



Political Theory Working Paper

Número 18

The Republic and its boundaries. Democratic
republicanism and theories of right of secession

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December 2014

GRUP DE RECERCA EN TEORIA POLÍTICA

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Abstract: Despite the fact of dealing with the same object (the state, and specially the democratic state) from two different focus of interest, little effort has been devoted to analyze the normative relationship between democratic republicanism and current theories of right of secession (TRS): whether (and where) they are mutually reinforcing, contradictory, independent or in tension. This gap is part of another major gap: the lack of a democratic republican theory of secession. This article tries to fill the first gap as a first step to further fill the second one. In doing this, it shows (1) how current TRS can point out democratic republicanism as having missed to handle the dangers that secession conflicts imply in terms of exclusion, domination (either by blackmailing minorities or permanent majorities), and instability; and (2) how democratic republicanism can point out all current TRS as falling in some of these dangers. Hence, to explore how to reconcile democratic republicanism with the field of TRS appears as a relevant task to be developed; in this sense, the article also shows that we have reasons to think that we can work on an alternative democratic republican TRS as a feasible way to reach such reconciliation.

Key words: ascriptivism, civil freedom, conflict, democracy, domination, factions, majorities, minorities, nationalism, plebiscitarianism, pragmatism, remedialism, republicanism, secession.

Introduction

This article aims to answer a theoretical question: *which is the normative relationship between democratic republicanism and current theories of right of secession?* By “normative relationship” I mean to which point different normative political theories¹ are compatible. Roughly speaking, we can say that there can exist different levels of compatibility between such theories, ranging from *mutual reinforcement* (when they point out to similar or mutually reinforcing goals; e.g. egalitarian liberalism and liberal feminism) to *mutual exclusion* (when they point out to fundamentally incompatible goals; e.g. capitalist libertarianism and Marxist socialism), with intermediate levels of *independence* (when they point out to different but not mutually excluding goals; e.g. egalitarian liberalism and environmentalism) or *tension* (when they have a mixed relation of having mutually indifferent or reinforcing goals, on the one hand, and potential or actual mutually excluding goals, on the other; e.g. egalitarian liberalism and socialism). Through such analysis we can not only describe the shape and roots of the most known controversies between different normative theories, but we can also discover which problems are being considered by one theory while being obviated by others, and vice versa, which in turn may lead us to find out not-so-obvious points of tension between them.

Besides its intrinsic interest, such analysis are helpful in order to figure out whether the tensions between different theories can be overcome (and how) or not. It is for these purposes that I have analyzed the normative relationship between *democratic republicanism* and current *theories of right of secession* (TRS), since there has hardly been any analysis of this kind, which I regard as a necessary step in order to fill another major gap: the lack of a democratic republican theory of secession. Among the few scholars who have tried to link both fields, we can find John McGarry and Margaret Moore (2011), Ovejero (2006: 81 - 104)

¹ I.e. theories whose aim is to find out *how should politics be or work*, rather than *how politics is or works*.

or Sellers (2006: 158 - 166)², but I find their analysis unsatisfying because they all (1) examine secession and TRS from the point of view of democratic republicanism, but not vice versa; and (2) support one or another version of one TRS (remedialism), which I find as partly contradictory with democratic republican values, as I will later explain. So this article tries to fill this gap, with the aim of being a first step in order to develop a democratic republican approach to one of the most challenging issues of modern politics, as secession is. Indeed, in order to further develop such approach we need to find out whether it must be based on one current TRS, on a synthesis of them or on completely new bases.

The article is structured in seven sections. In the *first* one, I clarify the definitions of the concepts secession, secessionist politics and secession conflict I handle. In the *second* and *third* sections, I summarize the main traits both of current TRS and of democratic republicanism, in preparation for the *fourth* and the *fifth* section, in which I ask, respectively, what can TRS tell us about democratic republicanism, and what can democratic republicanism tell us about TRS. Since TRS are a more diverse group of theories, this fifth section is larger than the fourth one but, in any case, what I find in both sections is symmetrically important: the fourth section points out a historical neglect, by democratic republicans, of the normative challenges of nation-building, including secession; while the fifth section shows how, and why, each TRS fails to provide a framework able to protect all factions of secession conflicts from domination, so that in turn it could be able to be seen as fair and reasonable by those same factions. Over these findings I briefly outline, in the *sixth* section, how an alternative democratic republican approach to secession could be developed through further research. Finally, in the *seventh* section, I summarize my findings and conclusions.

1. Secession, secessionist politics and secession conflict: an overview

I will start by defining the concepts of *secession*, *secessionist politics* and *secession conflict*. There is not a unanimously accepted definition of *secession*: scholars like Pavkovic and Radan (2007) exclude phenomena like irredentism or decolonization from their definition, while others like Buchanan implicitly or explicitly include them as types of secession (1991: 10 and 45); and we even hear about “secessions” at non-state levels (e.g. the secession of the Swiss canton of Jura from Berna). Since I think all these views are partly right, I will handle two definitions instead of just one. In the *first* definition, which I call the *broad* one, secession is *the withdrawal of a territory and its population from a broader polity, either to join another polity or to create a new one*; a definition that naturally shelters different types of secession, including decolonization or irredentism. The second definition, which I call the *pure* one, highlights one of those subtypes: *“the creation of a new state by the withdrawal of a territory and its population where that territory was previously part of an existing state”* (Pavkovic and Radan 2007: 5). Thus, whenever I use the word “secession” alone, I will be talking about “pure” secession, while acknowledging there are other types of “secession” in a broader but genuine sense³. On the other hand, *secessionist politics* can be defined as:

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

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

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

Secessionist politics is driven by a group of people, *secessionists*, who support the secession of a broader group of people, their *target* population, over a given territory. When, within a polity, secessionist politics grows to a certain degree, it generates a *secession conflict* between secessionists and *unionists* (i.e. opponents of secession). By *conflict* I understand *the opposition between different agents (individual and/or collective) in order to pursue their respective agendas*. A secession conflict is a type of *political* conflict, i.e. a conflict between different agents in order to gain power, where *power* is, roughly speaking, *the capability of A to get B to do something that B would not otherwise do* (Dahl 1957: 202 – 203); as any political conflict, it *may*, but not necessarily *must*, be violent. In a secession conflict, unionists aim to keep their polity united *and* avoid any international recognition for secession, while secessionists seek the successful withdrawal of their target population and territory from that polity, *as well* as international recognition for it. In those liberal democratic states in which secessionists become a majority within their target population, secession conflicts seem to oppose two democratic majorities (a state-level unionist majority and a regional-level secessionist one), hence giving the issue of right of secession a crucial, as well as controversial, relevance.

Roughly speaking⁴, we can historically distinguish between: (1) an era of anti-colonial secessionism in America from the mid 16th century to the mid 19th century; (2) an age of irredentism and pure secessionism from the mid 19th century to the mid 20th century, which in Europe was linked to the birth both of modern nationalisms and of the concept of self-determination, understood as the right of national minorities to secede; (3) decades of anti-colonial secessionism in Asia and Africa from 1945 to the 1980's, during which international law limited the right of "external" self-determination (i.e. secession) to the colonies, while recognizing to "national" minorities a right to "internal" self-determination (i.e. autonomy); and (4) the years from the 1970's onwards, with a new rise of pure secessionism, reaching a turning point in the implosion of the Communist Bloc. The contradictions of the international community when handling these new pure secessionism; the outbreak of violent secession conflicts in places like Northern Ireland, the Basque Country or Yugoslavia; and the growth of a reasonably liberal and democratic secessionism in other places like Quebec; all these phenomena, I say, were (and are) hard to handle through an international law system that was thought for decolonization. TRS were born during that era, in order to fill this gap.

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

Current TRS are divided in two groups. First, there are theories of the unilateral⁵ right of secession (TURS),

4 Though in a way we can find secession conflicts in pre-modern times (e.g. medieval Wars of Scottish Independence), this article focus on *modern* secession conflicts, which have been developed along with modern states which normally have found their main source of legitimacy in secular notions (e.g. popular sovereignty, human rights or nationality) rather than in religious ones.

