another may indeed be subject to evaluation of political legitimacy; it is unclear whether, in addition, such transfers can or need to be regulated/assessed by another set of norms, whether moral or legal’ (Pavkovic 2011: 449).

12 As quoted in Christakis (2014).

13 In another work, Dalle Mulle and Serrano (2018: 15) also found a similar trend in the Catalan case: ‘This group, that we have called “instrumental,” refers to the effects of secession understood as a political tool for social wellbeing, economic prosperity and democratic improvement. It clearly applies to a context where consequentialist arguments from a strict remedial approach, such as massive violations of human rights, severe discrimination or the occupation of a previously independent state, can hardly be found because of the existence of minimally democratic conditions.’

14 Around twelve constitutions regulate this right out of 193. See Constitute Project <https://www.constituteproject.org/> [accessed on 25 July 2018].

15 The ICJ Court stated in 2010: ‘During the eighteenth, nineteenth and early twentieth centuries, there were numerous instances of declarations of independence, often strenuously opposed by the State from which independence was being declared. Sometimes a declaration resulted in the creation of a new State, while others did not. In no case, however, does the practice of States as a whole suggest that the act of promulgating the declaration was regarded as contrary to international law. On the contrary, State practice during this period points clearly to the conclusion that international law contained no prohibition of declarations of independence. During the second half of the twentieth century, the international law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation (cf. Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971, pp. 31–32, paras. 52–53; East Timor (Portugal v. Australia), Judgment, I.C.J. Reports 1995, p. 102, para. 29; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), pp. 171–172, para. 88). A great many new States have come into existence as a result of the exercise of this right. There were, however, also instances of declarations of independence outside this context. The practice of States in these latter cases does not point to the emergence in international law of a new rule prohibiting the making of a declaration of independence in such cases.’ Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Reports 2010, p. 37.

16 See Sorens (2012).

17 Pettit (2017) has convincingly argued in favour non-domination in realist normative forms of government. I am very thankful to an anonymous reviewer for this suggestion.

18 Quoted in Pavkovic (2011: 451).

19 Reference re Secession of Quebec, [1998] 2 S.C.R. 217.

20 *Ibid.*

21 Sleat (2015: 307) reminds us that ‘“Here I stand, I can do no other” is a noble cry, but it is no coincidence that our prevailing folk-memories of this kind of unwavering commitment to a political position are often accompanied by images of real bloodshed (think Thatcher’s battle with the unions). There are undoubtedly some points at which the stubborn pursuit of one’s ideals is the right course of action, regardless of the consequences. But in politics those points are the exception, not the rule, especially because such action often runs the risk of disrupting the normal processes of politics and reintroducing the threat of real violence as the means of resolving disputes.’

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