5 We should recall that "unilateral" (made by one side without looking for the acquiescence of the other side or sides) doesn't necessarily means "unconditional" (without limits). I, for instance, have a unilateral right to free speech (i.e. I don't have to ask for permission when it comes to publicly express my opinions), but it doesn't means that right is unconditional: I can't use my freedom

which is "*the principal focus of interest for theorists of secession*" (Pavkovic & Radan 2007: 200-201). TURS try to establish *who* has a moral (i.e. not necessarily a legal) right to secede, and *why*. Though discussions on institutionalization are not out of this field, the main concerns of TURS are those two. In the second place we find theories of the constitutional (normally understood as *consensual*) right of secession (TCRS), which try to determine whether states (specially liberal-democratic ones) should include a right to secede in their constitutions. I find this division a bit misleading in some senses⁶, but nevertheless is the classification of TRS most commonly accepted among their own authors, so I prefer to use it as such in this analysis.

2.1. Theories of the unilateral right of secession

TURS are usually classified in three groups: *plebiscitarianism*, *ascriptivism* and *remedialism*. The first two conceive (unilateral) secession as a *primary right*, i.e. a right to which some groups of people are entitled *a priori*, with no need of justification to their decision; they only differ on the definition of which people(s) are entitled to such primary right. For *plebiscitarianism*, the subject of it is simply any territorially concentrated group in which a majority of people supports secession. Wellman (1995), Beran (1984) and Philpott (1998) are some well-known examples of these theories. Despite their differences, they always seem to appeal to the same idea: in liberal-democratic terms, it is the state which is the servant of the people. In a second place, *ascriptivism* restricts this primary right of secession to certain groups linked by some objective features such as language, history, self-government institutions, traditions, "world-views" and so on. Miller (1995: 84-85), Nielsen (1998) and Margalit and Raz (1990) are typical representatives of ascriptive theories. Broadly speaking, the idea is that some objective features create a common identity (usually labeled as "national") among the people who share them, this common identity provides some important goods to these people, and this fact makes justifiable for such people to build their own state if that's their will.

These primary right theories have received two main criticisms from other authors working under the same liberal-democratic values underlying them: (1) *secessio ad infinitum*, i.e. the threat that a primary right of secession could lead to recursive secessions, thus promoting instability; (2) the *blackmail danger*, that is, the danger of giving privileged minorities the power to threaten the majority, even to undermine the mission of the liberal-democratic state as a promoter of rights and social justice (e.g. the Slave States' secession in the US). Besides, ascriptivism has been further criticized for: (3) *weak operationalization*: it is rather difficult to give an empirically operational definition of the ascriptive features that a human group must share in order to be considered a "nation" or an "encompassing group"; (4) *unclear normative logic*: it is not clear why an "encompassing group" must have the right to have its own state, since reasons usually pointed out in this sense (e.g. common interests, importance for individual identity and values) are easily applicable to other kinds of groups, such as social class; and (5) *danger of exclusion*: those who live in the territory supposed to belong to an ascriptive group, but who don't share its ascriptive (normally meaning *cultural*) features, might be seen as "second-class citizens", or even be excluded of citizenship itself.

In order to overcome these problems, different primary right theorists propose to place restrictions to this right. Secession would then be a primary right of certain groups, *unless* a set of conditions are not

of speech to publicly and deliberately accuse someone of a crime he or she hasn't committed.

6 For instance, I can't see why can't we think on a unilateral and constitutional right of secession, or in a non-unilateral right of secession entrenched in international law instead of in constitutional one.

satisfied. Each primary right theorist has his own set of limits to unilateral secession (Wellman 2005: 36; Beran 1984: 30 – 31; Philpott 1998: 80; or Margalit and Raz 1990: 459 - 460), but normally all them refer to the foreseeable capability (and will) of both the seceding state and the remainder one to keep fulfilling the obligations of a state in terms both of stability and of accordance to liberal-democratic values. However, the more limits you put to a primary right of secession, the more it needs an arbiter to interpret when those limits have been passed (which, of course, let us in front of the problem of "who" should be the arbiter), and also the more you loose one of the appeals of these primary right theories: the open questioning of the arbitrariness of boundaries as they have been developed through history, since you are assuming that those boundaries can only be modified by those secessionist groups which happen to satisfy some conditions that you are not demanding to currently existing states in order to continue their existence.

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

These theories have the appeal of avoiding almost all the weak points of primary right theories. However, remedial theories have also been criticized as biased towards the *status quo*, assuming the legitimacy of current boundaries while putting the burden of the proof on secessionists. This is quite problematic since most boundaries are the result of historical processes (e.g. wars) rather far from complying with the liberal-democratic values that ground remedial theories. Remedialism seems to imply an answer to this objection: as long as states are reasonably just (in liberal-democratic terms), boundaries are irrelevant. However, between the massively oppressed minority and the privileged, blackmailer one, there are a lot of intermediate stages in which in absence of intolerable injustice there are, nevertheless, genuine discussions on certain issues related to state or nation-building (e.g. language regulations, decentralization or territorial allocation of economic resources) in which territorialized, permanent minorities (e.g. Quebecers within Canada, Basques or Catalans within Spain) would usually be the weak part under state-majority rule.

There are two main strategies in order to keep remedialism while avoiding these problems: (1) to argue for *intrastate reasonable degrees* of autonomy for minorities (Buchanan 2007: 401 - 424), but this could hardly be seen as a solution since the definition of "reasonable degree of autonomy" would be differently interpreted by majorities and minorities and, again, here the weak part would generally be minorities; and (2) *to extend the catalog of "just causes"* to secede in order to include, for instance, the failure of a state *"to introduce and respect institutional arrangements that adequately recognize the distinct national identity of (some of) the group's members"* (Patten 2002: 561). However, the more we extend the catalog, the more remedialism loses one of its main appeals: clarity in the delimitation of a *demos* with a reasonable

claim against its permanence within its host state. For instance, it is relatively easy to determine if a group is being victim of massive violations of human rights, but it will usually be controversial whether a group has a "national" identity, in the first place, and whether it has been, or not, "adequately" recognized by the state.

2.2. Theories of the constitutional right of secessionism

Unlike TURS, TCRS observe a double divide: (1) on the very *introduction* of such a right in liberal democratic constitutions, some scholars say "yes", some of them say "no" and some of them just say "it depends", which I label as *positive*, *negative* and *case-by-case* groups; and (2) on the reasons to introduce or reject such right (which of course influences the shape and subject of it), some scholars share a *plebiscitarian* approach, some of them share a *remedialist* view of it and, finally, some of them share what I label a *pragmatic* approach, i.e. they doesn't evaluate the constitutional right of secession as a way to institutionalize a previous TURS, but as an institutional mechanism designed to minimize those potential dangers they see as linked to secessionist politics. Interestingly enough, it seems to be that no scholar has yet argued for a constitutional right of secession from an ascriptivist approach.

Some *plebiscitarian* scholars see constitutionalism and secession as both sides of the same coin: the idea that governments ought to serve the people's will, not viceversa. (Brandon 2003, in Macedo and Buchanan: 275). A strongly plebiscitarian scholar, Andrei Kreptul (2003), argues the contrary starting from a Hayek-style libertarian strong mistrust on state, which is seen at best as a necessary evil that must be limited to security tasks (protecting individual civil rights and private property). Kreptul states that only individuals have the right to decide to which political community should they belong. Kreptul mistrust of the state, however, leads him to discourage any attempt to constitutionalize secession (2003: 58). Finally, another plebiscitarian, Philpott, considers different strategies to pass from his ideal plebiscitarian TURS to a non-ideal institutionalization of it, with a constitutional right of secession among them. The conclusion of his exploration is that the goodness of a constitutional right of secession, as that of all the other strategies he considers, must be evaluated case by case.

On the other hand, some *remedialists* argue for a constitutional right of secession because a qualified version of such right, with high democratic hurdles⁷, could be used as a legal proxy for just-cause secessions, since only groups with very good reasons for secession (namely, just reasons) would likely pass those hurdles; this could be a solution for the problem of the arbiter we have seen as linked to some remedialist TURS (Norman 1998). On the contrary, other remedialists oppose such constitutionalization because they understand secession as a form of resistance that can only be legitimized when it is exercised against a deeply unjust authority, similarly to revolution or civil disobedience. Therefore, it has no sense to "legalize" it and, on the contrary, such legalization would fuel those risks usually linked to primary right theories (Sunstein 1991). Finally, there are also remedialists for whom a constitutional right of secession should be seen as just one possible tool a tool among many others (including veto and nullification rights) for protecting vulnerable minorities without empowering selfish or privileged ones. Sometimes it will be the best

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

one, sometimes not (Buchanan 1991: 127 - 149).

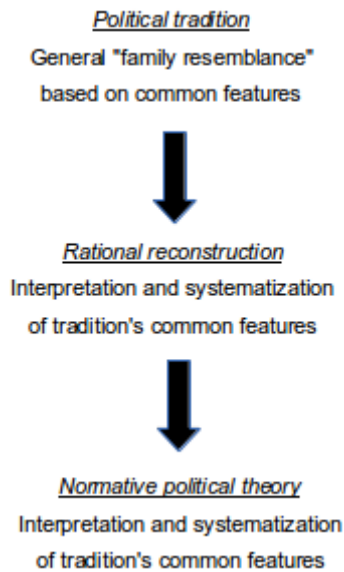
In the last place, pragmatic theorists differ from remedialists and plebiscitarians in that their TCRS are not designed as an extension of any TURS. Instead, they identify a set of problems that secessionist politics suppose to liberal democracies, and then discuss the adoption of a constitutional right of secession as a proper institutional device to handle those problems. Daniel Weinstock, for instance, describes secession as a not-absolute-but-inevitable evil for liberal democracies, which could be better handled by constitutionalizing a right to secede (2001). Norman, who (as we have seen) initially defended a constitutional right of secession for remedialist reasons, has lately argued for it rather as a pragmatic way to "domesticate secession" (2003). Based on similar reasons and on comparative research, Miodrag Jovanovic (2007) argues for introducing such right in federalized states. On the contrary, Hiliard Aronovitch, in his analysis on the quasi-constitutional Quebec's right of secession, makes a pragmatic case against it (2006), stating that it would fuel greater problems (e.g. strengthening selfish minorities or weaken the unity of plural states and the diversity of their constituent units) than it would be intended to solve. Finally, and contrary to the other groups of TCRS we have seen, there seem not to be pragmatic "case-by-case" authors.

3. Democratic republicanism: a definition

Now that we have summarized TRS, let's take a look on republicanism, and specifically on its democratic brand. A quick look on the work of the most prominent scholars on republicanism shows quite different ways to define this tradition (Pocock 2003: 507; Sandel 1996: 4 – 7; Arendt 1963: 30; Skinner 2002; Pettit 1997; or Sunstein 1988). Thus, it is not always clear what "republicanism" means. One can therefore be tempted to say that it may not mean anything at all. However, I think this fuzziness is rather the norm when it comes to define any tradition of political thought (e.g. Hayek and Rawls would disagree in defining "liberalism"). Political traditions are not homogeneous theories with a clear set of principles and proposals, but rather groups of such theories sharing some common assumptions, principles and vocabulary, forming what Wittgenstein called a "family resemblance". This point of view has costs in terms of theoretical precision, but also gains in terms of historical rigor⁸. Thus, once this "family resemblance" is identified, one can move forward by rationally reconstructing it in a more coherent way; this reconstruction will of course be just one among others, being a different task to argue why we consider it as the best possible one. With this reconstruction at hand, we will be able to use it as a framework to handle concrete normative problems⁹.

⁸ It has also the advantage of allowing us to place some authors in more than one tradition, which is actually how things often happen. Burke, for instance, is usually seen as a leading figure both of modern conservatism and of classical liberalism, two traditions with its own distinctive features, but which are certainly present, at the same time, on Burke's thought.

⁹ One can think that this effort to define political traditions is historically interesting, but theoretically irrelevant. Logically speaking, this view is basically right: to find connections between the normative theorists of present and the past, on the one hand, and to formulate solutions for normative problems, on the other, are two different intellectual tasks. However, I think that, in terms of actual research, this second task is greatly reinforced by a good handling of the first one, for at least three reasons: (1) *authors' location*: to define traditions of political thought makes easier to find authors who studied problems we concern from values and assumptions we basically agree with; (2) *avoiding repetitions*: related with the previous one, to know the work of the authors of a political tradition prevents us from wasting time dealing with problems which already have a solution we could see as satisfactory, thereby minimizing the risk of "reinventing the wheel"; and (3) *historical pedigree*: as Pettit (2013: 19) argues, a normative approach well placed within a tradition with historical pedigree have better chances to be taken *a priori* as intellectually plausible ("*how likely is, after all, that any one of us would discover afresh a wholly novel ideal for political life?*").

Figure 1. Traditions of thought and normative political theory

Which are those common features that shape the "family resemblance" of the different republicanisms? I think most current republican scholars, despite their differences, would agree on the following loose description: *republicanism is a tradition which goes at least from Aristotle to Madison, passing through Cicero, Machiavelli or Harrington; which proposes a concept of freedom different from negative freedom; which links this freedom, in some way, to civic virtue; and which sees economic autonomy and dispersion of power as necessary conditions for republican freedom and/or civic virtue.* Starting from this tentative description, how can we rationally reconstruct these features in a cohesive theoretical framework? For the purposes of this article, I will use what nowadays is probably the main rational reconstruction of republicanism among republican political theorists: that one of Philip Pettit¹⁰ (1997 and 2013), built upon the historical works of Quentin Skinner (1983, 1990, 1998 and 2002).

For Pettit, republicanism is a political tradition which: (1) defends an ideal of freedom as non-domination; (2) understands domination as the power of one individual or group to exercise arbitrary interference¹¹ over another individual or group; (3) argues that, in order to promote republican freedom, private sources of power (e.g. wealth) must be checked, controlled and dispersed by the state; (4) argues that, in order to prevent the state of becoming itself dominating, it must be organized as a constitutional republic, with its own powers being checked, controlled, dispersed, prevented to be monopolized by any faction, and kept under the rule of law and the vigilance of civically virtuous citizenry (i.e. predisposed, whether for intrinsic or instrumental reasons, to participate in politics for the sake of the common good of the republic); and (5) argues that civic virtue is unattainable without freedom, hence establishing a relationship of

¹⁰ Although it is hard to know which reconstruction of republicanism is the most followed by modern republican scholars, it is indicative that three well known "state of the art" compilations on republicanism (Nadeau and Weinstock 2004; Honohan and Jennings 2006; Laborde and Maynor 2008) give Pettit's conception a central role.

¹¹ Skinner gives a good definition of what does "arbitrary" means in this context: "(an arbitrary power is) a power capable of interfering in our activities without having to consider our interests." (2002: 247 – 248).

mutual dependence between republican freedom and civic virtue. Besides, *democratic* republicanism, as opposed to more oligarchic brands of republicanism, (6) defends this republican citizenship, based on civil freedom and civic virtue, to be as extended among people as possible. Since the first of this six features is central for Pettit's reconstruction of republicanism, I will now describe it with more detail.

Pettit distinguishes republican freedom from those other two concepts of liberty described by Berlin (2005): compared to *positive* freedom, republican one does not consist in having resources (including political participation¹²) to fulfill one's own potential. Compared to *negative* freedom¹³, Pettit says, republican one is neither sufficiently nor necessarily limited by interference¹⁴. I have to say that, in my view, Pettit misses to point out that Berlin's definition of negative freedom, which is actually Hobbes' one, only considers *physical* interference¹⁵ as a limit, while republican freedom can *also* be threatened by other sources of interference (e.g. wealth). It is easy to track, in early modern political thought, this distinction between freedom as absence of physical interference and freedom as invulnerability in front of any power capable of arbitrary interference, which in the 17th and 18th centuries were labeled as *natural* and *civil freedom*¹⁶. On the other hand Pettit regards civil freedom as a consequentialist ideal: it can vary in terms of *intensity* (i.e. the strength of a person in front of arbitrary power) and/or *extension* (i.e. the number of people enjoying enough civil freedom as to be considered free citizens). Let's see this point with a bit more detail.

In terms of intensity it is evident that, *ceteris paribus*, republicans would always look for a situation in which those who are supposed to be full citizens enjoy civil freedom to the highest possible degree. Since "domination" is hardly measurable, Pettit proposes a fuzzy, though intuitive and appealing, way to determine if someone is strong enough in front of arbitrary power: a free person would be that one who enjoys protections and resources to the point where he or she can "*look others in the eye without reason for the fear or deference that a power of interference might inspire (...) in the absence of what would count, even by the most demanding standards of their society, as mere timidity or cowardice*" (Pettit 2012: 84). Pettit call this "the eyeball test"; the person who pass it (the free person) is the ideal that lies at the heart of the republican concept of citizenship. Of course, this test opens the door to consider that we can be basically free in front of

12 Among republican scholars, a distinction is usually made between a "neo-athenian" republicanism, which would identify freedom with political participation, in tune with Sandel (1996); and a "neo-roman" republicanism centered on freedom as non-domination, and thus on protection against arbitrary power. The terms themselves are shared by Skinner (1998) and, at first, by Pettit (1997). However, as Pettit himself has recently pointed out, there are good historical reasons to reject this "neo-athenian" label for Sandel's and others' brand of republicanism (2012: 12), since Athenian democracy seems to have been compromised with a scheme of dispersion of power as a condition for freedom, well described in Hansen (1991).

13 Which Pettit's label as "liberal", though I will later discuss this point.

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

15 "*(...) liberty, or freedom, signifieth (properly) the absence of Opposition; (by Opposition, I mean externall Impediments of motion)*" (Hobbes 1968: 262).

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

some people and basically unfree in front of some other, but in my opinion this is an advantage rather than a weakness, for it captures the nature of freedom as a relational concept, describing not a quality of individuals, but of individuals when put in front of other individuals.

What about extension? How many people should pass "the eyeball test" thank to the institutional design of the republic and the policies of its governments? Here we must take into account a fact acknowledged in Pettit's works: from its very beginnings, republicanism has been divided between *democratic* currents, which have advocated for a greater extension of civil freedom, and *oligarchic* currents, which have argued for a lesser one. In Greco-Roman times, this division was centered on social class, being the debate whether: (1) to effectively exclude the have-not citizens from full citizenship (e.g. by giving more political rights to the haves) for they were considered as dominated by the haves, and therefore politically unreliable, since subjection to a dominant power undermines civic virtue; or (2) to effectively include the have-not citizens in full citizenship by removing or checking the bases of this domination (e.g. paying salaries to poor magistrates or promoting debt reliefs); of course, these are ideal types, and therefore intermediate positions (e.g. that of Aristotle) also existed. Exclusions based on gender, birthplace or slavery were out of discussion in Greco-Roman republics, but were taken into account by democratic republicans from the Enlightenment onwards. Of course, Pettit includes himself within the field of democratic republicanism.

Figure 2. Three concepts of freedom, three limits to freedom

	Negative/Natural freedom	Positive freedom	Republican/Civil freedom
Interference (through the use of force)	Limit	Not necessarily a limit	Not necessarily a limit
Domination (as arbitrary power to interfere, and not only through the use of force)	Not necessarily a limit	Not necessarily a limit	Limit
Lack of resources (including political participation)	Not a limit	Limit	Not necessarily a limit

On the other hand, there's a point implicit in Pettit's work that I think he doesn't properly highlight: the key importance that, for republicanism, has the conflict between factions, which we can generally define as *groups of people with some common perceived interest translated into a common political purpose*. Almost all historical republican thinkers understood that every political community was divided between factions contending to win political power; whether they observed this conflict with sympathy (as Machiavelli) or with dislike (as Madison), they all agreed in asserting that the dispersion of the states' power among different institutions was not only needed in front of the natural tendency of government officers to abuse of their power, but also in front of the risk of a factional takeover, leading to the oppression rival factions, and giving to an end the definition of the political community as a *res publica* (public matter) by transforming it in a *res privata* (private matter) of the ruling faction. This feature of republican tradition would be, as we will later see, central to my analysis of the normative relationship between TRS and democratic republicanism.

Currently, those polities closer to democratic republican values are liberal and social democracies, in which rights (civil, political and socioeconomic), separation of powers and constitutionalism protect citizens

against arbitrary power to degrees of intensity and extension unparalleled in history. Pettit acknowledges this, while pointing out serious weaknesses of these polities in democratic republican terms (e.g. lack of civic virtue, unchecked economic power) (2012: 23). However, this critical support is a bit surprising since Pettit clearly presents republicanism and liberalism as opposed traditions, linking liberalism to negative freedom. This article does not aim to explore this issue, but nevertheless I would like to point out, in order to make clear my own view, that many scholars regard liberalism and republicanism as distinct, but not necessarily opposed (Kymlicka 2001: 327 - 346; Sunstein 1988; Sellers 1998; or Dagger 1997); that Pettit himself vindicates as republicans some thinkers usually classified liberals (e.g. Locke), what might indicate a trend in liberalism that would share the republican concept of freedom, thus forming a "liberal republicanism" or a "republican liberalism"; and that, in any case, here I will follow Pettit in taking modern liberal and social democracies as the currently (though imperfectly) closer polities to democratic republican values¹⁷.

This has been a summary of Pettit's view, to which I think we should add a more historical approach to domination¹⁸ and a more clear consciousness of the fact that republicanism conceives unequal distribution of property as being a particularly problematic and universal source of domination¹⁹. Democratic republicanism, so defined, has been developed to deal with different topics of political theory: the definition of concepts like freedom or civic virtue; the proper institutional design to promote republican values; the tense relationship between civic virtue and commerce; the place of republicanism in national or international law; or even the translation of republican principles to the relations between states, thus looking to avoid domination between them and promote peace, security and the common good of all humankind²⁰. However, there's a field in which historically democratic republicans have remained essentially silent: secessionist politics. What, therefore, could be said of democratic republicanism from the point of view of TRS?

4. What can TRS tell us about democratic republicanism?

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

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

19 However Pettit usually states that some degree of economic equality among citizens and economic independence of each citizen is needed in order to assure civil freedom, he directs the bulk of his analysis towards the institutional design of the republic; and while this has been certainly a central concern of republican tradition, there's no doubt that almost all classic republicans considered lack of property as a main source of domination, have versus have-nots as the fundamental social (and factional) division of any polity, and therefore property as a source of freedom and so a precondition for full citizenship (see Pérez Lozano 2008; Pocock 2003: 507; or Domènech 2004).

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

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

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

with this second one

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

The first quote seems to legitimize secession as long as the secessionist group was strong enough to win it, while the second one clearly condemns secession as a path to anarchy. The striking fact is that the author of both quotes is the same well-known republican leader: Abraham Lincoln. The first quote is an excerpt from an speech of before the House of Representatives in 1848, concerning the Mexican-American War, in which then Congressman Lincoln criticized the war while acknowledging the legitimacy of Texas' secession from Mexico. The second quote, on the other hand, is taken from his First Inaugural Address in 1861, with Southern Secession already in place and with the Civil War about to begin. Unless we assume Lincoln simply changed his mind between 1848 and 1861 for some unknown reason, we can only reach one of these two conclusions, either (1) he thought secession was not a moral issue, but a plain matter of power, being its resolution confided to the law of the strongest; or (2) he plainly morally contradicted himself on the grounds that the first secession he considered affected a foreign country while the second one affected his own.

Whether we choose one or another conclusion, the fact is that confidence in the law of the strongest and/or moral contradiction has been a usual fact in the history of republicanism when republicans have had to deal with secession, even if we only take into account pure secessions. Thus in 1794, Georges Couthon, who like all French Jacobins was a staunch defender of the invisibility of the French Republic, nevertheless advocated before the French National Convention to support Catalonia's secession from Spain in order to create a friendly republic south of the Pyrenees. During the same year, the same Jacobins fiercely fought Corsica's secessionist movement, which was led by another republican, Pasquale Paoli, who tried to restore the independent Corsica he founded in 1755 and the Kingdom of France abolished in 1768 by forcible annexation. However, more than confidence in the law of the strongest and moral contradictions, the predominant trait in the history of republicanism concerning secession has been silence. In fact, the former probably have their roots in the latter.

Thus, the *first* thing we can point out when analyzing democratic republicanism from the point of view of TRS is a criticism which is as obvious as important: unlike what democratic republicans have historically seemed to assume, secession is a phenomenon that can, and must, be normatively evaluated. Neither silence, nor moral contradictions justified on the grounds of "national interest", nor confidence in the law of

the strongest, are morally acceptable when dealing with secession and secession conflicts. Moreover, they are politically dangerous, for the result of taking any of those three stances would be to let the resolution of any secession conflict to lie, eventually, under the law of the strongest, which naturally tends to promote injustice, domination and, more often than not, violence. This is a criticism that can be directed towards almost all theories of state of all time, since all them have had a tendency to take for granted the legitimacy of states' boundaries. Therefore, while the main focus of democratic republicanism has been how to design and maintain a democratic republic, TRS point out that the issue of the boundaries of such democratic republic are not a morally irrelevant issue that democratic republicanism could ignore.

Related to that, a *second* point we can see is that, until very recently, it was difficult to find major democratic republican theoretical works in issues like language regulations, immigration policies, cultural diversity or, of course, secession conflicts and the drawing of boundaries; that is, all issues related to nation-building and its problems. Liberals, who have also been obviating these issues until very recently, have distinguished between liberalism 1 (centered on individual rights while indifferent or hostile to claims of recognition by national and ethnic minorities within the state) and liberalism 2 (including both that defense of individual rights *and* a concern on minorities' demands for national recognition and accommodation). In the case of democratic republicanism, I would not suggest the need to formulate "republicanism 2", for democratic republicanism has been gradually updating over the centuries the list of political conflicts within which domination and exclusion may operate²¹, and therefore it is hard to make such a sharp distinction between two stages as in liberalism. Instead, I would say democratic republicanism must simply update once again its catalog of political conflicts to be handled, this time in order to include those ones that, like secession conflicts, (usually) have to do with nationality and/or ethnicity.

In the third place, TRS implicitly point out another, deeper flaw in democratic republicanism, which again is common to all theories of the state: the problem of *sovereignty*, a controversial term which, nevertheless, can be loosely defined as *the supreme power over a territory*. The existence of a sovereign political unit with clear boundaries has always been an axiom in many of the fields within which democratic republican thinkers have worked. Theories of democracy have the *demos*, the sovereign people, at their core; International Relations regard the sovereign state as their basic unit; and democratic constitutionalism is based on the idea that the source of any legitimate constitution lies in a constituent power whose holder is a sovereign people. The problem, of course, is how to determine who is or, rather, who should be sovereign, in each of these fields. TRS, in the end, try to deal with a subdivision of this problem, hence pointing out that what democratic republicans have taken as an axiom is, actually, intensely problematic²².

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

22 It should be said that, though it is true that democratic republicanism has not examined the problem of the boundaries of the *demos*, nevertheless many republican thinkers, particularly in modern times, have dealt with two other related problems: (1) the optimal *size* of the republic; (2) the optimal *territorial distribution of power* within a republic. In these fields, republicans have adopted a variety of positions, typically illustrated by the opposition between the Rousseauian ideal of republic (small, unitary, homogeneous) and the Madisonian one (large, federal, diverse). Again, each thinker's choices were based in their considerations on which size and territorial distribution of power was the best in order to avoid factional takeover and despotism. But generally speaking, those

In a *fourth* and last place, TRS highlight what, in democratic republican terms, can be seen as different dangers of domination and/or exclusion present in secessionist conflicts. They can be summed up in the following four: (1) the *danger of exclusion*, i.e. the risk that *some people who would be directly affected by secession may be excluded from deciding on the issue* (e.g. an ethnic minority within the seceding territory); (2) the *danger of blackmailing minorities*, i.e. the fact that *in case of being entitled to secession, powerful minorities* (e.g. wealthy ones) *would be able to blackmail the rest of the polity*; (3) the *danger of permanent majorities*, i.e. the fact that *secessionist conflicts are usually part of wider political conflicts between permanent state-level and regional-level majorities* around how the state should be conceived and organized in terms of *identity, territory* (i.e. territorial distribution of political power) and *economy* (i.e. territorial organization of it)²³, and that *without a feasible exit option, permanent regional-level majorities will always be at mercy of permanent state-level majorities*; and (4) the *danger of instability*, i.e. the risk that *a bad handling of secession conflicts, and even more the absence of any handling at all, is likely to promote instability*, which will in turn favor the rule of the strongest, thus promoting domination and/or exclusion.

Thus, a review of democratic republicanism from the point of view of current TRS let us discover four important weaknesses in that tradition. In my judgment, as I previously said, democratic republicanism can overcome these weaknesses by updating its catalog of political conflicts to be handled through the application of democratic republican principles, in order to include those ones that, like secession conflicts, have to do (or usually have to do) with nationality and/or ethnicity. In the concrete case of secession conflicts, this means to assume that *contenders of secession conflicts must be understood as factions, and therefore a normative analysis of secession and secession conflicts must include a democratic republican concern on minimizing the risks of factional takeover and/or wide exclusion from citizenship*. And in order to develop such democratic republican approach to secession conflicts, it would be a good starting point to do the same kind of analysis developed in this section but in the opposite direction.

5. What can democratic republicanism tell us about TRS?

We have just seen how, from the point of view of TRS, we can point out the failure of republicanism to realize many of the factional conflicts arisen by the fact of nation-building, including secession conflicts. Now is time to look the other way around: what can democratic republicanism tell us about current TRS? Since TRS are a more diverse family than democratic republicanism, starting from the division between TURS and TCRS, it will be better to analyze them separately.

5.1. What can democratic republicanism tells us about TURS?

As we have seen, all current TURS are in some way criticized of being unjustly or dangerously biased either

theoretical developments hardly ever questioned the role of the state as nation-builder, the legitimacy of its boundaries or the justice or injustice of national and ethnic minorities' demands for self-government and recognition.

²³ See Rokkan and Urwin (1983) for a good account of how nationalist conflicts (and, we can say, secession ones) are related to these three fields. There, the authors explain nationalism (defined in a sense within which we can place secessionist politics) as a reaction against what is perceived as the peripherization of one's territory in terms of economy, territory and identity; that means that in a given territory, a good amount of people come to the conclusion that important decisions in these three fields are being made outside their territory, with no need of it (the given territory being perceived as capable of self-government) and without great regard to the prosperity of the people of this territory.

to the state or to secessionists. This is not an ultimate reason to reject them all, but we must explore the reasons behind this common weakness. In this sense, I would say the main reason is that all current TURS seem to choose an *a priori* winner in secession conflicts, an actor who is not supposed to bear any prove in order to be legitimated to unilaterally define the boundaries of the state. This poses an evident problem in terms of building a consensus among the two usual main actors in any secessionist controversy, i.e. state-majority unionists and regional-majority secessionists. And, as we have seen, there seem not to exist clear ultimate reasons to impose the burden of the proof on any of them. In my view, this common trait is the consequence of a common search: the search for the *demos* of democracy. They assume that, once you find this *demos*, then the moral problems of secessionist politics and secession conflicts are basically solved.

I think this way of looking at secessionist politics is, to a great extent, an inheritance of the three basic modern conceptions of *nation*, which in the end is one of the most common ways to name the *demos* of modern democracy: (1) a *voluntaristic* conception which Renan (1996) famously summarized in the metaphor of the nation as a "*daily plebiscite*"; (2) an *organic* conception of nation as a group of people linked by some common objective traits (e.g. language, culture or even race), as we can read in Fichte (2008); and (3) a *legalistic* conception of nation as the citizenship represented in the legislature of the state, which can be found in Sieyès (1964). It is easy to see links between these conceptions and plebiscitary, ascriptive and remedial TURS, respectively, and it is important to recall that all three were designed in order to argue for concrete state and nation-building projects²⁴. This means that to handle secession conflicts from one of these three conceptions is equivalent to handle it from a point of view raised by one of the conflicting factions in order to win. That's not an ultimate reason to reject current TURS, but it is a way to understand the roots of their failure in building a consensus on how to handle secession conflicts; and it is therefore a good reason to ask whether there may not be a better normative approach to them.

Such alternative must be based on a view of politics as a series of conflicts between groups, within which we can place secession conflicts. Despite its focus on individual rights, liberalism is not incompatible with this view, as scholars like Kymlicka have shown (1995 and 2001). However, it is not its natural mood, and normally such group-minded developments are the result of accommodating liberalism with values coming from other traditions, rather than of developing their own. And in any case, they doesn't give us any hint about what to do when secessionist politics arise in liberal democracies with a reasonably high level of protection for minorities, as in the case of Canada. I think that, instead, democratic republicanism, with its *republican* conception of factional conflicts *and* its *democratic* concern on inclusion on citizenship, give us a better tools to handle secession conflicts; it will only need to include secession conflicts in its catalog of factional conflicts to be taken into account when designing democratic institutions. Thus, we reach the same point we have seen as the conclusion of the previous section: *contenders of secessionist politics must be understood as factions, and therefore a normative analysis of secessionist politics must include a democratic republican concern on minimizing the risks of factional takeover and/or wide exclusion from citizenship.*

²⁴ Thus, Renan, in 1882, wanted to argue for the continuity of Alsace-Lorraine within the French Republic, which was the will of the majority of their inhabitants despite their German ethnolinguistic heritage. Fichte, in 1808, was concerned with the unification of the German-speaking states. And Sieyès, in the wake of the French Revolution, wanted to identify the French state with its citizenship, thus replacing the old absolutist identification between the state and the monarch. And, in different times, different movements have assumed one of these concepts of nation in order to legitimate their aspiration to create, or to keep united, a state.

However, there's a key point in which secession conflicts are different from any other factional conflict: what is at stake is not how the state should be governed, who should govern it, or even how power must be distributed within the borders of the state; instead, the object of the conflict are precisely these borders. This is a problem for which traditional republican solutions are ill prepared to work here, for they are designed to work *within* the state. Republicanism, as we have seen, takes the boundaries of the republic to be given. However, the idea of preventing the arbitrary rule of one faction over the other, I think, still makes full sense in secession conflicts. Therefore, the principles inherited from the republican view of factional conflicts are still valid, though we need to translate them into rules and institutions which are likely to be sensibly different from any other one previously envisioned by republican thinkers, since this particular conflict is also essentially different from any other one previously considered by them. To this prevention against factional takeover, common to all republicans, we must also add the concern on political inclusion specific to democratic republicanism. Starting from this approach, what can we say about current TURS?

I think we must evaluate the ability or inability of each TRS to overcome the four dangers for democratic republican values we pointed out in the previous section. To begin with, I see the *danger of exclusion* as particularly present in ascriptive TURS. If, for instance, we define Quebec people in linguistic terms, putting to be French-speaking as a condition to be recognized as part of such people, and we give this people the right to secede, then English-speaking Quebecers might be excluded from a referendum on Quebec's secession²⁵. Besides, some scholars have argued that this danger is also present in plebiscitary theories (Ovejero 2011: 155 – 201). The argument goes like this: civil freedom requires, as we have seen, the citizens' right to participate in politics and their disposition to do it looking for the common good; on the other hand, democracy requires a maximal inclusive citizenship. This ideal is realized, however imperfectly, in modern democracies. To give some people the unilateral right to secede from a democratic political community would therefore mean: (1) to let some people decide over a matter that affects the whole political community; and (2) to declare all the rest of the political community as strangers; that is, as non-citizens.

In my view, these last are pretty misleading conclusions; a secession doesn't "exclude" the people at the other side of the new border in the same way in which, for instance, African-Americans were excluded from citizenship in Southern U.S. during much of their history. Taking again the example of Quebec: if Quebec secedes unilaterally as a result of a referendum in which all Quebec residents have been able to participate, and if all Quebec residents are automatically included in the new Quebecer citizenship, then the people of the rest of Canada (ROC) would have not been more "excluded" of deciding over Quebec's destiny than they currently are from deciding over the United States' one, and in any case they would be excluded from new Quebec's citizenship, but in no sense from "democratic citizenship", globally speaking, as it was indeed the case of Southern African-Americans: the people of ROC will continue to be full members of a well-functioning democratic community. The territorial borders of their democracy will be smaller; their inclusion within such democracy will not.

Nevertheless, a danger that indeed affects both ascriptive and (particularly) plebiscitary TURS is the *danger of blackmailing minorities*. As we have seen in section 2, primary right theorists propose to overcome

²⁵ Of course, this situation could be avoided by compromises in order to make the referendum politically viable, or even for the sake of balance Quebec's self-government with other important values (such inclusion itself), but the point is that it would not be a consequence of the ascriptive point of view and, indeed, it would go against its very logic

this risk, as well as the risk of exclusion, by putting restrictions on such primary right, normally referred to the foreseeable capability (and will) of both the seceding state and the remainder one to keep fulfilling the obligations of a functional and liberal-democratic state. However, we have also seen the weaknesses of this solution: (1) the need of an arbiter; and (2) the weakening of the open questioning of the arbitrariness of states' boundaries. These two dangers of exclusion and blackmail, linked as they are with primary right TURS, have led republican scholars like Ovejero (2006: 81) or Sellers (2006: 158 – 166) to embrace remedialism. I regard remedialism, however, as ill prepared to handle *the danger of permanent majorities*, since *by stating that secessionists must bear the burden of the proof in a secession conflict, remedialism gives to state-level permanent majorities a high ground to arbitrarily decide which degree of autonomy, recognition or economic promotion they will give to permanent minorities*²⁶. From a democratic republican point of view, this criticism of remedialism can be answered in two ways.

The first way is to argue that in order to protect civil freedom and civic virtue, democracy should be understood in a deliberative way, in which people doesn't have fixed preferences which they try to impose to other people by using their respective political force; on the contrary, citizens of a democratic republic have to be opened to argue their views and, in the process, to convince and to be convinced by other people. Every political proposal has to be argued in the agora through public reasons, i.e. reasons that appeal to the common good of all citizenship, and not just to the particularistic interest of one individual or faction. This deliberative model of democracy would be the most efficient burden against factional domination, as factional reasons will not be allowed to enter the agora. Starting from this point, it is easy to follow the line: if regional-level majority claims can be sustained in reasons of common interest, they will prevail; if not, they will fail. And in no way this could be attributed to their state-level minority status, but only to the fact that their claims would have a factional nature. To recognize a primary, unilateral right of secession to such regional-level majorities is not to protect them from state-level majorities, but to allow them to politically succeed even when their political goals happen not to be rationally justified.

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

²⁶ Certainly, remedialism places a limit to this arbitrariness: the state, and therefore ruling permanent majorities, are not allowed to commit evident injustices against minorities. But a permanent majority can be highly dismissive towards permanent minorities' identity, territorial or economic aspirations while essentially respecting the limits imposed by basic Human Rights and liberal-democratic institutions. For instance it can decide, through strictly democratic procedures, to remove from public education across the state the teaching of the indigenous language of a permanent minority (if it happened to have one)

Factional conflict doesn't disappear, nor it is well handled, just by saying that "we should not be factional" and that "we should think on the well-being of the whole political community"; it is rather the other way around: only a good handling of factional conflict, by means of a proper institutional design, can minimize factions' chances of plainly and arbitrarily impose their will to other factions, thereby forcing their supporters to publicly discuss and convince each other through public reasons. And in terms of conflicts between state-level majorities and regional-level majorities around the three fields I pointed out previously (identity, territory and economy), state-level majorities, particularly in non-federal states, have no particular incentives to listen to regional-level majorities which are also permanent state-level minorities; they could either do it or not, but it is basically at their arbitrary will; an arbitrary power which is greatly ensured by remedialism when it only asks for the respect of very basic standards of justice, beyond which a state-level majority is enabled to act at its will, without any real need to act in such deliberative mood²⁷.

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

As we have previously seen in section 4, there are two remedialist strategies in order to overcome this danger of permanent majorities. The first one was the defense of reasonably high degrees of intrastate autonomy; unfortunately, we have also seen a critical weakness of this strategy in the fact that it is rather hard to establish objective criteria on what should be seen as a "reasonably high level of autonomy". In certain, deep disagreements on issues of territory, economy and identity, permanent minorities would likely to regard state-level majorities as the strong part in negotiating, interpreting and implementing any imaginable intrastate arrangement as long as both groups keep sharing the same state; while for state-level majorities, concessions to regional-level minorities in these points of deep disagreement, specially in the form of asymmetric agreements, would likely to be seen as a privileges, and probably not the last ones such minorities will ask for.

The second strategy was, on the other hand, the inclusion of insufficient self-government, discriminatory redistribution and/or failure of recognition within the catalog of "just causes" for unilateral secession. Patten argues for this strategy (2002), while Buchanan dismisses it because of "*the difficulties of*

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

forging a reasonable agreement on what counts as fundamental issues of value" at stake in controversies between permanent majorities and minorities (2007: 363)²⁸. Indeed, as we have also seen, this strategy weakens the most interesting feature of remedialism: its clarity in defining who has a right to secede without falling in the dangers of exclusion and minority blackmailing. While dismissing this strategy, Buchanan points out the example of the opinion of the Supreme Court of Canada on Quebec's secession as a way to give minorities a vehicle for secessionist politics without giving them a unilateral right of secession (2007: 362-363); however, he doesn't fully develop this point, and more importantly: I think he misses the fact that the SCC argumentation *also* questions the right of the rest of Canada to ignore a secessionist majority in Quebec, therefore forbidding unilateralism *both* for secessionists *and* for unionists (and, therefore, for the state). I will come to this point again in the next section.

The last of the four dangers we saw in the previous section was the *danger of instability*. It is the only danger that, in my view, is common to all three TURS and, more importantly, also to the option of rejecting all three without an alternative. In the presence of rules which could be reasonably presented as biased towards one faction of secession conflicts, the disadvantaged faction (whether secessionists or unionists) is likely to reject such rules, which in turn will lead to instability and the rule of the strongest, the nemesis of civil freedom. In the absence of any rules at all, unless both factions are spontaneously reasonable and open to dialogue, such instability and rule of the strongest will arise even more quickly. So it seems all current TURS, when reviewed from the point of view of democratic republicanism, share the same mistake: *they all favor one faction of the conflict at stake, instead of looking for a way to balance the power between them so that no one can dominate the other*. And the alternative of not choosing any of them and remaining silent on the issue seems not to be a much better option. Could, then, any current TURS be a suitable alternative to build a democratic republican normative theory of right of secession?

5.2. What can democratic republicanism tell us about TURS?

As we have seen in section 2, there are currently three different kinds of TURS: *plebiscitarian*, *remedialist* and *pragmatic*. The first two are different from the last one in the fact that they establish a link between the recognition of a right in moral terms and the practical recommendation of giving or not giving some sort of legal recognition to it. This is what Weinstock (a pragmatic theorist) calls the "one-stage view", in which "*the question of whether a right exists and whether it ought to be granted are not distinguished, or rather, the latter question is taken as disposing of the former*" (2001: 184). On the contrary, Weinstock himself (and, implicitly or explicitly, all pragmatic theorists in general) starts from what he calls the "two-stage view", which "*invokes different considerations to determine, on the one hand, whether a right exists, and on the other, whether it ought to be recognized*". We can have good reasons to reject the idea that someone has a moral right to do X while at the same time recommending to recognize its legal right to do it, normally in order to "domesticate" an inevitable-but-not-absolute evil, hence preventing it to become bigger and worse.

Hence, in plebiscitarian and remedialist TURS we can distinguish a purely *moral* aspect (based on plebiscitarian and remedialist TURS, respectively) as different from an *instrumental* one, in which the positions on the idea of constitutionalizing secession are based on what each plebiscitarian or remedialist

²⁸ Recently, Buchanan seems to be considering this strategy as plausible in the Catalan case (2013: 19 - 21).

scholar thinks that will be the real (not only logical) consequences of it in relation to the moral aspect of the theory. If they are expected to be positive to what plebiscitarianism or remedialism stand for, then the position on constitutionalizing secession will be positive as well; if they are expected to be negative, the position will also be negative; and if the scholar thinks the consequences will greatly vary depending on the context, then a case-by-case position will be adopted. Pragmatism, on the contrary, only presents the instrumental aspect, in which the consequences of constitutionalizing secession are analyzed as positive or negative *prima facie*, independently from any previous TURS. Since we have already observed the dangers that plebiscitarian and remedial TURS pose in democratic republican terms, and since pragmatism has no TURS behind, it is clear that in this subsection the key point must be the analysis of what does democratic republicanism tell us about the instrumental part of TCRS.

I will start by analyzing the most clearly instrumentally-focused of the three TCRS: pragmatism. Let's begin with its virtues, though. Pragmatism aims to decide whether to constitutionalize secession or not by evaluating its foreseeable consequences in terms of a different set of dangers. Whether they adopt a positive or a negative answer to this question, many of the dangers addressed by pragmatic scholars can be subsumed within the four ones we have already seen. Thus, Weinstock argues for a constitutional right of secession as a way to handle secessionist politics seen as an inevitable as well as morally problematic phenomenon which nevertheless doesn't necessarily violate any absolute moral principle. Among his different ways to make his case, Weinstock imagines an hypothetical "veil of ignorance" in which negotiators of different nations must establish a multinational state, without knowing whether their respective nations will be the majority or a minority within the new state. In this hypothetical situation, and assuming risk aversion, Weinstock says that

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

Here, Weinstock is addressing both the dangers of instability and permanent majorities; and, when he details his view of the first danger, it is clear that he is subsuming the danger of blackmailing minorities within it²⁹. While he doesn't directly address the danger of exclusion, his theory doesn't lead to it; and actually, his insistence on a Rawlsian handling of secessionist politics allows us to infer that no resident (or at least not resident *and* currently full citizen) of a territory will be allowed to be excluded from the decision on secession of that territory, if his TCRS was to be followed. Norman, in his latest works on the issue (2003 and 2006) also makes a case for a constitutional right of secession by pointing out reasons that can be subsumed

²⁹ "(...) hypothetical negotiators would want to make it difficult for a national group to quit the union, as too easy a secession procedure would make the attainment of the goods of political union precarious. For example, a multinational federation will almost by definition be one in which richer regions will often be called upon to transfer resources to poorer regions. If secession were too easy, richer groups might be tempted to wield the secessionist stick to lessen their distributive burden. The threat of secession might, as opponents of a constitutional right to secede have noted, unacceptably infect the process of everyday politics, in particular by making just policies more difficult to implement when they place unequal burdens upon a particular group" (Weinstock 2001: 198).

within the dangers of instability and blackmailing minorities. In a different light, Aronovitch (2006) argues against such a right by pointing out that it will be futile in order to protect vulnerable minorities, dangerous because it will empower blackmailer ones, and instability and exclusion-promoting because it will weaken the unity of the plural states as well as the diversity of their constituent units.

Hence, pragmatism seems to be the more promising candidate to be the base of a democratic republican normative TRS. However, I see different weaknesses in pragmatism in order to fulfill this role. First of all, precisely because its lack of a previous theory on a moral right of secession, pragmatism has not a clear guidance of how can we distinguish the “negative” and the “positive” outputs of constitutionalizing secession. Some scholars might think, against Aronovitch, that weakening the unity of plural states may not be such a bad idea, if this weakening is a peaceful result of the freely expressed will of the people of that state; some others might object, against Weinstock, that secession is indeed violating some absolute moral principle (e.g. popular sovereignty, if identified as the indivisible sovereignty of the whole population of the state). Pragmatism could answer in two ways: (1) by asserting that the guide to make this distinction lies in a broader political philosophy (e.g. democratic liberalism); and (2) by asserting that making this distinction is rather an intuitive job, without a need of a previous moral theory in order to fulfill it. In any case, aside from deciding whether these answers actually overcome that weakness, and related to it, positive and negative pragmatic TCRS present other serious flaws each one.

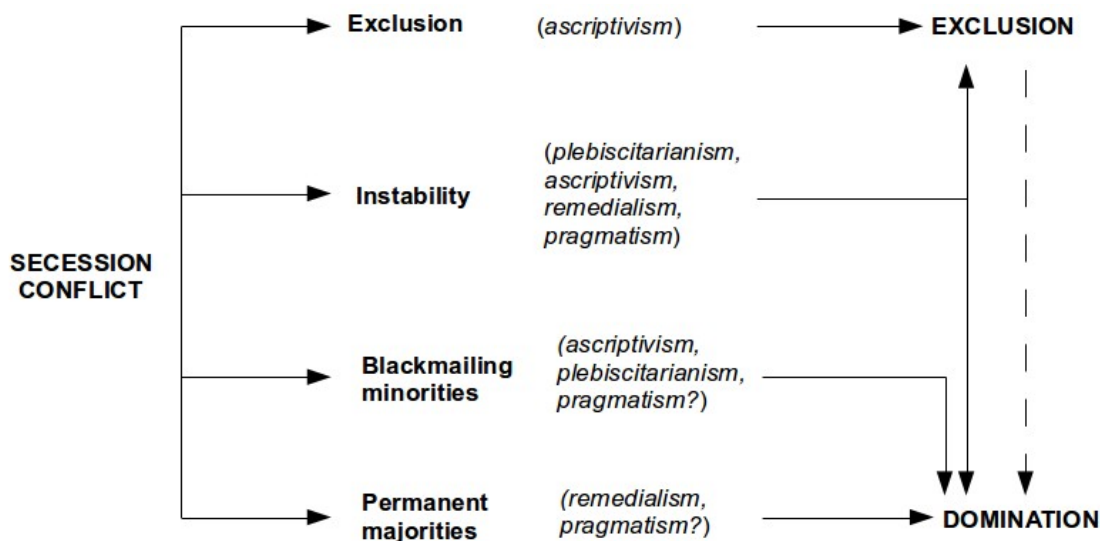
On the one hand, when pragmatic scholars like Aronovitch reject to constitutionalize a right of secession they leave basically unresolved the danger of permanent majorities: even if we consider, with Aronovitch, that to defend a constitutional right of secession would be futile in order to protect vulnerable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

Plebiscitarian and remedialist TCRS have an implicit answer for this question, for they have a previous TRS behind them: in absence of a constitutional management of it, right of secession is a priori reserved to secessionist regional majorities or to deeply oppressed groups, respectively. However, this answer obviously share the dangers linked to plebiscitarian and remedialist TRS. And, in any case, they both share a common last flaw with pragmatism: the lack of a clear, impartial arbiter to guide, interpret and manage the constitutionalization of secession. This flaw makes problematic to answer two key questions: (1) who should decide the concrete features of a constitutional right of secession (e.g. supermajorities for referenda on secession)?; and (2) who should interpret and guide the implementation of such a constitutional right (e.g. clarity, or lack of thereof, of the question in a referendum)? If, to any of both questions, we answer “the state” (or a majority of the population of the state), we fall in the danger of permanent majorities. If we answer “the secessionists” (or a majority of the population of the potentially

seceding territory), we fall in the danger of blackmailing minorities. And if we answer “both”, we still need an arbiter to decide how this consensus should be built, and what happens if negotiations to build it fail.

In the end, we seem to be stuck in a cul-de-sac: on the one hand, we have seen in section 4 how TRS point out that serious weaknesses in democratic republicanism resulting from its neglect to deal with the issue of the legitimacy of states' boundaries; on the other hand, we have just seen in this section 5 that neither current TRS, nor current TCRS, are fully satisfactory for democratic republicanism. So, answering the opening question of this article, *democratic republicanism and current TRS seem to be in a normative relationship characterized by tension*. However, it is unlikely that democratic republicanism would be better suited to handle the normative problems of secession by simply ignoring those of its weaknesses that, as we have seen, can be pointed out by current TRS; neither vice versa. So the exploration of the best way to reconcile both theoretical fields seems to be a relevant issue to be explored. But then, new questions arise: is this reconciliation possible? Are we forced to choose between one of these TRS, thus accepting its dangers in terms of domination, exclusion and instability? Or can we think instead in developing a democratic republican alternative TRS? I think we can, and before finishing this article I would like to point out which are the basic tasks that must be fulfilled in order to develop such democratic-republican TRS.

Figure 3. Secession conflict, TRS, exclusion and domination



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

I have argued that current TRS share a common failure based on a common search: the search for a sovereign *demos*, a group of people morally entitled to exercise sovereignty over a territory. In all cases, sovereignty had clear limits, but also a clear holder as long as the holder respected those limits. In my opinion, on the contrary, the idea of popular (or national) sovereignty is an abstraction with no intrinsic, but only instrumental, value, based on a twofold usefulness: (1) to the extent that prevents states to arbitrary interfere on the affairs of other states unless in case of extraordinary circumstances, hence promoting peace and order in the international arena; and (2) to the extent that puts the state as servant, and not as master, of

the people, therefore preventing common people of tolerating domination and tyranny by governments and elites. But it's still an abstraction: "peoples" exist in a certain sense, but they do not exist in the same sense as individuals do. Peoples do not "decide" anything, nor they "violate" any right or became "oppressed", literally: individuals do, either alone or in conjunction with other individuals. Therefore, the idea of a "people" holding sovereignty despite of what individuals might think is, in my opinion, a case of reification, of objectification of a human creation which has only value in terms of the services it can provide to humans.

As long as the individuals which happen to be citizens of one given state recognize each other as members of the same "people" or "nation", the idea of "popular" or "national" sovereignty remains useful in those two senses I pointed out; let's label these cases as *uncontested political communities*, with examples such as Iceland, Switzerland or Japan, to name very different cases of the same concept. But then think in a situation in which a good amount of the individuals which happen to live in one given part of one given state happen, on the contrary, to challenge this assumption of being "a people" together with the rest of the citizens of the state, and more concretely happen to campaign for secession; we could label these cases as *contested political communities*, with pairs of examples such as Canada and Quebec, Spain and Catalonia, UK and Scotland, or Belgium and Flanders. To use the concept of "popular" or "national" sovereignty as a way to discredit the aspirations either of unionists or of secessionists members of such communities doesn't have any usefulness in terms of promoting peace and non-domination, but rather the opposite, as we have seen when when analyzing current TRS from a democratic republican point of view.

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

It is clear that, from this point of view, a *unilateral* right of secession must be a last-resort in front of very concrete grievances committed by the state or the state-level unionist majority. A democratic republican TRS would therefore agree with remedialism in this sense; the difference would be that such theory would also consider the *unilateral* right of the state to suppress an attempt of secession as a last-resort in front of very concrete grievances by the regional-level secessionist majority. Therefore, in absence of these very concrete grievances by any of both factions, neither the right of secession of the regional-level secessionist majority, nor the right to territorial integrity of the state-level unionist majority, would be unilateral; instead, some institutional design would be in place in order to handle a negotiation process between the two parts. Therefore, the two basic theoretical tasks of a democratic republican TRS would be: (1) to develop this institutional design as the *normal* framework to handle secession conflicts whenever secessionism becomes majority in the territory it claims for its purposed state; and (2) to specify under which concrete conditions one of the two parts would be allowed to impose its will unilaterally.

Concerning the first task, I think the democratic republican review of TCRS I just developed here would have a necessary complement in a democratic republican normative analysis of one of the very few cases of a current modern democracy which recognizes a (quasi)constitutional right of secession: Canada (for Quebec)³⁰. By and large, this right was shaped in 1998 by the Supreme Court of Canada, which stated that Quebec had no right to unilaterally secede from Canada, while also questioning the right of the rest of Canada to unilaterally abort Quebec's secession, should a clear majority of Quebecers voted "yes" to a clear question on the issue. Instead of unilaterally acting, both parts should negotiate in good faith on secession. In my view, this solution falls very close to how a democratic republican theory of right of secession might look like, at least relating to the first of the two tasks I previously defined for the development of such theory. Nevertheless, it is clear that the SCC reference is full of important gaps: who decides what is a "clear" question and a "clear" majority? Who should have this right to initiate a negotiated process of secession: a federated unit, a culturally homogeneous group, or any group who ask for it? Who is the judge of the "good faith" of the participants in eventual negotiations? What happens if negotiations fail or get blocked?

I think we can group this case study with the two theoretical tasks I defined previously as basic for the development of a democratic republican TRS, and also try to anticipate which problems and secondary questions we would find in the way; by doing all this, I think we can list the following four tasks to undertake in future research towards a democratic republican TRS: (1) to study the case of Quebec as an example of a (quasi)constitutional right of secession, in order to see the advantages and inconveniences of this concrete institutional proposal; (2) to develop, on the basis of that case study, an institutional design as the normal democratic republican practical framework to handle secession conflicts; (3) to specify under which concrete conditions one of the two parts would be allowed to act out of that framework and pursue its will unilaterally; and (4) to compare this institutional design for secession conflicts with other possible arrangements to balance the power of the factions involved in such conflict (e.g. federal and/or asymmetric formulas).

7. Conclusions

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

³⁰ It is not the only example, but the other ones are located either in very small-sized democracies (e.g. St. Kitts and Nevis) or in not-very-well-established democracies (e.g. Ethiopia).

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